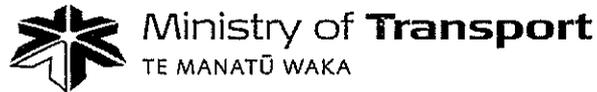


DISALLOWABLE INSTRUMENT



Maritime Transport Act 1994

Marine Protection Rules

Amendments to Ballast and Harmful Substances Provisions 2018

Pursuant to sections 386, 388, and 390 of the Maritime Transport Act 1994 I, Julie Anne Genter, Associate Minister of Transport, having had regard to the criteria for making marine protection rules in section 392 of the Maritime Transport Act 1994, hereby make the following marine protection rules.

Signed at Wellington

This 25 day of June 2018

By Hon JULIE ANNE GENTER

A handwritten signature in black ink, appearing to read "Julie AGenter", written over a large, stylized circular flourish.

Associate Minister of Transport

Objective

The objective of the “Marine Protection Rules Amendments to Ballast and Harmful Substances Provisions 2018” is to (1) clarify the instances when discharge of ballast water is permitted, to align with section 246B(1) of the Act; (2) clarify when discharge of ballast water and sediment as harmful substances are permitted, to align with sections 226A(2) and 226(4) of the Act; (3) clarify that sediment is a harmful substance only in circumstances to which subparts A to J apply; (4) clarify that subparts A to J apply to ships designed or constructed to carry non-permanent ballast water and do not apply to permanent ballast water; (5) amend the transition schedule of when different BWM standards are applicable to different ships; and (6) clarify in Part 100 that the defined terms dirty ballast water and dirty sediment are linked to harmful substances specified in Part 300.

The authority for these amendments is found in section 388 of the Act. Section 388(i) enables rules to regulate or prohibit the discharge of a harmful substance. Section 390(2) enables marine protection rules to provide for such other matters as are contemplated by or necessary for giving full effect to the provisions of Parts 18 to 26A of the Act and for the due administration thereof, which includes subsection (1) of section 246B in Part 19A of the Act under which ballast water may only be discharged in accordance with applicable marine protection rules.

Marine protection rules are disallowable instruments under the Legislation Act 2012. Under that Act, the rules are required to be tabled in the House of Representatives. The House of Representatives may, by resolution, disallow any rules. The Regulations Review Committee is the select committee responsible for considering rules under that Act.

Extent of consultation

In November 2017, Maritime New Zealand published via its website, an invitation to comment on drafts of the proposed amendments to the Marine Protection Rules, in accordance with the Act. A notice regarding this consultation was placed in the New Zealand Gazette on 23 November 2017. The deadline for making submissions was 26 January 2018. Four (4) submissions, summarised at the back of these rules, were received.

Entry into force

These rules enter into force on 27 July 2018.

INSTRUCTIONS TO AMEND PART 300

1 Heading

In Part 300, in the Part heading “Part 300: Ballast Water Management”, delete “Water Management”.

2 Part 300: Objective

In Part 300, immediately after the Part heading page, replace the heading and content describing the objective of Part 300 with the following heading and content:

“Part objective

The objective of subparts A to J of Part 300 is to prevent, minimise, and ultimately eliminate the risk to the environment, human health, property, and resources arising from the transfer of harmful aquatic organisms and pathogens through the control and management of ships’ ballast water and sediment.

Subparts A to J of Part 300 give effect to the provisions of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004 and contain the applicable marine protection rules for the discharge of ballast water in section 246B of the Maritime Transport Act 1994 (the Act).

The United Nations Convention on the Law of the Sea 1982 (UNCLOS) provides, in Article 196(1), that “States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto”.

The 2002 World Summit on Sustainable Development, in paragraph 34(b) of its Plan of Implementation, calls for action at all levels to accelerate the development of measures to address invasive alien species in ballast water.

The objective of subpart K is to clarify the instances when discharge is permitted.

The authority for Part 300 is found in section 388 of the Act. Section 388(f) of the Act provides the Minister may make marine protection rules for the purpose of prescribing areas of ships where harmful substances, or any specified harmful substance, or ballast water, may not be held. Section 388(n) of the Act provides the Minister may make marine protection rules for the purpose of prescribing requirements and procedures relating to the control and management of ballast water for the purposes of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004. This includes a provision for the Director to issue guidelines that allow for alternative requirements and procedures for certain specified types of ship. Section 388(i) enables rules to regulate or prohibit the discharge of a harmful substance. Section 388(h) enables rules to be made in respect of reception facilities, which this Part contains in its transition provisions to amend Part 100. This links the ballast water requirements in this Part 300 with those requirements in Part 100 that are relevant to reception facilities for ballast water and sediment. Section 390(2) enables marine protection rules to provide for such other matters as are contemplated by or necessary for giving full effect to the provisions of Parts 18 to 26A of the Act and for the due administration thereof, which includes subsection (2) of section 246B in Part 19A of the Act under which ballast water may only be discharged in accordance with applicable marine protection rules.

Marine protection rules are disallowable instruments under the Legislation Act 2012. Under that Act, the rules are required to be tabled in the House of Representatives. The House of Representatives may, by resolution, disallow any rules. The Regulations Review Committee is the select committee responsible for considering rules under that Act.”.

3 Index of Contents

In Part 300, under the heading “Contents”, amend the index of contents as appropriate to align with the rule headings and pages in that Part resulting from the changes made by these amendments.

4 Rule 300.1: Application

4.1 In rule 300.1, replace subrules (1), (2), and (3) with the following:

- “(1) Subparts A to J—
- (a) apply to a New Zealand ship or a foreign ship in New Zealand jurisdiction that is—
 - (i) designed or constructed to carry ballast water; and
 - (ii) on an international voyage; and
 - (b) do not apply to permanent ballast water.
- (2) The application of Subpart K is specified in that subpart.
- (3) This Part applies, in relation to an applicable ship, to the following persons:
- (a) the operator of that ship:
 - (b) the owner of that ship:
 - (c) the master of that ship:
 - (d) a surveyor performing a survey of that ship.”.

4.2 Delete the footnote that is on the same page as rule 300.1.

5 Rule 300.2: Definitions

5.1 In rule 300.2(1), in the appropriate order, insert the following:

“**non-permanent ballast water** means ballast water that is not permanent ballast water: **rules** includes maritime rules and marine protection rules.”.

5.2 In rule 300.2(1), replace the definition of **permanent ballast** with the following:

“**permanent ballast water** means ballast water that is contained in a sealed tank and from which discharge of the ballast water or any other form of ballast water management in relation to the ballast water is not intended to occur in the normal course of the operation of a ship:”.

5.3 In rule 300.2, replace subrule (2) with the following two subrules:

- “(2) Non-permanent ballast water that exceeds the performance standard specified in rule 300.140 is a harmful substance for the purposes of the definition in section 225 of the Act.
- (3) Sediment carried on a ship to which any of subparts A to J apply is a harmful substance for the purposes of the definition in section 225 of the Act.”.

6 Part 300: Subpart A

6.1 In Part 300, replace the heading of subpart A with the following:

“**Subpart A General requirements under subparts B to I**”.

6.2 Replace rule 300.20 with the following:

“300.20 General

Each person to whom rule 300.1(3) refers must comply with subparts B to I, as applicable, in the following circumstances:

- (a) the ship is carrying ballast water:
- (b) ballast water is discharged from the ship:
- (c) sediment is discharged from the ship:
- (d) cleaning or repairing a ballast water tank:
- (e) surveying a ship for the purposes to which subpart C applies.”.

6.3 In rule 300.21, replace the footnote reference “2” with “1”.

6.4 In the footnote on the same page as rule 300.21, replace the footnote reference “2” with “1”.

7 Part 300: Subpart E

In rule 300.100, in subrule (4), delete “in the table”.

8 Part 300: Subpart J

Replace rule 300.201 with the following:

“300.201 [reserved]”.

9 Part 300: New subpart K

In Part 300, at the end of subpart J, insert the following subpart:

“Subpart K Permitted discharges

300.220 Permitted discharge - ballast water and section 246B of the Act

- (1) This rule 300.220 applies to a ship to which section 246B of the Act applies, except when any of subparts A to J of this Part applies to the ship.
- (2) Unless otherwise prohibited or restricted in rules or other applicable legislation, ballast water may be discharged from a ship in an area to which section 246B of the Act applies.
- (3) For the avoidance of doubt, a discharge of ballast water from a ship in accordance with subrule (2) is a discharge in accordance with the marine protection rules for the purposes of section 246B of the Act.

300.221 Permitted discharge - ballast water as a harmful substance and section 226 of the Act

- (1) This rule 300.221 applies to a ship to which section 226 of the Act applies, except when any of subparts A to J of this Part applies to the ship.
- (2) Unless otherwise prohibited or restricted in rules or other applicable legislation, ballast water that is a harmful substance may be discharged from a ship in an area to which section 226 of the Act applies.
- (3) For the avoidance of doubt, a discharge of ballast water, as a harmful substance, from a ship in accordance with subrule (2) is a discharge in accordance with the marine protection rules for the purposes of section 226 of the Act.

300.222 Permitted discharge - ballast water as a harmful substance and section 226A of the Act

- (1) This rule 300.222 applies to a ship to which section 226A of the Act applies, except when any of subparts A to J of this Part applies to the ship.
- (2) Unless otherwise prohibited or restricted in rules or other applicable legislation, ballast water that is a harmful substance may be discharged from a ship in an area to which section 226A of the Act applies.
- (3) For the avoidance of doubt, a discharge of ballast water, as a harmful substance, from a ship in accordance with subrule (2) is a discharge in accordance with the marine protection rules for the purposes of section 226A of the Act.”.

10 Part 300: Appendix A

10.1 In Part 300, below the heading of Appendix A and below the words “Refer rule 300.100” under that heading—

- (a) delete the table; and
- (b) delete the footnote.

10.2 In Part 300, below the heading of Appendix A and below the words “Refer rule 300.100” under that heading, insert the following words and flow chart:

“A.1 The following standards and requirements apply to ships for which an IOPP renewal survey under MARPOL Annex I does not apply:

A1.1 a ship constructed before 8 September 2017 must—

A.1.1.1 until 8 September 2024, meet the ballast water exchange standard (rule 300.120) or ballast water performance standard (rule 300.140):

A.1.1.2 from 8 September 2024, meet the ballast water performance standard (rule 300.140):

A.1.2 a ship constructed on or after 8 September 2017 must meet the ballast water performance standard (rule 300.140).

A.2 The following standards and requirements apply to ships for which an IOPP renewal survey under MARPOL Annex I applies:

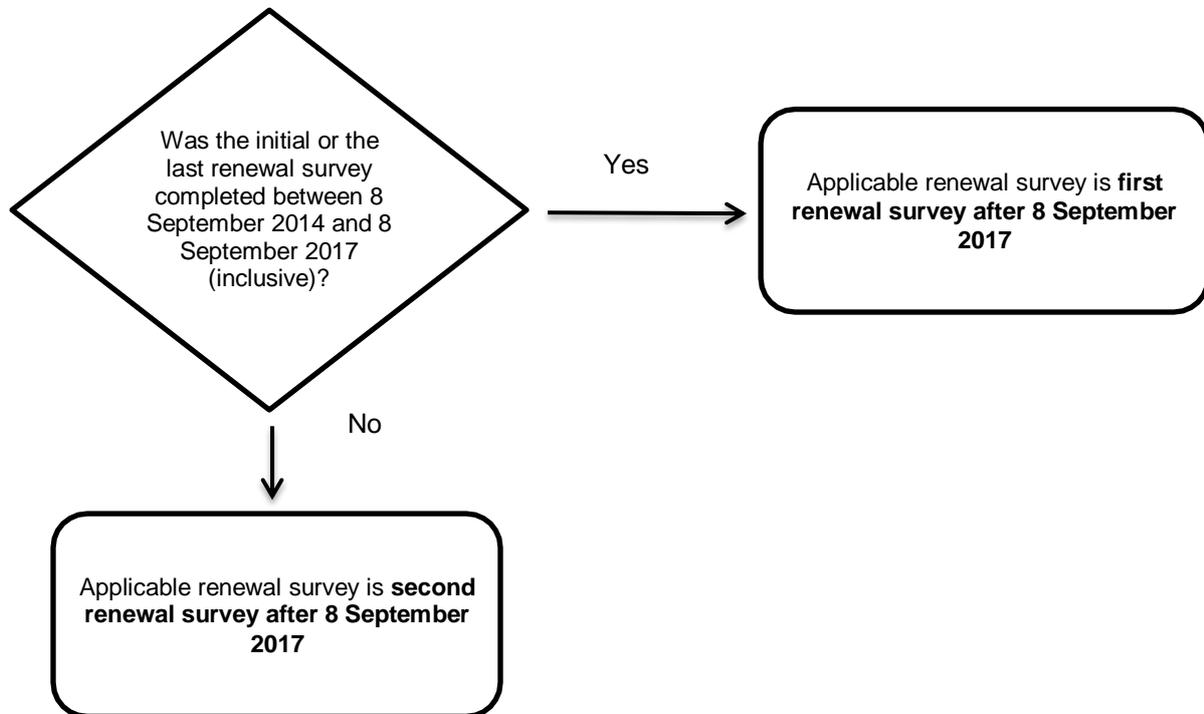
A.2.1 a ship constructed before 8 September 2017 must—

A.2.1.1 until the applicable date of the relevant renewal survey under MARPOL Annex I determined in the flow chart below, meet the ballast water exchange standard (rule 300.120) or ballast water performance standard (rule 300.140):

A.2.1.2 from the applicable date of the relevant renewal survey under MARPOL Annex I determined in the flow chart below, meet the ballast water performance standard (rule 300.140).

A.2.2 a ship constructed on or after 8 September 2017 must meet the ballast water performance standard (rule 300.140).

Flow chart for determining the applicable renewal survey under subclause A.2.1 at which time the vessel needs to conduct ballast water management to the performance standard



”

INSTRUCTIONS TO AMEND PART 100

11 Rule 100.2: Definitions

11.1 In rule 100.2, delete the definition of “**dirty ballast water**”.

11.2 In rule 100.2, delete the definition of “**dirty sediment**”.

11.3 In rule 100.2, delete the definition of “**sediment**”.

12 Rule 100.13: Facilities for the reception of ballast water and sediment

12.1 In rule 100.13, in subrule (1)(a), immediately before “sediment”, delete “dirty”.

12.2 In rule 100.13, in subrule (2), immediately before “sediment”, delete “dirty”.

12.3 In rule 100.13, after subrule (2), insert new subrule (3) as follows:

“(3) For the purposes of this rule 100.13—

- (a) **dirty ballast water** means non-permanent ballast water that is specified as a harmful substance under rule 300.2(2); and
- (b) **sediment** means sediment that is specified as a harmful substance under rule 300.2(3).”.

Summary of submissions

Consultation

Maritime New Zealand released the proposed amendments to Parts 100 and 300 of the Marine Protection Rules for consultation on 23 November 2017. Submissions closed at 5.00pm on Friday 26 January 2018.

Submissions were received from:

- Malcolm Nicolson, Chief Executive Officer of Northland Regional Council
- Phil Brown, Biosecurity Manager at the Auckland Council
- Greg Corbett for the Bay of Plenty Regional Council
- Campbell Leckie, Manager Land Services at the Hawke's Bay Regional Council.

All of the submissions were in favour of the proposed amendments. The Auckland Council, the Bay of Plenty Regional Council and the Hawkes Bay Regional Council wrote in support of the submission from the Northland Regional Council.

Malcolm Nicholson, Chief Executive Officer of the Northland Regional Council, submitted that:

- The Northland region has already experienced incursions from marine pests, and that the risk of further incursions is compounded by the relatively high numbers of international vessel movements in the region.
- Ballast water discharges from domestic shipping is a significant gap in the management of marine pests in New Zealand. This gap could undermine the measures introduced under Part 300 to manage the biosecurity risk posed by ballast water discharges from international shipping, and result in the spread of marine pests from one part of New Zealand to another.

In view of this, the Northland Regional Council recommended that Maritime New Zealand and the Ministry of Primary Industries consider the options for managing domestic ballast water discharges.

MNZ Response

Maritime New Zealand acknowledges the biosecurity risk of marine pests introduced by vessels on international voyages being trans-shipped via domestic ballast water to other New Zealand ports.

However, the overarching purposes of the proposed amendments are to align New Zealand's legislation with the technical requirements of the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 and to align Part 300 with sections 226, 226A, and 246B of the Act. The discharge of domestic ballast water is not covered by this Convention.

Nevertheless, it is anticipated that by reducing the incursion of marine pests from international vessels, Part 300 will also reduce the risk of the trans-shipment of marine pests to New Zealand harbours via domestic ballast water.