

MARITIME TRANSPORT AMENDMENT BILL

EXPLANATORY NOTE

General Policy Statement

This Bill contains measures relating to a range of maritime matters and should be read together with the Local Government Amendment Bill (No. 3). The central focus of the Bill is on—

- the provision of effective on-water crowd control measures for special maritime events such as the America's Cup;
- updating provisions of the Maritime Transport Act 1994 which are associated with the Harbours Act 1950, which is to be repealed by the Local Government Amendment Bill (No. 3);
- updating provisions of the Maritime Transport Act 1994 concerning wreck, salvage, and marine protection.

Today, controls put in place by the Harbours Act 1950 can readily be subsumed under the Maritime Transport Act 1994 and the Local Government Act 1974, each of which provides a framework within which the relevant measures can be embodied. The proposed arrangements under the Bill will enable nationally applicable navigation safety standards to be integrated with the ship safety and environment protection framework of the Maritime Transport Act 1994. At the same time, the proposal will allow regional authorities to make local navigation safety bylaws to suit their specific needs and provide them with continued general controls over navigation safety.

The Bill contains a number of amendments to the Maritime Transport Act 1994 that are necessary to enable maritime rules to set national standards in respect of navigation safety. Pilotage standards will be brought within the maritime documentary system of the Act, like other maritime qualifications. Further provisions continue measures relating to pilotage liability protection and responsibilities in relation to navigational aids.

In association with the revision of navigation safety measures, the Bill takes the opportunity to introduce updated enforcement provisions to ensure that effective on-water management and crowd control can be undertaken in relation to large maritime events such as the America's Cup. These provisions will be activated only on the occasion of specific, nominated, events.

Other measures contained in the Bill update wreck and salvage provisions carried forward into the Maritime Transport Act 1994 from the Shipping and Seamen Act 1952. The Bill provides for the repeal of provisions that will be

unnecessary when the Salvage Convention 1989, contained in the Sixth Schedule to the Maritime Transport Act 1994, is brought into force. This Convention entitles salvors to claim a reward for efforts to prevent or minimise damage to the marine environment from pollution. Additionally, the Bill carries over the Director of Maritime Safety's safety functions in respect of wreck but discontinues property protection measures, which involve no safety considerations and can be addressed under the general law.

Amendments to the marine environment provisions of the Maritime Transport Act will implement New Zealand obligations under the 1996 Protocol to the London Convention 1972 to prohibit the incineration of waste at sea or the export of waste for incineration at sea.

Further amendments to the Maritime Transport Act 1994 will rectify technical or practical problems that have been identified in the course of implementing a number of provisions in that Act.

Clause by Clause Analysis

Clause 1 relates to the Short Title and commencement. The provisions concerning salvage (*clauses 11 (1), 12, 13 (2), and 20 (2)*) come into force on the commencement of Part XVII of the principal Act. The rest of the Bill comes into force on the day after the date on which the Bill receives the Royal assent.

Interpretation

Clause 2 repeals the definition of the term "harbour" and is consequential on the repeal of the Harbours Act 1950 by *clause 10 of the Local Government Amendment Bill (No. 3)*. The term is unnecessary because of the definition of the term "New Zealand waters".

Maritime Rules

Clause 3 amends section 34 of the principal Act and relates to the Minister's powers to make maritime rules concerning maritime documents. The amendment clarifies the section to ensure that maritime rules under the section can apply to any ship operating in New Zealand waters and to persons engaged as pilots.

Clause 4 amends section 36 of the principal Act and relates to the Minister's power to make maritime rules concerning general maritime matters. The amendment enables rules to be made for the purposes of—

- defining pilotage limits and specifying when and where pilotage is required;
- setting standards for cargo and other property carried on ships, including cargo containers;
- setting standards for navigational aids;
- regulating the conduct of ships in specified waters;
- setting standards for small craft such as river rafts.

Maritime Documents

Clause 5 amends section 43 of the principal Act and relates to the suspension of maritime documents and the imposition of conditions on maritime documents. The changes are—

- the power to suspend for a further period after the initial 14 days, or to impose new or further conditions, can be exercised independently of any investigation carried out by the Director of Maritime Safety for the purposes of deciding what further action should be taken; and
- a suspension can last until the Director decides whether to revoke the relevant maritime document.

Clause 6 contains a consequential amendment to section 44 of the principal Act and relates to the revocation of maritime documents.

Investigations

Clause 7 repeals and replaces section 58 of the principal Act, and relates to the Director's powers to investigate accidents, incidents, and mishaps. The existing section 58 gives the Director the powers of a Commission of Inquiry and does not adequately recognise the Director's enforcement role or the role of the Transport Accident Investigation Commission. The *new section 58* limits the Director's investigative powers to—

- making inquiries; and
- issuing summonses; and
- removing and copying documents.

Pilots

Clause 8 inserts into the principal Act *new sections 60A and 60B*, and relates to pilots. These new sections, together with maritime rules, will replace Part V of the Harbours Act 1950.

New section 60A requires compliance with maritime rules concerning pilotage and empowers the Director to require a pilot to be taken on board a ship in the interests of navigation safety or marine environmental protection.

New section 60B continues the protection that pilots enjoy under section 214B of the Harbours Act 1950 but dispenses with the requirement that pilots give a bond. The new section also protects port companies and others who engage pilots.

Clause 9 inserts into the principal Act *new section 65A* and relates to offences involving pilotage. If a ship proceeds without a pilot contrary to *new section 60A*, the owner and master each commit an offence. The penalties are fines not exceeding \$10,000 (in the case of an individual) and \$100,000 (in the case of a body corporate).

Offences Relating to Maritime Documents

Clause 10 amends section 68 of the principal Act and relates to the offence of acting without the appropriate current maritime document. The purpose of the amendment is to clarify that a document is not to be regarded as current if the document or the relevant endorsement is for the time being suspended.

Wreck and Salvage

Clauses 11 to 20 amend the provisions of Part IX of the principal Act and relate to wreck and salvage. The main purpose of these provisions is to—

- abolish the office of Receiver of Wreck and provide for property in wreck to be protected under the general law rather than by the Director;
- carry over the Director's safety functions in relation to wreck;
- repeal the provisions relating to salvage (which are to be replaced by Part XVII of the principal Act when that Part comes into force).

Clause 11 consequentially amends section 97 of the principal Act and relates to limitation of actions.

Clause 12 consequentially amends the heading to Part IX of the principal Act.

Clause 13 amends section 98 of the principal Act and redefines the term "wreck" to cover shipping containers.

Clause 14 amends section 100 of the principal Act and redefines the role of the Director where a ship or aircraft is wrecked, stranded, or in distress in New

Zealand limits. The Director takes over the safety functions of Receivers and can give directions for the preservation of life or property.

Clause 15 inserts into the principal Act a *new section 100A* and relates to the responsibility of owners of ships and aircraft that are wreck. The *new section 100A* makes the owner responsible for removing the wreck.

Clause 16 consequentially amends section 101 of the principal Act and relates to rights of passage over private land.

Clause 17 amends section 105 of the principal Act and relates to the duties of persons who find wreck. A person who finds wreck belonging to someone else must allow the Police to take custody of it. A person who finds his or her own wreck must notify the Director.

Clause 18 amends section 110 of the principal Act and relates to the removal of wreck. The clause provides for the Director to remove wreck if it is a hazard to navigation and no regional council has jurisdiction over the area. The existing section refers to Harbour Boards and Receivers and their roles are dispensed with.

Clause 19 consequentially amends section 127 of the principal Act and relates to penalties for offences.

Clause 20 repeals provisions of the principal Act relating to wreck and salvage.

Navigational Aids

Clause 21 amends section 200 of the principal Act and relates to navigational aids. The clause transfers from section 206 of the Harbours Act 1950 provisions which enable the Director to give directions about navigational aids.

Special Maritime Events

Clause 22 inserts into the principal Act *new sections 200A and 200B*. These sections provide for on-water crowd control where a special event such as the America's Cup is held in New Zealand waters.

New section 200A sets out a public notification procedure under which the Minister can declare a maritime event to be a special maritime event or occasion. Once that happens, the special enforcement powers in *new section 200B* apply. *New section 200A*—

- requires public notification to be given; and
- sets out what has to be in the notification; and
- requires the Minister to be satisfied that the application is reasonable and that the application of *new section 200B* is in the interests of navigation safety or is an appropriate way to manage the event; and
- requires the Minister to publish a notice of his or her intention to invoke *new section 200B* and allow interested persons an opportunity to make representations.

New section 200B sets out the enforcement powers available for special maritime events or occasions.

An enforcement officer may—

- stop and detain any craft in the designated area; and
- remove any craft or person from the designated area; and
- prevent any craft or person from entering the designated area; and
- prohibit the use of a vessel in the designated area (if the enforcement officer considers its use in the designated area would pose an unreasonable risk to the safety of those on board or of other persons).

The section also creates an infringement offence of failing to comply with a notice under *section 200A*.

An enforcement officer must produce evidence of identity and evidence that he or she is an enforcement officer, whenever reasonably requested to do so.

The following persons are enforcement officers under this section:

- all sworn members of the Police; and all non-sworn members of the Police authorised for the purpose by the Commissioner of Police;
- all members of the New Zealand Defence Force authorised for the purpose by the Chief of Defence Force;
- harbourmasters employed or engaged by any harbour controlling authority;
- such other persons as may for the time being be authorised for the purpose by the regional council concerned.

Dangerous Goods

New section 200c provides for the opening and testing of packages containing dangerous goods that are carried on a ship in New Zealand waters. The persons who can require a package to be opened and tested are—

- the owner, master, or charterer of a ship to which this section applies;
- the agent of the owner or charterer;
- the consolidator of any freight container or other form of secondary containment intended for shipment on the ship;
- a person authorised by the Director or by the chief executive of the Department of Labour or of the New Zealand Customs Service or of the Ministry of Fisheries or of the proposed new *Ministry of Agriculture and Forestry*.

Regulations

Clause 23 consequentially amends section 201 of the principal Act to enable regulations to set infringement fees for infringement offences against *new section 200B* and prescribe the form of infringement notices.

Marine Protection

Clause 24 consequentially amends section 222 of the principal Act and relates to the definition of the term “harbourmaster”.

Clause 25 repeals section 235 of the principal Act and substitutes *new sections 235 and 235A*, which relate to the Director’s investigative powers when a discharge or escape of a harmful substances occurs.

New section 235 mirrors the *new section 58* (which is set out in *clause 7*).

New section 235A empowers the Director to preserve the site of a pollution incident, collect oil samples, and tests things for the purposes of establishing the cause.

Clause 26 consequentially amends section 254 of the principal Act and provides that instructions given by the Director for the purposes of marine protection take precedence over instructions issued by a harbourmaster.

Clauses 27 to 30 amend the principal Act to give effect to changes to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 made by the 1996 Protocol to the Convention.

Clause 27 replaces the definition of the term “incineration” in section 257 of the principal Act. The change is that the new definition excludes the incineration of matter generated during the normal operation of a ship, platform, or other structure at sea.

Clause 28 amends section 261 of the principal Act and relates to the dumping and incineration of waste or other matter. The amendment prohibits—

- the incineration of waste or other matter at sea; and
- the exporting of waste or other matter for the purposes of dumping or incineration at sea.

Clause 29 consequentially amends section 262 of the principal Act to remove references to incineration.

Clause 30 repeals and replaces section 264 of the principal Act and relates to the offences of dumping and incineration of waste of other matter. The changes here also are of a consequential nature.

Marine Protection Documents

Clause 31 amends section 277 of the principal Act and relates to the offence of acting without an appropriate current marine protection document. The amendment mirrors the changes to section 68 set out in *clause 10*.

Clause 32 amends section 278 of the principal Act and relates to the offence of acting in breach of a marine protection document. The amendment removes some words which should not be there.

Other Provisions Relating to Marine Protection

Clause 33 amends section 331 of the principal Act and relates to the New Zealand Oil Pollution Fund. The main purpose of the amendment is to ensure that the following costs can be met from the Fund:

- the costs associated with planning and responses for marine oil spills that are services provided under a contract or arrangement with the Authority or the Director;
 - the reasonable costs of a regional council (including the costs of its regional on-scene commander) in investigating a suspected marine oil spill and in controlling, dispersing, and cleaning up any marine oil spill.
- The clause also provides for the recovery of costs met from the Fund.

Clauses 34 to 39 are of a consequential nature.

Clause 40 amends the Sixth Schedule of the principal Act to update the International Convention on Salvage, 1989.

Hon Jenny Shipley

MARITIME TRANSPORT AMENDMENT

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A BILL INTITULED

An Act to amend the Maritime Transport Act 1994

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Maritime Transport Amendment Act 1997, and is part of the Maritime Transport Act 1994* (“the principal Act”). 5

(2) Sections 11 (1), 12, 13 (2), and 20 (2) come into force on the commencement of Part XVII of the Maritime Transport Act 1994.

(3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 10

2. Interpretation—Section 2 (1) of the principal Act is amended by repealing the definition of the term “harbour”.

Maritime Rules

3. Maritime rules relating to maritime documents— Section 34 (1) of the principal Act is amended— 15

(a) By omitting from paragraph (b) the words “Foreign ships”, and substituting the words “All ships (including foreign ships)”:

(b) By omitting from paragraph (j) the word “operated”, and substituting the words “as may be operated or engaged or used in New Zealand waters or”. 20

4. Maritime rules relating to other matters—(1) Section 36 of the principal Act is amended by repealing paragraph (i), and substituting the following paragraph: 25

“(i) Defining operating limits and pilotage limits; and specifying requirements concerning pilotage (including when and where pilotage is required or is not required, and the classes of ships that must carry a pilot in circumstances described in the rules):”. 30

(2) Section 36 of the principal Act is amended by repealing paragraph (m), and substituting the following paragraph:

“(m) Prescribing standards and requirements for the carriage on a ship of any cargo, container, or personal 35

*1994, No. 104

Amendment: 1996, No. 79

property (including any item brought on to the ship by a passenger or other person, or carried in or on a vehicle on the ship); and prescribing standards and requirements concerning containers carried on a ship.”.

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(3) Section 36 of the principal Act is amended by inserting, after paragraph (t), the following paragraphs:

“(ta) Prescribing standards and requirements for navigational aids:

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“(tb) Regulating the conduct of ships in New Zealand waters, or the conduct of ships in any defined part of New Zealand waters, for the purpose of securing safe navigation in those waters.”.

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(4) Section 36 of the principal Act is amended by adding, as subsection (2), the following subsection:

“(2) Without limiting anything in subsection (1), rules under this section may apply to river rafts and other manually-powered water craft and to their operators, crew, and passengers.”

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Maritime Documents

5. Suspension of maritime documents or imposition of conditions—Section 43 of the principal Act is amended by repealing subsections (3) to (5), and substituting the following subsections:

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“(3) Unless the suspension or the imposition of conditions is extended under **subsection (4)** or remains in force by virtue of **subsection (5A)**, the suspension of a maritime document, the suspension of recognition of a document as a maritime document, or the imposition of conditions under this section remains in force until—

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“(a) The close of the 14th day after the date of the imposition of the suspension or conditions; or

“(b) The Director decides what action (if any) under **subsection (4)** or section 51 is to be taken,—

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whichever happens first.

“(4) Before the expiry of the 14-day period referred to in **subsection (3) (a)**, the Director may do 1 or more of the following:

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“(a) Extend the period of a suspension, or the period during which conditions apply, by a specified further period:

“(b) Impose, vary, or lift conditions:

“(c) Suspend the maritime document or lift the suspension.

“(5) When a maritime document or recognition is suspended or a maritime document is made subject to conditions under

this section, the holder of the document or recognition must immediately produce the maritime document or the document of recognition to the Director, and—

“(a) The Director must endorse the document to indicate the action taken under this section; and 5

“(b) The Director may retain a document while it is suspended.

“(5A) If notice of a proposed revocation of a maritime document or recognition of a document as a maritime document is given in accordance with section 51 either at the same time as the suspension of the document or recognition under this section is imposed or while the suspension is in force, the document or recognition to which the notice relates remains suspended until the Director finally decides whether to revoke the document or recognition under section 44.” 10 15

Investigations

6. Revocation of maritime documents—Section 44 (1) of the principal Act is amended by omitting the words “, after an investigation under section 43 of this Act,”.

7. Powers of investigation of Director—The principal Act is amended by repealing section 58, and substituting the following section: 20

“58. (1) For the purposes of investigating under section 57 an accident, incident, or mishap, the Director (or a person authorised for the purpose by the Director), may— 25

“(a) Make inquiries from any person who he or she has reason to believe is in possession of information that may lead to discovery of the cause of the accident, incident, or mishap:

“(b) Issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any documents or things in that person’s possession or under that person’s control that are relevant to the subject of the investigation: 30 35

“(c) Take possession of and remove any such document from the place where it is kept for such period of time as is reasonable in the circumstances:

“(d) Require a person to reproduce, or to allow the Director (or authorised person) to reproduce, in usable form any information recorded or stored on a document electronically or by other means. 40

“(2) Nothing in **subsection (1)** requires a person to answer a question if to do so would tend to incriminate that person.

5 “(3) A summons under this section may be served in the same manner as a summons served under section 5 of the Commissions of Inquiry Act 1908, and that section 5 applies accordingly with any necessary modifications.

“(4) For the purposes of this section, ‘document’ means a document in any form; and includes—

10 “(a) Any writing on or in any material; and

“(b) Information recorded or stored by means of a tape-recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and

15 “(c) A record, book, graph, or drawing; and

“(d) A photograph, film, negative, tape, disk, or other device in which 1 or more visual images are embodied or stored so as to be capable (with or without the aid of equipment) of being reproduced.

20 “(5) A person who fails without reasonable cause to comply with a requirement made under **subsection (1)** commits an offence and is liable to a fine not exceeding \$1,000.”

Pilots

25 **8. New heading and sections inserted**—The principal Act is amended by inserting in Part V, after section 60, the following heading and sections:

“Powers and Provisions Relating to Pilots

30 **“60A. Master to ensure rules relating to pilotage are complied with**—(1) The master of a ship must ensure that a pilot is taken on board the ship in accordance with and whenever required by maritime rules.

35 “(2) Despite anything in maritime rules, the Director may direct that a pilot be taken on board a ship in New Zealand waters if the Director is satisfied that, in the circumstances (such as the weather conditions, damage to the ship, or incapacity of the master), the interests of navigation safety or marine environmental protection require that a pilot be taken on board.

40 “(3) A direction under **subsection (2)** must, whenever practicable, be in writing and must be given to the owner or master of the ship to which it applies.

“(4) Once a direction is given under **subsection (3)**, the ship may not proceed from or enter a port in New Zealand unless a pilot is on board.

“60B. Limitation of liability where pilot engaged—(1) A port company, or other body corporate or person, who employs a pilot is not liable for any neglect or want of skill of the pilot.

“(2) The owner or master of a ship navigating under circumstances in which pilotage is required is answerable for any loss or damage caused by the ship or by any fault of the navigation of the ship in the same manner as that person would be if pilotage were not required. 5

“(3) A pilot is not liable for neglect or want of skill while on board a ship and acting as a pilot.” 10

9. Proceeding without pilot contrary to maritime rules or direction given under section 60A—The principal Act is amended by inserting, after section 65, the following section:

“65A. (1) If a ship proceeds without a pilot in contravention of section 60A, the owner and master of the ship each commits an offence and is liable,— 15

“(a) In the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000: 20

“(b) In the case of a body corporate, to a fine not exceeding \$100,000:

“(c) In any case, to an additional penalty under section 409.

“(2) Despite section 451 (5), a contravention of a maritime rule in circumstances to which section 60A (1) applies is an offence against this section.” 25

Offences Concerning Maritime Documents

10. Acting without necessary maritime document—Section 68 of the principal Act is amended by adding the following subsection: 30

“(4) For the purposes of this section,—

“(a) A maritime document is not a current maritime document if it is for the time being suspended under this Act:

“(b) A maritime document is not a current maritime document in relation to an act if the endorsement that is required to authorise that act is for the time being suspended under this Act.” 35

Wreck and Salvage

11. Limitation of actions—(1) Section 97 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 40

“(1) Subject to subsections (3) and (4), no action may be brought to enforce any claim or lien against a ship (“the defendant ship”) or the owners of the ship, if the action concerns—

5 “(a) Any damage or loss to another ship, or to cargo or freight of another ship, or to any other property on board another ship, that was caused wholly or partly by the fault of the defendant ship; or

10 “(b) Damages for loss of life or personal injuries suffered by any person on board another ship, that were caused wholly or partly by the fault of the defendant ship,—

unless proceedings are commenced within 2 years after the date when the damage or loss or injury was caused.”

15 (2) Section 97 (7) of the principal Act is amended by omitting the words “or section 208 of the Harbours Act 1950,”.

12. Part heading amended—The heading to Part IX of the principal Act is amended by omitting the words “, AND SALVAGE”.

20 **13. Interpretation**—(1) Section 98 of the principal Act is amended by repealing the definition of the term “Receiver”.

(2) Section 98 of the principal Act is amended by repealing the definition of the terms “salvage”, “salvage services”, and “salvor”.

25 (3) Section 98 of the principal Act is amended by repealing the definition of the term “wreck”, and substituting the following definition:

 “ ‘Wreck’ includes—

30 “(a) The equipment and any goods in or on a ship or aircraft that is abandoned, stranded, or in distress; and

 “(b) Shipping containers and property lost overboard or otherwise separated from a ship.”

35 **14. Powers of Director where ship or aircraft in distress**—(1) Section 100 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsection:

40 “(1) If any ship or aircraft is wrecked, stranded, or in distress at any place on or over or near the coasts of New Zealand or any tidal waters within the limits of New Zealand or any river or lake or other inland water, the Director may give such

directions as he or she thinks fit for the preservation of all or any of the following:

“(a) The ship or aircraft:

“(b) The lives of the passengers and crew (who are in this Part referred to as the shipwrecked persons): 5

“(c) The equipment and cargo of the ship or aircraft”.

(2) Section 100 of the principal Act is amended by omitting from subsections (3) and (4) the word “Receiver” wherever it occurs, and substituting in each case the word “Director”.

(3) Section 100 (5) of the principal Act is amended by repealing paragraphs (h) and (i), and substituting the following paragraph: 10

“(h) The Minister under section 255.”

15. Responsibility of owner of ship or aircraft in distress—The principal Act is amended by inserting, after section 100, the following section: 15

“100A. (1) If any ship or aircraft is wrecked, stranded, or in distress at any place on or over or near the coasts of New Zealand or any tidal waters within the limits of New Zealand or any river or lake or other inland water, the owner must make arrangements to secure and remove the ship or aircraft, and its equipment and cargo. 20

“(2) This section is subject to section 100 and nothing in this section affects or limits any right, privilege, or power exercisable in relation to a ship or aircraft, or its equipment or cargo, by the Director or any other person under any other enactment or any rule of law. 25

“(3) A person commits an offence if the person contravenes subsection (1).”

16. Right of passage over adjoining lands—Section 101 (2) of the principal Act is amended by omitting the words “; and the amount payable in respect of the damage shall in case of dispute be determined, and shall in default of payment be recoverable, in the same manner as the amount of salvage is under this Part of this Act determined or recoverable”. 30 35

17. Rules to be observed by persons finding wreck—(1) Section 105 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

“(1) If a person finds or takes possession of any wreck within the limits of New Zealand, or takes possession of and brings within the limits of New Zealand any wreck found outside those limits, the following provisions apply: 40

“(a) The person must notify the Director that the person has found or taken possession of the wreck:

“(b) If the person is not the owner of the wreck, the person must either deliver it to the Police or allow the Police to take possession of it.

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“(1A) The Director may transmit to such persons and agencies as the Director thinks appropriate any information received by him or her under **subsection (1)**.”

(2) Section 105 (2) of the principal Act is repealed.

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18. Removal of wrecked ships and aircraft—(1) Section 110 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) The Director may cause a ship or aircraft referred to in **section 100A** to be removed from the place where it has been sunk, stranded, or abandoned if—

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“(a) The owner of the ship or aircraft has not made arrangements under that section to secure and remove the ship or aircraft; and

“(b) No regional council has jurisdiction over the waters or place where the ship or aircraft is located; and

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“(c) The Director considers the ship or aircraft to be a hazard to navigation.”

(2) Section 110 (2) of the principal Act is amended—

(a) By omitting the words “On receiving such a direction, the Receiver”, and substituting the words “The Director”:

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(b) By omitting the word “shall”, and substituting the word “may”.

(3) Section 110 of the principal Act is amended by omitting from subsections (3) and (4) the word “Receiver”, and substituting in each case the words “Director (or a person authorised by the Director)”.

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19. Penalties—(1) Section 127 (1) of the principal Act is amended by inserting, after the expression “section 100”, the expression “or **section 100A**”.

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(2) Section 127 (2) of the principal Act is amended by omitting the expression “or section 106”.

20. Repeals—(1) The following provisions of the principal Act are repealed:

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(a) Section 99 (which relates to the appointment of receivers):

(b) Section 102 (which relates to the suppression of plunder and disorder):

- (c) Section 103 (which relates to who may act in the absence of a receiver):
- (d) Section 104 (which relates to inquiries made by a Receiver):
- (e) Section 106 (which relates to the custody of articles washed ashore): 5
- (f) Section 107 (which relates to claims to wreck):
- (g) Section 108 (which relates to the sale of wreck):
- (h) Section 109 (which relates to claims to wreck):
- (i) Section 111 (which relates to offences involving wreck): 10
- (j) Section 112 (which relates to the seizure of wreck):
- (k) Section 125 (which relates to fees of Receivers) and the heading above that section.
- (2) Sections 115 to 124 (which relate to salvage), and the heading above section 115, are repealed. 15

21. Navigational aids—(1) Section 200 (1) of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) The Authority is responsible for the management of all navigational aids on or near the coasts of New Zealand and the adjacent seas and islands, except navigational aids belonging to a local authority or other person.” 20

(2) Section 200 of the principal Act is amended by repealing subsection (5), and substituting the following subsections:

“(5) The local authority or the port company or other person operating a port must, as and when required by the Director, erect lights, lay down buoys and beacons, and replace, remove, or discontinue any harbour light, signal, buoy, beacon, or other sea mark, or make any variation in their character or in the mode of exhibiting them. 25 30

“(6) If the local authority or the port company or other person operating a port fails or neglects to comply with any such requisition within a reasonable period to be stated in the requisition, the Director may take all such steps and do all such acts as may be necessary to give effect to the requisition, and the cost and charges of so doing are a debt due to the Crown from the local authority or the port company or other person operating the port, and may be recovered accordingly. 35

“(7) No person may erect or place any navigational aid on or near the coasts of New Zealand and the adjacent seas and islands, or alter or remove the position of any navigational aid, without the approval of the Director.” 40

22. New heading and sections inserted—The principal Act is amended by inserting, after section 200, the following heading and sections:

“Provisions Relating to Special Maritime Events

5 **“200A. Minister may notify maritime event where special enforcement powers exercisable**—(1) On application made by a regional council or any other person or organisation, the Minister may, by notice in the *Gazette*, declare a specified maritime event or occasion to be an event or
10 occasion to which **section 200B** applies.

“(2) A notice under subsection (1)—

“(a) Must describe the event or occasion to which it applies; and

“(b) Must describe the waters (‘the designated area’) to which it applies; and
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“(c) Must specify the period during which the notice applies; and

“(d) May set out requirements for the purposes of navigation safety and to enable the event or occasion to be properly managed, including requirements specifying the classes of ships that are authorised to enter the designated area, and the conditions and requirements to be complied with by persons in the designated area; and
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“(e) May authorise the regional council in whose region the maritime event or occasion is being held to determine, in accordance with the notice, which ships may enter the designated area and to specify and vary conditions for the day to day management and conduct of activities within the designated area (such as varying the hours of racing, closing and opening the course, and changing the course); and
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“(f) May contain such other information as may be necessary to explain the effect of the notice.

35 **“(3) A notice under subsection (1) may not be given unless the Minister—**

“(a) Is satisfied that—

“(i) The application is reasonable; and

“(ii) The applicant has provided the information referred to in paragraphs (a), (b), and (c) of subsection (2); and
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“(iii) The applicant has provided any information required for the purposes of paragraphs (d), (e), and (f) of subsection (2); and

- “(b) Is satisfied that the application of **section 200B** is in the interests of navigation safety or is an appropriate way to manage and control the event or occasion; and
- “(c) Has published in the *Gazette*, and in such daily newspapers as the Minister considers appropriate, a notice stating the Minister’s intention to give the notice under **subsection (1)** and specifying a period (which may not be less than 10 days) within which interested persons and organisations may make written representations about the proposal; and
- “(d) Has considered all representations received within the specified time.
- “(4) The Minister may from time to time, by notice in the *Gazette*,—
- “(a) Extend the period during which a notice under **subsection (1)** applies:
- “(b) Amend any description or correct any obvious mistake in a notice under **subsection (1)**.
- “(5) **Subsection (3)** does not apply to a notice under **subsection (4)**.
- “(6) An applicant must pay the costs and expenses of the notices referred to in **subsection (3)** that are published for the purposes of that person’s application under this section.
- “(7) This section applies only to specified maritime events and occasions that are to be held in or on New Zealand waters.
- “**200B. Special enforcement powers may be exercised when this section applies—**(1) This section applies to a specified maritime event or occasion that is subject to a notice under **section 200A**.
- “(2) While this section applies to a maritime event or occasion, an enforcement officer who has reasonable cause to believe that the action is necessary to maintain public order, or to preserve the safety of any person or ship, or to enforce the provisions of the notice may do all or any of the following things:
- “(a) Stop and detain any ship in the designated area:
- “(b) Remove any ship or person from the designated area:
- “(c) Prevent any craft or person from entering the designated area:
- “(d) Prohibit the use of a ship in the designated area, if the enforcement officer considers its use in the designated area would pose an unreasonable risk to the safety of those on board or of other persons:

“(3) The exercise of any power conferred by **subsection (2)** does not prevent an enforcement officer or any other person from taking any further action against a person under some other provision of this Act or under any other enactment.

5 “(4) An enforcement officer exercising any power under this section must produce evidence of identity and evidence that he or she is an enforcement officer, whenever reasonably requested to do so.

10 “(5) A person commits an infringement offence and is liable to the penalty prescribed by regulations made under section 201 if the person enters or remains in a designated area in contravention of a notice given under **section 200A** or otherwise contravenes the notice.

15 “(6) For the purposes of this section, the following persons are enforcement officers:

“(a) All sworn members of the Police; and all non-sworn members of the Police authorised for the purpose by the Commissioner of Police:

20 “(b) All members of the New Zealand Defence Force authorised for the purpose by the Chief of Defence Force:

“(c) Harbourmasters employed or engaged by any harbour controlling authority:

25 “(d) Such other persons as may for the time being be authorised for the purpose by the regional council within whose region the event or occasion is being held.

“*Dangerous Goods*”

30 “200c. **Opening and testing of packages containing dangerous goods**—(1) This section applies to—

“(a) New Zealand ships; and

“(b) Other ships in a port in New Zealand or in New Zealand waters that load or unload cargo or fuel or embark or disembark passengers.

35 “(2) A person referred to in **subsection (3)** may require a package or container to be opened and subjected to such tests as may be necessary to identify the contents, if—

“(a) The package or container is, or is intended to be, loaded or carried on a ship to which this section applies; and

40 “(b) The person reasonably believes the package or container contains dangerous goods (as defined in rules made under this Act) that are not marked or packed in accordance with the rules.

“(3) The persons referred to in **subsection (2)** are—

“(a) The owner, master, or charterer of a ship to which this section applies:

“(b) The agent of the owner or charterer:

“(c) The consolidator of any freight container or other form of secondary containment intended for shipment on the ship: 5

“(d) A person authorised by the Director or by the chief executive of the Department of Labour or of the New Zealand Customs Service or of the Ministry of Fisheries or of the **Ministry of Agriculture and Forestry**. 10

“(4) The shipper of the package or container is liable for the costs of inspections and tests carried out under **subsection (2)**, and of any delay caused by the inspections and tests.”

Regulations

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23. Regulations—Section 201 (1) (d) of the principal Act is amended by inserting, after the words “paragraph (b) of this section”, the words “and for infringement offences against **section 200b**”.

Marine Protection

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24. Interpretation—Section 222 (1) of the principal Act is amended by omitting from the definition of the term “harbourmaster” the words “under section 42 of the Harbours Act 1950”.

25. New sections substituted—The principal Act is amended by repealing section 235, and substituting the following sections: 25

“**235. Powers of investigation of Director**—(1) The Director may investigate any discharge or escape of a harmful substance in breach of this Act or the Resource Management Act 1991, or any pollution incident. 30

“(2) For the purposes of carrying out an investigation under this section, the Director (or a person authorised for the purpose by the Director) may—

“(a) Make inquiries from any person who he or she has reason to believe is in possession of information that may lead to discovery of the cause of the discharge or escape or pollution incident: 35

“(b) Issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any 40

documents or things in that person's possession or under that person's control that are relevant to the subject of the investigation:

5 “(c) Take possession of and remove any such document from the place where it is kept for such period of time as is reasonable in the circumstances:

“(d) Require a person to reproduce, or to allow the Director (or authorised person) to reproduce, in usable form any information recorded or stored on a document electronically or by other means.

10 “(3) Nothing in **subsection (2)** requires a person to answer a question if to do so would tend to incriminate that person.

“4) A summons under this section may be served in the same manner as a summons served under section 5 of the Commissions of Inquiry Act 1908, and that section 5 applies accordingly with any necessary modifications.

15 “(5) For the purposes of this section, ‘document’ means a document in any form; and includes—

20 “(a) Any writing on or in any material; and

“(b) Information recorded or stored by means of a tape-recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and

25 “(c) A record, book, graph, or drawing; and

“(d) A photograph, film, negative, tape, disk, or other device in which 1 or more visual images are embodied or stored so as to be capable (with or without the aid of equipment) of being reproduced.

30 “(6) A person who fails without reasonable cause to comply with a requirement made under **subsection (2)** commits an offence and is liable to a fine not exceeding \$1,000.

35 “235A. **Additional powers of Director**—For the purposes of an investigation under **section 235**, but without limiting the powers conferred by that section, the Director (or a person authorised for the purpose by the Director) may—

40 “(a) Prohibit or restrict access of persons or classes of persons to the site of the discharge, escape, or pollution incident to which the investigation relates, if the Director believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any thing involved in the discharge, escape, or pollution incident:

“(b) Collect oil samples:

“(c) Seize, detain, remove, preserve, protect, or test any thing that the Director believes on reasonable grounds will assist in establishing the cause of the discharge, escape, or pollution incident.”

26. Instructions under this Part that conflict with other instructions—(1) Section 254 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 5

“(1) If a harbourmaster or any other person gives, under the Local Government Act 1974 or any navigation bylaws, instructions (‘harbourmaster’s instructions’) that conflict with instructions given by the Director under section 248 or section 249 (‘Director’s instructions’), the Director’s instructions prevail.” 10

(2) Section 254 (2) of the principal Act is amended by omitting the words “Harbours Act” in both places where they occur, and substituting in each case the word “harbourmaster’s”. 15

27. Interpretation—Section 257 of the principal Act is amended by repealing the definition of the term “incineration”, and substituting the following definition: 20

“‘Incinerated at sea’—

“(a) Means the deliberate disposal of waste or other matter by thermal destruction on board a ship, platform, or other artificial structure at sea; but 25

“(b) Does not include the incineration on board a ship, platform, or other artificial structure at sea of waste or other matter generated during the normal operation of that ship, platform, or other structure at sea.”. 30

28. Dumping and incineration of waste or other matter—(1) Section 261 of the principal Act is amended by repealing subsections (1) to (3), and substituting the following subsections:

“(1) Unless authorised by and done in accordance with a permit issued by the Director under **section 262**, waste or other matter may not be dumped from a ship, aircraft, or controlled offshore installation— 35

“(a) Into the sea, or onto or into the seabed, within the exclusive economic zone of New Zealand; or 40

“(b) Onto or into the continental shelf of New Zealand beyond the outer limits of that exclusive economic

zone, or into the sea above that part of the continental shelf.

“(2) Waste or other matter may not be taken on board a ship or 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 into the sea within any of those waters unless that dumping is authorised by a permit issued by the Director under **section 262** or a resource consent under the Resource Management Act 1991.

“(3) Unless authorised by and done in accordance with a permit issued by the Director under **section 262** or a permit issued under the corresponding law of a Convention State, waste or other matter may not be dumped from a New Zealand ship or New Zealand aircraft into the sea, or onto or into the seabed, beyond New Zealand continental waters.”

(2) Section 261 of the principal Act is amended by inserting, after subsection (6), the following subsection:

“(6A) Waste or other matter may not be—

“(a) Incinerated at sea in the internal waters of New Zealand or New Zealand continental waters, or on a New Zealand ship or New Zealand aircraft beyond New Zealand continental waters; or

“(b) Exported to another country for dumping at sea or incineration at sea.”

29. Power of Director to issue permits for dumping of waste or other matter—The principal Act is amended by repealing section 262, and substituting the following section:

“262. The Director may, in accordance with section 270 and the marine protection rules, issue permits authorising the dumping of any waste or other matter, ship, aircraft, or offshore installation.”

30. Offences in respect of dumping and incineration of waste and other matter—The principal Act is amended by repealing section 264, and substituting the following section:

“264. (1) The master and the owner of a ship each commits an offence if waste or other matter is—

“(a) Taken on board the ship in breach of **section 261 (2)**; or

“(b) Dumped from the ship in breach of **section 261 (1)**; or

“(c) Dumped from the ship (being a New Zealand ship) in breach of **section 261 (3)**.

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

“(a) The ship is dumped in breach of section 261 (4); or

“(b) The ship (being a New Zealand ship) is dumped in breach of section 261 (6).

“(3) A person in possession, and the owner, of an aircraft each commits an offence if waste or other matter is—

“(a) Taken on board the aircraft in breach of **section 261 (2)**; or 5

“(b) Dumped from the aircraft in breach of **section 261 (1)**; or

“(c) Dumped from the aircraft (being a New Zealand aircraft) in breach of **section 261 (3)**.

“(4) A person in possession, and the owner, of an aircraft each commits an offence if— 10

“(a) The aircraft is dumped in breach of section 261 (4); or

“(b) The aircraft (being a New Zealand aircraft) is dumped in breach of section 261 (6).

“(5) An owner of a controlled offshore installation commits an offence if— 15

“(a) Waste or other matter is dumped from the offshore installation in breach of **section 261 (1)**; or

“(b) The controlled offshore installation is dumped in breach of section 261 (5).

“(6) The owner and master of a ship, and the owner of a platform or other artificial structure, each commits an offence if waste or other matter is incinerated on it in breach of **section 261 (6A) (a)**. 20

“(7) A person commits an offence if the person exports waste or other matter in breach of **section 261 (6A) (b)**.” 25

31. Acting without necessary marine protection document—Section 277 of the principal Act is amended by adding the following subsection:

“(3) For the purposes of this section,—

“(a) A marine protection document is not a current marine protection document if it is for the time being suspended under this Act: 30

“(b) A marine protection document is not a current marine protection document in relation to an act if the endorsement that is required to authorise that act is for the time being suspended under this Act.” 35

32. Acting in breach of marine protection document—Section 278 of the principal Act is amended by omitting the words “and all relevant marine protection rules”.

33. Application of money in New Zealand Oil Pollution Fund—(1) Section 331 of the principal Act is 40

amended by inserting, after paragraph (c), the following paragraph:

5 “(ca) To meet the costs of services associated with planning and responses for marine oil spills that are services provided under a contract or arrangement with the Authority or the Director:”.

(2) Section 331 of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

10 “(e) To meet the reasonable costs of a regional council (including the costs of its regional on-scene commander) in investigating a suspected marine oil spill and in controlling, dispersing, and cleaning up any marine oil spill:”.

(3) Section 331 of the principal Act is amended by adding, as subsection (2), the following subsection:

15 “(2) The following provisions apply to payments made under paragraph (e) of subsection (1), and to payments made under paragraph (g) of that subsection for the purpose of assisting any wildlife:

20 “(a) The payments may be made if, and to the extent that, the costs for which the payments may be made have not been recovered from the person who caused the oil spill:

25 “(b) The recipient must make all reasonable efforts to recover those costs from that person:

“ (c) Payments may be made on an interim or periodic basis; and each time it recovers money from the person who caused the oil spill, the recipient must pay the Fund a proportionate amount.”

30 **34. Certain ships to have certificates of insurance—**Section 363 of the principal Act is amended—

(a) By omitting from subsections (1) and (2) the word “current”:

35 (b) By inserting in subsections (1) and (2), after the words “in force in respect of”, the words “, and carried on board,”.

35. Proceedings for offences—Section 419(2) of the principal Act is repealed.

40 **36. Infringement offences—**Section 422(1) of the principal Act is amended by inserting, after the words “specified as such in”, the words “this Act or”.

37. Infringement notices—Section 423 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) An infringement notice for an infringement offence against **section 200B** may be issued by the Director, a person duly authorised by the Director, a member of the Police, or a person duly authorised by the regional council or other local authority in whose region or district the offence was committed.” 5

38. Procedure for making rules by Minister—Section 446 (c) of the principal Act is amended by omitting the words “Part XXVII of this Act with such regional councils”, and substituting the words “Part IV (to the extent that the rules relate to pilotage or harbourmasters) or Part XXVII with such regional councils or other local authorities”. 10

39. Further general provisions in respect of rules— (1) Section 451 (4) of the principal Act is amended— 15

(a) By inserting, after the words “the Director,”, the words “a regional council,”;

(b) By inserting, before the words “or any other person” where they secondly occur, the words “, a regional council,”. 20

(2) Section 451 (5) of the principal Act is amended by adding the words “or is expressly specified by this Act to be an offence against this Act”.

40. Sixth Schedule amended—(1) Paragraph 2 of article 23 of the Sixth Schedule of the principal Act is amended by inserting, after the words “a claim is made”, the word “may”. 25

(2) The Sixth Schedule of the principal Act is amended by adding the following attachments:

“Attachment 1 30

“Common Understanding Concerning Articles 13 and 14 of the International Convention on Salvage, 1989

“It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under article 14. 35

“Attachment 2

“Resolution requesting the amendment of the York-Antwerp Rules, 1974

“THE INTERNATIONAL CONFERENCE ON SALVAGE, 1989,

5 “HAVING ADOPTED the International Convention on Salvage, 1989,

“CONSIDERING that payments made pursuant to article 14 are not intended to be allowed in general average,

10 “REQUESTS the Secretary-General of the International Maritime Organization to take the appropriate steps in order to ensure speedy amendment of the York-Antwerp Rules, 1974, to ensure that special compensation paid under article 14 is not subject to general average.

“Attachment 3

15 **“Resolution on international co-operation for the implementation of the International Convention on Salvage, 1989**

“The International Conference on Salvage, 1989,

20 “IN ADOPTING the International Convention on Salvage, 1989 (hereinafter referred to as ‘The Convention’),

“Considering it Desirable that as many States as possible should become Parties to the Convention,

25 “RECOGNIZING that the entry into force of the Convention will represent an important additional factor for the protection of the marine environment,

“CONSIDERING that the international publicizing and wide implementation of the Convention is of the utmost importance for the attainment of its objectives,

“I RECOMMENDS:

30 “(a) that the Organization promote public awareness of the Convention through the holding of seminars, courses or symposia;

35 “(b) that training institutions created under the auspices of the Organization include the study of the Convention in the corresponding courses of study.

“II REQUESTS:

40 “(a) Member States to transmit to the Organization the text of the laws, orders, decrees, regulations and other instruments that they promulgate concerning the various matters falling within the scope of application of the Convention;

“(b) Member States, in consultation with the Organization, to promote the giving of help to those States

requesting technical assistance for the drafting of laws, orders, decrees, regulations and other instruments necessary for the implementation of the Convention; and

“(c) The Organization to notify Member States of any communication it may receive under paragraph II (a).” 5