

Proposed amendments to the financial assurance regime for offshore installations

Invitation to comment: Marine Protection Rules

[Marine Protection Rules Part 102 - Certificates of insurance Amendment 2019](#)

[Marine Protection Rules Part 131 - Oil spill contingency plans Amendment 2019](#)

Introduction

1. In June 2019, the Government agreed to strengthen requirements for offshore oil and gas installations to hold increased levels of insurance. Changes to the regime will be made in three ways:
 - a. proposed amendments to the Maritime Transport Act 1994 (Act) via the Maritime Transport (Offshore Installations) Amendment Bill (Bill);
 - b. proposed amendments to Marine Protection Rules (covered in this document); and
 - c. industry guidance.

Invitation to comment

2. Submissions on the Bill have closed and you are now invited to comment on the proposed amendments to Marine Protection Rules Parts 102 and 131. Further information on these proposals is set out on pages 2 and 3 of this document.
3. Submissions on proposed amendments to these Marine Protection Rules will close on **Tuesday, 1 October 2019 at 5 pm.**
4. The Marine Protection Rules will be made by the Associate Minister of Transport, following the statutory process in the Act, subject to Parliament enacting the Bill.

How can you make a submission?

The deadline for making submissions on the draft amendments to Part 102 and 131 is: **5 p.m. Tuesday, 1 October 2019.**

You may make comments by:

- Email: info@transport.govt.nz; or
- Post: Ministry of Transport
PO Box 3175
WELLINGTON 6140

Submissions are public information

Submissions will be proactively released following public consultation on the rules.

Please indicate clearly if your comments are commercially sensitive, or if, for some other reason, you consider they should not be released. If your submission is subject to an Official Information Act (OIA) request, the Ministry of Transport will consider your confidentiality request in accordance with the grounds for withholding information set out in the Official Information Act 1982. In addition, if you are an individual (i.e. your comments are made personally and not on behalf of a company or an organisation) please indicate if you consider for some reason that your identity should not be disclosed.

Further information about the Official Information Act is available at: <http://www.legislation.govt.nz>.

Background

5. New Zealand's regulatory regime for offshore oil and gas installations exists to ensure essential protections, such as those to mitigate environmental risks, are in place, while capturing the economic benefits of these activities.
6. New Zealand uses a prevention-control-response-recovery framework to regulate offshore oil and gas exploration and production. This includes ensuring permit holders have plans, resources, and capabilities in place to minimise hazards and the likelihood of a spill, and reduce the impacts if an adverse event does occur.
7. The regime includes the Act, in particular Part 26A, and Marine Protection Rules made under the Act, particularly Part 102 (Certificates of Insurance) and Part 131 (Offshore Installations – Oil Spill Contingency Plans & Oil Pollution Prevention Certification).
8. Under Part 26A of the Act, owners of offshore oil and gas installations (owners) have unlimited liability for the costs of pollution damage resulting from a spill at their facilities, in New Zealand waters. This means that anyone affected by pollution damage from an offshore installation is entitled to make a claim.¹
9. The Act also requires owners to hold a marine protection document, called a certificate of insurance,² issued by the Director of Maritime New Zealand (the Director) certifying that they hold insurance or other financial assurance in respect of their liability.

Marine Protection Rules Part 102 and policy problem

10. Marine Protection Rules Part 102 (Part 102), sets out the requirements owners must meet for the Director to issue a certificate of insurance. Part 102 requires owners to demonstrate that they have third-party financial assurance to cover their liabilities under the Act (including but not limited to liabilities from an oil spill), for a sum not less than 14 million International Monetary Fund Units of Account (approximately \$27.7 million).
11. Modelling undertaken in 2015 for the Crown by Navigatus Consulting Limited (an expert ocean risk modelling consultancy) estimated that the median clean-up costs from a credible worst-case spill scenario at an offshore installation in New Zealand could cost around \$800 million. The uppermost estimate in the modelling was \$1.2 billion.
12. This modelling means that the current requirement for approximately \$27.7 million of financial assurance would be insignificant compared to the potential costs of a significant oil spill, and that the level of financial assurance needs to be much higher to be proportionate to the risk posed by operators.
13. To address this, the Ministry of Transport, together with the Ministry of Business, Innovation and Employment and Maritime New Zealand have been reviewing the offshore financial assurance regime for offshore oil and gas installations since 2011. Prior to the creation of the Bill, this review solely focussed on amendments to Part 102 to require, where appropriate, higher levels of financial assurance.
14. Consultation on previous proposals to change Part 102 to increase the financial assurance requirements occurred in 2017 and 2018. At that time, the oil and gas and insurance industries supported an increase from the current minimum amount, but also raised concerns about the insurability of the regime. The Bill and proposed amendments to Part 102 seek to address these concerns.

Marine Protection Rules Part 131 and policy problem

15. Marine Protection Rules Part 131 (Part 131) prevents owners of offshore oil and gas installations from operating unless they have an oil spill contingency plan (OSC plan) approved by the Director..

¹This unlimited liability includes:

- a. the cost of measures to prevent or reduce pollution damage;
- b. the cost of reasonable measures to reinstate the environment; and
- c. the loss of profit from impairment of the environment (these are covered in sections 385B and 385C of the Act, which set out an owner's liabilities in more detail).

² A certificate of insurance is required in order for an offshore installation to operate in in New Zealand waters.

16. OSC plans must identify and assess risks, and ensure that appropriate prevention measures are in place.
17. Where relevant to the nature of the operation, the OSC plan should also cover the owner's arrangements for well capping and containment; however, this is not currently specified in Part 131. In addition, there has not been clarity around owners needing to have the capability to implement their OSC plan if needed.

Proposed amendments to Marine Protection Rules

18. To address the issues identified above, the proposed amendments to Part 102 seek to:
 - a) Introduce a risk-based scaled framework for determining the level of insurance an offshore operator must hold.
 - b) Introduce an upper limit to the scaled framework at \$1.2 billion.
 - c) Ensure owners are able to meet financial security obligations through obtaining insurance using internationally available insurance policy wording.
 - d) Ensure that insurance policies used to obtain a certificate of insurance are consistent with New Zealand's relevant insurance legislation and subject to the jurisdiction of New Zealand courts.
 - e) Ensure the insurance policies submitted are robust, by dealing with common issues found in relation to such insurance contracts.
 - f) Add transitional arrangements, which provide three months for new installations to comply with the new regime, and give until 31 July 2020 for existing installations to comply.
19. These proposed changes to Part 102 seek to increase the maximum amount of financial assurance owners are required to hold, while also providing certainty to owners, the Crown, and third parties about what liabilities the financial assurance needs to provide cover for.
20. The proposed amendments to Rule Part 131 include:
 - a) Owners being required to develop a well control contingency plan as part of their OSC plan.
 - b) The Director being satisfied that owners have the ability, including the financial resources, to implement the OSC plan.
21. By ensuring an owner has the ability, including the financial resources, to carry out their OSC plan under Part 131, the Crown will have greater confidence that the quantum of financial assurance held under Part 102 can be preserved for clean-up and compensation costs.
22. Without financial assurance for Part 131, a necessary part of the regime would remain unclear, especially in terms of containment costs related to the financial assurance that is required to be held to meet an owner's Part 102 liabilities.

Table: Proposed changes to Parts 102 and 131

Proposed rule change	Policy proposal	Additional analysis
Marine Protection Rules – Part 102	The proposed upper limit to the scaled framework is \$1.2 billion.	<ul style="list-style-type: none"> ○ The recommendation for the upper-limit is based on the Navigatus modelling and reflects the uppermost estimate for clean-up costs from an oil spill in the Deepwater Taranaki Basin. ○ For existing installations, and planned exploration, the amount of assurance required under the scaled framework is likely to be much lower than this proposed upper limit. ○ The proposed scaled financial assurance requirements for existing operators remain consistent with the amounts and bands consulted on in 2018. The scaled framework will include additional, higher bands reflecting the proposal to increase the limit of the framework to \$1.2 billion. ○ The proposed upper limit will future-proof the scaled framework in the event that a new installation proceeds in a higher-risk, deep water location.
Marine Protection Rules – Part 102	Owners are able to meet assurance obligations using insurance policies, available from the international market.	<ul style="list-style-type: none"> ○ These cover the key risks (e.g. well blow-out, pipeline rupture) associated with their operations and are consistent with internationally available best practice policy wording.
Marine Protection Rules – Part 102	Any insurance policies provided for under this regime must be consistent with New Zealand's relevant insurance legislation and subject to the jurisdiction of New Zealand courts.	<ul style="list-style-type: none"> ○ This is consistent with current practice.
Marine Protection Rules – Part 102	Transitional arrangements.	<ul style="list-style-type: none"> ○ From the date the regime comes into force, new installations will have three months to comply with the new regime, and existing installations will have up to 31 July 2020 to comply.
Marine Protection Rules – Part 131	Owners are required to provide financial assurance for the cost of well control.	<ul style="list-style-type: none"> ○ A strong regime requires financial assurance to be held for both well control measures (Part 131) and for clean-up and compensation (Part 102). Costs for well control are usually the first drawn down. By ensuring that there is assurance for Part 131, we can have greater confidence that the financial assurance quantum held under Part 102 can be preserved for clean-up and compensation.