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SUBJECT **Hull Defouling and Decommissioning of Offshore Installations**

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## Introduction

Maritime New Zealand (MNZ) is the government agency responsible for administration of New Zealand's marine dumping provisions in the Exclusive Economic Zone.<sup>1</sup>

Two policy issues of interest to the oil and gas industry have recently arisen. MNZ has provided this document in order to provide clarity to industry participants.

## Purpose

MNZ wishes to communicate the following information to stakeholders:

- the **new requirement** to apply for a dumping permit for disposal of wastes arising from in-water hull cleaning operations; and,
- the beginning of a **consultation process** aimed at developing a national policy for decommissioning offshore facilities in New Zealand.

## Hull Defouling

MNZ now requires a dumping permit application for defouling of floating facilities in New Zealand's Exclusive Economic Zone. This is consistent with activities occurring within the 12nm Coastal Marine Area under the RMA.

This requirement was initially communicated to industry through the Petroleum Exploration and Production Association of New Zealand (PEPANZ) on the 26<sup>th</sup> April, 2010.

Information on the application process for dumping permits can be found in Marine Protection Rule Part 180 and its advisory circular, both of which can be found on the MNZ website ([www.maritimenz.govt.nz](http://www.maritimenz.govt.nz)).

## Hull defouling - background

Under Marine Protection Rule 180.2, discharges of certain wastes may be permissible at sea without a permit if considered part of the normal operations of a ship, aircraft or installation. Internationally, there is no agreed definition on what constitutes 'normal operations' – this leaves scope for differing domestic interpretations on whether certain disposal activities require a dumping permit.

Historically, MNZ has interpreted the potential marine disposal of wastes generated from cleaning the exterior of hulls as a normal operation. This position was indicated to industry on a number of occasions in answer to specific queries, noting the jurisdiction of MAF Biosecurity New Zealand as the lead agency for the biosecurity aspects of defouling operations.

However, events arising from the defouling operations related to the Ocean Patriot in December 2007, and the subsequent unsuccessful prosecution taken by Nelson City Council for an alleged breach of the Resource Management Act 1991, have caused MNZ to reassess its position.

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<sup>1</sup> This is provided for through Part 21 of the Maritime Transport Act 1994 and the regulations contained within Marine Protection Rule Part 180, which gives effect to New Zealand's obligations as party to the 1996 Protocol to the 1972 London Dumping Convention.

During the lead up to the court case, MNZ was informed about a different interpretation of “normal operations” prescribed for the purposes of the RMA. It is dealt with in section 360(1)(hh), and in accordance with that provision, Schedule 4 of the Resource Management (Marine Pollution) Regulations 1998 (the RMA regulations) defines “normal operations of a ship or offshore installation” to include:

*The cleaning of the ship or offshore installation, except for the exterior of the hull below the load line or parts of the ship used for carrying cargo.*

As there is no definition of “normal operations” for the purposes of the Maritime Transport Act (MTA) and there is no ability to “prescribe” what the “normal operations” are, the matters excluded by the RMA regulations could well be considered to be “normal operations” for the purposes of the MTA definition. This inconsistency of application of the two legal regimes is unsatisfactory.

Subsequently, analysis undertaken within MNZ suggested that for the purposes of regulating marine dumping, the two legal regimes were probably intended to be consistent in meeting obligations under the London Protocol.

While ultimately unsuccessful, the prosecution of Diamond Offshore Drilling for defouling the Ocean Patriot within the jurisdiction of the RMA highlighted an important distinction for the oil and gas industry which gives an indication of the approach courts may take. Environment Judge BP Dwyer found that the pontoons of the mobile drilling rig, in providing flotation, provided the same function as a hull. This meant the provisions related to controlling the dumping of wastes arising from cleaning such structures applied, so a dumping permit should have been approved prior to discharge. This decision suggests that in addition to vessel hulls, floating facilities such as mobile rigs or FPSO/FSOs should come within the purview of the dumping regimes for defouling operations.

This analysis led to the decision to make dumping permits mandatory for the marine disposal of defouling wastes from floating facilities in New Zealand’s Exclusive Economic Zone. This achieves consistency with regulation of activities within the 12nm Coastal Marine Area under the RMA.

Similar issues are evident for defouling of fixed installations, and MNZ is looking at the regulation of these activities. In the interim, it is recommended that operators of fixed installations contact MNZ to discuss any planned defouling activities on a case-by-case basis to ensure all relevant considerations are taken into account.

In all cases, MNZ will work in close liaison with MAF Biosecurity NZ as the lead agency on biosecurity aspects of dumping permit applications for defouling activities.

## **Decommissioning of Offshore Facilities**

MNZ intends to determine a New Zealand position around the decommissioning of offshore facilities and develop guidance for industry. The process will begin with a presentation of decommissioning experiences from overseas on 4th August, 2010, followed by a consultation phase seeking industry and public comment. Details of this process will be available in the consultation section of MNZ’s website.

### **Decommissioning of offshore facilities – background**

Part 21 of the MTA specifically provides for regulation of deliberate disposal into the sea of platforms or other man-made structures at sea. This is derived from the London Protocol, which includes deliberate disposal, abandonment or toppling of such structures in the definition of dumping and has provisions in Annex I (1.4) which allow these structures to be considered as acceptable waste.

MNZ's position mirrors Annex II of the London Protocol, which notes a hierarchy of preferred waste management options in increasing order of environmental impact (re-use; off-site recycling; destruction of hazardous constituents; treatment to reduce or remove the hazardous constituents; and disposal on land, into air and in water). Marine disposal is considered the last resort where no other viable option exists, and in the specific circumstances of decommissioning this implies that all practically recoverable material will be removed. Further, and reflecting international best practice developed around offshore decommissioning, MNZ's position is that a clean seafloor should be achieved where practical and possible.

However, MNZ considers that more detailed guidelines specific to decommissioning offshore facilities would be helpful. It is our intention to seek views of industry and public through a process of formal consultation, and to provide clear guidance based on development of a national policy on offshore decommissioning.

We will begin this process on 4<sup>th</sup> August, 2010 with a presentation at MNZ's head office in Wellington by an international expert on development of decommissioning policy with extensive experience in the USA jurisdiction.

Following this, MNZ will hold a series of targeted discussions with key stakeholder groups to agree scope and direction. This in turn will be followed by development and circulation of a discussion document with a public consultation period during which submissions will be invited.

Once analysis has been completed on these submissions, a draft national policy will be circulated for final comment. While being primarily a Ministry of Transport/MNZ and Ministry of Environment initiative, other relevant agencies will be involved.

For further information, or to register interest in the decommissioning presentation and/or the consultation process, please contact:

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