MINISTRY of TRANSPORT
TE MANATŪ WAKA

WELLINGTON NEW ZEALAND

PURSUANT to Section 386 of the Maritime Transport Act 1994

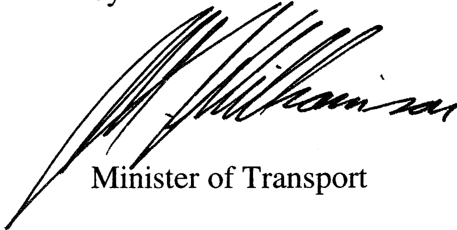
I, MAURICE DONALD WILLIAMSON, Minister of Transport,

HEREBY MAKE the following marine protection rules.

SIGNED AT Wellington

This 29 day of June 1998

by **MAURICE DONALD WILLIAMSON**



Minister of Transport

Marine Protection Rules
Part 130B
Oil Transfer Site Marine Oil Spill Contingency Plans

Maritime Transport Act 1994

Marine Protection Rules

PART 130B

OIL TRANSFER SITE MARINE OIL SPILL CONTINGENCY PLANS

Marine Protection Rules

PART 130B

OIL TRANSFER SITE MARINE OIL SPILL CONTINGENCY PLANS

PART OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT

Objective

Part 130B requires owners of oil transfer sites to develop contingency plans for dealing with oil spills into New Zealand's internal waters, territorial sea and exclusive economic zone.

An "oil transfer site" is any land, site, building, structure, or facility (whether on land or above the seabed) that is used to transfer oil, or at or from which oil is transferred, to, or from, a ship, or offshore installation. The term "owner" is widely defined by the rules and includes persons leasing, operating and managing sites.

The provisions of Part 130B do not apply where an oil transfer site is associated with an offshore installation whose contingency plan covers oil transfers to or from that site (refer Part 124).

The plan required under this Part must address issues such as—

- the procedures for reporting marine oil spills
- details of the personnel responsible for containing and cleaning up a spill from the site
- contact information for other persons likely to be affected by a spill from the site
- documenting the response equipment available for use in a spill response.

The rules place an obligation on the owner to have their site marine oil spill contingency plan approved by the Director. (The power to approve is to be delegated by the Director to regional councils). Regular updates and reviews of the plan are also required, as are exercises of the plan.

The authority for Part 130B is found in Part XXIII and sections 387 and 390 of the Maritime Transport Act 1994.

Extent of Consultation

Extensive discussions involving regional councils, port companies and the Oil Pollution Advisory Committee (OPAC), have taken place during the preparation and amendment of Part 130B.

On 4 September 1996 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 130B. A notice was also published in the *New Zealand Gazette* on 5 September 1996. The Authority then made its Invitation to Comment, draft Part 130B and draft Advisory Circular available to the public with 185 copies being sent automatically to interested parties. Comments on the Part were requested to be made by 31 October 1996.

Eleven submissions were received on Part 130B. 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 130B as amended was referred to and signed by the Minister of Transport.

Part 130B comes into force 28 days after the date of its notification in the New Zealand *Gazette.* However, compliance with Part 130B is not required until 12 months after the Part enters into force.

Marine Protection Rules

PART 130B

OIL TRANSFER SITE MARINE OIL SPILL CONTINGENCY PLANS

General

130B.1 Entry into force and compliance date
130B.2 Definitions
130B.3 Application
130B.4 Requirement to train personnel

Site Marine Oil Spill Contingency Plan

130B.5 Site marine oil spill contingency plan requirements
130B.6 Elements of the site marine oil spill contingency plan

Reporting of Marine Oil Spills

130B.7 Identification of nature of spill
130B.8 Reporting of marine oil spills

List of Contacts

130B.9 Contact information

Steps to Control Marine Oil Spills

130B.10 Action to mitigate damage and control spills
130B.11 Personnel responsibilities
130B.12 Priority actions
130B.13 Site information to be appended to site marine oil spill contingency plan

Use of Response Equipment

130B.14 Response equipment

Consultation

130B.15 Consultation with emergency services

Site Marine Oil Spill Contingency Plan Approval

130B.16 Site marine oil spill contingency plan approval and re-submission for new approval

Site Marine Oil Spill Contingency Plan Review

130B.17 Periodic review of site marine oil spill contingency plan
130B.18 Post-use review of site marine oil spill contingency plan

Upkeep of Site Marine Oil Spill Contingency Plan

130B.19 Periodic testing of site marine oil spill contingency plan
130B.20 Notification of modifications to site marine oil spill contingency plan

General

130B.1 Entry into Force and Compliance Date

(1) Part 130B shall come into force on the 28th day after the date of its notification in the *Gazette*.

(2) Compliance with Part 130B is not required until 12 months after the date of its entry into force.

130B.2 Definitions

In Part 130B—

"Acting under delegated authority" means exercising the powers of the Director of Maritime Safety pursuant to a delegation from the Director under section 444 of the Maritime Transport Act 1994:

"Defence area" has the same meaning as in section 2(1) of the Defence Act 1990:

"Exclusive economic zone of New Zealand" has the meaning given to it by section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977; and "exclusive economic zone" has the same meaning:

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

"Internal waters of New Zealand" includes any areas of the sea that are on the landward side of the baseline of the territorial sea of New Zealand:

"Marine oil spill" means an oil spill into the internal waters of New Zealand or New Zealand marine waters:

"New Zealand marine waters" means—

(a) the territorial sea of New Zealand; and

(b) the waters of the exclusive economic zone of New Zealand:

"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 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 spill" means any actual or probable release, discharge, or escape of oil:

"Oil transfer site" or **"site"** means any land, site, building, structure, or facility (whether on land or above the seabed) that is used to transfer oil, or at or from which oil is transferred, to, or from, a ship, or offshore installation:

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

"Owner" in relation to an oil transfer site includes any manager, lessee, licensee, or operator of the oil transfer site or the person in charge of the site:

"Part" means a group of rules made under the Maritime Transport Act 1994:

"Pollution damage" means damage or loss of any kind; and includes the cost of reasonable preventive measures taken to prevent or reduce pollution damage and any damage or loss occurring as a result of such measures:

"Region" has the same meaning as in the Local Government Act 1974:

"Regional Council" or **"council"** has the meaning given to the term "regional council" in the Local Government Act 1974; and includes—

(a) any territorial authority that has the functions, powers, and duties of a regional council; and

(b) the Chatham Islands Council:

"Regional marine oil spill contingency plan" means a marine oil spill contingency plan—

(a) prepared by a regional council and approved by the Director under section 292 of the Maritime Transport Act 1994; or

(b) prepared by the Director under section 295 of the Maritime Transport Act 1994:

"Regional on-scene commander" means a regional on-scene commander appointed under section 318 of the Maritime Transport Act 1994:

"Rules" includes maritime rules and marine protection rules:

"Ship" means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—

(a) a barge, lighter, or other like vessel;

(b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;

(c) a submarine or other submersible:

"Site marine oil spill contingency plan" means a plan prepared under the marine protection rules in respect of an offshore installation, or oil transfer site, and providing for the measures to be taken in respect of marine oil spills from the offshore installation or oil transfer site, as the case may be:

"Territorial sea of New Zealand" or **"territorial sea"** means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

130B.3 Application

(1) Except as provided for in rules 130B.3(2) and 130B.3(3), Part 130B applies to every oil transfer site within—

(a) the land area of New Zealand; and

(b) the internal waters of New Zealand; and

(c) New Zealand marine waters;

including any oil transfer site in a Defence area.

(2) Nothing in Part 130B applies to—

(a) any oil transfer site that is an offshore installation; or

(b) any ship or oil transfer site associated with an offshore installation where the site marine oil spill contingency plan approved under Part 124 for that installation covers oil transfer operations to or from that site.

(3) Nothing in Part 130B applies to any oil transfer site used to transfer oil, or at or from which oil is transferred, to, or from a ship in the inland waters of New Zealand, except where an oil spill at that site into those waters could lead directly to a marine oil spill.[1]

(4) For the avoidance of doubt, a tank truck operation is an oil transfer site and is subject to the provisions of Part 130B.

130B.4 Requirement to Train Personnel

The owner of any site to which this rule applies must—

(a) ensure that personnel responsible for implementing the site's marine oil spill contingency plan and dealing with oil spills receive training appropriate to their responsibilities under that plan; and

(b) maintain a record of training provided under rule 130B.4(a).

---

[1] Part 130B thus does not apply to sites adjacent to inland waters, such as Lake Taupo or Lake Wakatipu, where an oil spill would not directly enter the sea. It **does** apply to sites located at ports in inland waters where an oil spill would directly enter the sea, such as Greymouth and Wanganui.

Site Marine Oil Spill Contingency Plan

130B.5 Site Marine Oil Spill Contingency Plan Requirements

(1) The owner of any oil transfer site to which this rule applies must ensure that there is a site marine oil spill contingency plan for that site which—

(a) is available to assist personnel at the site to deal with an oil spill by setting in motion the actions necessary to stop or minimise the spill and to mitigate its effects; and

(b) complies with the requirements of rules 130B.5(2) to 130B.15 inclusive.

(2) The site marine oil spill contingency plan referred to in rule 130B.5(1) must be—

(a) prepared in accordance with rules 130B.6 to 130B.15 inclusive; and

(b) approved in accordance with rule 130B.16; and

(c) reviewed in accordance with rules 130B.17 and 130B.18; and

(d) kept in accordance with rules 130B.19 and 130B.20; and

(e) held at the site at all times.

(3) The owner of any oil transfer site to which this rule applies must hold an up-to-date copy of the site's approved site marine oil spill contingency plan.

130B.6 Elements of the Site Marine Oil Spill Contingency Plan

The site marine oil spill contingency plan must contain—

(a) a description of the areas, processes, activities, circumstances and arrangements at the site which present a risk of generating pollution damage from an oil spill, including a detailed description of those most likely to result in an oil spill; and

(b) a detailed description of those areas under threat of pollution damage outside the site should an oil spill occur from that site; and

(c) the procedure to be followed by the owner to report a marine oil spill; and

(d) the list of authorities or persons, as set out in rule 130B.9, to be contacted in the event of a marine oil spill; and

(e) a detailed description of the action to be taken immediately by persons at the site or elsewhere to reduce, control and clean-up any oil spill; and

(f) the procedure and point of contact at the site for coordinating site response activities with regional oil spill response procedures in the event that measures are taken under a regional marine oil spill contingency plan.

Evaluation and Reporting of Marine Oil Spills

130B.7 Evaluation of Nature of Spill

The site marine oil spill contingency plan must provide the owner with guidance to evaluate whether there has been an actual or probable release, discharge, or escape of oil, and the scale of any marine oil spill, including advice which will assist in—

(a) determining whether the marine oil spill is a result of an event which occurred some time ago, or is still occurring; and

(b) identifying the type of product spilled.

130B.8 Reporting of Marine Oil Spills

(1) The site marine oil spill contingency plan must require that in the event of a marine oil spill from the oil transfer site, the owner of the site is to make a report—

(a) by the fastest telecommunications channels available; and

(b) with the highest possible priority;

to the Director, or where the oil spill is within the internal waters or territorial sea of New Zealand, the Director or the regional council within whose region the oil spill has occurred.

(2) The site marine oil spill contingency plan must, in accordance with section 299(2) of the Maritime Transport Act 1994, specify the criteria and procedure for notifying—

(a) the regional council within whose region the marine oil spill is located; or

(b) if the spill is not located within the region of a regional council, the Director;

of any marine oil spill which the person responsible for implementing the plan considers can not be contained and cleaned up using the resources available to that person for that purpose.

List of Contacts

130B.9 Contact Information

(1) A contact list for reporting and responding to oil spills must be included or appended to the site marine oil spill contingency plan. The contact list must provide 24 hour contact information for—

(a) the Director; and

(b) the regional council, if the oil transfer site is located within a council's region; and

(c) any organisation contracted to the site owner to provide response capability in respect of that site; and

(d) off-duty personnel with responsibilities for dealing with oil spills; and

(e) other parties whose interests in or around the site are, in the opinion of the owner of the site or the Director, likely to be affected by any oil spill from the site.

(2) The currency of contact information must be checked in accordance with rule 130B.17 and any necessary amendments made.

Steps to Control Marine Oil Spills

130B.10 Action to Mitigate Damage and Control Spills

The site marine oil spill contingency plan must contain a separate section—

(a) dealing with the types of occurrence which can lead to a marine oil spill, including guidance to the owner on the appropriate action to mitigate or control particular oil spills; and

(b) providing guidance to ensure that the owner considers all relevant factors when deciding what action to take in response to a spill of a particular type.

130B.11 Personnel Responsibilities

(1) The site marine oil spill contingency plan must designate the person or persons responsible for implementing the plan.

(2) The site marine oil spill contingency plan must define the responsibilities of personnel in dealing with oil spills.

130B.12 Priority Actions

(1) The site marine oil spill contingency plan must provide site-specific guidance for determining priority actions to—

(a) ensure the safety of personnel and the site; and

(b) prevent the escalation of the oil spill; and

(c) stop the discharge at its source, where possible.

(2) The site marine oil spill contingency plan must provide the owner with site-specific guidance and information for—

(a) assessing the occurrence that led to the oil spill; and

(b) evaluating the scale, magnitude and fate of the discharge; and

(c) deciding what remedial action to take; and

(d) identifying the safety and environmental consequences of any remedial action; and

(e) contacting appropriate persons and authorities for assistance and/or advice; and

(f) determining whether or not the marine oil spill can be contained or cleaned up by the resources available to the owner, or other person(s) responsible for implementing the plan, for that purpose.

130B.13 Site Information to be Appended to Site Marine Oil Spill Contingency Plan

(1) The site marine oil spill contingency plan must have appended to it, plans, drawings, and details showing the general arrangement of the site, and the location of areas under threat should an oil spill occur from that site.

(2) The site marine oil spill contingency plan must show where current information concerning the oil being transferred, including quantity and specifications, is available.

Use of Response Equipment

130B.14 Response Equipment

The site marine oil spill contingency plan for a site which holds response equipment must—

(a) contain an inventory of the response equipment; and

(b) establish personnel responsibilities for deployment, oversight and maintenance of the response equipment.

Consultation

130B.15 Consultation with Emergency Services

(1) The owner of a site to which this rule applies must, as provided for in rule 130B.15(2), consult with the Fire Service and the Police during the preparation of a site marine oil spill contingency plan for a site prior to submitting the plan to the Director, or a person acting under delegated authority, for approval under rule 130B.16.

(2) The matters consulted on must include—

(a) any criteria set out in the draft site marine oil spill contingency plan for notification of the Fire Service and the Police; and

(b) the role of the Fire Service and the Police in any oil spill response undertaken in accordance with the draft plan.

Site Marine Oil Spill Contingency Plan Approval

130B.16 Site Marine Oil Spill Contingency Approval and Re-Submission for New Approval

(1) The owner of a site to which this rule applies must make application to the Director, or a person acting under delegated authority, under section 269 of the Maritime Transport Act 1994 for approval of the site's marine oil spill contingency plan.

(2) Every site marine oil spill contingency plan submitted to the Director or a person acting under delegated authority for approval must be provided—

(a) on a diskette in a commonly used word processing format; and

(b) in the form of a hard copy.

(3) Subject to rules 130B.16(4), (5), (6) and (7), the Director, or a person acting under delegated authority, must approve in writing, by the issue of a marine protection document in accordance with section 270 of the Maritime Transport Act 1994, a site marine oil spill contingency plan which meets the requirements of rules 130B.6 to 130B.14 inclusive.

(4) The Director or a person acting under delegated authority may require the owner to include or omit from any plan submitted for approval such provisions as the Director or a person acting under delegated authority may reasonably specify.

(5) No marine protection document evidencing site marine oil spill contingency plan approval shall be issued by the Director or a person acting under delegated authority for a period exceeding 3 years.

(6) It is a condition of the marine protection document evidencing site marine oil spill contingency plan approval that the marine protection document accompany the plan at all times.

(7) A plan for a site within a defence area need not include any information about the site which is classified confidential by the New Zealand Defence Force provided that any information of this description relevant to an oil spill response is available without delay at the site.

(8) A site marine oil spill contingency plan must be resubmitted to the Director or a person acting under delegated authority by the owner for a new approval whenever—

(a) the use or layout of the site is altered in a way which could increase the risk of an oil spill; or

(b) there is a change in the response procedures or equipment for the site, other than the direct replacement of equipment; or

(c) a change notified to the Director or a person acting under delegated authority under rule 130B.20 is, in the Director's or that person's opinion, cause for a new approval.

(9) Whenever a site marine oil spill contingency plan is resubmitted to the Director, or a person acting under delegated authority, under rule 130B.16(7), the provisions of rule 130B.16(2) to 130B.16(7) inclusive shall apply.

(10) The owner must without delay supply a hard copy of the site's approved marine oil spill contingency plan and a copy of the marine protection document evidencing that approval to—

(a) the regional on-scene commander, where the site is within a region, and the plan has not been approved by an officer of that regional council acting under delegated authority from the Director; and

(b) the District Chief Fire Officer; and

(c) the Police District Commander; and

(d) the head of the local ambulance service.

Site Marine Oil Spill Contingency Plan Review

130B.17 Periodic Review of Site Marine Oil Spill Contingency Plan

(1) A site's marine oil spill contingency plan must be reviewed by the owner not less than once every 12 months to check the currency and completeness of the information contained in it.

(2) After any review of a site marine oil spill contingency plan under rule 130B.17(1), the owner of the site must ensure that—

(a) any information in the plan which is not current is updated; and

(b) any new information relevant to the plan is incorporated.

(3) The owner must maintain a record of every review under rule 130B.17(1).

130B.18 Post-Use Review of Site Marine Oil Spill Contingency Plan

(1) The effectiveness of a site's marine oil spill contingency plan must be evaluated by the owner of the site as soon as possible after its use in response to a marine oil spill.

(2) After any review under rule 130B.18(1), the owner of the site must ensure that any modifications emerging from the review that would increase the effectiveness of the site's plan are made.

(3) The owner must maintain a record of every review under rule 130B.18(1).

Upkeep of Site Marine Oil Spill Contingency Plan

130B.19 Periodic Testing of Site Marine Oil Spill Contingency Plan

The owner of the site to which this rule applies must ensure that—

(a) the site's plan is tested not less than once every 12 months; and

(b) accurate details of every such exercise and its results are kept; and

(c) any modifications that would increase the effectiveness of the site's plan are made; and

(d) the owner must maintain a record of every review made under rule 130B.19(c).

130B.20 Notification of Modifications to Site Marine Oil Spill Contingency Plan

The owner of a site to which this rule applies must—

(a) notify the Director or a person acting under delegated authority as soon as possible of any modifications made to the site marine oil spill contingency plan, whether arising from a periodic or post-use review, periodic testing or any other cause; and

(b) notify every other person holding a copy of that site's marine oil spill contingency plan, including any person who approved that plan under delegated authority, as soon as possible of any modifications made to the plan, whether arising from a periodic or post-use review, periodic testing or any other cause; and

(c) have a documented procedure for complying with the owner's obligations under rule 130B.20(a) and 130B.20(b), and for recording the actions taken to meet those obligations.

Marine Protection Rules

PART 130B

OIL TRANSFER SITE MARINE OIL SPILL CONTINGENCY PLANS

Consultation Details

(This text does not form part of the rules contained in Part 130B. It provides details of the consultation undertaken in making the rules)

Parties Consulted

The Canterbury Regional Council, Auckland Regional Council, the New Zealand Fire Service, the New Zealand Shipping Federation, Ports of Auckland Limited, Port of Napier Limited, South Port New Zealand Limited, Port of Wellington Limited, the New Zealand Defence Force, Charles Hansen, and Glenys Miller responded to the invitation to comment on the draft marine protection rules in Part 130B—Oil Transfer Site Marine Oil Spill Contingency Plans.

The Northland Port Corporation (NZ) Limited, on behalf of port company chief executives, commented on a preliminary draft of Part 130B prior to the invitation to comment.

The preliminary draft of Part 130B was made available to the Oil Pollution Advisory Committee.

Amendments following Consultation

Part 130B has been extensively revised following consultation. A number of definitions, some from the Maritime Transport Act 1994 and some newly coined, have been added; new rules have been incorporated in the body of the Part and some existing rules expanded; and the advisory circular has been revisited, strengthening in particular the description of the transition from site to regional response and the role of regional councils in the approval, inspection and audit of site plans.

The substantive changes made to the draft of Part 130B are the result of either specific submissions made by organisations and individuals or revisions made by MSANZ to meet their concerns. In addition, we have made a number of amendments to improve readability and clarity.

The draft of Part 130B has not been revised to reflect a number of forceful submissions from the ports industry that the escalation to a tier 2 response should be automatic once oil enters the sea.

The specific proposals and concerns of those making submissions are set out fully below, followed by our assessment and response. The rule and advisory circular section numbers are those used in the invitation to comment version of Part 130B.

General

Types of Sites Covered by Part 130B

The Ports of Auckland Ltd observed that in consequence of the definition of oil used in Part 130B (based on the Maritime Transport Act 1994 definition of oil, in turn derived from Annex I of MARPOL), only a restricted range of marine transfer sites will be required to have contingency plans while some others, dealing with equally harmful substances, will not. The result can be to have adjacent sites, one handling oil (as narrowly defined) with a plan, the other handling petrochemicals (which may be simply a cocktail of different oils) without a plan. This is not in the interests of the protection of the marine environment. The company therefore proposed that Part 130B be extended to cover all bulk liquid terminals.

The logic of the Ports of Auckland Ltd argument cannot be faulted. The company's position is also consistent with an international trend to extend and adapt contingency planning processes, developed originally for oil, to chemical cargoes.

However, we cannot support an extension of Part 130B to cover chemicals because, in our view—

- *The rule writing powers of the Maritime Transport Act 1994 do not allow the Minister of Transport to make rules covering contingency planning for chemical transfer sites, even taking into account the ability to add to the definition of oil by specifying other products in the marine protection rules. (We do not consider that that ability extends to oil-based chemicals when the Act's definition specifically excludes the petro-chemicals covered by Annex II of MARPOL. Equally, it could not be used where the chemical is not oil-based.)*
- *The scheme of the Act's response and contingency planning provisions focus on oil, as narrowly defined. On-scene commanders have no powers to deal with chemical spills and the New Zealand Oil Pollution Fund, built up from levies on ships carrying oil, is not available to finance chemical spill contingency plans.*

While a formal chemical spill contingency planning framework under the Maritime Transport Act 1994 must await a decision by the Government to amend that Act, we propose, in the meantime, that the advisory circular accompanying Part 130B recommend to operators of chemical transfer sites that the accompanying oil spill contingency planning material (incident potential matrix and model plan) should be adopted and adapted for chemical cargo transfers.

We would also note that it is proposed the MSA undertake an assessment of the risk of marine pollution from chemical transfer sites in the 1999/2000 year, which will provide a sound basis for the Government to consider any extension of the Maritime Transport Act planning framework. We note further that contingency plans for such sites are required in some areas under the Resource Management Act.

Demarcation between Tier 1 and Tier 2 Response

A number of port companies* (Ports of Auckland Limited, Port of Napier Limited, South Port New Zealand Limited, and Northland Port Corporation Limited) submitted that Part 130B should provide that once oil enters the sea, a tier 2 response is automatically initiated. In other words, a tier 1 plan should be limited strictly to land and wharf areas.

The Ports of Auckland Limited argued that such a demarcation is both more efficient and more conducive to creating certainty because—

- response on the water requires special training, equipment and procedures, none of which are common to the functions performed at most oil transfer sites
- tier 2 responsibilities of regional councils are clearly to work on the water—it is illogical and uneconomical to repeat this capability for a small boundary area alongside the site itself
- certainty will be created because there will be a clear boundary of responsibility, there being no practical way of marking a boundary on water
- oil can migrate and reverse its movement on water. If there is no clear demarcation, responsibility could shift and lead to divided control and delay prior to effective action commencing—"...the spill will get debated, it won't get fixed."

South Port New Zealand Limited also registered concern that the approval process for site plans could prove problematic if a regional council (delegated authority from the Director of Maritime Safety to approve plans) and the site owner cannot agree over the appropriate demarcation between tier 1 and tier 2 response.

The Northland Port Corporation (NZ) Limited, commenting on the pre-invitation to comment version of Part 130B and emphasising the constraints imposed on it by contractual arrangements for oil spill response capability entered into with the regional council at the time the company was set up,* argued for a new rule requiring every plan to give clear instructions on when a spill response escalates from tier 1 to tier 2 to tier 3 based on the general principle that—

- a tier 1 response deals with a spill able to be contained and cleaned up by the site owner
- a tier 2 response is initiated when oil has reached the water
- a tier 3 response takes over once the spill gets beyond the resources of the region to deal with

We do not support the port companies' proposal that oil entering the sea should lead directly and invariably to a tier 2 response. It is contrary to the policy of the Maritime Transport Act 1994, which is to allow scope for site operators to deal with oil in the sea. Part 130B should provide for that flexibility. Individual plans should determine the escalation to a tier 2 response on the basis of what is appropriate to that site and that operator—such tailoring to the **site***-specific being the essence of* **site** *planning. Sites operated by organisations with substantial oil spill response capability and expertise should be free to plan for a clean-up commensurate with that capacity—which may be available for*

* Port of Wellington Limited commented on its preferred relation between tier 1 and 2 plans in submissions on the advisory circular and the model site plan.
* The Northland Port Corporation Limited contract (incorporated in the company's articles of association) provides that the port company is to maintain an oil spill response capability and to act for the regional council in the event of an oil spill emergency within the area of port operations.

protection of the marine environment and for the limitation of the site operator's potential civil liability for oil pollution damage more efficiently than a comparable tier 2 capacity.

While it is true that the Northland Port Corporation Limited (and perhaps other port companies) may be contractually bound to provide oil spill response capability to the regional council under understandings going back nearly ten years, this is not relevant to Part 130B. Such arrangements pre-date the tiered oil spill response strategy of the Maritime Transport Act 1994 and its provision for site planning, and clear policy of the spiller dealing with a spill in the first instance.

We appreciate that these earlier arrangements may create some uncertainty in the minds of port companies as to when and where a port company is the agent of a regional council in a tier 2 response. But this is a matter for the council to clarify when defining responsibilities under its contingency plan (Part 130C). To address the problem by rules in Part 130B declaring that oil in the sea automatically becomes a tier 2 response is, for the reasons set out above, an inappropriate solution. That said, in leaving this matter open for individual site plans to determine, port companies (with individual site operators, if a composite plan is to be prepared for an entire port company area) and regional councils are free to agree that plans should provide that once oil enters the sea, a tier 2 response is automatically initiated.

We accept that it is possible, as argued by South Port New Zealand Limited, that there may be irreconcilable differences of opinion between regional councils and site owners on the appropriate demarcation between tier 1 and tier 2 plans. However, this should not stalemate approval of site plans as the power of decision lies with the party responsible for approving the plan—in other words, if negotiation and consultation fails to produce an agreed demarcation, then the site owner may have to accept the demarcation the party approving the plan thinks appropriate. The Director of Maritime Safety can make the decision in any case where a regional council chooses not to exercise the power to approve plans delegated by the Director. An aggrieved site owner can appeal a decision of the Director (or a person acting under delegated authority) not to approve a site plan (that is, decline to issue a marine protection document under section 270 of the Maritime Transport Act 1994) to a District Court.

Role of regional councils

The Auckland Regional Council, noting the close relationship between site and regional plans, was concerned that the role of regional councils in site plan approval and audit is not dealt with specifically in the rules. Only a brief and somewhat cursory comment in the advisory circular indicates that it is intended that councils exercise delegated powers of the Director and have a key role in site plan approval. It noted too that no provision is made for auditing of site plans whether by the Director or the regional council—in contrast to the emphasis on auditing (by regional councils) in the revised national strategy.

This is fair comment. We propose that these matters be dealt with fully in the advisory circular, giving an account of the powers, including inspection and audit, it is proposed to delegate to regional councils. (See also the comments of the Canterbury Regional Council on rule 130B.14.)

Lack of specificity

The Auckland Regional Council commented on the lack of specificity in the rules, noting that while much of the information in the advisory circular and its annexes

helps to clarify the general provisions of the rules, this material is not mandatory. In the interests of creating certainty, the Council proposed that the rules include—

- a statement of the aim and purpose of a site plan. (The ARC noted that this is found in the advisory circular at page four, where it is stated that a plan is to require the owner to take immediate and effective action to minimise the impact of the spill on the environment by containing the spill either within the site itself, or, if appropriate, within an area beyond the immediate site boundary.)
- a definition of the boundary between site and regional response and the process for the transfer of responsibility between tiers.

We agree with the first point. A purpose statement for site plans has been inserted in rule 130B.5(1).

We agree that the relationship between site plans and regional plans could do with some elaboration. This has been provided in additional explanation inserted in section 4 of the advisory circular.

Rule 130B.1

The Canterbury Regional Council submitted that 12 months is too long to allow site operators to submit a plan for approval. It suggested that six months is sufficient, noting that in its region a number of site plans have already been submitted and await approval.

The 12 month phase-in period has been retained. While some regional councils consider a 6 month period more satisfactory, others will not be able to approve all plans in that period. We note that approval of site plans can be done as soon as Part 130B comes into force and does not require the elapse of the phase-in period.

Rule 130B.2

Charles Hansen, on the basis of Canadian experience, argued that Part 130B should draw on the international conventions for the definition of key terms: "oil" should be as defined in MARPOL, "oil spill" should be replaced by the MARPOL term "oil pollution incident" and "oil transfer site" by the OPRC term "oil handling facility."

The terms used in the rules are taken from the Maritime Transport Act 1994. As the rules are made under that Act, we do not have a lot of latitude to depart from the statutory definitions. We agree that using international convention terms that the industry is familiar with makes the rules more user friendly. Where possible we have avoided using statutory terms—such as incident (in Part 130A)—that have a convention meaning that is clearly at odds with the Maritime Transport Act's. But this is as far as we can go.

The Auckland Regional Council asked whether the range of hydrocarbons covered in the definition of oil is too broad, covering hydrocarbons which it may not be sensible to try to deal with and too restrictive in not referring directly to more volatile oils.

The definition of oil is inclusive of all hydrocarbons, including volatile products. The only hydrocarbons not covered are those which are classed as petrochemicals under Annex II of MARPOL.

The Auckland Regional Council suggested that definitions of internal waters of New Zealand, New Zealand marine waters, ship, offshore installation, risk and threat should be included.

We have included definitions of the statutory terms internal waters of New Zealand, New Zealand marine waters, ship, and offshore installation. The statutory definition of "pollution damage" has also been included. It is used in revised rule 130B.6 to make the use of the terms risk and threat more meaningful.

Rule 130B.2, 130B.3

The Canterbury Regional Council argued that the Part's application to tank truck operations should be made more clear. It suggests that this be done by extending the definition of "oil transfer site" or "owner" to specifically refer to such operations or by stating that tank truck operations are covered in rule 130B.3.

We have no doubts that tank truck operations fall within the definition of oil transfer site. However, we have, for the avoidance of doubt, made this clear in the application (rule 130B.3).

The Auckland Regional Council asked whether the reference in paragraph (3) of rule 130B.3 should be to internal waters rather than inland waters.

The use of the term inland waters, to refer to lakes and rivers, is correct. The internal waters of New Zealand are part of the sea.

Rule 130B.5

Charles Hansen made the point that in rule 130B.5(c) the term "site" is used in two different senses—as in an oil transfer site and a particular place within an oil transfer site. He suggested the use of the term "scene." The Auckland Regional Council makes the same point and suggested the use of the term "areas."

This is fair comment. But it is a non-issue as rule 130B.5(c) has been revised and is now two subparagraphs, one dealing with the identification of risk at a site, the second, areas removed from the site but potentially under threat from a spill from that site. The revision is tied to the addition to rule 130B.2 of definitions of "pollution damage," "risk of pollution damage," and "threat of pollution damage."

Charles Hansen proposed that more elaboration is required in the rule to aid those preparing plans. For example, the rule should indicate that information about tides, the weather, the sensitive areas down-wind should be covered.

These are all relevant considerations but we consider that they are dealt with fully in the advisory circular and its appendices. This supporting material, rather than the rules themselves, will be the planners' aid.

Charles Hansen asked whether rule 130B.5(d) should include a requirement that persons at the site must respond to an oil spill.

Part 130B requires a site owner to have an approved oil spill contingency plan. The plan provides for oil spill response. Section 313 of the Maritime Transport Act 1994 creates an obligation on site owners to comply with their plan. It does not need to be covered in the rules as well.

Rule 130B.7

Charles Hansen suggested that it should be made clear that in reporting oil spills to the Director, contact is to be made with the oil spill response personnel rather than to the Director personally.

This is fair comment. The advisory circular has been amended to make clear that the first point of contact for the Director is the Marine Duty Officer and for regional councils it is generally the harbourmaster.

Rules 130B.9

The Auckland Regional Council suggested that clarity would be served by finding a different word from "considering" in the final line, given the use of "consider" earlier in the sentence. "Addresses" is proposed.

We agree. We propose "deciding."

Rules 130B.12

The Auckland Regional Council questioned whether the expression "areas at risk" should be "areas under threat" to establish consistency with the use of the terms risk and threat in rule 130B.5(c).

This is fair comment. "Areas under threat of pollution damage" has been substituted for "areas at risk."

Rules 130B.7, 14, 15

The New Zealand Fire Service, noting that the 111 emergency telephone system may be the most appropriate way of notifying the Director and regional council of a spill, proposed that the rules require the site owner to consult with the local Fire Service, Police and ambulance service when preparing a site plan. It also proposed that the local District Chief Fire Officer be provided with a copy of approved site plans.

The importance of plans being available to parties likely, or possibly involved, was a point also made by Charles Hansen.

We agree that the emergency services should be given the opportunity to comment on draft site plans. In consequence, a new rule, 130B.15, requires a site owner to consult with the Fire Service and the Police on any criteria in the plan for notifying these services and their role during an oil spill response prior to submitting a site plan to the Director, (or person acting under delegated authority), for approval.

We agree emergency services should also be provided with a copy of an approved site plan. A new subparagraph has been added to rule 130B.14 requiring a site owner to supply a copy of the approved site plan to the Fire Service, Police, and ambulance service.

The Canterbury Regional Council, noting that site plans are relevant to tier 2 response planning, proposed that a copy of the approved plan be forwarded without delay to the council in whose region the site is located.

We agree. Rule 130B.15 has been amended to provide for this.

Rule 130B.9, 12

Charles Hansen suggested that rule 130B.9 is too open ended and should be narrowed down to the more likely scenarios at the site. Similarly, the risks to be considered in rule 130B.12(1) are ill-defined. How remote from the site itself do risks have to be to be considered in the plan?

Again, as for rule 130B.5, we think the focus on the site specific will come through as planners use the supporting advisory material. The off-site risks to be factored into the plan will also depend on the level of response capability available to the site owner.

Rule 130B.11

Charles Hansen submitted that rule 130B.11(2) should refer to responders rather than the owner because, in the event of a regional or national on-scene commander becoming involved, this rule could equally apply to action they may take.

We agree that on-scene commanders may make use of the plan but we are confident that they can be relied on to judge what parts of the plan are relevant and not to be deterred because of references to the owner.

Rule 130B.13

Charles Hansen proposed that criteria should be set to determine whether a site is to hold response equipment, suggesting that it seems odd that this rule implies that some sites may not have any equipment at all.

The decision to hold equipment is largely a matter for individual site owners, based on their willingness to assume responsibility for undertaking a tier 1 clean-up and acceptability of this to the regional council as tier 2 responder and the approving body for site plans.

Rules 130B.14, 15, 19

The Canterbury Regional Council proposed that rule 130B.14 provide for the delegation of the Director's power to approve site plans to regional councils in the following terms: a statement that the Director may so delegate; a statement that references to the Director in rules 130B.14 and 130B.18 may also refer to a regional council; procedures for the surrender or suspension of the delegation; and provision for recovery of regional council costs from the Maritime Safety Authority.

We agree that the involvement of persons outside the Authority in the approval of plans under delegated authority should be reflected in the rules. Rules 130B.15, and 130B.19 have been amended accordingly. However, the power of the Director to delegate and the revocation of delegations are substantive process which are dealt with in the Maritime Transport Act 1994. Such processes are also outside the scope of the Minister's power to make marine protection rules.

A full description of the Director's powers of approval, inspection and audit to be delegated to officers of regional councils has been incorporated in section 4 of the advisory circular.

Site owners should be charged directly by the regional council for the cost of assessing, approving and auditing site plans. Under section 444 the Maritime Transport Act 1994, people outside the MSANZ who exercise delegated powers may charge a reasonable fee.

Rule 130B.14

Charles Hansen, noting the plethora of available word processing formats and the absence of any established norms, made the point that the term "standard word processing format" is meaningless.

This is a good point. We have replaced it with the term "commonly used word processing format."

The New Zealand Defence Force submitted that some information relating to transfer sites in defence areas may be classified as confidential and cannot be held outside Maritime HQ and HQNZDF. It suggested an amendment to the rule to provide that confidential information need not be in a plan submitted to the Director for approval but must be immediately available on site.

We have amended the rule to provide that a plan for a transfer site in a defence area when submitted to the Director for approval (and copies of that plan held by other parties once approved) need not contain information classified confidential by the New Zealand Defence Force.

Charles Hansen observed that the scope of the discretion allowed the Director in Rule 130B.14(4) is ill-defined and queries whether it is a device to provide for exemptions from the rules.

This provision parallels that found in section 292 of the Maritime Transport Act 1994 in relation to regional plans. It is intended to help ensure that plans can be made acceptable quickly should an owner prove tardy. It is not a device to make exemptions from the rules. This is available to the Director under section 395 of the Act.

Charles Hansen suggested that limiting the life of plans to 3 years will involve a heavy ongoing workload in terms of re-approvals.

We think a 3 year life for site plans, which parallels that of regional plans, is appropriate. Plans need to be re-evaluated thoroughly from time to time. The work load should not be too onerous given that this will be spread between 17 regional councils and the Director.

Charles Hansen proposed that the marine protection document evidencing plan approval should form part of the plan rather than just accompany it and that a copy of this document should be in all official copies of the plan.

A marine protection document confers a right or a privilege, which can be suspended and revoked by the Director on the grounds provided for in the Maritime Transport Act 1994. A plan, clearly, is not a marine protection document and it would not be appropriate to merge the two documents in this way.

We agree that a copy of the marine protection document should accompany all official copies of the plan and such a requirement has been incorporated in rule 130B.15.

Charles Hansen suggested it is desirable to quantify the use of the term "significant" as a criterion for requiring a plan to be resubmitted to the Director for new approval.

We agree that some elaboration is desirable. This has been inserted in section 6 of the advisory circular.

Rule 130B.15

Charles Hansen proposed that a record of every 12 month review should be maintained by the owner, that the record form part of the plan and have an effect on its approval or validity.

We agree a record of reviews should be maintained and the rule has been amended to require this. However, we do not consider this needs to form part of the plan itself. The Maritime Transport Act 1994 regime for marine protection documents does not provide for approvals to automatically lapse on non-fulfilment of a condition—the suspension or revocation of a

marine protection document must in all cases be a considered decision of the Director of Maritime Safety.

Rule 130B.16 and 17

Charles Hansen suggested that the Maritime Safety Authority or the regional on-scene commander should be involved in determining what modification should be made to a plan following post-use and post-testing reviews.

We agree that this may be desirable. This has been incorporated in section 6 of the advisory circular.

Charles Hansen argued that the requirement to modify a plan to increase its effectiveness is too loose (as there are constantly new things coming along that would increase effectiveness) and it should be tied back to the outcome of the review.

This is fair comment. An amendment has been made to rule 130B.16(2) to make this clear.

Rule 130B.17

Charles Hansen suggested that it would be more practical and economic to allow piecemeal testing of plans so long as all aspects are tested over the course of 12 months.

This may well be the case, as recognised by section 6 of the advisory circular.

Charles Hansen suggested that it should be a requirement that testing and exercising of plans should be coordinated with regional and national authorities and that this should be part of retaining plan approval.

Coordination of exercises is desirable and is promoted by the MSA. However, it would be too restrictive to make it a condition of retaining plan approval.

Rule 130B.19

Charles Hansen suggested that consideration be given to requiring the plan to detail the method and procedures to be used to keep official copies up to date.

We see merit in having a formal process to ensure that plans held by other parties are kept up to date. Rule 130B.20 has been amended to require owners to have a documented procedure for this.

Other Matters

The New Zealand Shipping Federation proposed that unless there is a tier 2 response, regional councils should be prohibited from charging companies for keeping a watching brief over a clean-up of an oil spill which is within the capability of the site to satisfactorily handle.

Cost recovery by regional councils for their involvement in an oil spill clean-up is outside the scope of Part 130B. The circumstances in which the site owner is liable for the costs of cleaning up pollution are set out in section 355 of the Maritime Transport Act 1994.

The New Zealand Shipping Federation argued that the Maritime Safety Authority has a role to ensure that site plans meet the planning criteria agreed by the Oil Pollution Advisory Committee.

We agree. The approval process will ensure that this is the case.

Advisory Circular

2 Purpose

The Northland Port Corporation Limited suggested that it would aid clarity to address the information in the circular to *owners/operators* of oil transfer sites.

While the definition of owner is wide, we agree it would be helpful to readers to make it clear that the obligations in Part 130B apply to operators who may not be considered "owners" in common parlance.

3 Plan Basics

Charles Hansen pointed out that at an oil transfer site, the operation of transferring oil is likely to be spasmodic rather than continuous. He suggests the more appropriate question is *can* oil be transferred at the site.

We have amended the advisory circular to make it clear that the test is what the facility is used for, as in the definition of site used in Part 130B and the Maritime Transport Act. We do not consider the term "can" to be helpful—any wharf in New Zealand can be used to transfer oil; the question is, is *it so used.*

Charles Hansen asked whether barges are required to have site plans and what, if any, planning obligations apply to sites where refuelling of ships occur.

Barges are ships and must have contingency plans under Part 130A if they fall within the application of the rules in that Part. The definition of oil transfer site quite clearly does not cover ships. All sites where refuelling of ships is carried out are required to have plans.

Charles Hansen suggested that every site plan must cover all the areas surrounding a site that may be adversely affected by an oil spill. This will provide an incentive to the owner to plan effectively to react quickly and put in place a reasonable response in order to limit the geographic extent of the plan.

This proposal would tend to lead to plans in which the tier 1 responder would always bear the brunt of the clean-up. This would remove the flexibility we want to build into the planning process.

Charles Hansen suggested that it is inappropriate to ask whether a risk assessment needs to be undertaken for an oil transfer site given that risk is a given and forms the base premise from which contingency planning proceeds. He also questioned the use of an incident potential matrix which is aimed principally at gauging corporate impact of events involving risk.

We agree that risk is a given. The expression "risk assessment" refers to the systematic and disciplined identification and scrutiny of the probability of certain events and their consequences.

The Incident Potential Matrix is one possible planning tool. Other assessment guides may be more relevant to particular sites.

The Port of Wellington Limited, while observing that it is intended that the rules provide some flexibility for site owner and regional council to agree a basis of responsibility, argued that, from its point of view, a site should be limited to land

or wharf areas and should not include the sea. A plan, however, may provide for dealing with oil in the sea but the primary responsibility for the response should rest with the regional council.

It is for Port of Wellington Limited and the Wellington Regional Council to agree the demarcation. Such an arrangement would present no difficulty from a rules perspective.

The Auckland Regional Council, while noting that the explanation of what constitutes a site is useful, suggested that there still exists potential for confusion because the landward boundary of the sea is not defined and the term "facilities" (only one element of the definition of site) is used in giving examples of different oil transfer sites.

We agree that the statutory definition of the landward boundary of the sea is not clear. A footnote has been added to rule 130B.3(3) noting that this Part only applies to oil spills from sites adjacent to inland waters where the spill could lead directly to a marine oil spill.

The advisory circular has been amended to make it clear that the examples of sites cited includes their land, building and structures.

4 Responsibilities

Charles Hansen suggested that section 4 of the advisory circular is somewhat loose and the meaning of the comments about responsibility for preparing and complying with plans is open to more than one interpretation. He also suggested that the use of the Maritime Transport Act's inclusive definition of owner is confusing.

In reminding owners of their duty under section 313 of the Act to comply with their plan we are merely reiterating that this is the second leg of the site response regime—that in addition to having to hold a plan which complies with the marine protection rules, the owner must also put the plan into action when the time comes.

We do not envisage the inclusive definition of owner will cause any problems.

We agree with the comment concerning a plan requiring *an owner to take certain actions. This has been amended to the plan* guiding *the site owner to take immediate and effective action.*

Charles Hansen criticised the rules for not defining what level of response capability must be provided. He suggested that from the Government's perspective the maximum level of response capacity should be planned for at site level as experience suggested that owners, if not given clear direction, are likely to find it more economic to leave the clean-up to the marine agencies.

The lack of a defined level of response capability is considered policy. We agree that it may be more economic for site owners to leave the clean-up to the response organisations. But the self-interest of the owner may also be consistent with the best interests of the industry and country as a whole. The response agencies capability is, after all, funded by the industry levies (not by the taxpayer) and their costs are fully recoverable from the polluter. Organising response capability regionally and nationally encourages the development of scale economies and a critical mass of scarce expertise. A central authority, such as the MSANZ, also helps promote international co-operation and standardisation of equipment.

On the other hand, large private organisations such as the oil companies, with access to international resources in expertise and equipment may be best placed to organise the clean-

up of a quite big spill. The fact that they may be motivated by commercial self interest rather than a disinterested concern for the environment is neither here nor there. The important thing is that they have the resources and are prepared to use them in an emergency.

We believe allowing each site owner and the approving regional council the discretion to judge what level of response capability to provide will give the best result overall.

The Auckland Regional Council suggested that the statement of the basic aim of site planning and priority actions of site owners in terms of effective and immediate containment and mitigation appear in the rules, where it would be binding rather than advisory.

This is a good point, given that the Maritime Transport Act 1994, in section 286, contains only a very general statement of the purpose of site plans and establishes no explicit obligation on site owners to contain and clean-up an oil spill. A purpose statement for site plans has been inserted in rule 130B.4(1).

The Auckland Regional Council noted that it is envisaged that regional councils may be delegated the power to approve site plans but asked how this is to be done and what authority will enable councils to recover costs. It also asked if costs incurred by councils in providing advice to site owners on the development of their plans will be recoverable.

As discussed under rule 130B.14, the authority for a regional council to approve plans (and to charge for that approval) comes from section 444 of the Maritime Transport Act 1994.

The Port of Wellington Limited suggested that the definition of owner in the circular should make it clear, as in the section 222 Maritime Transport Act definition, that owner includes a licensee.

We agree. A reference to licensee has been inserted in the revised advisory circular.

The Port of Wellington Limited argued that it is misleading to use the term boundary when describing the relationship between site plans and tier 2 plans, noting that the term suggests a physical demarcation when it is more likely that it will be the quantity of the spill that governs the escalation to a tier 2 response.

We agree. The term boundary has been deleted from the text of the advisory circular.

5 Relationship Between Site Plans and Other Plans

Charles Hansen suggested that the importance of co-ordination and compatibility of site plans with other plans should be phrased in language which conveys an obligation rather than a suggestion. He also suggests that there may be a conflict between the proposition that the polluter pays for the clean-up and the reference to the liabilities of site owners for clean-up costs and pollution damage.

We agree that the first paragraph in section 5 should be more directly phrased and that polluter and site owner may not always be synonymous.

The Auckland Regional Council, noting that site owners are free but not compelled to develop a unified plan for a commercial port area, suggested there may be efficiency gains if there is a requirement to do so.

The efficiency gains of a co-ordinated plan are best left to the parties to judge in each commercial port area. Compulsory co-ordination may not sit comfortably with the freedom we wish to allow individual site owners to determine the level of response appropriate to

their circumstances. For example, a co-ordinated response plan may be difficult to develop if one owner is keen to undertake an extensive clean-up but adjacent site owners wish to rely on a tier 2 response.

Charles Hansen asked whether there are to be clear guidelines on transferring responsibility for a clean-up operation from the site owner to an on-scene commander, noting that some owners may be very unhappy to relinquish control before they are ready, particularly if large sums of money are involved.

Intervention by on-scene commanders is an important part of their training. Consideration will be given to developing guidelines. We note that any intervention by a regional on-scene commander must be consistent with the regional oil spill contingency plan.

The Auckland Regional Council suggested that the way in which the boundary between a site and a regional response is defined implies in effect that the site owner has the discretion to determine when a regional response will be declared.

The advisory circular can be read in this way and it is not strictly accurate as a description of the relationship. The plan (see rule 130B.7) will have criteria that the owner uses to determine that the spill is beyond the site's resources to deal with. These criteria must be acceptable to the regional council at the time the plan is approved. The Act, in section 313, requires a site owner to comply with the site plan (and thus the criteria for notifying inability to deal with a spill). Failure to do is an offence under section 314. The advisory circular has been amended to more accurately reflect this position.

The Northland Port Corporation Limited proposed that a third bullet point be added to the list of circumstances leading to the declaration of a regional response: in the case of oil entering the waterway from a site owned by a port company, a regional response is appropriate.

This may be one outcome of the site planning process and fall within the procedure set out in the first bullet point, as amended. The range of possible outcomes is described fully in the text we have added at the end of this section of the advisory circular.

6 Training Personnel, and Testing and Reviewing Plans

Charles Hansen argued that an explicit obligation to train personnel involved in marine oil spills is required.

We agree. A new rule on training has been added.

Annex 1 Incident Potential Matrix

Glenys Miller proposed additions to paragraph 4.2.3 to widen the considerations to be taken into account in assessing the potential environmental impact. These include the relation of the spill site to areas of special environmental significance, the length of time the oil will cause environmental damage, and the estimated economic loss to other users of environmental resources.

We consider each of the proposed additions appropriate and the draft has been amended accordingly.

Glenys Miller proposed additions to paragraph 3 and 4 of table 2c elaborating the indicators used to classify spills as localised or major.

We support the proposed elaborations, which have been added in an edited form.

Annex 2 Model Site Oil Spill Contingency Plan

Glenys Miller observed that in defining sensitive environments in section 2.1, no mention is made of wetlands. Nor is any recognition given to areas that may be regarded as sensitive at particular times of the year when, due to nesting, birthing, and mating activities, species are present in large numbers.

We agree and have modified the model plan to recognise these sensitive environments.

Glenys Miller proposed section 2.2 on the characteristics of oils and hydrocarbons should provide that—

(1) Preferred treatment plans are written for each oil type in order to avoid delays in response.

(2) Material safety data sheets on each oil include information on how particular oils will behave in different marine environments.

Information on preferred treatment plans is a key ingredient of plans for sites dealing with oil in the sea.

Manufacturers rather than site owners compile the contents of MSDS. The focus is on safety hazards, although some MSDS do include information on pollution categories. Information on behaviour of oil in different marine environments is clearly relevant to any site plan dealing with oil in the sea. But we suggest that it should, as envisaged by section 2.2, be held separately from, and in addition to, material safety data sheets.

Glenys Miller proposed that the summary oil spill response diagram should be amended to include "incident potential matrix assessment and review".

We agree and have amended the diagram accordingly.

Glenys Miller proposed that the appendices to the model site plan should make it clear that contact details need to be checked for currency and regularly updated, and that equipment should be checked for expiry dates.

We agree. The appendices have been amended duly.

Ports of Auckland Limited strongly endorsed section 2.4 on preventative measures, noting that this could prove to be the real strength of contingency plans by requiring high standards of construction and operation, thus preventing incidents in the first place.

The Auckland Regional Council noted that while section 2.6 of the model plan categorises spills into type A, B and C, there is no obvious process for regional council concurrence in the definition of a spill requiring a regional response.

The regional council involvement will come through the plan approval.

The Auckland Regional Council, commenting on section 4.1 of the model plan, suggested that there may be a case for national consistency in determining what constitutes a notifiable spill.

We are content to see councils set criteria for notifications as part of the plan approval process. These, however, must comply with the requirements of 130B.7: reports must be made in the event of every "marine oil spill," which is a term, along with "oil spill," defined by Part 130B.

The Auckland Regional Council asked whether the actions of a regional on-scene commander are subordinate to the directions of a Fire Service commander and the Police.

The limits on the powers of an on-scene commander are set out in section 312 of the Maritime Transport Act 1994. It should also be noted that the powers of on-scene commanders in section 305 may also be exercised by any member of the Police.

The Port of Wellington Limited suggested that the model site plan should be amended to reflect that a site is restricted to land and wharf areas and that any spill into the sea above a defined (quite small) quantity would involve a regional response. A type B spill would be a very minor spill that a site owner could deal with immediately using dispersants. In all cases, however, the regional council would be notified and determine the adequacy of the clean-up.

We consider the arrangement envisaged by Port of Wellington Limited to be entirely consistent with Part 130B. However, the model plan should stand as another, equally acceptable approach. Given that Part 130B provides for a flexible approach to the level of response capability of individual sites, no one model plan can cover all possibilities. We would prefer to retain the model plan as it is, and emphasise that it represents one approach among many.

The Northland Port Corporation Limited proposed that the categorisation of spills referred to in sections 2.6, 4.2, 4.4, and 4.5 should be amended to refer to tier 1 and tier 2, with the defining element of the latter being oil entering or threatening to enter the sea.

While a two tier classification, as proposed by the company may be a legitimate classification for some plans, for others, (we suspect the majority of site plans), a three tier categorisation will be appropriate. As noted previously, the model plan is only that and it is not intended to create a straitjacket which all plans must fit.