



Maritime Transport Act 1994

Marine Protection Rules

PART 200: Amendment 2012

Pursuant to section(s) 386 and 388 of the Maritime Transport Act 1994 I, Simon Bridges, Associate Minister of Transport, hereby make the following marine protection rules.

Signed at Wellington

This 13th day of December 2012

By Simon Bridges



Associate Minister of Transport

Contents

Part objective
Extent of consultation
Entry into force

1. Definitions
2. 200.15: Permitted discharge of garbage from controlled offshore installations

Part objective

These amendments are a result of the International Maritime Organisation's initiative to strengthen maritime garbage regulations in Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL). The changes to this convention will enter into force internationally on 1 January 2013 and New Zealand, as a party to Annex V, is required to update its domestic rules to reflect these changes.

This part is amended to reflect new operational requirements for offshore installations.

Extent of consultation

The proposed amendments to the part were released for consultation on 8th October 2012, as part of Part 170 and Part 200: Garbage Amendment 2012. The closing date for submissions was 5th November 2012.

On the 9th of October 2012 738 people who had previously indicated that they wished to be informed of MNZ consultations, were sent emails. The email contained an Invitation to Comment and a copy of the proposed amendments. The recipients were asked for comments on specific proposals and also invited to make any general comments on the proposed changes to the rules. 226 people opened the email.

A range of interested parties were also directly emailed the Invitation to Comment and proposed rule amendments on the 9th of October 2012. The consultation was also notified in the four main newspapers on the 13th of October.

A total of four submissions were received by email.

Entry into force

These rules come into force on 17 January 2013.

1. Definitions

Rule 200.2 is amended by—

- (a) Replace the definition of garbage with:

“**garbage** has the same meaning as in rule 170.1:”

- (b) Insert new definitions:

“**Director** has the same meaning as in section 2 of the Act:”

“**food waste** has the same meaning as in rule 170.1:”

2. 200.15: Permitted discharge of garbage from controlled offshore installations

Replace rule 200.15 with the following:

“200.15 Prohibition on discharge of garbage into the sea from controlled offshore installations

- (1) The discharge of garbage into the sea from a controlled offshore installation is prohibited, except as provided in this rule.
- (2) The prohibition on the discharge of garbage in subrule (1) does not apply to the discharge of food waste if—
 - (a) the food waste has been passed through a comminuter or grinder; and
 - (b) the comminuted or ground food waste is capable of passing through a screen with openings no greater than 25 millimetres.
- (3) Nothing in this rule prohibits or restricts any person from discharging garbage from a controlled offshore installation if—
 - (a) the discharge is necessary for the purpose of securing the safety of an installation and those on board or saving life at sea; or
 - (b) the discharge is an accidental loss of garbage resulting from damage to an installation or its equipment, and all reasonable precautions have been taken before and after the occurrence of the damage to prevent or minimise the accidental loss.

200.15A Placards

The owner of an offshore installation must ensure that placards in the working language of the crew and in English are displayed to notify all persons on board the installation of the discharge requirements set out in rule 200.15 that are applicable to the installation.

200.15B Garbage management plans

- (1) The owner of an offshore installation must ensure that—
 - (a) the installation has a garbage management plan that complies with this rule; and
 - (b) an up-to-date copy of the installation's garbage management plan is carried on board the installation; and
 - (c) all persons on board comply with the garbage management plan at all times.
- (2) The garbage management plan required under this rule must—
 - (a) prescribe written procedures for minimising, collecting, storing, processing, and disposing of garbage, including the use of garbage related equipment on board; and
 - (b) designate the person or persons in charge of carrying out the plan; and
 - (c) be written in the working language of the crew and in English.¹

¹ Guidance on the development of garbage management plans is contained in [insert reference to relevant Advisory Circular]

- (3) Every person on board an installation to which this rule applies must comply with the garbage management plan at all times.

200.15C Garbage Record Books

- (1) The owner of an offshore installation must ensure that—
 - (a) there is a Garbage Record Book for the installation that is—
 - (i) in the form shown in the Appendix to Part 170; and
 - (ii) in the working language of the crew and in English; and
 - (iii) carried on board the installation at all times; and
 - (iv) readily available for inspection by the Director at all reasonable times; and
 - (b) for each discharge of garbage, and each completed incineration of garbage, an entry is promptly made in the Garbage Record Book that includes—
 - (i) the date and time of the discharge or incineration; and
 - (ii) the position of the installation at the time of the discharge or incineration; and
 - (iii) the category of the garbage discharged or incinerated; and
 - (iv) the estimated amount of garbage discharged or incinerated; and
 - (v) the signature of the officer in charge of the discharge or incineration; and
 - (c) for each discharge or accidental loss referred to in rule 200.15(3), an entry is made in the Garbage Record Book that includes—
 - (i) the location, circumstances of, and reasons for the discharge or loss; and
 - (ii) details of the items discharged or lost; and
 - (iii) the reasonable precautions taken to prevent or minimise such discharge or accidental loss.
- (2) Each completed page of the Garbage Record Book must be signed by the person on board the installation who has overall responsibility for its operations.
- (3) The Garbage Record Book required by subrule (1) must be preserved by the owner of the installation for 24 months after the last entry has been made.”

Consultation Details

This paper provides a brief summary of all submissions made concerning the proposed reissue of Marine Protection Rules Part 170 – Prevention of Pollution by Garbage from Ships and amendments to Marine Protection Rule Part 200 – Offshore Installations – Discharge.

The proposed new draft rule parts were released for consultation on 8th October 2012. The closing date for submissions was 5th November 2012.

On the 9th of October 2012 738 people who had previously indicated that they wished to be informed of MNZ consultations, were sent emails. The email contained an Invitation to Comment and a copy of the proposed amendments. The recipients were asked for comments on specific proposals and also invited to make any general comments on the proposed changes to the rule. 226 people opened the email.

A range of potentially interested parties, including those in the shipping and waste management industry, government agencies, NGO's, ports and local government, were also directly emailed the Invitation to Comment and proposed rule amendments on the 9th of October 2012. The consultation was also notified in the four main newspapers on the 13th of October.

A total of four submissions were received by email.

Consultation Summary

Submissions are summarised by theme, with reference to submitters by the following numbers. Maritime New Zealand ("MNZ") responses are italicised.

Number	Submitter	Affiliation
1	William Woods	Planning and Environmental Manager, Centreport Limited
2	David Robinson	Chief Executive, Petroleum Exploration and Production Association of New Zealand (PEPANZ)
3	Doug Saunders-Loder	President, New Zealand Federation of Commercial Fishermen (the Fed)
4	Ali Undorf-Lay	Industry Liaison Manager, Sanford Limited

General Comments by Submitters

Centreport and PEPANZ submitted that the proposed changes to garbage rules would have little impact and could be readily complied with.

Both the Fed and Sanford Ltd indicated that they would like further involvement to ensure there was pragmatic implementation of new requirements such as the reporting of lost fishing gear.

Maritime New Zealand Comment: Noted. This offer has been gratefully accepted.

Sanford Ltd noted that operational requirements such as placards, garbage management plans and record books should be incorporated into operator plans which are proposed under the new Maritime Operator Safety System that Maritime New Zealand is developing and intends to launch in 2013. They recommended that proposed new garbage rules come into force when MTOP/MTOC's are approved.

Maritime New Zealand Comment: While the practice of preparing a plan for managing garbage has parallels with, and could even be incorporated into, an MTOP, there is not a persuasive argument for deferring the in-force date of the garbage rule changes. Operational requirements in the garbage rules are neither complicated nor costly to comply with, they have been applied to larger vessels for many years and there is guidance available to facilitate compliance with these requirements, which will be in force in other signatory jurisdictions from 1 January 2013.

Rule-Specific Submissions

Garbage Definitions

170.1 Sanford Ltd note that “by-products” captured during fishing or aquaculture, such as seaweed or unwanted shellfish, are routinely returned to the sea but that this material is not explicitly excluded from the definition of garbage. They propose adding an exception for “marine products” that are gathered during fishing or aquaculture activity to the definition of garbage.

Maritime New Zealand Comment: Notes and agrees that the intention of Annex V of MARPOL is not to regulate naturally occurring material brought on board during fishing or aquaculture activity, whether that be fish, shellfish, seaweed or other bycatch. However, MNZ does not believe it is necessary to alter the garbage definition in the rules, which adheres closely to Annex V of MARPOL. Instead, MNZ will provide additional guidance in the Advisory Circular that expands on the exemption described in the rules.

Sanford Ltd also sought clarification whether fish bait was included as garbage, and therefore would be subject to discharge restrictions within, and outside special areas. They proposed alternative wording for the definition of garbage to specifically include an exception for “fresh or frozen fish used as bait”.

Maritime New Zealand Comment: The proposed definition of garbage is faithful to Annex V of MARPOL, however, guidance which accompanies Annex V highlights that releasing fish into the sea for the purpose of fishing should not be considered a discharge of garbage in the context of Annex V. This guidance will also accompany the new rules, but amendment of the definition such that it no longer reflects wording in the Annex is not a preferred option.

Sanford Ltd submitted that it was impractical (and impossible) to contain operational waste water and bilge water and discharge these to port reception facility, particularly when this water is not harmful to the marine environment. Sanford suggested that waste water should either be excluded from the definition of garbage, or provided with an exception under Rule 170.4.

Maritime New Zealand Comment: Garbage includes “operational waste” but operational waste specifically excludes “grey water, bilge water or other similar discharges essential to the operation of the ship”. These “other similar discharges” have been more fully described in the IMO Guidelines for the Implementation of MARPOL Annex V and this will be included in the new Advisory Circular. Discharges of water, fish waste, bilge water and cleaning agents described in the submission do not appear to be captured by the proposed rules, provided the cleaning agents contained in washwater are not harmful to the marine environment. It should be noted that discharges containing oil are regulated through other Marine Protection rules.

Animal Carcasses

Sanford Ltd expressed concern that the regulations may not keep ahead of changing fish harvesting techniques, particularly their intention to retain live wild fish and re-locate them to ocean-based or onshore facilities for on-growing. They were concerned that Annex V of MARPOL, which regulates the discharge of animal carcasses when carried as cargo, may impact the implementation of novel fishing approaches. Sanford Ltd maintain that there is no likelihood that stock temporarily housed in sea cages would likely carry pathogens that put other wild fish stocks at risk.

Maritime New Zealand Comment: When this type of fishing occurs MNZ will be better equipped to understand how it works in relation to the garbage rules and other legislation. Until this time, it is anticipated that fish transported as cargo (ie received from a holding facility at sea or on land and shipped elsewhere) that die and are subsequently discharged overboard, is garbage and should be recorded in the garbage record book. Mortalities exceeding those generated during the normal operation of a ship would only be discharged overboard with a dumping permit issued by Maritime New Zealand. The threshold at which mortalities exceed normal operations should be described in the garbage management plan of vessels involved in this activity. It is anticipated that fish carcasses

discharged from an aquaculture facility may be subject to consent conditions under either the RMA or EEZ (Environmental Effects) Act.

170.8 The Fed sought to clarify that fish may be discharged when it is part of fishing activities, and it will not be subject to restrictions similar to those that are placed on the discharge of food waste.

Maritime New Zealand Comment: As noted by the submitter, fish and parts of fresh fish generated as a result of fishing activity undertaken during a voyage, are not included in the definition of garbage. Furthermore, fish caught during a voyage are not subject to animal carcass disposal regulations, which are intended to manage the discharge of dead livestock loaded as cargo.

Cleaning Agents

170.9 and 170.15 The Fed noted that they would like guidance on “safe” cleaning agents and are prepared to assist with the identification of agents commonly used in the fishing industry. Sanford Ltd submitted that more work was necessary for operators to be able to determine which cleaning agents are harmful to the marine environment and therefore cannot be discharged. They indicated that Material Safety Data Sheets and labelling was insufficient to determine whether the cleaning agents are ecotoxic, carcinogenic, mutagenic or reprotoxic. They proposed a delay of the requirement until further information is made available.

Maritime New Zealand Comment: Cleaning agent labelling typically instructs users about the safe use and disposal of the product. The onus for clear labelling and the provision of information describing the toxicity of cleaning agents lie with the manufacturer and supplier. Vessel operators can use any cleaning agent but those that are harmful to the marine environment must not be disposed of overboard. MNZ will be issuing guidance in the Advisory Circular to assist operators with the identification of suitable cleaning agents, but to ensure compliance with the rules, operators should select cleaning agents with clear documentation about their toxicity. Due to the changing nature of chemical classifications, it is impractical to list all harmful substances in the Rules.

Operational Requirements

Subpart D Sanford Ltd note that many crew do not encounter the garbage management plan or record book, particularly on foreign charter fishing vessels, and that it would be more appropriate for these to be written in the language of “senior” crew and English only.

Maritime New Zealand comment: Noted but consider there to be no need to change garbage management plan and record book requirements. In practical terms, these items should be in English and the language of any crew expected to manage garbage on board or record its fate in the record book. This does not fall to senior crew in all instances, hence the wider requirement.

Sanford Ltd noted that the guidelines encourage governments to develop appropriate placards for ships in their registry and suggested MNZ should have these in place, in the languages of ships operating in New Zealand, at the time the rules enter into force.

Maritime New Zealand Comment: The Advisory Circular will include sample placards which will be in English. To comply with the rules, vessel operators, who employ crew and understand the needs of their passengers, must translate sample placards into the appropriate languages.

Sanford Ltd generally approve of the changes to the Garbage Record Book format but recommended changing the heading “To reception facility” to “Landed to port”, and that the “fishing gear” category should be extended to specifically exclude fish bait.

Maritime New Zealand Comment: Noted but the wording, which mirrors Annex V of MARPOL and is already used in existing garbage record books, will be retained. The definition of fishing gear in Rule 170.1 is not ambiguous and does not include fish bait, whether fresh or frozen.

Lost Fishing Gear

170.4(c) and 170.4(d) The Fed noted that there was discretion in the requirement that all reasonable precautions must be taken to avoid the accidental loss of fishing gear. They submitted that this exception must be fairly interpreted, accounting for the practical realities of fishing.

Maritime New Zealand Comment: The generation of garbage while fishing is predictable, as is the likelihood that the vessel will encounter rough weather, so it is reasonable that these factors will be considered by operators. Effective garbage management can reduce the amount of garbage lost overboard accidentally. The new rules extend the requirement for garbage management plans to smaller vessels than were previously regulated, ensuring that more vessels actively manage this waste stream. The Advisory Circular and the Waste Management Handbook for Inshore Vessels will provide guidance on what should be considered when developing these plans.

170.21 The Fed submitted that they were concerned about the lack of clarity about lost fishing gear that must be reported if it poses a “significant threat to the marine environment or navigation”. They commented that the Director already has powers to remove hazards to navigation and sought greater engagement on this matter, noting that there appears to be no urgency attached to the reporting. They also questioned what type of vessel this requirement might apply to, suggesting smaller vessels of the inshore fleet need not be captured by these regulations. Lastly, they noted that it would be difficult to issue prescriptive rules regarding this issue because each situation would be different

Sanford Ltd submitted a possible definition for “significant threat” in relation to the loss of fishing gear, noting that lost gear does not occur often and that every effort is made to retrieve lost gear, particularly in light of the significant financial cost of equipment. They also suggested that it is sufficient to report any loss at the end of the fishing voyage.

Maritime New Zealand Comment: “Significant threat” will be inferred from the type of equipment lost. A list of applicable gear will be developed following further targeted engagement and circulated via the Advisory Circular. This prescriptive approach will ensure that there is certainty for operators regarding when to report lost fishing gear. Reports of lost fishing gear should be submitted as soon as practicable.

Waste reception

PEPANZ submitted that sorting and recycling measures undertaken at sea were often not supported by shore-based waste reception facilities.

Maritime New Zealand comment: The discrepancy between shipboard waste management and shore-side waste reception standards is beyond the scope of these marine protection rule changes. Inadequate waste reception facilities in ports should be reported to MNZ (as the port state authority) and the vessels flag state (if other). Reporting should follow the format described in the International Maritime Organization (IMO) document MEPC.1/Circ.469/Rev.1.

Appendix – Form of Garbage Record Book (4.2) Sanford noted that it would be difficult and unnecessarily burdensome to get a receipt, with details about the estimated volume, from some port reception facilities, given that in some instances these are unmanned skips and vessels arrive in port at all hours.

Maritime New Zealand Comment: Agree that in some instances it will not be possible to get a receipt from the operator of a garbage reception facility. The rule will be amended so that when no receipt is available this should be noted in the garbage record book.