

Maritime Transport Act 1994

Maritime Rules

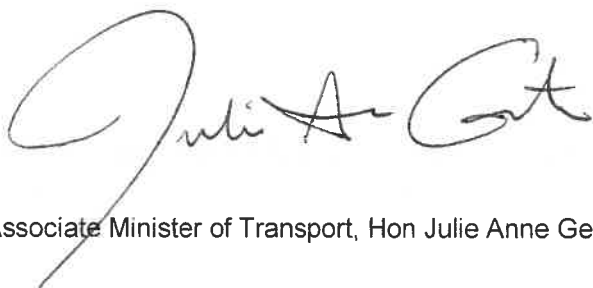
Maritime Rules Part 40 Series Amendments 2017

Pursuant to section 36 of the Maritime Transport Act 1994 I, Julie Anne Genter, Associate Minister of Transport, having had regard to the criteria in section 39(2) of the Maritime Transport Act 1994, hereby make the following Maritime Rules.

Signed at Wellington

This 23 day of January 2018

By Hon JULIE ANNE GENTER



Associate Minister of Transport, Hon Julie Anne Genter

Contents

Maritime Transport Act 1994	1
Maritime Rules	1
Maritime Rules Part 40 Series Amendments 2017	1
Objective.....	3
Extent of consultation.....	3
Entry into force.....	3
General Index Alignment.....	4
1 All Parts: Index of Contents.....	4
Part 40C: Design, Construction and Equipment – Non-passenger Ships that are not SOLAS Ships.....	4
2 Part 40C: Appendix 1 Intact stability.....	4
Part 40D: Design, Construction and Equipment – Fishing Ships.....	5
3 Rule 40D.2 Definitions.....	5
4 Rule 40D.6 Restricted limit or coastal limit ships making voyages in the coastal or offshore limits.....	5
5 Rule 40D.68 General.....	5
6 Part 40D: Appendix 3 Radiocommunication equipment.....	5
Part 40E: Design, Construction and Equipment – Sailing Ships.....	6
7 Rule 40E.25 Bilge pumps.....	6
Part 43: Radio.....	6
8 Rule 43.2 Definitions.....	6
9 New Rule 43.22A.....	7
Summary of submissions	8

Objective

The objective of the Maritime Rules Part 40 Series Amendments 2017 is to update Maritime Rules Parts 40C, 40D, 40E, and 43 to either improve safety outcomes, remove out-dated and conflicting requirements, or reduce the cost of compliance.

Maritime 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 2017, Maritime New Zealand consulted, via its website, with the public on drafts of the proposed amendments to the Maritime Rules in accordance with the Act, including the expected costs and benefits. A notice regarding this consultation was placed in the New Zealand Gazette on 13 April 2017. The deadline for making a submission was 14 May 2017 and further extended by *Gazette* notice to 11 June 2017. Twelve (12) submissions, summarised at the back of these Rules, were received.

Entry into force

Rules 6.1 and 6.2 (amendments to Clauses 3.1 and 3.2 of Appendix 3 of Part 40D) in the Maritime Rules Part 40 Series Amendments 2017 enter into force on 1 January 2019.

All other rules in the Maritime Rules Part 40 Series Amendments 2017 enter into force on 15 March 2018.

General Index Alignment

1 All Parts: Index of Contents

In each relevant Part of the Maritime Rules, in the Index of Contents, amend the rule headings and pages to align with the rule headings and pages in that Part resulting from changes made by these amendments.

Part 40C: Design, Construction and Equipment – Non-passenger Ships that are not SOLAS Ships

2 Part 40C: Appendix 1 Intact stability

2.1 In Appendix 1 of Part 40C, in clause 1.2—

2.1.1 replace subclause (1) with the following:

“(1) This clause 1.2 applies to a ship—

- (a) of 15 metres or more in length overall; or
- (b) that carries cargo weighing more than 1000 kg; or
- (c) that carries a combination of passengers and cargo weighing more than 1000 kg; or
- (d) that carries more than 50 persons; or
- (e) to which clause 1.4 applies; or
- (f) to which clause 1.5 applies.”; and

2.1.2 in subclause (3), after “the requirements of”, insert “subclauses”; and

2.1.3 in clause 1.2, in subclause (4), replace “subrule” with “subclause”.

2.2 In Appendix 1 of Part 40C, replace clause 1.4 with the following:

“1.4 Tugs

- (1) A ship that is engaged in towing must meet the standards and requirements in either subclause (2) or (3).
- (2) In respect of a ship referred to in subclause (1)—
 - (a) the tow rope heeling lever curve, which is determined by assuming the bollard pull athwartships at 30° to the horizontal, must be plotted on the curve of righting levers; and
 - (b) the area of the curve of righting levers above the heeling lever curve—
 - (i) up to 40° angle of heel must be calculated; or
 - (ii) the angle of downflooding if that is less than 40° must be calculated; and
 - (c) the proportion of the area calculated in subclause (b) to the total area of the curve of righting levers—
 - (i) from 0° to 40° must not be less than 40%; or
 - (ii) from the angle of downflooding, if that is less than 40°, must not be less than 40%; and
 - (d) the ship meets the standards and requirements in clause 1.2.
- (3) In respect of a ship referred to in subclause (1), the ship is certified as being in accordance with the standards and requirements in clause 1.2 and tug stability standards prescribed by any of the following classification societies:

- (a) American Bureau of Shipping:
- (b) Bureau Veritas:
- (c) DNV GL AS:
- (d) Lloyd's Register of Shipping:
- (e) Nippon Kaiji Kyokai.”.

Part 40D: Design, Construction and Equipment – Fishing Ships

3 Rule 40D.2 Definitions

In rule 40D.2, in the appropriate order, insert the following definitions:

“AIS means Automatic Identification System:

AIS-SART means AIS Search And Rescue Transmitter:

IMO means the International Maritime Organisation:

IMO GMDSS Master Plan means the GMDSS Master Plan adopted by the IMO:

NAVAREA has the same meaning as defined in Annex 1 of IMO Resolution A.706(17); it is used to describe geographical sea areas for the purpose of coordinating the transmission of radio navigational warnings; the term NAVAREA followed by an identifying roman numeral is used as a short title to represent such an area:

Sea Area A4 has the same meaning as defined in SOLAS Chapter IV regulation 2:

SOLAS means the International Convention for the Safety of Life at Sea 1974.”.

4 Rule 40D.6 Restricted limit or coastal limit ships making voyages in the coastal or offshore limits

In rule 40D.6, in subrule (a)—

4.1 renumber subrule (vi) to become subrule (vii) by replacing “(vi)” with “(vii)”; and

4.2 renumber subrule (v) to become subrule (vi) by replacing “(v)” with “(vi)”; and

4.3 replace subrule (iv) with the following new subrules (iv) and (v):

“(iv) a 406 MHz EPIRB that complies with the requirements of rule 43.19, if the ship is more than 7.5 metres in length and less than 24 metres in length; and

(v) a 406 MHz EPIRB that complies with the requirements of rule 43.18A or 43.19, if the ship is 7.5 metres in length or less or 24 metres or more in length; and”.

5 Rule 40D.68 General

In rule 40D.68, in subrule (2)—

5.1 replace “with the” with “with a”; and

5.2 after “transponder”, insert “or AIS-SART”.

6 Part 40D: Appendix 3 Radiocommunication equipment

In Appendix 3 of Part 40D—

6.1 in the Table in clause 3.1, in the row headed in the first column “**Satellite EPIRB**”, replace the second column with the following:

“(1) The ship must be—

- (a) fitted with a 406 MHz EPIRB that complies with the requirements of rule 43.19; or

- (b) if it operates within enclosed waters, or if it is 7.5 metres or less in length or 24 metres or more in length and does not proceed beyond a VHF Coverage Area, fitted with a 406 MHz EPIRB that complies with the requirements of rule 43.18A or 43.19.

(2) The EPIRB must be kept in a readily accessible position on board the ship.”; and

- 6.2** in the Table in clause 3.2, in the row headed in the first column “**Satellite EPIRB**”, replace the second column with the following:

“Ships of more than 7.5 metres in length and less than 24 metres in length must be provided with a 406 MHz EPIRB that complies with the requirements of rule 43.19.

Ships of 7.5 metres or less in length or 24 metres or more in length must be fitted with a 406 MHz EPIRB that complies with the requirements of rule 43.18A or 43.19.

The EPIRB must be kept in a readily accessible position on board the ship.”; and

- 6.3** in the Table in clause 3.3, in the row headed in the first column “**MF/HF Radiotelephone**”, replace the second column with the following:

“The ship must be provided with an MF/HF Radiotelephone that complies with either—

- (1) rule 43.15; or
- (2) rule 43.15, excluding the requirement for, and associated with, Narrow-band Direct Printing equipment contained in rule 43.15, provided the ship—
 - (a) operates between latitudes 76 degrees south and 76 degrees north; and
 - (b) does not proceed into Sea Area A4; and
 - (c) does not proceed into a NAVAREA where an operational High Frequency Narrow Band Direct Printing Maritime Safety Information broadcast service is provided by a country as indicated in the IMO GMDSS Master Plan.”; and

- 6.4** in the Table in clause 3.3, in the row headed in the first column “**Radar Transponder**”—

6.4.1 in the first column, after “**Radar Transponder**”, insert “**or AIS-SART**”:

6.4.2 replace the second column with the following:

“The ship must be provided with either—

- (1) a radar transponder capable of operating in the 9 Ghz band and that complies with rule 43.22, which must be stowed so that it can be easily used; or
- (2) an AIS-SART that complies with rule 43.22A in Part 43.”.

Part 40E: Design, Construction and Equipment – Sailing Ships

7 Rule 40E.25 Bilge pumps

In rule 40E.25, replace subrule (5) with the following:

“(5) [Reserved]”.

Part 43: Radio

8 Rule 43.2 Definitions

In rule 43.2, in the appropriate order, insert the following definitions:

“**AIS** means Automatic Identification System:

AIS-SART means AIS Search And Rescue Transmitter.”.

9 New Rule 43.22A

After rule 43.22, insert the following new rule 43.22A:

“43.22A AIS-SART

AIS-SARTs must comply with the *Performance Standards for Survival Craft AIS search and Rescue Transmitters (AIS-SART) for Use in Search and Rescue Operations* adopted by the International Maritime Organisation by Resolution MSC.246(83).”

Summary of submissions

MNZ formally consulted on six amendments to the 40 series of rules for a period of two months (13 April 2017 to 11 June 2017). 12 submissions were received.

Three changes have been made to the proposed rule amendments, as a result of matters raised by submitters during the consultation process. In sum, these are:

- The length of fishing vessels, operating beyond enclosed waters, required to carry float free EPIRBs has been amended from vessels of more than 6m and less than 24m to vessels of more than 7.5 metres and less than 24m.
- The requirement for fishing vessels, operating beyond enclosed waters, to carry float-free EPIRBs will be introduced on 1 January 2019 instead of 1 January 2020.
- The proposal to remove a requirement for 40A, 40C, 40D, and 40E vessels, which are 24 metres or less in length, to meet a 2014 electrical system standard will be deferred. In the interim, Maritime New Zealand is considering the available options to manage the challenges presented by the current rule.

Some matters that were raised are out of scope of the relevant rule amendment. Nonetheless, in many instances, this feedback usefully feeds into the upcoming policy investigation into the 40 series of rules.

1. Allow Classification Societies' stability criteria for Tug towing operations

Four submissions commented on this proposed amendment. There was general support for the change.

One submission made by Josh Smith commented that the rule should only allow for alternative stability criteria prescribed by classification societies which are recognised by Maritime New Zealand. However, Mr Smith's suggestion is already accommodated by the rule amendment.

Two submissions made by Dominic Harvey suggested amending existing rules associated with tug stability criteria. However, these submissions are out of scope as they do not relate to this particular amendment. The points raised in these submissions will provide helpful input for the upcoming policy investigation into the 40 series of rules.

2. Allow AIS-SART instead of a radar transponder on fishing vessels which proceed beyond offshore limits

The submission made by Pacific7 supported this amendment. The submitter suggested that the change also be applied to the relevant parts of Maritime Rules Parts 40A, 40C, and 40E. There is no relevant rule to amend in Rule Part 40A, as the Rule does set out any requirements to carry a radar transponder. An amendment to Rule Parts 40C and 40E is out of scope of this particular amendment. However, the suggestion will be considered as part of the upcoming policy investigation into the 40 series of rules.

3. Remove the requirement for NBDP for fishing vessels which proceed beyond offshore limits

The submission made by Pacific7 supported this amendment. The submitter suggested that the change also be applied to the relevant parts of Maritime Rules Parts 40A, 40C, and 40E. There is no relevant rule to amend in Rule Part 40A, as the Rule does set out any requirements to carry a radio with NBDP. An amendment to Rule Parts 40C and 40E is out of scope of this particular amendment. However, the suggestion will be considered as part of the upcoming policy investigation into the 40 series of rules.

Pacific7 also notes that some countries which provide NBDP Maritime Safety Information broadcast services, such as Australia, exempt a number of vessels from carrying NBDP if the vessel is fitted with Inmarsat C. Pacific7 suggested Maritime New Zealand take a similar approach. Similar to those jurisdictions, Maritime New Zealand will consider exemptions from the requirement on a case-by-case basis.

4. Remove a requirement which requires manual bilge pumps on sailing ships be operable from above the weatherdeck

One submission commented on this amendment. Mr Smith's noted that "insufficient information is given into how a sailing vessel meets the functionality of a manual bilge pump without having it operable from above the weather deck".

Notwithstanding the rule change, under the Maritime Operator Safety System, an operator will continue to be required to demonstrate that their manual bilge pump can be operated safely and effectively. Surveyors must also consider how the manual bilge pump is operated as part of the assessments undertaken for a certificate of survey.

5. Remove a requirement for 40A, 40C, 40D, and 40E ships, which are 24 metres or less in length, to meet a 2014 electrical system standard

Four submissions commented on this amendment. All submitters supported the proposal to remove the application of AS/NZS3004.2 to vessels built or converted before 2014.

However, a substantial concern was raised with the standards which were proposed to replace AS/NZS3004.2. An Electrical Surveyor, Dave Potter, noted that many operators may not have documentation to identify the electrical standards to which a vessel's electrical installations were originally designed and installed. He also noted that many of the standards which were proposed to be reintroduced have either been superseded or withdrawn, or are unobtainable, overly expensive, or extensive. Further to this, Mr Potter suggested that: 'significant modification' be defined to ensure consistent application of the term; and that AS/NZS3004.2 be applied to vessels of under 50m in length rather than under 24m in length.

There were also substantial concerns raised about which particular vessels should meet which particular standards. The Federation of Commercial Fishermen commented that if the rule were amended so that vessels which are built before 2014, but converted or newly-entered into an operation after 2014, were required to meet the proposed 'post-2014 vessel electrical standard', significant costs would be created for industry, without commensurate safety benefits. The Federation's view is that such a change would result in the rewiring of vessels which are already wired to a safe standard.

Conversely, Pacific7 commented that vessels that are built prior to 1 July 2014, and converted after that date, should be treated no differently than if the vessel was 'newly entered'.

These submissions raise substantial issues with the proposed rule amendment. Further evaluation and analysis of these matters is required to ensure the rules stipulate verifiable and safe electrical standards for different vessel categories. Any further proposed rule amendments will likely be significant enough to warrant further consultation. This matter will therefore be considered as part of the upcoming policy investigation into the 40 series of rules.

In the interim, Maritime New Zealand is considering the available options to manage the challenges presented by the current rule.

6. Require float-free EPIRBs on fishing vessels of more than 6 metres, and less than 24 metres, operating beyond enclosed waters

Eight submissions were made in support of this amendment.

Two submitters recommended the requirement be expanded to apply to other commercial and private vessel operators. This proposal is beyond the scope of the proposed rule amendment. However, expanding the application of the requirement to other commercial vessels will be considered as part of the upcoming policy investigation into the 40 series of rules. As a general rule, MNZ always encourages the carriage of communication devices, to communicate distress, on all vessels.

GME/Standards Communications Pty Ltd suggested that the requirement should be expanded to require float-free EPIRBs to be fitted with GPS, as this allows rescue coordination services to locate an activated beacon faster and more accurately. This falls out of scope of the proposed rule amendment. If such a requirement was deemed to be necessary following analysis of the proposal, further consultation would be needed. Nonetheless, the suggestion will provide helpful input for the upcoming policy investigation into the 40 series of rules.

As part of an operator's safe fishing operation, it is likely even now to be considered reasonable to carry a float-free EPIRB. Views were therefore sought on the option of bringing the requirement into force at an earlier date. Two submissions supported this proposal. The FISH Safety Foundation presented international cases which demonstrate how effective the carriage of float-free EPIRBs has been in saving fishers' lives. The Foundation therefore strongly urged Maritime New Zealand to bring forward the implementation date. The Federation of Commercial Fishermen commented that they would not discourage an earlier introduction of this requirement, noting that some fishermen already carry float-free EPIRBs.

Considering the points made in these submissions, and considering it may already be deemed reasonable to carry a float-free EPIRB on fishing vessels of relevant length operating beyond enclosed waters, the in-force date for the rule amendment will be introduced on 1 January 2019 instead of 1 January 2020. This date is appropriate because:

- existing manually-activated EPIRBs are not at any particular point in their lifecycle which would favour any particular introduction date;
- introducing the requirement on 1 January 2019 will give operators sufficient time to meet the new requirement before its introduction;
- an incident may occur during 2019 whereby the carriage of a float-free EPIRB may result in fishers being rescued following an incident, who may otherwise perish.

Three submissions commented on the proposed length of fishing vessel to which the new float-free EPIRB requirement would apply.

- A Surveyor, Hans Grimbergen, noted that particular types and operations of fishing vessels create differing levels of risk, and would therefore benefit to different degrees from the carriage of float-free EPIRBs. He noted that on small open boats, finding the right location to stow the EPIRB would be problematic. For example, he noted that stowing the EPIRB on the forward cuddy cabin could cause a swamp wave to activate the hydrostatic release.
- The Federation for Commercial Fishermen questioned the need to apply the float-free EPIRB requirement to vessels of 6m-12m in length, noting that many vessels in the smaller range will struggle to meet the extra cost and that many vessels of this size generally operate within enclosed waters.
- Herb Sandy suggested that a swamp wave may cause a float-free EPIRB to inadvertently deploy on vessels of around 6-7m in length.

These submissions prompted an investigation into whether the lower length threshold of 6 metres should be raised. It was concluded that the proposed lower length threshold is too low, and should be raised, for the following reasons:

- The design of vessels of around 6 metres in length means that they are likely to have significant reserve buoyancy. This means that if they capsize, they are likely to remain floating in an upturned position. Therefore, the hydrostatic release unit may not be activated. In this situation there is a risk that, when abandoning a vessel, a person will incorrectly assume that an EPIRB will automatically activate, causing the person not to manually activate the EPIRB.
- It is difficult to find space on a vessel of around 6 metres in length to fit a float-free EPIRB, whereby:
 - it can still be easily accessible in case it needs to be manually activated;
 - it is not an obstructive physical hazard to the operation of the vessel;
 - it is not inadvertently activated by sea-wash; and

- there is certainty that it will float-free clear of the vessel, without getting caught and sinking with the vessel.

The analysis determined that the lower length limit should be lifted to 7.5 metres in length because:

- This will overcome design features, generally found on 6-7.5m boats, which make the carriage and operation of a float-free EPIRB impractical, for the reasons listed above.
- The 7.5m vessel-length threshold already exists in the rule, avoiding the need to complicate the rule by creating an additional vessel-length delineation.

The Federation of Commercial Fishermen commented that some operators of smaller vessels may struggle to meet the extra cost of acquiring a float-free EPIRB. The cost of a float-free EPIRB is approximately \$100 per year, if the cost is spread over an expected lifespan of ten-years. As evidenced by historic New Zealand and foreign incidents, the benefits created by the carriage of a float-free EPIRB on vessels of under 12m in length, in terms of potential lives saved, outweighs this cost.