

Offshore installations: Summary of requirements under the Maritime Transport Act 1994

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Abstract

The Maritime Transport Act 1994 (MTA) is the legislation which sets the broad principles of maritime safety and navigation, and maritime environmental law in New Zealand. The primary role of the MTA is the bringing into force in and for New Zealand all relevant maritime treaties and conventions pertaining to the maritime industry as a whole, but also includes other environmental provisions relating to marine environmental management.

In general the environmental roles can be thought of effecting three areas:

- prevention of pollution in the marine environment from ships, structures and oil transfer sites, including a response capability to marine oil spills;
- control, via permitting, of dumping of wastes, including structures, at sea (in accordance with the London (Dumping) Convention); and
- control of discharges into the waters of the EEZ and Continental Shelf including controls on offshore mineral exploration and exploitation (as well as for a host of other activities that might occur).

The specific mechanism for translating the general provisions of the Act into practicable measures is a system of maritime and marine protection rules made by the Minister of Transport under the Act.

This paper will explore all of the above and set out relevant provisions for the offshore industry.

Introduction

The Maritime Transport Act 1994 is, like the Resource Management Act 1991, a statute repealing a raft of previous legislation and regulations made for all matters to do with maritime safety, and certain aspects of marine environment protection. The new Act has as its aims (*inter alia*):

- to enable the implementation of New Zealand's obligations under international maritime agreements;
- to ensure that participants in the maritime transport system are responsible for their actions;
- to amend the law relating to the health and safety of seafarers;
- to protect the marine environment; and
- to continue, or enable, the implementation of obligations on New Zealand under various international conventions relating to pollution of the marine environment.

As such it is very much an omnibus piece of legislation, running to some 500 sections, seven Schedules and already three amendments.

But isn't this all to do with ships and shipping? So before considering the implications of this new legislation for the offshore exploration and exploitation industries, it is worth noting that the definition of *ship* for the purposes of the Act is:

Every description of boat or craft used in navigation, whether or not it has any means of propulsion, and includes-

- a barge, lighter, or other like vessel;
- a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- a submarine or other submersible.

In other words, a platform or other installation fixed to the seabed or otherwise stationary during exploration and production operations is therefore *not a ship*, but if it is on the move between locations then it becomes one – clear as the stuff you’re exploring for? The Act however also includes some sections relating specifically to *offshore installations*, which is the bulk of the following discussion.

The Act falls within the responsibilities of the Minister of Transport, whose principal functions under it are:

- to promote marine safety;
- to ensure that New Zealand’s international obligations are met;
- to ensure New Zealand’s preparedness for and ability to respond to marine oil spills; and
- to promote compliance with marine pollution prevention standards

all at reasonable cost. This latter term is defined as being where the value of the cost to the nation of doing something or putting a certain measure in place is exceeded by the value of the resulting benefit to the nation. Day-to-day administration of the Act is carried out by the Maritime Safety Authority of New Zealand, with the Director of Maritime Safety having the key role therein.

Rather than Regulations under the Act, the various technical standards and requirements pertaining to protection of the marine environment, and health and safety of seafarers, are promulgated by the Minister as Rules, either as marine protection rules (for the former) or maritime rules. These rules have the force of Regulations, and come in the form of Parts, each Part dealing with a discrete subject. Let’s now discuss these various requirements, and Rules, as they pertain to the offshore industry.

Marine protection rules

The marine protection rules currently in force give effect outside 12 nautical miles to the requirements of the International Convention for the Prevention of Pollution from Ships 1973/78, also known as MARPOL 73/78. The relevant Parts in respect of offshore installations are:

Part 124: Offshore Installations – Oil, which covers

- Annex I of MARPOL as it relates to the discharge of oily water from machinery space drainage;
- oil spill contingency planning and spill response preparedness;
- requirements for the reporting of potential and actual pollution incidents.

Part 170: Prevention of Pollution by garbage from Ships & Offshore Installations, which covers management of garbage and solid waste.

A brief summary of these Parts and their requirements follows.

Beyond the Territorial Sea (12 nautical miles offshore):

- oily water from machinery spaces and related drainage must have a maximum oil content of 15 ppm prior to discharge into the sea;
- a marine oil spill contingency plan must be prepared and held on board for use in the event of a marine oil spill from the rig, such plan to be approved by the Director of Maritime Safety. Interface with the National Marine Oil Spill Contingency Plan for New Zealand and, if relevant, the appropriate regional contingency plan (which extend out to 12 nautical miles) is a key factor in this approval process;
- the only garbage or other solid waste permitted to be discharged into the sea is finely-chopped (comminuted) food waste;
- garbage management is required to ensure that no unauthorised type of garbage is discharged or falls into the sea. As part of Annex V of MARPOL, waste engine/driver oil is able to be incinerated on board, along with any combustible garbage if desired, pursuant to the provisions and requirements of the standard specification for shipboard incinerators as set out in MEPC Resolution 76(40) of September 1997.

It is expected that, as part of the classification of any offshore drilling vessel/rig, the necessary certification for compliance with MARPOL Annexes I and V will be provided to the Maritime Safety Authority for inspection and sign-off.

With regard to sewage discharges, there is no set standard for discharges into waters beyond 12 nautical miles offshore; as a minimum it is generally expected that sewage is comminuted and discharged under water, although most rigs nowadays have an on-board treatment plant which achieves a significantly higher standard than this (which use is encouraged).

No rules are planned at this stage to control discharges arising directly from offshore exploration and exploitation activities (i.e. excess drill fluids/cuttings and produced water). However, the Minister’s rule writing powers in section 388 of the Act cover

prescribing the requirements and procedures for the discharge or escape of water produced from geologic formations by marine operations in New Zealand continental waters.

It is envisaged that such rules will be made in due course, but at this stage a regional agreement standard for produced water discharges of 40 ppm total hydrocarbon is generally acceptable, but recognising that discharges of drill fluids/cuttings at times will obviously exceed this.

Within the Territorial Sea

Within the Territorial Sea, environmental matters relating to discharges in particular, including for drill fluids/cuttings and produced water, are managed under the provisions of the

Resource Management Act. The various MARPOL requirements however have been set within the Resource Management (Marine Pollution) Regulations 1998 and are unable to be regionally varied. In this context, note that there are stringent requirements for sewage discharges within the Territorial Sea.

For all New Zealand waters

All potential and actual discharges of harmful substances into the Territorial Sea or EEZ of New Zealand, and any pollution incidents therein, must be reported immediately to either the relevant regional council (if within the Territorial Sea) or the Maritime Safety Authority. For example, an oil spill contingency plan will not be approved unless these reporting lines were clearly identified and are known to work effectively.

Part 102: Certificates of Insurance requires the provision of a certificate of financial responsibility to cover for environmental damage in the event of pollution, to the tune of 14 million International Monetary Fund Units of Account (approximately NZ\$30 M). This requirement however only relates to *regulated offshore installations*, i.e. those to be defined in Regulations made under the Act. There are no such Regulations currently in force, and until such time there are therefore no requirements for any rig or platform to hold such a certificate, unless that vessel is able to be classified as an oil tanker (e.g. an FPSO moving away from its on-loading point and delivering cargo to another terminal). In the event that a rig or platform created such damage and associated costs, the full statutory powers available to the Director could be used to recover all costs without limitation for the owner or operator.

Finally, although not within a marine protection rule, the operators of any drilling rig or production platform and of any petroleum pipeline within the marine environment, are liable to pay an annual contribution to the New Zealand Oil Pollution Fund. This requirement arises out of Part XXIV of the Act, and in particular the 1998 Oil Pollution Levies Order. The details of the levy against the offshore industry are as follow:

- \$10,000 incl gst per well drilled by an offshore installation that is used or constructed for the purposes of exploring for oil;
- \$10,000 incl gst per year for each offshore installation that is producing, processing, storing or transferring oil; and
- \$10,000 incl gst per year for each oil pipeline.

All vessels associated with these operations (e.g. service and standby vessels) are also liable for a levy each and every time they enter a port, based on their gross registered tonnage and, if they carry oil as cargo, an additional levy based on tonnage of oil carried and its type (persistent or not). This Fund pays for New Zealand's preparedness against marine oil spills.

Maritime rules

At this stage, unless the offshore operation is conducted from a ship *per se*, very few of the maritime rules apply; i.e. a towed rig in position over the drill site and working, or a stationary production platform, are not covered by any maritime rules. A seismic ship, or a drill ship making its way to or from the drill site, are however covered by all of the provisions of the Act and rules as any other ship, and the latter is only exempted obligations when sited over the drill location and directly preparing for or actually undertaking drilling operations. This was done deliberately to avoid overlap between the responsibilities for maritime safety matters under the Maritime Transport Act, and for fixed installations under the Petroleum Regulations of the Health & Safety in Employment Act (administered by the Occupational Safety & Health branch of the Department of Labour).

Part 21 of the maritime rules provide for the application of chapter IX of the International Convention on Safety of Life at Sea (SOLAS) to mobile offshore drilling units (MODUs) of 500 gross tonnage and above, at 1 July 2002. This will bring such MODUs into line with all other vessels for the purposes of the International Safety Management Code (ISM), which applies to some ships now. Part 21 however is at slight variance to the international regime of SOLAS, in that it only applies to self-propelled MODUs in New Zealand waters (i.e. not to towed ones). The ISM system is a formalised and audited safety and environmental management programme, not unlike the programmes in place for offshore operations at the moment.

Part 24A: Carriage of Cargoes – Dangerous Goods sets out the requirements for dangerous goods carried by any ship, as well as any MODU or other installation during its passage to and from the drill site. These requirements are essentially those found within the International Maritime Dangerous Goods Code with regard to:

- the classification of dangerous goods (based on the UN system);
- packaging;
- marking, labelling and placarding;
- requisite documentation;
- stowage requirements;
- requirements of notification prior to entry into port if carrying such goods; and
- training requirements.

These requirements also apply to crew and passenger baggage which contains such goods.

The specific international standards for MODUs are contained within the 1989 Code for the Construction and Equipment of Mobile Offshore Drilling Units, which covers design, construction, equipment, and various operational matters covered by SOLAS and the International Load Line

Convention for conventional ships engaged in international voyages. There is however no immediate intent to write any Part to give effect to this Code.

A cautionary tale?

In November 1999 the International Maritime Organization agreed a set of recommendations on training of personnel on mobile offshore units (refer Resolution A.891(21)). A *mobile offshore unit* is defined as any vessel which can be readily relocated and which can perform an industrial function involving offshore operations, and includes:

- self-elevating rigs and installations;
- self-propelled and non-self-propelled rigs and installations;
- submersible vessel and units;
- drillships;
- mobile offshore accommodation units; and
- any offshore unit involved in things such as construction, maintenance (including of wells), lifting operations, pipelaying operations, diving, emergency/contingency preparedness (including fire fighting), and offshore production.

Supply, standby, anchor-handling, seismic, and ship-shaped monohull dive support vessels are not included in this definition.

The recommendations provide an international standard for training all personnel on mobile offshore units aimed at ensuring adequate levels of safety of life and property at sea and protection of the marine environment, complimentary to that required for other vessels and ships by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the SCTW Convention

and related Code). The recommendations cover training standards and competencies for all personnel (including visitors) for normal and emergency operations, and also sets out guidelines for emergency drills.

Governments are urged to implement these recommendations, and it is not unlikely that New Zealand could so do in the near to medium future if the need was demonstrated.

Other matters relating to the offshore industry

The Maritime Safety Authority is often asked to undertake several activities for offshore operations, although these are not required by the Act. These include:

- issuing coastal navigation warnings and notices to mariners to warn other seafarers of the presence of a hazard to navigation (such as a drilling rig or seismic vessel towing cable);
- assisting with the coordination of search and rescue planning and preparedness, especially if the operation is a long way offshore;
- advising on the international standards for lighting and buoys for a fixed installation (temporary or semi-permanent);
- assisting with the obtaining of an exclusion zone around semi-permanent installations (in New Zealand currently the two Maui platforms and the FPSO *Whakaaropai*), which are made as Safety Zone Regulations under the Continental Shelf Act by the Ministry of Foreign Affairs; and
- Gazetting Protected Areas around submarine pipelines (prohibited anchoring and fishing) under the Submarine Cables and Pipelines Protection Act 1996.

Authors

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