

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Marine Legislation Bill as reported from the Transport and Industrial Relations Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- the Maritime Transport Amendment Bill comprising Part 1 and Schedules 1, 2 and 2A
 - this bill comprising Part 2 and Schedules 3 and 4
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**Exclusive Economic Zone and
Continental Shelf (Environmental
Effects) Amendment Bill**

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon Gerry Brownlee

**Exclusive Economic Zone and
Continental Shelf (Environmental
Effects) Amendment Bill**

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act **2013**.

2 Commencement

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This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.

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88 Principal Act

This **Part** amends the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the **principal Act**).

89 Section 3 amended (Outline of Act)

(1) Replace section 3(5) with:

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“(5) **Subpart 1** sets out restrictions imposed by this Act on activities other than discharges and dumping.

“(5A) **Subpart 2** sets out restrictions and prohibitions on the discharge of harmful substances and the dumping of waste and other matter.

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“(5AB) **Subpart 2A**—

“(a) sets out, in **sections 24I and 24K**, ongoing transitional provisions for activities that are being carried out when the regulations that apply to them are amended or replaced and require a marine consent as a result; and

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“(b) provides, in **section 24J**, for petroleum activities that, although authorised, have not commenced when new regulations come into force that change the rules for those activities and require a marine consent as a result. An activity may commence if the person planning to undertake the activity first provides an impact assessment to the EPA; and

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- “(c) requires, in **section 24L**, a person undertaking an activity to stop undertaking it once it is no longer authorised.
- “(5B) **Subpart 3**—
- “(a) imposes, in **section 25**, a duty on every person to avoid, remedy, or mitigate the adverse effects of their activities on the environment and a duty to provide sufficient training, supervision, and resources to their employees (if any) to ensure compliance with the Act; and
- “(b) clarifies, in **section 26**, that compliance with the Act does not mean a person need not comply with other legal requirements and vice versa.”
- (1A) In section 3(8), after “standard process for applying for a marine consent”, insert “for a non-notified activity, the standard process for applying for a marine consent for a publicly notifiable activity.”.
- (2) After section 3(8), insert:
- “(8A) **Subpart 2A** adapts the standard process for obtaining a marine consent for marine discharge consents and marine dumping consents.”
- (3) In section 3(11)(c), delete “under **sections 132 and 133**”.
- (4) In section 3(14), replace “Acts” with “Acts, regulations, and marine protection rules”.
- 90 Section 4 amended (Interpretation)**
- (1) In section 4(1), insert in their appropriate alphabetical order: “customary marine title group has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011
- “**discharge**—
- “(a) includes any release, disposal, spilling, leaking, pumping, emitting, or emptying; but
- “(b) does not include dumping
- “**dumping**—
- “(a) means,—
- “(i) in relation to waste or other matter, its deliberate disposal or storage; and
- “(ii) in relation to a ship, an aircraft, or a structure, its deliberate disposal or abandonment; but

- “(b) does not include—
- “(i) the disposal into the sea of waste or other matter from a ship, an aircraft, or a structure, or the equipment of a ship, an aircraft, or a structure, if the disposal is incidental to, or derived from, the normal operation of the ship, aircraft, structure, or equipment; or 5
 - “(ii) the disposal or storage of waste or other matter directly arising from, or related to, a mining activity 10
- “emergency dumping consent** means a marine consent granted under **section 24FA**
- “harmful substance** means any substance specified as a harmful substance by regulations made under this Act
- “incinerate at sea—** 15
- “(a) means to deliberately dispose of waste or other matter by thermal destruction on board a ship or a structure at sea; but
 - “(b) does not include incinerating on board a ship or structure at sea waste or other matter that has been generated during the normal operation of a ship or a structure while at sea 20
- “marine discharge consent** means a marine consent granted under **section 87F** to discharge harmful substances
- “marine dumping consent** means a marine consent granted under **section 87F** to dump waste or other matter 25
- “mineral** has the meaning given in section 2(1) of the Crown Minerals Act 1991
- “mining activity** means an activity carried out for, or in connection with,— 30
- “(a) the identification of areas of the seabed likely to contain mineral deposits; or
 - “(b) the identification of mineral deposits; or
 - “(c) the taking or extraction of minerals from the sea or seabed, and associated processing of those minerals 35
- “mining discharge**, in relation to a harmful substance, means a discharge made as an integral part of, or as a direct result of, a mining activity

“New Zealand ship—

“(a) means a ship that is registered under the Ship Registration Act 1992; and

“(b) includes a ship that is not registered under that Act but that is required or entitled to be registered under that Act 5

“New Zealand structure means a structure that is owned by—

“(a) a New Zealand citizen; or

“(b) a person ordinarily resident in New Zealand; or

“(c) a company registered under the Companies Act 1993

“non-notified activity means a discretionary activity that— 10

“(a) is described in regulations as non-notified; or

“(b) is an activity for which regulations provide that an application for a marine consent is not to be publicly notified

“offshore installation— 15

“(a) includes an artificial structure used or intended to be used in or on, or anchored or attached to, the seabed for the purpose of the exploration for, or the exploitation or associated processing of, any mineral; but

“(b) does not include a ship or a pipeline 20

“protected customary rights group has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

“publicly notifiable activity means a discretionary activity other than emergency dumping or a non-notified activity 25

“radioactive waste or other radioactive matter means any waste or other matter that contains any radioactive material within the meaning of the Radiation Protection Act 1965

“ship has the meaning given in section 2(1) of the Maritime Transport Act 1994 30

“toxic or hazardous waste means any waste or other matter specified as toxic or hazardous waste by regulations made under this Act

“working day means a day of the week other than—

“(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, and Labour Day; and 35

- “(b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
“(c) a day in the period commencing on 20 December in any year and ending with 10 January in the following year.”
- (2) In section 4(1), replace the definition of **activity** with: 5
“activity,—
“(a) in relation to the exclusive economic zone and continental shelf, means an activity described in section 20 or subpart 2 of Part 2; and
“(b) in relation to the sea above the continental shelf beyond the outer limits of the exclusive economic zone, means an activity described in subpart 2 of Part 2”. 10
- (3) In section 4(1), definition of **applicant**, after “section 38”, insert “**or 87B**”.
- (4) In **section 4(1)**, replace the definition of **marine consent** or **consent** with: 15
“marine consent or consent means—
“(a) a consent granted under section 62; or
“(b) a marine discharge consent or a marine dumping consent granted under section 87F” 20
“marine consent or consent means—
“(a) a marine consent granted under section 62; or
“(b) an emergency dumping consent, a marine discharge consent, or a marine dumping consent”.
- (4A) In section 4(1), definition of **structure**, replace paragraph (b) with: 25
“(b) includes an offshore installation, an artificial island, or a floating platform; but”.
- (5) In section 4(1), replace the definition of **waste or other matter** with: 30
“waste or other matter means material and substances of any kind, form, or ~~description.~~ description”.
- 91 Section 9 amended (Application to ships and aircraft of New Zealand Defence Force and foreign States)**
 After section 9(1), insert: 35
“(1A) However, the following provisions of this Act do apply to warships and other ships of the New Zealand Defence Force:

- “(a) **subparts 2** (as if those ships were New Zealand ships),
2A, and 3 of Part 2:
- “(b) regulations made under **sections 29A and 29B:**
- “(c) **subpart 2A of Part 3:**
- “(d) **sections 134 to 134M.**” 5
- 92 Section 10 amended (Purpose)**
Replace section 10(1) with:
- “(1) The purpose of this Act is—
- “(a) to promote the sustainable management of the natural
resources of the exclusive economic zone and the contin- 10
tental shelf; and
- “(b) in relation to the exclusive economic zone, the contin-
ental shelf, and the waters above the continental shelf
beyond the outer limits of the exclusive economic zone,
to protect the environment from pollution by regulating 15
or prohibiting the discharge of harmful substances and
the dumping or incineration of waste or other matter.”
- 93 Section 11 amended (International obligations)**
In section 11, after paragraph (b), insert:
- “(c) the International Convention for the Prevention of Pol- 20
lution from Ships, 1973 (MARPOL):
- “(d) the Convention on the Prevention of Marine Pollution
by Dumping Wastes and Other Matter, 1972 (the Lon-
don Convention).”
- 94 Section 13 amended (Functions of Environmental Protection Authority)** 25
In section 13(1)(d)(i), replace “subparts 2 and 3” with “sub-
parts 2, **2A**, and 3”.
- 95 Section 16 amended (Restriction on Environmental Protection Authority’s power to delegate)** 30
In section 16, replace “62, 81, or 82” with “62, 81, 82, or **87F**”.

95 Section 16 amended (Restriction on Environmental Protection Authority’s power to delegate)

In section 16, replace “or make a decision on a review of a consent under section 62, 81, or 82 (as appropriate),” with “under section 62 or to make a decision under section 81 or 82 on a review of a consent granted under section 62,”.

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96 **Part 2 replaced**

Replace Part 2 with:

“Part 2

“Duties, restrictions, and prohibitions

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“Subpart 1—Restrictions on activities other than discharges and dumping

“20 **Restriction on activities other than discharges and dumping**

“(1) No person may undertake an activity described in **subsection (2)** in the exclusive economic zone or in or on the continental shelf unless the activity is a permitted activity or authorised by a marine consent or **section 24I, 24J, or 24K.**

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“(2) The activities referred to in **subsection (1)** are—

“(a) the construction, placement, alteration, extension, removal, or demolition of a structure on or under the seabed:

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“(b) the construction, placement, alteration, extension, removal, or demolition of a submarine pipeline on or under the seabed:

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“(c) the placement, alteration, extension, or removal of a submarine cable on or from the seabed:

“(d) the removal of non-living natural material from the seabed or subsoil:

“(e) the disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on the seabed or subsoil:

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“(f) the deposit of any thing or organism in, on, or under the seabed:

“(g) the destruction, damage, or disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on marine species or their habitat.

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- “(3) No person may undertake an activity described in **subsection (4)** in the sea of the exclusive economic zone unless the activity is a permitted activity or authorised by a marine consent or **section 24I, 24J, or 24K**.
- “(4) The activities referred to in **subsection (3)** are— 5
- “(a) the construction, mooring or anchoring long-term, placement, alteration, extension, removal, or demolition of a structure, part of a structure, or a ship used in connection with a structure:
 - “(b) the causing of vibrations (other than vibrations caused by the propulsion of a ship) in a manner that is likely to have an adverse effect on marine life: 10
 - “(c) the causing of an explosion.
- “(5) However, this section does not apply to—
- “(a) the discharge of harmful substances; or 15
 - “(b) the dumping of waste or other matter; or
 - “(c) lawful fishing for wild fish under the Fisheries Act 1996.
- “Subpart 2—Restrictions and prohibitions
on discharges and dumping
- “Discharge of harmful substances”* 20
- “**24AA Regulation under this subpart and Maritime Transport Act 1994 of discharges**
- “(1) This section describes how the discharge of harmful substances is regulated under this subpart and the Maritime Transport Act 1994, but it does not affect the interpretation or the application of this subpart or that Act. 25
- “(2) In relation to the discharge of harmful substances, this subpart regulates—
- “(a) discharges into the exclusive economic zone and into or onto the seabed below it from— 30
 - “(i) structures:
 - “(ii) submarine pipelines:
 - “(iii) ships, if the discharge is a mining discharge:
 - “(b) discharges into or onto the continental shelf beyond the exclusive economic zone or into the sea above that part of the continental shelf from— 35
 - “(i) New Zealand structures:

- “(ii) structures (other than New Zealand structures) involved in a mining activity:
“(iii) submarine pipelines:
“(iv) ships, if the discharge is a mining discharge.
- “(3) The Maritime Transport Act 1994 regulates— 5
“(a) the discharge of harmful substances (other than a mining discharge) from a ship into the sea or seabed of the exclusive economic zone:
“(b) the discharge of harmful substances (other than a mining discharge) into the sea above the continental shelf beyond the exclusive economic zone and the seabed below that sea from a New Zealand ship or from a foreign ship involved in a mining activity: 10
“(c) the discharge of harmful substances from a New Zealand ship into the sea beyond the continental shelf or the seabed below that sea. 15
- “**24A Restriction on discharges of harmful substances from structures and submarine pipelines**
- “(1) No person may discharge a harmful substance from a structure or from a submarine pipeline into the sea or into or onto the seabed of the exclusive economic zone. 20
“(2) No person may discharge a harmful substance into or onto the continental shelf beyond the outer limits of the exclusive economic zone or into the sea above that part of the continental shelf from— 25
“(a) a New Zealand structure; or
“(b) a structure (other than a New Zealand structure) involved in a mining activity; or
“(c) a submarine pipeline.
- “(3) However, a person may discharge a harmful substance if the discharge is a permitted activity or authorised by a marine consent or **section 24I, 24J, or 24K.** 30
- “**24B Restriction on mining discharges from ships**
- “(1) No person may discharge a harmful substance (if the discharge is a mining discharge) from a ship— 35

- “(a) into the sea of the exclusive economic zone or above the continental shelf beyond the outer limits of the exclusive economic zone; or
- “(b) into or onto the continental shelf.
- “(2) However, a person may discharge the harmful substance in the circumstance described in **subsection (1)** if the discharge is a permitted activity or authorised by a marine consent or **section 24I, 24J, or 24K.** 5
- “Dumping of waste or other matter*
- “24C Regulation under this subpart and Maritime Transport Act 1994 of dumping 10
- “(1) This section describes how the dumping of waste or other matter is regulated under this subpart and the Maritime Transport Act 1994, but it does not affect the interpretation or the application of this subpart or that Act. 15
- “(2) In relation to the exclusive economic zone and the continental shelf, this subpart—
- “(a) prohibits—
- “(i) the dumping of radioactive waste or other radioactive matter: 20
- “(ii) the dumping of toxic or hazardous waste:
- “(iii) the incineration of waste or other matter at sea; and
- “(b) regulates—
- “(i) the disposal of human remains other than ashes: 25
- “(ii) the dumping of waste or other matter (other than waste or other matter described in **paragraph (a)**).
- “(3) The Maritime Transport Act 1994 regulates—
- “(a) the dumping of waste or other matter into the waters beyond the continental shelf from a New Zealand ship or a New Zealand structure: 30
- “(b) the dumping of waste or other matter in an emergency (other than waste or other matter described in **subsection (2)(a)**): 35

“(3) The Maritime Transport Act 1994 regulates the dumping of waste or other matter into the waters beyond the continental shelf.

“24D Prohibition on dumping radioactive waste or other radioactive matter 5

No person may dump radioactive waste or other radioactive matter—

“(a) into the sea within the exclusive economic zone or above the continental shelf beyond the outer limits of the exclusive economic zone; or 10

“(b) into or onto the continental shelf.

“24E Prohibition on dumping toxic or hazardous waste

No person may dump toxic or hazardous waste—

“(a) into the sea within the exclusive economic zone or above the continental shelf beyond the outer limits of the exclusive economic zone; or 15

“(b) into or onto the continental shelf.

“24F Restriction on dumping waste or other matter

“(1) This section applies to waste or other matter other than—

“(a) radioactive waste or other radioactive matter: 20

“(b) toxic or hazardous waste:

“(c) human remains.

“(2) No person may dump waste or other matter (including ships, aircraft, or structures)—

“(a) into the sea within the exclusive economic zone or above the continental shelf beyond the outer limits of the exclusive economic zone; or 25

“(b) into or onto the continental shelf.

“(3) However, a person may dump waste or other matter (including ships, aircraft, or structures) if— 30

“(a) regulations allow the dumping to be authorised by a marine consent and the dumping is authorised by a marine consent; or

“(b) the dumping is authorised by an emergency dumping permit issued under **section 262A** of the Maritime Transport Act 1994. 35

- “(b) the dumping is authorised by an emergency dumping consent and complies with any regulations for emergency dumping made under **section 29AB**; or
“(c) the dumping is in accordance with section 248 or 249 of the Maritime Transport Act 1994.

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“24FA Emergency dumping

“(1) Any person may apply to the Environmental Protection Authority for an emergency dumping consent to dump waste or other matter in an emergency—

“(a) into the waters of the exclusive economic zone;

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“(b) into waters beyond the outer limits of the exclusive economic zone but over the continental shelf.

“(2) The EPA may issue an emergency dumping consent, in accordance with this section and regulations under **section 29AB**, if it is satisfied that—

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“(a) an emergency exists; and

“(b) the emergency poses an unacceptable risk to human health, safety, or the marine environment; and

“(c) the dumping of the waste or other matter is necessary to remove or reduce the risk; and

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“(d) there is no feasible alternative to the dumping of the waste or other matter.

“(3) Before the EPA grants an emergency dumping consent, it must—

“(a) consult Maritime New Zealand and the appropriate competent authority of any country that is likely to be affected by the dumping of the waste or other matter; and

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“(b) notify the International Maritime Organization that it has received an application for an emergency dumping consent.

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“(4) The EPA may grant an emergency dumping consent subject to conditions.

“(5) The EPA may impose any conditions that it considers appropriate to deal with the effects of the dumping of waste or other matter on the environment or on human health or safety, including conditions that require the person issued with the consent to—

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- “(a) monitor, and report to the EPA on, the exercise of the permit and the effects of the dumping on the environment and human health and safety:
- “(b) keep and maintain records of the waste or other matter dumped and the location of the dumping: 5
- “(c) provide the EPA with any specified information that relates to the permit or its exercise.
- “(6) The EPA may impose as a condition a requirement that the person granted the emergency dumping consent complies with—
- “(a) any procedures for dumping recommended by the International Maritime Organization: 10
- “(b) any procedures for dumping specified in the consent.
- “(7) Before imposing a condition under **subsection (6)**, the EPA must consider whether the condition is feasible in the circumstances after taking into account the urgency of the situation. 15
- “(8) The EPA must make its decision on an application for an emergency dumping consent as soon as is reasonably practicable after the EPA is satisfied that the application is complete.
- “(9) The EPA must notify the International Maritime Organization of every decision it makes under **subsection (8)** to grant or refuse an application for an emergency dumping consent. 20
- “24G Prohibition on incinerating waste or other matter at sea**
- “(1) No person may incinerate waste or other matter in the exclusive economic zone.
- “(2) No person may incinerate waste or other matter on a New Zealand ship or a New Zealand structure in the sea above the continental shelf beyond the outer limits of the exclusive economic zone. 25
- “(3) However, a person may incinerate waste or other matter on a New Zealand ship or a New Zealand structure if the waste or other matter was generated during the normal operation of the ship or structure. 30

“Burial at sea

- “24H Burial at sea**
- “(1) No person may dispose of human remains in the exclusive economic zone, or into or onto the continental shelf, unless— 35

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- “(a) the disposal complies with regulations made under this Act; and
 - “(b) the Environmental Protection Authority certifies, in writing, that the proposed disposal complies with the regulations. 5
- “(2) However, **subsection (1)** does not apply to human remains that are ashes resulting from the cremation of human remains.
- “Subpart 2A—Existing activities and
planned petroleum activities
- “**24I Certain existing activities may continue** 10
- “(1) This section applies to an existing activity if—
- “(a) the activity is classified as a permitted activity by regulations; and
 - “(b) new regulations come into force that amend or replace the regulations described in **paragraph (a)** (the **new regulations**); and 15
 - “(c) the activity is lawfully established before the new regulations come into force; and
 - “(d) the effects of the activity on the environment and existing interests are of the same or similar character, intensity, and scale as the effects that existed before the coming into force of the new regulations; and 20
 - “(e) the activity requires a marine consent as a result of the amendment or replacement of the regulations described in **paragraph (a)**. 25
- “(2) The activity may continue without a marine consent for a prescribed period or, if no period is prescribed for the activity, for 6 months from the date on which the new regulations come into force.
- “(3) If the activity is one that is described in **section 20** and the person undertaking the activity applies for a marine consent within the period described in **subsection (2)**, the activity may continue after the period has expired until— 30
- “(a) the application is decided under section 62 and any appeals are determined; or 35

- “(b) the application is returned as incomplete by the EPA under section 41 and any objections and appeals are determined.
- “(4) If the activity is a discharge of a harmful substance and the person undertaking the activity applies for a marine consent within the period described in **subsection (2)**, the activity may continue after the period has expired until—
- “(a) the application is decided under **section 87F** and any appeals are determined; or
- “(b) the application is returned as incomplete by the EPA under section 41 and any objections and appeals are determined.
- “(5) If the application for a marine consent described in **subsection (3) or (4)** is returned by the EPA under section 41, **subsection (3) or (4)** (as the case requires) applies to any new application that replaces the returned application.
- “**24J Planned petroleum activities may commence**
- “(1) This section applies to a planned petroleum activity if—
- “(a) the activity is classified as a permitted activity by regulations; and
- “(b) new regulations come into force that amend or replace the regulations described in **paragraph (a)** (the **new regulations**); and
- “(c) the activity requires a marine consent as a result of the amendment or replacement of the regulations described in **paragraph (a)**.
- “(2) The activity may commence without a marine consent after the new regulations come into force.
- “(3) However, before the activity may commence, the person intending to undertake the activity must—
- “(a) prepare an impact assessment for the activity; and
- “(b) provide the impact assessment to the EPA.
- “(4) Section 41 applies to the impact assessment as if it were an application for a marine consent.
- “(5) If the person intending to undertake the activity complies with **subsection (3)**, the activity may continue for a prescribed period or, if no period is prescribed for the activity, for 6

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- months from the date on which the new regulations come into force.
- “(6) If the person undertaking the activity applies for a marine consent within the period described in **subsection (5)**, the activity may continue after the period has expired until the application— 5
- “(a) is decided under section 62 and any appeals are determined; or
 - “(b) is returned as incomplete by the EPA under section 41 and any objections and appeals are determined. 10
- “(7) If the activity is a discharge of a harmful substance and the person undertaking the activity applies for a marine consent within the period described in **subsection (5)**, the activity may continue after the period has expired until— 15
- “(a) the application is decided under **section 87F** and any appeals are determined; or
 - “(b) the application is returned as incomplete by the EPA under section 41 and any objections and appeals are determined.
- “(8) If the application for a marine consent described in **subsection (6) or (7)** was returned by the EPA under section 41, **subsection (6) or (7)** (as the case requires) applies to any new application that replaces the returned application. 20
- “(9) In this section, **planned petroleum activity** means a mining activity undertaken in relation to petroleum if, before the new regulations come into force,— 25
- “(a) the exploration, prospecting, or mining for petroleum with which the activity is involved is authorised by a permit that is granted under section 25 of the Crown Minerals Act 1991 or authorised by an existing privilege preserved under ~~section 107~~ clause 12 of Schedule 1 of that Act; and 30
 - “(b) the activity had not commenced.
- “**24K Certain existing activities that become prohibited may continue** 35
- “(1) This section applies to an existing activity if—

- “(a) the activity is classified as a permitted activity by regulations, or was authorised by a marine consent in accordance with the regulations; and
 - “(b) new regulations come into force that amend or replace the regulations described in **paragraph (a)** (the **new regulations**); and 5
 - “(c) the activity becomes a prohibited activity as a result of the amendment or replacement of the regulations described in **paragraph (a)**; and
 - “(d) the activity is lawfully established before the new regulations come into force. 10
- “(2) The activity may continue—
- “(a) for the duration of the consent, if the activity is authorised by a marine consent; or
 - “(b) for a period prescribed by regulations, if the activity is not authorised by a consent. 15

“Unauthorised activities

“24L Unauthorised activities must stop

- “(1) This section applies to an activity authorised to continue by **section 24I, 24J, or 24K** once the activity is no longer authorised to continue by one of those sections. 20
- “(2) The person undertaking the activity must—
 - “(a) stop the activity; and
 - “(b) in stopping the activity, comply with any regulations or consent conditions that apply to the stopping of the activity; and 25
 - “(c) comply with any instructions of the Environmental Protection Authority that relate to stopping the activity.

“Subpart 3—General matters

“25 Duty of persons operating in exclusive economic zone or on continental shelf 30

- “(1) This section applies to every person who carries out or proposes to carry out an activity in the exclusive economic zone, in or on the seabed of the continental shelf, or in the sea above the continental shelf beyond the outer limits of the exclusive economic zone. 35

- “(2) The person has—
- “(a) a general duty to avoid, remedy, or mitigate the adverse effects of the activity on the environment; and
 - “(b) a duty to provide—
 - “(i) training and supervision to all of the person’s employees who are engaged in the activity in order to ensure compliance with this Act, regulations, and any marine consent; and 5
 - “(ii) sufficient resources to the person’s employees to ensure compliance with this Act, regulations, and any marine consent, including establishing appropriate management systems. 10
- “(3) The duties referred to in **subsection (2)** are not enforceable against any person, and no person is liable to any other person for a breach of a duty. 15
- “(4) However, despite **subsection (3)**, an enforcement order may be made or an abatement notice may be served under Part 3 to require a person to comply with **subsection (2)(a)** if adverse effects result or are likely to result from a breach of this Act, regulations, or a marine consent. 20
- 26 Relationship with other legal requirements**
- To avoid doubt,—
- “(a) compliance with this Act does not remove the need to comply with all other applicable Acts, regulations, and rules of law; and 25
 - “(b) compliance with any Act, regulations, or rule of law does not remove the need to comply with this Act.”
- 97 Cross-heading above section 27 amended**
- In the cross-heading above section 27, replace “*activities and environment of exclusive economic zone and continental shelf*” with “*certain activities and areas*”. 30
- 98 Section 27 amended (Regulations prescribing standards, methods, or requirements)**
- (1AA) In section 27(1), replace “technical standards, methods, or requirements” with “requirements, methods, or technical standards”. 35

- (1) In section 27(1)(a), after “activities”, insert “described in **section 20**”.
- (2) Replace section 27(1)(b) with:
 “(b) the effects of the activities referred to in **paragraph (a)**, including effects that occur in the territorial sea or in the sea above and beyond the continental shelf.” 5
- (3) In section 27(2)(d)(i), replace “section 21, 22, or 23” with “**section 24I, 24J, or 24K**”.
- 99 Section 28 amended (Regulations classifying areas of exclusive economic zone or continental shelf)** 10
- (1) In section 28(1), after “section 27”, insert “**or 29A**”.
- (2) In section 28(2), replace “activities described in section 20” with “activities described in **section 20 or subpart 2 of Part 2**”.
- 100 New sections 29A and 29B and cross-heading inserted** 15
- After section 29, insert:
“Regulation of discharges and dumping
- “29A Regulations for discharges and dumping**
- “(1) This section applies to the exclusive economic zone, continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone. 20
- “(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that—
- “(a) ~~prescribe technical standards, methods, or requirements~~ requirements, methods, or technical standards for the discharge of harmful substances, the dumping of waste or other matter, and the effects of the discharge or dumping: 25
- “(b) in relation to a harmful substance,— 30
- “(i) prohibit its discharge; or
- “(ii) allow the discharge without a marine consent or describe the discharge as permitted; or
- “(iii) allow the discharge with a marine consent or describe the discharge as discretionary:
- “(c) in relation to the dumping of specified waste or other matter (other than emergency dumping),— 35

- “(i) prohibit the dumping; or
“(ii) allow the dumping with a marine consent or describe the dumping as discretionary.
- “(2A) However, the Minister must not recommend the making of regulations unless he or she is satisfied that the requirements of sections 32 and 34A have been met. 5
- “(3) The regulations may—
- “Harmful substances*
- “(a) prescribe a substance to be a harmful substance:
“(b) in relation to an offshore installation, regulate— 10
 “(i) the removal or retention on board of a harmful substance:
 “(ii) the stowage, packaging, containment, marking, labelling, documentation, and notification of a harmful substance carried in packaged form: 15
 “(iii) plans for emergencies involving a harmful substance:
“(c) prescribe requirements and procedures for the discharge of water produced from geologic formations by a mining activity: 20
- “Waste and other matter*
- “(e) prescribe waste or other matter to be toxic or hazardous waste:
“(f) specify the matters an applicant for a marine dumping consent must include in the impact assessment for the activity, in addition to the matters required by section 39: 25
“(g) specify sites at which burial at sea may be approved:
“(h) specify criteria to be considered in deciding an application for a marine dumping consent or an application to change or cancel a condition of a marine dumping consent. 30
- “(4) Regulations may apply to different classes of persons, ships involved in mining activities, offshore installations, or submarine pipelines. 35
- “(5) Despite **subsection (2)(b)(ii)**, the regulations must not provide for the discharge of a harmful substance to be a permitted activity if, in the Minister’s opinion,—

- “(a) the activity has or is likely to have adverse effects on the environment or an existing interest that are significant in the circumstances; and
- “(b) it is more appropriate for the adverse effects of the activity to be considered in relation to an application for a marine consent. 5
- “(6) Section 27(2) applies to regulations made under **subsection (2)(a)**.
- “(7) ~~The regulations may close an area of the waters above the continental shelf beyond the outer limits of the exclusive economic zone to all or any of the activities described in **subpart 2 of Part 2**.~~ 10
- “(8) Section 29(2) and (3) applies to the regulations made under this section.
- “29AB Regulations for emergency dumping 15**
- “(1) This section applies to the exclusive economic zone, continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone.
- “(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that prescribe requirements, methods, or technical standards for emergency dumping of waste or other matter. 20
- “29B Regulations implementing international obligations**
- “(1) Regulations may be made under **section 29A** to— 25
- “(a) implement New Zealand’s international obligations relating to the exclusive economic zone, continental shelf, or the sea above the continental shelf beyond the outer limits of the exclusive economic zone:
- “(b) enable New Zealand to become a party to an international convention, protocol, or agreement relating to the protection of the marine environment: 30
- “(c) implement international practices and standards relating to the protection of the marine environment recommended by the International Maritime Organization.
- “(2) This section does not limit **section 29A**. 35

“Non-notified activities

“29C Non-notified activities

- “(1) Regulations may describe any discretionary activity as non-notified or provide that an application for a marine consent for an activity is not to be publicly notified.”** 5
- “(2) Regulations must only provide that a discretionary activity is to be non-notified if, in the Minister’s opinion,—**
- “(a) the activity has a low probability of significant adverse effects on the environment or existing interests; and**
- “(b) the activity is—** 10
- “(i) routine or exploratory in nature; or**
- “(ii) an activity of brief duration; or**
- “(iii) a dumping activity.”**

101 Section 31 amended (Application of regulations)

- (1) In section 31(1), after “A regulation”, insert “made under **section 27**”.** 15
- (2) Replace section 31(2) with:**
- “(2) A regulation made under **section 29A** may apply to—**
- “(a) all or any part of the exclusive economic zone, the continental shelf, and the sea above the continental shelf beyond the outer limits of the exclusive economic zone; and** 20
- “(b) any or all of the activities described in **subpart 2 of Part 2**.**
- “(2A) A regulation made under section 27 or **29A** may apply to the effects of an activity even if the effects occur outside the area to which the regulation applies.”** 25

102 Section 32 amended (Process for developing or amending regulations)

- (1) In section 32(1), replace “section 27 or 30(1)(a) or (c)” with “section 27, **29A**, or 30(1)(a) or (c)”.** 30
- (2) In section 32(2)(a)(ii), replace “section 27” with “section 27 or **29A**”.**

102A Section 33 amended (Matters to be considered for regulations)

- (1) In the heading to section 33, after “**regulations**”, insert “**under section 27**”.
- (2) In section 33(3)(k), replace “permitted or discretionary” with “permitted, discretionary, non-notified, or publicly notifiable”.

102B Section 34 amended (Information principles)

In section 34(1), replace “section 27” with “sections 27, **29A**, and **29AB**”.

103 New section 34A inserted (Matters to be considered for regulations relating to discharges and dumping)

After section 34, insert:

“34A Matters to be considered for regulations relating to discharges and dumping

- “(1) This section applies when the Minister is developing regulations for the purpose of **section 29A**.
- “(2) The Minister must have regard to any comments made under section 32(2).
- “(3) The Minister must take into account—
- “(a) the matters described in section 33(3), except paragraphs (c), (g), (h), and (j); and
 - “(b) the effects of the discharge or dumping on human health if the discharge or dumping takes place; and
 - “(c) in relation to the dumping of waste or other matter,—
 - “(i) any alternative methods of disposal that could be used; and
 - “(ii) whether there are practical opportunities to reuse, recycle, or treat the waste.”

104 Section 36 amended (Discretionary activities)

- (1) In section 36(1), after “discretionary activity if”, insert “this Act or”.
- (2) In section 36(3), replace “section 21” with “**section 24I**”.

105 Section 37 amended (Prohibited activities)

- (1) In section 37(1), after “described in”, insert “this Act or”.

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(2) In section 37(4), replace “section 23” with “**section 24K**”.

106 New section 37A inserted (Application of this subpart)

In subpart 2 of Part 2, before the cross-heading “*Application for marine consent*”, insert:

“**37A Application of this subpart** 5
This subpart applies only in relation to an activity described in **section 20**.”

106A Section 38 amended (Application for marine consent)

After section 38(2), insert:

“(3) This section does not apply to the following activities: 10
“(a) the discharge of harmful substances:
“(b) the dumping of waste or other matter.”

106B New section 42A inserted (Joint processing and decision-making on related applications)

After section 42, insert:

“**42A Joint processing and decision-making on related applications** 15
“(1) This section applies if the Environmental Protection Authority receives more than 1 application for a marine consent in relation to the same proposal (**related applications**) and at least 1 of the applications must be publicly notified under section 45(2). 20
“(2) The EPA may extend a time period that applies to the processing of an application for a non-notified activity in order to ensure that— 25
“(a) the application and a related application are heard (if both are to be heard) at the same time and place:
“(b) the EPA makes its decisions on the related applications on the same date.”

106C Section 44 amended (Environmental Protection Authority may obtain advice) 30

(1) In the heading to section 44, after “advice”, insert “or information”.
(2) In section 44(1)(d), after “advice”, insert “or information”.

106D New sections 44A to 44C and cross-headings inserted

After section 44, insert:

*“Disclosure and hearings of applications for
marine consents for non-notified activities*

“44A Copy of consent applications for non-notified activities 5

If the Environmental Protection Authority is satisfied that an
application for a marine consent for a non-notified activity is
complete, the EPA—

“(a) must serve a copy of the application on any of the fol-
lowing that the EPA considers may be affected by the
application: 10

“(i) iwi authorities:

“(ii) customary marine title groups:

“(iii) protected customary rights groups:

“(b) may serve a copy of the application on the following if
the EPA considers it appropriate in the circumstances: 15

“(i) Ministers with responsibilities that may be af-
fected by the activity for which consent is sought:

“(ii) Maritime New Zealand:

“(iii) other persons that the EPA considers have exist-
ing interests that may be affected by the applica-
tion: 20

“(iv) regional councils whose regions may be affected
by the application.

**“44B Hearings in respect of consent applications for
non-notified applications** 25

“(1) The Environmental Protection Authority may conduct a hear-
ing on an application for a marine consent for a non-notified
activity if the EPA considers it necessary or desirable.

“(2) Despite **subsection (1)**, the EPA must conduct a hearing if
the applicant requests a hearing. 30

“(3) **The Schedule** applies to hearings of applications for marine
consents for non-notified activities.

*“Public notification and hearings of applications
for marine consents for publicly notifiable
activities”*

“44C Application of sections 45 to 58

Sections 45 to 58 apply to applications for marine consents for publicly notifiable activities.” 5

106E Section 68 amended (Time limits for Environmental Protection Authority’s decision)

(1) In section 68, after “an application for a marine consent”, insert “for a publicly notifiable activity”. 10

(2) In section 68, insert as subsection (2):

“(2) The EPA must make its decision on an application for a marine consent for a non-notified activity as soon as is reasonably practicable and no later than 50 working days after the date on which the EPA is satisfied that the application is complete.” 15

106F Section 76 amended (Environmental Protection Authority may review duration and conditions)

(1) In section 76(2), delete “, in accordance with section 78,”.

(2) After section 76(2), insert:

“(3) A notice of review must comply with section 77.” 20

106G Section 78 amended (Notice of review to consent holder and public notice)

(1) Replace the heading to section 78 with “Public notice of review”.

(2) In section 78(1), after “a notice of review”, insert “of a publicly notifiable activity”. 25

106H New section 78A inserted (Copy of notice of review of non-notified activity)

After section 78, insert:

“78A Copy of notice of review of non-notified activity 30

If the Environmental Protection Authority serves a notice of review of a non-notified activity on a consent holder, the EPA must serve a copy of the notice on the persons specified in **section 44A(a)** as if the reference in that paragraph to an

application for a marine consent were a reference to a notice of review.”

106I Section 79 amended (Further information, advice, submissions, and hearing)

(1) In section 79(1), replace “Sections 42 to 58 apply, with all necessary modifications, to a review of a marine consent” with “Sections 42 to 44 and 45 to 58 apply, with all necessary modifications, to a review of a marine consent for a publicly notifiable activity”. 5

(2) After section 79(1), insert: 10

“(1A) Sections 42 to **44B** (and **the Schedule**) apply, with all necessary modifications, to a review of a marine consent for a non-notified activity as if the notice of review were an application for a marine consent.”

107 New subpart 2A of Part 3 inserted 15

After section 87, insert:

“Subpart 2A—Marine discharge consents
and marine dumping consents

“87A Application

“(1) This subpart applies in relation to an activity described in **subpart 2 of Part 2**. 20

“(2) Subpart 2 of this Part applies in relation to an activity described in **subsection (1)** only as set out in this subpart.

“87B Application for marine discharge consent or marine dumping consent 25

“(1) Any person may apply to the Environmental Protection Authority for a marine discharge consent or a marine dumping consent to undertake a discretionary activity.

“(2) An application must—

“(a) be made in the prescribed form; and 30

“(b) fully describe the proposal; and

“(c) include an impact assessment prepared in accordance with section 39 and any regulations.

“87C Process before Environmental Protection Authority makes decision

“(1) Sections 40 to 58 apply to an application made under **section 85B 87B.**

“(2) However, section 43(3) applies as if the reference to section 59 were a reference to **section 87D.**

“87D Environmental Protection Authority’s consideration of application

“(1) This section and **sections 87E and 87F** apply when the Environmental Protection Authority is considering an application for a marine discharge consent or a marine dumping consent and submissions on the application. 10

“(2) The EPA must take into account,—

“(a) in relation to the discharge of harmful substances,—

“(i) the matters described in section 59(2), except paragraph (c); and 15

“(ii) the effects on human health of the discharge of harmful substances if consent is granted; and

“(b) in relation to the dumping of waste or other matter,—

“(i) the matters described in section 59(2), except paragraphs (c), (f), (g), and (i); and 20

“(ii) the effects on human health of the dumping of waste or other matter if consent is granted; and

“(iii) any alternative methods of disposal that could be used; and 25

“(iv) whether there are practical opportunities to reuse, recycle, or treat the waste.

“(3) Section 59(3) applies to the application for a marine discharge consent or a marine dumping consent.

“87E Information principles relating to discharges and dumping 30

“(1) When considering an application for a marine dumping consent or a marine discharge consent, the Environmental Protection Authority must—

“(a) make full use of its powers to request information from the applicant, obtain advice, and commission a review or a report; and 35

- “(b) base decisions on the best available information; and
“(c) take into account any uncertainty or inadequacy in the information available.
- “(2) If, in relation to making a decision on the application, the information available is uncertain or inadequate, the EPA must 5
favour caution and environmental protection.
- “(3) In this section, **best available information** means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.
- “**87F Decision on application for marine discharge consent or 10
marine dumping consent**
- “(1) After complying with **sections 87D and 87E**, the Environmental Protection Authority may—
- “(a) grant an application for a marine discharge consent or a marine dumping consent, in whole or in part, and issue 15
a consent; or
“(b) refuse the application.
- “(2) However, the EPA must refuse an application for a marine dumping consent if—
- “(a) the EPA considers that the waste or other matter may be 20
reused, recycled, or treated without—
“(i) adverse effects on human health or the environment that are more than minor; or
“(ii) imposing costs on the applicant that are unreasonable in the circumstances; or 25
“(b) the waste or other matter is identified in such a way that it is not possible to assess the potential effects of dumping the waste or other matter on human health or the environment; or
“(c) the EPA considers that dumping the waste or other matter is not the best approach to the disposal of the waste or other matter in the circumstances. 30
- “(3) To avoid doubt, the EPA may refuse an application for a marine discharge consent or a marine dumping consent if the EPA considers that it does not have adequate information to determine the application. 35

“(4) If the EPA grants the application, it may issue the consent subject to conditions under section 63, but not under section 63(2)(b).

“87G Conditions and decision-making process

The following provisions apply to a marine dumping consent 5
or a marine discharge consent granted under **section 87F**:

“(a) sections 65 to 67, which relate to conditions:

“(b) sections 68 to 72, which relate to time limits for mak-
ing decisions, the form and notification of the decision,
commencement of the consent, and the nature of the 10
consent.

**“87H Duration of marine discharge consents and marine
dumping consents**

“(1) The duration of a marine discharge consent or a marine dump-
ing consent is the term specified in the consent. 15

“(2) However, the duration must not be more than 35 years.

“(3) If no duration is specified in a consent, its duration is 5 years.

“(4) When determining the duration of a consent, the Environmen-
tal Protection Authority must comply with sections 73(2)(b)
and (c), **87D, and 87E**. 20

“87I Exercise of consents, transfer, review, and minor changes

“(1) The following provisions apply to a marine dumping consent
or a marine discharge consent granted under **section 87F**:

“(a) sections 74 and 75, which relate to the exercise of a con-
sent while applying for a new consent and the transfer 25
of consents:

“(b) sections 76 to 82, which relate to the review of the con-
ditions and duration of consents:

“(c) sections 83 to 86, which relate to minor changes and
corrections to consent conditions, and the lapsing and 30
cancellation of consents not exercised.

“(2) However,—

“(a) section 80(a) applies as if—

“(i) the reference to sections 59 and 60 were a refer-
ence to **section 87D**; and 35

- “(ii) the reference to section 61 were a reference to **section 87E**; and
- “(b) section 81(2) applies as if ‘Sections 63 to 71’ were replaced with ‘Sections 63 (but not subsection (2)(b)) and 65 to 71’.

5

“87J Change or cancellation of marine dumping consent or marine discharge consent on application by consent holder

- “(1) The holder of a marine dumping consent or a marine discharge consent granted under **section 87F** may request the Environmental Protection Authority to change or cancel a condition of the consent. 10
- “(2) **Sections 87B to 87G** apply, with all necessary modifications, as if—
- “(a) the request were an application for a marine dumping consent or a marine discharge consent; and 15
- “(b) the references to a marine dumping consent or a marine discharge consent were references only to the change or cancellation of a condition; and
- “(c) the references to the activity were references only to the effects of the change or cancellation. 20
- “(3) Section 87(3) to (6) apply to the request.”

107A Section 93 amended (Environmental Protection Authority may require joint application)

- (1) In section 93(3)(a), replace “proceed with the notification” with “continue with the processing”. 25
- (2) In section 93(3)(b), before “return”, insert “to”.

107B Section 94 amended (Decision to separate joint application for consent)

- Replace section 94(2)(b) with: 30
- “(b) one application must be publicly notified, but not the other; or”.

107C Section 96 amended (Environmental Protection Authority to administer process)

- (1) In section 96(2)(b), replace “the application is” with “if both applications must be publicly notified, they are”.
- (2) In section 96(2)(c), after “submissions”, insert “(if applicable)”. 5
- (3) In section 96(2)(e), replace “and notify” with “and (if applicable) notify”.
- (4) In section 96(3), after “ensure that”, insert “(where applicable)”. 10

107D Section 99 amended (Application for consent for nationally significant cross-boundary activity referred to board of inquiry)

- (1) Replace section 99(3) and (4) with:
- “(3) If the EPA delegates its functions under subsection (2), sections **44B**, 50 to 58, and 68 of this Act do not apply to the application for a marine consent and, instead,—
- “(a) the EPA must process the application for a marine consent together with the associated application for a resource consent; and 20
- “(b) the provisions of the Resource Management Act 1991 specified in subsection (5) apply to the processing of the application for a marine consent as if the application were part of the associated application for a resource consent. 25
- “(4) If **subsection (3)** applies,—
- “(a) the EPA must, if the application must be publicly notified under section 45(2) of this Act,—
- “(i) notify the application, if it has not already been notified; and 30
- “(ii) receive submissions made under section 46; and
- “(b) the board of inquiry must apply sections 59 to 67 in making its decision on the application as if the board were the EPA.”
- (2) Replace section 99(5)(c) and (d) with: 35

- “(c) section 149R (which requires the board to produce a final report), but not subsections (3)(e) and (f) and (4)(b) and (c):
- “(ca) section 149RA(1) and (2) (which allows the board to make minor corrections to board decisions and resource consents): 5
- “(d) section 149S (which allows the Minister to extend the time by which the board must report), but not subsection (4)(b):”.
- (3) After section 99(5), insert: 10
- “(6) An application for a resource consent is associated with an application for a marine consent if the applications relate to the same cross-boundary activity.”
- 107E Section 105 amended (Appeals on question of law)**
- In section 105(2)(c), replace “section 81(2)” with “section 81(3)”. 15
- 108 Sections 132 to 134 and cross-heading above section 132 replaced**
- Replace sections 132 to 134 and the cross-heading above section 132 with: 20
- “Offences and defences in relation to activities regulated under section 20*
- “132 Offences in relation to activities regulated under section 20**
- “(1) This section applies if an activity described in section 20(2) or (4) is carried out in breach of section 20(1) or (3) (as applicable).** 25
- “(2) The following persons commit an offence:**
- “(a) if the activity involves a structure, the owner of the structure:** 30
- “(b) if the activity involves a ship, the master and owner of the ship:**
- “(c) if the activity involves a submarine pipeline, the owner of the pipeline:**
- “(d) if the activity involves a submarine cable, the owner of the cable:** 35

- “(e) if the activity is one described in **section 20(2)(d) to (g)**, the person who carried out the activity:
- “(f) if the activity is one described in **section 20(4)(b) or (c)**, the person who carried out the activity.
- “(3) In this section and **sections 134 and 134B to 134D**, **owner**,— 5
- “(a) in relation to a ship, includes—
- “(i) a person who is the legal or equitable owner, or both, of the ship; and
- “(ii) a person in possession of the ship; and 10
- “(iii) a charterer, a manager, or an operator of the ship, or any other person (other than a pilot) responsible for the navigation or management of the ship:
- “(b) in relation to an offshore installation, includes— 15
- “(i) the person having a right, privilege, or licence to explore for or exploit minerals in connection with which the installation is being, has been, or is to be used; and
- “(ii) the manager, lessee, licensee, or operator of the installation; and 20
- “(iii) any agent or employee of the owner, manager, lessee, licensee, or operator of the installation, or the person in charge of any operations connected with the installation: 25
- “(c) in relation to a structure other than an offshore installation, includes any manager, lessee, licensee, or operator of the structure, or the person in charge of the structure:
- “(d) in relation to a submarine pipeline or submarine cable, includes any manager, lessee, licensee, or operator of the pipeline or cable. 30

“133 Strict liability and defences

- “(1) In a prosecution for an offence of breaching, or permitting a breach of, **section 20**, it is not necessary to prove that the defendant intended to commit the offence. 35
- “(2) It is a defence to a prosecution of the kind referred to in **subsection (1)** if the defendant proves—
- “(a) that—

- “(i) the action or event to which the prosecution relates was necessary for the purposes of saving or protecting life or health, or preventing serious damage to property, or avoiding an actual or likely adverse effect on the environment or existing interests; and 5
- “(ii) the conduct of the defendant was reasonable in the circumstances; and
- “(iii) the effects of the action or event were adequately mitigated or remedied by the defendant after it occurred; or 10
- “(b) that the action or event to which the prosecution relates resulted from an event beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage, and in each case— 15
 - “(i) the action or event could not reasonably have been foreseen or been provided against by the defendant; and
 - “(ii) the effects of the action or event were adequately mitigated or remedied by the defendant after it occurred. 20
- “(3) **Subsection (2)** applies only if the defendant delivers to the prosecutor within 7 days after the service of the summons, or such further time as the court may allow, a written notice— 25
 - “(a) stating that the defendant intends to rely on **subsection (2)**; and
 - “(b) specifying the facts that support his or her reliance on **subsection (2)**.
- “(4) However, the court may grant leave to the defendant to rely on **subsection (2)** even if the defendant does not comply with **subsection (3)**. 30

*“Offences and defences in relation to discharge
or escape of harmful substances*

- “**134 Offences in relation to discharge of harmful substances** 35
 - “(1) This section applies if a harmful substance is discharged into the sea or onto or into the seabed in breach of 1 or more of **sections 24A and 24B**.

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- “(2) The following persons commit an offence:
- “(a) if the discharge is from an offshore installation, the owner of the offshore installation:
 - “(b) if the discharge is from a submarine pipeline, the owner of the pipeline: 5
 - “(c) if the discharge is from a ship, the master and the owner of the ship:
 - “(d) if the discharge is as a result of mining activity, the person in charge of and the person carrying on the mining activity: 10
 - “(e) if the discharge is of a kind referred to in **paragraph (a), (b), or (c)**, and results from intentional damage caused by a person not referred to in that paragraph, the person who committed the damage.
- “**134A Defence** 15
- It is a defence to proceedings for an offence against **section 134** if the defendant proves that—
- “(a) the harmful substance was discharged for the purpose of securing the safety of a ship or offshore installation or for the purpose of saving life, and the discharge was a reasonable step to take to effect that purpose; or 20
 - “(b) the harmful substance escaped as a consequence of damage to the ship or its equipment, to an offshore installation or its equipment, to a pipeline, or to any apparatus (other than a ship) used in connection with any mining activity and— 25
 - “(i) the damage occurred without the negligence or deliberate act of the defendant; and
 - “(ii) as soon as practicable after the damage occurred, all reasonable steps were taken to prevent the escape of the harmful substance or, if any escape could not be prevented, to minimise the escape. 30

“Offences and defences in relation to dumping

“134B Offences in relation to dumping of radioactive waste or other radioactive matter

The following persons each commit an offence if radioactive waste or other radioactive matter is dumped in breach of **section 24D**: 5

“(a) the master and the owner of a ship, if the dumping is from the ship:

“(b) the person in possession of, and the owner of, an aircraft, if the dumping is from the aircraft: 10

“(c) the owner of an offshore installation, if the dumping is from the offshore installation.

“134C Offences in relation to dumping of toxic or hazardous waste

The following persons each commit an offence if toxic or hazardous waste is dumped in breach of **section 24E**: 15

“(a) the master and the owner of a ship, if the dumping is from the ship:

“(b) the person in possession of, and the owner of, an aircraft, if the dumping is from the aircraft: 20

“(c) the owner of an offshore installation, if the dumping is from the offshore installation.

“134D Offences in relation to dumping and incineration of waste and other matter

“(1) The master and the owner of a ship each commits an offence if— 25

“(a) waste or other matter is dumped from the ship in breach of **section 24F**; or

“(b) the ship is dumped in breach of **section 24F**.

“(2) The person in possession of, and the owner of, an aircraft each commits an offence if— 30

“(a) waste or other matter is dumped from the aircraft in breach of **section 24F**; or

“(b) the aircraft is dumped in breach of **section 24F**.

“(3) The owner of an offshore installation commits an offence if— 35

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- “(a) waste or other matter is dumped from the offshore installation in breach of **section 24F**; or
 - “(b) the offshore installation is dumped in breach of **section 24F**.
- “(4) The following persons each commit an offence if waste or other matter is incinerated at sea in breach of **section 24G**:
- “(a) the owner and master of a ship, if the incineration occurs on the ship; or
 - “(b) the owner of a structure, if the incineration occurs on the structure.
- “(5) The following persons each commit an offence if human remains are disposed of in breach of **section 24H**:
- “(a) the owner and master of a ship, if the remains are disposed of from the ship:
 - “(b) the person in possession of, and the owner of, an aircraft, if the remains are disposed of from the aircraft:
 - “(c) the owner of a structure, if the remains are disposed of from the structure.
- “**134E Defence in relation to dumping of waste or other matter**
- In a prosecution for an offence against **section 134D**, it is a defence if the defendant proves that the act or omission that is alleged to constitute the offence—
- “(a) was necessary—
 - “(i) to save or prevent danger to human health or safety, or the marine environment; or
 - “(ii) to avert a serious threat to the ship, aircraft, or offshore installation; or
 - “(iii) in the case of force majeure caused by stress of weather, to secure the safety of the ship, aircraft, or offshore installation; and
 - “(b) was a reasonable step to take in all the circumstances; and
 - “(c) was likely to result in less damage than would otherwise have occurred; and
 - “(d) was taken or omitted in such a way that the likelihood of damage to human or marine life was minimised.

“Other offences

“134F Offence in relation to enforcement order, abatement notice, section 24L, or section 167

A person commits an offence against this Act who breaches, or permits a breach of, any of the following: 5

- “(a) an enforcement order or an abatement notice:
- “(b) section **24L** or 167 (which require a person to comply with the EPA’s instructions when stopping an activity).

“134G Other offences

“(1) A person commits an offence against this Act who breaches, or permits a breach of, any of the following: 10

- “(a) a requirement under section 35(3) to notify the Environmental Protection Authority of a permitted activity to be undertaken:
- “(b) a requirement to provide certain information to an enforcement officer under section 140: 15
- “(c) a direction given by the EPA under section 158 in relation to the protection of sensitive information:
- “(d) an order (other than an enforcement order) made by the Environment Court or the High Court. 20

“(2) A person commits an offence against this Act who—

- “(a) wilfully obstructs, hinders, resists, or deceives any person in the execution of a power conferred on that person by or under this Act; or
- “(b) contravenes or permits a contravention of a summons or order to give evidence issued or made under section 55. 25

“Penalties

“134H Penalties

“(1) A person who commits an offence against this Act (other than against **section 134G**) is liable on conviction,— 30

- “(a) in the case of a natural person, to a fine not exceeding \$300,000:
- “(b) in the case of a person other than a natural person, to a fine not exceeding \$10 million. 35

- “(2) The person is also liable on conviction, if the offence is a continuing one, to a fine not exceeding \$10,000 for every day or part of a day during which the offence continues.
- “(3) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Act is a continuing offence. 5
- “134I Additional penalties for discharge and dumping offences**
- A person who commits an offence against **section 134, 134B, 134C, or 134D** is also liable on conviction to pay such amounts as the court may assess in respect of the costs incurred in respect of or associated with— 10
- “(a) removing, containing, rendering harmless, or dispersing any harmful substance to which the offence relates; and
- “(b) removing or dispersing any waste or other matter to which the offence relates. 15
- “134J Penalties for section 134G offences**
- “(1) A person who commits an offence against **section 134G(1)** is liable on conviction to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues. 20
- “(2) A person who commits an offence against **section 134G(2)** is liable on conviction to a fine not exceeding \$1,500.
- “134K Court orders** 25
- “(1) This section applies if a person is convicted of an offence against this Act.
- “(2) The court may, instead of or in addition to imposing a fine, make 1 or more of the following orders:
- “(a) an order specified in section 115: 30
- “(b) an order requiring the Environmental Protection Authority to serve notice, under section 76(2), of the review of a marine consent held by the person, but only if the offence involves an act or omission that breaches the consent. 35

“134L Additional penalty for offence involving commercial gain

- “(1) A court may order a person convicted of an offence against this Act to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of the offence if the court is satisfied that the offence was committed in the course of producing commercial gain. 5
- “(2) The penalty imposed under **subsection (1)** is in addition to any other penalty the court may impose under this Act.
- “(3) The court must assess the value of any gain for the purpose of **subsection (1)**. 10
- “(4) The amount of the additional penalty imposed under **subsection (1)** is recoverable in the same manner as a fine.

“134M Application of fines for discharge and dumping offences

- “(1) A court that convicts a person for an offence against **section 134, 134B, 134C, or 134D** may order that the whole or part of the fine, or other monetary penalty, imposed on the person under this Act be paid to another person specified by the court. 15
- “(2) The specified person must apply the money towards meeting the costs of either or both—
- “(a) removing, containing, rendering harmless, or dispersing the harmful substance or waste or other matter: 20
 - “(b) repairing the damage resulting from the discharge of the harmful substance or dumping of waste or matter.”

109 Section 136 amended (Commencement of offence proceedings) 25

In section 136, replace “under” with “against”.

110 New section 136A inserted (Commencement of proceedings against natural person)

After section 136, insert:

“136A Commencement of proceedings against natural person 30

- “(1) Criminal proceedings may not be commenced against a natural person in relation to an offence under this Act unless—
- “(a) the natural person is—
 - “(i) a New Zealand citizen; or

- “(ii) a person who is ordinarily resident in New Zealand; or
- “(b) in the case of any other person, the Attorney-General consents to the commencement of the proceedings and certifies that it is expedient to do so. 5
- “(2) However, before the Attorney-General’s consent has been obtained,—
- “(a) a person described in **subsection (1)(b)** may be arrested or a warrant for the person’s arrest may be issued and executed; and 10
- “(b) the person may be remanded in custody or on bail.
- “(3) This section overrides any other enactment that is inconsistent with this section.”
- 110A Section 143 amended (Principles of cost recovery)**
- In section 143(2)(c), replace “section 22,” with “**section 24J**,”. 15
- 110B New section 158A inserted (EPA and Maritime New Zealand to share information) sections 158A and 158B inserted**
- After section 158, insert: 20
- “158A EPA and Maritime New Zealand to share information**
- “(1) The Environmental Protection Authority may provide Maritime New Zealand with any information that the EPA holds and that the EPA considers may assist Maritime New Zealand in the performance of Maritime New Zealand’s functions under the Maritime Transport Act 1994. 25
- “(2) Maritime New Zealand may provide the EPA with any information that Maritime New Zealand holds and that it considers may assist the EPA in the performance of the EPA’s functions under this Act. 30
- “(3) If any information provided by the EPA under **subsection (1)** is the subject of a direction made under section 158, that section continues to apply to the information and Maritime New Zealand must comply with that section.

“158B EPA may provide information to other regulatory agencies for purposes of this Act

- “(1) A regulatory agency may provide to the EPA any information or a copy of any document that the agency believes would assist the EPA in the performance or exercise of the EPA’s functions, duties, or powers under this Act. 5
- “(2) The EPA may provide to a regulatory agency any information or a copy of any document that the EPA believes would assist the agency in the performance or exercise of its functions, duties, or powers under a specified Act. 10
- “(3) A person or an agency that receives information provided under this section must not disclose the information to any other person or organisation unless—
- “(a) the disclosure is made for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed by this Act or a specified Act on the person or agency; or 15
 - “(b) the information is publicly available; or
 - “(c) the disclosure is made with the consent of the person to whom the information relates or to whom the information is confidential; or 20
 - “(d) the disclosure is made in connection with proceedings, or any investigation or inquiry for proceedings, for an offence against this Act or any other enactment; or
 - “(e) the disclosure is required by another enactment; or 25
 - “(f) the disclosure is required by a court of competent jurisdiction.
- “(4) In this section,—
- “regulatory agency means—
 - “(a) a consent authority as that term is defined in section 2(1) of the Resource Management Act 1991; 30
 - “(b) a department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of any specified Act
- “specified Act means any Act specified in section 7(2) other than the Crown Minerals Act 1991.” 35

111 New sections 164A and 164B and cross-heading inserted

After section 164, insert:

*“Transitional provisions relating to discharges
and dumping*

“164A Dumping permits issued under Maritime Transport Act 1994 5

A permit issued before the commencement of this Act commencement of this section by the Director of Maritime New Zealand under section 262 of the Maritime Transport Act 1994 must be treated as if it were a marine dumping consent granted under **section 87F** of this Act on the same terms and conditions as apply to the permit. 10

“164B Provisions of discharge management plans approved under Maritime Transport Act 1994 become marine discharge consents 15

“(1) This section applies to a discharge management plan for an offshore installation approved before the commencement of this section by the Director of Maritime New Zealand in accordance with rule 200.7 of Part 200 of the Marine Protection Rules. 20

“(2) The provisions of the discharge management plan that specify the following matters must be treated as if they were a marine discharge consent granted under **section 87F** for a term that is the same as the remaining duration of the discharge management plan: 25

“(a) harmful substances that may be discharged in accordance with the discharge management plan:

“(b) a method for continuously measuring the oil content of production water, displacement water, or offshore processing drainage discharged from the offshore installation: 30

“(c) procedures for reporting oil spills:

“(d) environmental monitoring methods for identifying the environmental impacts of discharges:

“(e) matters described in clause 1(2) to (6) of Schedule 1 of Part 200 of the Marine Protection Rules as if the words ‘in a form acceptable to the Director’ were replaced with ‘in the prescribed form’: 35

- “(f) matters described in Schedule 2 of Part 200 of the Marine Protection Rules other than in clause 5(f).
- “(3) Part 200 of the Marine Protection Rules does not apply to the provisions of the discharge management plan that are to be treated as a marine discharge consent under **subsection (2)**. 5
- “(4) Despite **subsection (3)**, the following marine protection rules, as they were on the day before this section comes into force, must be treated as if they were conditions of the consent:
- “(a) rule 200.13: 10
- “(b) rule 200.14(1), (2), and (5)(a), as if a reference to the Director in those provisions were a reference to the Environmental Protection Authority, and (8):
- “(c) rule 200.15:
- “(d) rule 200.16(1): 15
- “(e) rule 200.17, as if the reference to rule 200.19 were a reference to that rule as it was before this section comes into force:
- “(f) rule 200.18:
- “(g) rule 200.22, as if— 20
- “(i) the words ‘in a form approved by the Director’ in subrule (1) were replaced with ‘in the prescribed form’:
- “(ii) the reference in subrule (4) to the Director were a reference to the Environmental Protection Authority: 25
- “(h) rule 200.23(1) and (3), as if in each case paragraph (b) were replaced with:
- “(b) the Environmental Protection Authority and the Director, if the spill occurs in the exclusive economic zone; or 30
- “(c) the Director, if the spill occurs beyond the exclusive economic zone,
- “(i) rule 200.24 as if the reference to the Director in subrule (2)(a) included a reference to the Environmental Protection Authority: 35
- “(j) rule 200.25 as if the reference to the Director in subrule (2) were a reference to the Environmental Protection Authority.

“(5) The marine protection rules described in **subsection (4)** and treated as conditions of a marine discharge consent by that subsection may be amended, cancelled, or replaced as if they were conditions imposed under this Act.

“**164C Completion of certain matters pending at commencement of sections 164A and 164B** 5

“(1) If a person makes an application for a permit under section 262 of the Maritime Transport Act 1994 and it has not been decided before **section 164A** comes into force, the application is to be continued and completed under that Act as it was before **section 164A** comes into force. 10

“(2) **Section 164A** applies to a permit issued after being continued and completed under **subsection (1)**.

“(3) If a person makes an application for the approval of a discharge management plan under rule 200.5 of Part 200 of the Marine Protection Rules and that application has not been decided before **section 164B** comes into force, the application is to be continued and completed under the marine protection rules as they were before **section 164B** comes into force. 15

“(4) **Section 164B** applies to a discharge management plan approved after being continued and completed under **subsection (3)**.” 20

111A New section 167A and cross-heading inserted

After section 167, insert:

“*Transitional and savings provision relating to regulations*” 25

“167A Transitional and savings provision relating to regulations

Any consultation undertaken before the commencement of this section by the Minister on proposals as to whether certain discretionary activities should be classified as non-notified activities may be taken to be consultation for the purposes of section 32(2) for the first non-notified activities regulations made after this section comes into force. 30

“Compare: 2000 No 91 s 114”.

111B New Schedule inserted

After section 177, insert the Schedule set out in **Schedule 4** of this Act.

112 Consequential amendments to maritime transport legislation

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- (1) Amend the Maritime Transport Act 1994 in the manner set out in **Part 1 of Schedule 3**.
- (2) Amend Marine Protection Rules: Part 180 in the manner set out in **Part 2 of Schedule 3**.

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Schedule 3	s 112
Amendments to maritime transport legislation consequential on amendments to Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	5
Part 1 Amendments to Maritime Transport Act 1994	
Section 222	10
In section 222(1), insert, in their appropriate alphabetical order:	
“ emergency dumping permit has the meaning given in section 257	
“ mining activity has the meaning given in section 225	
“ mining discharge has the meaning given in section 225	15
“ New Zealand structure has the meaning given in section 257	
“ structure has the meaning given in section 257”.	
In section 222(1), definition of marine protection document , paragraph (a), replace “ section 262 ” with “ section 262 or 262A ”.	
New section 224A	20
Before section 225, insert:	
“ 224A Regulation under this Part and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 of discharges	
“(1) This section describes how the discharge of harmful substances is regulated under this Part and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, but it does not affect the interpretation or the application of this Part or that enactment.	25
“(2) This Part regulates—	30
“(a) the discharge of harmful substances (other than a mining discharge) from a ship into the sea or seabed of the exclusive economic zone:	
“(b) the discharge of harmful substances (other than a mining discharge) into the sea above the continental shelf beyond the exclusive economic zone and the seabed be-	35

Part 1—*continued*

New section 224A—*continued*

- low that sea from a New Zealand ship or from a foreign ship involved in a mining activity:
- “(c) the discharge of harmful substances from a New Zealand ship into the sea beyond the continental shelf or the seabed below that sea. 5
- “(3) In relation to the discharge of harmful substances, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 regulates—
- “(a) discharges into the exclusive economic zone and into or onto the seabed below it from— 10
- “(i) structures:
- “(ii) submarine pipelines:
- “(iii) ships, if the discharge is a mining discharge:
- “(b) discharges into or onto the continental shelf beyond the exclusive economic zone or into the sea above that part of the continental shelf from— 15
- “(i) New Zealand structures:
- “(ii) structures (other than New Zealand structures) involved in a mining activity:
- “(iii) submarine pipelines: 20
- “(iv) ships, if the discharge is a mining discharge.”

Section 225

In section 225, insert in its appropriate alphabetical order:

- “**mining activity** means an activity carried out for, or in connection with,— 25
- “(a) the identification of areas of the seabed likely to contain mineral deposits; or
- “(b) the identification of mineral deposits; or
- “(c) the taking or extraction of minerals from the sea or seabed, and associated processing of those minerals 30
- “**mining discharge**, in relation to a harmful substance, means a discharge made as an integral part of, or as a direct result of, mining activity”.

Part 1—*continued*

Section 225—*continued*

In section 225, definition of **pollution incident**, after “Resource Management Act 1991”, insert “or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012”.

Section 226

Replace section 226 with:

5

“226 Harmful substances not to be discharged into sea or seabed of exclusive economic zone or continental shelf

“(1) This section applies to the discharge of harmful substances (other than a mining discharge).

“(2) Harmful substances must not be discharged from a ship—

10

“(a) into the sea within the exclusive economic zone; or

“(b) into or onto the seabed below that sea.

“(3) Harmful substances must not be discharged from a New Zealand ship or from a foreign ship that is involved in mining activity—

15

“(a) into the sea beyond the outer limits of the exclusive economic zone but over the continental shelf; or

“(b) into or onto the seabed below that sea.

“(4) However, a harmful substance may be discharged if the substance is discharged in accordance with the marine protection rules.

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“226A Harmful substances not to be discharged into sea or seabed beyond New Zealand continental waters from New Zealand ships

“(1) Harmful substances must not be discharged from a New Zealand ship—

25

“(a) into the sea beyond New Zealand continental waters; or

“(b) onto or into the seabed below that sea.

“(2) However, a harmful substance may be discharged if the substance is discharged in accordance with the marine protection rules.”

30

Part 1—*continued*

Section 227

Replace section 227 with:

“227 Duty to report discharge or escape of harmful substances

- “(1) This section applies to the discharge or escape of a harmful substance into the sea, or onto or into the seabed, in breach of— 5
- “(a) **section 226 or 226A**; or
 - “(b) section 15B of the Resource Management Act 1991; or
 - “(c) **section 24A or 24B of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.** 10
- “ (2) Notice of the discharge or escape must be given,—
- “(a) if the discharge or escape occurred beyond New Zealand continental waters, to the Director; or
 - “(b) if the discharge or escape occurred within the internal waters or the territorial sea, to the Director and the regional council within whose region the discharge or escape occurred; or 15
 - “(c) if the discharge or escape occurred in the exclusive economic zone or in relation to the continental shelf, to the Director and the Environmental Protection Authority. 20
- “ (3) Each of the following persons is under a duty to give notice of the discharge or escape of a harmful substance:
- “(a) if the discharge or escape was from a ship, the owner and the master of the ship: 25
 - “(b) if the discharge or escape was from an offshore installation, the owner of the installation:
 - “(c) if the discharge or escape was from a pipeline, the owner of the pipeline:
 - “(d) if the discharge or escape was a result of a marine operation, the person in charge of and the person carrying on the operation. 30
- “ (4) If one person gives notice of the discharge or escape of a harmful substance in accordance with **subsection (3)**, no other person is required to give notice of the discharge or escape. 35
- “ (5) If the discharge or escape of a harmful substance breaches **section 226A**, the master of the ship must, as soon as practicable,

Part 1—*continued*

Section 227—*continued*

report the discharge or escape to the appropriate authority of the nearest State.

- “(6) This section applies whether or not a defence may be available under this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.” 5

Section 228

Replace section 228(1) with:

- “(1) This section applies to a pollution incident involving—
- “(a) a ship in the internal waters of New Zealand or New Zealand marine waters; or 10
 - “(b) a ship involved with marine operations or an offshore installation or pipeline within New Zealand continental waters; or
 - “(c) any marine operations within New Zealand continental waters. 15
- “(1A) Notice of the pollution incident must be given—
- “(a) to the Director; or
 - “(b) if the incident occurs in the internal waters or the territorial sea, to the Director and the regional council in whose region the incident occurs; or 20
 - “(c) if the incident occurs in the exclusive economic zone or in relation to the continental shelf, to the Director and the Environmental Protection Authority.”

Section 231

25

Replace section 231 with:

“231 Obligations of Director, Environmental Protection Authority, and regional councils to share information concerning notices

- “(1) This section applies if a notice is given under any of sections 227, 228, 229, 230, and 299 to a regional council, the Environmental Protection Authority, or the Director. 30

Part 1—*continued*

Section 231—*continued*

“(2) The regional council must, without delay, inform the Director of the matters about which it has been notified.

“(3) The Environmental Protection Authority must, without delay, inform the Director of the matters about which it has been notified. 5

“(4) The Director must, without delay, inform—

“(a) a regional council of the matters about which the Director has been notified if the matters have occurred or may occur in the region of the council; or

“(b) the Environmental Protection Authority of the matters about which the Director has been notified if the matters have occurred or may occur in New Zealand continental waters.” 10

Section 232

Replace section 232(1) with: 15

“(1) This section applies if the Director has reasonable cause to believe that a harmful substance has been discharged or has escaped from a ship in breach of this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. 20

“(1A) The Director may require the owner of the ship to provide a contract of insurance or other financial security of a kind and for an amount that is sufficient security for the payment of any amounts that may be payable by the owner, or the master of the ship, under this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 in respect of the discharge or escape.” 25

In section 232(2), replace “subsection (1)” with “**subsection (1A)**”.

Section 233

30

Replace section 233(1) with:

“(1) This section applies if the Director believes on reasonable grounds that the conditions on a ship, offshore installation, or pipeline—

Part 1—*continued*

Section 233—*continued*

- “(a) have been or are likely to be responsible for a discharge or escape of a harmful substance into the sea or onto or into the seabed in breach of this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or 5
- “(b) pose an unreasonable threat of harm to the marine environment.

“(1A) The Director may require the owner of the ship, offshore installation, or pipeline to take all necessary steps to rectify the conditions.” 10

Section 235

In section 235(1), replace “this Act or the Resource Management Act 1991,” with “this Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.”. 15

Section 237

Replace section 237 with:

“237 Discharge or escape of harmful substances from ship into sea or seabed

- “(1) If a harmful substance is discharged or escapes from a ship into the sea or onto or into the seabed in breach of **section 226 or 226A**, the master and the owner of the ship each commit an offence. 20
- “(2) If the discharge or escape results from intentional damage caused by a person other than the master or the owner of the ship, the person who caused the damage commits an offence.” 25

Section 243

Replace section 243 with:

“243 Defences to offence against section 237

It is a defence to proceedings for an offence against **section 237** if the defendant proves that— 30

Part 1—*continued*

Section 243—*continued*

- “(a) the harmful substance was discharged for the purpose of securing the safety of a ship or for the purpose of saving life, and the discharge was a reasonable step to take to effect that purpose; or
- “(b) the harmful substance escaped as a consequence of damage to the ship or its equipment and—
- “(i) the damage occurred without the negligence or deliberate act of the defendant; and
- “(ii) as soon as practicable after the damage occurred, all reasonable steps were taken to prevent the escape of the harmful substance or, if an escape could not be prevented, to minimise the escape.”

Section 250

In section 250, insert as subsection (2):

- “(2) The Director must notify the Environmental Protection Authority as soon as practicable after the Director decides to issue instructions or take measures if the instructions or measures (which the Director intends to issue or take) affect the exclusive economic zone or New Zealand continental waters.”

Part 21

Replace the Part 21 heading with:

**“Part 21
“Protection of marine environment
beyond New Zealand continental waters
from dumping, incineration, and storing
of wastes”.**

Section 257

In section 257, insert in their appropriate alphabetical order:

- “**emergency dumping permit** means a permit granted under **section 262A**
- “**New Zealand structure** means a structure that is owned by—
- “(a) a New Zealand citizen; or
- “(b) a person who is ordinarily resident in New Zealand; or

Part 1—*continued*

Section 257—*continued*

“(c) a company registered under the Companies Act 1993
“**structure** includes an offshore installation, artificial is-
land, or floating platform, but does not include a submarine
pipeline”.

New section 257A

5

After section 257, insert:

**“257A Regulation under this Part and Exclusive Economic
Zone and Continental Shelf (Environmental Effects) Act
2012 of dumping**

“(1) This section describes how the dumping of waste or other mat- 10
ter is regulated under this Part and the Exclusive Economic
Zone and Continental Shelf (Environmental Effects) Act 2012,
but it does not affect the interpretation or the application of this
Part or that enactment.

“(2) This Part regulates— 15

“(a) the dumping of waste or other matter into the waters
beyond the continental shelf from a New Zealand ship
or a New Zealand structure:

“(b) the dumping of waste or other matter in an emergency
(other than waste or other matter described in **subsec- 20**
tion (3)(a)):

“(2) This Part regulates the dumping of waste or other matter into
the waters beyond the continental shelf.

“(3) In relation to the exclusive economic zone and the continen- 25
tal shelf, the Exclusive Economic Zone and Continental Shelf
(Environmental Effects) Act 2012—

“(a) prohibits—

“(i) the dumping of radioactive waste or other radio-
active matter:

“(ii) the dumping of toxic or hazardous waste: 30

“(iii) the incineration of waste or other matter at sea;
and

“(b) regulates—

“(i) the disposal of human remains other than ashes:

Part 1—*continued*

New section 257A—*continued*

“(ii) the dumping of waste or other matter (other than waste or other matter described in **paragraph (a)**).”

Section 258

Replace section 258(c) with: 5

“(c) dumped from any ship or aircraft into the sea above the continental shelf beyond the outer limits of the exclusive economic zone; or”.

Repeal section 258(d).

In section 258, insert as subsections (2) and (3): 10

“(2) No person may incinerate radioactive waste or other radioactive matter at sea—

“(a) in the internal waters of New Zealand; or

“(b) beyond New Zealand continental waters on a New Zealand ship, a New Zealand structure, or a New Zealand aircraft. 15

“(3) No person may export radioactive waste or other radioactive matter to another country for dumping at sea or incineration at sea.”

Section 259 20

Repeal section 259.

Section 260

Repeal section 260.

Section 261

Replace section 261 with: 25

“261 Dumping and incineration of waste or other matter

“(1) No person may dump waste or other matter from a New Zealand ship or a New Zealand aircraft or a New Zealand structure into the sea, or into or onto the seabed, beyond New Zealand continental waters, unless the dumping is authorised by— 30

Part 1—*continued*

Section 261—*continued*

- “(a) a permit issued under **section 262**; or
 - “(b) a permit issued by a Convention State; or
 - “(c) an emergency dumping permit issued under **section 262A**.
- “(2) No person may dump a New Zealand ship or a New Zealand aircraft or a New Zealand structure into the sea or onto or into the seabed beyond New Zealand continental waters, unless the dumping is authorised by—
- “(a) a permit issued under **section 262**; or
 - “(b) a permit issued by a Convention State; or
 - “(c) an emergency dumping permit issued under **section 262A**.
- “(3) No person may incinerate waste or other matter at sea—
- “(a) in the internal waters of New Zealand; or
 - “(b) beyond New Zealand continental waters on a New Zealand ship, a New Zealand structure, or a New Zealand aircraft.
- “(4) No person may export waste or other matter to another country for dumping at sea or incineration at sea.
- “(5) No person may take waste or other matter on board a ship or an aircraft in New Zealand, or within the internal waters of New Zealand or New Zealand continental waters, for the purpose of dumping that waste or other matter within any of those waters unless the dumping is authorised by—
- “(a) a resource consent granted under the Resource Management Act 1991; or
 - “(b) a marine consent granted under **section 87F** of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or
 - “(c) a permit granted under **section 262**.
- “(6) This section does not—
- “(a) require the Director to obtain a permit under **section 262 or 262A** before he or she exercises a power conferred by section 248 or 249; or
 - “(b) apply to the exercise of any of those powers by the Director.”

Part 1—*continued*

Section 262

Replace section 262 with:

“262 Permits for dumping waste or other matter

The Director may, in accordance with section 270 and the marine protection rules, issue permits authorising the dumping of any waste or other matter (including ships, aircraft, or offshore installations) from a New Zealand ship, or a New Zealand aircraft, beyond New Zealand continental waters. 5

“262A Emergency dumping permit

“(1) This section and **section 262B** apply if a situation arises which poses an unacceptable risk to human health, human safety, or the marine environment (**an emergency**). 10

“(2) Any person may apply to the Director, in an emergency, for an emergency dumping permit—

“(a) to dump waste or other matter into New Zealand continental waters (which would otherwise contravene **section 24F** of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012); 15

“(b) to dump waste or other matter from a New Zealand ship, a New Zealand aircraft, or a New Zealand structure into the sea beyond New Zealand continental waters (which would otherwise contravene **section 261**); 20

“(2) Any person may apply to the Director, in an emergency, for an emergency dumping permit to dump waste or other matter into the sea beyond New Zealand continental waters (which would otherwise contravene **section 261**). 25

“(3) The Director may issue the permit in accordance with section 270 and the marine protection rules, if he or she is satisfied that—

“(a) an emergency exists; and 30

“(b) the dumping of the waste or other matter is necessary to remove or reduce the risk; and

“(c) there is no practical alternative to the dumping of the waste or other matter.

“(4) Before the Director issues a permit under **subsection (3)**, the Director must— 35

Part 1—*continued*

Section 262—*continued*

- “(a) consult with the appropriate competent authority of any country that is likely to be affected by the dumping of the waste or other matter; and
- “(b) notify the International Maritime Organization that he or she has received an application for an emergency dumping permit. 5

“262B Conditions of emergency dumping permit

- “(1) An emergency dumping permit may be granted subject to conditions.
- “(2) The Director must include as a condition on an emergency dumping permit a requirement that the person granted the permit complies with any procedures for dumping recommended by the International Maritime Organization and specified on the permit. 10
- “(3) **Subsection (2)** applies only to the extent that the Director considers the conditions practicable after taking into account the urgency of the situation. 15
- “(4) The Director may include any conditions that he or she considers appropriate to deal with the effects of the dumping of waste or other matter on the environment or on human health or safety, including conditions that require the person issued with the permit to— 20
 - “(a) monitor, and report to the Director on, the exercise of the permit and the effects of the dumping on the environment and human health and safety: 25
 - “(b) keep and maintain records of the waste or other matter dumped and the location of the dumping:
 - “(c) provide the Director with any specified information that relates to the permit or its exercise.”

Section 263

Replace the heading to section 263 with “**Offences in respect of radioactive waste and other radioactive matter**”.

Part 1—*continued*

Section 263—*continued*

Replace section 263(3) with:

“(3) The owner of a controlled offshore installation commits an offence if radioactive waste or other radioactive matter is taken on board any ship or aircraft at the offshore installation in breach of section 258(b).”

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Repeal section 263(4) and (5).

Section 264

In section 264(1)(a), replace “section 261(2)” with “**section 261(5)**”.

Repeal section 264(1)(b).

10

In section 264(1)(c), replace “section 261(3)” with “**section 261(1)**”.

Replace section 264(2) with:

“(2) The master and owner of a ship each commits an offence if the ship (being a New Zealand ship) is dumped in breach of section **261(2)**.”

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In section 264(3)(a), replace “section 261(2)” with “**section 261(5)**”.

Repeal section 264(3)(b).

In section 264(3)(c), replace “section 261(3)” with “**section 261(1)**”.

20

Replace section 264(4) with:

“(4) A person in possession, and the owner, of an aircraft each commits an offence if the aircraft (being a New Zealand aircraft) is dumped in breach of section **261(2)**.”

25

Repeal section 264(5).

In section 264(6), replace “section 261(6A)(a)” with “**section 261(3)**”.

In section 264(7), replace “261(6A)(b)” with “**section 261(4)**”.

After section 264(7), insert:

30

“(8) The master and the owner of a ship who are authorised to dump waste or other matter from the ship by an emergency dumping

Part 1—*continued*

Section 264—*continued*

permit each commits an offence if a condition of the permit is breached.

“(9) The person in possession of an aircraft and the owner of the aircraft who are authorised to dump waste or other matter from the aircraft by an emergency dumping permit each commits an offence if a condition of the permit is breached.” 5

Section 272

After section 272(1)(e)(iv), insert:

“(v) **section 24A or 24B** of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or 10

“(vi) any regulations made under **section 29A or 29AB** of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; or”. 15

Section 276

In section 276(2)(a), after “Resource Management Act 1991”, insert “or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012”.

In section 276(2)(c), after “Resource Management Act 1991”, insert “or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012”. 20

Section 387

Repeal section 387(1)(d).

Section 388

25

In section 388(i), delete “and offshore installations”.

In section 388(l), replace “New Zealand continental waters” with “the high seas”.

Part 1—*continued*

Section 389

In section 389(1)(b) to (e), replace “section 262” with “**section 262 or 262A**”.

Replace section 389(1)(g) with:

- “(g) to specify the terms and conditions of permits or any class of permit granted under **section 262**: 5
- “(ga) to specify the maximum duration of permits or any class of permit granted under **section 262 or 262A**:
- “(gb) to authorise the Director to specify the duration of a permit granted under **section 262 or 262A** by reference to— 10
 - “(i) a period of time that must be no longer than the maximum duration specified for the permit under **paragraph (ga)** (if one is specified); or
 - “(ii) the duration of the dumping operation authorised by the permit.” 15

Section 397

In section 397(2)(a), (b), and (c), replace “Act or of the Resource Management Act 1991;” with “Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012;” 20

In section 397(7), replace “Act or the Resource Management Act 1991,” with “Act, the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012,”. 25

Section 463

Replace section 463(2) with:

- “(2) A District Court Judge may order a Customs officer or another officer named by the Judge to detain a ship if— 30
 - “(a) a person has been convicted of an offence described in **subsection (2B)** in relation to the ship; and
 - “(b) property has been, or is likely to be, damaged by the discharge; and
 - “(c) none of the owners of the ship reside in New Zealand.

Part 1—*continued*

Section 463—*continued*

“(2A) The ship may be detained until security has been provided for costs, damages, or other money that may be payable as a result of civil proceedings.

“(2B) The offences relate to—

“(a) the discharge of a harmful substance from a ship in breach of this Act: 5

“(b) contravening or permitting a contravention of section 15B of the Resource Management Act 1991:

“(c) a breach of **section 24B** of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.” 10

In section 463(3), replace “A certificate” with “Despite **subsection (2)**, a certificate”.

Section 464

Replace section 464 with: 15

“464 Agents’ contracts of indemnity

“(1) This section applies to a person (the **agent**) who enters into an agreement to act as the agent in New Zealand of the owner, charterer, manager, or operator of a ship.

“(2) The agent may enter into a contract of indemnity under which the owner, charterer, manager, or operator agrees to indemnify the agent for any sum for which the agent may become liable as a result of proceedings (whether civil or criminal) against the agent, in that capacity, in any court under any provision of any 1 or more of this Act, the Resource Management Act 1991, and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. 20 25

“(3) A New Zealand court may enforce the contract of indemnity only if the proceedings do not result from the wilful act or neglect or default of the agent.” 30

Part 1—*continued*

New section 467A

After section 467, insert:

“467A Provisions of Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 not to apply

Section 20 and subpart 2 of Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 do not apply to—

- “(a) anything done by or on behalf of the Director under section 248 or 249 or by or on behalf of any person in accordance with any instructions under either of those sections; or
- “(b) anything done by or on behalf of an on-scene commander—
 - “(i) under section 305 or 311; or
 - “(ii) in accordance with a direction given under section 310; or
- “(c) anything done by or on behalf of the master or owner of any ship, or the owner or operator of any oil storage or transfer site or offshore installation or any other person in accordance with a direction given under section 305 or 311; or
- “(d) anything done by or on behalf of the Director, or by any person in accordance with any instruction issued by the Director, under section 305 or 311.”

Part 2

Consequential amendments to Marine
Protection Rules Part 180

Rule 180.3

Replace rule 180.3 with:

“180.3 Application of rules

- “(1) Rules 180.4 to 180.11 apply to the application for, and issuing of, permits under **section 262** of the Act.
- “(2) Rule 180.12 applies to the application for, and issuing of, emergency dumping permits under **section 262A** of the Act.”

Part 2—*continued*

Rule 180.12

Replace rule 180.12 with:

“180.12 Emergency dumping

“(1) An application for an emergency dumping permit must comply with rule 180.4(1). 5

“(2) The Director may, in writing, require a person who made an application to—

“(a) elaborate on information provided in the application; and

“(b) provide additional information. 10

“(3) Rule 180.9 applies to the emergency dumping permit.

“(4) Rules 180.5 to 180.8 and 180.10 and 180.11 do not apply to the application.”

Schedule 4
New Schedule inserted

s 111B

Schedule
**Hearings of applications for marine
consents for non-notified activities**

s 44B

- 1** **Hearing date and notice** 5
- (1) If a hearing of an application for a marine consent for a non-notified activity is to be held, the Environmental Protection Authority must fix a commencement date and time and the place of the hearing.
- (2) The EPA— 10
- (a) must give the applicant reasonable notice of the commencement date and time and the place of a hearing;
- (b) may give the applicant directions as to evidence and the general conduct of the hearing.
- 2** **Hearings to be without unnecessary formality** 15
- (1) The EPA may hold a hearing of an application for a marine consent for a non-notified activity in public or in private.
- (2) The EPA must establish a procedure for a hearing that is appropriate and fair in the circumstances.
- (3) In determining an appropriate and fair procedure for a hearing, the EPA must— 20
- (a) avoid unnecessary formality; and
- (b) recognise tikanga Māori where appropriate, and receive evidence written or spoken in Māori, and the Maori Language Act 1987 applies accordingly. 25
- (4) The applicant may question a party or witness if the EPA gives permission.
- 3** **Persons who may be heard at hearings**
- (1) At a hearing, the applicant may speak (either personally or through a representative) and call evidence. 30
- (2) The Environmental Protection Authority may proceed with a hearing even if the applicant fails to appear at the hearing if the EPA considers it fair and reasonable to do so.

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Schedule 4

4 Provisions relating to hearings

- (1) The following provisions of the Commissions of Inquiry Act 1908 apply to every hearing:
- (a) section 4 (which gives powers to maintain order):
 - (b) section 4B (which relates to evidence): 5
 - (c) section 4D (which gives power to summon witnesses):
 - (d) section 5 (which relates to the service of a summons):
 - (e) section 6 (which relates to the protection of persons appearing before the Commission):
 - (f) section 7 (which relates to allowances for witnesses). 10
- (2) Every summons to a witness to appear at a hearing must be in the prescribed form and be signed on behalf of the Environmental Protection Authority or by the chairperson of the committee that is to conduct the hearing.
- (3) All allowances for a witness must be paid by the party on whose behalf the witness is called. 15
- (4) At a hearing, the following persons must give to the EPA any information and advice that is relevant and reasonably necessary to decide the application if the EPA asks for it:
- (a) a person who reviewed the impact assessment or provided advice or information under section 44: 20
 - (b) a person who is heard or represented at the hearing.

5 Control of hearings

The Environmental Protection Authority may exercise a power under **clause 6 or 7** after considering whether the scale and significance of the hearing makes the exercise of the power appropriate. 25

6 Directions to provide evidence within time limits

- (1) The Environmental Protection Authority may direct the applicant to provide briefs of evidence to the EPA before the hearing. 30
- (2) The EPA must set a reasonable time within which the applicant must provide the briefs of evidence.
- (3) The applicant must provide its briefs of evidence as required by the EPA under **subclauses (1) and (2).** 35

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- 7** **Directions before or at hearings**
- (1)** **Before or at the hearing, the Environmental Protection Authority may do 1 or more of the following:**
- (a)** **specify the order of business at the hearing, including the order in which evidence is presented:** 5
- (b)** **direct that evidence be—**
- (i)** **recorded; or**
- (ii)** **taken as read; or**
- (iii)** **limited to matters in dispute:**
- (c)** **direct the applicant, when presenting evidence or his or her own submission, to present it within a time limit.** 10
- (2)** **At the hearing, the EPA may seek advice or information under section 44(1) on an application or the activity to which the application relates, if the applicant agrees.**
- (3)** **The EPA must provide copies of the advice or information to the applicant.** 15

Legislative history

24 September 2013

Divided from Marine Legislation Bill (Bill 58-2)
by committee of the whole House as Bill 58-3B
