

Maritime Transport Act 1994

Maritime Rules

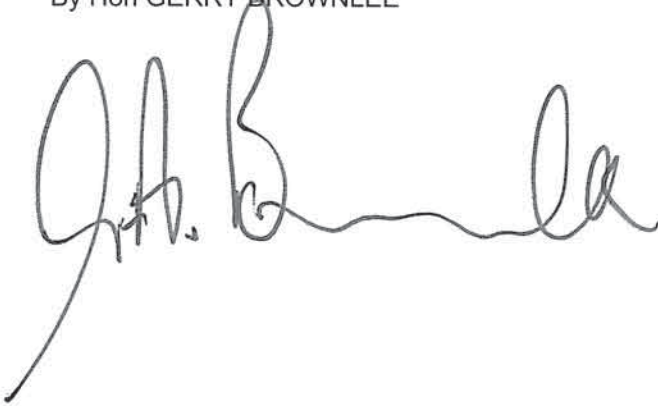
PART 19: MARITIME TRANSPORT OPERATOR – CERTIFICATION AND RESPONSIBILITIES

Pursuant to section 34 and section 36, and having regard to the criteria in section 39, of the Maritime Transport Act 1994 I, Gerry Brownlee, Minister of Transport, hereby make the following maritime rules.

Signed at Wellington

This 30 day of OCTOBER 2013

By Hon GERRY BROWNLEE



Minister of Transport

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Part objective

The purpose of Part 19 is to require maritime transport operators to develop, and operate in accordance with, safety systems that are specific and appropriate to their maritime transport operation. Specifically, Part 19 prescribes certification requirements for persons who conduct maritime transport operations and the requirements for continuing such operations.

The authority for Part 19 is found in section 34(1)(c) and (g) and section 36(1)(j), (k), (p), (q), (v), and (zb) of the Maritime Transport Act 1994.

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

On 12 April 2010, Maritime New Zealand published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed rules (Parts 19 and 44) to implement the proposed Maritime Operator Safety System. A notice was also published in the *Gazette*. In addition, copies of the draft rules and consultation documents were sent to interested parties and made publicly available on the internet. Comments on the proposed new Parts 19 and 44 were requested to be made by 29 July 2010.

Maritime New Zealand received 102 written submissions and 12 oral submissions. All submissions were reviewed and resulted in significant amendment to the draft rules and the need to undertake a second round of consultation.

On 28 April 2012, Maritime New Zealand published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the amended proposed rules (Parts 19 and 44) to implement the proposed Maritime Operator Safety System. A notice was also published in the *Gazette*. In addition, copies of the draft rules and consultation documents were again sent to interested parties and made publicly available on the Maritime New Zealand website.

Approximately 100 RSS feed subscribers also received a consultation notification by email. Comments on the proposed new Parts 19 and 44 were requested to be made by 31 May 2012.

Maritime New Zealand received 69 written submissions and 12 oral submissions. All submissions were reviewed and amendment was made to the draft rules as appropriate. Submitters generally made points regarding both Parts or regarding the Maritime Operator Safety System as a whole.

Entry into force

Part 19 enters into force on 1 April 2014.

General

19.1 Application

- (1) This Part applies to every person conducting a maritime transport operation that operates—
 - (a) in New Zealand waters;
 - (b) on the New Zealand coast; or
 - (c) outside New Zealand waters—
 - (i) if the ship is registered in New Zealand under the Ship Registration Act 1992; or
 - (ii) if the ship is, or is required to be, licensed or registered in New Zealand under any applicable New Zealand fisheries law.
- (2) This Part, excluding rule 19.62(1), (2)(a), (2)(b)(ii), (2)(b)(iii), (2)(c), and (3) and rule 19.66(c)(ii), does not apply to the non-commercial use of a commercial ship during the period of the non-commercial use.

19.2 Definitions

In this Part, unless the context otherwise requires,—

Act means the Maritime Transport Act 1994:

approved survey plan means a survey plan approved under rule 19.43:

barge means any barge, lighter, or like vessel that has no means of self-propulsion:

Certificate for International Voyage means a certificate issued by the Director in accordance with rule 44.61:

Certificate of Survey means a certificate issued by a surveyor issued in accordance with subpart B of Part 44, and certifying that a ship meets the requirements of rule 44.41(2):

category, in relation to a ship's scope of certification, means the intended purpose of the ship in terms of passenger ship, non-passenger ship, fishing ship, sailing ship, or any combination of these purposes:

commercial ship has the same meaning as in section 2 of the Act:

current, in relation to a Maritime Transport Operator Certificate, means that the certificate is valid, has not expired, and has not been suspended or revoked by the Director:

Initial Survey Portfolio means the portfolio that is compiled by a surveyor under rule 44.41(2)(b)(i):

international voyage means a journey by water from—

- (a) a port in New Zealand to a port outside of New Zealand or vice versa; or
- (b) a port outside New Zealand to another port outside New Zealand:

length means 96 percent of the total length on a waterline at 85 percent of the least moulded depth measured from the top of the keel, or the length from the fore side of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel the waterline of which this length is measured is to be parallel to the designed waterline:

major modification means an alteration or modification of a ship, including the replacement, removal, or addition of any part of a ship, that has or is likely to—

- (a) significantly affect the structural integrity, tonnage, freeboard, cargo or passenger capacity, crew or passenger accommodation, conditions of assignment of load line, watertight subdivision, stability, or structural fire protection; or
- (b) result in significant changes to the propulsion machinery, auxiliary machinery, or steering or the method of propulsion of the ship:

major repair means a repair in respect of any damage, defect, breakdown or grounding of the ship that has or is likely to significantly affect the structural integrity, conditions of assignment of load line, watertight subdivision, stability, structural fire protection, main propulsion machinery, method of propulsion, steering gear, or vital auxiliary machinery of the ship:

maritime transport operation means the operation of—

- (a) a New Zealand ship that is a commercial ship unless—
 - (i) it operates in accordance with Part 21:
 - (ii) it operates in accordance with a safe operational plan approved by the Director in accordance with Part 40A, 40D, 40F, 80, 81, or 82:
 - (iii) it operates in accordance with a safety case approved by the Director in accordance with Part 40G:
 - (iv) it is an amusement device currently certified under section 21A of the Machinery Act 1950:
 - (v) it operates in accordance with a specified limits operating plan issued under Part 20:
 - (vi) it operates in accordance with a barge safety certificate under Part 46, section 3
 - (vii) it is a barge that does not carry any persons on board during the course of a voyage; or
 - (viii) it is a ship used exclusively for eel fishing—
 - (A) for which a fishing permit is held under section 91 of the Fisheries Act 1996;
 - (B) that is less than 6 metres in length; and
 - (C) that operates less than 2 nautical miles from the coast:
- (b) a foreign ship that is a commercial ship—
 - (i) that is also—
 - (A) used for fishing, and is required to be licensed or registered in accordance with any applicable New Zealand fisheries law;
 - (B) a non-passenger ship of less than 500 tons gross tonnage; or
 - (C) a passenger ship that carries 12 or less passengers;
 - (ii) unless it—
 - (A) operates in accordance with Part 21; or
 - (B) holds valid documents or certificates in accordance with section 4 of Part 46:

maritime transport operator means the holder of a Maritime Transport Operator Certificate issued under this Part:

Maritime Transport Operator Certificate means a certificate issued by the Director under rule 19.22:

Maritime Transport Operator Plan means the plan required by rule 19.41:

maritime transport operator safety system means a comprehensive set of processes and procedures that give effect to the requirements of rule 19.42 for identifying and managing safety risks in a maritime transport operation:

New Zealand Safe Ship Management Certificate means the maritime document issued by the Director under Part 5 of the Act in accordance with rule 21.13(7) or rule 21.13(11):

non-commercial use, in relation to a ship, means the operation of the ship for a period, not for hire and reward, and exclusively during that period, for relocation, sea trials, or the owner's or maritime transport operator's pleasure:

operate has the same meaning as in section 2 of the Act:

recreational bare boat charter operation means an operation that lets a ship for hire or reward, without a master, that the hirer operates solely for pleasure:

safety equipment list means a list of safety equipment required in rule 19.46:

scope of certification, in relation to a ship, means the ship's category, activity, type, operating limits, minimum crew, maximum number of passengers on board, maximum number of people on board, and maximum cargo capacities:

spare parts list means a list of tools, equipment, and gear required to carry out any emergency repairs of machinery and electrical equipment to maintain a ship's core functions to ensure ship, crew, and passenger safety, including, but not limited to, the ship's steering, flotation, navigation, and propulsion systems:

surveyor means the holder of a Certificate of Surveyor Recognition issued under rule 44.22:

survey report means the survey report prepared by a surveyor in accordance with rule 44.43:

trip report means a communication from the master or crew of a ship to a nominated shore-based contact detailing—

- (a) when the ship is departing from a stated position;
- (b) the ship's destination;
- (c) the total number of people on board; and
- (d) when the shore-based contact can next expect contact from the master:

voyage has the same meaning as in section 2 of the Act.

19.3 Requirement to hold Maritime Transport Operator Certificate

No person may conduct a maritime transport operation on or after 1 July 2014 except under the authority of, and in accordance with, a current Maritime Transport Operator Certificate.

Subpart A Maritime Transport Operator Certificate

19.21 Application for Maritime Transport Operator Certificate

- (1) The applicant for a Maritime Transport Operator Certificate, or a further Maritime Transport Operator Certificate, must make an application in accordance with section 35 of the Act, and include, in a form required by the Director,—
 - (a) a Maritime Transport Operator Plan required under Subpart B;
 - (b) a declaration, signed by the applicant, that the applicant will comply, and ensure compliance, with the policies and procedures set out in the Maritime Transport Operator Plan; and
 - (c) such further particulars relating to the applicant as may be required by the Director.
- (2) Every application must be submitted to the Director, with a payment of the appropriate application fee prescribed by the regulations made under the Act.

19.22 Issue of Maritime Transport Operator Certificate

- (1) The Director must issue a Maritime Transport Operator Certificate if satisfied that the applicant meets the applicable requirements of this Part and the requirements of section 41 of the Act.
- (2) A Maritime Transport Operator Certificate is a maritime document.

19.23 Privileges of Maritime Transport Operator Certificate

A Maritime Transport Operator Certificate entitles the holder to conduct a maritime transport operation on and after 1 July 2014 subject to any conditions imposed under section 34(3) of the Act by the Director and specified on the certificate.

19.24 Duration of Maritime Transport Operator Certificate

A Maritime Transport Operator Certificate may be issued for a period not exceeding 10 years.

19.25 Display of Maritime Transport Operator Certificate

A maritime transport operator must display at the operator's place of business, or make available on request, a copy of the Maritime Transport Operator Certificate.

Subpart B Maritime Transport Operator Plan and maritime transport operator safety system

19.41 Maritime Transport Operator Plan

A maritime transport operator must ensure that the Maritime Transport Operator Plan for the maritime transport operation—

- (a) documents the maritime transport operator's safety system required by rule 19.42;
- (b) includes the details, safe operating procedures, and other procedures required by the Appendix;
- (c) attaches a copy of the current Certificate of Survey for each ship in the maritime transport operation issued, or deemed to be issued, under Part 44;
- (d) attaches a copy of the Initial Survey Portfolio, required under Part 44, for any newly built ship in the maritime transport operation;

- (e) attaches a copy of each subsequent survey report, required under Part 44, for each new ship in the maritime transport operation; and
- (f) attaches the approved survey plan, the maintenance plan, the safety equipment list, and the spare parts list required by this subpart for each ship in the maritime transport operation.

19.42 Maritime transport operator safety system

- (1) A maritime transport operator must develop and document a maritime transport operator safety system in the Maritime Transport Operator Plan that—
 - (a) identifies and manages the safety risks involved in the maritime transport operation;
 - (b) is consistent with safety guidelines and other safety information provided by the Director of Maritime New Zealand and best practice information contained in relevant industry codes of practice; and
 - (c) is designed to ensure that the maritime transport operation complies with applicable maritime rules and marine protection rules.
- (2) A maritime transport operator must address the following when developing the maritime transport operator safety system:
 - (a) the scope of activities of the maritime transport operation;
 - (b) the intended uses of all ships in the maritime transport operation, including any non-commercial uses;
 - (c) all reasonably foreseeable hazards associated with the maritime transport operation;
 - (d) the protection of the environment; and
 - (e) the conditions in which the maritime transport operation is conducted.
- (3) A maritime transport operator must address the following when developing the processes and procedures within the maritime transport operator safety system:
 - (a) their relevance and applicability to the maritime transport operation;
 - (b) whether they provide an effective means to manage all reasonably foreseeable hazards; and
 - (c) whether they provide an effective means to prevent harm and respond to an emergency.
- (4) A maritime transport operator must ensure that the processes and procedures that constitute the maritime transport operator safety system are communicated to, and in a form understood by, all personnel responsible for operating in accordance with those procedures.

19.43 Survey plan

- (1) A maritime transport operator must ensure that a survey plan is developed and applied, in a form acceptable to the Director, for each ship in a maritime transport operation that describes the survey requirements for the ship that are consistent with rule 44.41(2).
- (2) A maritime transport operator must ensure that all survey plans for ships in the maritime transport operation are approved by a surveyor.
- (3) A maritime transport operator must—
 - (a) amend the approved survey plan if required to do so by a surveyor in accordance with rule 44.23(d); and

- (b) obtain prior written approval from a surveyor for any other amendments to the approved survey plan.
- (4) A maritime transport operator must make the approved survey plan available for inspection by the Director, or a surveyor engaged by the maritime transport operator, if requested.

19.44 Alternative survey requirements

The Director may approve a survey plan for a ship in a maritime transport operation that adopts alternative survey requirements to those set out in rule 19.63 if he or she is satisfied that it is appropriate having regard to the ship's scope of certification.

19.45 Maintenance plan

- (1) A maritime transport operator must develop and apply a maintenance plan, in a form acceptable to the Director, for each ship in a maritime transport operation that describes the policies and procedures to maintain the ship, including the ship's hull, decks, and superstructure, and the ship's machinery, equipment, and critical shipboard systems.
- (2) A maritime transport operator must sign and date any amendments to the maintenance plan.
- (3) A maritime transport operator must make a maintenance plan available for inspection by the Director, or a surveyor engaged by the maritime transport operator, if requested.

19.46 Safety equipment list and spare parts list

- (1) A maritime transport operator must ensure that a relevant safety equipment list and a spare parts list, in a form acceptable to the Director, are developed for each ship in the maritime transport operation.
- (2) A maritime transport operator must ensure that, where practicable, each ship in the maritime transport operation carries its safety equipment list and spare parts list at all times.
- (3) A maritime transport operator must make its safety equipment list and spare parts list for a ship in the maritime transport operation available for inspection by the Director, or a surveyor engaged by the maritime transport operator, if requested.

Subpart C Operating requirements

19.61 Maritime transport operator responsible for Maritime Transport Operator Plan and maritime transport operator safety system

A maritime transport operator must—

- (a) ensure that the Maritime Transport Operator Plan continues to—
 - (i) be applied;
 - (ii) reflect the maritime transport operator safety system for the maritime transport operation; and
 - (iii) meet the requirements prescribed in the Appendix;
- (b) ensure that the maritime transport operator safety system continues to be appropriate for the maritime transport operation;
- (c) make a copy of the Maritime Transport Operator Plan available for inspection by the Director if requested;
- (d) obtain approval from the Director for any amendment to the maritime transport operator details contained in the Maritime Transport Operator Plan, as required by clause 1.1 of the Appendix, before the amendment is recorded and implemented;

- (e) sign and date any amendment to the maritime transport operation's details contained in the Maritime Transport Operator Plan, as required by clauses 1.2 (Ship details), 1.3 (Personnel details), 1.4 (Safe operating procedures), and 1.5 (Information management procedures) of the Appendix;
- (f) amend the Maritime Transport Operator Plan as may be required from time to time by the Director in accordance with the Director's powers under section 43 of the Act;
- (g) carry the safety equipment and spare parts, as listed in the safety equipment list and spare parts list required by rule 19.46; and
- (h) keep a current and complete copy of the Maritime Transport Operator Plan on shore that includes safe operating procedures for each ship in the maritime transport operation.

19.62 Maritime transport operator responsible for safe ships

- (1) No person may operate or permit the operation of a ship in the maritime transport operation unless the ship has a valid Certificate of Survey issued under rule 44.41 and any other valid certificates required for the ship under other maritime rules and marine protection rules.
- (2) A maritime transport operator must—
 - (a) ensure the safety of each ship in the maritime transport operation at all times;
 - (b) ensure that each ship in the maritime transport operation continues to meet the requirements of the following:
 - (i) this Part;
 - (ii) Part 44; and
 - (iii) any other applicable maritime rules and marine protection rules; and
 - (c) ensure that each ship in the maritime transport operation carries at all times, in a readily accessible place, a current and complete copy of the safe operating procedures relevant to the ship.
- (3) A maritime transport operator must also—
 - (a) notify the Director, in a form acceptable to the Director, as soon as is practicable after a ship enters or exits its maritime transport operation;
 - (b) ensure that the Maritime Transport Operator Plan meets the requirements of this Subpart for each ship in the maritime transport operation at all times; and
 - (c) in relation to a ship of less than 500 tons gross tonnage and less than 45 metres in length in the maritime transport operation that the maritime transport operator intends to undertake an international voyage carrying 12 or less passengers, apply to the Director for a certificate certifying that the ship is fit for an international voyage and provide the following:
 - (i) a copy of the ship's valid Certificate of Survey issued for the ship in regard to the international voyage in accordance with the requirements set out in rule 44.41; and
 - (ii) any further information the Director considers relevant to the application that he or she may request.

19.63 Survey requirements

- (1) Subject to subrule (2), a maritime transport operator must ensure that a surveyor completes surveys for each ship in its maritime transport operation, including any barge that carries persons or passengers on board, either—

- (a) between 24 months and 36 months from the date on which the Certificate of Survey was issued, and within six months prior to the expiry date of the Certificate of Survey; or
 - (b) in accordance with the survey intervals as required in the approved survey plan.
- (2) A maritime transport operator may adopt alternative survey arrangements including an alternative survey cycle to that set out in subrule (1) if these arrangements are approved by the Director in accordance with rule 19.44.

19.64 Validity of Certificate of Survey

A Certificate of Survey remains valid until its date of expiry if the maritime transport operator ensures that—

- (a) the provisions of the approved survey plan and the maintenance plan for the ship are applied in accordance with this subpart;
- (b) any major repair or major modification to the ship or change to the ship's scope of certification has been approved by a surveyor in accordance with rule 44.23(g);
- (c) any deficiency of the ship or maritime product notified by the surveyor is rectified to the satisfaction of the surveyor; and
- (d) the ship is operated within the scope of certification listed on its Certificate of Survey.

19.65 Display of Certificate of Survey

A maritime transport operator must—

- (a) for each ship of six metres or more in length in the maritime transport operation, display the applicable Certificate of Survey details, in a form acceptable to the Director, in a prominent position on the ship at all times;
- (b) for each ship of less than six metres in length in the maritime transport operation, the applicable Certificate of Survey details must be made available for inspection by the Director, or a surveyor engaged by the maritime transport operator, if requested.

19.66 Documentation requirements

A maritime transport operator must—

- (a) maintain records relating to the qualifications and training of all employees or other persons engaged that perform any duties requiring a certificate under Part 31B, Part 31C, or Part 32,;
- (b) retain the record of each employee or other person engaged by the operator for one year from the date that the employee or other person engaged ceases to perform duties requiring a certificate of competency; and
- (c) except in relation to recreational bare boat charter operations, ensure that the log relevant to each ship in the maritime transport operation—
 - (i) is maintained and carried on the ship in a readily accessible place at all times; and
 - (ii) includes the particulars of any non-commercial use.

Subpart D Transition and revocation

19.81 Transition

- (1) If a single New Zealand Safe Ship Management Certificate is held by any person on the commencement of this Part, it is deemed to be a Maritime Transport Operator Certificate on

1 July 2014 issued under this Part that expires on the expiry date of the New Zealand Safe Ship Management Certificate.

- (2) If more than one New Zealand Safe Ship Management Certificate is held in respect of ships that will form a maritime transport operation under this Part, the New Zealand Safe Ship Management Certificates will be deemed, in combination, to be one Maritime Transport Operator Certificate on 1 July 2014 issued under this Part that—
 - (a) applies to each of the ships that the New Zealand Safe Ship Management Certificates applies to; and
 - (b) expires on the earliest expiry date of the New Zealand Safe Ship Management Certificates.
- (3) Despite anything in this Subpart—
 - (a) a person is not required to comply with Subpart B and Subpart C of this Part in respect of a ship if –
 - (i) the person holds a New Zealand Safe Ship Management Certificate that is deemed to be a Maritime Transport Operator Certificate under subrule (1) or subrule (2);
 - (ii) there is, in respect of the ship, a current –
 - (A) certificate of survey; or
 - (B) deemed certificate of survey under rule 44.81; and
 - (iii) the person continues to meet the requirements associated with the New Zealand Safe Ship Management Certificate, excepting membership of an organisation's safe ship management system.
 - (b) section 2 of Part 21 and section 2 and 5 of Part 46 apply to the person and the ship as if those sections had not been revoked.
- (4) The Director may revoke a deemed Maritime Transport Operator Certificate described in subrule (1) or subrule (2) before its expiry date in accordance with the Act.
- (5) The Director may extend the expiry date of a deemed Maritime Transport Operator Certificate described in subrule (1) or subrule (2) for up to 12 months if he or she is satisfied that the extension is appropriate and that the deemed certificate enables each ship in the maritime transport operation to be operated safely in accordance with rule 19.62 for the duration of the extension period either by—
 - (a) the requirements associated with the New Zealand Safe Ship Management Certificate; or
 - (b) any conditions imposed on the deemed certificate by the Director.
- (6) The Director may add, remove, or amend conditions on a deemed Maritime Transport Operator Certificate that has been extended in accordance with subrule (5) if he or she considers it appropriate to do so and that the maritime transport operation as a whole is able to be operated safely in accordance with rule 19.62 for the remainder of the extension period.

19.82 Revocation

Section 2, Appendix 5 and Appendix 6 of Part 21 of the Maritime Rules are revoked on 1 July 2014.

Appendix

Maritime Transport Operator Plan: Details and procedures

The details and procedures required under Subpart B to be included in the Maritime Transport Operator Plan are as follows:

1.1 Maritime transport operator details

- 1.1.1 the full name of the maritime transport operator:
- 1.1.2 for the purpose of determining who has, or is likely to have, control over the exercise of privileges under the Maritime Transport Operator Certificate, the natural person or persons responsible for the following:
 - (a) the maritime transport operation:
 - (b) resourcing of the maritime transport operation:
 - (c) crew training and competency assessments; and:
 - (d) operational decisions, including the control and scheduling of maintenance and internal quality assurance:
- 1.1.3 the primary harbours or ports from which the maritime transport operation is conducted:
- 1.1.4 the category or categories and the activity or activities of maritime transport operation that will be conducted under the Maritime Transport Operator Certificate:

1.2 Ship details

- 1.2.1 the names and MSA/MNZ numbers of all ships in the maritime transport operation:

1.3 Personnel details

- 1.3.1 a record of all employees required to hold a certificate of competency issued under the Act in accordance with the applicable maritime rules, including each employee's experience, training, and qualifications and the scope, validity, and currency of the certificate:
- 1.3.2 the name and contact details for shore based personnel responsible for managing trip reports and emergency responses.

1.4 Safe operating procedures

- 1.4.1 appropriate shore and ship-based procedures that address all reasonably foreseeable hazards in the maritime transport operation including, but not limited to, the following:
 - 1.4.1.1 harm prevention procedures in relation to, but not limited to, the following:
 - (a) the safe transportation of cargo, passenger, and goods:
 - (b) the scope of activities, and all intended uses, including the non-commercial use, of all ships in the maritime transport operation:
 - (c) the safe operation of all machinery and equipment:
 - (d) occupational health management including fatigue policies, and drug and alcohol policies, where applicable:
 - (e) the protection of the environment:
 - (f) the conditions in which the maritime transport operation is conducted:

(g) emergency preparedness:

1.4.1.2 emergency procedures in response to, but not limited to, the following events:

(a) fire:

(b) pollution:

(c) person overboard:

(d) medical emergency:

(e) mechanical failure, including loss of propulsion or steering:

(f) incident involving dangerous goods, as applicable:

(g) stricken vessel, including due to grounding, collision, capsizing, or sinking:

(h) overdue ship:

1.5 Information management procedures

1.5.1 procedures for the storage, review, continuous improvement, and distribution of the Maritime Transport Operator Plan:

1.5.2 procedures for training of, and communication to, all personnel of safe operating procedures in the Maritime Transport Operator Plan to ensure those procedures in the Maritime Transport Operator Plan are understood and implemented effectively:

1.5.3 procedures for checking and ensuring currency of qualifications of personnel, including crew:

1.5.4 procedures for accident and incident reporting:

1.5.5 procedures for logging and managing trip reports:

1.6 Document and exemption requirements

1.6.1 a copy of any other document or certificate, including any current exemption granted by the Director under the Act from the requirements of the maritime rules or marine protection rules, as relevant to the maritime transport operation.

Part 19

Summary of Submissions

The maritime operator safety system package was released for consultation on two occasions. It was first released in April 2010 and was notified in the four major metropolitan dailies, by *Gazette* notice, and on the Maritime New Zealand (Maritime NZ) website. The consultation included a number of public hearings to facilitate further engagement on the proposals. Following consideration of submissions received in the 2010 consultation, the two Rules (Parts 19 and 44) making up the package were amended. The changes made were sufficient to warrant further consultation.

In April 2012 the package was again released for consultation on the Maritime NZ website, and notified in the four major metropolitan dailies and by *Gazette* notice. The changes made following the 2012 consultation were less substantive than the post-2010 changes and the design and structure of the package remained the same as was consulted.

On balance, submissions indicated that there is more support for the regime the Rules introduce than opposition to it.

The key issues raised during consultation can be summarised as follows:

- Maritime NZ resourcing;
- Compliance costs;
- The formatting of the Rules;
- Survey standards and survey performance;
- The requirement for surveyors to notify the Director of Maritime NZ (the **Director**) of safety concerns about a vessel;
- The display of the Maritime Transport Operators Certificate;
- Transitional provisions for operators moving from the Safe Ship Management System to the new maritime transport operator safety system;
- Surveyor accountability for vessel safety in the period between surveys;
- The respective responsibilities of operators and surveyors;
- The requirement to notify the Director of intended non-commercial use;
- The treatment of small vessels operating in inland waters; and
- The “fit” between the maritime operator safety system and other regulatory frameworks.

A number of submissions covered concerns about the Maritime NZ capacity to give effect to the proposed system, and carry out new functions (in particular audit) given current resources and priorities. Maritime NZ had already taken a number of actions to address capacity needs, and preparedness for the new regime is an organisational priority. Specific actions include an increase in technical staff, the establishment of a Maritime Operator Safety System project team with a dedicated project manager, an organisational redesign to ensure, among other things, efficient service delivery and performance of functions and the establishment of an industry advisory group to provide advice on operational matters. Maritime NZ is also working to ensure the right staff are in place on the “go live” date for the Maritime Operator Safety System and that they are appropriately trained and supported. Maritime NZ is finalising arrangements for a new IT system to provide optimal connectedness and efficiency in the performance of electronic transactions and information systems. There is also a focus on ensuring forms, templates, guidance material, and advisory documents are in place on commencement of the new regime.

The cost of the proposed system to maritime transport operators was raised as a matter of concern in a number of submissions. In this respect, the cost of survey was also raised, but as surveys will continue to be conducted by recognised persons acting in a commercial capacity, that is not a matter Maritime NZ can control. However, lowered survey standards resulting from any price undercutting (if it occurs) would become a surveyor compliance issue, which of itself would be a disincentive to engage in such practices.

In terms of the fees and charges Maritime NZ can impose for feeable activities, Maritime NZ is aware that ensuring the success and effectiveness of the Maritime Operator Safety System turns in part on those operating within the system seeing it as providing value for money. The principal purpose of the Maritime Operator Safety System is improved transport operation safety, not cost reductions but, in setting fees and charges, Maritime NZ will ensure it provides an efficient service based on fair and reasonable costs. The value for money and cost analysis undertaken in 2010 for the Maritime NZ funding review identified the fully allocated cost of Maritime NZ chargeable activities at that time. Decisions made as a result of funding review recommendations, including that the hourly rate for feeable activities will transition over the next six financial years to \$235 per hour (GST incl), will inform the fee structure for the Maritime Operator Safety System. Wherever possible, Maritime NZ will ensure that efficiencies in service delivery are reflected in fees and that any fees are based on a rigorous assessment of costs. The industry advisory group will be consulted on key operational decisions, many of which may have a cost implication. The views of the advisory group will be taken into account in finalising administrative decisions affecting operators and costs. Further, all fee and charge proposals will be subject to public and industry consultation as a matter of course.

The formatting of the Rules (in terms of ease of interpretation) was raised as a concern. In response, Maritime NZ redeveloped the Rules to clarify and separate out the responsibilities of operators, surveyors, and Maritime NZ. For example, requirements on operators concerning the safety of their vessels were moved from Part 44 to Part 19. Detailed prescriptive requirements were removed and replaced with more outcome-based requirements.

Strong concerns were raised about the quality of vessel survey and surveyor performance under the proposal in the 2010 draft. In response, Maritime NZ undertook considerable redesign, including, rather than an independent professional body as initially proposed in the draft Rule, Maritime NZ should have a surveyor oversight and development role. Further, rather than surveyors being required to be “bound by a code of ethics”, the Rule was amended to enable the Director to develop and issue a Code of Conduct. This was subsequently revised to the effect that the conduct required of surveyors is set out on the face of the Rule (Part 44) but continues to address the concern behind the initial proposal that an industry organisation be responsible for surveyor oversight or development.

Concerns were also raised about the requirement in Part 44 for surveyors to notify the Director of safety concerns about a vessel. This requirement was considered to have the potential to encourage a culture of blame and mistrust among recognised surveyors and create an expectation of surveyors being amateur policemen. Maritime NZ’s response was to retain the requirement on the grounds that it contributes to improved safety standards and is a straightforward mechanism to discourage “surveyor shopping”. A concern about such practices was raised during consultation.

Concerns were raised about the practicality of requiring a Maritime Transport Operator Certificate to be displayed at all times at the place of business and for a copy of Safe Operating Procedures to be carried at all times - where the “place of business” is an open-topped vessel or a small vessel. In response, the Rule was amended to allow the Maritime Operator Safety Certificate to be displayed or made available on request. The requirement to keep a copy of Safe Operating Procedures on each vessel was retained, as these can be stowed in even a relatively small craft without difficulty. The purpose of the procedures is for them to be readily accessible, as required, when a vessel is operating.

Concerns were raised about the transitioning from Safe Ship Management to the proposed new system (particularly multi-vessel operations). In response, the transitional provisions in Part 19 were amended to simplify the transition and to clarify the point at which those operating under Safe Ship Management Certificates would be required to enter the Maritime Operator Safety System.

Interrelated concerns were raised with respect to the “allocation of responsibility between operators and surveyors”, and the accountability of surveyors for vessel safety given the survey cycle (the period between one survey and the next). Maritime NZ’s response was to ensure that Part 44 makes clear that surveyors are responsible for ensuring the vessel meets all applicable survey standards before issuing a Certificate of Survey. Part 19 makes clear that an operator is responsible for ensuring that vessels in their operation have a current and valid Certificate of Survey: validity relies on the vessel being maintained to the applicable survey standard.

There is no allowance for non-commercial use of commercial vessels in the current Rule (Part 21). Part 19 provides for a non-commercial use waiver from some requirements in limited circumstances, and as long as the operator notifies the Director prior to embarking on their intended non-commercial voyage or activity. Submissions indicated some confusion about the application of the non-commercial use waiver and requirements. The “prior notification” requirement for non-commercial use was queried by some submitters on the grounds that it is impractical and unnecessary.

Maritime NZ’s response was to clarify that the intention is that, rather than impose unnecessary limitations on the private use of commercial vessels, such use is enabled in a way that ensures safety but does not impose onerous requirements during the private usage. For this reason, provision for non-commercial use is retained. However, the notification requirement has been removed because the operator safety system covering safety management, safe operating procedures, and log book requirements provide adequate safeguards in respect of non-commercial use.

Submissions were made on the need for clarity on how the maritime operator safety system fits with other applicable regulatory frameworks, in particular adventure tourism legislation. For most such activities this is not directly a Maritime Operator Safety System matter as adventure tourism activities conducted on water (for example rafting, jet boating, and fishing and diving operations using vessels under 6 metres in length) are not in the scope of the Maritime Operator Safety System. These activities are covered by other maritime rules. No changes were made to the Rules in response to this matter.

Some submissions asked that special provision be made for small vessels operated on inland waters, given an assumption that the Maritime Operator Safety System has a focus on seagoing vessels. Maritime NZ was to clarify that the Maritime Operator Safety System expressly covers both marine and inland water operations and is not tailored toward the former. With respect to the suggestion that special provision be made for small vessels, there are two matters of note. Firstly, Part 40 of the Rules covers a number of specific operations involving small vessels that will not be covered by the Maritime Operator Safety System (for example, river rafting, jet boating, small craft diving and fishing operations). For small vessel operations that it does cover, the Maritime Operator Safety System is not a “one size fits all” regulatory model, which means the particularities or relative simplicity of small vessel operations can be reflected in the operator’s Maritime Transport Operator Plan.

Numerous other matters were raised by submitters which did not pertain to specific provisions in the draft rules as consulted upon, but to matters such as the treatment of non-commercial use of commercial vessels covered by the Maritime Operator Safety System, Maritime NZ’s performance under the new system given its performance under Safe Ship Management, the priorities for Maritime NZ in regulating the Maritime Operator Safety System framework, and the cost of the proposed system to operators. The Maritime NZ response to these matters is set out in the Summary of Submissions on the 2010 Consultation.