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An Act—
(a) To continue the Maritime Safety Authority of New Zealand; and
(b) To enable the implementation of New Zealand's obligations under international maritime agreements; and
(c) To ensure that participants in the maritime transport system are responsible for their actions; and
(d) To consolidate and amend maritime transport law; and
(e) To amend the law relating to the health and safety of seafarers; and

(f) To protect the marine environment; and

(g) To continue, or enable, the implementation of obligations on New Zealand under various international conventions relating to pollution of the marine environment [17 November 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 Act 1994.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and, except in the case of the provisions referred to in section 214 of this Act, different dates may be so appointed by one or more Orders in Council for different provisions and different purposes.

(3) This section and sections 2, 214, and 221 of this Act shall come into force on the day on which this Act receives the Royal assent.

PART I
PRELIMINARY PROVISIONS

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Accident” means an occurrence that involves a ship and in which—

(a) A person is seriously harmed as a result of—

(i) Being on the ship; or

(ii) Direct contact with any part of the ship, including any part that has become detached from the ship; or

(iii) Direct exposure to the wash of the ship or interaction (other than direct contact) between 2 ships; or

(iv) Being involved in the salvage of any ship—except where the injuries are self-inflicted or inflicted by other persons, or when injuries are to stowaways hiding outside the areas normally available to passengers and crew; or

(b) The ship sustains damage or structural failure that—
(i) Adversely affects the structural strength, performance, or seaworthiness of the ship; or

(ii) Would normally require major repair or replacement of the affected component; or

(iii) Poses a threat to the safety of people on board the ship; or

(c) There is a complete or partial failure of machinery or equipment that affects the seaworthiness of the ship; or

(d) There is a loss of, or damage to, or movement of, or change in the state of, the cargo of the ship which poses a risk to the ship or other ships; or

(e) There is a significant loss of, or significant damage to, property (not being the cargo carried by the ship) or the property of any person (whether or not on board the ship), whether or not the loss or damage arises from an interaction between 2 ships; or

(f) There is a loss or escape of any substance or thing that—

(i) May result, or has resulted, in serious harm to any person; or

(ii) May pose a risk, or has resulted in damage, to the ship or other ships; or

(iii) May pose a risk, or has resulted in damage, to any property (whether or not on board the ship); or

(g) A person is lost at sea (whether or not subsequently found) or is missing; or

(h) The ship is foundering, capsizing, being abandoned, stranding, missing, or has foundered, capsized, been abandoned, stranded, been in a collision, or has had a major fire on board:

“Air craft” has the same meaning as in the Civil Aviation Act 1990:

“All practicable steps”, in relation to achieving any result in any circumstances, means all steps to achieve the result that are reasonably practicable to take in the circumstances, having regard to—

(a) The nature and severity of the harm that may be suffered if the result is not achieved; and

(b) The current state of knowledge about the likelihood that harm of that nature and severity will be suffered if the result is not achieved; and
(c) The current state of knowledge about harm of that nature; and
(d) The current state of knowledge about the means available to achieve the result, and about the likely efficacy of each; and
(e) The availability and cost of each of the means referred to in paragraph (d) of this definition:

"Articles of Agreement" means an agreement between an employer and one or more seafarers setting out the terms and conditions of the seafarers’ employment:
"Authority" means the Maritime Safety Authority of New Zealand continued by section 429 of this Act:
"Commercial ship" means a ship that is not—
(a) A pleasure craft; or
(b) Solely powered manually; or
(c) Solely powered by sail:
"Continental shelf" or "continental shelf of New Zealand" has the same meaning as in the Continental Shelf Act 1964:
"Conventions", in relation to this Part and Parts II to XV of this Act, means such conventions as may be declared for the purposes of any such Part by Order in Council pursuant to subsection (2) of this section; and includes the amendments to such conventions, being amendments to which New Zealand is a party that are declared in the same manner:
"Crew" means the persons employed or engaged in any capacity on board a ship (except a master, a pilot, or a person temporarily employed on the ship while it is in port):
"Director" means the person who is for the time being the Director of Maritime Safety under section 439 of this Act:
"Emergency rules" means emergency maritime rules or emergency marine protection rules:
"Employer" means a person who employs or engages any other person (other than a person temporarily employed on the ship while it is in port or a pilot) to do any work for hire or reward on board a commercial ship or pleasure craft:
"Fail" includes refuse; and "failure" includes refusal:
"Fishing ship" means a ship used for catching fish, whales, seals, or other living resources of the sea for profit; and includes a ship that is recognised by the Director as being engaged in fisheries research:
"Foreign ship" means any ship that is not a New Zealand ship:

"Gross tonnage" or "gross tons", in relation to a ship, means the gross tonnage of that ship determined or recognised in accordance with the provisions of this Act or any maritime rules:

"Harbour" has the same meaning as in the Harbours Act 1950:

"Harm" means illness, injury, or both; and "to harm" and "harmed" have corresponding meanings:

"Hazard" means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether or not arising or caused on board a ship) that is an actual or potential cause or source of harm; and "hazardous" has a corresponding meaning:

"Incident" means any occurrence, other than an accident, that is associated with the operation of a ship and affects or could affect the safety of operation:

"Internal waters of New Zealand" means the internal waters of New Zealand as defined by section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977:

"Load lines" means the marks indicating several maximum depths to which a ship is permitted to be loaded in various circumstances prescribed by maritime rules or regulations made under this Act:

"Marine protection rules" means marine protection rules made by the Minister under Part XXVII of this Act; and includes emergency marine protection rules made by the Director under section 391 of this Act:

"Maritime document"—

(a) Means any licence, permit, certificate or other document issued under Part V of this Act or in respect of any person, ship, cargo, maritime procedure, or maritime product; and

(b) Includes any foreign licence, permit, certificate, or other document recognised by the Director under section 41 of this Act or accepted by the Director under section 42 of this Act:

"Maritime product" means anything that comprises or is intended to comprise any part of a ship or that is or is intended to be installed in or fitted or supplied to a ship; and includes—

(a) Safety equipment:
(b) Nautical instruments and publications, whether or not computerised or electronic, used or intended to be used in the operation of a ship:
(c) Electronic navigational aids used or intended to be used in the operation of a ship:
(d) Radio and other communication equipment:
(e) Fuel and other similar consumable items necessary for the operation of a ship:

"Maritime rules" means maritime rules made by the Minister under Part IV of this Act; and includes emergency maritime rules made by the Director under section 37 of this Act:

"Master" means any person (except a pilot) having command or charge of any ship:

"Minister" means the Minister of Transport:

"Ministry" means the Ministry of Transport:

"Mishap" means an event that—
(a) Causes any person to be harmed; or
(b) In different circumstances, might have caused any person to be harmed:

"Nautical instruments and publications" means those instruments and publications (including computerised or electronic instruments and publications) used or intended to be used in the navigation of a ship:

"Navigational aid" includes—
(a) Any lightship and any floating or other light exhibited for the guidance of ships:
(b) Any description of a fog signal not carried on a ship:
(c) All marks and signs in aid of marine navigation:
(d) Any electronic, radio, or other aid to marine navigation not carried on board any ship:

"New Zealand Defence Force" has the same meaning as the term "Defence Force" in section 2 (1) of the Defence Act 1990:

"New Zealand ship" means a ship that is registered under the Ship Registration Act 1992; and includes a ship that is not registered under that Act but is required or entitled to be registered under that Act:

"New Zealand waters" means—
(a) The territorial sea of New Zealand; and
(b) The internal waters of New Zealand; and
(c) All rivers and other inland waters of New Zealand:
“Operate”, in relation to a ship, means to sail or use the ship, or cause or permit the ship to sail, be used, or be in any place, whether or not the person is present with the ship; and “operating”, “operation”, and “operator” have corresponding meanings:

“Operating in New Zealand waters” means any activity undertaken in New Zealand waters that involves calling in to a New Zealand port; but does not include the passage by a ship through New Zealand waters that does not involve calling in to a New Zealand port:

“Owner”,—

(a) In relation to a ship registered in New Zealand under the Ship Registration Act 1992, means the registered owner of the ship:

(b) In relation to a ship registered in any place outside New Zealand, means the registered owner of the ship:

(c) In relation to a fishing ship, other than one to which paragraph (a) or paragraph (b) of this definition applies, means the person registered as the owner under section 57 of the Fisheries Act 1983:

(d) In relation to a ship to which paragraph (a) or paragraph (b) or paragraph (c) of this definition applies, where, by virtue of any charter or demise or for any other reason, the registered owner is not responsible for the management of the ship, includes the charterer or other person who is for the time being so responsible:

(e) In relation to an unregistered ship or a registered ship that does not have a registered owner, means the person who is for the time being responsible for the management of the ship:

“Passenger” means any person carried on a ship, other than—

(a) The master and members of the crew, and any other person employed or engaged in any capacity on board the ship on the business of the ship:

(b) A person on board the ship either in pursuance of an obligation laid upon the master to carry shipwrecked, distressed, or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled:

(c) A child under the age of 1 year:
“Pilot”, in relation to any ship, means any person not being the master or a member of the crew of the ship who has the conduct of the ship:

“Plant” includes—
(a) Appliance, equipment, fitting, furniture, implement, machine, machinery, tool, and vehicle:
(b) Part of any plant, the controls of any plant, and anything connected to any plant:

“Pleasure craft” means a ship that is used exclusively for the owner’s pleasure or as the owner’s residence, and is not offered or used for hire or reward; but does not include—
(a) A ship that is provided for transport or sport or recreation by or on behalf of any institution, hotel, motel, place of entertainment, or other establishment or business:
(b) A ship that is used on any voyage for pleasure if it is normally used or intended to be normally used as a fishing ship or for the carriage of passengers or cargo for hire or reward:
(c) A ship that is operated or provided by any club, incorporated society, trust, or business:

“Port” includes place and harbour:
“Prescribed” means prescribed by this Act or by regulations or rules made under this Act:

“Proper officer”, in relation to any country other than New Zealand, means the person who is, by the law of that country, authorised or required—
(a) To do or perform the act or duty to which reference is made in the provisions of this Act in which the expression occurs; or
(b) To do or perform, in relation to ships registered in or belonging to that country, any act or duty of the same nature as the act or duty to which reference is made in the provisions of this Act in which the expression occurs;—
and includes a consular officer of New Zealand in any other country:

“Reward”,—
(a) In the definition of the term “employer” in this section and in the definition of the term “seafarer” in this section, and in section 125 (1) of this Act, means any remuneration, recompense, or other payment for service (whether of money or money’s worth):
(b) In the definition of the term “pleasure craft” in this section,—

(i) Includes the payment (whether of money or money’s worth and whether directly or indirectly), to or for the benefit of the owner or master of a ship, of a contribution towards the expenses of a voyage by or on behalf of persons, or the owners of cargo, carried on board the ship during the voyage; but

(ii) Does not include the payment of any such contributions exclusively by part owners of the ship or by persons engaged as bona fide crew members:

“Rules” includes maritime rules and marine protection rules:

“Safety equipment” means any equipment carried on a ship for the health or safety of any person during the normal operation and working of the ship or for fire or the abandonment of the ship or other emergency; and includes anchors and chain cables:

“Seafarer”—

(a) Means any person who—

(i) Is employed or engaged on any ship in any capacity for hire or reward; or

(ii) Works on any ship for gain or reward otherwise than under a contract of employment; but

(b) Does not include a pilot or any person temporarily employed on a ship while it is in port:

“Seaplane” includes a flying boat and any other aircraft designed to manoeuvre on the water:

“Serious harm” means—

(a) Death; or

(b) Harm of a kind or description referred to in the First Schedule to the Health and Safety in Employment Act 1992; or

(c) Harm of a kind or description declared by the Governor-General by Order in Council to be serious for the purposes of the Health and Safety in Employment Act 1992;—

and “seriously harmed” has a corresponding meaning:
“Ship” means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—
(a) A barge, lighter, or other like vessel:
(b) A hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates:
(c) A submarine or other submersible:
“Significant hazard” means a hazard that is an actual or potential cause or source of—
(a) Serious harm; or
(b) Harm (being harm that is more than trivial) the severity of whose effects on any person depends (entirely or among other things) on the extent or frequency of the person’s exposure to the hazard; or
(c) Harm that does not usually occur, or usually is not easily detectable, until a significant time after exposure to the hazard:
“System”, in relation to a ship, means any system incorporated in the ship which contributes to the safe navigation and working of the ship during normal operation or is required in the event of any emergency:
“Territorial sea of New Zealand” or “territorial sea” means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977:
“Tonnage measurement” means measurement of a ship in accordance with the requirements of maritime rules:
“Unit of account” means one special drawing right as defined by the International Monetary Fund, the calculation of which, in New Zealand currency, is in accordance with section 88 of this Act:
“Voyage” means a journey by water from one port—
(a) To another port; or
(b) Back to the same port without calling at any other port:
“Warship”—
(a) Means a ship belonging to the armed forces of a State and bearing the external marks distinguishing the nationality of ships of that State, being a ship—
(i) Under the command of an officer duly commissioned by the Government of that State whose name appears in the
appropriate service list or its equivalent; and

(ii) Crewed by crew subject to regular armed forces discipline; and

(b) Includes any ship requisitioned under section 10 of the Defence Act 1990; but

(c) Does not include any ship operated by the New Zealand Defence Force that operates, for the time being, for a commercial purpose.

(2) The Governor-General may from time to time, by Order in Council, declare—

(a) That any specified international convention relating to maritime transport, to which New Zealand is a party, shall be a convention for the purposes of this Part and Parts II to XV of this Act, or such of them (or their provisions) as may be specified in the order:

(b) That any specified amendment to any such convention shall form part of that convention for any such purposes.

Cf. 1952, No. 49, s. 2; 1987, No. 184, s. 2 (1)

3. Act to bind the Crown—Except as provided in section 4 of this Act, this Act shall bind the Crown.

Cf. 1952, No. 49, s. 3; 1987, No. 184, s. 3

4. Application of this Act—(1) Except as otherwise provided in this Act, or in any regulations or rules made under this Act, nothing in this Act, or any regulations or rules made under this Act, shall apply to—

(a) Warships of the New Zealand Defence Force; or

(b) Warships of any other State; or

(c) Aircraft of the New Zealand Defence Force; or

(d) Aircraft of the defence forces of any other State; or

(e) Any ship owned or operated by a State other than New Zealand, if the ship is being used by that State for wholly governmental (but not including commercial) purposes; or

(f) The master or the crew of any ship referred to in paragraph (a) or paragraph (b) or paragraph (e) of this section; or

(g) Defence areas as defined in section 2 of the Defence Act 1990.

(2) The provisions of sections 344 to 352, 361, and 368 of this Act shall apply to warships of the New Zealand Defence Force and, for the purposes of determining any liability under any of
those provisions in respect of any act or omission involving such a warship, any provision of this Act, the Resource Management Act 1991, or any other enactment referred to in those provisions shall be deemed to apply to such warships.

(3) Where it is alleged that the Crown has contravened a provision of this Act, or any rules or regulations made under this Act, and such contravention constitutes an offence,—

(a) Any person may apply to the High Court for a declaration that the Crown has contravened that provision; and

(b) If satisfied beyond reasonable doubt that the Crown has contravened that provision, the Court may make a declaration to that effect.

5. Functions of Minister—(1) The principal functions of the Minister under this Act shall be—

(a) To promote maritime safety at a reasonable cost:

(b) To ensure New Zealand’s obligations under the Conventions are implemented and to administer New Zealand’s participation in them:

(c) To ensure New Zealand’s preparedness for, and ability to respond to, marine oil pollution spills at a reasonable cost:

(d) To promote compliance with marine pollution prevention standards in the maritime transport system at a reasonable cost.

(2) For the purposes of subsection (1) of this section, a cost is a reasonable cost where the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation.

Cf. 1990, No. 98, s. 14

PART II

DUTIES RELATING TO HEALTH AND SAFETY ON SHIPS

Duties of Employers Relating to Health and Safety of Seafarers

6. Employers to ensure safety of seafarers—Every employer of seafarers on a New Zealand ship shall take all practicable steps to ensure the safety of the seafarers while on the ship; and in particular shall take all practicable steps to—

(a) Provide and maintain for seafarers a safe and seaworthy ship and a safe working environment on the ship; and

(b) Provide and maintain for seafarers on the ship facilities for their safety and health; and

(c) Ensure that plant used by any seafarer on the ship is so arranged, designed, made, and maintained that it is safe for the seafarer to use; and
(d) Ensure that while on the ship the seafarers are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working, or use of things—

(i) On the ship; or

(ii) Near the ship and under the employer’s control; and

(e) Develop procedures for dealing with emergencies that may arise while seafarers are on the ship.

Cf. 1992, No. 96, s. 6

Duties of Employers in Relation to Hazards

7. Identification of hazards to seafarers—(1) Every employer of seafarers on a New Zealand ship shall ensure that there are in place effective methods for—

(a) Systematically identifying to seafarers existing hazards on the ship; and

(b) Systematically identifying to seafarers (if possible before, and otherwise as, they arise) new hazards on the ship; and

(c) Regularly assessing each hazard identified, and determining whether or not it is a significant hazard.

(2) Where there occurs any mishap, or harm in respect of which an employer is required by section 30 of this Act to record particulars, the employer of seafarers on a New Zealand ship shall take all practicable steps to ensure that the occurrence is so investigated as to determine whether it was caused by or arose from a significant hazard.

Cf. 1992, No. 96, s. 7

8. Significant hazards to seafarers to be eliminated where practicable—Where there is a significant hazard to seafarers on a New Zealand ship, the employer shall take all practicable steps to eliminate it.

Cf. 1992, No. 96, s. 8

9. Significant hazards to seafarers to be isolated where elimination impracticable—Where—

(a) There is a significant hazard to seafarers on a New Zealand ship; and

(b) Either—

(i) There are no practicable steps that may be taken to eliminate it; or
(ii) All practicable steps to eliminate it have been taken, but it has not been eliminated,—
the employer shall take all practicable steps to isolate it from the seafarers.

Cf. 1992, No. 98, s. 9

10. Significant hazards to seafarers to be minimised, and seafarers to be protected, where elimination and isolation impracticable—(1) Where—
(a) There is a significant hazard to seafarers on a New Zealand ship; and
(b) Either—
   (i) There are no practicable steps that may be taken to eliminate it; or
   (ii) All practicable steps to eliminate it have been taken, but it has not been eliminated; and
(c) Either—
   (i) There are no practicable steps that may be taken to isolate it from the seafarers; or
   (ii) All practicable steps to isolate it from the seafarers have been taken, but it has not been isolated,—
the employer shall take the steps set out in subsection (2) of this section.

(2) The steps are—
(a) To take all practicable steps to minimise the likelihood that the hazard will be a cause or source of harm to the seafarers; and
(b) To ensure that there is provided for, accessible to, and used by the seafarers suitable clothing and equipment to protect them from any harm that may be caused by or may arise out of the hazard; and
(c) To monitor the seafarers’ exposure to the hazard; and
(d) To take all practicable steps to obtain the seafarers’ consent to the monitoring of their health in relation to the hazard; and
(e) With their informed consent, to monitor the seafarers’ health in relation to exposure to the hazard.

Cf. 1992, No. 96, s. 10

Duties of Employers in Relation to Information

11. Employees to be given results of monitoring—
(1) This section applies to the results of any monitoring of any
ship or any seafarer on a New Zealand ship, if it was undertaken in compliance with this Act; and—

(a) If the monitoring was undertaken by or on behalf of an employer; or

(b) If—

(i) The monitoring was undertaken by or on behalf of a department (within the meaning of the State Sector Act 1988) or the Authority; and

(ii) The results have been given to an employer.

(2) Subject to subsection (3) of this section, every employer of seafarers on New Zealand ships shall ensure that—

(a) Every seafarer is given all results to which this section applies of monitoring of the seafarer (whether as an individual or as one of a number of employees) in relation to health or safety; and

(b) All seafarers who ask for them are given all results to which this section applies of general monitoring of—

(i) Conditions in the seafarer's ship; or

(ii) The health or safety of seafarers there.

(3) Every employer of seafarers on New Zealand ships shall ensure that—

(a) There are omitted from all results to which this section applies given to any individual seafarer all information that identifies, or discloses anything about, any other individual seafarer; and

(b) There are omitted from all results to which this section applies given to any group of seafarers all information that identifies, or discloses anything about, any seafarer.

Cf. 1992, No. 96, s. 11

12. Information for seafarers generally—Every employer shall ensure that every seafarer who is on board or who does work of any kind, or uses plant of any kind, or deals with a substance of any kind, on a New Zealand ship has been given, in such a form and manner that the seafarer is reasonably likely to understand it, information about—

(a) What to do if an emergency arises while the seafarer is on board, or while doing work of that kind, using plant of that kind, or dealing with substances of that kind, on that ship; and

(b) All identified hazards to which the employee is or may be exposed while on board, or while doing work of that kind, using plant of that kind, or dealing with substances of that kind, on that ship, and the steps to
be taken to minimise the likelihood that the hazards will be a cause or source of harm to the seafarer; and

(c) All identified hazards the seafarer will or may create while on board, or while doing work of that kind, using plant of that kind, or dealing with substances of that kind, on that ship, and the steps to be taken to minimise the likelihood that the hazards will be a cause or source of harm to other people; and

(d) Where all necessary safety clothing, devices, equipment, and materials are kept.

Cf. 1992, No. 96, s. 12

**Duties of Employers in Relation to Training and Supervision**

13. **Training and supervision**—Every employer of seafarers on a New Zealand ship shall take all practicable steps to ensure that every seafarer who does work of any kind, or uses plant of any kind, or deals with a substance of any kind, on the ship—

(a) Either—

(i) Has; or

(ii) Is so supervised, by a person who has— such knowledge and experience of maritime matters, and work, plant, or substances of that kind, as to ensure that the performance of the work, use of the plant, or dealing with the substance by the seafarer, is not likely to cause harm to the seafarer or to any other person; and

(b) Is adequately trained in the safe use of all plant, objects, substances, and protective clothing and equipment that the seafarer is or may be required to use or handle.

Cf. 1992, No. 96, s. 13

14. **Seafarers to be involved in development of health and safety procedures**—Every employer of seafarers on a New Zealand ship shall ensure that all seafarers employed by that employer have the opportunity to be fully involved in the development of procedures developed for the purposes of—

(a) Complying with sections 7 to 10 of this Act; or

(b) Dealing with or reacting to emergencies or imminent dangers.

Cf. 1992, No. 96, s. 14
15. Duties of employers in respect of persons who are not seafarers—Every employer of seafarers on a New Zealand ship shall take all practicable steps to ensure that no action or inaction of any seafarer while on the ship harms any other person.

Cf. 1992, No. 96, s. 15

16. Duties of seafarers—Every seafarer on a New Zealand ship shall take all practicable steps to ensure—
(a) The seafarer’s safety while on the ship; and
(b) That no action or inaction of the seafarer while on the ship causes harm to any other person.

Cf. 1992, No. 96, s. 19

PART III
DUTIES IN RELATION TO MARITIME ACTIVITY

General Duties

17. General requirements for participants in maritime system—(1) Every person who does anything for which a maritime document is required (in the succeeding provisions of this section called a participant) shall ensure that the appropriate maritime documents and all the necessary qualifications and other documents are held by that person.

(2) Every participant shall comply with this Act, regulations made under this Act, maritime rules, and the conditions attached to the relevant maritime documents.

(3) Every participant shall ensure that the activities or functions for which the maritime document has been granted are carried out by the participant, and by all persons for whom the participant is responsible, safely and in accordance with the relevant prescribed safety standards and practices.

(4) Every participant—
(a) Shall, if so required by maritime rules, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the document; and
(b) Shall provide training and supervision to all employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and to promote safety; and
(c) Shall provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

Cf. 1990, No. 98, s. 12; 1991, No. 116, s. 3

18. General requirements for persons other than participants—Every person, other than a participant (within the meaning of section 17 of this Act), who—

(a) Operates any ship; or

(b) Is responsible for any maritime product; or

(c) Is otherwise engaged in any maritime activity—shall comply with the relevant provisions of this Act and any relevant rules.

19. Duties of master—(1) The master of a ship shall—

(a) Be responsible for the safe operation of the ship on a voyage, the safety and wellbeing of all passengers and crew, and the safety of cargo carried; and

(b) Have final authority to control the ship while in command and for the maintenance of discipline by all persons on board; and

(c) Be responsible for compliance with all relevant requirements of this Act and regulations and maritime rules made under this Act, except in an emergency when, in the interests of safety, immediate action in breach of this Act or of regulations or maritime rules made under this Act is necessary; and

(d) Where an emergency requires that in the interests of safety an action is necessary that breaches this Act, or regulations or maritime rules made under this Act, as soon as practicable, notify the Director of the action and the circumstances which necessitated it and, if requested by the Director, provide to the Director a written report in respect of the action.

(2) For the purposes of subsection (1) (c) of this section, a breach of any prescribed requirement is permitted only if—

(a) The emergency involves a danger to life or property; and

(b) The extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and

(c) There is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
(d) The degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.

(3) Nothing in subsection (1) (c) of this section permits—

(a) The breach of any prescribed requirement as to the seaworthiness of a ship; or

(b) The operation of a ship by a person who does not hold the appropriate maritime document; or

(c) The operation of a ship by a person who does not have authority to operate that ship.

(4) Every master commits an offence and is liable to a fine not exceeding $5,000 who, without reasonable excuse, fails to comply with subsection (1) (d) of this section.

Cf. 1990, No. 98, s. 13

20. Duty to report dismissals—(1) The employer of any seafarer on a New Zealand ship shall report to the Director any dismissal from employment of a seafarer that is a dismissal related to violence, alcohol, the use, supply, or possession of controlled drugs (as defined in the Misuse of Drugs Act 1975), or the misuse of prescription medicines (as defined in the Medicines Act 1981).

(2) The Director shall not release the name of any person reported under subsection (1) of this section unless the person's name appears on a list maintained under section 52 (4) of this Act; and any release of such a name shall be made only to the extent provided for in section 52 (4) of this Act.

21. Pleasure craft departing for overseas—(1) No master of a pleasure craft shall permit that pleasure craft to depart from any port in New Zealand for any place outside New Zealand unless—

(a) The Director has been notified in writing of the proposed voyage and the full name of the person who is in command of the pleasure craft; and

(b) The Director is satisfied that the pleasure craft and its safety equipment are adequate for the voyage; and

(c) The Director is satisfied that the pleasure craft is adequately crewed for the voyage; and

(d) The pleasure craft and the master comply with any relevant maritime rules.

(2) No pleasure craft shall be entitled to a certificate of clearance to depart from any port in New Zealand under the
Customs Act 1966 unless subsection (1) of this section has been satisfied.

Cf. 1952, No. 49, s. 308; 1987, No. 184, s. 14

**Duties in Relation to Crewing**

**22. Employer's duties in relation to seafarers of New Zealand ships on overseas voyages**—(1) Every employer of a seafarer on any New Zealand ship, other than a pleasure craft, going on an overseas voyage shall,—

(a) Prior to the departure of the ship,—

(i) Enter into articles of agreement, in a form approved by the Director as meeting the requirements of the relevant convention and subsection (2) of this section, with every seafarer (except the master), in relation to the voyage; and

(ii) Post the articles of agreement up in a place on the ship easily accessible from the seafarer's quarters; and

(b) Ensure that any termination of a period of employment of a seafarer is by notice in writing; and

(c) Make provision on termination of the voyage, or where the seafarer has been left behind by the ship by reason of—

(i) Injury sustained during his or her employment on the ship; or

(ii) Shipwreck; or

(iii) Illness, which is not due to the seafarer's own wilful act or default; or

(iv) Discharge for any cause for which the seafarer cannot be held responsible,—

to return each seafarer to his or her own country, or to the port where that seafarer was employed, or to the port where the voyage commenced, or to such other place (if any) as may be agreed between the employer and the seafarer; and an employer of a seafarer shall be deemed to have made adequate provision under this paragraph if the seafarer has been provided with suitable employment on board a vessel proceeding to one of the foregoing destinations; and

(d) Provide to the seafarer, if requested by the seafarer, a certificate as to the quality of the seafarer's work and whether the seafarer has fully discharged his or her
obligations under any articles of agreement with the employer.

(2) The articles of agreement shall include a statement that the agreement shall be terminated by—

(a) Mutual consent of the employer and the seafarer; or

(b) Death of the seafarer; or

(c) Loss or total unseaworthiness of the ship.

(3) A seafarer on a New Zealand ship may recover from the seafarer’s employer, or any agent of the employer, the reasonable expenses incurred by the seafarer in returning to his or her own country, or to the port where the crew member was employed, if the employer of that seafarer does not comply with the employer’s obligations under subsection (1) (c) of this section.

(4) For the purposes of this section,—

“Overseas voyage” means a voyage to a port outside New Zealand:

“Reasonable expenses” means all reasonable transportation charges, accommodation, and food expenses, in respect of the period commencing when the seafarer was left behind and ending with the end of the return journey; and includes maintenance in respect of the period commencing when the seafarer was left behind and ending with the time fixed for the seafarer’s return journey departure.

23. Employer’s duties in relation to seafarers on New Zealand ships—(1) Every employer of seafarers on a New Zealand ship shall—

(a) Provide food and water supplies which, having regard to the size of the crew and the duration and nature of the voyage, are suitable in respect of quantity, nutritive value, quality, and variety; and

(b) Ensure that any seafarer requiring medical attention while overseas receives all necessary medical attention at the employer’s expense; and

(c) In the event of the loss or foundering of the ship, pay to every seafarer wages at the normal rate until—

(i) The seafarer is otherwise employed; or

(ii) The expiry of 2 months from the date of the loss or foundering,—

whichever first occurs; and

(d) Maintain a record (in a form prescribed or in a form approved by the Director) of the employment on board a New Zealand ship of every seafarer employed
on that ship by that employer and provide to a seafarer, if requested by that seafarer, a copy of the record applying to that seafarer.

(2) Any wages payable under subsection (1) of this section shall be recoverable in the same manner as wages earned by the seafarer during his or her normal employment.

24. Inspection of provisions—Without limiting section 54 of this Act, the Director shall, upon receipt of a written complaint from not less than half the crew of a New Zealand ship, carry out such inspections and audits under that section as he or she considers appropriate to ascertain compliance with section 23 (1) (a) of this Act.

25. Body and effects of deceased seafarer—(1) Subject to subsection (2) of this section, every employer of seafarers on a New Zealand ship shall make suitable arrangements for the body and effects of any seafarer who dies in the course of a voyage, which may include the return of the body to the deceased’s next of kin or the burial or cremation of that body.

(2) The employer shall endeavour to ascertain the reasonable wishes of the deceased’s next of kin and shall, where practicable, comply with those wishes.

Cf. 1952, No. 49, s. 106 (2)

26. Provisions relating to crewing of New Zealand ships and young persons—(1) Every employer of seafarers on a New Zealand ship shall keep a register of all persons under the age of 18 years who are employed on that ship and the register shall include the date of birth of each such person.

(2) No person shall employ on any New Zealand ship—

(a) Any person of an age that requires that person to be enrolled at a school; or

(b) Any person under the age of 18 years as a trimmer or stoker.

(3) Notwithstanding subsection (2) of this section, where an employer has not been able, after taking all reasonable steps, to obtain a person over 18 years of age as a trimmer or stoker in a port, the employer may employ on a New Zealand ship a person over the age of 16 years as a trimmer or stoker in that port, but in any such case 2 persons over the age of 16 years shall be employed to do the work which would otherwise have been performed by one person over the age of 18 years.

(4) Nothing in subsection (2) of this section applies to the employment of a person to carry out work on a training ship if
the carrying out of such work by a person of that age is approved by the Director.

Cf. 1952, No. 49, s. 49 (1), (2), (4)

27. Prohibition on receiving remuneration for placing seafarers in employment—(1) No person shall carry on for pecuniary gain, directly or indirectly, any undertaking in relation to the finding of employment for seafarers (other than masters) on any ship nor shall any person charge, directly or indirectly, any fees for finding employment for such seafarers on any ship.

(2) Every person commits an offence and is liable to a fine not exceeding $200 who acts in contravention of subsection (1) of this section.

Cf. 1952, No. 49, s. 48

Liens on Ships by Crew and Masters

28. Members of crew not to contract out of rights—(1) A member of the crew of a ship shall not by any agreement forfeit his or her lien on the ship, or be deprived of any remedy for the recovery of his or her wages, or abandon his or her right to wages in case of the loss of the ship, or abandon any right that he or she may have or obtain in the nature of salvage; and every stipulation in any agreement inconsistent with this subsection shall be void.

(2) Nothing in this section shall apply to a stipulation made by a member of the crew of any ship with respect to the remuneration to be paid to that member of the crew for salvage services to be rendered by that ship if, according to the terms of the agreement, the ship is to be employed on salvage service.

Cf. 1952, No. 49, s. 91

29. Master to have same rights as members of crew—(1) The master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his or her wages as a member of the crew of the ship has under this Act or by any law or custom.

(2) The master of a ship, and every person lawfully acting as master, shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of disbursements and liabilities properly made or incurred by the master on account of the ship as a master has for the recovery of his or her wages.

Cf. 1952, No. 49, s. 100 (1), (2)
Duties in Relation to Accidents, Incidents, Etc.

30. Recording and notification of accidents, incidents, and mishaps—Every employer of seafarers on a New Zealand ship shall maintain (in a form approved by the Director) a register of accidents, incidents, and mishaps; and shall record in the register particulars relating to—
(a) Every accident or incident; and
(b) Every mishap.
Cf. 1992, No. 96, s. 25 (1)

31. Obligation to notify all accidents, incidents, etc.—
(1) The master of—
(a) Any New Zealand ship; or
(b) Any foreign ship in New Zealand waters—
that is involved in a mishap that results in serious harm to a person, an accident, or an incident, shall notify the mishap, accident, or incident to the Authority as soon as practicable.
(2) If, due to injuries or death or for other good reason, the master of a ship referred to in subsection (1) of this section is unable to give the necessary notice under that subsection, the operator of the ship shall provide the necessary notice.
(3) Every person who—
(a) Operates, maintains, or services, or does any other act in respect of any New Zealand ship, any foreign ship in New Zealand waters, or any maritime product; and
(b) Is involved in an accident, incident, or mishap resulting in serious harm, involving a New Zealand ship, or a foreign ship in New Zealand waters—
shall, where required to do so under maritime rules, notify the accident, incident, or mishap to the Authority as soon as practicable.
(4) The co-ordinator of any search and rescue operation for any ship or person missing at sea shall notify the Authority of the operation as soon as practicable.
(5) The Authority may, on being notified under this section, request such additional information in such form as it considers appropriate in each specific case, and the master or operator or person of whom the request is made shall provide the additional information forthwith.
Cf. 1990, No. 98, s. 26

32. Duty to assist persons in danger and to respond to distress calls—(1) The master of a New Zealand ship and the master of a foreign ship in New Zealand waters shall, so far as
the master can do so without serious danger to the ship and persons on board,—

(a) Render assistance to any person found at sea in danger of being lost:

(b) After a collision, render assistance to the other ship, its crew, and its passengers:

(c) After a collision, inform the master of the other ship of the name of his or her own ship, its port of registry, and the nearest port at which it will call.

(2) On receiving a signal that a ship, aircraft, or survival craft is in distress, the master of a ship referred to in subsection (1) of this section shall—

(a) Proceed with all speed to the assistance of the persons in distress and, if possible, inform them of that fact; and

(b) Comply with any requisition to the master’s ship by the master of the ship in distress by continuing to proceed with all speed to the assistance of persons in distress.

(3) Subsection (2) (a) of this section does not apply if—

(a) The master is unable, or, in the special circumstances of the case, considers it unreasonable or unnecessary, to proceed to the assistance of the persons in distress; or

(b) The master is informed that one or more ships have been requisitioned and are complying with the requisition.

(4) Neither paragraph (a) of subsection (2) of this section nor, if the ship has been requisitioned, paragraph (b) of that subsection, shall apply if the master is informed by the persons in distress or by the master of another ship which has reached the persons that assistance is no longer necessary.

(5) The master of a New Zealand ship that is required to carry a logbook shall enter in the logbook a record of every distress signal received and any reason for failing to go to the assistance of persons in distress in accordance with subsection (3) (a) of this section.

(6) Every person commits an offence who fails to comply with this section and is liable to—

(a) Imprisonment to a term not exceeding 12 months; or

(b) A fine not exceeding $100,000; or

(c) Both.

Cf. 1952, No. 49, ss. 289 (1) (a), (c), 297; 1987, No. 184, s. 14

88. Reporting of dangers to navigation—(1) The master of a New Zealand ship and the master of a foreign ship in New Zealand waters shall report to ships in the vicinity, and the
nearest radio communication station with which it is possible for the ship to communicate, any danger to navigation, including the failure or displacement of any navigational aid.

(2) Every person commits an offence and is liable to a fine not exceeding $10,000 who fails, without reasonable excuse, to comply with this section.

Cf. 1952, No. 49, s. 294; 1987, No. 184, s. 14

PART IV
FURTHER REGULATION OF MARITIME ACTIVITY

Maritime Rules

84. Maritime rules relating to maritime documents—
(1) Maritime rules made under this Part of this Act may require that a maritime document be held by or in respect of all or any of the following:

(a) New Zealand ships:
(b) Foreign ships operating in New Zealand waters:
(c) The owners and operators of, and seafarers on, New Zealand ships or foreign ships operating in New Zealand waters:
(d) Persons or organisations having a direct involvement in ship operations or ship or maritime product safety services:
(e) Maritime products used on, by, or in relation to New Zealand ships or foreign ships operating in New Zealand waters:
(f) Persons or organisations that provide—
   (i) Maritime training; or
   (ii) The testing, inspecting, audit, or certification of ships or maritime products; or
   (iii) The design, manufacture, or maintenance of ships or maritime products:
(g) Shipping operations and management:
(h) Shipping containers:
(i) Navigational aid installations:
(j) Such other persons, ships, maritime products, maritime related services, facilities, and equipment operated in support of the maritime system.

(2) The requirements, standards, and application procedure for each maritime document, and the maximum period for which each document may be issued or recognised, as the case may be, shall be prescribed by maritime rules.

(3) Subject to any maritime rules, a maritime document may be issued or a document may be recognised as a maritime
35. Application for maritime document—(1) Every application for the grant or renewal of a maritime document or the recognition of a document as a maritime document shall be made to the Director in the prescribed form or, if there is no prescribed form, in such form as the Director may require.

(2) Every applicant for a maritime document shall include in his or her application his or her address for service in New Zealand including, where applicable, telephone and facsimile numbers.

(3) It shall be the duty of every holder of a maritime document to maintain the currency of the information provided under subsection (2) of this section by promptly notifying the Director of any changes to the address, telephone number, or facsimile number.

(4) The Director shall ensure that a record of all information provided under this section is maintained at the Maritime Registry.

(5) Service of any notification under this Act on a holder of, or an applicant for, a maritime document shall be effective service if served at the address last provided by that holder or applicant under this section.

Cf. 1990, No. 98, s. 8; 1992, No. 75, s. 5

36. Maritime rules relating to other matters—The Minister may from time to time make maritime rules for all or any of the following purposes:

(a) Classifying ships as to type, nature of service, operating limits, or otherwise:

(b) The implementation of technical standards, codes of practice, performance standards, and other requirements of the conventions:

(c) Prescribing standards and requirements for the design and construction of, or major alteration to, any ship:

(d) Prescribing standards and requirements for the accommodation of seafarers or passengers on any commercial ship:
(e) Prescribing the provision of medical supplies and facilities on any ship, their stowage, maintenance, and periodic inspection, and requiring medical officers on ships:

(f) Prescribing the requirements for the maintenance and periodic inspection or testing of the hull, machinery, and systems of any ship, safety equipment, or any maritime products of any ship:

(g) Prescribing safe navigational and maritime operational and emergency procedures, including such procedures for any seaplane, and any training requirements in respect of such procedures:

(h) Prescribing operational and emergency procedures for the assistance of persons in distress at sea and in respect of collisions:

(i) Prescribing and defining operating limits:

(j) Prescribing standards and requirements for the safe management of commercial shipping operations:

(k) Requiring the recording and retention of operational information and prescribing the details of any reporting that is required by this Act:

(l) Prescribing criteria for determining the maximum number of passengers or persons that may be carried on any ship and for assigning and marking load lines on any ship:

(m) Prescribing standards and requirements for the carriage of any cargoes or for any shipping containers:

(n) Prescribing the minimum number of seafarers to be employed on any commercial ship, their qualifications, and experience:

(o) Prescribing standards, specifications, qualifications, restrictions, and licensing requirements for persons engaged in maritime activities, including any medical requirements and requirements relating to the keeping of records of qualifications, restrictions, and licences:

(p) Prescribing technical standards or requirements relating to the health and safety of seafarers:

(q) Prescribing the format of maritime documents, forms, and applications:

(r) Prescribing the requirements and criteria for determining the tonnage measurement, length, and size of any ship:

(s) Prescribing the criteria and conditions under which foreign licences, permits, certificates, or other
documents will be recognised by the Director under section 41 of this Act:

(t) Prescribing standards and requirements for any maritime product, including any safety equipment for any ship;

(u) Prescribing or providing for such matters as may be necessary—

(i) To enable New Zealand to become a party to any international convention, protocol, or agreement relating to maritime transport:

(ii) To implement such international practices or standards relating to maritime transport as may, from time to time, be recommended by the International Maritime Organisation:

(v) Such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Cf. 1990, No. 98, s. 28

37. Power of Director to make emergency maritime rules—(1) The Director may from time to time make emergency maritime rules for any purpose for which the Minister may make maritime rules under this Part of this Act, if the Director considers that—

(a) Such rules are necessary to alleviate or minimise any risk of the death of or a serious injury to any person, or of damage to any property; and

(b) It is not practicable in the circumstances of the particular case for the Minister to make maritime rules to effectively alleviate or minimise the risk concerned.

(2) The Minister may revoke any emergency maritime rule and the revocation shall be notified as if it were an emergency rule.

Cf. 1990, No. 98, s.31

38. Contravention of emergency maritime rule—(1) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any emergency maritime rule made under section 37 of this Act.

(2) Every person who commits an offence against subsection (1) of this section is liable,—

(a) In the case of an individual, to a fine not exceeding $5,000:
(b) In the case of a body corporate, to a fine not exceeding $30,000.
Cf. 1990, No. 98, s.53

Requirements in Relation to Maritime Rules

39. Matters to be taken into account in making maritime rules—(1) The maritime rules made by the Minister and the emergency maritime rules made by the Director shall not be inconsistent with international standards relating to maritime safety, and the health and welfare of seafarers, to the extent adopted by New Zealand.

(2) In making any maritime rule, the Minister or the Director, as the case may be, shall have regard to, and shall give such weight as he or she considers appropriate in each case to, the following:

(a) The recommended international practices relating to maritime safety and to the health and welfare of seafarers:
(b) The level of risk existing to maritime safety in each proposed activity or service:
(c) The nature of the particular activity or service for which the rule is being established:
(d) The level of risk existing to maritime safety in New Zealand in general:
(e) The need to maintain maritime safety:
(f) The costs of implementing and enforcing maritime safety measures:
(g) The international circumstances in respect of maritime safety:
(h) Such other matters as the Minister or the Director, as the case may be, considers appropriate in the circumstances.

Cf. 1990, No. 98, s. 33

40. Further provisions relating to rules—The provisions of sections 446 to 452 of this Act apply in relation to rules made under this Part of this Act.

PART V
Powers and Duties of Director of Maritime Safety in Relation to Maritime Activity

Powers in Relation to Maritime Documents

41. Issue of maritime documents and recognition of documents—(1) After considering any application under
section 35 of this Act, the Director shall, as soon as practicable, grant the application if he or she is satisfied that—

(a) All things in respect of which the document is sought or, in the case of an application for recognition of a document as a maritime document, all things to which the document relates, meet any relevant prescribed requirements; and

(b) The applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document—

(i) Either hold the relevant prescribed qualifications and experience or hold such qualifications as are acceptable to the Director under subsection (2) of this section; and

(ii) Are fit and proper persons to have such control or hold the document; and

(iii) Meet all other relevant prescribed requirements; and

(c) It is not contrary to the interests of maritime safety for the document to be granted, renewed, or recognised.

(2) For the purpose of granting or renewing a maritime document, or recognising a document as a maritime document, the Director may, subject to any provisions in the maritime rules, recognise such qualifications or certifications as he or she considers appropriate in each case.

(3) In no case shall the Director recognise foreign qualifications or foreign certificates where—

(a) The requirements to gain such qualifications or to obtain such certificates are less than the requirements to gain similar qualifications or to obtain similar certificates in New Zealand; and

(b) The Director believes that to recognise such qualifications or certificates might pose a risk or danger to the safety of any person, to property, or to the marine environment.

(4) Where a licence, permit, certificate, or other document is recognised by the Director under this section, the Director shall either—

(a) Issue an equivalent maritime document under this section; or

(b) Notify in writing such recognition.

(5) It shall be a condition of every current maritime document issued or recognised by the Director that the holder shall continue to satisfy the fit and proper person criteria specified in subsection (1) (b) (ii) of this section.
Where the Director declines to grant an application under section 35 of this Act, the applicant may appeal against that decision to a District Court under section 424 of this Act.

(7) Nothing in this section applies in respect of any ship, crew, or maritime product in respect of which section 42 of this Act applies.

Cf. 1990, No. 98, s. 9; 1992, No. 75, s. 6

42. Acceptance of convention documents—(1) Subject to subsection (2) of this section, the Director shall accept every valid licence, permit, certificate, or other document issued or approved by a State, other than New Zealand, under a convention to which that State and New Zealand are both parties; and, for the purposes of this Act, such documents shall be deemed to be maritime documents.

(2) The Director shall not accept, or shall suspend acceptance of, any documents referred to in subsection (1) of this section where he or she has clear grounds for believing that—

(a) The condition of the ship or maritime product does not correspond substantially with the particulars of any document relating to the ship or maritime product; or

(b) The condition of the ship or maritime product has not been maintained in accordance with the provisions of any requirements leading to the issue of that document; or

(c) The ship is not in all respects fit to proceed to sea without danger to the ship or the persons on board or without presenting an unreasonable threat of harm to the marine environment; or

(d) The ship or maritime product has been materially altered without the sanction of the State that issued or approved the document; or

(e) The document has been fraudulently obtained or the holder of the document is not the person to whom the document was originally issued.

(3) Sections 35, 41, 43 to 51, 68, 69, 73 to 78, 406 (b), and 406 (c) of this Act shall not apply to any document referred to in subsection (1) of this section.

(4) This section applies in respect of—

(a) Every ship, other than a New Zealand ship, registered in a country that is a party to any convention to which New Zealand is also a party:

(b) The crew of every ship referred to in paragraph (a) of this subsection:
(c) The maritime products of every ship referred to in paragraph (a) of this subsection.

48. Suspension of maritime documents or imposition of conditions—(1) The Director may from time to time—

(a) Suspend any maritime document issued by the Director under this Act or under any maritime rules, or impose conditions in respect of any such maritime document; or

(b) Suspend the Director’s recognition as a maritime document of any document issued by another person or any organisation, or impose conditions in respect of such recognition,—

if he or she considers such action necessary in the interests of maritime safety, and if he or she—

(c) Is satisfied that the holder has failed to comply with any conditions of the relevant maritime document or with the requirements of section 17 of this Act; or

(d) Is satisfied the holder has contravened or failed to comply with section 406 of this Act; or

(e) Is satisfied such action is necessary to ensure compliance with any provisions of Parts I to XV of this Act or any regulations or maritime rules made under this Act; or

(f) Considers that the privileges or duties for which the document has been granted, or the relevant document has been recognised as a maritime document, are being carried out by the holder in a careless or incompetent manner.

(2) Without limiting the general provisions of subsection (1) of this section, the Director may suspend any maritime document, or the recognition of any document as a maritime document, relating to the use of any ship, or maritime product, or impose conditions in respect of any such document, if he or she considers that there is reasonable doubt as to the seaworthiness of the ship or as to the quality or safety of the maritime product to which the document relates.

(3) The suspension of any maritime document, or the suspension of recognition of any document as a maritime document, or the imposition of conditions in respect of any such document, by the Director, shall remain in force until the Director has determined, after due investigation, the action to be taken in respect of the causes requiring the suspension or imposition of conditions, but the duration of any such suspension or conditions shall not exceed 14 days unless the
Director directs that a further specified period is necessary for the purposes of the investigation.

(4) If, after investigation, the Director considers such action to be warranted, he or she may suspend for a further period the maritime document, or the recognition of a document as a maritime document, or impose further conditions, and he or she shall cause the appropriate endorsement to be made on the maritime document concerned (if the document has been issued in accordance with this Act or maritime rules) or on the notification of recognition, as the case may require.

(5) Where a maritime document or recognition of a document as a maritime document has been suspended or a maritime document has been made subject to conditions under this section, the holder shall forthwith produce that document or notification of recognition of that document to the Director for appropriate endorsement.

(6) The whole or any part of a maritime document, or the recognition of the whole or any part of a document recognised as a maritime document, may be suspended under this section.

(7) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 424 of this Act.

Cf. 1990, No. 98, s. 17; 1992, No. 75, s. 11

44. Revocation of maritime documents—(1) If, after an investigation under section 43 of this Act, the Director believes that any relevant maritime document or the recognition of a document as a maritime document should be revoked, the Director may revoke that document or the recognition of that document.

(2) Where the Director proposes to revoke a maritime document or the recognition of a document as a maritime document, the Director shall give notice in accordance with section 51 of this Act, which shall apply as if the proposed revocation were a proposed adverse decision under this Act.

(3) Where a maritime document or recognition of a document as a maritime document has been revoked under this section, the holder shall forthwith surrender that document or notification of recognition of that document to the Director.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 424 of this Act.

Cf. 1990, No. 98, s. 18; 1992, No. 75, s. 12
45. Amendment or revocation in other cases—(1) The Director may,—

(a) If so requested in writing by the holder of any maritime document issued by the Director, amend or revoke the document as requested:

(b) Amend any maritime document issued by the Director to correct any clerical error or obvious mistake on the face of the document.

(2) Subject to subsection (3) of this section, the Director may do any of the following:

(a) Amend any maritime document issued by the Director to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder:

(b) Revoke any maritime document issued by the Director, or revoke the recognition of any document as a maritime document, if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder.

(3) Before taking any action under subsection (2) of this section, the Director shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

(4) The power to amend a maritime document under this section includes—

(a) Power to revoke the document and issue a new document in its place; and

(b) Power to impose reasonable conditions.

(5) When the holder of a maritime document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Director.

Cf. 1990, No. 98, s. 20

46. Suspension or revocation of maritime document where prescribed fees or charges unpaid—(1) Where any fee or charge payable under this Act or any regulations made under this Act is not paid by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the maritime document, or suspend recognition of the document as a maritime document, to which the unpaid fee or charge relates.

(2) Where any fee or charge payable under this Act or any regulations made under this Act is not paid within 6 months
after the date prescribed or fixed for payment of that fee or charge, the Director may revoke the maritime document, or revoke recognition of the document as a maritime document, to which the fee or charge relates.

(3) Before undertaking any action under subsection (1) or subsection (2) of this section, the Director shall notify the holder of that document of—

(a) The Director's intention to act under subsection (1) or subsection (2) of this section; and

(b) The right of appeal available to the holder of that document in the event of the Director taking such action.

(4) Where a maritime document or recognition of a document as a maritime document has been revoked under this section, the holder shall forthwith surrender that document or notification of recognition of that document to the Director.

(5) Where a fee or charge is payable to the Authority or the Director in respect of an application or the provision of a service, the Authority or the Director, as the case may be, may, unless the safety of any person would be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority or the Director, as the case may be, for payment of the fee or charge have been made.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 424 of this Act.

Cf. 1990, No. 98, s. 41; 1992, No. 75, s. 22

47. Exemption—(1) The Director may, if he or she considers it appropriate and upon such conditions as he or she considers appropriate, exempt any person, ship, or maritime product from any specified requirement in any maritime rule.

(2) The Director shall not grant an exemption under subsection (1) of this section unless he or she is satisfied in the circumstances of each case that—

(a) The granting of the exemption will not breach New Zealand's obligations under any convention; and

(b) Either—

(i) The requirement has been substantially complied with and that further compliance is unnecessary; or

(ii) The action taken or provision made in respect of the matter to which the requirement relates is as
effective or more effective than actual compliance with the requirement; or

(iii) The prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

(iv) Events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and

(c) The risk to safety will not be significantly increased by the granting of the exemption.

(3) The number and nature of any exemptions granted under subsection (1) of this section shall be notified as soon as practicable in the Gazette.

(4) Nothing in this section shall apply in any case where any maritime rule specifically provides that no exemptions are to be granted.

Cf. 1990, No. 98, s. 37

48. Powers of Director in relation to examinations, etc.—For the purposes of granting or renewing maritime documents in respect of personnel under this Act, the Director may set, conduct, and administer examinations and tests, and carry out such other functions in relation to such examinations and tests as may be necessary.

Cf. 1990, No. 98, s. 72k; 1992, No. 75, s. 31

49. Criteria for action under section 48 or section 44—

(1) The provisions of this section shall apply for the purpose of determining whether a maritime document, or recognition of a document as a maritime document, should be suspended or made subject to conditions under section 48 or revoked under section 44 of this Act.

(2) Where this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters:

(a) The person's compliance history with transport safety regulatory requirements:

(b) Any conviction for any transport safety offence, whether or not—

(i) The conviction was in a New Zealand Court; or

(ii) The offence was committed before the commencement of this Act:

(c) Any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any maritime rule made under this Act.
(3) The Director shall not be confined to consideration of the matters specified in subsection (2) of this section and may take into account such other matters and evidence as may be relevant.

(4) The Director may—
(a) Seek and receive such information as the Director thinks fit; or
(b) Consider information obtained from any source.

(5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6) of this section, as soon as is practicable, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) of this section shall require the Director to—
(a) Disclose any information the disclosure of which would be likely to endanger the safety of any person; or
(b) Disclose any information before—
   (i) Suspending a maritime document or suspending the recognition of a document as a maritime document; or
   (ii) Imposing conditions in respect of a maritime document under section 43 of this Act.

(7) Where the Director determines not to disclose any information in reliance on subsection (6) of this section,—
(a) The Director shall inform the person of the fact of non-disclosure and that the person may seek a review by an Ombudsman of that non-disclosure pursuant to the Official Information Act 1982; and
(b) The provisions of that Act shall apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld in reliance on section 6 (d) of that Act.

Cf. 1990, No. 98, s. 19

50. Criteria for fit and proper person—(1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, or under the maritime rules, the Director shall, having regard to the degree and nature of the person’s proposed involvement in maritime activities, have regard to, and give such weight as the Director considers appropriate to, the following matters:
(a) The person’s compliance history with transport safety regulatory requirements:
The person’s related experience (if any) within the transport industry:

The person’s knowledge of the applicable maritime regulatory requirements:

Any history of physical or mental health problems or serious behavioural problems:

Any conviction for any transport safety offence or for any offence relating to controlled drugs (as defined in the Misuse of Drugs Act 1975) or relating to any prescription medicine (as defined in the Medicines Act 1981), whether or not—

(i) The conviction was in a New Zealand Court; or

(ii) The offence was committed before the commencement of this Act:

Any conviction for any offence involving violence, or causing danger to any person, or criminal damage, whether or not—

(i) The conviction was in a New Zealand Court; or

(ii) The offence was committed before the commencement of this Act:

Any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any maritime rule.

(2) The Director shall not be confined to consideration of the matters specified in subsection (1) of this section and may take into account such other matters and evidence as may be relevant.

(3) The Director may, for the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act,—

(a) Seek and receive such information (including medical reports) as the Director thinks fit; and

(b) Consider information obtained from any source.

(4) Subsection (1) of this section applies to a body corporate with the following modifications:

(a) Paragraphs (a), (b), (c), (e), (f), and (g) of that subsection shall be read as if they refer to the body corporate and its officers:

(b) Paragraph (d) of that subsection shall be read as if it refers only to the officers of the body corporate.

(5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6) of this section, disclose that information to that person and, in accordance with
section 51 of this Act, give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) of this section shall require the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.

(7) Where the Director determines not to disclose any information in reliance on subsection (6) of this section,—

(a) The Director shall inform the person of the fact of non-disclosure and that the person may seek a review by an Ombudsman of that non-disclosure pursuant to the Official Information Act 1982; and

(b) The provisions of that Act shall apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld in reliance on section 6 (d) of that Act.

Cf. 1990, No. 98, s. 10

51. Notice to persons affected by proposed adverse decisions—(1) In this section, unless the context otherwise requires,—

“Adverse decision” means a decision of the Director to the effect that a person is not a fit and proper person for any purpose under this Act or under the maritime rules:

“Affected document holder”, in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the maritime document:

“Person directly affected”, in relation to any adverse decision, means the person who would be entitled under section 424 of this Act to appeal against that adverse decision:

“Person on the basis of whose character the adverse decision arises”, in relation to any adverse decision made or proposed to be made on the grounds referred to in section 50 of this Act, means the person whom the Director assesses as not being a fit and proper person.

(2) Where the Director proposes to make an adverse decision under this Act in respect of any person, the Director, by notice in writing, shall—

(a) Notify the person directly affected by the proposed decision of the proposed decision; and

(b) Subject to subsection (4) of this section, inform that person of the grounds for the proposed decision; and
(c) Specify a date by which submissions may be made to the Director in respect of the proposed decision, which date shall not be less than 21 days after the date on which the notice is given; and

(d) Where appropriate, specify the date on which the proposed decision will, unless the Director otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given; and

(e) Notify the person of the person’s right of appeal under section 424 of this Act, in the event of the Director proceeding with the proposed decision; and

(f) Specify such other matters as in any particular case may be required by any provision of this or any other Act.

(3) Where the Director gives a notice under subsection (2) of this section, the Director—

(a) Shall also supply a copy of the notice to—
   (i) Any person on the basis of whose character the adverse decision arises, where that person is not the person directly affected by the proposed decision; and
   (ii) Any affected document holder, where the Director considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and

(b) May supply a copy of the notice to any other affected document holder.

(4) No notice or copy of a notice given under this section shall include or be accompanied by any information referred to in section 50 (1) of this Act, except to the extent that—

(a) The notice or copy is supplied to the person to whom the information relates; or

(b) That person consents to the supply of that information to any other person.

(5) Where any notice or copy of a notice is given to any person under this section, the following provisions shall apply:

(a) It shall be the responsibility of that person to ensure that all information that that person wishes to have considered by the Director in relation to the proposed decision is received by the Director within the period specified in the notice under subsection (2) (c) of this section, or within such further period as the Director may allow:

(b) The Director may consider any information supplied by that person after the expiry of the period referred to in paragraph (a) of this subsection, other than information requested by the Director and supplied
by that person within such reasonable time as the Director may specify:

(c) The Director shall consider any submissions made in accordance with paragraph (a) of this subsection, other than information requested by the Director and supplied pursuant to a request referred to in paragraph (b) of this subsection.

(6) After considering the matters referred to in subsection (5) of this section, the Director shall—

(a) Finally determine whether or not to make the proposed adverse decision; and

(b) As soon as practicable thereafter, notify in writing the person directly affected, and any other person of a kind referred to in subsection (3) (a) of this section, of—

(i) The Director's decision and the grounds for the decision; and

(ii) The date on which the decision will take effect; and

(iii) In the case of an adverse decision, the consequences of that decision and any applicable right of appeal (being a right of appeal specified in section 41 (6) or section 43 (7) or section 44 (4) of this Act).

Cf. 1990, No. 98, s. 11; 1992, No. 75, s. 8

**Suspension of Seafarers from Employment**

**52. Suspension from employment**—(1) The Director may suspend from employment on a New Zealand ship any person who is not required by this Act or regulations or rules made under this Act to be in possession of a maritime document, where—

(a) The Director considers such action necessary in the interests of maritime safety; and

(b) Either—

(i) The person is convicted for any offence relating to—

(A) Controlled drugs (as defined in the Misuse of Drugs Act 1975) or any prescription medicine (as defined in the Medicines Act 1981); or

(B) Violence, or causing danger to any person, or criminal damage;—
whether or not the conviction was in a New Zealand Court or the offence was committed before the commencement of this Act; or

(ii) The person has been dismissed from employment, which dismissal is related to violence, alcohol, or the use, supply, or possession of controlled drugs (as defined in the Misuse of Drugs Act 1975) or the misuse of any prescription medicine (as defined in the Medicines Act 1981).

(2) Where the Director proposes to suspend any person under this section, the Director shall give the person notice in accordance with, and shall adopt the procedure set out in, section 51 of this Act, which shall apply as if—

(a) The proposed suspension was a proposed adverse decision under this Act; and

(b) The reference to the person’s right of appeal under section 424 of this Act were a reference to the person’s right of appeal to the Maritime Appeal Authority continued by section 82 of this Act.

(3) The Director may suspend a person under this section for any period the Director thinks fit and may impose such conditions on the re-employment of that person as the Director thinks fit.

(4) The Director shall maintain a list of persons suspended under this section, and employers of seafarers or potential employers of seafarers may ask the Director to ascertain whether a particular person is a suspended person and the Director shall advise that employer or potential employer accordingly.

(5) Any person in respect of whom any decision is taken under this section may appeal against that decision to the Maritime Appeal Authority continued by section 82 of this Act.

53. Suspended persons not to be employed—(1) No person shall employ on board a New Zealand ship, or any ship involved in coastal shipping under section 198 of this Act, a person who has been suspended under section 52 of this Act.

(2) No person who has been suspended under section 52 of this Act shall offer himself or herself for employment on board a New Zealand ship, or any ship involved in coastal shipping under section 198 of this Act.

(3) Every person commits an offence who, without reasonable excuse, contravenes this section.

(4) Every person who commits an offence against subsection (3) of this section is liable,—
(a) In the case of an individual, to a fine not exceeding $5,000:
(b) In the case of a body corporate, to a fine not exceeding $50,000.

**Inspection, Detention, and Rectification**

54. **Inspections and audits**—(1) The Director may in writing require any person who—
(a) Holds a maritime document; or
(b) Operates, maintains, or services, or does any other act in respect of any ship or maritime product,—
to undergo or carry out such inspections and such audits as the Director considers necessary in the interests of maritime safety or the health or safety of seafarers or for the purposes of any provision of any of Parts I to XV of this Act.

(2) The Director may, in respect of any person described in subsection (1) of this section, carry out such inspections and audits as the Director considers necessary in the interests of maritime safety or the health or safety of seafarers.

(3) For the purposes of any inspection or audit carried out in respect of any person under subsection (2) of this section, the Director may, in writing,—
(a) Require from that person such information as the Director considers relevant to the inspection or audit:
(b) Require that person to demonstrate to the Director the familiarity of the master or crew with essential shipboard procedures for the safe operation of the ship:
(c) Require that person to demonstrate to the Director that any operational, maintenance, or servicing procedure in respect of a ship or a maritime product is capable of being carried out in a competent manner.

Cf. 1990, No. 98, s. 15; 1992, No. 75, s. 10

55. **Detention, etc., of ships and maritime products**—
(1) The Director may from time to time do all or any of the following:
(a) Detain any ship or any ship of a particular class:
(b) Seize any maritime product or any maritime product of a particular class:
(c) Prohibit or impose conditions on the use or operation of any ship or any ship of a particular class, or the use of any maritime product or any maritime product of a particular class:
(d) Impose conditions on the release from detention or seizure of the ship or maritime product.

(2) The powers under subsection (1) of this section may be exercised where the Director believes on clear grounds that—
(a) The operation or use of any ship or maritime product or class of ship or maritime product, as the case may be, endangers or is likely to endanger any person or property, or is hazardous to the health or safety of any person; or
(b) The appropriate prescribed maritime document is not for the time being in force in respect of the ship, or the master or any member of the crew of that ship, or the maritime product, as the case may be; or
(c) Any maritime document required by maritime rules in respect of the ship or maritime product, as the case may be, has expired; or
(d) The conditions under which a maritime document in respect of a ship or maritime product was issued or recognised, or the requirements of that document, are not being met; or
(e) The watchkeeping requirements specified for a ship by the State in which the ship is registered are not being met; or
(f) The conditions imposed under paragraph (c) or paragraph (d) of that subsection are not being met.

(3) The powers under subsection (1) of this section may also be exercised where the Director is satisfied, on clear grounds, that the master is not, or crew are not, familiar with essential shipboard procedures for the safe operation of the ship.

(4) Nothing in this section shall permit the Director to detain a ship where that detention would constitute a breach of any convention.

(5) Any detention or seizure under subsection (1) of this section shall be maintained for only such time as is necessary in the interests of maritime safety or the health or safety of any person; but, if ships, maritime products, or parts thereof are required for the purpose of evidence in any prosecution under this Act, those ships, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.

(6) The Director shall, if requested by the owner or the person for the time being in charge of a ship detained or a maritime product seized under subsection (1) of this section, provide in writing to the owner or that person the reasons for the detention or seizure.
(7) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 424 of this Act.

(8) For the purpose of subsection (1) of this section, the Director shall notify any prohibitions or conditions to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.

(9) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any prohibition or condition notified under this section.

(10) Every person who commits an offence against subsection (9) of this section is liable,—

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

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

Cf. 1990, No. 98, s. 21

56. Costs of detention, etc.—(1) Where the Director acts under section 55 of this Act to detain a ship, the provisions of section 462 of this Act shall apply to the costs of and incidental to the detention.

(2) Where the Director acts under section 55 of this Act to seize a maritime product, the Authority may recover from the owner of such maritime product all reasonable costs of and incidental to such seizure.

(3) The Authority is liable to pay to the owner of a ship or a maritime product compensation for any loss resulting from the Director unduly detaining the ship or maintaining the seizure of a maritime product.

(4) The Authority is liable to pay to the owner of a ship or maritime product compensation for any loss resulting from the Director unduly delaying the ship or the use of the maritime product.

(5) Where the Director has taken action under section 55 of this Act on the information of a complainant and the information is subsequently found to be frivolous or vexatious, the complainant is liable to indemnify the Authority for all costs for which the Authority is liable under this section.

Cf. 1952, No. 49, s. 306; 1987, No. 184, s. 14
Investigation of Accidents, Incidents, and Mishaps

57. Investigation of accidents, incidents, and mishaps by Director—(1) Where an accident, incident, or mishap occurs that is required to be notified to the Authority under section 31 of this Act, the Director may investigate the accident, incident, or mishap.

(2) When an accident, incident, or mishap is under investigation by the Director, the Director shall be in charge of that investigation.

(3) The Director shall permit the participation or representation of foreign states in any investigation in which they have an interest.

(4) Except with the consent of the Director, which consent shall not be unreasonably withheld, no person (other than the New Zealand Police) shall—

(a) Participate in any investigation if the Director is in charge of the investigation; or

(b) Undertake any independent investigation at the site of any accident, incident, or mishap that the Director is in charge of investigating; or

(c) Examine or cause to be examined any material removed from the site of any accident, incident, or mishap that the Director is in charge of investigating.

(5) Where the Director refuses consent under subsection (4) of this section, he or she shall give the applicant a statement in writing of the reasons for his or her refusal.

(6) Where an accident, incident, or mishap is being investigated by—

(a) The Director; and

(b) Any one or more of the following, namely,—

(i) The Transport Accident Investigation Commission:

(ii) The New Zealand Defence Force:

(iii) A visiting force:

(iv) An inspector or other person under the Health and Safety in Employment Act 1992,—

the Director and the other persons investigating the accident, incident, or mishap shall take all reasonable measures to ensure that the investigations are co-ordinated.

(7) This section is subject to section 14 of the Transport Accident Investigation Commission Act 1990.

Cf. 1990, No. 99, s. 14
58. Powers of investigation of Director—(1) For the purposes of carrying out the functions and duties of the Director under section 57 of this Act, the Director shall have the same powers as are conferred on a Commission of Inquiry by the Commissions of Inquiry Act 1908, and subject to the provisions of this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.

(2) In addition, the Director shall, for the purposes of carrying out such functions and duties, have all such powers as may be conferred on the Director by this Act or any other Act, and as may be reasonably necessary or expedient to enable the Director to carry out his or her functions.

Cf. 1990, No. 99, s. 11

59. Additional powers of investigation—Without limiting the powers conferred by section 58 of this Act, for the purpose of exercising any of the functions, duties, or powers of the Director under this Act, the Director and any person authorised in writing for the purpose by the Director shall, in addition to any other powers conferred by this Act, have power to do the following:

(a) Where 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 ship, place, maritime product, or any other thing involved in any manner in an accident, incident, or mishap, to prohibit or restrict access of persons or classes of persons to the site of any accident, incident, or mishap:

(b) To seize, detain, remove, preserve, protect, or test any ship, maritime product, or any thing that the Director believes on reasonable grounds will assist in establishing the cause of an accident, incident, or mishap.

60. Duty of Director to notify accidents and incidents to Transport Accident Investigation Commission—(1) As soon as practicable after any accident or incident is notified to the Authority under section 31 of this Act, the Director shall notify the Transport Accident Investigation Commission that he or she has been notified of the accident or incident, if it is of any of the following kinds:

(a) An accident or incident involving—

(i) A New Zealand commercial ship; or
(ii) A foreign commercial ship that was in New Zealand waters at the time of the accident or incident:

(b) An accident involving a New Zealand ship where a person is seriously harmed:

(c) An incident involving more than one ship, where at least one ship is a commercial ship and, in the opinion of the Authority, it is likely that the occurrence would have, or will, become an accident:

(d) An accident at the interface of the civil and military maritime systems.

(2) Where the Authority has been notified of a search and rescue operation under section 31 (4) of this Act, the Director shall, if he or she has reasonable cause to believe that the ship involved is included in any of the categories specified in subsection (1) of this section, forthwith notify the Transport Accident Investigation Commission accordingly.

Cf. 1990, No. 98, s. 27

PART VI

OFFENCES IN RELATION TO MARITIME ACTIVITY

Offences Against Health and Safety on Ships

61. Offences likely to cause serious harm—(1) Every person commits an offence where—

(a) The person, knowing that any action is reasonably likely to cause serious harm to any person, takes the action; and

(b) The action is contrary to a provision of Part II of this Act.

(2) Every person commits an offence where—

(a) The person, knowing that failure to take any action is reasonably likely to cause serious harm to any person, fails to take the action; and

(b) The person is required by Part II of this Act to take the action.

(3) Every person who commits an offence against this section is liable to—

(a) Imprisonment for a term not exceeding 12 months; or

(b) A fine not exceeding $100,000; or

(c) Both.

(4) A person charged with an offence against this section may be convicted of an offence against section 62 of this Act as if the person had been charged under that section.

Cf. 1992, No. 96, s. 49
62. Other offences—(1) Every person commits an offence who fails to comply with any provision of Part II of this Act (other than section 14).
(2) Every person who commits an offence against subsection (1) of this section is liable to—
(a) A fine not exceeding $50,000, if the failure caused any person serious harm;
(b) A fine not exceeding $25,000, in any other case.
Cf. 1992, No. 96, s. 50

63. Actions taken to prevent harm—Notwithstanding sections 61 and 62 of this Act, where any seafarer harms any person by taking action necessary for the protection of that person or any other person from harm,—
(a) That seafarer does not thereby contravene section 16 of this Act; and
(b) The seafarer’s employer does not thereby contravene section 15 of this Act.
Cf. 1992, No. 96, s. 51

Safety Offences

64. Unnecessary danger caused by holder of maritime document—(1) Every holder of a maritime document commits an offence who, in respect of any activity or service to which the document relates, does or omits to do any act, or causes or permits any act or omission, if the act or omission causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.
(2) Every person who commits an offence against subsection (1) of this section is liable,—
(a) In the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000;
(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 of this Act.
Cf. 1990, No. 98, s. 43

65. Dangerous activity involving ships or maritime products—(1) Every person commits an offence who—
(a) Operates, maintains, or services; or
(b) Does any other act in respect of—
any ship or maritime product in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.

(2) Every person commits an offence who—
(a) Causes or permits any ship or maritime product to be operated, maintained, or serviced; or
(b) Causes or permits any other act to be done in respect of any ship or maritime product,—

in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.

(3) Every person who commits an offence against subsection (1) or subsection (2) of this section is liable,—

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

Cf. 1990, No. 98, s. 44

66. Effect of breach of maritime rule—(1) Where any person is charged with any offence against section 64 or section 65 of this Act and the Court is satisfied that any act or omission of that person, or caused or permitted by that person, constitutes a breach of a relevant maritime rule, then, in the absence of proof to the contrary, it shall be presumed that the act or omission caused unnecessary danger or risk to another person or to property, irrespective of whether or not in fact any injury or damage occurred.

(2) Nothing in this section shall be construed so as to require the proof of a breach of a maritime rule as an element of any offence described in section 64 or section 65 of this Act.

67. Communicating false information affecting safety—(1) Every person commits an offence who by any means provides to another person information relating to the safety of a ship, maritime product, or any other facility or product used in or connected with maritime activities, or any person associated therewith, knowing the information to be false or in a manner reckless as to whether it is false.

(2) Every person who commits an offence against subsection (1) of this section is liable,—
(a) In the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:

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

(3) Where the commission of an offence against subsection (1) of this section causes financial loss to any person and the Court imposes a fine under subsection (2) of this section in respect of that offence, the Court may order that such part of the fine as it thinks fit, but in any event not more than one-half of the fine, be awarded to that person.

Cf. 1990, No. 98, s. 56

**Offences in Relation to Maritime Document**

68. Acting without necessary maritime document—

(1) Every person commits an offence who—

(a) Operates, maintains, or services; or

(b) Does any other act in respect of—

any ship or maritime product, without holding the appropriate current maritime document.

(2) Every person commits an offence who—

(a) Operates, maintains, or services; or

(b) Does any other act in respect of—

any ship or maritime product knowing that a current maritime document is required to be held in respect of that ship or product before that act may lawfully be done and knowing that the appropriate document is not held.

(3) Every person who commits an offence against subsection (1) or subsection (2) of this section is liable,—

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

(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 of this Act.

Cf. 1990, No. 98, s. 46

69. Applying for maritime document while disqualified—(1) Every person commits an offence who applies for or obtains a maritime document while disqualified by an order of a Court from obtaining such a document and any such document so obtained shall be of no effect.
(2) Every person who commits an offence against subsection (1) of this section is liable,—
   (a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding $2,000;
   (b) In the case of a body corporate, to a fine not exceeding $20,000;—
and the Court may order the person to be disqualified from holding or obtaining a maritime document for such period not exceeding 12 months as the Court thinks fit.

Cf. 1990, No. 98, s. 48

70. Failure to comply with inspection or audit request—(1) Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under subsection (1) or subsection (3) of section 54 of this Act.

(2) Every person who commits an offence against subsection (1) of this section is liable,—
   (a) In the case of an individual, to a fine not exceeding $10,000 and, if the offence is a continuing one, to a further fine not exceeding $2,000 for every day or part of a day during which the offence is continued:
   (b) In the case of a body corporate, to a fine not exceeding $100,000 and, if the offence is a continuing one, to a further fine not exceeding $20,000 for every day or part of a day during which the offence is continued:
   (c) In any case, to an additional penalty under section 409 of this Act:

Cf. 1990, No. 98, s. 44A; 1992, No. 75, s. 23

71. Failure to comply with Part III—(1) Every person commits an offence who, without reasonable excuse, contravenes or fails to comply with any provision of any of sections 20, 21, 22, 23, 25, 30, and 31 of this Act.

(2) Every person who commits an offence against subsection (1) of this section is liable,—
   (a) In the case of an individual, to a fine not exceeding $5,000:
   (b) In the case of a body corporate, to a fine not exceeding $30,000.

(3) Every person commits an offence and is liable to a fine not exceeding $1,000 who, without reasonable excuse,
contravenes or fails to comply with any provision of section 26 of this Act.

Penalties

72. Failure to comply with sections 7 to 10—Where—
(a) Any employer is convicted of failing to comply with any
provision of sections 7 to 10 of this Act; and
(b) The Court is satisfied that the employer has also failed to
ensure that the seafarers employed by that employer
had the opportunity to be fully involved in the
development of procedures developed for the
purpose of complying with the provisions,—
the Court may take the failure referred to in paragraph (b) of
this section into account in determining the penalty to be
imposed.

Cf. 1992, No. 96, s. 52

Disqualification

73. Court may disqualify holder of maritime document
or impose conditions on holding of document—(1) In
addition to any penalty a Court may impose under section 64
or section 65 or section 70 of this Act, the Court, on convicting
any person of an offence against any of those sections, may by
order do all or any of the following, namely,—
(a) Disqualify the person convicted from holding or obtaining
a maritime document, or a particular maritime
document, issued by the Director:
(b) Impose on any maritime document held by or issued to
the person convicted such restrictions or conditions or
both as the Court, having regard to the circumstances
of the offence, thinks fit,—
for such period not exceeding 12 months as the Court thinks
fit.

(2) Nothing in subsection (1) of this section shall affect or
prevent the exercise by the Director of his or her powers under
Part V of this Act.

Cf. 1990, No. 98, s. 45

74. Effect of disqualification—(1) Where the holder of a
maritime document is disqualified by an order of a Court from
holding or obtaining a maritime document, the document shall
be deemed to be suspended while the disqualification continues
in force, and during the period of suspension shall be of no
effect.
(2) Where the holder of a maritime document is disqualified by an order of a Court from holding or obtaining such a document, and the disqualification will expire before the expiration of the term of the document, the document shall, on the expiration of the disqualification, continue to be of no effect until the holder of it undergoes and passes such tests and fulfils such requirements as the Director may from time to time specify.

Cf. 1990, No. 98, s. 59

75. Commencement of period of disqualification—Where an order is made by a Court disqualifying any person for a period from holding or obtaining a maritime document, the period of disqualification shall commence on the date of the making of the order unless the Court making the order directs that the period of disqualification shall commence on a later date.

Cf. 1990, No. 98, s. 60

76. Retention and custody of documents—(1) Where, by an order of a Court, the holder of a maritime document is disqualified from holding or obtaining a document, the person in respect of whom the order is made shall forthwith, and whether or not demand is made, surrender the document to—

(a) The Court where the order was made; or
(b) The Authority.

(2) Where a maritime document is so surrendered, it shall forthwith be forwarded to the Director who shall endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.

(3) If the person entitled to the document is a person to whom section 74 (2) of this Act applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

Cf. 1990, No. 98, s. 61

77. Removal of disqualification—(1) Subject to this section, any person who by order of a Court is disqualified for a period exceeding 6 months from holding or obtaining a maritime document, or is disqualified from being recognised as the holder of a maritime document, may, after the expiration of 6 months after the date on which the order of
disqualification became effective, apply to the Court by which that order was made to remove the disqualification.

(2) On an application under this section, the Court may, having regard to the character of the applicant and the applicant's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, remove the disqualification as from such date as may be specified in the order or refuse the application.

(3) In the case of a disqualification ordered by a District Court, every application under this section shall be made to a District Court Judge exercising jurisdiction in the Court by which the order was made.

(4) Notice of every application under this section shall be served on the Director who shall have a right to appear and be heard in respect of the matter.

Cf. 1990, No. 98, s. 62

78. Particulars of disqualification orders, etc., to be sent to Director—Where a Court makes an order under section 73 or section 77 of this Act, the Registrar of the Court shall send to the Director particulars of the order.

Cf. 1990, No. 98, s. 63

79. Appeals—(1) For the purposes of Part IV of the Summary Proceedings Act 1957, an order of a District Court by which any person is disqualified from holding or obtaining a maritime document shall be deemed to be a sentence or part of a sentence, as the case may be. If a notice of appeal against any such order is filed, the Court may, if it thinks fit, defer the operation of the order pending the appeal, but otherwise the order shall have immediate effect.

(2) Any person whose application under section 77 of this Act to the District Court is refused may appeal against the refusal to the High Court, and in any such case the provisions of Part IV of the Summary Proceedings Act 1957 shall, with the necessary modifications, apply.

(3) Any person whose application under section 77 of this Act to the High Court is refused may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the refusal, and in any such case the provisions of subsections (3) to (5) of section 379A of the Crimes Act 1961 shall, with the necessary modifications, apply as if it were an appeal under that section.

(4) Where application is made to the Court of Appeal for leave to appeal to that Court against a sentence of the High Court that is or includes an order of disqualification, the High
Court may, if it thinks fit, defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.

(5) Where an appeal to the High Court or Court of Appeal is allowed under this section, whether in whole or in part, the Registrar of the High Court shall send notice thereof to the Director who shall have a right to appear and be heard in respect of the matter.

(6) In determining the expiration of the period for which a person is disqualified from holding or obtaining a maritime document, any time during which the operation of the relevant order is deferred under this section shall be disregarded.

Cf. 1990, No. 98, s. 64

Further Provisions Relating to Offences

80. Amendment of indictment or information—In any proceedings for an offence against section 61 or section 62 of this Act, it is enough to state the name or title under which a person who is ostensibly an employer is usually known or appears to carry on business; and the Court may from time to time amend the indictment or information as to the actual name of the defendant.

Cf. 1992, No. 96, s. 55 (3)

81. Strict liability and defences—(1) In any prosecution for an offence of contravening or permitting a contravention of section 62 of this Act, it is not necessary to prove that the defendant intended to commit the offence.

(2) Subject to subsection (3) of this section, it is a defence to prosecution of the kind referred to in subsection (1) of this section, 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; and

(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

(b) That the action or event to which the prosecution relates was due to an event beyond the control of the
defendant, including natural disaster, mechanical failure, or sabotage, and in each case either—

(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.

(3) Except with the leave of the Court, subsection (2) of this section does not apply unless, within 7 days after the service of the summons or within such further time as the Court may allow, the defendant delivers to the prosecutor a written notice—

(a) Stating that he or she intends to rely on subsection (2) of this section; and

(b) Specifying the facts that support his or her reliance on subsection (2) of this section.

Cf. 1991, No. 69, s. 341

Maritime Appeal Authority

82. Continuation of Maritime Appeal Authority—
(1) There shall continue to be an authority called the Maritime Appeal Authority.

(2) The person appointed as the Maritime Appeal Authority under the Shipping and Seamen Act 1952 is hereby appointed as the first Maritime Appeal Authority under this Act.

(3) Every subsequent Maritime Appeal Authority shall be appointed by the Minister after consultation with the Minister of Justice.

(4) The functions of the Maritime Appeal Authority shall be to consider and determine applications made to the Authority pursuant to section 52 of this Act.

(5) In making its determinations the Maritime Appeal Authority shall have regard to the potential effect on the risk to maritime safety of the suspended person being employed as a seafarer.

(6) The provisions of the Second Schedule to this Act shall apply in relation to the office of the Maritime Appeal Authority.

PART VII
LIABILITY OF SHIP OWNERS AND OTHERS

88. Application of this Part—This Part of this Act applies to every ship (whether registered or not and whether a New
Zealand ship or not) in any circumstances in which the High Court has jurisdiction under section 4 of the Admiralty Act 1973.

Cf. 1952, No. 49, s. 458; 1987, No. 184, s. 22 (1)

84. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Limitation of liability” means limitation of the aggregate amount of liability of any one or more persons in accordance with this Part of this Act:

“Owner”, in relation to a ship,—

(a) Means every person who owns the ship or has any interest in the ownership of the ship:

(b) In any case where the ship has been chartered, means the charterer:

(c) In any case where the owner or charterer is not responsible for the navigation and management of the ship, includes every person who is responsible for the navigation and management of the ship:

“Salvage” includes all expenses properly incurred by the salvor in the performance of the salvage services:

“Salvage operations” or “salvage services” includes—

(a) Operations in respect of the raising, removal, destruction, or rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned, or of anything that is or has been on board such a ship:

(b) Operations in respect of the removal, destruction, or rendering harmless of the cargo of a ship:

(c) Measures taken in order to avert or minimise any loss or injury or damage in respect of which liability may be limited in accordance with this Part of this Act:

“Salvor”, in relation to a ship, means every person rendering services directly connected with salvage operations carried out in relation to that ship:

“Ship” means every description of vessel (including barges, lighters, and like vessels) used or intended to be used in navigation, however propelled; and includes any structure (whether completed or not) launched and intended for use as a ship or part of a ship; and also includes any ship used by or set aside for the New Zealand Defence Force.

Cf. 1952, No. 49, s. 459; 1987, No. 184, s. 22 (1)
85. Persons entitled to limitation of liability under this Part—(1) Subject to subsection (2) of this section, the following persons are entitled to limit their liability in accordance with this Part of this Act:

(a) Owners of ships, and any master, seafarer, or other person for whose act, omission, neglect, or default the owner of the ship is responsible:

(b) Salvors, and any employee of a salvor or other person for whose act, omission, neglect, or default the salvor is responsible:

(c) Insurers of liability for claims subject to limitation of liability, to the extent that the person assured is entitled to such limitation.

(2) No person shall be entitled to limitation of liability in respect of claims for loss or injury or damage resulting from that person’s personal act or omission where the act or omission was committed, or omitted, with intent to cause such loss or injury or damage, or recklessly and with knowledge that such loss or injury or damage would probably result.

Cf. 1952, No. 49, s. 460; 1987, No. 184, s. 22 (1)

86. Claims subject to limitation of liability—(1) No person who is entitled to limitation of liability shall be liable for an amount greater than the relevant limit calculated in accordance with section 87 of this Act in respect of claims for loss or injury or damage arising on any distinct occasion, being, in relation to any ship,—

(a) Claims in respect of—

(i) Loss of life or personal injury; or

(ii) Loss of or damage to property (including damage to harbour works, basins and waterways, and aids to navigation),—

where the loss or injury or damage occurs on board the ship or is directly connected with the operation of the ship or with salvage operations, or is consequential upon any such loss or injury or damage; or

(b) Claims in respect of loss or damage resulting from delay in the carriage by sea of cargo, passengers, or luggage; or

(c) Claims in respect of loss or damage resulting from infringement of rights other than contractual rights, where the loss or damage is directly connected with the operation of the ship or salvage operations; or
(d) Claims in respect of the raising, removal, destruction, or rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned, or of anything that is or has been on board such a ship; or
(e) Claims in respect of the removal, destruction, or rendering harmless of the cargo of a ship; or
(f) Claims of a person (other than the person liable) in respect of measures taken in order to avert or minimise any loss or injury or damage for which the person liable is entitled to limitation of liability, including claims for further loss or injury or damage caused by the taking of such measures.

(2) Notwithstanding anything in subsection (1) of this section,—
(a) The following claims shall not be subject to limitation of liability:
   (i) Claims for salvage or contribution in general average;
   (ii) Claims for pollution damage that are subject to Part XXV of this Act;
   (iii) Claims in respect of nuclear damage; and
(b) Claims in respect of the matters specified in paragraphs (d), (e), and (f) of that subsection shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

(3) The limitation of liability under this Part of this Act—
(a) Applies to the aggregate of relevant claims arising on any distinct occasion—
   (i) Against the owner of the ship, and any seafarer or other person for whose act, omission, neglect, or default the owner is responsible; or
   (ii) Against the owner of a ship rendering salvage services, and the salvor operating from that ship, and any employee of the salvor or other person for whose act, omission, neglect, or default that owner or salvor is responsible; or
   (iii) Against a salvor who is not operating from a ship, or is operating solely on the ship to or in respect of which the salvage services are rendered, and any employee of the salvor or other person for whose act, omission, neglect, or default the salvor is responsible; and
(b) Relates to all relevant claims for loss or injury or damage arising on any distinct occasion, whether or not the
loss or injury or damage is sustained by more than one person; and

c) Applies in respect of each distinct occasion, without regard to any liability arising on any other distinct occasion; and

d) Applies, subject to subsection (4) of this section, whether the liability arises at common law or under any other enactment, and notwithstanding anything in any other enactment.

(4) This section shall not limit or affect section 110 of this Act, or section 208 of the Harbours Act 1950, or anything in the Accident Rehabilitation and Compensation Insurance Act 1992 or Parts XVIII to XXVI of this Act or the Carriage of Goods Act 1979.

Cf. 1952, No. 49, s. 461; 1987, No. 184, s. 22 (1)

87. Calculation of limits of liability—(1) Subject to subsection (4) of this section, the limit of liability for the purposes of this Part of this Act in respect of claims for loss of life or personal injury (other than claims specified in subsection (2) of this section) shall be as follows:

(a) In the case of a ship of not more than 300 gross tons, 166,677 units of account;

(b) In the case of a ship of more than 300 gross tons, but not more than 500 gross tons, 333,000 units of account;

(c) In the case of a ship of more than 500 gross tons, 333,000 units of account plus a further number of units of account calculated as follows:

(i) For each gross ton of the ship from 501 to 3,000 tons, 500 units of account; and

(ii) For each gross ton of the ship from 3,001 to 30,000 tons, 333 units of account; and

(iii) For each gross ton of the ship from 30,001 to 70,000 tons, 250 units of account; and

(iv) For each gross ton of the ship in excess of 70,000 tons, 167 units of account.

(2) The limit of liability of the owner of a ship (including any person for whom that owner is responsible) in respect of claims for the loss of life of, or injury to, passengers of that ship, shall be 46,666 units of account multiplied by the number of passengers which the ship is authorised to carry, up to a maximum limit of 25,000,000 units of account.

(3) The limit of liability in respect of any claim other than a claim for which a limit is set under subsection (1) or subsection (2) of this section shall be—
(a) In the case of a ship of not more than 300 gross tons, 83,333 units of account:

(b) In the case of a ship of more than 300 gross tons, but not more than 500 gross tons, 167,000 units of account:

(c) In the case of a ship of more than 500 gross tons, 167,000 units of account plus a further number of units of account calculated as follows:

(i) For each gross ton of the ship from 501 to 30,000 tons, 167 units of account; and

(ii) For each gross ton of the ship from 30,001 to 70,000 tons, 125 units of account; and

(iii) For each gross ton of the ship in excess of 70,000 tons, 83 units of account.

(4) Where the amount available under the limit of liability calculated in accordance with subsection (1) of this section is insufficient to pay all relevant claims under that subsection in full,—

(a) The amount available under the limit calculated in accordance with subsection (3) of this section shall also be available for payment of the unpaid balance of any such claims; and

(b) That unpaid balance shall rank rateably with claims under subsection (3) of this section.

(5) For the purposes of this section,—

(a) The limits of liability for any salvor not operating from any ship, or for any salvor operating solely on the ship to or in respect of which the salvor is rendering salvage services, shall be calculated as if the salvor were operating from a ship of 1,500 gross tons:

(b) The tonnage of a ship shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships 1969, and regulations and maritime rules made under this Act:

(c) Where the gross tonnage of a ship is unable to be ascertained,—

(i) The Director, on receiving from or by the direction of the Court hearing the case in which the tonnage of the ship is in question such evidence of the dimensions of the ship as is available, shall estimate what the gross tonnage of the ship would have been if the ship had been duly measured in accordance with the relevant tonnage measurement rules, and give a
certificate of the tonnage as estimated by the Director; and

(ii) The tonnage so estimated shall be taken to be the gross tonnage of the ship:

(d) The reference in subsection (2) of this section to claims for the loss of life of, or personal injury to, passengers of a ship refers to claims brought by, through, or on behalf of any person carried in that ship—

(i) Under a contract of passenger carriage; or

(ii) Who, with the consent of the carrier, was accompanying a vehicle or live animals carried under a contract for the carriage of goods.

Cf. 1952, No. 49, s. 462; 1987, No. 184, s. 22 (1)

88. Units of account—(1) For the purposes of determining the monetary value of the number of units of account calculated in any case to be the relevant limit of liability under this Act,—

(a) The units of account shall be converted to their monetary value according to the value of the New Zealand currency at the date on which the limitation fund is constituted, or payment is made on the claims, or satisfactory security for any such payment is given; and

(b) The value of the New Zealand currency in terms of the special drawing right shall be treated as equal to such a sum in New Zealand currency as is fixed by the International Monetary Fund as being the equivalent of one special drawing right for—

(i) The relevant date; or

(ii) If no sum has been fixed for that date, the last preceding date for which a sum has been so fixed.

(2) For the purposes of subsection (1) (b) of this section, a certificate given by or on behalf of the Secretary to the Treasury stating—

(a) That a particular sum in New Zealand currency has been fixed as the equivalent of one special drawing right for a particular date; or

(b) That no sum has been fixed for that date, and that a particular sum has been so fixed for the date most recently preceding a particular date,—

shall, in any proceedings, be received in evidence and, in the absence of proof to the contrary, be sufficient evidence of the
value of the New Zealand currency for the purposes of subsection (1) (b) of this section.

Cf. 1952, No. 49, s. 463; 1987, No. 184, s. 22 (1)

89. Court may consolidate claims—(1) Where 2 or more claims are made or expected against any person who is alleged to have incurred liability in respect of any claim of a kind referred to in section 86 (2) of this Act, that person may apply to the High Court to have the claims consolidated.

(2) On any such application, the Court may—
(a) Determine the amount of the applicant's liability, and distribute that amount rateably among the several claimants; and
(b) Stay any other proceedings pending in the same or any other Court in relation to the same matter; and
(c) Proceed in such manner and give such directions relating to the joining or excluding of interested persons as parties, the giving of security, the payments of costs, or otherwise, as the Court thinks just.

Cf. 1952, No. 49, s. 464; 1987, No. 184, s. 22 (1)

90. Part owners to account in respect of damages—All sums paid for or on account of any loss or damage in respect of which the liability of owners is limited under this Part of this Act, and all costs incurred in relation to that loss or damage, may be brought into account among those part owners of the same ship who are jointly and severally liable in the same manner as money disbursed for the use of that ship.

Cf. 1952, No. 49, s. 465; 1987, No. 184, s. 22 (1)

91. Release of ship where security given—(1) Where any ship or other property is arrested or seized in respect of a claim that appears to be one for which liability is limited by this Part of this Act, or security has been given to prevent or obtain release from any such arrest or seizure, the High Court may, on the application of the owner of the ship or other property or any other person having an interest in the ownership of the ship or other property, order the release of the ship, property, or security if the conditions specified in subsection (2) of this section are met.

(2) The conditions for the making of an order under subsection (1) of this section are as follows:
(a) That security of a kind that, in the opinion of the Court, is satisfactory (in this section referred to as the guarantee) has previously been given, whether in
PART VIII
LIABILITY WHERE TWO OR MORE SHIPS INVOLVED

92. Application of this Part—This Part of this Act applies to every ship (whether registered or not and whether a New Zealand ship or not) in any circumstances in which the High Court has jurisdiction under section 4 of the Admiralty Act 1973.

Cf. 1952, No. 49, s. 467; 1987, No. 184, s. 23

93. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“Owner”, in relation to a ship at fault, means every person who owns the ship or any interest in the ship; and includes every other person who is responsible for the fault of the ship; and in any case where, by virtue of any charter or demise or for any other reason, the owner is not responsible for the navigation and management of the ship, also includes every person who is responsible for the navigation and management of the ship:

“Salvage services” has the same meaning as in section 84 of this Act:

“Ship” means every description of vessel (including barges, lighters, and like vessels) used or intended to be used in navigation, however propelled; and includes any structure (whether completed or not) launched and intended for use as a ship or part of a ship; and also includes any ship used by or set aside for the New Zealand Defence Force.

(2) In this Part of this Act, reference to damage or loss caused by the fault of a ship shall be construed as including references
to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

Cf. 1952, No. 49, s. 468; 1987, No. 184, s. 23

94. **Division of loss**—(1) Subject to the succeeding provisions of this section, where, by the fault of 2 or more ships, damage or loss is caused to one or more of them, or to their cargoes or freight, or to any other property on board, the liability to make good the damage or loss shall be in proportion to the degree to which each ship was at fault.

(2) If, in any case to which subsection (1) of this section applies, it is not possible to establish different degrees of fault, having regard to all the circumstances of the case, the liability shall be apportioned equally.

(3) Nothing in this section shall—

(a) Render any ship liable for any loss or damage to which the fault of that ship has not contributed; or

(b) Affect the liability of any person under a contract of carriage, or any other contract; or

(c) Impose any liability upon any person from which that person is exempted by any contract or by any provision of law; or

(d) Affect the right of any person to limit that person's liability in the manner provided by law.

Cf. 1952, No. 49, s. 469; 1987, No. 184, s. 23

95. **Damages for personal injury**—(1) Subject to subsection (2) of this section, where, by the fault of 2 or more ships, any person on board one of the ships is killed or injured, the liability of the owners of the ships shall be joint and several.

(2) Nothing in subsection (1) of this section shall—

(a) Deprive any person of any right of defence on which, had this section not been enacted, that person might have relied in an action brought against that person by the injured person or by any person entitled to sue in respect of the death of any person on board; or

(b) Affect the right of any person to limit that person's liability in the manner provided by law.

Cf. 1952, No. 49, s.470; 1987, No. 184, s.23

96. **Right of contribution**—(1) Subject to subsection (2) of this section, where, by the fault of 2 or more ships, any person on board one of the ships is killed or injured, and a proportion of the damages is recovered against the owners of one of the ships that exceeds the proportion in which that ship was at
fault, those owners may recover the amount of the excess by way of contribution from the owners of the other ship or ships to the extent to which those ships were respectively at fault.

(2) No amount shall be recovered under subsection (1) of this section that could not, by reason of any statutory or contractual limitation of or exemption from liability, or for any other reasons, have been recovered in the first instance as damages by the persons entitled to sue for damages.

(3) In addition to any other remedy provided by law, the persons entitled to any contribution under this section shall, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Cf. 1952, No. 49. s. 471; 1987, No. 184, s. 23

97. Limitation of actions—(1) Subject to subsections (3) and (4) of this section, no action shall be maintainable to enforce any claim or lien against a ship (in this section referred to as the defendant ship) or the owners of such a ship—

(a) In respect of—

(i) Any damage or loss to another ship, or to cargo or freight of another ship, or to any other property on board another ship; or

(ii) Damages for loss of life or personal injuries suffered by any person on board another ship,—

caused wholly or partly by the fault of the defendant ship; or

(b) In respect of any salvage services,—

unless proceedings are commenced within 2 years after the date when the damage or loss or injury was caused or the salvage services were rendered.

(2) Subject to subsections (3) and (4) of this section, no action shall be maintainable under section 96 of this Act to recover any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings are commenced within 1 year after the date of payment.

(3) If, in any case to which subsection (1) or subsection (2) of this section applies, the High Court is satisfied that there has not been a reasonable opportunity to arrest the defendant ship—

(a) At any port in New Zealand; or

(b) Within New Zealand waters; or

(c) Locally within the jurisdiction of the country to which the plaintiff’s ship belongs or in which the plaintiff resides or has his or her principal place of business,
within the period specified by subsection (1) or (as the case may require) subsection (2) of this section, the Court shall, on the application of the plaintiff, extend that period to an extent sufficient to give such a reasonable opportunity.

(4) Without limiting subsection (3) of this section, in any case to which subsection (1) or subsection (2) of this section applies, the High Court may, in accordance with rules of Court, extend the period referred to in the appropriate one of those subsections to such extent and on such conditions as it thinks fit.

(5) This section shall not apply to proceedings in respect of any alleged fault of a ship used by or set aside for the New Zealand Defence Force.

(6) Subsection (3) of this section shall not apply to any ships of the Crown.

(7) This section shall not limit or affect section 110 of this Act, or section 208 of the Harbours Act 1950, or anything in the Accident Rehabilitation and Compensation Insurance Act 1992 or Parts XVIII to XXVI of this Act or the Carriage of Goods Act 1979.

Cf. 1952, No. 49, ss. 471A; 1987, No. 184, s. 23

PART IX

WRECK, AND SALVAGE OF SHIPS AND AIRCRAFT

98. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Crown entity” has the same meaning as in section 2 (1) of the Public Finance Act 1989:

“Receiver” means a Receiver of Wreck appointed under section 99 of this Act:

“Salvage” includes all expenses properly incurred by the salver in the performance of the salvage services:

“Salvage services”, includes—

(a) Operations in respect of the raising, removal, destruction, or rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned, or of anything that is or has been on board such a ship:

(b) Operations in respect of the removal, destruction, or rendering harmless of the cargo of a ship:

(c) Measures taken in order to avert or minimise any loss or injury or damage in respect of which liability may be limited in accordance with Part VII of this Act:
“Salvor”, in relation to a ship, means every person rendering services directly connected with salvage operations carried out in relation to that ship:

“Tidal water” means—
(a) Any part of the sea:
(b) Any part of a river within the ebb and flow of the tide at mean spring tides:

“Wreck” includes any property that a Receiver is required or authorised by this Part of this Act to take into his or her possession.

Cf. 1950, No. 34, s. 2 (1); 1952, No. 49, s. 2 (1); 1987, No. 184, s. 2 (1)

99. Director may appoint Receivers—(1) The Director shall have the general superintendence of all matters relating to wreck, and may from time to time, by notice in the Gazette, establish, alter, or abolish districts for the purposes of this Part of this Act.

(2) The Director may appoint—
(a) Any employee of the Authority; or
(b) With the consent of the Comptroller of Customs, any officer of Customs; or
(c) Any other person—
to be a Receiver of Wreck (in this Part of this Act referred to as a Receiver), and may from time to time revoke any such appointment.

(3) The Director may from time to time assign any Receiver or Receivers to any district or districts, and may from time to time vary any such assignment.

(4) Without limiting the general power to make regulations conferred by section 201 of this Act, regulations may be made under that section prescribing the conduct of Receivers.

(5) Subject to subsection (6) of this section, Receivers shall have authority in the district or districts to which they are respectively assigned, and shall have therein the powers and duties set out in this Part of this Act and in any regulations made under this Act.

(6) Nothing in this Part of this Act relating to aircraft wrecked, stranded, or in distress on or over or near the coasts of New Zealand or any tidal water within the limits of New Zealand or in any river or lake or other inland water shall derogate from any provision of the Civil Aviation Act 1990 or any regulations or rules under that Act relating to rescue
operations involving aircraft or the investigation of aircraft accidents.

Cf. 1952, No. 49, s. 342; 1963, No. 129, s. 23; 1965, No. 28, s. 22

**Ships and Aircraft in Distress**

100. **Duties and powers of Receivers where ship or aircraft in distress**—(1) Subject to subsection (2) of this section, where 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 in any river or lake or other inland water, a Receiver having authority in the district in which that place is situated shall, upon being informed of the circumstance, forthwith proceed there, and upon his or her arrival shall take command of all persons present, and shall assign such duties and give such directions to each person as he or she thinks fit for the preservation of the ship or aircraft and the lives of the persons belonging thereto (in this Part of this Act referred to as shipwrecked persons) and of the cargo and equipment of the ship or aircraft.

(2) The Receiver shall not interfere between the master and the crew of the ship, or, as the case may be, between the person in command and the crew of the aircraft; nor shall the Receiver (otherwise than in compliance with a direction of the Director given in pursuance of section 110 of this Act) take into his or her possession any ship or aircraft, or any cargo or equipment belonging thereto, while that ship or aircraft remains in the possession of the master or person in command thereof, except with the consent of that master or person in command.

(3) The Receiver may, with a view to the preservation of the lives of the shipwrecked persons or of the ship or aircraft or of its cargo or equipment,—

(a) Require such persons as the Receiver thinks necessary to assist him or her:

(b) Require the master or other person having the charge of any ship near at hand to give such aid with his or her crew or ship as may be within the master's power:

(c) Demand the use of any vehicle that may be near at hand.

(4) Every person commits an offence who—

(a) Wilfully disobeys the lawful direction of a Receiver; or
(b) Refuses without reasonable cause to comply with any lawful requisition or demand made by a Receiver under this section.

(5) No power conferred by this section shall be exercised so as to conflict with the exercise of a power, or any lawful directions given, by—

(a) A Harbourmaster (as defined in section 222 (1) of this Act); or

(b) An on-scene commander (as defined in section 281 of this Act); or

(c) A person under Part V of the Civil Defence Act 1983; or

(d) A Disaster Recovery Co-ordinator appointed under the Civil Defence Act 1983 and acting under that Act; or

(e) The Minister of Civil Defence under section 73 of the Civil Defence Act 1983; or

(f) Any member of the Police under section 10 of the International Terrorism (Emergency Powers) Act 1987; or

(g) A person under the Transport Accident Investigation Commission Act 1990; or

(h) A person under section 57 of this Act; or

(i) A person under Part XX of this Act.

Cf. 1952, No. 49, s. 343; 1963, No. 129, s. 23

101. Right of passage over adjoining lands—(1) Where a ship or aircraft is wrecked, stranded, or in distress as aforesaid, all persons may, for the purpose of rendering assistance to the ship or aircraft, or of saving the lives of the shipwrecked persons, or of saving the cargo or equipment of the ship or aircraft, unless there is some public road equally convenient, pass and repass, either with or without vehicles or equipment, over any adjoining lands without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on those lands any cargo or other article recovered from the ship or aircraft.

(2) Any damage sustained by an owner or occupier in consequence of the exercise of the rights given by this section shall be a charge on the ship or aircraft or cargo or articles in respect of or by which the damage is occasioned; 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.
(3) Every owner or occupier of land commits an offence who—

(a) impedes or hinders any person in the exercise of the rights given by this section, by locking his or her gates, or refusing upon request to open the same, or otherwise; or

(b) impedes or hinders the deposit on the land of any cargo or other article recovered from the ship or aircraft as aforesaid; or

(c) prevents or endeavours to prevent any such cargo or other article from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit.

Cf. 1952, No. 49, s. 344

102. Receiver to suppress plunder and disorder—

(1) Where a ship or aircraft is wrecked, stranded, or in distress as aforesaid, and any person plunders, creates disorder, or obstructs the preservation of the ship or aircraft or of the shipwrecked persons or of the cargo or equipment of the ship or aircraft, the Receiver may cause that person to be apprehended.

(2) The Receiver may use reasonable force for the suppression of any such plundering, disorder, or obstruction, and may command all persons present to assist him or her in so using reasonable force.

Cf. 1952, No. 49, s. 345

108. In Receiver's absence, who to act—

(1) Where a Receiver is not present, the following officers or persons in succession (each in the absence of the other, in the order in which they are named), namely, any Collector of Customs, District Court Judge, Justice, or commissioned officer on full pay of the New Zealand Defence Force, or any member of the Police, may do anything by this Part of this Act authorised to be done by the Receiver.

(2) A person acting under this section for a Receiver shall, with respect to any goods or articles belonging to a ship or aircraft, the delivery of which to the Receiver is required by this Act, be considered as the agent of the Receiver, and shall place the same in the custody of the Receiver; but he or she shall not be deprived by reason of his or her so acting of any right to salvage to which he or she would otherwise be entitled.

Cf. 1952, No. 49, s. 346; 1972, No. 24, s. 14
104. Receiver to make inquiry—(1) Where any ship or aircraft is or has been in distress on or over or near the coasts of New Zealand or any tidal water within the limits of New Zealand or in any river or lake or other inland water, a Receiver or any person lawfully acting as such shall, as soon as is reasonably practicable, examine on oath or affirmation any person belonging to the ship or aircraft, or any other person who may be able to give an account thereof or of the cargo or stores thereof, as to the following matters:

(a) The name and description of the ship or aircraft:
(b) The names of the owners and the master of the ship, or, as the case may be, the names of the owners and the person in command of the aircraft:
(c) The names of the owners of the cargo:
(d) The ports from and to which the ship or aircraft was bound:
(e) In the case of a ship, the occasion of its distress:
(f) The services rendered:
(g) Such other matters or circumstances relating to the ship or aircraft, or to the cargo or stores thereof, as the person holding the examination thinks necessary.

(2) The person holding the examination shall take the same down in writing, and shall send it to the Director.

Cf. 1952, No. 49, s. 347; 1963, No. 129, s. 23

Dealing with Wreck

105. Rules to be observed by person finding wreck—(1) Where any 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, he or she shall,—

(a) If he or she is the owner thereof, give notice to the appropriate Receiver, stating that he or she has found or taken possession of the wreck, and describing the marks by which the same may be recognised:
(b) If he or she is not the owner thereof, as soon as possible deliver the same to the appropriate Receiver.

(2) In this section,—

“Wreck” includes any ship or aircraft which is abandoned, stranded, or in distress at sea or in any river or lake or other inland water, or any equipment or cargo or other articles belonging to or separated from any such ship or aircraft or belonging to or separated
from any ship or aircraft which is lost at sea or in any river or lake or other inland water:

“The appropriate Receiver” means a Receiver having authority in the district in which the wreck was found, or, in the case of wreck found outside the limits of New Zealand, a Receiver having authority in the district of New Zealand into which the wreck was first brought.

(3) Every person commits an offence who, without reasonable excuse, fails to comply with this section, and shall in addition, if he or she is not the owner, forfeit any claim to salvage, and shall be liable to pay to the owner of the wreck if it is claimed, or, if it is unclaimed, to the person entitled to the same, double the value thereof, to be recovered in the same way as a fine of a like amount under this Act.

Cf. 1952, No. 49, s. 348; 1963, No. 129, s. 23

106. Articles washed ashore to be delivered to Receiver—(1) Where a ship or aircraft is wrecked, stranded, or in distress at any place on or over or near the coast of New Zealand or any tidal water within the limits of New Zealand or in any river or lake or other inland water, any cargo or equipment or other articles belonging to or separated from the ship or aircraft which may be washed on shore, or otherwise lost or taken from the ship or aircraft, shall be delivered to the Receiver.

(2) Every person, whether the owner or not, commits an offence who secretes or keeps possession of any such cargo or equipment or article, or refuses to deliver the same to the Receiver or any person authorised by the Receiver to demand the same.

(3) The Receiver or any person authorised as aforesaid may take any such cargo or equipment or article by force from the person so refusing to deliver the same.

Cf. 1952, No. 49, s. 349; 1963, No. 129, s. 23

107. Claims to wreck—(1) Where a Receiver takes possession of any wreck, the Receiver shall within 48 hours cause to be posted in the Customhouse nearest to the place where the wreck was found or was seized by the Receiver a description thereof and of any marks by which it is distinguished.

(2) The owner of any wreck in the possession of the Receiver, upon establishing the owner’s claim to the same to the satisfaction of the Receiver within one year from the time at
which the wreck came into the possession of the Receiver, shall, upon paying the salvage, fees, and expenses due, be entitled to have the wreck or the proceeds delivered to him or her.

(3) Where any ship other than a New Zealand ship, or any aircraft which is not registered in and does not belong to New Zealand, is wrecked, stranded, or abandoned on or near the coasts of New Zealand or any tidal water within the limits of New Zealand or in any river or lake or other inland water, a consular representative of the foreign country in which that ship or aircraft may have been registered or to which that ship or aircraft may have belonged, shall, if the Director so directs, be deemed in the absence of the owner and of the master of the ship or other agent of the owner or, as the case may be, in the absence of the owner and of the person in command of the aircraft or other agent of the owner, to be the agent of the owner, as far as relates to the custody and disposal of that ship or aircraft.

(4) Where any wreck, whether or not belonging to or separated from any ship or aircraft to which the last preceding subsection applies, is found within the limits of New Zealand or is brought within those limits, and it does not appear that that wreck belongs to persons resident in New Zealand, a consular representative of the foreign country to which the owners of the wreck may belong shall, if the Director so directs, be deemed, in the absence of the owners and of any other agent of the owners, to be the agent of the owners, as far as relates to the custody and disposal of the wreck.

Cf. 1952, No. 49, s. 350; 1963, No. 129, s. 23

108. Wreck may be sold immediately in certain cases—
(1) A Receiver may at any time sell any wreck in his or her custody, if in his or her opinion—
(a) It is so much damaged or of so perishable a nature that it cannot with advantage be kept; or
(b) It is not of sufficient value to pay for warehousing or berthing.

(2) The proceeds of the sale shall, after defraying the expenses thereof, be held by the Receiver for the same purposes and subject to the same claims, rights, and liabilities as if the wreck had remained unsold.

Cf. 1952, No. 49, s. 351 (1) (b), (c), (2)

109. Provisions where wreck claimed by 2 or more persons and as to unclaimed wreck—(1) Where a dispute arises between 2 or more persons as to the title to wreck, the
dispute may be determined in the same manner as if it were a 
dispute as to salvage to be determined under this Part of this 
Act.

(2) Upon delivery of wreck or the payment of the proceeds of 
sale of wreck by a Receiver under this Part of this Act, the 
Receiver shall be discharged from all liability in respect thereof; 
but the delivery thereof shall not prejudice or affect any 
question which may be raised by third parties concerning the 
right or title to the wreck.

(3) Where no owner establishes a claim to any wreck found 
within the limits or territorial waters of New Zealand, and in 
the possession of a Receiver, within one year after it came into 
his or her possession, it shall be the property of the Crown, and 
the Receiver shall sell the same and shall pay the proceeds of 
sale (after deducting therefrom the expenses of sale and any 
other expenses incurred by the Receiver, and the Receiver's 
fees, and paying thereout to the salvors such amount of salvage 
as the Minister may in each case, or by any general rule, 
determine) into the Crown Bank Account and the proceeds so 
paid shall be public money.

Cf. 1952, No. 49, s. 352

Removal of Wrecked Ships and Aircraft

110. Removal of wrecked ships and aircraft—(1) If any 
ship or aircraft is sunk, stranded, or abandoned on or near the 
coasts of New Zealand or any tidal water within the limits of 
New Zealand or in any river or lake or other inland water, and 
there is no Harbour Board or person having jurisdiction under 
section 208 of the Harbours Act 1950 to remove or destroy that 
ship or aircraft, the Director may, and shall, if in his or her 
opinion the ship or aircraft is, or is likely to become, an 
obstruction to navigation, direct a Receiver having authority in 
the district in which the ship or aircraft is located to cause that 
ship or aircraft to be removed.

(2) On receiving such a direction, the Receiver, by notice in 
writing given to the owner or master of the ship or any agent of 
the owner or, as the case may be, to the owner or person in 
command of the aircraft or to any agent of the owner, shall 
require the owner to remove that ship or aircraft, or any part 
thereof, in a manner satisfactory to, and within a time to be 
specified by, the Director.

(3) If the owner fails to comply with the notice, or if neither 
the owner nor the master of the ship, or, as the case may be, 
neither the owner nor the person in command of the aircraft,
nor in either case any agent of the owner can be found, the Receiver may—

(a) Take possession of and remove or destroy the whole or any part of the ship or aircraft; and

(b) Sell, in such manner as he or she thinks fit, the ship or aircraft, or any part thereof, so removed, and also any property recovered therefrom, in the exercise of his or her powers under this section; and, out of the proceeds of any such sale, without any reference to the articles from the sale of which those proceeds arise, recover the whole of the expenses of removal; and

(c) If the proceeds of the sale are insufficient to pay the whole of the expenses of removal, recover the balance from the owner of the ship or aircraft, or from the owner of any other ship or aircraft or from any other person if the sinking, stranding, or abandonment occurred through the fault or negligence of that other ship, aircraft, or person.

(4) Subject to the next succeeding subsection, the Receiver shall hold and dispose of the surplus (if any) of the proceeds of any sale under this section in accordance with the provisions of this Part of this Act relating to wreck.

(5) This section shall apply to every article belonging to or forming part of a ship or aircraft, as it applies to a ship or aircraft; and the proceeds of the sale under this section of any ship or aircraft or part thereof or other property recovered therefrom shall be regarded as a common fund.

(6) In this section, the term “owner”, in relation to any ship or aircraft which has been sunk, stranded, or abandoned, includes not only the owners of the ship or aircraft at the time of the sinking, stranding, or abandonment thereof, but also any subsequent purchaser of the ship or aircraft or of any article belonging thereto or forming part thereof, as long as the ship or aircraft remains sunk, stranded, or abandoned.

Cf. 1952, No. 49, s. 353; 1959, No. 102, s. 63

Offences in Respect of Wreck

111. Offences in respect of wreck—(1) Every person commits an offence and is liable to a fine not exceeding $10,000 who takes into any port out of New Zealand any ship or aircraft, stranded, derelict, or otherwise in distress, found on or near the coasts of New Zealand or any tidal water within the limits of New Zealand or in any river or lake or other inland
water, or any part of the cargo or equipment thereof, or anything belonging thereto, or any wreck found within those limits or in any river or lake or other inland water, and there sells the same.

(2) Every person, not being a Receiver or a person lawfully acting as such or a person acting by the command of any such person as aforesaid, commits an offence and is liable to a fine not exceeding $10,000 who boards or endeavours to board any ship or aircraft which is wrecked, stranded, or otherwise in distress on or near the coasts of New Zealand or any tidal water within the limits of New Zealand or in any river or lake or other inland water, unless he or she acts with the leave of the master of the ship or, as the case may be, the person in command of the aircraft, and every such master or person in command may repel him or her by force.

(3) Every person commits an offence who—
(a) Impedes or hinders, or endeavours in any way to impede or hinder, the saving of any ship or aircraft stranded or in danger of being stranded or otherwise in distress on or over or near the coasts of New Zealand or any tidal water within the limits of New Zealand or in any river or lake or other inland water, or of any part of the cargo or equipment of any such ship or aircraft, or of any wreck; or
(b) Secretes any wreck, or defaces, or obliterates any marks thereon; or
(c) Wrongfully carries away or removes any part of a ship or aircraft stranded or in danger of being stranded or otherwise in distress on or near the coasts of New Zealand or any tidal water within the limits of New Zealand or in any river or lake or other inland water, or any part of the cargo or equipment of any such ship or aircraft, or any wreck,—
and every such person is liable for each offence to a fine not exceeding $10,000; and that penalty may be imposed in addition to any other penalty to which that person may be liable by law under this Act or otherwise.

Cf. 1952, No. 49, s. 354; 1957, No. 87, s. 213; 1963, No. 129, s. 23

112. Receiver may seize concealed wreck—(1) Where a Receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof, or that any wreck is otherwise improperly dealt with, he or she may apply to any Justice for a search warrant,
and that Justice shall have power to grant such a warrant, and
the Receiver, by virtue thereof, may enter any house or other
place, wherever situate, and also any ship, and search for, seize,
and detain any such wreck there found.

(2) If any such seizure of wreck is made in consequence of
information given by any person to the Receiver, on a warrant
being issued under this section, the informant shall be entitled
by way of salvage to such sum, not exceeding in any case
$1,000, as the Receiver allows.

Cf. 1952, No. 49, s. 355

Salvage

113. Salvage for saving life—(1) Where services are rendered—

(a) Wholly or in part within New Zealand waters in saving life
from any ship or aircraft, whether or not a New
Zealand ship or an aircraft registered in or belonging
to New Zealand; or

(b) Elsewhere in saving life from any New Zealand ship or
any aircraft which is registered in or belongs to New
Zealand,—

there shall be payable to the salvor by the owner of the ship or
aircraft or cargo or equipment saved a reasonable amount of
salvage, to be determined in case of dispute in the manner
hereinafter mentioned.

(2) Salvage in respect of the preservation of life, when
payable by the owners of the ship or aircraft, shall be payable
in priority to all other claims for salvage.

(3) Where the ship or aircraft and its cargo and equipment
are destroyed, or the value thereof is insufficient, after payment
of the actual expenses incurred, to pay the amount of salvage
payable in respect of the preservation of life, the Minister may
in his or her discretion award to the salvor, out of any money
appropriated by Parliament for the purpose, such sum as he or
she thinks fit in whole or part satisfaction of any amount of
salvage so left unpaid.

Cf. 1952, No. 49, s. 356

114. Salvage of cargo or wreck—Where—

(a) Any ship or aircraft is wrecked, stranded, or in distress on
or over or near the coasts of New Zealand or any tidal
water within the limits of New Zealand or in any river
or lake or other inland water, and services are
rendered by any person in assisting that ship or
aircraft, or in saving the cargo or equipment thereof or any part thereof; or
(b) Services are rendered by any person other than a Receiver in saving any wreck,—there shall be payable to the salvor by the owners of the ship or aircraft or cargo or wreck a reasonable amount of salvage, to be determined in case of dispute in the manner hereinafter mentioned.

Cf. 1952, No. 49, s. 357; 1963, No. 129, s. 23

Procedure in Salvage

115. Settlement of disputes as to salvage—(1) Disputes as to the amount of salvage, whether of life or property, arising between the salvor and the owners of any ship or aircraft or cargo or equipment or wreck shall, if not settled by agreement, arbitration or otherwise, be determined by a District Court in the following cases:
(a) In any case where the parties to the dispute consent:
(b) In any case where the amount claimed does not exceed $200,000.

(2) Subject to subsection (1) of this section, disputes as to salvage shall be determined by the High Court; but if the claimant does not recover in that Court more than $200,000 he or she shall not be entitled to recover any costs, charges, or expenses incurred by him or her in the prosecution of his or her claim, unless the Court certifies that the case is a fit one to be tried otherwise than by a District Court.

(3) Disputes relating to salvage may be determined on the application either of the salvor or of the owner of the property saved, or of their respective agents.

Cf. 1952, No. 49, s. 358; 1979, No. 125, s. 16 (1)

116. Settlement of disputes by District Court—(1) Disputes as to salvage which are to be determined by a District Court shall,—
(a) Where the dispute relates to salvage of wreck, be referred to the Court at or nearest to the place where the wreck is found:
(b) Where the dispute relates to salvage in the case of services rendered to any ship or aircraft or to the cargo or equipment thereof, or in saving life therefrom, be referred to the Court at or nearest to the place where the ship or aircraft then is, or at or nearest to the port in New Zealand into which the ship or aircraft is first
brought after the occurrence by reason whereof the claim of salvage arises.

(2) Any party aggrieved by the decision of the Court may, if the sum in dispute exceeds $5,000, appeal therefrom to the High Court in the manner provided in Part V of the District Courts Act 1947.

Cf. 1952, No. 49, s. 359 (1), (3); 1979, No. 125, s. 16 (1)

117. Apportionment of salvage among owners, etc., of ships and aircraft other than New Zealand ships or aircraft—Where any dispute arises as to the apportionment of any amount of salvage among the owners, master, pilot, crew, and other persons in the service of any ship other than a New Zealand ship, or, as the case may be, among the owners, person in command, crew, and other persons in the service of any aircraft which is not registered in and does not belong to New Zealand, the amount shall be apportioned by the Court or person making the apportionment in accordance with the law of the country in which the ship or aircraft is registered or to which the ship or aircraft belongs.

Cf. 1952, No. 49, s. 360

118. Valuation of wreck—(1) Where any dispute as to salvage arises, a Receiver having authority in the district where the property is situate in respect of which the salvage claim is made may, on the application of either party, appoint a valuer to value the property.

(2) The Receiver shall give copies of the valuation to both parties.

(3) Any copy of the valuation purporting to be signed by the valuer, and to be certified as a true copy by the Receiver, shall be admissible as evidence in any subsequent proceeding.

(4) There shall be paid in respect of the valuation, by the person applying for the same, such fee as the Director directs.

Cf. 1952, No. 49, s. 361

119. Enforcing payment of salvage—(1) Where salvage is due to any person under this Act the Receiver shall,—

(a) If the salvage is due in respect of services rendered in assisting any ship or aircraft, or in saving life therefrom, or in saving the cargo or equipment thereof, detain the ship or aircraft and cargo or equipment; and
(b) If the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under this Act, detain the wreck.

(2) Subject as hereinafter mentioned, the Receiver shall detain the ship or aircraft and the cargo and equipment, or the wreck (hereinafter referred to as detained property), until payment is made for salvage, or process is issued for the arrest or detention thereof by a competent Court.

(3) A Receiver may release any detained property if security is given to his or her satisfaction, or, if the claim for salvage exceeds $1,000 and any question is raised as to the sufficiency of the security, to the satisfaction of the High Court.

(4) Any security given for salvage in pursuance of this section to an amount exceeding $1,000 may be enforced by the High Court in the same manner as if bail had been given in that Court.

Cf. 1952, No. 49, s. 362

120. Receiver may sell wreck in case of non-payment—
(1) The Receiver may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, in the following cases:
(a) Where the amount is not disputed, and payment of the amount due is not made within 20 days after the amount is due:
(b) Where the amount is disputed, but no appeal lies from the first Court to which the dispute is referred, and payment is not made within 20 days after the decision of the first Court:
(c) Where the amount is disputed, and an appeal lies from the decision of the first Court to some other Court, and within 20 days of the decision of the first Court neither payment of the sum due is made nor proceedings are commenced for the purpose of appeal.

(2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the Receiver in payment of the expenses, fees, and salvage, and the surplus (if any) shall be paid to the owners of the property or any other persons entitled to receive the same.

Cf. 1952, No. 49, s. 363

121. Payment of salvage in case of dispute as to apportionment—(1) Where the aggregate amount of salvage payable in respect of salvage services rendered has been finally
determined, either by a District Court or by agreement, and does not exceed $2,000, but a dispute arises as to the apportionment thereof among several claimants, the person liable to pay the amount may apply to the Receiver for liberty to pay the same to him or her.

(2) The Receiver may, if he or she thinks fit, receive the same accordingly, and shall grant to the person paying the amount a certificate of the amount paid and of the services in respect of which it is paid, and that certificate shall be a full discharge and indemnity to the person by whom the money is paid, and to that person's ship or aircraft and cargo, equipment, and effects, against the claims of all persons in respect of the services mentioned in the certificate.

(3) The Receiver shall with all convenient speed distribute any amount received by him or her under this section among the persons entitled to the same, on such evidence, and in such shares and proportions, as he or she thinks fit (and shall, in determining those shares and proportions, have regard to section 117 of this Act in any case where that section is applicable), and may retain any money which appears to him or her to be payable to any person who is absent.

(4) A distribution made by a Receiver in pursuance of this section shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

Cf. 1952, No. 49, s. 365

122. High Court may apportion—Where the aggregate amount of salvage payable in respect of salvage service rendered has been finally determined, and exceeds $2,000, then, if any delay or dispute arises as to the apportionment thereof, the High Court, or, in any case where the aggregate amount of salvage payable does not exceed $200,000, a District Court, may cause the same to be apportioned among the persons entitled thereto in such manner as, having regard to section 117 of this Act in any case where that section is applicable, the Court thinks just, and may for that purpose, if it thinks fit, appoint any person to carry that apportionment into effect, and may compel any person in whose hands or under whose control the amount may be to distribute the same, or to bring the same into Court to be there dealt with as the Court directs, and may for such purposes issue such processes as it thinks fit.

Cf. 1952, No. 49, s. 366; 1979, No. 125, s. 16 (1)
123. Salvage claims against the Crown—(1) Subject to subsection (2) of this section and to the provisions of the Crown Proceedings Act 1950, the provisions of this Part of this Act, except sections 118 to 120 of this Act, shall apply in relation to salvage services rendered in assisting any New Zealand warship or any other ship or other property owned by the Crown or a Crown entity in the same manner as if the ship or aircraft or cargo or equipment belonged to a private person.

(2) No claim shall by virtue of this section lie against the Crown in respect of anything done or suffered in relation to any mail or to the contents thereof while it is being carried by sea or by air.

Cf. 1952, No. 49, s. 367

124. Salvage claims by the Crown—(1) Where civil salvage services are rendered by any ship or aircraft to which this section applies, the Crown or, as the case may be, the Government of the country other than New Zealand to which that ship or aircraft belongs or for the benefit of which that ship or aircraft is employed shall be entitled to claim salvage in respect of those services to the same extent as any other salvor, and shall have the same rights and remedies as any other salvor.

(2) This section applies to—

(a) Warships and aircraft of the New Zealand Defence Force:

(b) Warships and aircraft of any defence force other than the New Zealand Defence Force:

(c) Ships and aircraft of the Crown or a Crown entity:

(d) Ships and aircraft of the Government of any State other than New Zealand.

Cf. 1952, No. 49, s. 368 (1), (2)

Fees of Receivers

125. Fees to be paid to Receiver—(1) There shall be paid to every Receiver the expenses properly incurred by him or her in the performance of his or her duties; but no Receiver shall be entitled to receive any other remuneration or reward in respect of the performance of any such duties.

(2) There shall be payable to every person lawfully acting as a Receiver (and not being himself or herself a Receiver) the expenses properly incurred by him or her in the performance of his or her duties in relation to any ship or aircraft in distress, or any wreck, unless it be shown that salvage has been claimed
by and awarded to him or her in respect of any services rendered in relation to that ship or aircraft or wreck.

(3) There shall be payable to the Authority where the Receiver is an employee or agent of the Authority, or the Crown where the Receiver is an employee of the Customs Department, in respect of duties performed by a Receiver or any person lawfully acting as such with regard to—

(a) Every examination on oath or affirmation instituted by him or her with respect to any ship or aircraft which may be or may have been in distress; and

(b) Any wreck taken by him or her into custody; and

(c) Any services rendered by him or her in respect of any ship or aircraft in distress, not being wreck, or in respect of cargo or other articles belonging thereto—such fees as may be prescribed by regulations made under this Act.

(4) Without prejudice to any other rights and remedies in respect of the recovery thereof, those expenses and fees shall be recoverable as salvage is recoverable.

(5) Where any dispute arises as to the amount of any such expenses or fees, the dispute shall be determined by the Minister, whose decision shall be final.

Cf. 1952, No. 49, s. 369; 1993, No. 89, s. 20

Duties on Wreck

126. Foreign wreck subject to duties as an importation—(1) All wreck, being goods brought or coming into New Zealand from a place outside New Zealand, shall be subject to the same duties as if the same was imported into New Zealand, and if any question arises as to the origin of the goods they shall be deemed to be the produce of such country as the Comptroller of Customs may on investigation determine.

(2) The Comptroller of Customs may permit all goods saved from any ship or aircraft stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination, and all goods saved from any ship or aircraft stranded or wrecked on its outward voyage to be returned to the port at which they were laden; but the Comptroller of Customs shall take security for the due protection of the revenue in respect of those goods.

(3) In this section, the term “goods” includes any part of any ship or aircraft and the cargo, machinery, and equipment thereof, and any other property belonging thereto.

Cf. 1952, No. 49, s. 370
127. Penalties—(1) Every person who commits an offence against section 100 or section 101 of this Act is liable,—
   (a) In the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $2,000:
   (b) In the case of a body corporate, to a fine not exceeding $10,000.

(2) Every person who commits an offence against section 105 or section 106 of this Act is liable to a fine not exceeding $5,000 and, if the offence is a continuing one, to a further fine not exceeding $250 for every day or part of a day during which the offence is continued.

Cf. 1952, No. 49, s. 480 (2)

PART X

CONSTRUCTION, SURVEY, AND EQUIPMENT

128. Interpretation—In this Part of this Act, unless the context otherwise requires,—

"Barge" means any barge, lighter, or like vessel that does not have any means of self-propulsion:

"Certificate" means a certificate of survey, or a Safety Convention certificate, or an interim certificate of survey, as the case may be; and includes any document issued with any such certificate and expressed, or deemed by any provision of this Act, to form part of that certificate:

"Certificate of survey" means a certificate of survey issued under section 143 of this Act:

"Crown entity" has the same meaning as in section 2 (1) of the Public Finance Act 1989:

"Declaration of survey" means a declaration of survey made under section 140 of this Act:

"Length", in relation to any ship, means the overall length:

"Major alteration" includes the repair or alteration of a ship, or the replacement or removal or addition of any part of a ship, that is likely—

   (a) To significantly affect the structural integrity, tonnage, freeboard, cargo or passenger capacity, crew or passenger accommodation, conditions of assignment of load line or submersion line, watertight subdivision, stability, structural fire protection, or safety equipment of the ship; or
(b) To result in significant changes to the propulsion machinery, auxiliary machinery, or method of propulsion of the ship:

“New Zealand Government ship” means a ship that belongs to the Crown or is held by any Crown entity or by any person on behalf of or for the benefit of the Crown; but does not include a ship that is set aside or used by the New Zealand Defence Force:

“Restricted limits” means the limits, defined by regulations made under this Act, within which ships in respect of which restricted-limit certificates are for the time being in force may ply or proceed:

“Restricted-limit ship” means a ship, other than a fishing ship or pleasure craft, that proceeds on a voyage the normal course of which does not take the ship outside restricted limits:

“Safety Convention” means the International Convention for the Safety of Life at Sea, done at London on the 1st day of November 1974; and includes—

(i) The Annex to that Convention; and
(ii) All amendments of that Convention in force on the 23rd day of May 1990; and
(iii) All amendments of that Convention made after the 23rd day of May 1990 and in force with respect to New Zealand; and
(iv) The Protocol to that Convention, adopted in 1978; and
(v) Any further protocols to that Convention in force with respect to New Zealand:

“Safety Convention certificate” means a certificate issued pursuant to the Safety Convention:

“Safety Convention ship” means a ship registered in or belonging to a country to which the Safety Convention applies, being a ship that is subject to the provisions of the Safety Convention:

“Surveyor” means a surveyor of ships or a radio surveyor, as the case may require:

“Surveyor of ships” means a surveyor of ships recognised as such under section 130 of this Act.

Cf. 1952, No. 49, s. 2 (1); 1987, No. 184, s. 2 (1)

129. Application of this Part—(1) Subject to subsections (2) and (3) of this section, and except as expressly provided in this Part of this Act, this Part of this Act applies to the following ships:
(a) Every New Zealand ship:
(b) Every other ship while operating in New Zealand waters.

(2) This Part of this Act applies to ships referred to in subsection (1) (b) of this section only to the following extent:
(a) In the case of a Safety Convention ship, to the extent necessary to satisfy the requirements of, and to meet the standards prescribed in, the Safety Convention:
(b) In the case of any other ship, to the extent (if any) that the Director from time to time sees fit to direct.

(3) This Part of this Act applies to barges only to the following extent:
(a) In the case of a barge of 24 metres or more in length that carries any person on a voyage, to the same extent as it applies to a ship that is not a barge:
(b) In the case of a barge of 24 metres or more in length that does not carry any person on a voyage, to the extent prescribed in sections 152 to 155 of this Act:
(c) In the case of a barge of less than 24 metres in length (whether or not it carries any person on a voyage), to the extent (if any) prescribed by notice given by the Director under section 152 (3) of this Act.

C£ 1987, No. 49, s. 195; 1987, No. 184, s. 11 (1)

180. Surveyors—(1) The Director may from time to time recognise any suitably qualified person as a surveyor of ships or a radio surveyor for the purposes of this Act, either generally or for a specified purpose or for a specified occasion.

(2) Every surveyor shall have and may exercise the functions, duties, and powers prescribed by this Act or by any maritime rules or regulations made under this Act, and such other functions, duties, and powers as may be necessary to carry into effect the provisions of this Act and of all such rules and regulations.

C£ 1952, No. 49, s.15D; 1987, No. 184, s. 5

181. Notice to be given before work commenced—
(1) This section applies to—
(a) The building or major alteration in New Zealand of—
   (i) Any New Zealand ship that is or will be required by section 133 of this Act to be surveyed; or
   (ii) Any barge for which a certificate of completion is or will be required under section 153 of this Act:
(b) The building or major alteration outside New Zealand of any ship for use—
(i) As a New Zealand ship that is or will be required by section 133 of this Act to be surveyed; or
(ii) In New Zealand as a barge for which a certificate of completion is or will be required under section 153 of this Act.

(2) Every person who intends to carry out any work to which this section applies shall, before commencing that work, give written notice to the Director of the general nature of the proposed work.

(3) On receipt of any notice under subsection (2) of this section, the Director shall, within a reasonable time,—
(a) Issue such directions or requirements as the Director considers desirable in accordance with subsection (4) of this section; or
(b) Notify the person giving the notice that that person may proceed with the work without further approval under this section.

(4) On receipt of any notice under subsection (2) of this section, the Director may do all or any of the following things:
(a) Require detailed plans and specifications to be submitted for approval:
(b) Require any other information relating to the proposed work to be submitted in addition to or instead of the plans and specifications:
(c) Specify the person by whom, the person to whom, the form in which, and the time or times by which, any such plans, specifications, or other information are to be submitted:
(d) Require a specified period of notice to be given to the Director, or to a surveyor or other person specified by the Director, of the place and time at which the proposed work will commence:
(e) Direct that the proposed work or any stage of the work shall not be commenced until the plans and specifications have been approved by the Director, or by a surveyor or other person approved for the purpose by the Director, either in respect of all matters described in the plans and specifications, or in respect of any of those matters specified by the Director.

(5) Every person commits an offence who—
(a) Commences any work to which this section applies without giving notice in accordance with subsection (2) of this section; or
(b) Does any work to which this section applies otherwise than in accordance with—
   (i) Every requirement or direction imposed by the Director under subsection (4) of this section; and
   (ii) The plans and specifications (if any) approved by the Director under that subsection.

(6) Section 14 of the Summary Proceedings Act 1957 shall not apply in respect of an offence against this section.

(7) Where any work to which this section applies has been carried out on a ship otherwise than in compliance with this section, and the ship is at a New Zealand port, the Director may detain the ship until satisfied that the ship or, as the case may require, every major alteration made to the ship, complies with the provisions of this Act and of any maritime rules or regulations made under this Act relating to the construction or major alteration of ships.

(8) While any work to which this section applies is being carried out on any ship, a surveyor may inspect the ship to ensure that the work is being carried out in accordance with—
   (a) Every requirement or direction imposed by the Director under subsection (4) of this section; and
   (b) The plans and specifications (if any) approved by the Director under that subsection.

Cf. 1952, No. 49, ss. 199, 200, 201; 1987, No. 184, s. 11 (1)

132. Notice to be given before use changed—(1) Where any person proposes to change the use of any ship to which this Part of this Act applies and that change would result in—
   (a) Any maritime document already issued in respect of that ship ceasing to be appropriate; or
   (b) The ship becoming one that is required by section 133 of this Act to be surveyed; or
   (c) The ship becoming a barge for which a certificate of completion is required under section 153 of this Act,—
that person shall, before changing the use of the ship, give written notice to the Director of the intended use and service of the ship.

(2) On receipt of a notice under subsection (1) of this section, the Director may approve the proposed use of the ship either unconditionally or subject to such conditions and requirements as the Director may specify.

(3) The obligations imposed by this section on the person who proposes to use the ship as a New Zealand ship or a barge
shall, where that person is not the owner of the ship, also be
imposed on the owner of the ship.

(4) Every person commits an offence who, being required by
subsection (1) or subsection (3) of this section to give notice to
the Director of a proposed change in the use of any ship,
changes or permits a change in the use of that ship without first
giving such notice and ensuring that the Director has approved
the change of use under subsection (2) of this section.

(5) Section 14 of the Summary Proceedings Act 1957 shall
not apply in respect of an offence against this section.

Cf. 1952, No. 49 s. 198; 1987, No. 184, s. 11 (1)

Requirement of Survey

138. Certain ships to be surveyed—(1) Subject to any
exemption issued under section 134 of this Act, every ship of
over 6 metres in length to which this Part of this Act applies
shall be surveyed in accordance with regulations and maritime
rules made under this Act unless it is—
(a) A fishing ship of less than 12 metres in length; or
(b) A pleasure craft; or
(c) A barge that does not carry any person on a voyage; or
(d) A ship holding documents recognised as maritime
documents by the Director under section 41 of this
Act; or
(e) A ship holding documents accepted by the Director under
section 42 of this Act.

(2) The owner of a ship that is required by subsection (1) of
this section to be surveyed commits an offence against this
section if that owner fails to cause the ship to be surveyed in
accordance with section 135 of this Act.

(3) Without limiting any other provision of this Act, the
Governor-General may from time to time, by Order in Council,
in relation to ships of or less than 6 metres in length or any
class of such ships (not being a ship or class of ships referred to
in paragraphs (a) to (e) of subsection (1) of this section), make
regulations for all or any of the following purposes:
(a) Prescribing operating limits:
(b) Prescribing, or authorising the Director to prescribe,
technical standards, codes of practice, and
performance standards:
(c) Prescribing, or authorising the Director to prescribe,
design and construction requirements:
(d) Prescribing maintenance and periodic inspection
requirements:
(e) Prescribing, or authorising the Director to prescribe, the safety and navigational equipment to be carried:

(f) Prescribing, or authorising the Director to prescribe, the maximum loading, the maximum number of persons permitted to be carried, and the maximum and minimum installed propulsive power, or prescribing the criteria for determining any of those things:

(g) Prescribing, or authorising the Director to prescribe, the form of any specified document; and providing for the issue and display of any specified document:

(h) Prescribing the qualifications to be held by a master:

(i) Prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this subsection; and prescribing fines not exceeding $5,000 in respect of any such offence.

Cf. 1952, No. 49, s. 199, 200, 201; 1987, No. 184, s. 11 (1)

184. Director may exempt any particular ship or class of ship from survey—(1) The Director may, by notice to the owner of any ship, exempt that ship from all or any of the survey requirements of this Part of this Act for such period and subject to such conditions and requirements as may be specified in the notice.

(2) The Director may, by notice published in the Gazette, exempt any specified class of ship from all or any of the survey requirements of this Part of this Act for such period and subject to such conditions and requirements as may be specified in the notice.

Cf. 1952, No. 49, ss. 202, 203, 204; 1987, No. 184, s. 11 (1)

Conduct of Surveys

185. Initial, intermediate, and periodical surveys—(1) Every ship that is required by section 133 of this Act to be surveyed shall undergo an initial survey, and such intermediate surveys and periodical surveys as may be prescribed.

(2) Every initial survey, and intermediate survey, and every periodical survey of a ship shall be of such extent as will enable the surveyor to determine whether or not the relevant requirements of this Act and of any rules and regulations made under this Act are being complied with, and as to whether or not the ship is in all respects satisfactory for the service for which the ship is intended to be used having regard to the
period for which the issue or endorsement of any certificate in respect of the ship is sought.

Cf. 1952, No. 49, s. 206; 1987, No. 184, s. 11 (1)

186. **Additional surveys**—(1) The Director may, by notice in writing to the owner of any ship that is required by section 133 of this Act to be surveyed, require that the ship be the subject of an additional survey where—

(a) The Safety Convention so requires; or

(b) The purpose for which the ship is used has been changed since the last survey, and the certificate in force in respect of the ship is not appropriate for the new use; or

(c) A major alteration has been made to the ship since the last survey; or

(d) A surveyor has good cause to suspect that any alteration of or damage to or deterioration in the ship, or any loss of or damage to any equipment of the ship, has occurred since the last survey to the detriment of the seaworthiness or safety of the ship; or

(e) An extension has been sought of the period for which any certificate in respect of the ship would otherwise remain in force.

(2) Nothing in subsection (1) of this section limits the power to require a survey conferred on the Director by section 143 (3) (b) of this Act.

(3) The owner of a ship to whom a notice is given under subsection (1) of this section commits an offence against this section if that owner fails to cause the ship to be surveyed in compliance with the notice.

(4) Section 14 of the Summary Proceedings Act 1957 shall not apply in respect of an offence against this section.

Cf. 1952, No. 49, s. 207; 1987, No. 184, s. 11 (1)

187. **Duties of surveyor on completion of survey where ship satisfactory**—(1) If, on completion of a survey under section 135 of this Act, the surveyor is satisfied that a certificate in respect of the ship can be issued or renewed,—

(a) The Surveyor shall give to the Director a declaration of survey to that effect; and

(b) The Director shall either—

(i) Give to the owner of the ship an interim certificate of survey; or

(ii) Endorse the existing certificate.
(2) If, on completion of a survey under section 136 of this Act, the surveyor is satisfied that there is no reason why any certificate in respect of the ship should be revoked or, as the case may require, is satisfied that a certificate should be issued,—

(a) The Surveyor shall give to the Director a declaration of survey or a report of survey to that effect, and notify the owner of the result of the survey; and

(b) The Director shall issue an interim certificate of survey.

Cf. 1952, No. 49, s. 211; 1987, No. 184, s. 11 (1)

188. Duties of surveyor on completion of survey where ship unsatisfactory—If, as the result of a survey under this Part of this Act, a surveyor is not satisfied that any certificate in respect of the ship should continue in force or be issued, the surveyor shall forthwith give written notice of that decision to the Director and to the owner of the ship.

Cf. 1952, No. 49, s. 212; 1987, No. 184, s. 11 (1)

189. Duties of Director on receipt of notice—On receipt of any notice from a surveyor under section 138 of this Act, the Director shall,—

(a) In the case of a Safety Convention ship that is not a New Zealand ship, notify the Government of the country to which the ship belongs of the results of the survey; or

(b) In the case of any other ship, suspend or revoke in accordance with Part V of this Act any certificate that is in force in respect of the ship or, as the case may require, decline to issue or endorse a certificate in respect of the ship.

Cf. 1952, No. 49, s. 213; 1987, No. 184, s. 11 (1)

140. Declarations of survey—(1) Every declaration of survey shall be in a form approved by the Director, and shall contain—

(a) Such statement of the particulars of the ship; and

(b) Such report by the surveyor on the condition of the ship’s hull, and its machinery and equipment; and

(c) Such statement of the ship’s fitness, in the opinion of the surveyor, to ply on the voyages or the trade for which the certificate is issued,—

as the Director may require, and shall also specify the maximum number of passengers (if any) that the surveyor considers the ship is fit to carry.
(2) Different declarations of survey may be prescribed by the Director in respect of different certificates.

(3) Every declaration of survey shall be deemed to include such additional reports or documents relating to survey as the Director may require to accompany the declaration.

Cf. 1952, No. 49, s. 216; 1987, No. 184, s. 11 (1)

Certificates

141. Interim certificates—(1) Every interim certificate of survey shall be in a form approved by the Director, and shall state—

(a) The use, trade, or type of voyage for which the ship may be used; and

(b) The number of passengers (if any) that the ship is authorised to carry; and

(c) Any restrictions, conditions, or variations (not otherwise provided for in this Act) to which the use, trade, or voyages of the ship, or the carriage of passengers by the ship, is or are subject, either generally or in any specified circumstances; and

(d) The period for which the certificate is to remain in force, being such period, not exceeding 2 months, as the surveyor thinks fit.

(2) While an interim certificate of survey remains in force, it shall have effect as if it were a certificate of survey.

Cf. 1952, No. 49, s. 217; 1987, No. 184, s. 11 (1)

142. Safety Convention certificates—If, on receipt from a surveyor of a declaration of survey to the effect that a Safety Convention certificate in respect of a Safety Convention ship can be issued, the Director is satisfied that the declaration is in order, the Director shall issue to the owner of the ship a Safety Convention certificate in the form set out in the Safety Convention.

Cf. 1952, No. 49, s. 217; 1987, No. 184, s. 11 (1)

143. Certificates of survey—(1) If, on receipt from a surveyor of a declaration of survey to the effect that a certificate of survey in respect of a New Zealand ship can be issued, the Director is satisfied that the declaration is in order, the Director shall issue to the owner of the ship, in duplicate, a certificate of survey in a form approved by the Director.

(2) Every certificate of survey issued under subsection (1) of this section shall specify the period during which it is to remain
in force, and may stipulate that this period is conditional upon the satisfactory completion of any periodical survey or surveys and endorsement to that effect by a surveyor.

(3) If, on receipt from a surveyor of a declaration of survey to the effect that a certificate of survey can be issued or that a certificate of survey has been endorsed, the Director is not satisfied that the declaration is in order, the Director shall do one or both of the following:

(a) Exercise any of the powers conferred on the Director by Part V of this Act:

(b) Direct that a surveyor carry out a further survey or partial survey of the ship.

(4) Whether or not the Director orders another survey or partial survey under subsection (3)(b) of this section, in any case to which that subsection applies, the Director may issue in respect of the ship a certificate of survey appropriate to the extent to which the ship complies to the satisfaction of the Director with the survey requirements of this Part of this Act.

Cf. 1952, No. 49, s. 219 (1)-(4); 1987, No. 184, s. 11 (1)

144. Requirement to hold appropriate certificate—

(1) Subject to section 145 of this Act, this section applies to—

(a) Every ship that is required by section 133 of this Act to be surveyed; and

(b) Every ship that is exempted from section 133 of this Act by virtue of paragraph (d) or paragraph (e) of subsection (1) of that section.

(2) No New Zealand ship, other than a New Zealand Safety Convention ship, in possession of all necessary valid Safety Convention certificates, shall proceed on any voyage unless there is in force in respect of that ship a certificate of survey that is appropriate to that voyage.

(3) No New Zealand Safety Convention ship shall proceed on any international voyage from any port unless there is in force in respect of that ship every Safety Convention certificate that is appropriate to that voyage.

(4) No other ship (not being a ship referred to in subsection (2) or subsection (3) of this section) shall proceed on any voyage from a port in New Zealand unless there are in force in respect of that ship the appropriate documents recognised as maritime documents under section 41 of this Act or accepted under section 42 of this Act.

(5) If any ship proceeds on a voyage in contravention of subsection (2) or subsection (3) or subsection (4) of this section, the owner and the master of the ship each commits an offence.
(6) The master of a ship to which any of the provisions of this section applies shall, on request by the Director or a Collector of Customs or a surveyor, produce for inspection every certificate in force in respect of the ship, and every notice of dispensation (if any) granted in respect of the ship under section 145 of this Act.

(7) Every master commits an offence who fails to comply with subsection (6) of this section.

Cf. 1952, No. 49, s. 220; 1987, No. 184, s. 11 (1)

145. Dispensation from having appropriate certificate—(1) The Director may, by notice to the owner or the master of a ship to which section 144 of this Act applies, grant a dispensation in respect of the ship from all or any of the provisions of subsections (2) to (4) of that section where the ship is—

(a) A fishing ship that is to be used on a specified occasion for any purpose other than fishing; or
(b) To make its delivery voyage; or
(c) To be used on a specified occasion for any trade or purpose other than that for which it has an appropriate certificate of survey; or
(d) Not authorised to carry passengers and is to carry passengers on a specified occasion, or is authorised to carry a certain number of passengers and is to carry more passengers on a specified occasion; or
(e) To voyage for the purpose of undergoing repairs, a survey, trials, or tests; or
(f) Not normally engaged on international voyages but is to make a single international voyage; or
(g) To be used as a pleasure craft by the owner on specific occasions or for a specified period.

(2) The Director may prescribe such conditions and limitations as the Director thinks fit in respect of any notice of dispensation given under subsection (1) of this section, and any breach of any such condition or limitation shall render the dispensation ineffective.

(3) The Director, in accordance with the provisions of Part V of this Act, may at any time revoke any notice of dispensation by notice to the owner and the master of the ship.

Cf. 1952, No. 49, s. 221 (1)–(3); 1987, No. 184, s. 11 (1)

146. Conditions in respect of certificates—(1) The Director may, on issuing any certificate of survey, impose such restrictions, conditions, and limitations as the Director thinks fit
relating to the use, equipment, and passenger-carrying and cargo-carrying capacity of the ship to which the certificate relates.

(2) Every person commits an offence who contravenes or fails to comply with any restriction, condition, or limitation imposed under subsection (1) of this section.

Cf. 1952, No. 49, s. 222 (1); 1987, No. 184, s. 11 (1)

147. More than one certificate in respect of same ship—(1) More than one certificate, each having effect in different circumstances, may be issued under this Part of this Act in respect of any ship.

(2) Where 2 or more certificates of survey are in force in respect of any ship, the master shall, before proceeding on any voyage,—

(a) Enter in the official logbook a statement; or

(b) If no official logbook is carried on the ship, make a written record—

of the certificate of survey under which the ship is to operate on the voyage.

(3) Every master commits an offence who fails to comply with subsection (2) of this section.

Cf. 1952, No. 49, s. 223; 1987, No. 184, s. 11 (1)

148. Duration of Safety Convention certificates—The maximum period for which a Safety Convention certificate may be issued under this Part of this Act shall be prescribed by the Safety Convention.

149. Duration of certificate of survey—The maximum period for which a certificate of survey may be issued under section 143 of this Act shall be—

(a) Four years, in the case of a fishing ship or a restricted-limit ship:

(b) Such period (if any) as may be specified for the purpose by the Minister by notice published in the Gazette, in the case of any other class of ships:

(c) One year, in the case of any class of ships (other than fishing ships and restricted-limit ships) for which no period is prescribed under paragraph (b) of this section.

Cf. 1952, No. 49, s. 228; 1987, No. 184, s. 11 (1)

150. Display of certificates—The owner or agent of any ship shall, on receipt of a certificate issued in respect of that
ship under this Part of this Act, cause the certificate or a
duplicate copy of it, together with any document forming part
of the certificate, to be posted up in a prominent and accessible
place on board the ship, and to be kept so displayed while the
certificate remains in force.

Cf. 1952, No. 49, s. 231; 1987, No. 184, s. 11 (1)

151. Offence in respect of display of certificates—If any
certificate or other document referred to in section 150 of this
Act is not displayed in the manner required by that section, the
owner and the master of the ship each commits an offence.

Special Provisions Relating to Barges

152. Application of sections 158 to 155—(1) Subject to
the provisions of any notice made under subsection (2) or
subsection (3) of this section, sections 153 to 155 of this Act—
(a) Apply to every barge of 24 metres or more in length,
other than a barge that is required to be surveyed
under section 183 of this Act:
(b) Do not apply to any barge of less than 24 metres in
length.

(2) The Director may, by notice to the owner of a barge of 24
metres or more in length, exempt that barge from all or any of
the provisions of sections 153 to 155 of this Act.
(3) The Director may, by notice to the owner of a barge of
less than 24 metres in length, direct that all or any of the
provisions of sections 153 to 155 of this Act shall apply to the
barge.

Cf. 1952, No. 49, s. 240; 1987, No. 184, s. 11 (1)

153. Certificates of completion required for certain
barges—No barge to which this section applies shall proceed
on any voyage unless there is in force in respect of that barge a
certificate of completion issued under section 154 of this Act or
under section 242 of the Shipping and Seamen Act 1952 or
under section 245A of that Act (as repealed by section 11 (1) of
the Shipping and Seamen Amendment Act 1987).

Cf. 1952, No. 49, s. 241; 1987, No. 184, s. 11 (1)

154. Certificates of completion—(1) The Director may
issue to the owner of any barge to which this section applies a
certificate of completion if the Director is satisfied that,—
(a) In the case of a barge whose construction was
commenced, or that has undergone major alteration,
on or after the 1st day of August 1987, the provisions
of section 131 of this Act, and any regulations made under this Act, have been complied with; or

(b) In the case of a barge whose construction was commenced, or which had undergone major alteration, before that date, section 196 of the Shipping and Seamen Act 1952 (as repealed by section 11 (1) of the Shipping and Seamen Amendment Act 1987) was complied with; or

(c) In any case to which section 132 of this Act applies, that section has been complied with,—

and is also satisfied of the other matters specified in subsection (2) of this section.

(2) The other matters of which the Director must be satisfied before a certificate of completion can be issued under subsection (1) of this section are as follows:

(a) That the barge is seaworthy and safe for the purpose for which it is intended to be used;

(b) That the tonnages of the barge have been determined in accordance with regulations made under this Act:

(c) That the barge has been marked in such manner as the Director may require in order to show—

(i) A distinguishing number or name to identify the barge; and

(ii) The approved tonnages of the barge.

(3) Every certificate of completion issued under this section shall be in a form approved by the Director, and shall specify—

(a) The limits within which the barge is approved for use; and

(b) The name, number, or letter used to identify the barge; and

(c) The approved tonnages of the barge; and

(d) Such other matters as the Director requires.

Cf. 1952, No. 49, s. 242 (1)-(3); 1987, No. 184, s. 11 (1)

155. Offence to proceed on voyage in certain circumstances—(1) No barge to which this section applies shall proceed on a voyage—

(a) In contravention of section 153 of this Act; or

(b) Beyond any limits prescribed in its certificate of completion; or

(c) Unless its markings have been properly maintained, and conform with those specified in the certificate of completion; or

(d) While it is unseaworthy or otherwise unsafe.

(2) If any barge proceeds on a voyage in contravention of any of the provisions of subsection (1) of this section, the owner of
the barge, and the master of any vessel that is propelling the barge, each commits an offence.

Cf. 1952, No. 49, s. 244; 1987, No. 184, s. 11 (1)

156. Government ships—The master of any ship in the service of the Customs Department or the New Zealand Police or the Ministry of Agriculture and Fisheries, or the master of any other New Zealand Government ship, may proceed beyond the restricted limits specified in the ship's certificate of survey or for which the ship has the prescribed crewing if the master's official duties require it and the master considers it safe to do so.

Cf. 1952, No. 49, s. 221 (4); 1987, No. 184, s. 11 (1)

PART XI
LOAD LINES

157. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Appropriate load line” means—

(a) The load line indicating or purporting to indicate the maximum depth to which a ship is for the time being permitted to be loaded in accordance with the Load Line Regulations; or

(b) In the case of a passenger ship to which Part X of this Act applies, the appropriate subdivision load line to which the ship is for the time being permitted to be loaded in accordance with regulations made for the purpose under this Act:

“Barge” means any barge, lighter, or like vessel that does not have any means of self-propulsion:

“Certificate” means a certificate of survey, or a Safety Convention certificate, or an interim certificate of survey, as the case may be; and includes any document issued with any such certificate and expressed, or deemed by any provision of this Act, to form part of that certificate:

“Certificate of survey” means a certificate of survey issued under section 143 of this Act:

“Deck line” means a mark on each side of a ship as described in the Load Line Regulations:

“Existing ship” means a ship that is not a new ship:

“International load line certificate” means a load line certificate issued under the Load Line Convention:
"Length", in relation to any ship, means the load line length:
"Load lines" means the marks indicating the several maximum depths to which a ship is permitted to be loaded in various circumstances prescribed by the Load Line Regulations:
"Load Line Convention" means the International Convention on Load Lines 1966; and includes the Regulations annexed to that Convention and any amendments of those Regulations:
"Load Line Convention country" means a country that is a party to the Load Line Convention; and includes any territory of that country to which that Convention extends:
"Load line length", in relation to a ship, means the length of the ship measured in accordance with the Load Line Regulations:
"Load Line Regulations" means the Load Line Rules 1970; and includes any regulations made in respect of those rules under section 204 (2) of this Act:
"Load line ship" has the meaning assigned to that term in section 159 (1) of this Act:
"New ship" means a ship whose keel is laid, or in respect of which a similar stage of construction has been reached, on or after the 5th day of May 1970:
"New Zealand waters" includes the New Zealand marine waters (as defined in section 222 (1) of this Act):
"Passenger ship" means a ship that carries more than 12 passengers:
"Safety Convention" means the International Convention for the Safety of Life at Sea, done at London on the 1st day of November 1974; and includes—
(i) The Annex to that Convention; and
(ii) All amendments of that Convention in force on the 23rd day of May 1990; and
(iii) All amendments of that Convention made after the 23rd day of May 1990 and in force with respect to New Zealand; and
(iv) The Protocol to that Convention, adopted in 1978; and
(v) Any further protocols to that Convention in force with respect to New Zealand:
"Safety Convention ship" means a ship registered in or belonging to a country to which the Safety
Convention applies, being a ship that is subject to the provisions of the Safety Convention:

"Submersion line ship" has the meaning assigned to that term in section 167 (1) of this Act.

Cf. 1952, No. 49, s. 2 (1); 1987, No. 184, s. 2 (1)

158. Application of this Part—(1) Except as provided in subsections (2) and (3) of this section, this Part of this Act applies to the following ships:
   (a) Every New Zealand ship:
   (b) Every other ship while operating in New Zealand waters.
   (2) This Part of this Act does not apply to fishing ships or pleasure craft.
   (3) With the exception of section 167 of this Act, this Part of this Act does not apply to submersion line ships.

Cf. 1952, No. 49, s. 255; 1987, No. 184, s. 13

159. Load line ships and certificates—(1) A load line ship is—
   (a) Any new ship of 24 metres or more in length, or any existing ship of 150 gross tons or more, other than a barge:
   (b) Any ship (including a barge) that proceeds on an international voyage.
   (2) Every load line ship is required to carry an appropriate load line certificate or load line exemption certificate in accordance with this Part of this Act.

Cf. 1952, No. 49, s. 256; 1987, No. 184, s. 13

160. Issue of load line certificates—(1) An appropriate load line certificate in the form prescribed by the Load Line Regulations shall be issued by the Director to every owner of a New Zealand ship in accordance with this section and those regulations.
   (2) For the purposes of subsection (1) of this section, the appropriate load line certificate shall be as follows:
   (a) In the case of a ship that proceeds beyond New Zealand waters and is—
       (i) An existing ship with a gross tonnage of 150 tons or more; or
       (ii) A new ship of not less than 24 metres in length,—
       an international load line certificate:
   (b) In the case of a ship that proceeds beyond New Zealand waters and is—
(i) An existing ship with a gross tonnage of less than 150 tons; or
(ii) A new ship of less than 24 metres in length,—
    a New Zealand load line certificate:
(c) In the case of a ship that operates only in New Zealand waters and is—
    (i) An existing ship with a gross tonnage of 150 tons or more; or
    (ii) A new ship of not less than 24 metres in length,—
        either a New Zealand load line certificate or an international load line certificate:
(d) In the case of a ship that, pursuant to section 165 of this Act, is wholly exempt from the Load Line Regulations, an international load line exemption certificate or a New Zealand load line exemption certificate, as the case may require:
(e) In the case of a ship that, pursuant to section 165 of this Act, is partially exempt from the Load Line Regulations, an international load line certificate together with an international load line exemption certificate or a New Zealand load line certificate together with a New Zealand load line exemption certificate, as the case may require.

Cf. 1952, No. 49, s. 258 (1), (2); 1987, No. 184, s. 13

161. Duty to comply with Load Line Regulations—
(1) Subject to any exemption granted under section 165 of this Act, no master of a load line ship shall take or attempt to take the ship on a voyage unless—
(a) The ship has either—
    (i) In the case of a New Zealand ship, a load line certificate or a load line exemption certificate issued in accordance with section 160 of this Act; or
    (ii) In the case of any other ship operating in New Zealand waters, a load line certificate or a load line exemption certificate recognised under section 41 or accepted under section 42 of this Act; and
(b) The ship is clearly marked with a deck line and with load lines in accordance with the Load Line Regulations; and
(c) The ship complies with the conditions of assignment of the freeboard; and
(d) Any information for the guidance of the master of a ship to which a freeboard has been assigned under the
Load Line Regulations relating to the stability, loading, and ballasting of the ship has been supplied to the master of the ship in accordance with those regulations.

(2) If a master takes or attempts to take the ship on a voyage in contravention of subsection (1) of this section, the master and the owner of the ship each commits an offence.

(3) Any load line ship that is not marked in the manner specified in subsection (1) (b) of this section may be detained until it is so marked.

Cf. 1952, No. 49, s. 262 (1)-(3); 1987, No. 184, s. 13

162. Overloading—(1) In this section, the term “the appropriate load line”,—
(a) In relation to a passenger ship that is marked with a subdivision load line in accordance with—
   (i) Regulations made under this Act in relation to the construction and survey of passenger ships; or
   (ii) The requirements of the Safety Convention,—
   being a subdivision load line that is lower than the load line marked in accordance with the Load Line Regulations, means the subdivision load line:
(b) In relation to any other ship to which this Part of this Act applies in any circumstances specified in the Load Line Regulations, means the load line that, in accordance with those regulations, indicates the maximum depth to which the ship may be loaded in those circumstances.

(2) No load line ship that is marked with load lines shall be so loaded that—
(a) When the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or
(b) In any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(3) If any ship is loaded in contravention of subsection (2) of this section it shall be deemed for the purposes of this Act to be overloaded; and the master and the owner of the ship each commits an offence and is liable to—
(a) A fine not exceeding $50,000; and
(b) Such additional fine, not exceeding an amount calculated in accordance with subsection (4) of this section, as the Court thinks just having regard to the extent to
which the earning capacity of the ship was, or would have been, increased by the overloading.

(4) An additional fine imposed under subsection (3) (b) of this section shall not exceed $5,000 for every centimetre or part of a centimetre by which the appropriate load lines on the ship were or would have been submerged.

(5) Every master of a load line ship who takes or attempts to take the ship on a voyage while it is overloaded commits an offence and (without prejudice to any liability that the master may incur under subsection (3) of this section) is liable to a fine not exceeding $50,000.

(6) Every person (other than the master) who, having reason to believe that a load line ship is overloaded, causes or attempts to cause the ship to be taken on a voyage while it is overloaded commits an offence and (without prejudice, in the case of the owner, to any liability that the owner may incur under subsection (3) of this section) is liable to a fine not exceeding $50,000.

(7) Any load line ship that is overloaded may be detained until it ceases to be overloaded.

(8) This section shall not apply in any case where overloading has arisen solely because of deviation or delay caused by stress of weather or other circumstances that neither the owner nor the master of the ship could have forestalled or prevented.

Cf. 1952, No. 49, s. 263; 1987, No. 184, s. 13

168. Offences in relation to markings—(1) Every person commits an offence who, being the owner or the master of a load line ship that is marked in accordance with the Load Line Regulations, fails without reasonable cause to keep the ship so marked.

(2) Every person commits an offence who conceals, removes, alters, defaces, or obliterates, or permits any other person under his or her control to conceal, remove, alter, deface, or obliterate, any mark with which a load line ship is marked in accordance with the Load Line Regulations, except where the concealment, removal, alteration, defacing, or obliteration is authorised by or under those regulations.

(3) Every person who commits an offence against subsection (1) of this section is liable,—

(a) In the case of an individual, to a fine not exceeding $5,000:

(b) In the case of a body corporate, to a fine not exceeding $30,000.
(4) Every person who commits an offence against subsection (2) of this section is liable,—
   (a) In the case of an individual, to a fine not exceeding $10,000:
   (b) In the case of a body corporate, to a fine not exceeding $50,000.

Cf. 1952, No. 49, s. 264; 1987, No. 184, s. 13

164. Display of load line certificate and other requirements—(1) When a load line certificate is issued in respect of any ship under section 160 of this Act,—
   (a) The owner of the ship shall, on receipt of the certificate, cause it to be framed and posted in some conspicuous place on board the ship, and to be kept so framed and posted, and legible, while the certificate remains in force; and
   (b) The master of the ship shall enter in the official logbook particulars of the positions of the deck line and load lines that are specified in the certificate.

(2) Before any load line ship leaves any dock, wharf, harbour, or other place for the purpose of proceeding to sea, the master of the ship shall enter in the official logbook such particulars of the depth to which the ship is loaded as may be required in the form approved by the Director and contained in the logbook.

(3) Every owner or master of a load line ship who fails to comply with any requirement imposed on the owner or the master by subsection (1) or subsection (2) of this section commits an offence.

Cf. 1952, No. 49, s. 265; 1987, No 184, s. 13

165. Director may exempt certain ships from Load Line Regulations—(1) The Director may, on the application of the owner of any load line ship that does not ply on international voyages, grant an exemption certificate in respect of that ship if the Director is satisfied that, having regard to the nature and conditions of the voyages to be undertaken by that ship, the application of the provisions of the Load Line Regulations to that ship would be unreasonable or impracticable.

(2) The Director may, on the application of the owner of any New Zealand registered load line ship that does not usually ply on international voyages but is, in exceptional circumstances, required to undertake an international voyage, grant an exemption certificate in respect of that ship for that voyage.
(3) The Director may, on the application of the owner of a New Zealand registered load line ship, grant an exemption certificate in respect of that ship if, in the Director's opinion, the ship embodies features of a novel but desirable kind such that, if the ship were required to comply in all respects with this Part of this Act and the Load Line Regulations, the development of those features and their incorporation in other ships may be seriously impeded.

(4) Every exemption certificate granted under this section shall be in the form prescribed in the Load Line Regulations, and shall have the effect of exempting the ship to which it relates from all the requirements of the Load Line Regulations, or such of those requirements as are specified in the certificate.

(5) The Director may grant an exemption certificate under this section subject to any conditions that the Director thinks fit.

Cf. 1952, No. 49, s. 268; 1987, No. 184, s. 13

166. Use of timber load lines—Where a load line ship is using a timber load line in accordance with the Load Line Regulations, the deck cargo of timber shall be stowed and secured in the manner required—

(a) By the Load Line Regulations; and


Cf. 1952, No. 49, s. 269; 1987, No. 184, s. 13

167. Submersion lines on ships not subject to Load Line Regulations—(1) A submersion line ship is any ship (not being a load line ship) that,—

(a) In the case of a ship other than a barge, is a ship of more than 6 metres in length carrying cargo in New Zealand waters; or

(b) Is a barge of 24 metres or more in length; or

(c) Is a barge of less than 24 metres but more than 6 metres in length that—

(i) Is carrying cargo in New Zealand waters; and

(ii) Carries any person on a voyage.

(2) Every submersion line ship shall be marked with lines (in this section referred to as submersion lines) showing the maximum draught to which the ship may be loaded appropriate to the conditions under which the ship may voyage, as determined, and described in a certificate issued, under this section.
(3) Submersion lines shall be—
(a) Parallel to the deck at each side amidships; and
(b) Not less than 300 mm long and 25 mm wide; and
(c) Clearly marked in such colour and manner as, in the opinion of a surveyor, will make the lines clearly visible.

(4) The position of the submersion lines on a submersion line ship shall be determined by the Director, taking into consideration the maximum draught to which the Director considers the ship may safely be loaded in the intended plying limits in various circumstances, having due regard to the shape, construction, and strength of the hull and superstructure, and to the fittings and appliances with which the ship is provided.

(5) Every owner of a submersion line ship shall, for the purpose of ensuring that the ship complies with this section, cause the ship to be surveyed by the Director.

(6) Where, following a survey under subsection (5) of this section, the Director is satisfied that the ship complies with the requirements of this section, the Director shall issue in respect of that ship a submersion line certificate showing the position of the ship's submersion line and the plying limits to which such submersion line applies.

(7) Every certificate issued under subsection (6) of this section—
(a) Shall be in a form approved by the Director; and
(b) May be combined in one document with the certificate of survey or certificate of completion issued under Part X of this Act in respect of that ship or barge; and
(c) Shall remain in force during the currency of the certificate of survey or certificate of completion issued in respect of the same ship or barge, as the case may be.

(8) No submersion line ship shall be used in navigation, however propelled or towed, unless—
(a) There is in force in respect of the ship a submersion line certificate issued under this section; and
(b) The upper edge of the submersion line, as marked in accordance with this section, is not submerged when the ship is loaded.

(9) Every owner of a ship in respect of which a submersion line certificate is in force shall, as soon as possible after any structural alterations are made to the hull or superstructure of the ship that may require an alteration to the position of the submersion line, give written notice of the particulars of the alteration to the Director.
(10) Every submersion line ship that is loaded in contravention of subsection (8)(b) of this section shall be deemed to be overloaded, and the provisions of section 162 of this Act shall apply with any necessary modifications.

(11) Every person commits an offence who, being the owner or master of a submersion line ship,—

(a) fails without reasonable cause to keep the ship marked in accordance with this section; or

(b) acts in contravention of, or fails to comply with, any of the provisions of this section.

(12) Every person commits an offence who conceals, removes, alters, defaces, or obliterates, or permits any other person under his or her control to conceal, remove, alter, deface, or obliterate, any mark with which a submersion line ship is marked in accordance with this section, except where the concealment, removal, alteration, defacing, or obliteration is authorised by or under this section.

(13) Every person who commits an offence against subsection (11) of this section is liable,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $30,000.

(14) Every person who commits an offence against subsection (12) of this section is liable,—

(a) in the case of an individual, to a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $50,000.

Cf. 1952, No. 49, s. 270 (1)-(7), (10), (11), (13), (15), (16); 1987, No. 184, s. 13

PART XII

SAFETY AT SEA

168. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Certificate” means a certificate of survey, or a Safety Convention certificate, or an interim certificate of survey, as the case may be; and includes any document issued with any such certificate and expressed, or deemed by any provision of this Act, to form part of that certificate:
"Collision Regulations" means regulations made under this Act for the purpose of the prevention of collisions:

"Crew accommodation" means accommodation on a ship for seafarers engaged on the ship:

"Load Line Convention" means the International Convention on Load Lines 1966; and includes the Regulations annexed to that Convention and any amendments of those Regulations:

"Load line ship" has the meaning assigned to that term in section 159 (1) of this Act:

"Restricted-limit ship" has the meaning given to it by section 128 of this Act:

"Surveyor" has the meaning given to it by section 128 of this Act.

Cf. 1952, No. 49, s. 2 (1); 1987, No. 184, s. 2 (1)

169. Application of Collision Regulations—(1) The Collision Regulations shall apply to—

(a) New Zealand ships:

(b) All ships, and seaplanes while they are on the surface of the water, within New Zealand waters:

(c) All ships, and seaplanes while they are on the surface of the water, used by or set aside for the New Zealand Defence Force or the defence force of any other country while in New Zealand waters.

(2) For the purposes of this section, a seaplane that is taking off from, or alighting on, the water shall be deemed to be on the surface of the water while it is in contact with the surface.

170. Observance of Collision Regulations—(1) Every owner of a ship or seaplane to which the Collision Regulations apply shall ensure that the ship or seaplane is provided with all such lights, shapes, and means of making fog signals as may be required by the Collision Regulations.

(2) Every master or other person for the time being responsible for the navigation of a ship or seaplane to which the Collision Regulations apply shall—

(a) Ensure that all such lights, shapes, and means of making fog signals as may be required by the Collision Regulations are carried, exhibited, and used in accordance with those regulations; and

(b) Refrain from carrying, exhibiting, or using on the ship or seaplane any lights, shapes, or means of making fog
signals other than those required or permitted by the Collision Regulations to be carried, exhibited, or used on the ship or seaplane; and

(c) Ensure that the ship or seaplane is navigated in accordance with all such rules of steering and sailing as may be prescribed in the Collision Regulations; and

(d) Refrain from navigating the ship or seaplane in a manner that is contrary to any such rules of steering and sailing as may be prescribed in the Collision Regulations.

(3) Every owner, and every master or other person for the time being responsible for the navigation, of any ship or seaplane to which the Collision Regulations apply, commits an offence who—

(a) Fails to obey the Collision Regulations; or

(b) Contravenes subsection (1) or (as the case may require) subsection (2) of this section.

Cf. 1952, No. 49, s. 287; 1987, No. 184, s. 14

General Provisions Relating to Safety

171. Radio messages—(1) Every person who is in charge of any radio apparatus capable of effecting radio communications by transmission or reception shall, whenever required to do so by the Director, transmit and receive messages relating to safety at sea in general and in particular to—

(a) Dangers to navigation; and

(b) Meteorological forecasts and warnings; and

(c) Search and rescue operations; and

(d) Medical advice to ships.

(2) Every person commits an offence who fails without reasonable excuse to comply with any requirement of subsection (1) of this section or any regulations made under this Act.

Cf. 1952, No. 49, s. 293; 1987, No. 184, s. 14

172. Additional duties in respect of reporting of dangers to navigation—(1) In addition to the duty set out in section 33 of this Act, the master of every New Zealand ship, and the master of every foreign ship in New Zealand waters, that, in the course of any voyage,—

(a) Meets with dangerous ice, or a dangerous derelict, or any other direct danger to navigation; or
(b) Meets with a tropical storm, or winds of force 10 or above on the Beaufort scale, for which no storm warning has been issued; or

c) Encounters sub-freezing air temperatures associated with gale force winds causing severe ice accretion on superstructures,—

shall transmit an appropriate message in accordance with regulations made under this Act.

(2) Every master commits an offence who fails without reasonable excuse to comply with any requirement of subsection (1) of this section or of any regulations made under this Act.

Cf. 1952, No. 49, s. 294 (1), (3); 1987, No. 184, s. 14

178. Dangerous goods—(1) In this section, the term “dangerous goods” includes—

(a) The substances listed and classified according to their hazards in The International Maritime Dangerous Goods Code, published by the International Maritime Organisation; and

(b) Any other substances declared to be dangerous goods by the Governor-General by Order in Council;—

and also includes empty receptacles that have been used for the carriage of dangerous goods, unless the receptacles have been cleaned, subsequently dried, and, where appropriate, gas freed; but does not include goods forming part of the equipment or stores of the ship in which they are carried.

(2) This section applies to—

(a) New Zealand ships:

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

(3) Every person commits an offence who causes or allows any dangerous goods to be taken on board any ship to which this section applies unless—

(a) The shipper of the goods has furnished the owner or master of the ship with a certificate or declaration to the effect that the goods—

(i) Are properly marked and labelled in accordance, and comply in all other respects, with any regulations made under this Act; and

(ii) Are packaged in such a manner as to withstand the ordinary risks of handling and transport by sea, having regard to the nature and properties of the goods; and
(b) The certificate or declaration states the correct technical name of the goods and the class or classes to which they belong; and
(c) The certificate or declaration is completed and signed by the shipper of the goods.

(4) Every person commits an offence who,—
(a) Being the owner or charterer of any ship to which this section applies, causes or allows any dangerous goods to be taken on board the ship without first delivering to the master of the ship a list of the dangerous goods to be loaded; or
(b) Being the master of any ship to which this section applies and on which any dangerous goods are loaded, fails to note on the list referred to in paragraph (a) of this subsection the position of the goods in the ship.

(5) Every person commits an offence who, being the owner or charterer or master of any ship to which this section applies,—
(a) Causes or allows any dangerous goods taken on board the ship to be stowed otherwise than in accordance with any regulations made under this Act; or
(b) Fails to ensure that any such dangerous goods are kept stowed in accordance with those regulations; or
(c) Fails to keep adequately separated any dangerous goods that the person knows or ought to know are liable to interact dangerously.

(6) Every person commits an offence who—
(a) Offers any dangerous goods for carriage by sea unless they are marked and labelled in accordance with regulations made under this Act; or
(b) Causes or allows any goods intended for carriage by sea to be packed in any freight container, vehicle, portable tank, tank container, or other form of secondary container, unless the container, vehicle, or tank is marked and labelled in accordance with any regulations made under this Act.

(7) Every person commits an offence who—
(a) Offers for carriage in, or causes or allows to be loaded into, any ship to which this section applies any dangerous goods, other than those to which paragraph (b) of this subsection applies, unless those goods—
   (i) Are properly packaged in accordance with any regulations made under this Act; and
   (ii) Are packaged in such a manner as to withstand the ordinary risks of handling and transport by sea,
having regard to the nature and properties of the goods; or

(b) Causes or permits any dangerous goods to be loaded in bulk (that is, loaded directly within the structural cargo space of the ship without any intermediate form of containment) in any ship to which this section applies for carriage in that ship if the person knows or ought to know that the goods cannot be carried safely to the destination to which they are consigned while stowed in bulk.

(8) Every person commits an offence who, being the owner or charterer or master of any ship to which this section applies, or the agent of any such owner or charterer, or the consolidator of any freight container or other form of secondary containment intended for shipment in any ship to which this section applies, agrees to load on any such ship any package or container that the person has reason to believe—

(a) Contains any dangerous goods; and

(b) Is not packaged, marked, labelled, and documented in accordance with any regulations made under this Act.

(9) Any person referred to in subsection (8) of this section may require any package or container mentioned in that subsection to be opened, and such tests as may be necessary to identify the contents to be conducted; and the costs of such inspection and tests, and any delay caused by the inspection and tests, shall be borne by and recoverable from the shipper of the package or container.

(10) Without limiting subsection (9) of this section, every person authorised by the Authority, the Secretary of Labour, the Comptroller of Customs, the Director-General of Agriculture and Fisheries, or a surveyor who has good cause to suspect that a package or container contains dangerous goods that are unmarked or improperly marked or packed may require the package or container to be opened, and such tests as may be necessary to identify the contents to be conducted; and the costs of such inspection and tests, and any delay caused by the inspection and tests, shall be borne by and recoverable from the shipper of the package or container.

(11) Every person commits an offence who misrepresents the nature of any dangerous goods with intent to evade any of the provisions of this section or any regulations made under this Act and, upon the conviction of any person of an offence against this subsection, the Court by which the person is convicted may order the forfeiture of all goods involved in the offence.
(12) It is a defence in a prosecution under this section if the defendant proves that—

(a) The nature of the goods to which the prosecution relates was misrepresented to the defendant by the consignor of the goods, or by the agent of the consignor; and

(b) It was reasonable in all the circumstances for the defendant to rely on that misrepresentation; and

(c) The defendant had no reason to believe that the goods in question were other than what they were represented to be.

(13) For the purposes of any prosecution under this section, where any mark, label, certificate, declaration, or other descriptive or identifying document describes or identifies any goods as being—

(a) Goods which are, or are classified as, dangerous goods; or

(b) Dangerous goods of any specified name or class,—

the goods to which the mark, label, certificate, declaration, or other document relates, or related, shall, in the absence of proof to the contrary, be deemed to be, or to have been, dangerous goods or, as the case may be, dangerous goods of the specified name or class.

Cf. 1952, No. 49, s. 298 (1), (2), (4)–(14); 1987, No. 184, s. 14

174. Deck cargo—(1) In this section, the term “deck cargo” means any cargo stowed on a weather deck of a ship; but does not include—

(a) Livestock; or

(b) Timber when carried as deck cargo on any timber load line ship in accordance with section 166 of this Act.

(2) Except as provided in subsection (4) of this section,—

(a) No New Zealand ship subject to survey under section 133 of this Act shall carry any deck cargo from any port; and

(b) No ship subject to survey under section 133 of this Act shall carry any deck cargo from any port in New Zealand,—

unless that deck cargo is carried in accordance with the terms of a deck cargo permit issued by the Director, specifying the quantity, position, and type of deck cargo that may be carried on the ship.

(3) The Director may issue a deck cargo permit where the Director is satisfied that the cargo is to be carried in a manner that will ensure the ship is seaworthy, and, in determining
whether the ship is seaworthy under this subsection, the Director may have regard to all or any of the following:

(a) The nature of the voyage:

(b) The nature of the cargo to be carried:

(c) The manner in which the cargo is to be secured:

(d) The security arrangements in respect of the cargo:

(e) The ability of the ship to shed water from its decks:

(f) The stability of the ship:

(g) Such other matters the Director believes relevant.

(4) No load line ship shall require a deck cargo permit if the ship—

(a) Is authorised under the Load Line Convention to carry deck cargo; and

(b) Carries on board such stability information relating to the types, weights, volumes, and distribution of deck cargo that may be carried, as is appropriate to the trade on which the ship is engaged; and

(c) Does not carry deck cargo otherwise than in accordance with paragraphs (a) and (b) of this subsection.

(5) Every master commits an offence who takes a ship on a voyage in contravention of any requirement of this section or any deck cargo permit issued in respect of the ship.

Cf. 1952, No. 49, s. 299 (1), (2), (3)–(6); 1987, No. 184, s. 14

175. Livestock—(1) In this section, the term “livestock” means any living animal that is carried on board a ship and for which freight is paid.

(2) Any livestock carried on a voyage from any port in New Zealand shall be carried in accordance with the terms of a permit to carry livestock on board that ship issued by the Director, and stating—

(a) The type and number of livestock that may be carried; and

(b) Such matters as the Director considers necessary to ensure the safety of the ship; and

(c) Such requirements for inspection of the ship as the Director considers necessary for ensuring compliance with the permit.

(3) Every master of a ship commits an offence who takes the ship on a voyage from any port in New Zealand carrying any livestock on board that ship otherwise than pursuant to and in accordance with the terms of a permit to carry livestock on board that ship issued by the Director, and stating—

(a) The type and number of livestock that may be carried; and
(b) Such matters as the Director considers necessary to ensure the safety of the ship; and
(c) Such requirements for inspection of the ship as the Director considers necessary for ensuring compliance with the permit.

Cf. 1952, No. 49, s. 300; 1987, No. 184, s. 14

176. Grain—(1) In this section, the term "grain" means wheat, maize (corn), oats, rye, barley, rice, and pulses; and includes any seeds or processed forms of wheat, maize (corn), oats, rye, barley, rice, or pulses whose behaviour while being so carried or stored in a ship is similar to that of grain in its natural state.

(2) Every person who is the owner or master of—
(a) Any New Zealand ship that loads any grain; or
(b) Any ship that loads any grain at, or for carriage to, a New Zealand port,—
shall load or carry the grain in accordance with the requirements of Chapter VI of the International Convention for the Safety of Life at Sea 1974.

(3) Every owner and every master commits an offence who fails to comply to the satisfaction of the Director with the requirements referred to in subsection (2) of this section.

Cf. 1952, No. 49, s. 301; 1987, No. 184, s. 14

177. Minister may define restricted limits—(1) For the purposes of this Act, the Minister may from time to time, by notice in the Gazette, define the limits within which restricted-limit ships may ply or proceed; and those limits shall be one or more of the following classes:
(a) River limits:
(b) Extended river limits:
(c) Extreme limits.

(2) In defining any restricted limits under subsection (1) of this section, the Minister may—
(a) Define those limits in relation to any specified class or classes of ship:
(b) Require any ships plying or proceeding in restricted limits to have on board any specified equipment:
(c) Specify the maximum number of passengers that may be carried on any ships plying or proceeding in any class of restricted limits:
(d) Specify the period or season or hours of the day during which any ships may ply or proceed within restricted limits:
(e) Prescribe such other conditions as the Minister considers necessary.

(3) For the purposes of this Act, all rivers and other inland waters shall be deemed to be river limits.

Cf. 1952, No. 49, s. 151; 1987, No. 184, s. 5

178. Medical officers to be carried on certain ships—Every foreign-going New Zealand ship having 100 or more persons on board shall carry on board as part of its complement a duly qualified medical practitioner and, if it does not, the owner and the master each commits an offence against this section for every voyage of the ship made without a duly qualified medical practitioner.

Cf. 1952, No. 49, s. 142; 1987, No. 184, s. 7

179. Medical certificates required in respect of seafarers under 18 years of age—(1) Except as provided in subsection (2) of this section, no person under the age of 18 years may be employed on a New Zealand ship or engaged in New Zealand for employment on any ship unless a current medical certificate signed by a duly qualified medical practitioner certifying fitness for that employment has been delivered to the master of that ship.

(2) The Director may, on the grounds of urgency, authorise any person to be employed until arrival at the first port at which the ship calls notwithstanding that subsection (1) of this section has not been complied with.

(3) A certificate of the kind referred to in subsection (1) of this section shall remain in force for 12 months from the date on which it was issued, or, where the certificate would otherwise expire in the course of the voyage of the ship, until the end of that voyage.

Cf. 1952, No. 49, s. 49 (2), (3)

180. Crew accommodation—(1) This section applies to every ship that is required by section 133 of this Act to be surveyed, except a ship to which the Shipping (Crew Accommodation) Regulations 1974 apply.

(2) The owner of every ship to which this section applies shall provide crew accommodation on the ship to such standards and in compliance with such requirements as the Director may specify, having regard to the purposes for which the ship is to be used, its size and age, and the nature of the voyages on which it is to be used.
(3) The crew accommodation shall be marked in accordance with the requirements specified by the Director.

(4) The owner of a ship to which this section applies shall ensure—

(a) That the crew accommodation is maintained in a clean and habitable condition, and that all fittings, furniture, equipment, and appliances in the crew accommodation are maintained in a serviceable condition; and

(b) That no part of the crew accommodation is used for any purpose other than that for which it has been approved by the Director.

(5) If default is made in compliance with the requirements of this section in respect of any ship, the owner of the ship commits an offence.

Cf. 1952, No. 49, s. 145 (1)-(3), (5), (7), (8); 1987, No. 184, s. 8

181. Official logbook to be kept—(1) An official logbook shall be kept on every New Zealand ship in the appropriate form for that ship approved by the Director.

(2) The Director shall approve forms of official logbooks, which may be different for different classes of ships, so that each such form shall contain proper spaces for the entries required by this Act.

(3) The official logbook may, at the discretion of the master or owner, be kept distinct from or united with the ordinary ship’s log, so that in all cases the spaces in the official logbook are duly filled up.

(4) An entry required by this Act in an official logbook shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as that occurrence shall be made and dated so as to show the date of the occurrence and the entry respecting it; and if made in respect of an occurrence happening before the arrival of the ship at her final port of discharge shall not be made more than 24 hours after that arrival.

(5) Every entry in the official logbook shall be signed by the master and by the mate or some other member of the crew, and also, in the case of an entry of illness, injury, or death, shall be signed by the medical practitioner on board (if any).

(6) Every entry made in an official logbook in a manner provided by this Act shall be admissible in evidence.

(7) If an official logbook is not kept in the manner required by this Act, or if an entry directed by this Act to be made
therein is not made at the time and in the manner directed by 
this Act, the master commits an offence.

(8) Every person commits an offence against this section who, 
more than 24 hours after the arrival of the ship at its final port 
of discharge, makes, or procures to be made, or assists in 
making, any entry in an official logbook in respect of any 
occurance happening previously to that arrival.

(9) This section shall not apply to—
(a) Restricted-limit ships; or
(b) New Zealand fishing ships that do not in the course of any 
voyage go beyond the outer limits of the territorial 
sea of New Zealand; or
(c) Pleasure craft.

Cf. 1952, No. 49, s. 177

182. Matters to be entered in logbook—The master shall 
enter or cause to be entered in the official logbook the 
following matters:

(a) Every conviction by a legal tribunal of a member of the 
crew, and the punishment inflicted:
(b) Every offence committed by a member of the crew for 
which it is intended to discipline or dismiss that crew 
member:
(c) Every case of illness or injury happening to a member of 
the crew, with the nature thereof, and the medical 
treatment adopted (if any):
(d) Every birth, marriage, or death taking place on board, 
with the names and ages of the parties:
(e) The name of every seafarer who ceases to be a member 
of the crew otherwise than by death, with the place, 
time, manner, and cause thereof:
(f) Every accident, incident, or mishap:
(g) Any other matter directed by this Act or any rules or 
regulations made under this Act to be entered.

Cf. 1952, No. 49, s. 178

183. Chief engineer to keep engine room logbook—
(1) On every New Zealand ship having not less than 2 engineers 
the chief engineer shall keep an engine room logbook, and the 
entries required to be made therein shall be signed by the chief 
engineer and by the engineer on watch at the time of any 
occurance being recorded.

(2) The Director shall approve forms of the logbook, so that 
each form shall contain proper spaces for the entries required 
by this section.
(3) An entry required by this section shall be made as soon as possible after the occurrence to which it relates.

(4) The logbook shall contain full particulars respecting any accident or incident involving machinery, boilers, or the systems of the ship and give the date and time thereof, and state the nature of the occurrences and what was done to repair the same.

(5) Entries shall be made in the logbook of the full particulars of any examination of sea connections, docking dates, examination of the stern shaft and propellor, testing of the main steam pipe, and of general repairs and overhauls made from time to time in the engine room.

(6) All telegraph calls from the bridge to the engine room shall be recorded in the logbook or a separate telegraph movements book, or by means of an automatic telegraphic recorder.

(7) Every entry in an engine room logbook or a separate telegraph movements book, and every record taken from an automatic telegraphic recorder, shall be admissible in evidence.

(8) If an engine room logbook is not kept in the manner required by this section, or if an entry directed thereby to be made therein is not made at the time and in the manner directed by this section, the chief engineer commits an offence against this section.

(9) Every person who, more than 24 hours after the arrival of a ship at her final port of discharge, makes, or procures to be made, or assists in making, any entry in an engine room logbook in respect of any occurrence happening previously to that arrival commits an offence against this section.

(10) Nothing in this section shall in any way affect or limit the duties and liabilities imposed by this Act on the master in respect of the official logbook, and the engine room logbook shall at all times be open to inspection by the master and the Director.

(11) This section shall not apply to—

(a) Restricted-limit ships; or

(b) New Zealand fishing ships that do not in the course of any voyage go beyond the outer limits of the territorial sea of New Zealand.

Cf. 1952, No. 49, s. 181 (1)–(5), (7)–(9), (11), (12)

184. Offence in respect of official logbook, etc.—

(1) Every person commits an offence who wilfully—
(a) Destroys or mutilates or renders illegible any entry in any official logbook, engine room logbook, or separate telegraphic movements book; or
(b) Makes, procures to be made, or assists in making a false or fraudulent entry in or omission from any official logbook, engine room logbook, or separate telegraphic movements book.

(2) Every person commits an offence who wilfully destroys or mutilates or renders illegible any record taken from an automatic telegraphic recorder.

PART XIII
TRANSITIONAL PROVISIONS RELATING TO PARTS X TO XII
185. Penalties—(1) Every person who commits an offence against any of sections 131, 132, and 171 of this Act shall be liable to a fine not exceeding $5,000 and, if the offence is a continuing one, to a further fine not exceeding $250 for every day or part of a day during which the offence is continued.
(2) Every person who commits an offence against any of sections 133, 136, 144, 146, 155, 161, and 173 of this Act is liable,—
(a) In the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000:
(b) In the case of a body corporate, to a fine not exceeding $100,000.
(3) Every person who commits an offence against any of sections 147, 170 (3), 174 (5), 175 (3), 176 (3), 178, 180, 181, 183, and 184 of this Act is liable,—
(a) In the case of an individual, to a fine not exceeding $5,000:
(b) In the case of a body corporate, to a fine not exceeding $30,000.
(4) Every person who commits an offence against section 151 or section 164 (3) of this Act is liable to a fine not exceeding $2,000 and, if the offence is a continuing one, to a further fine not exceeding $100 for every day or part of a day during which the offence is continued.
(5) Every person who commits an offence against section 172 (2) of this Act is liable to a fine not exceeding $10,000.

186. Documents issued under Parts X to XII—Every licence, certificate, permit, authorisation, approval, or other document issued, recognised, or accepted by the Director
under any of Parts X, XI, and XII of this Act shall be deemed to be a maritime document issued, recognised, or accepted, as the case may be, under this Act, and shall accordingly have effect and be subject to the provisions of this Act or regulations or rules made under this Act.

187. Expiry of Parts X to XII—Parts X, XI, and XII of this Act shall expire with the close of the period of 3 years beginning on the date of commencement of this Act, and on the day after the day on which that period closes those Parts of this Act shall be deemed to be repealed.

PART XIV
GENERAL PROVISIONS RELATING TO SHIPPING

Duty of Assistance

188. Duty of assistance—Every person on whom any duty is imposed by this Act—
(a) Shall at all reasonable times furnish; and
(b) Shall ensure that at all reasonable times the person’s agents and employees furnish—
the means required by the Authority, its employees, the Director, or their respective agents for an entry, inspection, examination, audit, inquiry, or the exercise of any other power, under this Act in relation to the duty.

Cf. 1992, No. 96, s. 47

Maritime Registry

189. Maritime Registry—(1) The Authority shall establish a Maritime Registry.
(2) Copies or appropriate evidence of the following shall be recorded and maintained at the Registry:
(a) Every maritime document and every marine protection document issued by the Director:
(b) Every regulation made under this Act, and every rule notified in the Gazette and for the time being in force:
(c) Every item incorporated by reference into rules under section 452 of this Act:
(d) Every accident, incident, and mishap notification given under section 31 of this Act:
(e) Every delegation, authorisation, notification of recognition of a document as a maritime document or marine protection document, and exemption granted in writing under this Act:
(f) The address for service of—
   (i) Every current applicant for a maritime document or marine protection document; and
   (ii) Every current holder of a maritime document or marine protection document; and
   (iii) Every person who holds a document recognised under this Act as a maritime document or marine protection document:

(g) A list of the conventions and the parties to each of those conventions:

(h) The current performance agreement:

(i) The current service charter.

(3) Documents kept at the Registry shall be made available by the Authority, in accordance with the provisions of the Official Information Act 1982, for inspection by the public free of charge.

Cf. 1990, No. 98, s. 74

Information Services

190. Information services—(1) The Authority shall ensure that an information service is provided to collect and disseminate information as to maritime safety requirements, marine protection requirements, and the placement and operation of navigational aids in respect of New Zealand waters.

(2) The Authority may require the payment of a reasonable charge fixed by the Authority for any costs incurred by the Authority under this section.

Cf. 1990, No. 98, s. 75

Fees and Charges

191. Marine safety charges—(1) The Governor-General may from time to time, by Order in Council, make regulations providing for the payment of marine safety charges in respect of ships entering any port in New Zealand or operating in New Zealand waters and prescribing the amounts of those charges.

(2) The purpose of marine safety charges is to provide funding to enable the provision of—

(a) Navigational aids to which section 113 of the Harbours Act 1950 does not apply; and

(b) Distress and safety radio services; and

(c) Marine safety information; and

(d) Other services related to the safety of shipping.
(3) Any such regulations may—
(a) Specify the persons by whom the marine safety charges are payable including (without limitation) all or any of the master, owner, charterer, person responsible for the management of the ship, or any agent of any of those persons who by law or by contract is liable to pay any other charge on account of the ship:
(b) Prescribe different marine safety charges for different classes of ship based on length, tonnage, equipment available for use on board the ship, or such other criteria as may be specified in the regulations:
(c) Provide for the refund or waiver of any marine safety charge in whole or in part, in any specified case or class of cases:
(d) Provide that the marine safety charges are payable on an annual or other equal basis in advance or otherwise, or on a per voyage basis at the option of either the Director or the person liable to pay the marine safety charges; and provide for the changing of those options, and for the making of adjustments where an option is changed—whether or not persons levied use, or the ship in respect of which the levy arises uses, any such services.
(4) Nothing in this section limits the provisions of section 201 or section 204 of this Act.
Cf. 1952, No. 49, s. 375; 1990, No. 121, s. 2

192. Exemptions from marine safety charges—(1) All pleasure craft are totally exempt from liability in respect of marine safety charges.
(2) Regulations made under this Act may—
(a) Exempt any ship or class or description of ship or any ship used for a purpose specified in the regulations from liability in respect of marine safety charges, either totally or partially, and subject to such conditions, as may be imposed in the regulations:
(b) Specify circumstances in which any ship or class or description of ship is exempt from liability in respect of marine safety charges, either totally or partially.
Cf. 1952, No. 49, s. 376; 1990, No. 121, s. 2

198. Power to appoint agents to collect marine safety charges—(1) The Director may appoint the Collector of Customs at any port or the holder for the time being of any office (whether or not within the Public Service) or any other
person to be the agent of the Director for the purpose of collecting marine safety charges or any class of marine safety charges.

(2) Any appointment under subsection (1) of this section may—

(a) Provide for the payment of a fee by the Director for the collection of marine safety charges; or

(b) Permit the agent to retain a specified proportion of the marine safety charges as a collection fee; or

(c) Both.

Cf. 1952, No. 49, s. 377; 1990, No. 121, s. 2

194. Power of agent of ship, etc., to retain marine safety charges out of other money—Any agent who by any regulations made under this Act is liable for the payment of marine safety charges in respect of any ship may, out of the money received by the agent on account of that ship or belonging to the owner thereof, retain the amount of all such charges paid by the agent, together with any reasonable expenses incurred by reason of the payment of the charges or the agent’s liability to pay the charges.

Cf. 1952, No. 49, s. 378; 1990, No. 121, s. 2

195. Recovery in certain cases where marine safety charges not paid—(1) This section shall apply only where a marine safety charge is payable to the Director or the Collector of Customs at any port, and not where the charge is payable to any other person or any agent of the Director.

(2) If the person liable to pay any marine safety charge in respect of any ship fails to do so on demand, and the charge is not paid by any other person, the Director or the Collector may, in addition to any other remedy, go on board the ship and distrain the cargo and any other property belonging to or on board the ship, and may maintain that distraint until that charge is paid.

(3) For the purposes of subsection (1) of this section, the term “agent” does not include the Collector of Customs at any port.

Cf. 1952, No. 49, s. 378A; 1990, No. 121, s. 2

196. Issue of receipt for marine safety charge—Every person who receives any marine safety charge shall, on demand, issue to the person paying the charge a receipt
showing clearly the ship in respect of which the charge is paid and the period to which the charge relates.

Cf. 1952, No. 49, s. 378B; 1990, No. 121, s. 2

197. Detention of ship where marine safety charges not paid or receipt not produced—(1) Where, on demand being made by any person for the payment of any marine safety charge,—

(a) The charge is not paid; or
(b) Evidence for the earlier payment of the charge is not produced,—

the Director or the Collector of Customs may detain the ship concerned until the charge is paid or the receipt is produced.

(2) If payment of the charge is not made, or evidence of the earlier payment not produced, within the period of 28 days next following the detention, the Director may at any time during the continuance of the non-payment, or non-production, sell the ship, and apply the proceeds in payment of that charge, together with all reasonable expenses incurred by the Director under this subsection, paying the surplus (if any), on demand, to the owner or other person for the time being responsible for the management of the ship, or the master of the ship.

(3) Where a ship is detained or sold under this section, the Crown, the Director, and the Collector of Customs, or any person acting under their direction or authority under this section shall not be liable for any loss or damage arising directly or indirectly from the detention or sale of the ship unless it is proved to the satisfaction of a Court that the person acted in bad faith.

(4) The Collector of Customs shall advise the Director of every ship detained pursuant to subsection (1) of this section by the Collector or by a person acting under the Collector’s direction or authority.

Cf. 1952, No. 49, s. 378c; 1990, No. 121, s. 2

Coastal Shipping

198. Coastal shipping—(1) No ship shall carry coastal cargo, unless the ship is—

(a) A New Zealand ship; or
(b) A foreign ship that—

(i) Has disembarked at a port in New Zealand passengers who embarked at a foreign port or unloaded at a port in New Zealand goods loaded at a
foreign port, and has not visited a foreign port since that disembarkation or unloading; or

(ii) Will, before departing from a port in New Zealand for a foreign port, disembark such passengers or unload such goods; or

(c) A foreign ship that—

(i) Has embarked at a port in New Zealand passengers who are to be disembarked at a foreign port or loaded at a port in New Zealand goods to be unloaded at a foreign port, and has not visited a foreign port since that embarkation or loading; or

(ii) Will, before departing from a port in New Zealand for a foreign port, embark such passengers or load such goods.

(2) If, in any case, the Minister is satisfied that there are no ships of any of the kinds described in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section available to carry any coastal cargo, the Minister may authorise the carrying of coastal cargo in that case by any other ship on such conditions as the Minister considers appropriate; and every authorisation granted under this subsection shall, subject to subsection (5) of this section, have effect according to its tenor.

(3) Every person commits an offence who—

(a) Carries coastal cargo in contravention of this section; or

(b) Contravenes or fails to comply with any condition imposed under subsection (2) of this section.

(4) Every person who commits an offence against subsection (3) of this section is liable,—

(a) In the case of an individual, to a fine not exceeding $10,000:

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

(5) Nothing in this section shall limit any other provision of this Act or any other Act, or any regulations or maritime rules made under this Act.

(6) In this section,—

"Coastal cargo", in relation to any ship, means—

(a) Passengers embarked by the ship at any port in New Zealand for carriage to and disembarking at any other port in New Zealand:

(b) Goods loaded on the ship at any port in New Zealand for carriage to and unloading at any other port in New Zealand:
“Foreign port” means a port in a country other than New Zealand:
“Goods” has the same meaning as in section 2 of the Carriage of Goods Act 1979.

Safety Services

199. Search and rescue operations—(1) The Minister shall—
(a) Establish, maintain, and operate a Rescue Co-ordination Centre for the conduct of marine search and rescue operations; and
(b) Appoint persons to participate, either generally or in any particular case, in marine search and rescue operations in respect of any ship or aircraft or any person which or who is, or is believed to be, in distress or unaccounted for at sea; and
(c) Exercise such other powers as may be necessary or desirable for the effective performance of marine search and rescue operations, or for ship reporting systems or for the implementation of any international convention or agreement relating to marine search and rescue operations to which New Zealand is a party.

(2) The Minister may authorise the payment, out of money appropriated for the purpose by Parliament, of such amounts as the Minister considers appropriate to any person who assisted in marine search and rescue operations at the request of any person appointed under subsection (1)(b) of this section, and to the owner of any ship or aircraft that has assisted in any such operation in response to any such request.

(3) The Minister may, in exercising his or her powers under this section, contract out the operations referred to in this section.

Cf. 1952, No. 49, s. 292; 1987, No. 184, s. 14

200. Navigational aids—(1) Subject to the provisions of sections 203 to 207 of the Harbours Act 1950, the Authority shall be responsible for the management of all navigational aids on or near the coasts of New Zealand and the adjacent seas and islands.

(2) The Authority may—
(a) Erect or place any navigational aid:
(b) Add to, alter, remove, or maintain any navigational aid:
(c) Inspect any navigational aid or property related to any navigational aid.
(3) Any person who is authorised by the Director for that purpose either generally or specially may inspect and examine any navigational aid that is under the management of any local authority or person, and may for that purpose enter, with such assistants as he or she may deem necessary, any such navigational aid and any premises and property appurtenant thereto.

(4) The Authority may, where necessary for the exercise of its powers under this section or for the residence of any person employed in connection with the management of any such navigational aid, take or otherwise acquire any land under and subject to the provisions of the Public Works Act 1981.

(5) The powers conferred on the Authority by this section shall be in addition to and not in substitution for the powers conferred by the Harbours Act 1950 or any other Act.

Cf. 1993, No. 89, s. 19

**Miscellaneous Provisions**

**201. Regulations**—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) Prescribing those breaches of maritime rules that constitute offences against this Act:

(b) Prescribing those breaches of maritime rules that constitute infringement offences against this Act:

(c) Prescribing the penalty for each offence prescribed under paragraph (a) of this subsection which,—

(i) In the case of an individual, shall be a fine not exceeding $5,000:

(ii) In the case of a body corporate, shall be a fine not exceeding $30,000:

(d) Prescribing the infringement fee for each offence prescribed under paragraph (b) of this subsection, which,—

(i) In the case of an individual, shall be a fine not exceeding $2,000:

(ii) In the case of a body corporate, shall be a fine not exceeding $12,000:

(e) Such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act (other than those referred to in section 394 (1) (i) of this Act) and for their due administration.

(2) Any regulations made under this Act may be so made that different regulations shall apply with respect to different
classes of persons, ships, or maritime products, or with respect
to the same class of person, ship, or maritime product in
different circumstances.

Cf. 1990, No. 98, s. 100

PART XV
TRANSITIONAL AND CONSEQUENTIAL PROVISIONS
RELATING TO MARITIME TRANSPORT

202. Repeals and revocations—(1) The enactments speci-
fixed in Part I of the Third Schedule to this Act are hereby
repealed.

(2) The regulations, rules, orders, and notices specified in
Part II of the Third Schedule to this Act are hereby revoked.

(3) Notwithstanding the repeal of the Maritime Transport
Act 1993 by subsection (1) of this section, sections 21, 22, 23,
24, 25, and 27 of that Act shall be deemed to have effect as if
those sections had not been repealed.

(4) Nothing in subsection (1) of this section shall affect any
amendment made—

(a) To the Harbours Act 1950, the Ombudsmen Act 1975,
the Public Finance Act 1989, or the Ship Registration
Act 1992; or

(b) To any regulations (other than the Coastal Pilots
Regulations 1964), rules, orders, and notices—
by section 20 of the Maritime Transport Act 1993.

(5) The first item in the second column of Part I of the
Second Schedule to the Maritime Transport Act 1993 shall be
deemed always to have read as follows:

| By omitting from the definition of the term      |
| “harbour light” in section 2 (1) the words     |
| “Minister of Transport”, and substituting the   |
| word “Authority”; and by omitting from sections  |
| 5 (2), 177 (1A), 179 (1), 204, 241 (1) (b), 241A  |
| (1) (c), 241A (1) (d), and 241A (1) (dd) the    |
| words “Ministry of Transport” wherever they     |
| occur, and substituting in each case the word   |
| “Authority”.

203. Amendments to other enactments—The enactments
specified in the Fourth Schedule to this Act are hereby amended
in the manner indicated in that Schedule.

204. Regulations, etc., deemed made under this Act—
(1) All regulations, rules, orders, and notices made under the
Shipping and Seamen Act 1952, being in force immediately before the commencement of this Act and not revoked by section 202 (2) of this Act, shall be deemed to have been made under this Act and shall continue in force until revoked.

(2) The Governor-General may from time to time, by Order in Council, make regulations or orders, as the case may require, for either or both of the following purposes:

(a) Amending any regulations, rules, or orders continued in force by subsection (1) of this section by providing for any purpose for which a maritime rule may be made under this Act:

(b) Revoking any regulation, rule, or order continued in force by subsection (1) of this section, in whole or in part.

(3) The Minister may from time to time amend or revoke, in whole or in part, any notice continued in force by subsection (1) of this section.

(4) All instruments of delegation in respect of any regulation, rule, order, or notice continued in force by subsection (1) of this section shall, until revoked, continue to have effect according to their tenor, and any delegation that could have been made in respect of any such regulation, rule, order, or notice immediately before the commencement of this Act may hereafter be made as if this Act had not been passed.

(5) All regulations, rules, orders, notices, and instruments of delegation in force under this section immediately before the expiry of this section shall, upon the expiry of this section, be deemed to have been revoked.

205. Expiry of section 204—Section 204 of this Act shall expire—

(a) With the close of the period of 5 years beginning on the date of commencement of this Act; or

(b) On such earlier date as may be appointed by the Governor-General by Order in Council.

206. Dispensing powers of Director—The Director may, if he or she thinks fit, and subject to such conditions as he or she thinks fit to impose, exempt any ship or class of ship from any specified requirement contained in Part X or Part XI or Part XII of this Act or in any regulation, order, or notice continued in force by section 204 of this Act, or dispense with the observance of any such requirement in the case of any ship or class of ship, if he or she is satisfied that—

(a) The requirement has been substantially complied with in the case of that ship or ships of that class; or
(b) Compliance with the requirement is unnecessary in the circumstances of the case; or

(c) The action taken or provision made in relation to the subject-matter of the requirement in the case of the ship or ships of that class is as effective as or more effective than actual compliance with the requirement.

Cf. 1952, No. 49, s. 505; 1987, No. 184, s. 27

207. Abolition of Marine Council and Marine Advisory Committee, etc.—(1) The following bodies are hereby abolished:

(a) The Marine Council:
(b) The Marine Advisory Committee:
(c) The Mercantile Marine Office:
(d) Every other body established by or under the Shipping and Seamen Act 1952 other than the Maritime Appeal Authority.

(2) Every member of a body abolished by subsection (1) of this section shall vacate office on the commencement of this Act, and shall not be entitled to any compensation in respect of such loss of office.

PART XVI

CARRIAGE OF GOODS BY SEA


(2) For the purposes of Article 10 of the Rules, “State” includes each of Niue and Tokelau.

(3) A reference in this Act to a non-negotiable document includes a reference to a sea waybill.

209. Hague Rules to have force of law—(1) The Rules, as set out in the Fifth Schedule to this Act, shall have the force of law in New Zealand.

(2) Subsection (1) of this section shall apply to carriage of goods by sea evidenced by a non-negotiable document (other than a bill of lading or similar document of title) that contains
express provision to the effect that the Rules are to govern the carriage as if the document were a bill of lading.


210. Jurisdiction of New Zealand Courts—(1) An agreement, whether made in New Zealand or elsewhere, has no effect to the extent that it purports to—

(a) Preclude or limit the jurisdiction of the Courts of New Zealand in respect of—

(i) A bill of lading or a similar document of title, relating to the carriage of goods from any place in New Zealand to any place outside New Zealand; or

(ii) A non-negotiable document of a kind mentioned in section 209 (2) of this Act relating to such a carriage of goods; or

(b) Preclude or limit the jurisdiction of the Courts of New Zealand in respect of—

(i) A bill of lading, or a similar document of title, relating to the carriage of goods from any place outside New Zealand to any place in New Zealand; or

(ii) A non-negotiable document of a kind mentioned in section 209 (2) of this Act relating to such a carriage of goods.

(2) Nothing in this section shall be construed as limiting or affecting any stipulation or agreement to submit any dispute to arbitration in New Zealand or any other country.

Cf. 1940, No. 31, s. 11A; 1968, No. 17, s. 3; 1985, No. 97, s. 2; Carriage of Goods by Sea Act 1971 (U.K.), s. 2; Carriage of Goods by Sea Act 1991 (Aust.), s. 11

211. Contracting parties to the Rules—If the Secretary of Foreign Affairs and Trade certifies that, for the purposes of the Rules or any convention relating to liability of sea carriers for loss of, or damage to, cargo,—

(a) A State specified in the certificate is a Contracting State, or is a Contracting State in respect of any place or territory so specified; or

(b) Any place or territory specified in the certificate forms part of a State so specified (whether a Contracting State or not),—

then, in any proceedings, the certificate shall, in the absence of proof to the contrary, be sufficient evidence of the matters so certified.
212. Repeals—(1) The Sea Carriage of Goods Act 1940 is hereby repealed.

(2) Section 5 (5) of the Carriage of Goods Act 1979 is hereby repealed.

(3) The following enactments are hereby consequentially repealed:

(a) The Sea Carriage of Goods Amendment Act 1968:


213. Savings—(1) Notwithstanding section 212 (1) of this Act, the Sea Carriage of Goods Act 1940, as in force immediately before the commencement of that section, shall be deemed to continue to apply to a contract of carriage of goods by sea after that commencement if—

(a) The contract was made before that commencement, and

(b) That Act would have applied but for the operation of section 212 (1) of this Act.

(2) Notwithstanding section 212 (2) of this Act, section 5 (5) of the Carriage of Goods Act 1979, as in force immediately before the commencement of that section, shall be deemed to continue to apply to a contract of carriage of goods by sea between any place in New Zealand and any place in the Cook Islands or in Niue or in Tokelau after the commencement if—

(a) The contract was made before that commencement; and

(b) That subsection would have applied but for the operation of section 212 (2) of this Act.

Cf. 1940, No. 31, s. 15; Carriage of Goods by Sea Act 1991, s. 20 (Aust.)

PART XVII
SALVAGE

214. Commencement—Sections 215 to 220 of this Act and the Sixth Schedule to this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

215. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Coastal or inland waters” means New Zealand waters:

“Convention” means the International Convention on Salvage, 1989, as set out in the Sixth Schedule to this Act:

“Court” means the High Court and every District Court:

“Freight at risk” includes payments due to an owner or charterer for the carriage of cargo.
216. **Application of Convention**—The provisions of the Convention shall have the force of law in New Zealand.

217. **Salvage claims against the Crown**—Subject to the provisions of the Crown Proceedings Act 1950, the provisions of this Part of this Act shall apply to salvage operations which assist any New Zealand warship, or any other New Zealand State-owned ship or other property, in the same manner as if the ship or property belonged to a private person.

Cf. 1952, No. 49, s. 367 (1)

218. **Salvage claims by the Crown**—Where salvage operations are rendered by any New Zealand warship, or any other New Zealand State-owned ship, the Crown shall be entitled to claim salvage in respect of those operations to the same extent as any other salvor, and shall have the same rights as any other salvor.

Cf. 1952, No. 49, s. 368 (1)

219. **Apportionment between salvors**—A payment in respect of a salvage operation that is due to more than one person shall, in the absence of agreement between those persons, be apportioned among those persons in such manner as the Court thinks fit, having regard to the terms of the Convention.

Cf. 1952, No. 49, s. 366

220. **Actions for indemnity**—Any person who—
(a) Is liable to pay a payment in respect of a salvage operation; and
(b) Is indemnified against that liability—shall take action to enforce that indemnity within 2 years of the liability arising and, in the event of failure to do so, that right of enforcement shall no longer be available to that person.

**PART XVIII**

**PRELIMINARY PROVISIONS RELATING TO MARINE POLLUTION**

221. **Commencement of provisions relating to marine pollution**—Sections 222 and 224, Parts XIX to XXVII, and sections 469, 470, 471 (2), 472, 473, 474, 475 (2), 476 to 481, 484, 485 (2), and 485 (4) of, and the Seventh Schedule to, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and different dates may be so appointed by one or more Orders in Council for different provisions and different purposes.
222. Interpretation.—(1) In this Part of this Act and in Parts XIX to XXVIII of this Act, unless the context otherwise requires,—

“Agent” or “agent of the ship”, in relation to a ship, means—

(a) Any agent in New Zealand of the owner of the ship; and

(b) Any agent for the ship.

“Civil Liability Convention” has the meaning given to it by section 342 of this Act:

“CLC owner” has the meaning given to it by section 342 of this Act:

“CLC ship” has the meaning given to it by section 342 of this Act:

“CLC State” has the meaning given to it by section 342 of this Act:

“Controlled offshore installation” has the meaning given to it by section 257 of this Act:

“Discharge” has the meaning given to it by section 225 of this Act:

“Dumping” has the meaning given to it by section 257 of this Act:

“Exclusive economic zone of New Zealand” has the meaning given to it by section 9 of the Territorial Sea and Exclusive Economic Zone Act 1977; and “exclusive economic zone” has the same meaning:

“Fund Convention” has the meaning given to it by section 370 of this Act:

“Harbourmaster”, in relation to a port, includes any person appointed as a harbourmaster of that port under section 42 of the Harbours Act 1950 and, where no such person has been appointed, means the regional council within whose region the port is located:

“Harmful substance” has the meaning given to it by section 225 of this Act:

“London Convention” has the meaning given to it by section 257 of this Act:

“Marine incineration facility” has the meaning given to it by section 257 of this Act:

“Marine oil spill contingency plan” has the meaning given to it by section 281 of this Act:

“Marine operations” means any operations or operation for, or connected with, the exploration for, or the
exploitation or associated processing of, any mineral in the sea or the seabed:

“Marine protection convention”, in relation to this Part and Parts XIX to XXVII of this Act, means any international convention, protocol, or agreement relating to the protection of the marine environment from pollution that is declared for the purposes of any such Part by Order in Council pursuant to subsection (4) of this section; and includes every amendment to, or revision of, any such instrument, being an amendment or revision to which New Zealand is a party that is declared in the same manner:

“Marine protection document” means—
(a) Any permit issued by the Director under section 262 of this Act:
(b) Any certificate of insurance issued, recognised, or accepted by the Director under section 363 or section 364 of this Act:
(c) Any permit, certificate, licence, or other document issued or recognised by the Director under section 270 of this Act or any permit, certificate, licence, or other document issued by another person and accepted by the Director under section 271 of this Act:

“Marine protection product” has the meaning given to it by section 225 of this Act:

“Marine protection rules” means the marine protection rules made by the Minister or the Director under Part XXVII of this Act:

“MARPOL” has the meaning given to it by section 225 of this Act:

“Mineral” has the same meaning as in section 2 (1) of the Crown Minerals Act 1991:

“National On-Scene Commander” has the meaning given to it by section 281 of this Act:

“New Zealand aircraft” has the same meaning as the term “New Zealand registered aircraft” is given by section 2 of the Civil Aviation Act 1990:

“New Zealand continental waters” means—
(a) New Zealand marine waters; and
(b) The waters beyond the outer limits of the exclusive economic zone of New Zealand but over the continental shelf of New Zealand:
“New Zealand marine waters” means—
   (a) The territorial sea of New Zealand; and
   (b) The waters of the exclusive economic zone of
       New Zealand:
“New Zealand Oil Pollution Fund” has the meaning given to it by section 281 of this Act:
“Noxious liquid substance” has the meaning given to it by section 225 of this Act:
“Offshore installation” or “installation” includes any artificial structure (including a floating structure other than a ship) 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 does not include a pipeline:
“Offshore terminal” means any place in the sea where cargo is loaded or unloaded:
“Oil”, except in Parts XXV and XXVI of this Act, means petroleum in any form including crude oil, fuel oil, sludge, oil refuse, and refined products (other than petrochemicals that are subject to the provisions of Annex II of MARPOL); and includes any substance declared to be oil for the purposes of this definition by the marine protection rules:
“Oil transfer site” has the meaning given to it by section 281 of this Act:
“On-scene commander” has the meaning given to it by section 281 of this Act:
“Owner” has the meaning given to it by subsection (2) of this section:
“Pipeline” means a pipeline constructed or used to convey any matter or substance; and includes all machinery, tanks, and fittings connected to the pipeline:
“Pollution incident” has the meaning given to it by section 225 of this Act:
“Reception facility” has the meaning given to it by section 225 of this Act:
“Region” has the same meaning as in the Local Government Act 1974:
“Regional council” or “council” has the meaning given to the term “regional council” in the Local Government Act 1974; and includes—
   (a) Any territorial authority that has the functions, powers, and duties of a regional council; and
   (b) The Chatham Islands County Council:
“Regional marine oil spill contingency plan” has the meaning given to it by section 281 of this Act:

“Regulated oil tanker” has the meaning given to it by section 342 of this Act:

“Regulated ship” has the meaning given to it by section 342 of this Act:

“Seabed” includes the subsoil of the seabed:

“Shipboard marine oil spill contingency plan” has the meaning given to it by section 281 of this Act:

“Site marine oil spill contingency plan” has the meaning given to it by section 281 of this Act:

“Toxic or hazardous waste” has the meaning given to it by section 257 of this Act:

“Transfer”, in relation to oil or any other harmful substance, means transfer to or from a cargo or fuel tank:

“Transfer facility” has the meaning given to it by section 225 of this Act:

“Waste or other matter” has the meaning given to it by section 257 of this Act.

(2) In this Part of this Act, Parts XIX to XXVII, and section 418 of this Act, unless the context otherwise requires, “owner”,—

(a) In relation to any ship (except in the circumstances, and to the extent, provided in sections 343 and 370 of this Act), includes—

(i) Any person who is the legal or equitable owner, or both, of the ship; and

(ii) Any person in possession of the ship; and in Parts XIX, XX, and XXI and section 344 of this Act, includes any salvor in possession of the ship, and any servant or agent of any salvor in possession of the ship; and

(iii) Any charterer, manager, or 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—

(i) The person having any 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
(iii) Any agent or employee of the owner, manager, lessee, or licensee, or operator of the installation, or the person in charge of any operations connected with the installation:

(c) In relation to a pipeline, includes any manager, lessee, licensee, or operator of the pipeline, or the person in charge of the pipeline:

(d) In relation to an oil transfer site, includes any manager, lessee, licensee, or operator of the transfer site or the person in charge of the site.

(3) Unless the context otherwise requires, any term defined in this section or any of sections 225, 247, 257, 281, 329, 342, and 370 of this Act shall have that meaning throughout Parts XIX to XXVII of this Act and any regulations or rules made under any of those Parts.

(4) The Governor-General may from time to time, by Order in Council, declare—

(a) That any specified international convention, protocol, or agreement relating to the protection of the marine environment from pollution, to which New Zealand is a party, shall be a marine protection convention for the purposes of this Part and Parts XIX to XXVII of this Act, or such of them (or their provisions) as may be specified in the order:

(b) That any specified amendment to, or revision of, any such instrument shall form part of that instrument for any such purposes.

Cf. 1974, No. 14, s. 2; 1980, No. 53, s. 2; 1990, No. 34, s. 2

223. Application of Parts XIX to XXVII to ships of New Zealand Defence Force—Without limiting section 4 (2) of this Act, Parts XIX to XXVII of this Act shall apply to every warship and every other ship of the New Zealand Defence Force that is in waters outside the territorial sea of New Zealand, to the extent that those Parts apply to such waters.

224. Application of certain provisions of Parts XIX to XXVIII of this Act—(1) Notwithstanding anything in any other enactment, criminal proceedings shall not be commenced against a natural person in respect of a contravention of any provision of any of Parts XIX to XXVIII of this Act that is alleged to have occurred beyond the territorial sea of New Zealand unless they are commenced against—

(a) A New Zealand citizen; or

(b) A person who is ordinarily resident in New Zealand; or
(c) Any other person with the consent of the Attorney-General on his or her certificate that it is expedient that they be commenced.

(2) Notwithstanding subsection (1) of this section, a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further proceedings may be taken against a person who is neither a New Zealand citizen nor ordinarily resident in New Zealand, until the Attorney-General's consent under subsection (1) of this section has been obtained.

(3) If any person alleges that he or she is not a New Zealand citizen, nor ordinarily resident in New Zealand, the onus of proof shall be on that person to prove that allegation.

PART XIX

PROTECTION OF MARINE ENVIRONMENT FROM HARMFUL SUBSTANCES

225. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Discharge” includes any release, disposal, spilling, leaking, pumping, emitting, or emptying; but does not include—

(a) Dumping in accordance with a permit issued by the Director under section 262 of this Act; or

(b) Release of harmful substances for the purposes of legitimate scientific research into pollution abatement and control;—

and “to discharge” and “discharged” have corresponding meanings:

“Harmful substance” means any substance specified as a harmful substance for the purposes of this definition by the marine protection rules:

“Marine protection product” means—

(a) Anything that comprises, or is intended to comprise, any part of a ship, offshore installation, or pipeline, or that is or is intended to be installed on or fitted or supplied to a ship, offshore installation, or pipeline for the purpose of preventing, limiting, or controlling a discharge or the escape of a harmful substance, including (but not limited to)—

(i) Any plant or equipment that treats or is intended to treat a harmful substance; and
(ii) Any plant or equipment that monitors or is intended to monitor the discharge or escape of a harmful substance; and

(b) Any substance used or intended to be used for the dispersal or emulsification of a harmful substance in the sea;—

and includes anything that is specified as a marine protection product for the purposes of this definition by the marine protection rules:

“MARPOL” means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto; and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand:

“Noxious liquid substance” means any substance specified as a noxious liquid substance for the purposes of this definition by the marine protection rules:

“Pollution incident” means an event involving the probable discharge or escape into the sea or seabed of a harmful substance in contravention of this Act or the Resource Management Act 1991:

“Reception facility” means a facility for the reception of harmful substances from ships:

“Transfer facility” means any facility, structure, or building for transferring liquids to or from a ship or an offshore installation; and includes any storage tanks or pipelines connected to the facility.

Cf. 1974, No. 14, s. 2 (1), (3)

Obligations to Protect Marine Environment from Harmful Substances

226. Harmful substances not to be discharged into sea or seabed of exclusive economic zone or continental shelf—Harmful substances shall not be discharged or escape, otherwise than in accordance with the marine protection rules,—

(a) From any ship, offshore installation, or pipeline—

(i) Into the sea within the exclusive economic zone of New Zealand; or

(ii) Onto or into the seabed below that sea; or

(b) From any ship or offshore installation involved with the exploration or exploitation of the sea or the seabed, or any pipeline,—
(i) Into the sea beyond the outer limits of the exclusive economic zone of New Zealand but over the continental shelf of New Zealand; or
(ii) Onto or into the seabed below that sea; or
(c) From any New Zealand ship—
(i) Into the sea beyond the outer limits of the exclusive economic zone of New Zealand; or
(ii) Onto or into the seabed below that sea; or
(d) As a result of any marine operations,—
(i) Into the sea within the exclusive economic zone of New Zealand or beyond the outer limits of that exclusive economic zone but over the continental shelf of New Zealand; or
(ii) Onto or into the seabed below that sea.

Cf. 1974, No. 14, s. 3 (1), 4 (1), 5 (1)

227. Duty to report discharge or escape of harmful substances—(1) Notice of any discharge or escape of a harmful substance into the sea, or onto or into the seabed, in breach of section 226 of this Act or of section 15B of the Resource Management Act 1991 shall, forthwith after such discharge or escape, be given in accordance with the requirements of the marine protection rules (and whether or not any defence may be available under this Act or the Resource Management Act 1991) to the Director or, where a discharge or escape has occurred within the internal waters or the territorial sea of New Zealand, the Director or the regional council within whose region the discharge or escape has occurred.

(2) Each of the following persons shall be under a duty to give notice of a discharge or escape of a harmful substance in accordance with subsection (1) of this section, namely,—
(a) If the discharge or escape was from a ship, the owner and the master of the ship:
(b) If the discharge or escape was from an offshore installation, the owner of the offshore 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 any marine operations, the person in charge of and the person carrying on such operations.

(3) The giving of notice of a discharge or escape in accordance with subsection (2) of this section by one person shall be sufficient to relieve every other person from a duty to give such notice in respect of that discharge or escape.
(4) Where any discharge or escape of a harmful substance in breach of section 226 (c) of this Act occurs, the master of the ship shall, as soon as is practicable, report the discharge or escape to the appropriate authority of the nearest State.

Cf. 1974, No. 14, s. 16

228. Notice of pollution incidents—(1) The Director or, where a pollution incident occurs within the internal waters or the territorial sea of New Zealand, the Director or the regional council within whose region the incident occurs, shall be given notice in accordance with the requirements of the marine protection rules, of any pollution incident involving—
(a) A ship in the internal waters of New Zealand or New Zealand marine waters; or
(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.
(2) Each of the following persons shall be under a duty to give notice of the occurrence of a pollution incident in accordance with subsection (1) of this section:
(a) If a ship is involved, the master of the ship:
(b) If an offshore installation is involved, the owner of the offshore installation:
(c) If a pipeline is involved, the owner of the pipeline:
(d) If marine operations are involved, the person in charge of and the person carrying out those operations.
(3) The giving of notice of a pollution incident in accordance with subsection (1) of this section by one person shall be sufficient to discharge every other person from a duty to give such notice in respect of that pollution incident.
(4) Where any pollution incident involving a New Zealand ship occurs beyond the outer limits of the exclusive economic zone of New Zealand, the master of the ship shall, as soon as is practicable, report the incident to the appropriate authority of the nearest State.

Cf. 1974, No. 14, s. 16a; 1990, No. 34, s. 3

229. Notice of prospective arrival of ship carrying oil or noxious liquid substance—Notice of the arrival at a port in New Zealand of a ship carrying oil, or any noxious liquid substance, in bulk as cargo shall be given prior to its arrival by the master or owner of the ship to the Director or the regional council within whose region the port of prospective arrival is
located, in accordance with the requirements of the marine protection rules.

Cf. 1974, No. 14, s. 15

280. Notice of transfer of oil or noxious liquid substances to or from ships—No oil or noxious liquid substance—

(a) Carried in bulk by a ship shall be transferred from that ship in the internal waters or territorial sea of New Zealand; or

(b) Shall be transferred to a ship in the internal waters or the territorial sea of New Zealand to be carried in bulk by that ship,—

unless notice has been given by the master or owner of the ship to the Director or the regional council within whose region the transfer is intended to be made, in accordance with the requirements of the marine protection rules.

Cf. 1974, No. 14, s. 14

281. Obligations of Director and regional councils to share information concerning notices—Where any notice is given under any of sections 227, 228, 229, 230, and 299 of this Act—

(a) To a regional council, the regional council shall forthwith inform the Director of the matters about which it has been notified; or

(b) To the Director, the Director shall, where the matters about which he or she has been notified have occurred or may occur within the region of a regional council, forthwith inform the relevant regional council of the matters about which he or she has been notified.

Powers of Director in Relation to Protection of Marine Environment from Harmful Substances

282. Director may require provision of financial security—(1) 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 or the Resource Management Act 1991, the Director may require the owner of that 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 or the Resource Management Act 1991, in respect of that discharge or escape.
(2) The Director shall not exercise his or her powers under subsection (1) of this section in relation to a ship in respect of which an insurance certificate under section 365 of this Act or the marine protection rules has been issued, recognised, or accepted.

283. Rectification of hazardous conditions—(1) The Director may require the owner of any ship, offshore installation, or pipeline to take all necessary steps to rectify any conditions on the ship, offshore installation, or pipeline that the Director believes on reasonable grounds 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 or the Resource Management Act 1991 or pose an unreasonable threat of harm to the marine environment.

(2) Any owner of any ship, offshore installation, or pipeline whom the Director requires to do anything under this section may appeal against that requirement to a District Court under section 424 of this Act.

284. Precautionary measures in the event of transfer of oil or noxious liquid substance—(1) The Director may from time to time, in respect of a ship from which or to which any oil or noxious liquid substance is being or will be transferred in the internal waters or the territorial sea of New Zealand, take, or require the owner or master of that ship to take, any measures that the Director believes on reasonable grounds will remove, contain, or render harmless, any oil or noxious liquid substance that may be spilled as a result of that transfer.

(2) An owner of a ship whom the Director requires to do anything under this section may appeal against that requirement to a District Court under section 424 of this Act.

285. Investigation of pollution incidents by 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.

(2) For the purposes of carrying out an investigation under this section, the Director shall have the same powers as are conferred on a Commission of Inquiry by the Commissions of Inquiry Act 1908 and, subject to the provisions of this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.
236. **Power to require reception facilities**—The Director may from time to time, by notice in writing, require any person who operates a port in New Zealand, or New Zealand continental waters, to provide at that port a reception facility for the reception of harmful substances from ships which complies with the requirements of the marine protection rules.

*Offences in Respect of Discharge or Escape of Harmful Substances into Sea or Seabed*

237. **Discharge or escape of harmful substances into sea or seabed**—If any harmful substance is discharged or escapes into the sea or onto or into the seabed in breach of section 226 of this Act, the following persons commit an offence:

(a) If the discharge or escape is from a ship, the master and owner of the ship:

(b) If the discharge or escape is from an offshore installation, the owner of the offshore installation:

(c) If the discharge or escape is from a pipeline, the owner of the pipeline:

(d) If the discharge or escape is as a result of any marine operations, the person in charge of and the person carrying on such marine operations:

(e) If the discharge or escape is of a kind referred to in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) of this section, and results from intentional damage caused by a person not referred to in that paragraph, the person who committed the damage.

238. **Failure to report discharge of harmful substance into sea or seabed**—If, without reasonable excuse, notice of discharge or escape of a harmful substance is not given in accordance with section 227 of this Act, the following persons commit an offence:

(a) If the discharge or escape was from a ship, the master and owner of the ship:

(b) If the discharge or escape was from an offshore installation, the owner of the offshore 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 any marine operations, the person in charge of and the person carrying on the marine operations.
239. Failure to notify pollution incidents—If, without reasonable excuse, notice of the occurrence of a pollution incident is not given in accordance with section 228 of this Act, the following persons commit an offence:
(a) If the pollution incident involved a ship, the master and owner of the ship:
(b) If the pollution incident involved an offshore installation, the owner of the offshore installation:
(c) If the pollution incident involved a pipeline, the owner of the pipeline:
(d) If the pollution incident involved any marine operations, the person in charge of and the person carrying on the marine operations.

240. Failure to notify arrival of ship carrying oil or noxious liquid substance—The master and the owner of a ship commit an offence if, without reasonable excuse, the ship arrives at a port in New Zealand carrying oil, or any noxious liquid substance, in bulk as cargo without notice of its arrival having been given in accordance with the provisions of section 229 of this Act.

241. Failure to notify transfer of oil or noxious liquid substance from or to ships—If, without reasonable excuse, any oil or noxious liquid substance is transferred to or from a ship in the internal waters or territorial sea of New Zealand without notice of the transfer having been given in accordance with the provisions of section 230 of this Act, the following persons commit an offence:
(a) The master of the ship to or from which the oil or noxious liquid substance has been transferred:
(b) The owner of the ship to or from which the oil or noxious liquid substance has been transferred:
(c) The owner of any transfer facility to or from which the oil or noxious liquid substance has been transferred.

242. Failure to comply with requirement of Director—Every person commits an offence who fails to comply with a requirement of the Director under any of sections 232, 233, 234, and 236 of this Act.

Defences

248. Defences to offence against section 287—it shall be a defence to proceedings for an offence against section 237 of this Act 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

(b) The harmful substance escaped as a consequence of damage to a 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 marine operations; and—

(i) Such damage occurred without the negligence or deliberate act of the defendant; and

(ii) As soon as practicable after that damage occurred, all reasonable steps were taken to prevent the escape of the harmful substance or, if any such escape could not be prevented, to minimise the escape.

Cf. 1974, No. 14, s. 6

**Penalties**

244. **Penalties in respect of sections 237, 238, 239, and 242**—(1) Subject to subsection (2) of this section, every person who commits an offence against section 237 of this Act is liable—

(a) To imprisonment for a term not exceeding 2 years or a fine not exceeding $200,000 and, if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued; and

(b) To pay such amount as the Court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence; and

(c) To an additional penalty under section 409 of this Act.

(2) The Court shall not sentence to imprisonment any person who commits an offence against section 237 of this Act unless the Court is satisfied that—

(a) Either—

(i) The person intended to commit the offence; or

(ii) The offence occurred as a consequence of any reckless act or omission by the person with the knowledge that that act or omission would or would be likely to cause serious damage to the marine environment; and
(b) The commission of the offence has caused or is likely to cause serious damage to the marine environment.

(3) Every person who commits an offence against section 238 or section 239 or section 242 of this Act is liable,—

(a) In the case of an individual, to a fine not exceeding $10,000 and, if the offence is a continuing one, to a further fine not exceeding $2,000 for every day or part of a day during which the offence is continued:

(b) In the case of a body corporate, to a fine not exceeding $100,000 and, if the offence is a continuing one, to a further fine not exceeding $20,000 for every day or part of a day during which the offence is continued:

(c) In the case of an individual who, or a body corporate that, commits an offence against section 238 of this Act, to an additional penalty under section 409 of this Act.

245. Penalties in respect of sections 240 and 241—Every person who commits an offence against section 240 or section 241 of this Act is liable,—

(a) In the case of an individual, to a fine not exceeding $5,000 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 is continued:

(b) In the case of a body corporate, to a fine not exceeding $50,000 and, if the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued.

246. Amount of fine or other monetary penalty recoverable from agent—(1) Notwithstanding any enactment or rule of law to the contrary, if any master or owner of a ship—

(a) Is convicted of an offence against section 237 of this Act; and

(b) Makes default in the payment of any fine or other monetary penalty imposed by the Court under section 244 of this Act,—

the Crown may recover as a debt from the agent of the ship such amount of that fine or monetary penalty as remains unpaid.

(2) Every agent of a ship who, under subsection (1), pays any fine or other monetary penalty imposed on the master or owner of the ship shall be entitled to recover the amount so paid from that master or owner as a debt or deduct that amount out of or from any money which is or becomes payable
by that agent to that master or owner; and any amount so paid by the agent shall, for the purposes of section 4 (1) (p) of the Admiralty Act 1973, be deemed to be a disbursement made on account of the ship.

(3) Notwithstanding anything in the District Courts Act 1947, any District Court shall have jurisdiction to hear and determine proceedings for the recovery, in accordance with this section, of any money from any agent or master or owner of a ship whatever the amount of money involved.

PART XX

PROTECTION OF MARINE ENVIRONMENT FROM HAZARDOUS SHIPS, STRUCTURES, AND OFFSHORE OPERATIONS

247. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Hazardous marine operations” means marine operations in New Zealand continental waters that are discharging, or are likely to discharge, a harmful substance into New Zealand continental waters or the seabed below them:

“Hazardous offshore installation” means an offshore installation in New Zealand continental waters that is discharging, or is likely to discharge, a harmful substance into New Zealand continental waters or the seabed below them:

“Hazardous pipeline” means a pipeline in New Zealand continental waters that is discharging, or is likely to discharge, a harmful substance into New Zealand continental waters or the seabed below them:

“Hazardous ship” means a ship that is in the internal waters of New Zealand or New Zealand continental waters and, as a result of a shipping casualty or acts related to such a casualty, is discharging, or is likely to discharge, a harmful substance into the internal waters of New Zealand or New Zealand continental waters or the seabed below them:

“Hazardous structure” means a hazardous offshore installation or a hazardous pipeline:

“Marine interests” means the interests that are related to, or affected by, the marine environment, including maritime, coastal, port, or estuarine activities (including fisheries activities constituting an essential means of livelihood of the persons concerned), tourist
attractions, public health and welfare, and the conservation of living marine resources and wildlife:

"Offshore installation" has the meaning given to it by section 222 (1) of this Act:

"Shipping casualty" means any of the following:

(a) A collision of ships:
(b) The loss, stranding, or abandonment of a ship:
(c) Any other event occurring on board, outside, or to a ship, resulting in material damage or the risk of material damage to a ship, or cargo, or both:

"Structure" means an offshore installation or a pipeline.

248. Powers of Director in relation to hazardous ships—(1) In the case of a ship that, in the opinion of the Director, is a hazardous ship, the Director may from time to time—

(a) Issue any instructions to the master, owner, or agent of the ship, or to any person in charge of any salvage operation in respect of the ship and an employee or agent of that person, with respect to the ship, or its cargo, or both:

(b) Take any measures with respect to the ship, or its cargo, or both, including taking over control of the ship.

(2) Without limiting subsection (1) of this section, that subsection authorises the Director to take, or to require any person referred to in paragraph (a) of that subsection to take, all or any of the following measures:

(a) The removal of the ship to another place:
(b) The removal of cargo from the ship:
(c) The salvage of the ship, or its cargo, or both:
(d) The sinking or destruction of the ship, or its cargo, or both.

(3) The Director shall use reasonable endeavours to notify the master, owner, or agent of the ship of any measures the Director proposes to take under subsection (1) or subsection (2) of this section with respect to the ship, or its cargo, but the Director shall not be obliged to give such notification where, in his or her opinion, the urgency of the situation is such that the measures must be taken immediately.

(4) In order to carry out, or assist in carrying out, any measures taken under this section, after making reasonable endeavours to consult the owner, or the agent, of the ship to whose master the instructions are to be given, the Director may from time to time—
(a) Instruct the master of any New Zealand ship, or of any other ship within the internal waters of New Zealand or New Zealand continental waters, to render assistance to a ship that, in the opinion of the Director, is a hazardous ship; and

(b) Instruct the master of any New Zealand ship to do all or any of the following:
   (i) Take on board any item or equipment;
   (ii) Sail to any place;
   (iii) Render assistance to a ship assisting a ship that, in the opinion of the Director, is a hazardous ship;
   (iv) Assist in operations for the cleaning up and control of a harmful substance.

249. Powers of Director in relation to hazardous structures and operations—(1) In the case of a structure that, in the opinion of the Director, is a hazardous structure, the Director may from time to time—
   (a) Issue any instructions to the owner of the structure with respect to the structure:
   (b) Take any measure with respect to the structure.
(2) Subsection (1) of this section, includes power to take or require to be taken either or both of the following measures:
   (a) The removal to another place of the structure:
   (b) The sinking or destruction of the structure.
(3) In the case of marine operations that, in the opinion of the Director, are hazardous marine operations, the Director may from time to time—
   (a) Issue any instructions to the owner, or the person in charge, of the marine operations:
   (b) Take, or require that owner or person in charge to take, any measures with respect to the marine operations.
(4) The Director shall use reasonable endeavours to notify the owner of a structure, or the owner or person in charge of marine operations, of any measures the Director proposes to take under this section with respect to the structure or marine operations, but the Director shall not be obliged to give such notification where in his or her opinion the urgency of the situation is such that the measures must be taken immediately.

250. Exercise of power by Director—The Director shall not issue any instructions, or take any measures, under section 248 or section 249 of this Act unless the issue of such instructions, or the taking of such measures, appears necessary to the Director to avoid, reduce, or remedy pollution, or a
significant risk of pollution, by a harmful substance that is causing, will cause, or will be likely to cause serious harmful consequences to the marine environment or marine interests.

251. Right to compensation—(1) Any person who has incurred expense, or suffered loss or damage, as a result of any action duly taken under instructions issued by the Director under section 248 or section 249 of this Act, or as a result of any measure taken by the Director under either of those sections, may recover compensation from the Crown if the action or measure—

(a) Was not reasonably necessary—
   (i) To protect the marine environment or marine interests from a harmful substance; or
   (ii) To prevent or reduce the risk of a harmful substance being discharged into the sea; or

(b) Was such that the good done by the action or measure, or the good likely to be done, was disproportionately less than the expense incurred, or the loss or damage suffered, as a result of that action or that measure.

(2) Where a claim is brought against the Crown for compensation under this section, the Court, in determining whether subsection (1) (b) of this section applies, shall take into account—

(a) The probability of a harmful substance being discharged into the sea if the action or measure had not been taken; and

(b) The likelihood of the action or measure taken being effective; and

(c) The extent of the loss or the damage which has been caused by the action or measure taken.

Cf. 1974, No. 14, s. 27

252. Compliance with instructions—Every person shall comply with the instructions given by the Director under section 248 or section 249 of this Act.

258. Offences—(1) Every person commits an offence who—

(a) Fails to comply with any instructions issued by the Director under section 248 or section 249 of this Act; or

(b) Wilfully obstructs a person acting in compliance with any instructions issued by the Director under either of those sections; or
(c) Wilfully obstructs the Director in carrying out any of the powers conferred on the Director by either of those sections.

(2) It shall be a defence to proceedings for an offence against this section to prove that the action, or failure to act, which is alleged to constitute the offence resulted from the need to save life at sea.

(3) It shall be an additional defence to an offence against subsection (1) (a) of this section to prove that the person charged complied as promptly as possible with the instructions.

(4) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding $200,000 and, if the offence is a continuing one, to a fine not exceeding $10,000 for every day or part of a day on which the offence is continued.

(5) The Court shall not sentence to imprisonment any person who commits an offence against this section unless the Court is satisfied that—

(a) Either—

(i) The person intended to commit the offence; or

(ii) The offence occurred as a consequence of any reckless act or omission by the person with the knowledge that the act or omission would be likely to cause serious damage to the marine environment;

and

(b) The commission of the offence has caused or is likely to cause serious damage to the marine environment.

254. Instructions under this Part that conflict with other instructions—(1) Notwithstanding the provisions of any other enactment, if a harbourmaster or any other person gives, pursuant to the Harbours Act 1950, or any regulations made under that Act, instructions (in this section referred to as Harbours Act instructions) that conflict with instructions given by the Director under section 248 or section 249 of this Act (in this section referred to as Director’s instructions), the Director’s instructions shall prevail.

(2) If the Director becomes aware of any conflict between any Director’s instructions and any Harbours Act instructions, the Director shall, as soon as practicable, advise the person who has made the Harbours Act instructions of the conflict, and that person shall immediately upon being so advised withdraw those instructions or alter them so as to remove the conflict.

(3) The Director shall not issue Director’s instructions that conflict with the exercise of a power by—
(a) A person under Part V of the Civil Defence Act 1983; or
(b) A Disaster Recovery Co-ordinator appointed under the
Civil Defence Act 1983 and acting under that Act; or
(c) The Minister of Civil Defence under section 73 of the Civil
Defence Act 1983; or
(d) Any member of the Police under section 10 of the
International Terrorism (Emergency Powers) Act
1987.

255. Minister's power of direction—(1) The Minister
may, if he or she considers that having regard to the
circumstances it is expedient to do so, give directions to the
Director in respect of the performance of any function or duty
or the exercise of any power under this Part of this Act, and the
Director shall comply with such directions.

(2) The Minister shall not give directions under subsection (1)
of this section that conflict with the exercise of the powers
referred to in section 254 (3) of this Act.

(3) Sections 250 and 251 of this Act shall apply in respect of
every direction under subsection (1) of this section as if it were
an instruction under section 248 of this Act.

(4) Where any direction has been made by the Minister
under subsection (1) of this section, the Minister shall, as soon
as practicable, lay before the House of Representatives a copy
of the direction in written form.

256. Protection of Director and other persons—
Where—

(a) The Director has taken any measures under the provisions
of section 248 or section 249 of this Act; or

(b) Any person has complied with any instructions issued
under either of those sections,—
then, subject to section 251 of this Act, neither the Director nor
that person shall be under any criminal liability or any civil
liability in respect thereof.

PART XXI

PROTECTION OF MARINE ENVIRONMENT FROM DUMPING,
INCINERATION, AND STORING OF WASTES

257. Interpretation—In this Part of this Act, unless the
case otherwise requires,—
“Controlled offshore installation” means any offshore
installation that is—

(a) In the waters of the exclusive economic zone of
New Zealand; or
(b) In the waters beyond the outer limits of the exclusive economic zone of New Zealand, but over the continental shelf of New Zealand:

"Convention State" means a State that is a party to the London Convention:

"Dumping" means,—

(a) In relation to waste or other matter, its deliberate disposal; and

(b) In relation to a ship, an aircraft, or an offshore installation, its deliberate disposal or abandonment;— but does not include the disposal of waste or other matter incidental to, or derived from, the normal operations of a ship, aircraft, or offshore installation, if the purpose of those operations does not include the disposal, or the treatment or transportation for disposal, of that waste or other matter; and "to dump" and "dumped" have corresponding meanings:

"Incineration", in relation to waste or other matter, means its deliberate combustion for the purpose of its thermal destruction; and "to incinerate" and "incinerated" have corresponding meanings:

"London Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972; and includes any subsequent amendment or protocol to, or revision of, that convention accepted or ratified by New Zealand:

"Marine incineration facility" means a ship or an offshore installation that incinerates waste or other matter at sea:

"New Zealand marine incineration facility" means a marine incineration facility that is owned or managed by—

(a) A New Zealand citizen; or

(b) A person who is ordinarily resident in New Zealand; or

(c) A company registered under the Companies Act 1955 or the Companies Act 1993:

"Radioactive waste or other radioactive matter" means any waste or other matter containing any radioactive material within the meaning of the Radiation Protection Act 1965:

"Toxic or hazardous waste" means any waste or other matter specified as toxic or hazardous waste for the
purposes of this definition by the marine protection rules:

“Waste or other matter” means material and substances of any kind, form, or description.

Obligations in Respect of Dumping, Storing, and Incineration of Wastes

258. Dumping of radioactive waste or other radioactive matter—Radioactive waste or other radioactive matter shall not be—

(a) Taken on board any ship or aircraft in New Zealand or in the internal waters of New Zealand or in New Zealand marine waters for the purpose of dumping that radioactive waste or other radioactive matter; or

(b) Taken on board any ship or aircraft at any controlled offshore installation for the purpose of dumping that radioactive waste or other radioactive matter; or

(c) Dumped from any ship or aircraft into the sea or onto or into the seabed within the exclusive economic zone of New Zealand or onto or into the continental shelf of New Zealand beyond the outer limits of that exclusive economic zone or the sea above that continental shelf; or

(d) Dumped from a controlled offshore installation; or

(e) Dumped from any New Zealand ship or any New Zealand aircraft into the sea or onto or into the seabed beyond New Zealand continental waters.

Cf. 1974, No. 14, s. 21A; 1980, No. 53, s. 4

259. Storing of radioactive waste or other radioactive matter—Radioactive waste or other radioactive matter shall not be stored in the sea or in or on the seabed within the exclusive economic zone of New Zealand or in the continental shelf of New Zealand beyond the outer limits of that exclusive economic zone or the sea above that continental shelf.

Cf. 1974, No. 14, s. 21B; 1980, No. 53, s. 4

260. Storing of toxic or hazardous waste—Toxic or hazardous waste shall not be stored in the sea or in or on the seabed within the exclusive economic zone of New Zealand or in the continental shelf of New Zealand beyond the outer limits of that exclusive economic zone or in the sea above that continental shelf.
261. Dumping and incineration of waste or other matter—(1) Waste or other matter shall not, otherwise than in accordance with a permit issued by the Director under section 262 of this Act, be—

(a) Dumped from any ship, aircraft, or controlled offshore installation, into the sea or onto or into the seabed within the exclusive economic zone of New Zealand or onto or into the continental shelf of New Zealand beyond the outer limits of that exclusive economic zone or the sea above that continental shelf; or

(b) Incinerated in any marine incineration facility within the exclusive economic zone of New Zealand.

(2) Waste or other matter shall not be taken on board any ship or aircraft in New Zealand or within the internal waters of New Zealand or New Zealand continental waters for the purpose of—

(a) Dumping that waste or other matter into the sea or onto or into the seabed; or

(b) Incinerating that waste or other matter—within the internal waters of New Zealand or New Zealand continental waters unless that dumping or incineration has been authorised by a permit issued by the Director under section 262 of this Act or a resource consent under the Resource Management Act 1991.

(3) Waste or other matter shall not, otherwise than in accordance with a permit issued by the Director under section 262 of this Act, or a permit issued under the corresponding law of a Convention State, be—

(a) Dumped from any New Zealand ship or any New Zealand aircraft into the sea or onto or into the seabed beyond New Zealand continental waters; or

(b) Incinerated in any New Zealand marine incineration facility in the sea beyond the outer limits of the exclusive economic zone of New Zealand.

(4) No ship or aircraft shall be dumped into the sea or onto or into the seabed within the exclusive economic zone of New Zealand otherwise than in accordance with a permit issued by the Director under section 262 of this Act.

(5) No offshore installation shall be dumped into the sea or onto or into the seabed within the exclusive economic zone of New Zealand, or onto or into the continental shelf of New Zealand beyond the outer limits of that exclusive economic zone or the sea above that continental shelf, otherwise than in accordance with a permit issued by the Director under section 262 of this Act.
(6) No New Zealand ship or New Zealand aircraft shall be dumped into the sea or onto or into the seabed beyond the exclusive economic zone of New Zealand otherwise than in accordance with a permit issued under section 262 of this Act or a permit issued under the corresponding law of a Convention State.

(7) Nothing in this section limits section 258 of this Act.

(8) Nothing in this section shall be read as—
(a) Obliging the Director to obtain a permit under section 262 of this Act before exercising any power conferred by section 248 or section 249 of this Act; or
(b) Making the exercise of any such power subject to section 262 of this Act.

Cf. 1974, No. 14, s. 22; 1980, No. 53, s. 4

262. Power of Director to issue permits for dumping and incineration of waste or other matter—The Director may, in accordance with section 270 of this Act and the marine protection rules, issue permits authorising—
(a) Any dumping of waste or other matter or any dumping of any ship, aircraft, or offshore installation; and
(b) Any incineration of waste or other matter—that otherwise would contravene section 261 of this Act.

Cf. 1974, No. 14, s. 22b (1); 1980, No. 53, s. 4

Offences

268. Offences in respect of radioactive waste, other radioactive matter, toxic waste, and hazardous waste—
(1) The master and the owner of a ship each commits an offence if radioactive waste or other radioactive matter is—
(a) Taken on board the ship in breach of paragraph (a) or paragraph (b) of section 258 of this Act; or
(b) Dumped from the ship in breach of section 258 (c) of this Act; or
(c) Dumped from the ship (being a New Zealand ship) in breach of section 258 (e) of this Act.

(2) The person in possession of, and the owner of, an aircraft each commits an offence if radioactive waste or other radioactive matter is—
(a) Taken on board the aircraft in breach of paragraph (a) or paragraph (b) of section 258 of this Act; or
(b) Dumped from the aircraft in breach of section 258 (c) of this Act; or
(c) Dumped from the aircraft (being a New Zealand aircraft) in breach of section 258 (e) of this Act.

(3) The owner of a controlled offshore installation commits an offence if radioactive waste or other radioactive matter is—
   (a) Taken on board any ship or aircraft at the offshore installation in breach of section 258 (b) of this Act; or
   (b) Dumped from the offshore installation in breach of section 258 (d) of this Act.

(4) Every person commits an offence who stores radioactive waste or other radioactive matter in breach of section 259 of this Act.

(5) Every person commits an offence who stores toxic or hazardous waste in breach of section 260 of this Act.

264. Offences in respect of dumping and incineration of waste and other matter—(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) of this Act; or
   (b) Dumped from the ship in breach of section 261 (1) (a) of this Act; or
   (c) Dumped from the ship (being a New Zealand ship) in breach of section 261 (3) (a) of this Act.

(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) of this Act; or
   (b) The ship (being a New Zealand ship) is dumped in breach of section 261 (6) of this Act.

(3) The person in possession of, 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) of this Act; or
   (b) Dumped from the aircraft in breach of section 261 (1) (a) of this Act; or
   (c) Dumped from the aircraft (being a New Zealand aircraft) in breach of section 261 (3) (a) of this Act.

(4) The person in possession of, and the owner of, an aircraft each commits an offence if—
   (a) The aircraft is dumped in breach of section 261 (4) of this Act; or
   (b) The aircraft (being a New Zealand aircraft) is dumped in breach of section 261 (6) of this Act.

(5) The owner of a controlled offshore installation commits an offence if—
(a) Waste or other matter is dumped from the offshore installation in breach of section 261 (1) (a) of this Act; or

(b) Any controlled offshore installation is dumped in breach of section 261 (5) of this Act.

(6) The owner, and the person having control of a marine incineration facility and (if it is a ship) its master, each commits an offence if waste or other matter is incinerated—

(a) In that marine incineration facility in breach of section 261 (1) (b) of this Act; or

(b) In that marine incineration facility (being a New Zealand marine incineration facility) in breach of section 261 (3) (b) of this Act.

265. **Special defences**—In any prosecution for an offence against section 264 of this Act, it is a defence if the defendant proves that the act or omission which is alleged to constitute the offence—

(a) Was necessary—

(i) To save or prevent danger to human life; or

(ii) To avert a serious threat to the ship, aircraft, offshore installation, or marine incineration facility; or

(iii) In the case of force majeure caused by stress of weather, to secure the safety of the ship, aircraft, offshore installation, or marine incineration facility; 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.

Cf. 1974, No. 14, s. 23

**Penalties**

266. **Penalties**—Subject to section 267 of this Act, every person who commits an offence against section 263 or section 264 of this Act is liable—

(a) To a fine not exceeding $200,000; and

(b) If the offence is a continuing one, to a further fine not exceeding $10,000 for every day or part of a day during which the offence is continued; and

(c) For such amount as the court may assess in respect of the costs of all or any of the following, namely, removing
or dispersing, or disposing of, any waste or other matter to which the offence relates; and
(d) To an additional penalty under section 409 of this Act.

267. Sentence of imprisonment—(1) Subject to subsection (2) of this section, the Court may sentence a person who commits an offence against section 263 of this Act to imprisonment for a term not exceeding 2 years instead of imposing a fine under section 266 of this Act.

(2) The Court shall not sentence to imprisonment any person who commits an offence against section 263 of this Act unless the commission of the offence has caused or is likely to cause serious damage to the marine environment.

PART XXII
OBLIGATIONS AND POWERS IN RELATION TO MARINE PROTECTION DOCUMENTS

General Rule

268. Marine protection documents to be held and complied with if required by marine protection rules—(1) Every person who does anything, or uses or operates anything, for which a marine protection document is required under the marine protection rules made under this Act, shall ensure that—

(a) The appropriate document is held in accordance with the marine protection rules; and

(b) The provisions of that document and all relevant marine protection rules are complied with.

(2) Every holder of a marine protection document shall—

(a) If so required by the marine protection rules, establish and follow a management system that will ensure compliance with the relevant prescribed standards for protection of the marine environment and the conditions attached to the marine protection document; and

(b) Provide training and supervision to all employees of the holder who are engaged in doing anything to which the marine protection document relates, so as to maintain compliance with the relevant prescribed standards for protection of the marine environment and the conditions attached to the marine protection document; and
(c) Provide sufficient resources to ensure compliance with the relevant prescribed standards and the conditions attached to the marine protection document.

Cf. 1990, No. 98, s. 12; 1991, No. 116, s. 3

Powers of Director in Relation to Marine Protection Documents

269. Application for marine protection document—
(1) Every application for the grant or renewal of a marine protection document, or for the recognition of a document as a marine protection document, shall be made to the Director in the prescribed form or, if there is no prescribed form, in such form as the Director may require.

(2) Every applicant under subsection (1) of this section shall include in his or her application his or her address for service in New Zealand including, where applicable, telephone and facsimile numbers.

(3) It shall be the duty of every holder of a marine protection document to maintain the currency of the information provided under subsection (2) of this section by promptly notifying the Director of any change to the address, telephone number, or facsimile number.

(4) The Director shall ensure that a record of all information provided under this section is maintained at the Maritime Registry.

(5) Service of any notice, notification, or other document under this Act on a holder of a marine protection document, or on an applicant under subsection (1) of this section, shall be effective service if served at the address last provided by that holder or applicant.

Cf. 1990, No. 98, s. 8; 1992, No. 75, s. 5

270. Issue of marine protection documents and recognition of documents—(1) After considering any application under section 269 of this Act, the Director shall, as soon as practicable, grant the application if he or she is satisfied that—

(a) All things in respect of which the document is sought or, in the case of an application for recognition of a document as a marine protection document, the document, meet, meets, or will meet (as the case may be) any relevant prescribed requirements; and

(b) The applicant, and any person who is to have or is likely to have control over the exercise of the privileges
under the document, meet any prescribed requirements.

(2) For the purpose of granting or renewing a marine protection document, or recognising a document as a marine protection document, the Director may, subject to any provisions in the marine protection rules, recognise such qualifications or certifications as he or she considers appropriate in each case.

(3) In no case shall the Director recognise foreign qualifications or foreign certificates where—

(a) The requirements to gain such qualifications or to obtain such certificates are less than the requirements to gain similar qualifications or to obtain similar certificates in New Zealand; and

(b) The Director believes that to recognise such qualifications or certificates might pose a risk or danger to the marine environment.

(4) Where a licence, permit, certificate, or other document is recognised by the Director under this section, the Director shall either—

(a) Issue an equivalent marine protection document under this section; or

(b) Notify in writing such recognition.

(5) Where the Director declines to grant an application under section 269 of this Act, the applicant may appeal against that decision to a District Court under section 424 of this Act.

(6) Nothing in this section applies in respect of any ship, crew, or marine protection product in respect of which section 271 of this Act applies.

Cf. 1990, No. 98, s. 9; 1992, No. 75, s. 6

271. Acceptance of documents—(1) Subject to subsection (2) of this section, the Director shall accept every valid licence, permit, certificate, or other document issued by or approved by a State, other than New Zealand, under a marine protection convention to which that State and New Zealand are both parties, and for the purposes of this Act, such documents shall be deemed to be marine protection documents.

(2) The Director shall not accept, or may suspend acceptance of, any document referred to in subsection (1) of this section where he or she has clear grounds for believing that—

(a) The condition of the ship or marine protection product does not correspond substantially with the particulars of any document relating to the ship or marine protection product; or
(b) The ship or marine protection product has been materially altered without the sanction of the State that issued or approved the document; or

(c) The ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment; or

(d) Any provision or condition of the document is not being met.

(3) Sections 269, 270, 272, 273, 274, 275, 276, 277, 395, and 406 (b) of this Act shall not apply to any document to which this section relates.

(4) This section applies in respect of—

(a) Every ship, other than a New Zealand ship, registered in a country that is a party to any marine protection convention to which New Zealand is also a party:

(b) The crew of every ship referred to in paragraph (a) of this subsection:

(c) The marine protection products of every ship referred to in paragraph (a) of this subsection.

272. Suspension of marine protection documents or imposition of conditions—(1) The Director may from time to time—

(a) Suspend any marine protection document issued by the Director under this Act, or under any marine protection rules, or impose conditions in respect of any such marine protection document; or

(b) Suspend the recognition by the Director as a marine protection document of any document issued by another person or organisation, or impose conditions in respect of such recognition,—

if he or she considers such action necessary in the interests of protecting the marine environment and if he or she—

(c) Is satisfied that the holder fails or has failed to comply with any conditions of the relevant marine protection document; or

(d) Is satisfied that the holder has contravened or failed to comply with section 406 of this Act; or

(e) Is satisfied that such action is necessary to ensure compliance with—

(i) Any provision of Parts XIX to XXVII of this Act; or

(ii) Any regulations or marine protection rules made under this Act; or
(iii) Section 15A or section 15B or section 15C of the
Resource Management Act 1991; or

(iv) Any regulations made under any of paragraphs
(ha) to (he) of section 360(1) of the Resource
Management Act 1991; or

(f) Considers that the privileges or duties for which the
marine protection document has been granted, or the
relevant document has been recognised as a marine
protection document, are being or have been carried
out by the holder in a careless or incompetent
manner.

(2) The suspension of any marine protection document, or
the suspension of recognition of any document as a marine
protection document, or the imposition of conditions in respect
of any such document, by the Director, shall remain in force
until the Director has determined, after due investigation, the
action to be taken in respect of the causes requiring the
suspension or imposition of conditions, but the duration of any
such suspension or conditions shall not exceed 14 days unless
the Director directs that a further specified period is necessary
for the purposes of the investigation.

(3) If, after investigation, the Director considers such action
to be warranted, he or she may suspend for a further period
the marine protection document, or the recognition of a
document as a marine protection document, or impose further
conditions, and he or she shall cause the appropriate
endorsement to be made on the marine protection document
(if the document is issued under this Act or the marine
protection rules) or on the notification of recognition, as the
case may require.

(4) Where a marine protection document or recognition of a
document as a marine protection document has been
suspended or a marine protection document has been made
subject to conditions under this section, the holder shall
forthwith produce that document or notification of recognition
of that document to the Director for appropriate endorsement.

(5) The whole or any part of a marine protection document,
or the recognition of the whole or any part of a document
recognised as a marine protection document, may be
suspended under this section.

(6) Any person in respect of whom any decision is taken
under this section may appeal against that decision to a District
Court under section 424 of this Act.

Cf. 1990, No. 98, s. 17; 1992, No. 75, s. 11
278. Revocation of marine protection documents—
(1) If, after an investigation under section 272 of this Act, the Director believes that a marine protection document or the recognition of a document as a marine protection document should be revoked, the Director may revoke that document or the recognition of that document.

(2) Where the Director proposes to revoke any marine protection document, or the recognition of a document as a marine protection document, the Director shall give notice to the persons specified by, and in accordance with the provisions of, the marine protection rules.

(3) Where a marine protection document or recognition of a marine protection document has been revoked under this section, the holder shall forthwith surrender that document or notification of recognition of that document to the Director.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 424 of this Act.

Cf. 1990, No. 98, s.18; 1992, No. 75, s. 12

274. Suspension or revocation of marine protection document where prescribed fees or charges unpaid—
(1) Where any fee or charge that is payable under this Act, or any regulations made under this Act, is not paid by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the marine protection document, or suspend the recognition of the document as a marine protection document, to which the unpaid fee or charge relates.

(2) Where any fee or charge payable under this Act, or any regulations made under this Act, is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge, the Director may revoke the marine protection document, or revoke the recognition of the document as a marine protection document, to which the fee or charge relates.

(3) Before undertaking any action under subsection (1) or subsection (2) of this section, the Director shall notify the holder of that document of—

(a) The Director's intention to act under subsection (1) or subsection (2) of this section; and

(b) The right of appeal available to the holder of that document in the event of the Director taking such action.

(4) Where a marine protection document or recognition of a document as a marine protection document has been revoked
under this section, the holder shall forthwith surrender that document or notification of that document to the Director.

(5) Where a fee or charge is payable to the Authority or the Director in respect of an application or the provision of a service, the Authority or the Director, as the case may be, may, unless the marine environment would as a result be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority or the Director, as the case may be, for payment of the fee or charge have been made.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 424 of this Act.

Cf. 1990, No. 98, s. 41; 1992, No. 75, s. 22

275. Amendment or revocation in other cases—(1) The Director may,—

(a) If so requested in writing by the holder of any marine protection document issued by the Director, amend or revoke the document as requested:

(b) Amend any marine protection document issued by the Director to correct any clerical error or obvious mistake on the face of the document.

(2) Subject to subsection (3) of this section, the Director may—

(a) Amend any marine protection document issued by the Director to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder:

(b) Revoke any marine protection document issued by the Director, or revoke the recognition of any document as a marine protection document, if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder.

(3) Before taking any action under subsection (2) of this section, the Director shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

(4) The power to amend a marine protection document under this section includes—

(a) Power to revoke the document and issue a new document in its place; and

(b) Power to impose reasonable conditions.
(5) When the holder of a marine protection document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Director.

Cf. 1990, No. 98, s.20

276. Criteria for action under section 272 or section 273—(1) The provisions of this section shall apply for the purpose of determining whether a marine protection document, or recognition of a document as a marine protection document, should be suspended or made subject to conditions under section 272 of this Act or revoked under section 273 of this Act.

(2) Where this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters:

(a) The person's compliance history with any regulatory requirements relating to protection of the sea from harmful substances and the person's compliance history with the Resource Management Act 1991 in respect of the discharge of harmful substances:

(b) Any conviction for any offence related to the discharge of harmful substances into the sea, whether or not—

(i) The conviction was in a New Zealand Court; or

(ii) The offence was committed before the commencement of this Act:

(c) Any conviction for any offence under the Resource Management Act 1991 in respect of the discharge of harmful substances.

(3) The Director shall not be confined to consideration of the matters specified in subsection (2) of this section and may take into account such other matters and evidence as may be relevant.

(4) The Director may—

(a) Seek and receive such information as the Director thinks fit; or

(b) Consider information obtained from any source.

(5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6) of this section, as soon as is practicable, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) of this section shall require the Director to—
(a) Disclose any information the disclosure of which would be likely to endanger the safety of any person; or

(b) Disclose any information before—

(i) Suspending a marine protection document or suspending the recognition of a document as a marine protection document; or

(ii) Imposing conditions in respect of a marine protection document under section 272 of this Act.

(7) Where the Director determines not to disclose any information in reliance on subsection (6) of this section,—

(a) The Director shall inform the person of the fact of non-disclosure and that the person may seek a review by an Ombudsman of that non-disclosure pursuant to the Official Information Act 1982; and

(b) The provisions of that Act shall apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld in reliance on section 6 (d) of that Act.

Cf. 1990, No. 98, s. 19

General Offences

277. Acting without necessary marine protection document—(1) Every person commits an offence who—

(a) Operates, maintains, or services; or

(b) Does any other act in respect of—

any ship or marine protection product, without holding the appropriate current marine protection document.

(2) Every person commits an offence who—

(a) Operates, maintains, or services; or

(b) Does any other act in respect of—

any ship or marine protection product knowing that a current marine protection document is required to be held in respect of that ship or product before that act may lawfully be done and knowing that the appropriate document is not held.

278. Acting in breach of marine protection document or rules—Every person commits an offence who—

(a) Operates, maintains, or services; or

(b) Does any other act in respect of—

a ship or marine protection product if the provisions and conditions of the appropriate marine protection document and all relevant marine protection rules are not complied with.
Penalties

279. Penalties for individuals—Every individual who commits an offence against section 277 or section 278 of this Act is liable—
(a) To imprisonment for a term not exceeding 12 months or to a fine not exceeding $10,000; and
(b) To an additional penalty under section 409 of this Act.

280. Penalties for bodies corporate—Every body corporate that commits an offence against section 277 or section 278 of this Act is liable—
(a) To a fine not exceeding $100,000; and
(b) To an additional penalty under section 409 of this Act.

PART XXIII
PLANS AND RESPONSES TO PROTECT MARINE ENVIRONMENT FROM MARINE OIL SPILLS

281. Interpretation—In this Part of this Act, unless the context otherwise requires,—
"Marine oil spill" means an oil spill into the internal waters of New Zealand or New Zealand marine waters:
"Marine oil spill contingency plan" or "plan" means a shipboard, or site, or regional marine oil spill contingency plan or the national marine oil spill contingency plan:
"Marine oil spill response" or "response" means any action taken by or under the authority, or with the approval, of an on-scene commander in relation to a marine oil spill:
"National marine oil spill contingency plan" or "national plan" means the plan most recently prepared or reviewed under section 297 of this Act:
"National On-Scene Commander" means the National On-Scene Commander appointed under section 319 of this Act:
"New Zealand marine oil spill response strategy" or "response strategy" means the strategy most recently prepared or reviewed under section 283 of this Act:
"New Zealand Oil Pollution Fund" means the fund established under section 330 of this Act:
"Oil Pollution Advisory Committee" or "Committee" means the committee appointed under section 282 of this Act:
"Oil spill" means any actual or probable release, discharge, or escape of oil:

"Oil transfer site" or "site" means any land, site, building, structure, or facility (whether on land or above the seabed) that is used to transfer oil, or at or from which oil is transferred, to, or from, a ship, or offshore installation:

"On-scene commander" means the National On-Scene Commander or any regional on-scene commander:

"Regional marine oil spill contingency plan" means a marine oil spill contingency plan prepared by a regional council and approved by the Director under section 292 of this Act or prepared by the Director under section 295 of this Act:

"Regional on-scene commander" means a regional on-scene commander appointed under section 318 of this Act:

"Requisitioned property" means any land, building, vehicle, New Zealand ship, or any other real or personal property requisitioned under section 305(1)(g) of this Act:

"Shipboard marine oil spill contingency plan" means a plan prepared under the marine protection rules in respect of a ship and providing for the measures to be taken in respect of marine oil spills from the ship:

"Site marine oil spill contingency plan" means a plan prepared under the marine protection rules in respect of an offshore installation, or oil transfer site, and providing for the measures to be taken in respect of marine oil spills from the offshore installation or oil transfer site, as the case may be.

Oil Pollution Advisory Committee

282. Oil Pollution Advisory Committee—(1) There shall continue to be a committee, to be called the Oil Pollution Advisory Committee, to give advice to the Authority on the following matters:

(a) The New Zealand Marine Oil Spill Response Strategy:

(b) The fixing and levying of oil pollution levies imposed under Part XXIV of this Act:

(c) The use of the New Zealand Oil Pollution Fund:

(d) Any other matters related to marine oil spills that the Minister, or the Director, from time to time specifies by notice to the Committee.
(2) The Minister shall appoint to the Committee—
(a) The Director; and
(b) Such other persons as the Minister from time to time
determines; and
(c) A chairperson of the Committee.

(3) The Minister shall, in appointing members of the
Committee, consider whether the Committee should have
members who represent, or have experience relating to, the
following:
(a) The shipping industry:
(b) The oil and gas exploration industry:
(c) The oil and gas production and distribution industry:
(d) The Petroleum Industry Emergency Action Committee:
(e) Operators of port facilities:
(f) Regional councils:
(g) The Maritime Safety Authority of New Zealand:
(h) The Ministry of Transport:
(i) The Ministry for the Environment:
(j) The Department of Conservation:
(k) Te Puni Kokiri.

(4) The Committee may, subject to any written directions of
the Minister, regulate its procedure as it thinks fit.

(5) Members of the Committee shall be appointed on such
terms and conditions (including travelling allowances and
expenses) as the Minister from time to time determines.

(6) Any travelling allowances and expenses determined by
the Minister under subsection (5) of this section shall be paid
out of the New Zealand Oil Pollution Fund.

Cf. 1974, No. 14, s. 29c; 1977, No. 130, s. 3

New Zealand Marine Oil Spill Response Strategy

283. Preparation and review of response strategy—The
Director shall prepare, by a date specified by the Minister by
notice in the Gazette, the New Zealand marine oil spill response
strategy and shall review that response strategy at least once
every 3 years.

284. Purpose and contents of response strategy—(1) The
purpose of the New Zealand marine oil spill response strategy is
to—
(a) Describe the action to be taken, and by whom the action
is to be undertaken, in response to a marine oil spill in
New Zealand marine waters; and
(b) Promote a standard response to marine oil spills in New
Zealand; and
(c) Promote the co-ordination of marine oil spill contingency plans and the action taken in response to marine oil spills under such plans.

(2) The New Zealand marine oil spill response strategy shall include such matters as the Director considers appropriate to achieve its purpose as specified in subsection (1) of this section and any other matters that the marine protection rules require to be included in the response strategy.

285. Consultation in respect of response strategy—In preparing and reviewing the New Zealand Marine Oil Spill Response Strategy, the Director shall consult with the Oil Pollution Advisory Committee and such other persons as the Director considers appropriate.

Marine Oil Spill Contingency Plans

286. Purpose of marine oil spill contingency plans—The purpose of marine oil spill contingency plans is to—

(a) Promote in New Zealand planned responses to marine oil spills at shipboard, site, regional, and national levels; and

(b) Specify the functions and responsibilities of persons at shipboard, site, regional, and national levels, with respect to responses to marine oil spills.

Shipboard and Site Marine Oil Spill Contingency Plans

287. Preparation, review, and keeping of shipboard and site marine oil spill contingency plans—Shipboard and site marine oil spill contingency plans shall be prepared, reviewed, and kept in accordance with the provisions of the marine protection rules.

Regional Marine Oil Spill Contingency Plans

288. Purpose of regional marine oil spill contingency plan—The purpose of a regional marine oil spill contingency plan is to promote a planned and regionally co-ordinated response to any marine oil spill within a region that is beyond the resources of the persons who have caused the marine oil spill or that has not been appropriately responded to by such persons.

289. Initial regional marine oil spill contingency plans—(1) Every regional council whose region includes any coastline shall, by a date specified by the Director for the
purpose, submit to the Director for his or her approval a draft regional marine oil spill contingency plan for its region.

(2) Any date or dates specified by the Director for the purposes of subsection (1) of this section shall not be earlier than 12 months after all of the following have been prepared or issued, as the case may be, under this Act:

(a) The first New Zealand marine oil spill response strategy;
(b) The first national marine oil spill contingency plan;
(c) Marine protection rules prescribing requirements for regional marine oil spill contingency plans.

290. Regular review of regional marine oil spill contingency plans—Every regional council shall review its regional marine oil spill contingency plan and submit a draft regional marine oil spill contingency plan after such review to the Director for his or her approval, not less frequently than every 3 years after its preparation, or its most recent review under this section, as the case may be.

291. Preparation and consultation in respect of, and matters to be included in, regional marine oil spill contingency plans—(1) In preparing its draft regional marine oil spill contingency plan, a regional council shall ensure that,—

(a) The draft plan is consistent with the New Zealand marine oil spill response strategy and the national marine oil spill contingency plan; and
(b) The draft plan complies with any relevant requirements of the marine protection rules.

(2) In preparing under section 289 or reviewing under section 290 of this Act, its draft regional marine oil spill contingency plan, a regional council shall consider the following matters:

(a) The regional marine oil spill contingency plans of regional councils with adjacent regions;
(b) Such other marine oil spill contingency plans as it considers appropriate;
(c) Any regional coastal plan applying to that region and prepared under the Resource Management Act 1991;
(d) Any conservation management strategies and conservation management plans approved under section 17f or section 17g of the Conservation Act 1987 in respect of the coastal resources in its region;
(e) The harmful effects that marine oil spills may have on the marine environment and measures that can be taken to limit these effects:
(f) The substances that are suitable to contain and clean up marine oil spills:

(g) Such other matters as it considers appropriate.

(3) In preparing under section 289 or reviewing under section 290 of this Act, its draft regional marine oil spill contingency plan, a regional council shall consult—

(a) The Department of Conservation; and

(b) Representatives of the tangata whenua within its region; and

(c) Such persons who use the coastal resources within its region as the regional council considers appropriate; and

(d) Any other persons whom the regional council considers appropriate.

292. Approval of draft regional marine oil spill contingency plan—(1) A regional council shall, forthwith upon being required by the Director to do so, include in, or omit from, its draft regional marine oil spill contingency plan submitted to the Director under section 289 or section 290 of this Act such provisions as the Director may specify.

(2) The Director may, in his or her sole discretion, determine what provisions (if any) he or she requires under subsection (1) of this section to be included in or omitted from a draft regional marine oil spill contingency plan, except that the Director shall not require any inclusion or omission of a provision that will result in the plan being inconsistent with any relevant requirements of the marine protection rules.

(3) The Director shall, once his or her requirements (if any) under subsection (1) of this section have been complied with, approve the relevant regional marine oil spill contingency plan.

293. Amendment of regional marine oil spill contingency plans—(1) The Director may from time to time, by written notice to a regional council, require the inclusion or omission of any provision in a regional marine oil spill contingency plan if, in the opinion of the Director, it is necessary or desirable to ensure an appropriate response by the regional council to a marine oil spill within its region.

(2) A regional council may from time to time amend its regional marine oil spill contingency plan if such amendment is approved in writing by the Director.

294. Regional marine oil spill contingency plan overridden in certain cases—Where any regional marine oil
spill contingency plan is inconsistent with the New Zealand marine oil spill response strategy, the national marine oil spill contingency plan, or the marine protection rules, that response strategy, national plan, or those marine protection rules shall override that regional marine oil spill contingency plan to the extent of the inconsistency.

295. Power of Director to prepare regional marine oil spill contingency plan—(1) The Director may prepare the regional marine oil spill contingency plan for a region where a regional council has not submitted a draft regional marine oil spill contingency plan in accordance with section 289 or section 290 of this Act.

(2) Where a regional marine oil spill contingency plan is prepared by the Director under subsection (1) of this section, the regional council responsible for the plan shall meet out of its own resources the costs of the Director in preparing the regional marine oil spill contingency plan, and shall not be entitled under any provision of this Act to reimbursement from the New Zealand Oil Pollution Fund for those costs.

National Marine Oil Spill Contingency Plan

296. Purpose of national marine oil spill contingency plan—The purpose of the national marine oil spill contingency plan is to promote a planned and nationally co-ordinated response to any marine oil spill that—

(a) is beyond the resources of the regional council within whose region it is located; or

(b) is outside the region of any regional council, but within the exclusive economic zone of New Zealand, and is an oil spill for which the Director considers that a national response is required.

297. Preparation and review of national marine oil spill contingency plan—By a date specified by the Minister for the purpose by notice in the Gazette, the Director shall prepare the national marine oil spill contingency plan and shall review that plan at least once every 3 years.

298. Consultation in respect of and matters to be included in national plan—(1) In preparing or reviewing the national marine oil spill contingency plan, the Director shall consult with such persons as the Director considers appropriate.
(2) The national plan shall contain such matters as the Director considers appropriate but shall be consistent with the New Zealand marine oil spill response strategy.

(3) In preparing or reviewing the national plan under section 297 of this Act, the Director shall consider the following matters:

(a) New Zealand's obligations under international conventions and agreements in relation to responses to marine oil spills in the internal waters of New Zealand or New Zealand marine waters:

(b) The New Zealand marine oil spill response strategy:

(c) Any other matters the Director considers appropriate.

Marine Oil Spill Responses

299. Duty to notify if unable to contain and clean up marine oil spills—(1) If, in the event of an oil spill into the internal waters of New Zealand or New Zealand marine waters from a ship, the master of that ship considers that the oil spill cannot be contained and cleaned up using the resources available to that person for that purpose, he or she shall forthwith notify the Director or, where the spill has occurred within the territorial sea, the Director or the regional council within whose region the spill is located, of his or her inability to contain and clean up the oil spill.

(2) If, in the event of an oil spill into the internal waters of New Zealand or New Zealand marine waters from an offshore installation or an oil transfer site in respect of which there is required to be a site marine oil spill contingency plan under the marine protection rules, the person responsible for implementing the marine oil spill contingency plan in respect of that installation or site considers that the oil spill cannot be contained and cleaned up by the resources available to that person for that purpose, he or she shall forthwith notify—

(a) The regional council within whose region the oil spill is located; or

(b) The Director, if the spill is not located within the region of a regional council.

(3) Nothing in this section shall derogate from any other duty under this Act, or any other enactment, or any marine protection rules, to give notice to the Director or any other person of an oil spill into New Zealand marine waters.

300. Function of regional on-scene commanders after notification—(1) Subject to section 313 of this Act, if a regional on-scene commander is notified or otherwise becomes
aware, of a marine oil spill within the region of the council by whom that on-scene commander is appointed, he or she shall decide whether or not it is appropriate for any action to be taken in response to that marine oil spill, including the taking of any measures under the regional marine oil spill contingency plan or the exercise of any powers under this Act.

(2) Subject to section 313 of this Act, if, in the opinion of any regional on-scene commander, containing and cleaning up any marine oil spill within the region of that regional council is or may be beyond the capacity of the resources available to that regional council, that regional on-scene commander shall forthwith notify the Director that assistance is or may be sought from the Authority.

(3) Notification by the regional on-scene commander of the Director under subsection (2) of this section shall not relieve a regional council from its obligations under section 313 of this Act to comply with its regional marine oil spill contingency plan.

801. Function of National On-Scene Commander after notification—(1) If a National On-Scene Commander is notified by the Director or otherwise becomes aware of a marine oil spill, he or she shall decide whether or not it is appropriate for any action to be taken in response to that marine oil spill, including the taking of any measures under the national marine oil spill contingency plan or the exercise of any powers under this Act.

(2) If, in the opinion of the Director, containing and cleaning up any marine oil spill is beyond the capacity of the Authority, the Director may seek assistance from other States or persons in accordance with the national marine oil spill contingency plan.

802. National On-Scene Commander to take precedence—Notwithstanding any other provisions of this Act or any other enactment, a National On-Scene Commander may give directions to any regional council or its regional on-scene commander in relation to any marine oil spill within the region of that council and the regional council, and the regional on-scene commander shall comply with any such directions.

803. Objective of on-scene commanders—If a regional on-scene commander or the National On-Scene Commander decides that it is appropriate for a regional council or the Authority, as the case may be, to take action in respect of a
marine oil spill, the principal objective of that on-scene commander shall be to—
(a) Prevent further pollution from the marine oil spill; and
(b) Contain and clean up the oil spill in accordance with the relevant regional marine oil spill contingency plan or the National Oil Spill Contingency Plan, as the case may be,—
in such a way that does not cause any unreasonable danger to human life or cause an unreasonable risk of injury to any person.

804. Termination of marine oil spill response—(1) The National On-Scene Commander may, with the consent of the Director, terminate any marine oil spill response by the Authority.
(2) A regional on-scene commander may terminate any marine oil spill response by the regional council by whom he or she has been appointed.

805. Powers of on-scene commander—(1) If a regional on-scene commander or the National On-Scene Commander decides that it is appropriate for a regional council or the Authority, as the case may be, to take action in respect of a marine oil spill, he or she may do all or any of the following:
(a) Direct the master or owner of any New Zealand ship, or the owner of any offshore installation, or the owner of any oil transfer site that is the subject of a marine oil spill response to do anything, or refrain from doing anything, that the on-scene commander considers necessary or desirable to control or clean up the marine oil spill, or both:
(b) Remove any person obstructing a marine oil spill response from an area, or any part of an area, where a marine oil spill response is being carried out:
(c) Require the evacuation or the exclusion of persons, vehicles, or New Zealand ships from any area, or any part of an area, where a marine oil spill response is being carried out:
(d) Totally or partially prohibit, or restrict, public access on any road or to any public area or any part of the sea, that is within an area where a marine oil spill response is being carried out:
(e) Remove from any road, public place, or from the sea, in an area where a marine oil spill response is being carried out, any New Zealand ship, any vehicle, or
other thing impeding that response, and where reasonably necessary for the purpose, may enter forcibly any such ship, vehicle, or other thing:

(f) Carry out such inspections as he or she thinks appropriate in respect of any New Zealand ship, any vehicle, or other thing in an area where a marine oil spill response is being carried out:

(g) Subject to the provisions of section 306 of this Act, require the owner or person for the time being in control of any land, building, vehicle, New Zealand ship, or any other real or personal property to place that property under his or her control and direction.

(2) The powers under subsection (1) of this section may be exercised by any on-scene commander, any person authorised by him or her, and any member of the Police.

(3) Nothing in subsection (1) (g) of this section applies to any land, building, ship, vehicle, or other real or personal property under the control of the New Zealand Defence Force.

Cf. 1983, No. 46, ss. 58–64 (1)

806. Matters to be complied with in requisitioning—
(1) Any person exercising any power conferred by section 305 (1) (g) of this Act shall give to the owner or person in charge of the requisitioned property a written statement specifying the property being requisitioned and the person under whose control the property is to be placed.

(2) Where the owner or person for the time being in control of any property that may be requisitioned under section 305 (1) (g) of this Act cannot immediately be found, an on-scene commander, member of the Police, or person so authorised by an on-scene commander may assume forthwith the control and direction of the requisitioned property.

(3) Where any person assumes the control and direction of requisitioned property under subsection (2) of this section, that person shall ensure that, as soon as is reasonably practicable in all the circumstances, a written statement specifying the property that has been requisitioned and the person under whose control it has been placed is given to the owner or person formerly in charge of the requisitioned property.

Cf. 1983, No. 46, s. 64 (2)–(4)

807. Compensation payable where property requisitioned—(1) Where any requisitioned property has come under the control of any person acting under section 305 of this Act, any person having an interest in the requisitioned
property may recover from the New Zealand Oil Pollution Fund reasonable compensation for—
(a) The use of that requisitioned property while under that control; and
(b) Any loss of or damage or injury to that requisitioned property suffered or incurred while under that control.

(2) Where the New Zealand Oil Pollution Fund does not have sufficient resources to pay the whole or any part of any compensation payable under subsection (1) of this section, the Crown may, but is not obliged to, pay the compensation that the Fund is unable to pay.

(3) The Crown, and the Authority on behalf of the New Zealand Oil Pollution Fund, may recover as pollution damages under section 345 or section 356 of this Act any compensation paid under this section.

Cf. 1983, No. 46, s. 65

308. Compensation for loss or damage to personal property—(1) Every person who carries out a marine oil spill response and who suffers loss of or damage to his or her personal property in the course of carrying out that marine oil spill response shall be entitled to receive from the New Zealand Oil Pollution Fund compensation equal to—
(a) The value of any personal property that has been so lost; or
(b) The reduction in value of any personal property that has been so damaged.

(2) Where the New Zealand Oil Pollution Fund does not have sufficient resources to pay the whole or any part of any compensation payable under subsection (1) of this section, the Crown may, but is not obliged to, pay the amount of compensation that the Fund is unable to pay.

(3) The Crown, and the Authority on behalf of the New Zealand Oil Pollution Fund, may recover as damages for pollution damage under section 345 or section 356 of this Act, as the case may be, any compensation paid under this section.

(4) Subsection (1) of this section shall not apply in respect of any loss or damage to property to the extent to which a person is indemnified for that loss or damage by a contract of insurance.

(5) To the extent to which, in respect of any loss or damage to personal property, any person has recovered or, having regard to the circumstances of the case, may reasonably be expected to recover any damages, compensation, or ex gratia
payment, he or she shall not be entitled to receive any compensation under subsection (1) of this section.

Cf. 1983, No. 46, s. 75 (1), (4), (5)

809. Absence from duty not to affect employment rights—(1) No person who is absent from his or her usual employment as a result of carrying out any instructions or directions under section 305 of this Act shall be liable to dismissal from his or her employment by reason only of such absence, whether or not the employer has consented to such absence.

(2) Nothing in this section shall impose on the employer of any person any obligation to pay any remuneration in respect of any period of absence in carrying out any instructions or directions under section 305 of this Act.

Cf. 1983, No. 46, s. 74

810. Minister's power of direction—(1) The Minister may, if he or she considers that having regard to all the circumstances it is expedient to do so, give any directions to the Authority, a regional council, or an on-scene commander in respect of the performance of any functions or duties or the exercise of any powers under this Part of this Act, and that person shall comply with those directions.

(2) Where any direction has been made by the Minister under subsection (1) of this section, the Minister shall, as soon as practicable, lay before the House of Representatives a copy of the direction in written form.

Cf. 1990, No. 98, s. 72c; 1992, No. 75, s. 31

811. Additional powers of on-scene commander—If a regional on-scene commander or the National On-Scene Commander decides that it is appropriate for a regional council or the Authority, as the case may be, to take action in respect of a marine oil spill, he or she may, without limiting anything else that person may do,—

(a) Disseminate information and advice to the public relating to the marine oil spill:

(b) Carry out such works as will control and clean up the marine oil spill:

(c) Provide any item, equipment, or facility to assist with the control and clean up of the marine oil spill.
312. Limits on powers of on-scene commander—(1) No power conferred by section 305 or section 311 of this Act shall be exercised so as to conflict with the exercise of a power by—
(a) A person under Part V of the Civil Defence Act 1983; or
(b) A Disaster Recovery Co-ordinator appointed under the Civil Defence Act 1983 and acting under that Act; or
(c) The Minister of Civil Defence under section 73 of the Civil Defence Act 1983; or

(2) No power conferred by section 305 or section 311 of this Act shall be exercised so as to be inconsistent with any power exercised by the Director or the Minister under Part XX of this Act.

Obligations and Offences in Respect of Marine Oil Spill Contingency Plans

313. Compliance with marine oil spill contingency plans—(1) In the event of a marine oil spill from a ship, an offshore installation, or an oil transfer site in respect of which there has been prepared under the marine protection rules a shipboard or site marine oil spill contingency plan, as the case may be, the provisions of the relevant shipboard or site marine oil spill contingency plan shall be complied with except to the extent that a person is directed otherwise by an on-scene commander.

(2) In the event of a marine oil spill within the region of a regional council, the regional marine oil spill contingency plan shall be complied with except to the extent that a person is directed otherwise by the National On-Scene Commander.

314. Offences in respect of marine oil spill contingency plans—The master and the owner of a ship, the owner of an offshore installation, and the owner of an oil transfer site, each commits an offence if there has been without reasonable excuse, in respect of that ship, offshore installation, or oil transfer site, as the case may be, a breach of the duty under section 313 of this Act (in respect of compliance with shipboard or site marine oil spill contingency plans).

315. Offences in respect of notification of inability to contain and clean up marine oil spills—Every person (being a master of a ship or a person who is responsible for implementing a marine oil spill contingency plan in respect of
an offshore installation or an oil transfer site) commits an offence who breaches his or her duty under subsection (1) or subsection (2) of section 299 of this Act to notify the Director or a regional council, as the case may be, of an inability to contain or clean up a marine oil spill.

316. Failure to comply with prohibition, restriction, or direction—Every person commits an offence who, without reasonable excuse, fails to comply with any prohibition, restriction, or direction under section 305 of this Act.

317. Penalties—Every person who commits an offence against section 314 or section 315 or section 316 of this Act is liable,—

(a) In the case of an individual, to a fine not exceeding $10,000:
(b) In any other case, to a fine not exceeding $100,000.

Miscellaneous Provisions Relating to Responses to Marine Oil Spills

318. Appointment of regional on-scene commanders—
(1) Every regional council shall from time to time appoint—
(a) A regional on-scene commander for its region; and
(b) A person or persons, who shall perform the functions and duties and may exercise the powers of a regional on-scene commander, if the office of regional on-scene commander is vacant or the regional on-scene commander is absent, for so long as that vacancy or absence continues.

(2) Any person appointed under subsection (1) (b) of this section shall, subject to the terms of appointment, be deemed to be a regional on-scene commander during any vacancy or absence.

(3) The regional on-scene commander of a regional council shall manage and co-ordinate the response of, and direct the use of the resources available to, that regional council, in relation to any marine oil spill in respect of which the council is taking action.

(4) A regional council shall, in appointing any person or persons under paragraph (a) or paragraph (b) of subsection (1) of this section, appoint only such person or persons as are qualified under the marine protection rules to act as regional on-scene commanders.

(5) If the marine protection rules do not prescribe qualifications for a regional on-scene commander, a regional council shall appoint, under paragraph (a) or paragraph (b) of
subsection (1) of this section, only those persons who are approved by the Director.

Cf. 1983, No. 46, s. 30; 1989, No. 33, s. 5

819. Appointment of National On-Scene Commander—(1) The Director shall from time to time appoint—
   (a) A National On-Scene Commander; and
   (b) A person or persons, who shall perform the functions and duties and may exercise the powers of the National On-Scene Commander if the office of National On-Scene Commander is vacant or the National On-Scene Commander is absent, for so long as that vacancy or absence continues.

(2) Any person appointed under subsection (1) (b) of this section shall, during any vacancy or absence, be deemed to be a National On-Scene Commander.

(3) The National On-Scene Commander shall manage and coordinate the response of, and direct the use of resources available to, the Maritime Safety Authority in relation to any marine oil spill in respect of which the Authority is taking action.

Cf. 1983, No. 46, s.30; 1989, No. 33, s. 5

820. Appointments under section 818 or section 819—Any appointment under section 818 or section 819 of this Act shall be made by name and on such terms and conditions (including the revocation of the appointment) as the regional council or the Director, as the case may be, thinks appropriate.

821. Purchases by Authority to prepare for and implement responses to marine oil spills—(1) The Authority may purchase anything it considers necessary or desirable to make preparations for, or to implement, or assist in implementing, any response by the Authority or by any regional council, and as contemplated by the New Zealand marine oil spill response strategy, to a marine oil spill in New Zealand waters.

(2) The Authority shall be entitled to be reimbursed for any expenditure under subsection (1) of this section out of the New Zealand Oil Pollution Fund if such expenditure is provided for in the annual plan of expenditure approved by the Minister under section 332 of this Act.

822. Distribution and responsibility for maintenance of purchases under section 821—(1) Where it considers
appropriate, the Authority may distribute anything purchased under section 321 of this Act to regional councils or other persons in accordance with the New Zealand marine oil spill response strategy.

(2) Where anything is distributed to a regional council or another person under subsection (1) of this section, it shall remain the property of the Authority and the regional council or that person, as the case may be, shall maintain it in good order in accordance with any instructions issued by the Authority.

(3) The Authority shall meet the reasonable costs incurred by a regional authority or another person in maintaining anything in accordance with the Authority’s instructions under subsection (2) of this section.

323. Authority may inspect—The Authority may, at any time, inspect anything distributed to a regional council or another person under section 322 of this Act.

324. Director responsible for training—The Director shall be responsible for the development and co-ordination of training necessary to successfully implement a marine oil spill response under the New Zealand marine oil spill response strategy.

325. Director may review responses—The Director may, at any time within 2 years of a marine oil spill response being carried out, review that response with a view to improving such responses in the future rather than assigning blame to any person for any errors or omissions with respect to that response.

326. Proof of identity—Any person exercising any power conferred by section 305 of this Act shall—

(a) Carry, and produce if requested to do so, evidence of his or her identity; and

(b) If requested to do so, produce evidence of, or give a general explanation of, the authority under which he or she is acting and the powers he or she is exercising.

327. Protection from liability—Except as provided in sections 307 and 308 of this Act, no action or proceeding shall be brought against the Crown, or any organisation, the Authority, any regional council, or any officer or employee of any of them, or any member of a regional council, any on-scene
commander, or against any other person, to recover damages for any loss of or damage to property that is due directly or indirectly to a marine oil spill response having been taken, where the loss or damage is caused by any person acting in good faith who takes or fails to take any action in the exercise or performance of his or her functions, duties, or powers under this Part of this Act.

Cf. 1983, No. 46, s.66

328. Contracts—(1) Notwithstanding anything in the Public Bodies Contracts Act 1959, the Local Government Act 1974, or any other enactment, the Chairman, Deputy Chairman, principal administrative officer, treasurer, engineer, or any other employee of a regional council specified in the regional marine oil spill contingency plan, or any regional on-scene commander, may from time to time, when a marine oil spill response is determined to be needed, enter into any contract on behalf of the regional council for any of the purposes of this Part of this Act.

(2) Any person who exercises the power conferred by this section shall report the full circumstances of its exercise to the regional council at its next ordinary meeting, or where that is not practicable, at its next succeeding ordinary meeting.

Cf. 1983, No. 46, s. 68 (1), (3)

PART XXIV

FINANCING PLANS AND RESPONSES TO PROTECT THE MARINE ENVIRONMENT FROM MARINE OIL SPILLS

329. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Contributing oil” means any oil carried as cargo by sea and loaded onto or discharged from a ship in New Zealand:

“Contributing oil site” means any oil transfer site in New Zealand or in New Zealand continental waters, or any offshore oil installation or oil pipeline in New Zealand continental waters:

“Contributing ship” means a ship in excess of 100 gross tons, whose principal means of propulsion is mechanical:

“New Zealand Oil Pollution Fund” or “Fund” means the fund established under section 330 of this Act:
“Offshore oil installation” means any offshore installation that is used or constructed for the purposes of exploring for or producing oil:

“Oil pipeline” means any pipeline constructed or used to convey oil:

“Oil Pollution Advisory Committee” means the Oil Pollution Advisory Committee established by section 282 of this Act:

“Oil pollution levy” or “levy” means an oil pollution levy under this Part of this Act:

“Oil transfer site” has the meaning given to it by section 281 of this Act.

New Zealand Oil Pollution Fund

330. New Zealand Oil Pollution Fund—(1) The Authority shall establish and administer a fund to be known as the New Zealand Oil Pollution Fund.

(2) The oil pollution levies payable under section 333 of this Act, and any other money that is lawfully payable to the Fund, shall be paid into the Fund.

(3) All money payable to the Fund shall be paid to the credit of an account established by the Authority for the purpose at such bank as the Authority may from time to time determine.

(4) The Authority shall invest the Fund in accordance with its investment powers under section 25 of the Public Finance Act 1989.

(5) All income of the Fund shall be added to and form part of the Fund.

(6) There may from time to time be paid out of the Fund any money that may lawfully be paid out of the Fund under this Act or any other enactment.

(7) The financial statements of the Fund shall form part of the financial reports of the Authority.

331. Application of money in New Zealand Oil Pollution Fund—Subject to the provisions of this Act, the Authority shall apply the New Zealand Oil Pollution Fund only for the following purposes:

(a) To meet the costs of the Oil Pollution Advisory Committee:

(b) To purchase plant, equipment, or any other thing to make preparations for, or to implement, or assist in implementing, any responses to marine oil spills:

(c) To meet the reasonable costs of the Authority (including the costs incurred by the Director and the National
On-Scene Commander) in controlling, dispersing, and cleaning up any marine oil spill if, and to the extent that, those costs have not been recovered from the person who caused the oil spill, after all reasonable efforts have been made to recover those costs from that person:

(d) To meet the costs of the Authority in—

(i) The performance of the other functions and duties and the exercise of other powers of the Authority, the Director, and the National On-Scene Commander under Part XXIII of this Act; and

(ii) Taking measures to avoid marine oil spills:

(e) To meet the reasonable costs of a regional council (including the costs of its regional on-scene commander) in—

(i) Investigating a suspected marine oil spill; and

(ii) Controlling, dispersing, and cleaning up any marine oil spill if, and to the extent that, those costs have not been recovered from the person who caused the oil spill, after all reasonable efforts have been made to recover those costs from that person:

(f) To meet the reasonable costs of any regional council in—

(i) The performance of the other functions and duties and the exercise of the powers of the regional council and its regional on-scene commander under Part XXIII of this Act; and

(ii) Taking steps to avoid marine oil spills:

(g) To meet the reasonable costs incurred by any person, in assisting any animal or plant life affected by any marine oil spill, with the consent or in accordance with the requirements of an on-scene commander:

(h) To meet any other expenditure for which this Act contemplates that reimbursement may be made from the Fund:

(i) Such other expenditure, or classes of expenditure, related to marine oil spills, as may from time to time be approved by the Governor-General by Order in Council.

882. Expenditure budgets required before certain money paid from Fund—(1) Payment shall not be made under paragraph (a) or paragraph (b) or paragraph (d) of section 331 of this Act from the New Zealand Oil Pollution Fund to the Authority in any financial year unless such payment is in accordance with an expenditure budget.
submitted by the Authority from time to time and approved by
the Minister in his or her sole discretion.

(2) Payment shall not be made under section 331 (f) of this
Act from the Fund to any regional council in any financial year
unless such payment is in accordance with an expenditure
budget submitted from time to time by the regional council to
the Authority and approved by the Authority in its sole
discretion.

(3) The Authority shall, before submitting a budget under
subsection (1) of this section to the Minister for approval,
consult the Oil Pollution Advisory Committee about that
budget and shall consider the budgets received by the
Authority from regional councils under subsection (2) of this
section.

(4) The obligations of the Authority under this Act in respect
of its expenditure budget shall be in addition to its obligations
under the Public Finance Act 1989.

(5) Expenditure budgets are not required under this section
in respect of the application of the Fund for the purposes
provided in paragraph (c) or paragraph (e) or paragraph (g) of
section 331 of this Act or for any purposes specified by
regulations under section 394 (a) of this Act.

(6) The Minister shall from time to time, after consultation
with the Minister of Finance, determine what financial reserves
it is desirable for the Fund to hold.

Oil Pollution Levies

888. Oil pollution levies—(1) Subject to subsections (3) and
(4) of this section, the Governor-General may from time to
time, by Order in Council, impose on all or any of the persons
referred to in subsection (2) of this section oil pollution levies
for the purposes of providing money for the New Zealand Oil
Pollution Fund.

(2) Levies may be imposed under subsection (1) of this section
on all or any of the following:

(a) The owners and masters of contributing ships:
(b) The owners of contributing oil sites:
(c) The owners of contributing oil.

(3) Any Order in Council made under this section shall be
made only on the recommendation of the Minister.

(4) The Minister shall not make any recommendation under
subsection (3) of this section unless—

(a) The recommendation has been made at the request and
with the concurrence of the Authority; and
(b) He or she is satisfied that the planned expenditure from the Fund is reasonable and the levies recommended will enable that expenditure to be met without reducing the level of reserves referred to in section 332 (6) of this Act; and

(c) He or she is satisfied that the Authority has consulted the Oil Pollution Advisory Committee as required by section 334 of this Act.

(5) An Order in Council made under this section of this Act may—

(a) Require returns to be made by the persons by whom any levy is payable; and

(b) Prescribe requirements and conditions relating to the making of such returns.

Cf. 1974, No. 14, s. 29B; 1977, No. 130, s. 3; 1990, No. 98, ss. 42A, 42D (2); 1992, No. 75, s. 22

334. Consultation on oil pollution levies—The Authority shall consult the Oil Pollution Advisory Committee before advising the Minister on the imposition of and the rate or rates of any oil pollution levies.

335. Rates and basis of oil pollution levies—(1) Oil pollution levies are not required to be at a uniform rate and, in particular, different rates may be imposed—

(a) On different classes of person; and

(b) In respect of different classes of contributing ships, contributing oil sites, and contributing oil; and

(c) In respect of contributing ships, contributing oil sites, and contributing oil of the same class if different circumstances (which may include different levels of marine oil pollution risk) apply.

(2) An Order in Council under section 333 of this Act may fix different rates of levy in respect of contributing ships, contributing oil sites, and contributing oil, of the same class if different circumstances (which may include different levels of marine oil pollution risk) apply.

(3) Any such Order in Council may provide that the rate of any levy shall be calculated—

(a) At a specified flat annual rate per gross ton of the contributing ship;

(b) At a specified rate in respect of each entry of a contributing ship into a port in New Zealand;

(c) At a specified flat annual rate per tonne of oil;

(d) On any other specified basis whatever.
(4) Any such Order in Council may—
(a) Require levies to be paid in advance or otherwise:
(b) Prescribe dates for payment of levies:
(c) Prescribe the periods in respect of which the levies shall be
payable:
(d) Provide for the refund of the whole or any part of a levy
paid in advance or otherwise, in circumstances
specified in the Order in Council:
(e) Make the owners and masters of contributing ships, and
the owners of contributing oil sites, and contributing
oil, as the case may be, jointly and severally liable for
levies.

(5) No such Order in Council shall apply to a contributing
ship in respect of its entry into a port in New Zealand—
(a) Solely for the purpose of saving or preventing danger to
human life, or of obtaining medical treatment for any
person; or
(b) Solely because of weather conditions or any other
circumstances that neither the owner nor the master
of the ship could have prevented or forestalled.

Cf. 1974, No. 14, s. 29b (2), (5); 1977, No. 130, s. 3; 1990,
No. 98, s. 42b; 1992, No. 75, s. 22

336. Incurring of levies—(1) Where any oil pollution levy
is imposed in respect of a contributing ship, the liability to pay
that levy shall arise,—
(a) Where that levy is assessed on an annual basis, on the first
time of that ship into a port in New Zealand during
the period for which the levy is assessed; and
(b) In any other case, on the entry of that ship into a port in
New Zealand.

(2) Where any levy is imposed in respect of a contributing oil
site or contributing oil, the liability to pay that levy shall arise at
the date or time specified in the levy order relating to that
contributing oil site or contributing oil, as the case may be.

Cf. 1974, No. 14, s. 29c; 1977, No. 130, s. 3

337. Payment of levies—(1) Oil pollution levies shall be
paid—
(a) Where the levy is assessed on an annual basis, to the
Authority:
(b) In any other case, to the Authority or to such other
person approved by the Authority for the purpose.
(2) All levies so received shall be paid by the persons who receive them into the New Zealand Oil Pollution Fund.

Cf. 1974, No. 14, s. 29d (2), (3); 1977, No. 130, s. 3

338. Ships not entitled to certificate of clearance until levies paid—(1) A receipt shall, if requested, be given to any person paying any oil pollution levy.

(2) Where any levy is payable in respect of a contributing ship, the ship shall not be entitled to a certificate of clearance under section 74 of the Customs Act 1966 until payment is made or evidence of earlier payment of the levy is produced to the Collector of Customs to whom application is made for the issue of a certificate of clearance.

(3) A Collector of Customs who refuses to issue a certificate of clearance where evidence of payment of any levy payable in respect of the ship concerned is not produced shall, upon request, provide reasons in writing for his or her decision.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 424 of this Act.

Cf. 1974, No. 14, s. 29e; 1977, No. 130, s. 3

339. Evidence of nature and change of use—(1) Every person, being the owner or master of a contributing ship, or the owner of a contributing oil site, in respect of which an oil pollution levy is payable, shall, forthwith on the occurrence of any change in the use of the ship or site that would render the person liable to the payment of a levy at a different rate, notify the Authority in writing of that change.

(2) Where the Director has reasonable cause to suspect that a change specified in subsection (1) of this section has occurred in respect of a contributing ship, or contributing oil site, for which a levy is payable under this Part of this Act, the Director may, by notice in writing to the owner or master of the ship or the owner of the contributing oil site, require that person to deliver to the Director within 14 days after service of the notice a statutory declaration by that person verifying the nature of the use of the ship or site, as the case may be.

Cf. 1974, No. 14, s. 29h; 1977, No. 130, s. 3

340. Offences against this Part—(1) Every person commits an offence who contravenes or fails to comply with any obligation or requirement imposed on him or her by this Part of this Act or by any order made under section 333 of this Act.
(2) Every person who commits an offence under this section is liable,—
(a) in the case of an individual, to a fine not exceeding $10,000:
(b) in any other case, to a fine not exceeding $50,000.
Cf. 1974, No. 14, s. 291; 1977, No. 130, s. 3

341. Recovery of levies—(1) If any person who is liable under this Part of this Act to pay an oil pollution levy to the Oil Pollution Fund fails to do so, the amount of the levy may be recovered from that person as a debt due to the Authority.
(2) Where a person fails to pay on demand any oil pollution levy under subsection (1) of this section, the provisions of section 197 of this Act shall apply as if the levy were a marine safety charge and with any other necessary modifications.
Cf. 1974, No. 14, s. 29j; 1977, No. 130, s. 3

PART XXV
CIVIL LIABILITY FOR POLLUTION OF MARINE ENVIRONMENT

342. Interpretation—In this Part of this Act, unless the context otherwise requires,—
"Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1969; and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand:
"CLC owner" means,—
(a) in the case of a registered CLC ship, the person registered as the owner of that ship; or
(b) in the case of an unregistered CLC ship, the person who owns the ship; or
(c) in the case of a CLC ship owned by a State and operated by a person registered as the ship’s operator, the person registered as its operator:
"CLC ship" means any ship carrying oil in bulk as cargo and registered in, or (if unregistered) flying the flag of, a CLC State:
"CLC State" means any State that is a party to the Civil Liability Convention:
"Insurance" means public liability insurance:
"Marine agency" means the Authority, a regional council, or the operator of a port facility:
"Marine structure" means an offshore installation, a pipeline, or any facility, site, structure, or thing used
to transfer a harmful substance to or from a ship or offshore installation:

"Oil" means any persistent oil including crude, fuel, heavy diesel, or lubricating oil:

"Oil tanker" means a ship carrying oil in bulk as cargo:

"Pollution damage" means damage or loss of any kind; and includes the cost of any reasonable preventive measures taken to prevent or reduce pollution damage and any damage or loss occurring as a result of such measures:

"Regulated foreign oil tanker" means a regulated oil tanker that is not a New Zealand ship:

"Regulated New Zealand oil tanker" means a regulated oil tanker that is a New Zealand ship:

"Regulated New Zealand ship" means a regulated oil tanker or a regulated ship that is a New Zealand ship:

"Regulated offshore installation" means any offshore installation of a kind specified by regulations made under section 394 of this Act:

"Regulated oil tanker" means an oil tanker, wherever registered and of whatever nationality, carrying a quantity of oil in bulk in excess of 2,000 tonnes or such other quantity as may be fixed for the purpose from time to time by the Governor-General by Order in Council:

"Regulated ship" means any ship, other than a regulated oil tanker, of a kind specified by regulations made under section 394 of this Act:

"Tonnage", in relation to any ship,—

(a) Has the meaning defined in any regulations or maritime rules made under this Act that apply to the ship, unless the term is defined differently for different purposes, or is not defined, by such regulations or rules:

(b) Where the tonnage cannot be ascertained under paragraph (a) of this definition, means 40 percent of the weight (expressed in tons of 2,240 pounds) of oil that the ship is capable of carrying.

348. Ownership of CLC Ship—Notwithstanding any other provision of this Act, for the purposes of this Part of this Act, in respect of any discharge or escape of oil from a CLC ship, the owner of that ship shall be deemed to be the CLC owner of that ship at the time of an event giving rise to liability under this Part of this Act or (where such event consists of a series of
occurrences) at the time of the first such occurrence, as the case may be.

**Liability for Pollution from Ships**

344. **Liability to the Crown and marine agencies for costs of cleaning up pollution**—(1) Subject to subsection (2) of this section, where,—

(a) In breach of any provision of this Act,—

(i) Any harmful substance is discharged or escapes; or

(ii) Any waste or other matter is dumped; or

(b) In breach of any provision of the Resource Management Act 1991,—

(i) Any harmful substance is discharged or escapes; or

(ii) Any waste or other matter is dumped—

from a ship into the internal waters of New Zealand or New Zealand marine waters, or the seabed below such waters, the owner of that ship shall pay to the Crown and any marine agency the costs reasonably incurred by or on behalf of the Crown or the marine agency, as the case may be, in dealing with the harmful substance or waste or other matter.

(2) Nothing in this section shall apply to the discharge or escape of oil from a CLC ship.

(3) The amounts payable under subsection (1) of this section shall—

(a) Be payable as a debt due to the Crown or the marine agency, as the case may be; and

(b) Be payable only to the extent that those amounts have not been otherwise paid by the owner of the ship.

(4) For the purposes of subsection (1) of this section, “dealing with the harmful substance or waste or other matter” means removing, containing, and rendering harmless the substance, waste, or other matter, or doing any of those things.

Cf. 1974, No. 14, s. 30

345. **Liability of shipowners for pollution damage**—

(1) Subject to the provisions of sections 347 and 348 of this Act, where,—

(a) Any harmful substance is discharged or escapes; or

(b) Any waste or other matter is dumped—

from a ship into the sea or the seabed, the owner of that ship shall be liable in damages for all pollution damage in New Zealand, the internal waters of New Zealand, or New Zealand marine waters, or the seabed below such waters, caused by the
discharge or escape of that harmful substance or the dumping of that waste or other matter.

(2) The owner of a ship shall be liable in damages under subsection (1) of this section whether or not the discharge or escape of the harmful substance, or the dumping of the waste or other matter, was in breach of any provision of this Act or of any other enactment.

Cf. 1974, No. 14, s. 31 (1)

346. Liability for unattributable pollution damage from ships—(1) Where the owner of a ship is liable in damages for pollution damage under section 345 of this Act, but the pollution damage for which that owner is liable cannot reasonably be separated from the pollution damage for which any owner of another ship is liable under section 345 of this Act, each of the owners shall be jointly and severally liable for all the pollution damage for which the owners together would be liable under section 345 of this Act.

(2) Any liability under subsection (1) of this section shall be subject to the provisions of sections 347 and 348 of this Act.

Cf. 1974, No. 14, ss. 31 (7), 32 (7)

347. Maximum amount of liability of shipowners for pollution damage—(1) If a harmful substance is discharged or escapes, or any waste or other matter is dumped, from a ship without the actual fault or privity of the owner, the maximum amount for which the owner shall be liable under section 345 or section 346 of this Act shall be determined under this section; but, in the case of any other event, the owner’s liability under section 345 or section 346 shall not be so limited.

(2) The maximum amount for which an owner of a ship shall be liable in the circumstances specified in subsection (1) of this section shall be fixed from time to time by the Governor-General by Order in Council, and until such time as the maximum amount is so fixed shall be an amount of 133 units of account for each ton of the ship’s tonnage or 14 million units of account, whichever is the less.

(3) The owner of a ship shall be liable for the costs of any proceedings that may be awarded against that owner in addition to any other liabilities which are subject to a maximum amount determined under this section.

(4) The maximum amount of liability of an owner of a ship determined under this section shall relate to all pollution damage that arises on any one occasion and whether or not the
pollution damage arising from that occasion is sustained by more than one person.

(5) If, in any proceedings against the owner of a ship under section 345 or section 346 of this Act, the maximum amount for which that owner may be liable under this section is paid into Court, no subsequent variation of the method of calculating the liability in New Zealand currency under any marine protection rules shall affect the maximum amount of liability.

Cf. 1974, No. 14, ss. 31 (3), (4), 32 (3), (4)

348. Defences to shipowner’s liability for pollution damage—(1) The owner of a ship shall not be liable in damages for pollution damage under section 345 or section 346 of this Act if the owner proves that the discharge or escape—

(a) Resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; or

(b) Was wholly caused by the act or omission of a third person, other than the employee or agent of the owner, with intent to cause damage; or

(c) Was wholly caused by the negligence or other wrongful act of any government or other authority, or of any person, responsible for the maintenance of lights or other navigational aids in the exercise of its functions in relation to those lights or aids.

(2) The owner of a ship shall not be liable in damages to a claimant under section 345 or section 346 of this Act if it is proved that the pollution damage suffered by that claimant was wholly caused by the act or omission of that claimant, or the employee or agent of that claimant, with intent to cause damage, or was wholly caused by the negligence of that claimant or the employee or agent of that claimant.

Cf. 1974, No. 14, s. 33 (1), (3)

349. Reduction of shipowner’s liability for pollution damage where contributory negligence—(1) A Court may reduce, to such extent as it thinks just and equitable, the damages for which the owner of a ship is liable to a claimant under section 345 or section 346 of this Act if it is proved that the pollution damage suffered by that claimant was partly caused either by the act or omission of that claimant with intent to cause damage or by the negligence of that claimant.
(2) For the purposes of subsection (1) of this section, the term “claimant” includes any employee or agent of the claimant.

Cf. 1974, No. 14, s. 33 (4)

350. Proceedings against third parties in respect of pollution from ships—(1) Subject to subsection (3) of this section, where the owner of a ship avoids liability in damages for pollution damage under section 345 or section 346 of this Act by proving any of the matters specified in paragraph (b) or paragraph (c) of section 348 (1) of this Act, proceedings for pollution damage may be brought under this section against the person specified in the said paragraph (b) or the said paragraph (c) who has caused the discharge or escape of a harmful substance or waste or other matter, as the case may be.

(2) If proceedings have been brought under this section against a person specified in section 348 (1) (c) of this Act, that defendant shall be entitled to the same limitation of liability as is available under this Part of this Act to the owner of the ship from which the harmful substance or waste or other matter has been discharged or has escaped, as the case may be, and the provisions of section 351 of this Act shall apply, with the necessary modifications, to the defendant.

(3) Proceedings shall not be brought under this section against any government other than the Government of New Zealand.

Cf. 1974, No. 14, s. 40 (1), (3)

351. Distribution of amounts paid in satisfaction of liability—(1) Where a Court finds that the owner of a ship is liable in damages under section 345 or section 346 of this Act, and the liability of that owner is limited under section 347 of this Act, the Court shall—

(a) Determine the maximum amount of liability; and
(b) Direct payment into Court of that amount; and
(c) Determine the amount to which the persons making claims in the proceedings would otherwise be entitled; and
(d) Direct the distribution of the amount paid into Court to each of those persons in proportion to the amount determined under paragraph (c) of this subsection as the amount to which that person would otherwise be entitled.

(2) Where, prior to a Court making a direction for distribution of moneys under this section, any sum has been
paid to a person in or towards satisfaction of any claim in damages for pollution damage under section 345 or section 346 of this Act—

(a) By the owner of the ship or any insurer; or
(b) By a person who has or is alleged to have incurred liability otherwise than under section 345 or section 346 of this Act and who is—

(i) The employee or agent of the owner of the ship; or
(ii) The charterer of the ship or the agent in New Zealand of the charterer; or
(iii) Any person interested in, or in possession of, the ship,—

the person who paid the sum shall, to the extent of the amount paid, be in the same position with respect to any distribution made in accordance with this section as the person to whom it was paid would have been.

(3) Where an owner of a ship who is liable under section 345 or section 346 of this Act has voluntarily made any reasonable sacrifice, or incurred any reasonable expenses, to prevent or reduce the pollution damage for which the owner is liable or would have been liable, that owner shall be in the same position with respect to any distribution made under this section as if that owner had a claim for the cost of that sacrifice or those expenses.

(4) No claim for the distribution of any money under this section shall be admitted by a Court unless it is made within such time as the Court may direct or such further time as the Court may allow.

(5) The Court may, if it thinks fit, postpone the distribution of any money under this section having regard to any claims that may be made in the future.

Cf. 1974, No. 14, s. 35

852. Liability of shipowners for damages for pollution damage only under this Act—Where any pollution damage is caused in New Zealand or New Zealand marine waters, or the seabed below such waters, by the discharge or escape of a harmful substance, or the dumping of waste or other matter, from a ship into the sea or the seabed,—

(a) The only claim in damages that may be made against the owner of that ship in respect of pollution damage in New Zealand or New Zealand marine waters caused by that discharge or dumping shall be as provided in sections 344, 345, and 346 of this Act; and
(b) The employee or agent of that owner, and any person performing salvage operations in respect of the ship with the permission of the owner or the Director, shall have no liability in damages in respect of pollution damage in New Zealand or New Zealand marine waters caused by that discharge or dumping.

Cf. 1974, No. 14, s. 34

353. Restrictions on enforcement of claims against shipowners—(1) Where the amount directed to be paid under section 351 (1) of this Act has been paid into Court,—
(a) The Court shall order the release of any ship or other property detained, or any security given, in connection with the claim in respect of which the amount has been paid; and
(b) No judgment for any such claim shall be enforced (except in relation to costs).

(2) In proceedings under this Part of this Act against the owner of a ship, the reasonable costs and expenses of the claimant, including costs incurred between solicitor and client, shall, unless the Court otherwise orders, be taxed by the Court and paid by that owner.

Cf. 1974, No. 14, s. 36

354. Ships owned by CLC State—Subject to section 4 of this Act, a CLC State shall in any action under section 344 or section 345 or section 346 of this Act be deemed to have waived any defence based on its status as a sovereign State and to have submitted to the jurisdiction of the Court, but nothing in this section shall permit the levy of execution against the property of any State.

Cf. 1974, No. 14, s. 42

Liability for Pollution from Marine Structures and Operations

355. Liability to the Crown and marine agencies for costs of cleaning up pollution—(1) Where,—
(a) In breach of any provision of this Act,—
(i) Any harmful substance is discharged or escapes; or
(ii) Any waste or other matter is dumped; or
(b) In breach of any provision of the Resource Management Act 1991,—
(i) Any harmful substance is discharged or escapes; or
(ii) Any waste or other matter is dumped—
into the internal waters of New Zealand or New Zealand continental waters, or the seabed below such waters, from a marine structure, or as a result of a marine operation, the owner of that marine structure, or the person in charge of that marine operation, as the case may be, shall pay to the Crown and any marine agency the costs reasonably incurred by or on behalf of the Crown or the marine agency, as the case may be, in dealing with the harmful substance or waste or other matter.

(2) The amounts payable under subsection (1) of this section shall—

(a) Be payable as a debt due to the Crown or the marine agency, as the case may be; and

(b) Be payable only to the extent that those amounts have not otherwise been paid by the owner of the marine structure or the person in charge of that marine operation.

(3) For the purposes of subsection (1) of this section, “dealing with the harmful substance or waste or other matter” means removing, containing, and rendering harmless the substance, waste, or other matter, or doing any of those things.

Cf. 1974, No. 14, s. 30

856. Liability for pollution damage from marine structures and operations—(1) Subject to the provisions of section 357 of this Act, where—

(a) Any harmful substance is discharged or escapes; or

(b) Any waste or other matter is dumped—
from a marine structure, or as a result of any marine operations, into the sea or the seabed, the owner of that marine structure or the person in charge of those marine operations, as the case may be, shall be liable in damages for all pollution damage in New Zealand, the internal waters of New Zealand, or New Zealand continental waters, or the seabed below such waters, caused by the discharge or escape of that harmful substance or the dumping of that waste or other matter.

(2) The owner of a marine structure, or the person in charge of any marine operations, shall be liable in damages under subsection (1) of this section whether or not the discharge or escape of the harmful substance, or the dumping of the waste or other matter, was in breach of any provision of this Act or of any other enactment.

Cf. 1974, No. 14, s. 31 (9)
357. Liability for unattributable pollution damage from marine structures and operations—(1) Where the owner of a marine structure or the person in charge of any marine operations is liable in damages for pollution damage under section 356 of this Act, but the pollution damage for which that owner or person in charge is liable cannot reasonably be separated from the pollution damage for which any other owner of a marine structure or person in charge of any marine operations, or both, is liable under section 356 of this Act, each of the owners and persons in charge shall be liable, jointly and severally with the others, for the whole of the pollution damage for which the owners and persons in charge together would be liable under section 356 of this Act.

(2) Any liability under subsection (1) of this section shall be subject to the provisions of section 358 of this Act.

358. Defences in respect of liability for pollution damage from marine structures and operations—(1) The owner of a marine structure, or the person in charge of any marine operations, shall not be liable in damages for pollution damage under section 356 or section 357 of this Act if the owner or person in charge, as the case may be, proves that the discharge, escape, or dumping—

(a) Resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character; or

(b) Was wholly caused by the act or omission of a third person, other than the employee or agent of the owner or the person in charge, as the case may be, with intent to cause damage; or

(c) Was wholly caused by the negligence or other wrongful act of any government or other authority, or of any person, responsible for the maintenance of lights or other navigational aids in the exercise of its functions in relation to those lights or aids.

(2) The owner of a marine structure and the person in charge of marine operations shall not be liable in damages to a claimant under section 356 or section 357 of this Act if it is proved that the pollution damage suffered by that claimant was wholly caused by the act or omission of that claimant, or the employee or agent of that claimant, with intent to cause damage, or was wholly caused by the negligence of that claimant or the employee or agent of that claimant.

Cf. 1974, No. 14, s. 33 (2), (3)
369. Reduction of liability of owner of marine structure or person in charge of marine operations where contributory negligence—(1) A Court may reduce to such extent as it thinks just and equitable, the damages for which the owner of a marine structure, or the person in charge of any marine operations, is liable to a claimant under section 356 or section 357 of this Act if it is proved that the pollution damage suffered by that claimant was partly caused either by the act or omission of that claimant with intent to cause damage or by the negligence of that claimant.

(2) For the purposes of subsection (1) of this section, the term "claimant" includes any employee or agent of the claimant.

Cf. 1974, No. 14, s. 33 (4)

360. Proceedings against third parties in respect of pollution from marine structures or operations—Where the owner of a marine structure or the person in charge of any marine operations avoids liability in damages for pollution damage under section 356 or section 357 of this Act by proving any of the matters specified in paragraph (b) or paragraph (c) of section 358 (1) of this Act, proceedings for pollution damage may be brought under this section against the person specified in the said paragraph (b) or the said paragraph (c) who has caused the discharge, escape, or dumping of a harmful substance or waste or other matter, as the case may be.

Cf. 1974, No. 14, s. 40 (2)

General Provisions in Respect of Liability for Pollution Damage

361. Time for bringing proceedings—No action under section 345 or section 346 or section 350 of this Act in respect of the discharge or escape of oil from a CLC ship shall be brought in any Court, unless the proceedings are commenced not later than 3 years after the date on which the claim arose, nor later than 6 years after the event, or, as the case may be, the first of the events, by reason of which liability was incurred.

Cf. 1974, No. 14, s. 41

362. Part VII not to affect liability under this Part—Nothing in Part VII of this Act shall affect any liability under this Part of this Act.

Mandatory Insurance for Certain Ships and Offshore Installations

363. Certain ships to have certificates of insurance—(1) No regulated oil tanker or regulated ship shall enter or leave
any port in New Zealand or New Zealand marine waters unless a current certificate of insurance issued, recognised, or accepted by the Director under section 270 or section 271 of this Act is for the time being in force in respect of that tanker or ship.

(2) No regulated New Zealand oil tanker or regulated New Zealand ship shall enter or leave any port outside New Zealand unless a current certificate of insurance issued or recognised by the Director under section 270 of this Act is for the time being in force in respect of that tanker or ship.

(3) The Director may, in accordance with the provisions of the marine protection rules and of section 270 or section 271 of this Act, as the case may require, issue, recognise, or accept certificates of insurance in respect of a regulated oil tanker or a regulated ship.

Cf. 1974, No. 14, s. 37 (2)

864. Regulated offshore installations to have certificates of insurance—(1) A current certificate of insurance issued, recognised, or accepted by the Director under section 270 or section 271 of this Act is required to be for the time being in force in respect of every regulated offshore installation.

(2) The Director may, in accordance with section 270 or section 271 of this Act, as the case may require, issue, recognise, or accept certificates of insurance in respect of a regulated offshore installation.

865. Production of certificate of insurance—The master of a regulated oil tanker or regulated ship, in New Zealand marine waters, or the person in charge of the offshore installation, as the case may be, shall produce any certificate of insurance required by section 363 or section 364 of this Act on demand if requested by a harbourmaster, any officer of Customs, or the Director.

Cf. 1974, No. 14, s. 37 (6)

866. Rights of third parties against insurers of regulated oil tankers, regulated ships, and regulated offshore installations—(1) Where—

(a) The owner of a regulated oil tanker or regulated ship; or

(b) The owner of a regulated offshore installation—is alleged to have incurred liability under any of sections 344, 345, 346, 355, 356, and 357 of this Act, or all of those sections, as the case may be, proceedings to enforce a claim in respect of
that liability may be brought against any person (in this section referred to as the insurer) providing insurance or other financial security for the owner’s liability for pollution damage to which any certificate of insurance referred to in section 363 or section 364 of this Act, as the case may be, relates.

(2) In proceedings brought against the insurer under this section, it shall be a defence, in addition to any defence under this Act affecting the owner’s liability, for the insurer to prove that the discharge or escape of a harmful substance, or the dumping of waste or other matter, giving rise to liability resulted from the wilful misconduct of the owner of the regulated oil tanker, regulated ship, or regulated offshore installation, as the case may be, but the insurer shall not be entitled to invoke any other defence which the insurer might have been entitled to invoke in any proceedings brought against the insurer by that owner.

(3) The liability of the insurer in proceedings under this section against the owner of a regulated ship (irrespective of the actual fault or privity of that owner) is limited in like manner and to the same extent as the liability of that owner is limited under section 347 of this Act.

(4) Nothing in this section shall prejudice any claim, or the enforcement of any claim, by any person against the owner of a regulated oil tanker, regulated ship, or regulated offshore installation, as the case may be, in respect of pollution damage.

Cf. 1974, No. 14, s. 39

367. Offences—(1) The owner and the master of a regulated oil tanker or of a regulated ship each commits an offence and is liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding $200,000, if, without reasonable excuse, the regulated oil tanker or regulated ship, as the case may be, enters or leaves, or attempts to enter or leave, a port in New Zealand or in New Zealand marine waters in breach of section 363 of this Act.

(2) The master of a regulated oil tanker or a regulated ship, in New Zealand marine waters, commits an offence and is liable to a fine not exceeding $10,000, if, without reasonable excuse, the regulated oil tanker or the regulated ship fails to carry, or the master fails to produce, the certificate of insurance required by section 363 to be carried.

(3) The owner and person in charge of a regulated offshore installation each commits an offence and is liable to imprisonment for a term not exceeding 2 years or to a fine of $200,000, if, without reasonable excuse, a current certificate of
insurance issued under the marine protection rules is not for
the time being in force in respect of the regulated offshore
installation.

Cf. 1974, No. 14, s. 37 (8), (9)

Miscellaneous

368. Application of admiralty jurisdiction—(1) The
admiralty jurisdiction of the High Court of New Zealand shall
extend to any claim under this Part of this Act in respect of
liability for pollution damage involving a ship, and section
4 (1)(d) of the Admiralty Act 1973 (which relates to claims for
damage done by a ship) shall be construed as extending to any
claim to which this subsection applies, together with all the
incidents of such a claim.

(2) No action shall be brought in a Court to enforce any claim
attributable to the discharge of oil causing damage in or to the
territory or territorial sea of a CLC State, other than New
Zealand.

Cf. 1974, No. 14, s. 43; 1977, No. 12, s. 5

369. Reciprocal enforcement of judgments—(1) Part I of
the Reciprocal Enforcement of Judgments Act 1934 shall apply
to any judgment, given by a Court in a country in respect of
which the CLC Convention is in force, to enforce a claim in
respect of liability incurred under any provision corresponding
to section 345 of this Act.

(2) Subsections (3) and (4) of section 6 of the Reciprocal
Enforcement of Judgments Act 1934 shall have no effect in the
case of any such judgment.

Cf. 1974, No. 14, s. 44

PART XXVI

COMPENSATION FROM INTERNATIONAL OIL POLLUTION
COMPENSATION FUND FOR POLLUTION DAMAGE

370. Interpretation—In this Part of this Act, unless the
context otherwise requires,—

"Civil Liability Convention" has the meaning given to it by
section 342 of this Act:

"CLC ship" has the meaning given to it by section 342 of
this Act:

"CLC State" has the meaning given to it by section 342 of
this Act:
“Convention ship” means a ship registered in, or (if unregistered) flying the flag of, any State which is a party to the Fund Convention:

“Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; and includes any subsequent protocol or amendment to, or revision of, that convention accepted or ratified by New Zealand:

“International Oil Pollution Fund” or “the Fund” means the International Oil Pollution Compensation Fund established under Article 2 of the Fund Convention:

“Oil” means any persistent oil including crude, fuel, heavy diesel, or lubricating oil:

“Owner”, in relation to any convention ship, means,—
(a) In the case of a convention ship that is registered, the person registered as owner of that ship; or
(b) In the case of a convention ship that is not registered, the person who owns the ship; or
(c) In the case of a convention ship owned by a State which is operated by a person registered as the ship’s operator, the person registered as its operator:

“Tonnage” has the meaning given to it by section 342 of this Act.

Cf. 1974, No. 14, s. 47

Compensation and Indemnity from International Oil Pollution Fund

371. International Oil Pollution Fund to have legal personality—The International Oil Pollution Fund shall be deemed for the purposes of New Zealand law to be a body corporate and to have and to be able to exercise all the rights, powers, and privileges, and to incur all the liabilities and obligations, of a natural person of full age and capacity.

Cf. 1974, No. 14, s. 48

372. Compensation from International Oil Pollution Fund for certain pollution damage—Subject to the provisions of this Part of this Act, the International Oil Pollution Fund shall pay compensation, up to a maximum amount determined under section 373 of this Act, for pollution damage caused by the discharge or escape of oil from a convention ship—
(a) If the owner of the ship is not liable for the pollution damage under Part XXV of this Act; or

(b) If, and to the extent that, the pollution damage exceeds the maximum amount of liability of the owner of the ship determined under section 347 of this Act; or

(c) If, and to the extent that, the pollution damage exceeds the maximum amount of liability of the owner of the ship determined under any convention (other than the Civil Liability Convention) which is in force between New Zealand and a State that is not a CLC State; or

(d) If, and to the extent that, a person (after pursuing that person’s legal remedies against the owner of the ship), and any insurer of the owner, does not recover payment in full of any damages and costs awarded by a Court under section 345 or section 366 of this Act.

Cf. 1974, No. 14, s. 49 (3)

373. **Maximum amount of liability of International Oil Pollution Fund**—(1) The maximum amount for which the International Oil Pollution Fund shall be liable for pollution damage under section 372 of this Act shall be fixed from time to time, by Order in Council, and, until such time as the maximum amount is so fixed, shall be,—

(a) Where the pollution damage resulted from a natural phenomenon of an exceptional, inevitable, and irresistible character, the amount of 60 million units of account:

(b) Where no liability arises because of the provisions of section 348 of this Act giving effect to the Civil Liability Convention, the amount of 60 million units of account:

(c) Where liability has been incurred under section 345 of this Act by the owner of a CLC ship, 60 million units of account, less—

(i) The amount of compensation actually paid by the owner, or the owner’s insurer, or by both pursuant to a direction of the Court under section 351 of this Act; and

(ii) The amount for which the owner is entitled to be indemnified by the International Oil Pollution Fund.

(2) The maximum amount of liability fixed by this section shall apply to the total liability incurred on each distinct
occasion, and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.

Cf. 1974, No. 14, s. 49 (6)-(8)

374. International Oil Pollution Fund’s liability for compensation avoided or limited in certain cases—
(1) The provisions of this section apply only in respect of a CLC ship carrying persistent hydrocarbon mineral oil in bulk as cargo.

(2) The International Oil Pollution Fund shall not be liable under section 372 of this Act to pay compensation for pollution damage in the following circumstances:

(a) If it is proved that the pollution damage resulted from an act of war, hostilities, civil war, or insurrection, or was caused by oil which had been discharged from a warship, or from any other ship owned or operated by a State, and which at the time of the discharge was being used by the Government of that State for purposes other than commercial purposes:

(b) If the person making the claim in respect of the pollution damage is unable to prove that the pollution damage was the result of the discharge of oil from one or more ships.

(3) Where the International Oil Pollution Fund proves that the damages suffered by any person are a result in part of—

(a) That person’s own negligence; or

(b) Any act or omission by that person done or omitted with intent to cause pollution damage,—the compensation recoverable from the International Oil Pollution Fund under section 372 of this Act shall be reduced to the extent that the Court thinks just and equitable having regard to that person’s share in the responsibility for the damage suffered.

(4) Nothing in subsection (3) of this section shall apply to any claim against the International Oil Pollution Fund that relates to—

(a) Expenses reasonably incurred or sacrifices reasonably made by the owner of a ship voluntarily to prevent or reduce pollution damage; or

(b) Expenses relating to measures carried out by the owner of a ship pursuant to an instruction of the Director under Part XX of this Act.

Cf. 1974, No. 14, s. 49 (4), (5)
875. Several claims for compensation from International Oil Pollution Fund—(1) Subject to subsection (2) of this section, where liability to pay compensation is incurred under section 372 of this Act by the International Oil Pollution Fund in respect of several claims for pollution damage arising out of the same event, the Court shall determine the amount of the International Oil Pollution Fund's liability and apportion that amount rateably among the several claimants.

(2) Where the amount of claims for compensation established under section 372 against the International Oil Pollution Fund exceeds the maximum amount determined under section 373 of this Act, the Court shall order the maximum amount available to be distributed in such a way that the ratio between any established claim and the amount recovered by a claimant from the owner of a CLC ship and the owner's insurer, under section 345 or section 366 of this Act, and from the International Oil Pollution Fund under section 372 of this Act, is the same for all claimants.

Cf. 1974, No. 14, s. 50

876. International Oil Pollution Fund to indemnify certain shipowners—(1) This section applies only to Convention ships carrying persistent hydrocarbon mineral oil in bulk as cargo.

(2) Subject to the provisions in section 375 of this Act, the International Oil Pollution Fund shall indemnify the owner of a CLC ship, and the owner's insurer, against liability for pollution damage under section 345 of this Act to the extent that the amount of liability under that section, including expenses reasonably incurred and sacrifices reasonably made voluntarily by the owner to prevent or reduce pollution damage,—

(a) Exceeds an amount fixed for the purpose by the Governor-General by Order in Council or (if an amount is not so fixed) an amount equivalent to 100 units of account for each ton of the ship's tonnage or an amount of 8,333,000 units of account, whichever is the less; and

(b) Does not exceed an amount fixed for the purpose by the Governor-General by Order in Council or (if an amount is not so fixed) an amount equivalent to 133 units of account for each ton of the ship's tonnage or an amount of 14,000,000 units of account, whichever is the less.

Cf. 1974, No. 14, s. 51 (1)
877. International Oil Pollution Fund’s liability to indemnify limited or avoided in certain cases—(1) The International Oil Pollution Fund shall not be liable to indemnify the owner of a CLC ship, or the owner’s insurer under section 376 of this Act where the pollution damage in respect of which the indemnity is sought resulted from the wilful misconduct of that owner.

(2) The Court may reduce the International Oil Pollution Fund’s liability to indemnify under section 376 of this Act an owner of a CLC ship or the owner’s insurer, or both, against liability for pollution damage if it is proved that the discharge of oil which caused the pollution damage occurred wholly or partly because the ship did not, at the time of that discharge, comply with the requirements of any international convention, treaty, or agreement prescribed by the Governor-General by Order in Council for the purpose of complying with the provisions of Article 5 of the Fund Convention.

(3) Subsection (2) of this section shall apply in respect of every Convention ship regardless of whether or not the State in which the ship is registered, or whose flag the ship is flying, is a party to any of the instruments prescribed under that subsection.

(4) The Court may, pursuant to subsection (2) of this section, reduce the International Oil Pollution Fund’s liability to such extent as it thinks fit, including the cancellation of such liability.

Cf. 1974, No. 14, s. 51

Provisions in Respect of Proceedings Against International Oil Pollution Fund

878. Time for bringing proceedings against International Oil Pollution Fund—(1) No action to enforce a claim against the International Oil Pollution Fund for compensation under section 372 of this Act, or for indemnification under section 376 of this Act, shall be brought in any Court, unless the proceedings are commenced, or a notice is served on the International Oil Pollution Fund in accordance with the provisions of section 380 of this Act, not later than 3 years after the claim arose; and in any case no such action shall be brought later than 6 years after the occurrence of the event or, as the case may be, the first of the events giving rise to the claim.

(2) Notwithstanding anything in subsection (1) of this section, the right of the owner of a CLC ship, or the owner’s insurer, to bring proceedings to enforce a claim for indemnification

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against the International Oil Pollution Fund under section 376 of this Act shall continue until 6 months after the date on which the owner, or the owner's insurer, was served with the documents commencing the proceedings in respect of which the indemnification is sought.

Cf. 1974, No. 14, s. 53

379. Jurisdiction of Court in respect of claims against International Oil Pollution Fund—(1) Subject to the provisions of this section, no action shall be brought in a Court to enforce a claim against the International Oil Pollution Fund under section 372 or section 376 of this Act, in respect of pollution damage in or to the territory or territorial sea of a country other than New Zealand in respect of which the Civil Liability Convention is in force.

(2) Where an action to enforce a claim for compensation for pollution damage under the Civil Liability Convention has been brought before a Court in a State that is a party to that Convention but is not a party to the Fund Convention, an action by the claimant against the International Oil Pollution Fund for compensation under Article 4 of the Fund Convention and for indemnification under section 376 of this Act may be brought before a Court in New Zealand, and the provisions of this Part of this Act shall apply accordingly.

Cf. 1974, No. 14, s. 54 (1), (2)

380. Notice of proceedings against International Oil Pollution Fund—Where proceedings are brought against the International Oil Pollution Fund under section 372 or section 376 of this Act, copies of the documents commencing the proceedings shall be sent to the Director by the Registrar of the Court in which the documents are filed.

Cf. 1974, No. 14, s. 54 (3); 1993, No. 48, s. 6

381. Notice to and joining of International Oil Pollution Fund in certain proceedings—(1) Where proceedings have been brought in a Court against the owner of a CLC ship, or the owner's insurer, to enforce a claim in respect of any liability incurred under section 372 or section 376 of this Act,—

(a) Either party to the proceedings may serve a notice on the International Oil Pollution Fund or its representative in New Zealand:

(b) Either party may join the International Oil Pollution Fund in the action:
(c) The International Oil Pollution Fund may apply to the Court to be joined in the action.

(2) A notice served on the International Oil Pollution Fund, or its representative, under subsection (1) (a) of this section—

(a) Shall give sufficient details of the cause of action to allow the International Oil Pollution Fund to decide whether to apply to be joined in the action; and

(b) Shall specify a period of 30 days, or such lesser period as the Court may order, for the International Oil Pollution Fund to apply to be joined in the action.

(3) Where the International Oil Pollution Fund applies to be joined under subsection (1) (c) of this section in any proceedings, the Court shall join the International Oil Pollution Fund in those proceedings.

(4) Where the International Oil Pollution Fund, or its representative, has been served with a notice under subsection (1) (a) of this section but the International Oil Pollution Fund has not been joined in the proceedings, the judgment of the Court shall be final and binding on the International Oil Pollution Fund to the extent that the findings of the Court may not be challenged by the International Oil Pollution Fund in any proceedings relating to the same cause of action.

Cf. 1974, No. 14, s. 54 (4)-(7)

388. Reciprocal enforcement of judgments against International Oil Pollution Fund—(1) Part I of the Reciprocal Enforcement of Judgments Act 1934 shall apply to any judgment given by a Court against the International Oil Pollution Fund in a country in respect of which the Fund Convention is in force.

(2) Subsections (3) and (4) of section 6 of the Reciprocal Enforcement of Judgments Act 1934 shall have no effect in the case of any such judgment.

(3) Where a Court in a country in respect of which the Fund Convention is in force has directed the distribution of the amounts available for distribution in accordance with the provisions of paragraph 5 of Article 4 of that Convention, then, for the purpose of enforcing the judgment of that Court in New Zealand, the judgment to be enforced shall be the judgment of that Court as modified by that direction as to distribution.

Cf. 1974, No. 14, s. 55

388. Rights of subrogation of International Oil Pollution Fund—Where any person has received compensation from the International Oil Pollution Fund under
section 372 of this Act, then the International Oil Pollution Fund shall (up to the amount of compensation paid) be subrogated to the rights and remedies of that person against,—
(a) Subject to sections 376 and 384 of this Act, the owner of any CLC ship, or the owner’s insurer, in respect of the liability incurred by that owner or that owner’s insurer under section 345 or section 366 of this Act:
(b) Any other person in respect of the pollution damage for which compensation has been paid and the rights of the International Oil Pollution Fund against any person referred to in this paragraph shall be as favourable as any right or remedy that the insurer of any person referred to in paragraph (a) of this section would have by way of subrogation.

Cf. 1974, No. 14, s. 56

Miscellaneous Provisions Relating to International Oil Pollution Fund

384. International Oil Pollution Fund as insurer—
(1) The International Oil Pollution Fund may act as insurer to any owner of a Convention ship carrying persistent hydrocarbon mineral oil in bulk as cargo in respect of the same liability against which the Fund may indemnify owners, or owners and insurers, under section 376 of this Act, and section 363 of this Act shall apply accordingly.
(2) Where the International Oil Pollution Fund, as insurer, has paid any money as compensation for pollution damage incurred by the owner of a CLC ship under section 345 of this Act, it may recover from the owner the money so paid to the extent (if any) that the International Oil Pollution Fund would have been exonerated from indemnifying the owner by the provisions of section 376 (2) of this Act.

Levies on Oil Imports

385. Levies on oil imports—(1) For the purpose of complying with the requirements of Articles 10, 11, 12, 13, 14, and 15 of the Fund Convention, the Governor-General may from time to time, by Order in Council, impose a levy on oil carried by sea and landed from a ship in any port or oil transfer site in New Zealand (whether or not landed from a country outside New Zealand).
(2) Without limiting anything in subsection (1) of this section, any such Order in Council may prescribe all or any of the following matters:
(a) The rate of the levy, and the basis on which it is to be assessed in any one calendar year, whether for that year or the preceding calendar year or for any other calendar year;

(b) Any additional rate of levy, and the basis on which it is to be assessed;

(c) The persons liable to pay the levy, the due date for payment, and the persons to whom the levy is to be paid;

(d) Penalties and interest for non-payment and for late payment of levies;

(e) The taking of legal proceedings to recover any levy or any penalty or amount of interest:

(3) In this section, the term "oil" means—

(a) Crude oil, namely, any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation; and includes crude oils from which certain distillate fractions have been removed (topped crudes) or to which certain distillate fractions have been added (spiked or reconstituted crudes):

(b) Fuel oil, namely, heavy distillates or residues from crude oil, or blends of such materials, intended for use as a fuel for the production of heat or power of a quality equivalent to or heavier than the American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69).

PART XXVII

MAKING OF MARINE PROTECTION RULES AND REGULATIONS
AND TAKING OF OTHER MEASURES TO PROTECT
MARINE ENVIRONMENT

Marine Protection Rules

386. Marine protection rules to implement international standards—(1) The Minister may from time to time make marine protection rules for all or any of the following purposes:

(a) To implement New Zealand's obligations under any marine protection convention:

(b) To make such rules as may be necessary to enable New Zealand to become a party to any international convention, protocol, or agreement relating to the protection of the marine environment:
(c) To implement such international practices or standards relating to the protection of the marine environment as may from time to time be recommended by the International Maritime Organisation.

(2) Nothing in subsection (1) of this section limits any other provision of this Act that empowers the making of marine protection rules.

Cf. 1990, No. 98, s. 28; 1992, No. 75, s. 18

387. Marine protection rules relating to marine protection documents—(1) The Minister may from time to time make marine protection rules requiring that a marine protection document be held by or in respect of all or any of the following:

(a) New Zealand ships:
(b) Foreign ships:
(c) Offshore installations:
(d) Pipelines:
(e) Marine incineration facilities:
(f) Oil transfer sites:
(g) Cargo loading and unloading terminals:
(h) Marine protection products:
(i) Reception facilities:
(j) Persons or organisations that provide—

(i) Maritime training; or
(ii) The testing, inspection, audit, or certification of ships or marine protection products; or
(iii) The design, manufacture, or maintenance of ships or marine protection products:

(k) Any other vessel, equipment, person, or organisation engaged or used in maritime activities or activities that, in the opinion of the Minister, relate to maritime activities.

(2) Marine protection rules may provide for the recognition in writing by the Director of licences, permits, certificates, or other documents.

(3) The requirements, standards, and application procedure for each marine protection document and the maximum period for which each document may be issued or recognised, as the case may be, shall be prescribed by the marine protection rules.

(4) The marine protection rules may specify the requirements and criteria that must be satisfied in respect of the relevant insurance policy, bond, or other form of financial
security for the Director to issue a certificate of insurance under section 363 or section 364 of this Act.

(5) Subject to any marine protection rules, a marine protection document may be issued or a document may be recognised as a marine protection document, as the case may be, by the Director for such specified period and subject to such conditions as the Director considers appropriate in each particular case.

(6) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 424 of this Act.

Cf. 1990, No. 98, s. 7

388. Marine protection rules in relation to harmful and other substances—The Minister may from time to time make marine protection rules for all or any of the following purposes:

(a) Specifying the substances that are harmful substances for the purposes of section 225 of this Act:
(b) Specifying the substances that are noxious liquid substances for the purposes of section 225 of this Act:
(c) Specifying the substances that are not to be noxious liquid substances for the purposes of section 225 of this Act:
(d) Specifying things and substances that are to be included as marine protection products for the purposes of section 225 of this Act:
(e) Prescribing requirements for the design and construction of ships and other real or personal property for which a marine protection document is required:
(f) Prescribing areas of ships where harmful substances, or any specified harmful substance, or ballast water, may not be held:
(g) Prescribing the maximum quantities of harmful substances, or any specified harmful substance, that may be held on ships or any class of ship:
(h) Prescribing standards and requirements in respect of marine protection products and reception facilities:
(i) Regulating or prohibiting, in relation to ships and offshore installations, all or any of the following:
   (i) The discharge of harmful substances or any specified harmful substance, whether generally or in any specified area:
   (ii) The removal or retention on board of harmful substances:
(iii) The stowage, packaging, containment, marking, labelling, documentation, and notification of harmful substances carried in packaged form:

(iv) Plans for emergencies involving harmful substances or any specified harmful substance:

(j) Prescribing the requirements (and, in particular, in the case of any notice, the time periods to be complied with and the form and manner in which the notice is to be given) in respect of ships, offshore installations, pipelines, transfer facilities, reception facilities, and marine operations for the following:

(i) Giving notice under section 227 of this Act of the discharge or escape of any harmful substance:

(ii) Giving notice under section 228 of this Act of any pollution incident:

(iii) Giving notice under section 229 or section 230 of this Act of the prospective arrival of any ship carrying oil or a noxious liquid substance or the transfer of oil or any such substance to or from a ship:

(iv) Surveys and inspections:

(v) Records to be kept in respect of activities involving harmful substances or any specified harmful substance:

(k) Prescribing shipping exclusion zones and navigation and shipping lanes within the territorial sea of New Zealand:

(l) Prescribing the requirements and procedures for the discharge or escape of water produced from geologic formations by marine operations in New Zealand continental waters:

(m) Prescribing the requirements and procedures for the transfer of oil or noxious liquid substances to or from transfer facilities or ships.

389. Marine protection rules in relation to waste or other matter—(1) The Minister may from time to time make marine protection rules for all or any of the following purposes:

(a) To specify the types of waste or other matter that are toxic or hazardous wastes for the purposes of section 257 of this Act:

(b) To specify the types of waste or other matter for which permits, or any class of permit, may not be granted under section 262 of this Act:
(c) To specify the types of waste or other matter for which permits, or any class of permit, may be granted under section 262 of this Act:

(d) To specify the application procedure for permits, or any class of permit, under section 262 of this Act, including the persons (if any) who are to receive notice of the application:

(e) To specify the procedure for the persons (if any) who are to receive notice of an application for a permit under section 262 of this Act to make submissions:

(f) To specify the requirements to be satisfied for a permit, or any class of permit, under section 262 of this Act to be issued:

(g) To specify the terms and conditions, and maximum period of validity, of permits or any class of permit granted under section 262 of this Act:

(h) To specify the persons (if any) with whom the Director must consult before granting a permit or any class of permit under section 262 of this Act:

(i) To provide for the issue or renewal of permits or any class of permit granted under section 262 of this Act:

(j) To provide for the operational requirements in respect of, and for the survey, testing, and monitoring of, marine incineration facilities.

(2) The Minister shall, before making any marine protection rules under subsection (1) of this section, consult with such other Ministers as he or she considers appropriate having regard to the particular subject-matter of the proposed rules.

390. Marine protection rules in relation to marine oil spills and other matters—(1) The Minister may from time to time make marine protection rules for all or any of the following purposes:

(a) Specifying the matters that must be contained in—
   (i) Shipboard or site marine oil spill contingency plans:
   (ii) Regional marine oil spill contingency plans:

(b) Specifying the qualifications to be held by on-scene commanders, or any class of on-scene commander:

(c) Specifying the form and contents of the certificate to be issued by the Director under section 363 or section 364 of this Act:

(d) Specifying the manner in which any notice, notification, or instruction under this Act, or any regulation or
marine protection rules made under this Act, may be given by the Director:

(e) Requiring the Director to notify any person or persons in respect of any action taken by the Director under this Act or any regulations or marine protection rules made under this Act and, in particular, requiring the Director to comply with any obligations to notify any persons under any international conventions binding on New Zealand:

(f) Prescribing or providing for such matters as may be necessary to enable New Zealand to become a party to any international convention, protocol, or agreement relating to protection of the marine environment.

(2) The Minister may from time to time make marine protection rules to provide for such other matters as are contemplated by or necessary for giving full effect to the provisions of Parts XVIII to XXVI of this Act and for the due administration thereof.

891. Power of Director to make emergency marine protection rules—(1) The Director may from time to time make rules (to be called emergency marine protection rules) for any of the purposes for which the Minister may make rules under this Part of this Act, if the Director considers that—

(a) Such rules are necessary to alleviate or minimise any damage to the marine environment or threat of imminent damage to the marine environment; and

(b) It is not practicable in the circumstances of the particular case for the Minister to make rules to effectively eliminate or alleviate the damage or threat of damage to the marine environment.

(2) The Minister may revoke any emergency marine protection rule and the revocation shall be notified as if it were an emergency rule.

Cf. 1990, No. 98, s. 31

892. Matters to be taken into account in making marine protection rules—In making any marine protection rules, the Minister or the Director, as the case may be, shall have regard to, and shall give such weight as he or she considers appropriate in each case to, the following:

(a) The need to protect the marine environment:
(b) The recommended international practices of the International Maritime Organisation relating to protection of the marine environment:
(c) The costs of implementing, complying with, and enforcing the proposed rule:
(d) The risk to the marine environment if the proposed rule is not made:
(e) Such other matters as the Minister or the Director, as the case may be, considers appropriate in the circumstances.

Cf. 1990, No. 98, s. 33

398. **Further provisions relating to marine protection rules**—The provisions of sections 446 to 452 of this Act apply in relation to marine protection rules.

**Regulations**

394. **Regulations**—(1) Without limiting any other provision of this Act, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
(a) Prescribing purposes for which expenditure budgets are not required under section 332 of this Act:
(b) Requiring insurance and other financial guarantees, and certification relating to the same, in respect of offshore installations and classes of offshore installations:
(c) Requiring insurance and other financial guarantees, and certification relating to the same in respect of ships, or classes of ships, other than regulated oil tankers (as defined in section 342 of this Act):
(d) Prescribing those breaches of marine protection rules that constitute offences against this Act:
(e) Prescribing those breaches of marine protection rules that constitute infringement offences against this Act:
(f) Prescribing the penalty for each offence prescribed under paragraph (d) of this subsection which,—
(i) In the case of an individual, shall be a fine not exceeding $5,000; or
(ii) In the case of any other person, shall be a fine not exceeding $30,000:
(g) Prescribing the infringement fee for each offence prescribed under paragraph (e) of this subsection which,—
(i) In the case of an individual, shall be a fine not exceeding $2,000; or
(ii) In the case of any other person, shall be a fine not exceeding $12,000:

(h) Prescribing offences for breaches of any regulations made under this section and, except where some other penalty is prescribed by this Act, prescribing the penalty for each such offence which,—

(i) In the case of an individual, shall be a fine not exceeding $5,000; or
(ii) In the case of any other person, shall be a fine not exceeding $30,000:

(i) Such other matters as are contemplated by or necessary for giving full effect to the provisions of Parts XVIII to XXVII of this Act and for their due administration.

(2) Regulations made under subsection (1) of this section may, in addition to any other penalty imposed under this section, where the offence is a continuing one, impose further fines not exceeding $1,000 for each day or part of a day on which the offence is continued.

(3) Any regulations made under this Act may be so made that different regulations shall apply with respect to different classes of persons, ships, offshore installations, pipelines, marine protection products, or other property or with respect to the same class of person, ship, offshore installation, pipeline, marine protection product, or other property in different circumstances.

General Powers of Director in Relation to Protection of Marine Environment

395. Exemptions—(1) The Director may, if he or she considers it appropriate, and upon such conditions as he or she considers appropriate, exempt any person, ship, marine protection product, offshore installation, pipeline, reception facility, or any real or personal property, from any specified requirement in any marine protection rule.

(2) The Director shall not grant an exemption under subsection (1) of this section unless he or she is satisfied in the circumstances of each case that—

(a) The granting of the exemption will not breach New Zealand’s obligations under any marine protection convention; and
(b) Either—
(i) The requirement has been substantially complied with and that further compliance is unnecessary; or
(ii) The action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or
(iii) The prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
(iv) Events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and
(c) The risk of harm to the marine environment will not be significantly increased by the granting of the exemption.

(3) The number and nature of exemptions granted under subsection (1) of this section shall be notified as soon as practicable in the *Gazette*.

(4) Nothing in this section shall apply in any case where any marine protection rule specifically provides that no exemptions are to be granted.

Cf. 1990, No. 98, s.37

896. **Inspections and audits**—(1) The Director may from time to time, in writing, require any person who—
(a) Holds any marine protection document; or
(b) Is required to hold any marine protection document by this Act or any regulations or marine protection rules made under this Act; or
(c) Operates, maintains, or services, or does any other act in respect of any ship, marine protection product, offshore installation, pipeline, transfer or reception facility—

to undergo, or carry out, such inspections or audits, or both, as the Director considers necessary in the interests of protecting the marine environment from harm.

(2) The Director may in respect of any person described in subsection (1) of this section carry out such inspections or audits, or both, as the Director considers necessary in the interests of protecting the marine environment from harm.

(3) For the purposes of any inspection or audit carried out in respect of any person under subsection (2) of this section, the Director may, in writing,—
(a) Require that person to provide to the Director such
information as the Director considers relevant to the
inspection or audit:

(b) Require that person to demonstrate to the Director the
familiarity of the master or crew with essential
shipboard procedures for the prevention of marine
pollution:

(c) Require that person to demonstrate to the Director that
any operational, maintenance, or servicing procedure
in respect of a ship or marine protection product is
capable of being carried out in a competent manner.

Cf. 1990, No. 98, s. 15; 1992, No. 75, s. 10

397. Detention, etc., of ships and seizure of marine
protection products—(1) The Director may from time to
time do all or any of the following:

(a) Detain any ship:

(b) Prohibit, or impose conditions on, the use or operation of
any ship or any ship of a particular class or the use of
a marine protection product:

(c) Seize any marine protection product or any marine
protection product of a particular class:

(d) Impose conditions on the release from detention of the
ship or the release from seizure of a marine
protection product:

(e) Prohibit a ship from entering a port or calling at an
offshore terminal.

(2) The powers under subsection (1) of this section may be
exercised where the Director believes on clear grounds that—

(a) There is an existing discharge from the ship of a harmful
substance in breach of this Act or of the Resource
Management Act 1991; or

(b) There is likely to be a discharge from the ship of a
harmful substance in breach of this Act or of the
Resource Management Act 1991; or

(c) Ships of a particular class are likely to give rise to a
discharge of a harmful substance in breach of this Act
or of the Resource Management Act 1991; or

(d) There has not been issued in respect of the ship or the
marine protection product, as the case may be, a
marine protection document as required by this Act
or any regulations or marine protection rules made
under this Act; or
(e) A marine protection document in respect of the ship or marine protection product, as the case may be, has expired; or

(f) Any provision or condition of a marine protection document in respect of the ship, or marine protection product, as the case may be, is not being met; or

(g) The ship or the marine protection product presents an unreasonable threat of harm to the marine environment; or

(h) Any conditions imposed under paragraph (b) or paragraph (d) of subsection (1) of this section have not been complied with.

(3) The powers under subsection (1) of this section may also be exercised where the Director believes on clear grounds that the master or crew are not familiar with essential shipboard procedures for the prevention of marine pollution.

(4) Without limiting the generality of subsection (2) of this section, the Director may detain any ship to which section 232 of this Act applies if the owner of that ship has not provided a contract of insurance or other financial security in accordance with the provisions of that section.

(5) Nothing in this section shall permit the Director to detain a foreign ship where that detention would constitute a breach of any marine protection convention.

(6) Subject to subsections (7) and (8) of this section, any detention or seizure under subsection (1) of this section shall be maintained for only such time as the grounds under subsection (2) of this section which gave rise to the detention or seizure continue.

(7) If ships, marine protection products, or parts thereof are required for the purpose of evidence in any prosecution under a provision in this Act or the Resource Management Act 1991, those ships, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.

(8) Any detention under subsection (4) of this section shall be maintained until the Director is satisfied that either—

(a) The owner of the ship has complied with the obligation under section 232 of this Act to provide a contract of insurance or financial security; or

(b) Such obligation to provide a contract of insurance or financial security is no longer appropriate as it has been determined that there is no liability to pay the amounts in respect of which the security was sought or all such amounts have been paid.
(9) The Director shall, if requested by the owner of a ship detained or a marine protection product seized under subsection (1) of this section, provide in writing to the owner the reasons for the detention or seizure.

(10) For the purpose of subsection (1) of this section, the Director shall notify any prohibitions or conditions to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.

(11) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 424 of this Act.

Cf. 1990, No. 98, s. 21; 1992, No. 75, s. 14

898. Costs of detention under section 397—(1) Where the Director acts under section 397 of this Act to detain a ship, the provisions of section 462 of this Act shall apply to the costs of and incidental to the detention.

(2) Where the Director acts under section 397 of this Act to seize a marine protection product, the Authority may recover from the owner of such marine protection product all reasonable costs of and incidental to such seizure.

(3) The Authority is liable to pay to the owner of a ship or a marine protection product compensation for any loss resulting from the Director unduly detaining the ship or maintaining the seizure of the marine protection product.

(4) The Authority is liable to pay to the owner of a ship or marine protection product compensation for any loss resulting from the Director unduly delaying the ship or the use of the marine protection product.

(5) Where the Director has taken action under section 397 of this Act on the information of a complainant and the information is subsequently found to be frivolous or vexatious, the complainant is liable to indemnify the Authority for all costs for which the Authority is liable under this section.

Offences

899. Failure to comply with Director's inspection or audit requirements—Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under subsection (1) or subsection (3) of section 396 of this Act.

Cf. 1990, No. 98, s. 44A; 1992, No. 75, s. 23
400. Contravention of prohibition or conditions—Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any prohibition or condition under section 397 of this Act.

Cf. 1990, No. 98, s. 53

401. Contravention of emergency marine protection rule—Every person commits an offence who, without reasonable excuse, acts in contravention of any emergency marine protection rule made by the Director under section 391 of this Act.

Cf. 1990, No. 98, s. 53

Penalties

402. Penalties in respect of section 399—Every person who commits an offence against section 399 of this Act is liable,—

(a) In the case of an individual, to a fine not exceeding $10,000 and, if the offence is a continuing one, to a further fine not exceeding $2,000 for every day or part of a day during which the offence is continued:

(b) In the case of a body corporate, to a fine not exceeding $100,000 and, if the offence is a continuing one, to a further fine not exceeding $20,000 for every day or part of a day during which the offence is continued.

408. Penalties in respect of sections 400 and 401—
(1) Every person who commits an offence against section 400 of this Act is liable,—

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

(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 of this Act.

(2) Every person who commits an offence against section 401 is liable,—

(a) In the case of an individual, to a fine not exceeding $5,000:

(b) In the case of a body corporate, to a fine not exceeding $30,000.
PART XXVIII

GENERAL OFFENCES AND PROVISIONS IN RELATION TO OFFENCES AND APPEALS UNDER THIS ACT

General Offences

404. Obstruction of persons duly authorised by Director.—(1) Every person commits an offence who obstructs, impedes, delays, hinders, or deceives or causes to be obstructed, impeded, delayed, hindered, or deceived, the Authority, its employees, the Director, or any other person who is duly authorised by the Authority or the Director, while the Authority, employee, Director, or other person is acting in the performance or exercise of any functions, duties, or powers conferred on it or him or her by or under this Act or any rules made under this Act.

(2) Subsection (1) of this section shall apply only where the person obstructed or impeded produces evidence of his or her authority.

Cf. 1990, No. 98, s. 50

405. Failure to maintain accurate records.—Every person commits an offence who contravenes any provision of this Act or of any regulation or rule made under this Act that requires that person—

(a) To make accurate entries in a record; or
(b) To maintain an accurate record; or
(c) To produce to the Authority or the Director an accurate record.

Cf. 1990, No. 98, s. 52; 1992, No. 75, s. 40

406. Communicating false or insufficient information.—Every person commits an offence who,—

(a) By any means, provides to the Authority or to the Director information relevant to the Authority's or the Director's exercise of powers under this Act, or under regulations or rules made under this Act, knowing the information to be false; or

(b) Being an applicant for a maritime document, or a marine protection document, or an applicant for recognition of a document as a maritime document or a marine protection document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the Authority's or the Director's exercise of powers
under this Act, or under regulations or rules made under this Act; or
(c) Being the holder of a maritime document, or the holder of a document recognised as a maritime document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the condition specified in section 41 (5) of this Act.

Cf. 1990, No. 98, s. 49; 1992, No. 75, s. 26

407. Penalties—(1) Every person who commits an offence against section 404 of this Act is liable,—
(a) In the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $2,000:
(b) In the case of a body corporate, to a fine not exceeding $10,000.
(2) Every person who commits an offence against section 405 of this Act is liable,—
(a) In the case of an individual, to a fine not exceeding $5,000:
(b) In the case of a body corporate, to a fine not exceeding $30,000.
(3) Every person who commits an offence against section 406 of this Act is liable,—
(a) In the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding $5,000:
(b) In the case of a body corporate, to a fine not exceeding $30,000.

General Provisions in Respect of Offences

408. Offences to be punishable on summary conviction—Subject to section 422 (2) of this Act, every offence against this Act shall be punishable on summary conviction.

Cf. 1990, No. 98, s. 65

409. Additional penalty for offence involving commercial gain—(1) In addition to any other penalty the Court may impose under this Act, the Court may, on convicting any person of an offence against section 64 or section 65 or section 68 or section 70 or section 237 or section 238 or section 263 or section 264 or section 277 or section 278 or section 400 of this Act, order that person to pay an amount not
exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the Court is satisfied that the offence was committed in the course of producing a commercial gain.

(2) For the purpose of subsection (1) of this section, the value of any gain shall be assessed by the Court, and any amount ordered to be paid shall be recoverable in the same manner as a fine.

Cf. 1990, No. 98, s. 47

410. Liability of principal for acts of agents—(1) Where an offence is committed against this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence.

(2) Notwithstanding anything in subsection (1) of this section, where any proceedings are brought by virtue of that subsection, it shall be a good defence if the defendant proves,—

(a) In the case of a natural person (including a partner in a firm), that—

(i) He or she did not know nor could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) He or she took all reasonable steps to prevent the commission of the offence:

(b) In the case of a body corporate, that—

(i) Neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) The body corporate took all reasonable steps to prevent the commission of the offence:

(c) In all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.

(3) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of the like offence if it is proved—

(a) That the act that constituted the offence took place with his or her authority, permission, or consent; and

(b) That he or she knew or could reasonably be expected to have known that the offence was to be or was being
committed and failed to take all reasonable steps to prevent or stop it.
Cf. 1991, No. 69, s. 340

411. Limitation of proceedings—(1) Subject to subsection (2) of this section and to any special provisions of this Act, no person shall be charged with an offence against this Act unless an information charging that person with that offence is laid within 6 months after the matter arose.
(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, the period of 6 months shall not run while the person charged is beyond the limits and territorial sea of New Zealand.
Cf. 1952, No. 49, s. 481

412. Proof of exemption, etc.—Any exception, exemption, proviso, excuse, or qualification in relation to any offence against this Act or any rules or regulations under this Act, whether it does or does not accompany in the same section the description of the offence, may be proved by the defendant, but need not be specified or negatived in any information and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant.
Cf. 1952, No. 49, s. 482

413. Place where offences deemed to be committed—For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.
Cf. 1952, No. 49, s. 483

414. Presumption as to master of ship—(1) Where, in any proceedings for an offence against this Act or any regulations made under this Act, the informant alleges in any information that any person was, or was not, the master of any ship at any specified time, the allegation shall be presumed to be true in the absence of proof to the contrary.
(2) The presumption in subsection (1) of this section shall apply whether or not separate or further evidence is adduced by or on behalf of the informant in support of the relevant allegation or presumption.
Cf. 1983, No. 14, ss. 106b, 106c; 1990, No. 29, s. 51
415. Offences committed in foreign ports or on high seas by seafarers of New Zealand ships—(1) Whenever any complaint is made to any proper officer in a foreign country—
(a) That any person who is employed as a seafarer on any New Zealand ship has committed an offence against property or persons at any place outside New Zealand, whether on shore or afloat; or
(b) That any seafarer belonging to a New Zealand ship has committed an offence on the high seas,—
that proper officer may inquire into the case upon oath or affirmation, and may, if the case so requires, take any measures in his or her power for the purpose of placing the person alleged to have committed the offence under the necessary restraint and of sending that person as soon as practicable in safe custody to New Zealand or, if any Court in a country other than New Zealand is capable of taking cognisance of that offence, to that country.

(2) Any master of a New Zealand ship or pilot in command of a New Zealand aircraft in whose charge any person alleged to have committed an offence has been so placed shall, on the arrival of the ship or aircraft in New Zealand or, as the case may be, in the other country to which the ship or aircraft is bound, give the alleged offender into the custody of some member of the Police.

(3) The expense of placing any person referred to in subsection (1) of this section under restraint, and of conveying him or her and any witnesses to New Zealand or any other country in any manner other than on board the ships to which they respectively belong, shall, where not paid as part of the costs of the prosecution, be paid by the Authority out of money appropriated by Parliament.

Cf. 1952, No. 49, s. 485

416. Compliance with rules—Compliance with any rule or regulation made under this Act shall not excuse the commission of an offence against this Act.

417. Evidence and proof—(1) In any proceedings for an offence against this Act, the following provisions shall apply:
(a) A copy of any maritime document or marine protection document or permit which is certified correct by the Director or any other employee of the Authority authorised in that behalf by the Director shall be sufficient, in the absence of proof to the contrary, to prove that document:
(b) The production of a certificate signed by the Director or any other employee of the Authority authorised in that behalf by the Director to the effect that on a specified date a person or organisation was or was not the holder of any maritime document or marine protection document or any permit or any specified type of maritime document or marine protection document shall be sufficient evidence of the matter certified until the contrary is proved:

(c) Until the contrary is proved, it shall be presumed that every certificate purporting to have been certified or given under this section has been certified or given by the Director or any other employee of the Authority authorised in that behalf by the Director to certify documents or give certificates under this section.

(2) Without limiting any other method of proof, the production in any proceedings of a copy of—

(a) Any rule purporting to have been made by the Minister under this Act; or

(b) Any rule purporting to have been made by the Director under section 37 or section 391 of this Act—shall, in the absence of proof to the contrary, be sufficient evidence of the rule and the fact that it has been made in accordance with the relevant provisions of this Act.

Cf. 1990, No. 98, s. 71; 1992, No. 75, s. 30; 1993, No. 90, s. 6

418. Mode of service of summons on master or owner—(1) Where the master or owner of a ship is a defendant in any prosecution for an offence against any provision of this Act, then, notwithstanding any enactment, service on the defendant of any summons or other document shall be deemed to be effected for the purposes of the Summary Proceedings Act 1957—

(a) By being delivered personally to the agent of the ship on behalf of the defendant or being brought to the notice of that agent if that agent refuses to accept it on behalf of the defendant; or

(b) By being sent to the agent of the ship, by registered letter addressed to that agent on behalf of the defendant at that agent’s last known or usual place of residence or that agent’s place of business.

(2) A District Court Judge or Justice or the Registrar may direct that the summons or other document shall be served on the defendant in accordance with section 24 of the Summary
Proceedings Act 1957, where he or she is satisfied that it would not be impracticable to do so in the particular circumstances.

(3) Unless the contrary is shown, the time at which service shall be deemed to have been effected on the defendant shall be,—

(a) Where service is effected in accordance with subsection (1) (a) of this section, the time when the summons or other document is personally delivered to the agent of the ship or brought to that agent’s attention, as the case may be; or

(b) Where service is effected in accordance with subsection (1) (b) of this section, the time when the letter would have been delivered to the agent of the ship in the ordinary course of post; and in proving service it shall be sufficient to prove that the letter was properly addressed and posted.

(4) In this section, “District Court Judge”, “Justice”, and “Registrar” have the same meanings as in the Summary Proceedings Act 1957.

(5) Nothing in this section limits anything in section 458 of this Act.

419. Proceedings for offences—(1) Proceedings for an offence against this Act or any regulations made under this Act may be brought by the Director.

(2) Where, but for his or her departure from New Zealand, proceedings for an offence under this Act or regulations made under this Act might have been brought against the master of a ship, proceedings for the offence may, notwithstanding anything in the Summary Proceedings Act 1957, be brought against him or her within 2 months of the date on which he or she next returns to New Zealand.

(3) Where any fine imposed by the Court in proceedings under this Act or regulations made under this Act is not paid on time, the Court may direct the amount unpaid to be levied by distress and sale of any real or personal property involved in the committing of the offence.

Cf. 1974, No. 14, s. 60 (1), (2), (6)

420. Offence under more than one enactment—(1) Where an act or omission constitutes an offence under this Act and under any other Act, the offender may be prosecuted and punished either under this Act or under that other Act.
(2) Where an act or omission constitutes an offence under 2 or more provisions of this Act, the offender may be prosecuted and punished under any of those provisions.

Cf. 1961, No. 43, s. 10

421. Application of fines—Notwithstanding any other enactment, where a person is convicted of an offence against section 237 or section 263 or section 264 of this Act, the Court before which that person is convicted may order that the whole or part of the fine, or other monetary penalty, imposed under this Act in respect of that offence be paid to such person or persons as the Court thinks fit, to be applied towards meeting costs of—

(a) The removal, containment, rendering harmless, or dispersal of the harmful substance or waste or other matter; or

(b) The damage resulting from the discharge of the harmful substance or dumping of waste or matter; or

(c) Both.

Cf. 1974, No. 14, s. 63; 1989, No. 44, s. 86

Infringement Offences

422. Infringement offences—(1) In this Act, “infringement offence” means an offence specified as such in regulations made under this Act.

(2) Where any person is alleged to have committed an infringement offence, that person may either—

(a) Be proceeded against summarily for the alleged offence; or

(b) Be served with an infringement notice as provided in section 423 of this Act.

Cf. 1990, No. 98, s. 57

423. Infringement notices—(1) Where the Director, or any person duly authorised by the Director, observes a person committing an infringement offence or has reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be issued to that person by the Director or the authorised person.

(2) An infringement notice may be served—

(a) By delivering it personally to the person who appears to have committed the infringement offence; or
(b) By sending it by post addressed to him or her at his or her last known place of residence or business; or

(c) Where the person is a holder of a maritime document or marine protection document, by serving it by post on that person at his or her last address for service provided under section 35 or section 269 of this Act.

(3) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent to a person by post under paragraph (b) or paragraph (c) of subsection (2) of this section shall be deemed to have been served on the person when it would have been delivered in the ordinary course of post.

(4) Every infringement notice shall be in the prescribed form and shall contain the following particulars:

(a) Such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence:

(b) The amount of the infringement fee for that offence:

(c) The address at which the infringement fee may be paid:

(d) The time within which the infringement fee shall be paid:

(e) A summary of the provisions of section 21 (10) of the Summary Proceedings Act 1957:

(f) A statement of the right of the person served with the notice to request a hearing:

(g) A statement of the consequences if the person served with the notice does not pay the infringement fee and does not make a request for a hearing:

(h) Such other particulars as are prescribed in regulations made under this Act.

(5) Different forms of infringement notices may be prescribed in regulations made under this Act in respect of different kinds of infringement offences.

(6) Where an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and in that case the provisions of that section shall, with the necessary modifications, apply.

Cf. 1990, No. 98, s. 58

Rights of Appeal

424. Rights of appeal—(1) Where any other section of this Act provides that any person has a right of appeal under this section against a decision in respect of that person, that person
may appeal to a District Court against that decision in accordance with this Part of this Act.

(2) It is hereby declared that the exercise of any power conferred on the Director by any section that confers a right of appeal of the kind referred to in subsection (1) of this section is, except where that section specifies that the right of appeal applies to a particular decision or decisions, a decision in respect of a person within the meaning of that section and may be appealed against under this section.

(3) The owner of a ship, offshore installation, pipeline, maritime product, marine protection product, or other real or personal property shall, for the purposes of exercising a right of appeal under this section, be the person who is the owner of the ship, offshore installation, pipeline, maritime product, marine protection product, or other real or personal property for the purposes of that Part of this Act which contains the section giving rise to the right of appeal.

Cf. 1990, No. 98, s. 66; 1991, No. 116, s. 5 (1); 1992, No. 75, s. 29

425. Procedure—(1) Every appeal under section 424 of this Act shall be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the District Court may allow.

(2) In determining an appeal under section 424 of this Act the District Court may—

(a) Hear all evidence tendered and representations made by or on behalf of any party to the appeal, whether or not that evidence would be otherwise admissible in that Court; and

(b) Either—

(i) Confirm, reverse, or modify the decision appealed against, and make such orders and give such directions to the Authority or the Director, as the case may require, as may be necessary to give effect to the Court's decision; or

(ii) Refer the matter back to the Authority or the Director, as the case may require, with directions to reconsider the whole or any specified part of the matter.

(3) Any appeal under this section shall be by way of rehearing.
Subject to this section, every such appeal shall be made and determined in accordance with the District Courts Act 1947 and the rules of Court made under that Act.

Subject to section 427 of this Act, the decision of the District Court shall be final.

Cf. 1990, No. 98, s. 67

426. Decision of Director to continue in force pending appeal—(1) Every decision of the Director that is appealed against under section 52 or section 424 of this Act shall continue in force pending the determination of the appeal, and no person shall be excused from complying with any of the provisions of the Act or the decision on the ground that any appeal is pending.

(2) Notwithstanding that any appeal under section 52 or section 424 of this Act may have been determined in favour of the appellant, the Director may, subject to the same right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with in accordance with the provisions of this Act any maritime document or marine protection document or any permit, any person to which or to whom the appeal related, or any maritime document or marine protection document or any permit or approval granted or restored in compliance with the decision of the District Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

Cf. 1990, No. 98, s. 68

427. Appeal to High Court on question of law—(1) Every party to an appeal under section 424 of this Act may appeal to the High Court on a question of law.

(2) Every appeal under this section shall be heard and determined in accordance with the rules of Court.

Cf. 1990, No. 98, s. 69

428. Further appeal to Court of Appeal—(1) Every party to an appeal under section 427 of this Act may, with the leave of the High Court or (if that leave is declined) with special leave of the Court of Appeal, appeal to the Court of Appeal on that question of law.

(2) On any appeal under subsection (1) of this section, the Court of Appeal may make such order or determination as it thinks fit.
(3) The decision of the Court of Appeal on an appeal under this section, or on any application for leave to appeal to the Court, shall be final.

(4) Subject to this section, the procedure in respect of any appeal under this section shall be in accordance with the rules of Court.

Cf. 1990, No. 98, s. 70

PART XXIX

MARITIME SAFETY AUTHORITY OF NEW ZEALAND

Provisions Relating to Authority

429. Maritime Safety Authority of New Zealand continued—(1) There shall continue to be an authority to be known as the Maritime Safety Authority of New Zealand.

(2) The Authority shall consist of 5 members who shall be New Zealand citizens or permanent residents of New Zealand.

(3) The members of the Authority shall be appointed by the Governor-General on the recommendation of the Minister.

(4) The Minister shall recommend for appointment as members persons who the Minister considers will represent the public interest in maritime matters.

(5) Before making any recommendation in respect of 2 of the members, the Minister shall request, from such organisation or organisations as the Minister considers represent those who have a substantial interest in the maritime industry in New Zealand, the names of persons such organisation considers or organisations consider proper candidates for appointment to the Authority.

(6) A failure to comply with subsection (5) of this section in respect of the appointment of any member shall not affect the validity of that appointment.

(7) A person may hold office as a member concurrently with any other office, except any office or appointment under the Transport Accident Investigation Commission Act 1990.

(8) Neither the Director nor any other employee of the Authority may be a member of the Authority.

(9) The Authority shall be a body corporate owned by the Crown with perpetual succession but shall not have a common seal.

(10) The Authority is hereby deemed to be a Crown entity for the purposes of the Public Finance Act 1989.

(11) The provisions of the First Schedule to this Act shall apply in relation to the Authority.

Cf. 1993, No. 89, s. 3
480. Principal objective of Authority—(1) The principal objective of the Authority shall be to undertake activities that—
(a) Promote a safe maritime environment; and
(b) Provide effective marine pollution prevention and an effective marine oil pollution response system—at a reasonable cost.
(2) For the purposes of subsection (1) of this section, a cost is a reasonable cost where the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation.
Cf. 1993, No. 89, s. 4

481. Functions of Authority—(1) In furtherance of its principal objective, the Authority shall also have the following functions:
(a) To establish safety standards relating to entry into the maritime transport system which promote safe shipping:
(b) To monitor adherence to the safety standards within the maritime transport system:
(c) To ensure regular reviews of the maritime transport system to promote the improvement and development of its safety:
(d) To promote compliance with safety and marine pollution prevention standards in the maritime transport system:
(e) To ensure the provision of appropriate distress and safety radio communication systems and navigational aids for shipping:
(f) To ensure New Zealand's preparedness for, and ability to respond to, marine oil pollution spills:
(g) To license ships, their operation, and their crews:
(h) To ensure the occupational health and safety of seafarers:
(i) To promote safety in the maritime transport system by providing marine safety information and advice:
(j) To investigate and review maritime transport accidents and incidents:
(k) To maintain the New Zealand Register of Ships:
(l) To maintain and preserve records and documents relating to the Authority's functions:
(m) To advise the Minister on technical maritime safety policy:
(n) To perform such other functions as are conferred on it by this Act or any other Act.
(2) The Authority shall carry out such other maritime functions, and such maritime duties, as the Minister may from time to time prescribe by notice in the Gazette.

Cf. 1993, No. 89, s. 5

482. Authority to comply with policy directions—(1) In the exercise of its functions and powers under this Act, the Authority shall have regard to the policy of the Government in relation to maritime matters, and shall comply with any directions relating to that policy given to it in writing signed by the Minister. As soon as practicable after any such direction is given, the Minister shall publish in the Gazette and lay before the House of Representatives a copy of that direction.

(2) The Minister shall not give any direction under subsection (1) of this section which requires the Authority to do, or refrain from doing, a particular act, or bring about a particular result, in respect of any particular person or persons.

Cf. 1993, No. 89, s. 6

483. Authority to have powers of natural person—(1) Except as provided in this Act, the Authority shall have—
(a) The rights, powers, and privileges of a natural person; and
(b) The power to do any thing it is authorised to do by or under—
   (i) This Act; or
   (ii) Any other enactment; or
   (iii) Any rule of law.

(2) The Authority shall not exercise any of its rights, powers, or privileges except for the purpose of performing its functions.

Cf. 1993, No. 89, s. 6

484. Powers of entry in respect of existing works—(1) Subject to subsection (3) of this section, the Authority may—
(a) Enter upon any land for the purpose of gaining access to cables, wires, navigational aids, or other equipment owned by the Authority, being equipment installed before the date of commencement of this section; and

(b) Perform any act or operation necessary for the purpose of inspecting, maintaining, operating, repairing, or replacing such equipment.

(2) A certificate given under the hand of the Director containing a statement that any equipment of the type referred to in subsection (1) of this section was installed before the date of commencement of this section shall be admissible in any
proceedings and shall, in the absence of proof to the contrary, constitute proof of that statement.

(3) The power to enter land conferred by subsection (1) of this section shall be subject to the following conditions:

(a) Entry to the land shall be made only by an officer, employee, or agent of the Authority authorised by it in writing, or by persons under the immediate control of such an officer, employee, or agent:

(b) Reasonable notice of the intention to enter the land shall be given, and the provisions of Part X of Te Ture Whenua Maori Act 1993 shall apply in respect of notices served in the circumstances set out in that Part of that Act:

(c) Entry shall be made at reasonable times:

(d) The officer, employee, or agent shall have with him or her, and shall produce on initial entry and subsequently if required to do so, evidence of his or her identity and authority.

(4) Subsection (3) of this section shall not apply where the entry is necessary in circumstances of probable danger to life or property.

(5) Any equipment owned by the Authority that is fixed to or installed over or under land not owned by the Authority shall be deemed to be lawfully fixed or installed and shall continue to be fixed or installed until the Authority otherwise decides, and no person other than the Authority shall have any interest in any such equipment by reason only of having an interest in the land.

Cf. 1993, No. 89, s. 8

**485. Authority to consider delegating or contracting out of functions and powers**—Subject to this Act, the Authority shall, in the course of performing its functions and powers, consider whether it could most efficiently and effectively perform those functions and powers by means of its own operations or by delegating or contracting out those operations to appropriate persons selected after an appropriate competitive process.

Cf. 1993, No. 89, s. 9

**486. Performance agreement**—(1) Not later than 1 month before the commencement of each financial year, the Authority shall give to the Minister a draft performance agreement setting out in respect of that year—
(a) The proposed statement of objectives for that year prepared by the Authority under section 41D (1) (h) of the Public Finance Act 1989; and

(b) The methods (including financial and non-financial performance measures) by which the Authority intends to assess the extent to which it in fact meets those objectives during that year; and

(c) How the Authority intends to report on the extent to which it met or is meeting those objectives for that year and the dates by which interim reports, if any, will be given to the Minister; and

(d) Any new borrowings or financial leases, or similar liabilities the Authority intends to incur during that year; and

(e) Financial forecasts for the 2 years following the year to which the performance agreement relates.

(2) Every draft performance agreement shall be accompanied by a statement of the Authority’s best estimate of—

(a) Both—

(i) The various impacts the outputs described in the statement of objectives will have for; and

(ii) The consequences of those outputs for,—

a safe maritime system in New Zealand during the year to which the draft performance agreement relates; and

(b) The impacts of those outputs on, and consequences of those outputs for, a safe maritime system in New Zealand for later years.

(3) Every draft performance agreement shall be accompanied by a statement of the Authority’s assessment of the impact and consequences that the outputs described in the statement of objectives will have for New Zealand’s preparedness to respond to marine oil pollution.

(4) After receiving a draft performance agreement from the Authority under subsection (1) of this section or an amended version of it under subsection (6) of this section (whether for the first time or any later time), the Minister shall,—

(a) Subject to subsection (5) of this section, approve it; or

(b) Refuse to approve it and return it to the Authority with directions that the Authority amend it.

(5) No provision specifying any liabilities the Authority intends to incur shall be included in a performance agreement under this section without the concurrence of the Minister of Finance.
(6) Where a draft performance agreement is returned to the Authority under subsection (4) (b) of this section, the Authority shall amend it according to the directions given by the Minister and return it to the Minister for his or her approval.

(7) The draft performance agreement approved for any year by the Minister under this section shall constitute the performance agreement between the Minister and the Authority for that year.

(8) Where the Authority fails to comply with subsection (1) of this section, then, subject to subsection (5) of this section, the draft performance agreement shall be prepared by the Minister and that agreement shall constitute the performance agreement between the Minister and the Authority for that year.

(9) Where the Authority fails within a reasonable time to comply to the satisfaction of the Minister with subsection (6) of this section, the Minister shall determine the amendment and approve the agreement so amended.

(10) Subject to subsection (5) of this section, at any time during a financial year, the Minister and the Authority may in writing agree to amend the performance agreement for that year.

(11) Subject to subsection (5) of this section, at any time during a financial year, the Minister may direct the Authority to amend any provision of the performance agreement in respect of that year, and the Authority shall amend the performance agreement according to the directions given by the Minister.

Cf. 1993, No. 89, s. 10

487. Service charter—(1) The Authority shall prepare and make available to the public a service charter including (but not limited to)—

(a) A statement by the Authority of the standards of service which the public can expect to apply to the carrying out of functions of the Authority and the Director under this Act and any regulations or rules made under this Act; and

(b) Details of the procedures to be followed under the service charter by a person who alleges that the standards were not met; and

(c) Details of the remedies that are available under the service charter to the person affected, where it is established by that person, to the satisfaction of the Authority, that the standards were not met; and
(d) Provision for the appointment by the Authority of an appropriate independent person to assist in the resolution of disputes arising in respect of alleged failures to meet the standards of service specified in the service charter. 

(2) The service charter may make provision for a person to be appointed as a deputy to the person appointed under the provision referred to in subsection (1) (d) of this section, and for the functions, duties, and powers of the deputy.

(3) The Authority, the Director, any employee or agent of the Authority, and any agent of the Director shall have a public duty to observe the provisions of the service charter.

(4) If the Authority fails to comply with subsection (1) of this section, the Minister shall prepare the service charter and shall make it available to the public.

(5) The Authority (in any case except where the Minister has prepared it) and the Minister (where the Minister has prepared it) may from time to time, in writing, amend the service charter, and shall make such amendments available to the public.

(6) The Authority shall not amend the service charter under subsection (5) of this section if the service charter is prepared by the Minister under subsection (4) of this section.

(7) Nothing in the service charter shall limit or restrict any right to make any complaint or to bring any proceedings under any Act or rule of law.

Cf. 1993, No. 89, s. 11

438. Use of words “Maritime Safety Authority”—(1) No company or other body shall be incorporated or registered under a name that contains the words “Maritime Safety Authority” or under any name that, in the opinion of the Registrar of Companies, or the appropriate registering authority within the meaning of section 2 of the Flags, Emblems, and Names Protection Act 1981, so resembles such a name as to be likely to deceive.

(2) Nothing in subsection (1) of this section shall apply to the Authority or to any person who is appropriately authorised by the Authority.

Cf. 1993, No. 89, s. 12

439. Director of Maritime Safety—(1) The Authority shall from time to time appoint a chief executive of the Authority, who shall be known as the Director of Maritime Safety.
(2) The Director shall have and may exercise such functions and powers as may be conferred or imposed on the Director by this Act or any other Act, or regulations or rules made under this Act or any other Act, and such functions and powers as may be delegated to the Director by the Authority under section 442 of this Act or any other Act.

(3) Without limiting subsection (2) of this section, the Director shall—

(a) Exercise control over entry into the maritime transport system through the granting of maritime documents and marine protection documents under this Act or any other Act; and

(b) Take such action as may be appropriate in the public interest to enforce the provisions of this Act or any other Act, and of regulations and rules made under this Act or any other Act, including the carrying out or requiring of inspections and audits.

(4) In performing or exercising any functions or powers in relation to—

(a) The granting of maritime or marine protection documents; or

(b) The suspension of maritime or marine protection documents; or

(c) The revocation of maritime or marine protection documents; or

(d) The granting of exemptions; or

(e) The enforcement of the provisions of this Act or any other Act, or of rules or regulations made under any such Act,—

in respect of any particular case, the Director shall act independently and shall not be responsible to the Minister or the Authority for the performance or exercise of such functions or powers.

Cf. 1993, No. 89, s. 13

440. Acting Director of Maritime Safety—(1) In the case of absence from duty of the Director (from whatever cause arising) or on the occurrence from any cause of a vacancy in that position (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the Director or pertaining to the position may be exercised and performed by—

(a) Any other employee for the time being directed by the Authority to exercise and perform them; or
(b) Any other person for the time being appointed by the Authority to exercise and perform them,—whether the direction has been given or the appointment has been made before the absence or vacancy occurs or while the absence or vacancy continues.

(2) No such direction or appointment, and no acts done by any employee or other person acting pursuant to any such direction or appointment, shall in any proceedings be questioned on the ground that the occasion for the direction or appointment had not arisen or had ceased, or on the ground that the employee or other person has not been appointed to any position to which the direction or appointment relates.

Cf. 1993, No. 89, s. 14

General Provisions

441. Delegation of Minister's functions or powers to Authority—(1) The Minister may from time to time, either generally or particularly, delegate to the Authority all or any of the Minister's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include the power to delegate under this section.

(4) The power of the Minister to delegate under this section—

(a) Is subject to section 451 (8) of this Act and to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but

(b) Does not limit any power of delegation conferred on the Minister by any other Act.

(5) Subject to any general or special directions given or conditions imposed by the Minister, the Authority may exercise any functions or powers so delegated to the Authority in the same manner and with the same effect as if they had been conferred on the Authority directly by this section and not by delegation.

(6) Where the Authority purports to act pursuant to any delegation under this section, the Authority, shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) No such delegation shall affect or prevent the performance of any function or the exercise of any power by
the Minister, nor shall any such delegation affect the responsibility of the appropriate Minister for the actions of any person acting under the delegation.

Cf. 1993, No. 89, s. 15

442. Delegation of Authority's functions or powers to employees of Authority—(1) The Authority may from time to time, either generally or particularly, delegate to the Director or any other employee of the Authority any of its functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) The Authority shall not delegate any functions or powers delegated to the Authority by the Minister without the written consent of the Minister.

(4) In any case where the Authority has delegated any functions or powers to any employee of the Authority under this section, that employee may, with the prior approval in writing of the Authority, delegate to any other employee of the Authority such of those functions or powers as are so approved.

(5) No delegation of any functions and powers delegated to the Director by the Authority under this section shall be delegated by the Director under subsection (4) of this section without the written consent of the Authority.

(6) Subject to any general or special directions given or conditions imposed by the Authority, any employee of the Authority to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that employee directly by this Act and not by delegation.

(7) Every employee of the Authority purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(8) Any delegation under this section may be made to a specified employee of the Authority or to employees of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices of the Authority.

(9) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Authority, nor shall any such delegation affect the responsibility of the Authority for the actions of any employee of the Authority acting under the delegation.
(10) Every delegation under this section shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the employee of the Authority by whom it was made may cease to hold office, and shall continue to have effect as if made by the employee for the time being holding that office.

(11) Every employee of the Authority purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his or her authority to so act.

Cf. 1993, No. 89, s. 16

448. Delegation of Director's functions or powers to employees of Authority—(1) The Director may from time to time, either generally or particularly, delegate to any employee of the Authority any of the Director's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act, including functions or powers delegated to the Director under this Act or any other Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include the power to delegate under this section.

(4) Notwithstanding subsection (1) of this section, the Director shall not delegate—

(a) Any functions or powers delegated to the Director by the Authority, without the written consent of the Authority; or

(b) The power under section 44 or section 273 of this Act to revoke a maritime document or a marine protection document.

(5) The provisions of subsections (3) to (11) of section 442 of this Act shall apply to delegations under this section as if—

(a) References in those provisions to the Authority were references to the Director; and

(b) References in those provisions to the Director or to any employee of the Authority were references to any employee of the Authority other than the Director.

Cf. 1993, No. 89, s. 17

444. Delegation of Authority's or Director's functions or powers to persons outside Authority—(1) Subject to this section, the Authority may from time to time, either generally or particularly, delegate to any person who is not an employee of the Authority any of the Authority's functions and powers
under this Act or any other Act, or under any regulations or rules made under this Act or any other Act.

(2) Subject to this section, the Director may from time to time, either generally or particularly, delegate to any person who is not an employee of the Authority any of the Director’s functions and powers under this Act or any other Act, or under any regulations or rules made under this Act or any other Act, other than—

(a) The power under section 44 or section 273 of this Act to revoke maritime documents or marine protection documents; or

(b) The power under section 46 or section 274 of this Act to suspend or revoke maritime documents or marine protection documents; or

(c) The power under section 52 of this Act to suspend seafarers; or

(d) The power under section 55 or section 197 or section 397 of this Act to detain ships or maritime products or marine protection products; or

(e) The power under section 423 of this Act to issue infringement notices.

(3) Every delegation under this section shall be in writing.

(4) No delegation shall be made under this section without the written consent of the Minister.

(5) In any case where the Authority or the Director has delegated any functions or powers to any person under this section, that person may, with the prior approval in writing of the Minister, delegate to any other person such of those functions or powers as are so approved.

(6) Subject to any general or special directions given or conditions imposed by the Authority or the Director, as the case may be, any person to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this Act and not by delegation.

(7) Any delegation under this section may be made to a specified person or persons of a specified class or to the holder or holders for the time being of a specified office or specified class of office.

(8) Every delegation under this section shall be given for a specified period but in any event shall be revocable at will.

(9) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Authority or by the Director, as the case may be, nor
shall any such delegation affect the responsibility of the Authority or the Director, as the case may be, for the actions of any person acting under the delegation.

(10) Every delegation under this section shall, until it is revoked or it expires, continue in force according to its tenor, notwithstanding the fact that the person by whom it was made may cease to hold office, and shall continue to have effect as if it was made by the person for the time being holding that office.

(11) Every person purporting to act under any delegation under this section shall, when reasonably requested to do so, produce evidence of his or her authority to so act.

(12) Any person who exercises any function or power under a delegation made under this section may charge the person in respect of whom the function or power is exercised a reasonable fee in respect of the exercise of that function or power.

Cf. 1993, No. 89, s. 18

PART XXX
MISCELLANEOUS PROVISIONS APPLYING TO THIS ACT

GENERAL REGULATIONS

445. Regulations for fees and charges—(1) Without limiting the power to make regulations conferred by any other section of this Act, but subject to the provisions of this Act, the Governor-General may from time to time make regulations prescribing, or providing for the fixing of, fees or charges, or both, for the following purposes:

(a) To provide funds for the establishment, maintenance, and operation of facilities, works, goods, and services under this Act:

(b) To meet, or assist in meeting, the costs and expenses incurred by the Authority, the Director, the Maritime Appeal Authority, or the Crown in the exercise of functions or powers, or in the performance of duties, or the provision of services under this Act:

(c) To meet, or assist in meeting, the costs and expenses incurred by the Authority, the Director, or the Crown in providing goods, services, facilities, or works for maritime purposes or for the purposes of protecting the marine environment.

(2) Different rates of fees or charges, or both, may be so prescribed or fixed in respect of different classes of persons,
ships, offshore installations, pipelines, maritime products, marine protection products, or any other property or item, or on the basis of different times of use, or on any other differential basis.

(3) Any regulation made under subsection (1) of this section may—

(a) Specify the persons by whom, and to whom, any fees or charges, or both, are payable:

(b) Prescribe, or provide for the fixing of, additional fees or charges, or both, for services or work carried out outside normal working hours, at weekends, or on statutory holidays:

(c) Prescribe, or provide for the fixing of, charges for reimbursement of travelling time, accommodation and other expenses:

(d) Providing for the refund, waiver, or rebate or enabling the refund, waiver, or rebate, of any fee or charge, or both:

(e) Fixing, or enabling the fixing, of a date by which any fee or charge is to be paid:

(f) Providing, or enabling the fixing of, a discount for early payment of any fee or charge as a penalty for late payment, or both:

(g) Prescribing any returns, and the conditions relating to such returns, to be made by persons by whom any fees or charges are payable.

Cf. 1990, No. 98, s. 38; 1992, No. 75, s. 20

Provisions in Respect of Rules Under this Act

446. Procedure for making of rules by Minister—Before making any rule under this Act, the Minister shall—

(a) Publish a notice of his or her intention to make the rule in each of the daily newspapers published in Auckland, Wellington, Christchurch, and Dunedin, respectively, and publish the notice in the Gazette; and

(b) Give interested persons a reasonable time, which shall be specified in the notice published under paragraph (a) of this subsection, to make submissions on the proposal; and

(c) Consult with such persons, representative groups within the maritime industry or elsewhere, Government departments, Crown entities, and in the case of rules made under Part XXVII of this Act with such regional
councils, as the Minister in each case considers appropriate.
Cf. 1990, No. 98, s. 34 (1)

447. Procedure for making of emergency rules by Director—Before making any emergency rule under section 37 or section 391 of this Act, the Director shall consult with such persons, representative groups within the maritime industry or elsewhere, Government departments, Crown entities, and, in the case of rules made under Part XXVII of this Act, with such regional councils, as the Director in each case considers appropriate.
Cf. 1990, No. 98, s. 35 (1)

448. Provisions in respect of rules generally—(1) Every rule made under this Act shall—
(a) Be signed by the Minister if made by the Minister, or be signed by the Director if made by the Director; and
(b) Contain a statement specifying the objective of the rule and the extent of any consultation under this Act; and
(c) Set out fully the requirements of the rule, except where by reason of size or length certain information is incorporated in the rule by reference under section 452 of this Act.
(2) Subject to section 449 of this Act, notice of the making of a rule under this Act shall be given in the Gazette and the rule shall be made available by the Authority for purchase by members of the public at a reasonable price, and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.
(3) Every rule made under this Act by the Minister shall come into force on the 28th day after notice of its making has been given in the Gazette or on such later date as may be specified in the rule.
(4) Subject to section 449 of this Act, every rule made under section 37 or section 391 of this Act by the Director shall come into force on the date of its notification in the Gazette.
Cf. 1990, No. 98, s. 32

449. Notification of emergency rules in certain circumstances—(1) Where for reasons of safety, or because of the imminence of the threat to the marine environment, as the case may be, it is in the opinion of the Director impracticable to give notice in the Gazette under section 448 (2) of this Act of a
rule made under section 37 or section 391 of this Act by the Director, the Director may notify such persons as he or she considers appropriate of the making of the rule and such rule shall immediately upon such notification come into force in respect of any person or persons notified and in respect of that person or those persons only.

(2) Notification may be given by the Director under subsection (1) of this section by telephone, facsimile, or such other manner as the Director considers appropriate.

Cf. 1990, No. 98, s. 35 (3), (4)

450. Other provisions in respect of emergency rules—
(1) A rule made under section 37 or section 391 of this Act by the Director shall be in force for such period as is specified in the rule which shall not exceed 90 days, and may be renewed once only for a further period not exceeding 30 days.

(2) If any rule made under section 37 or section 391 of this Act by the Director is inconsistent with or repugnant to any rule made by the Minister under this Act, the rule made by the Director shall prevail.

Cf. 1990, No. 98, s. 35 (5), (6)

451. Further general provisions in respect of rules—
(1) Any rules made under this Act may be made so that different rules shall apply with respect to different classes of persons, organisations, ships, offshore installations, pipelines, maritime products, maritime related services, marine protection products, or of any other real or personal property, or with respect to the same class of person, organisation, ship, offshore installation, pipeline, maritime product, maritime related service, marine protection product, or of any other property or item in different circumstances.

(2) Any rule made under this Act may apply generally throughout New Zealand, New Zealand waters, or New Zealand continental waters (as defined in section 222 (1) of this Act) or within any specified part or parts of New Zealand, New Zealand waters, or New Zealand continental waters.

(3) The commencement of any rule may be wholly suspended until it is applied by the Minister by notice in the Gazette.

(4) No rule made under this Act shall be invalid because it confers any discretion upon, or allows any matter to be determined or approved by the Authority, the Director, or any other person, or allows the Authority, the Director or any other
person to impose requirements as to the performance of any activities.

(5) No breach of any rule made under this Act shall constitute an offence against this Act unless that offence is prescribed in regulations made under this Act.

(6) Every rule made under this Act is hereby deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989, but shall not be a regulation or an instrument for the purposes of the Acts and Regulations Publication Act 1989.

(7) So far as the bylaws of any local authority are inconsistent with or repugnant to any rule in force in the same locality, the bylaws shall be construed subject to the rule.

(8) Notwithstanding section 28 of the State Sector Act 1988, the Minister shall not delegate his or her power to make rules under this Act.

Cf. 1990, No. 98, s. 28 (2)–(9)

452. Incorporation in rules of material by reference—
(1) The following may be incorporated by reference into a rule made under this Act:

(a) Standards, requirements, or recommended practices of international or national organisations:

(b) Standards, requirements, or rules in force in any other jurisdiction:

(c) Standards, requirements, or rules, of any classification society or similar organisation:

(d) Standards, requirements, or rules, of any maritime sporting or maritime recreational organisation:

(e) Any other written material or document that, in the opinion of the Minister is too large or impractical to be printed as part of the rule.

(2) Any material incorporated in a rule by reference under subsection (1) of this section shall be deemed for all purposes to form part of the rule; and, unless otherwise provided in the rules, every amendment to any material so incorporated by reference that is made by the person or organisation originating the material shall, subject to subsection (4) of this section, be deemed to be part of the rule.

(3) The Director shall make available for inspection free of charge or purchase at a reasonable price, at such place or places as he or she shall from time to time appoint, copies of all material incorporated in a rule by reference under subsection (1) of this section and copies of all amendments deemed to be part of any rule.
(4) No amendment to any material incorporated in a rule by reference under subsection (1) of this section shall have effect until it is made available for inspection or purchase in accordance with subsection (3) of this section.

Cf. 1990, No. 98, s. 36; 1993, No. 88, s. 12

Powers of Entry

458. General power of entry—(1) Subject to subsections (3) and (4) of this section, every person duly authorised by the Director may, at any reasonable time or times, go on board any ship or enter any building or place for the purpose of carrying out his or her functions, duties, or powers under this Act or any regulations or rules made under this Act.

(2) Subject to subsections (3) and (4) of this section, but without limiting the power conferred by subsection (1) of this section, every person duly authorised by the Director who has reasonable grounds to believe that—

(a) Any breach of this Act or of any regulations or rules made under this Act is being or about to be committed; or

(b) A condition imposed under any maritime document or marine protection document is not being complied with; or

(c) A situation exists within the maritime system or is about to exist that constitutes a danger to persons or property or a threat to the marine environment—may at any reasonable time go on board any ship, or enter any building or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) to (c) of this subsection exists.

(3) No such duly authorised person shall enter a dwelling-house, a marae, or a building associated with a marae under subsection (1) of this section, except with—

(a) The consent of an occupier; or

(b) A warrant issued under section 454 of this Act.

(4) Where a warrant under section 454 of this Act has been issued to a duly authorised person subject to conditions, the duly authorised person—

(a) Shall not enter the dwelling-house, marae, or building associated with a marae, specified in the warrant otherwise than in accordance with the conditions; and

(b) Shall in all other respects comply with the conditions.

(5) Subject to subsection (4) of this section, a duly authorised person exercising the powers of inspection conferred by subsection (1) or subsection (2) of this section may use such
force in going on, into, or under, the place concerned (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.

Cf. 1957, No. 87, s. 198 (3); 1990, No. 98, s. 24

454. Warrant to inspect dwellinghouse, marae, etc.—A District Court Judge, a duly authorised Justice, or a Registrar (not being a member of the Police), who, on a written application made on oath by a person duly authorised by the Director, is satisfied that the entry is essential to enable the inspection to be carried out, may issue to the duly authorised person, unconditionally or subject to conditions, a warrant (in the prescribed form) authorising that person to enter the place on one occasion within 14 days of the issue of the warrant.

Cf. 1957, No. 87, s. 198 (1)

455. Entry in respect of offences—(1) Subject to subsection (2) of this section, a District Court Judge, a duly authorised Justice, or a Registrar (not being a member of the Police), who, on a written application made on oath by a person duly authorised by the Director, is satisfied that there are reasonable grounds for believing that there is on or in any place specified in the application any thing—

(a) In respect of which an offence against this Act has been or may have been committed; or

(b) That is or may be evidence of the commission of an offence against this Act; or

(c) That is intended to be used for the commission of an offence against this Act—

may issue, unconditionally or subject to conditions, a warrant (in the prescribed form) authorising the entry and search of the place, at any reasonable time on one occasion within 14 days of the issue of the warrant.

(2) The duly authorised person applying for a warrant under subsection (1) of this section—

(a) Shall first make reasonable inquiries as to whether any other applications for such a warrant (or a similar warrant under a provision of any enactment repealed by this Act) have been made in respect of the place concerned, and (if so) the following matters:

(i) The offence or offences alleged in respect of each application:

(ii) The result of each application; and

(b) Shall disclose on the application for the warrant the results of the inquiries.
(3) Every warrant under subsection (1) of this section shall be directed to and exercisable only by—  
(a) A member of the Police specified in the warrant; or  
(b) A duly authorised person specified in the warrant, if accompanied by a member of the Police; or  
(c) Any member of the Police; or  
(d) Any duly authorised person, if accompanied by a member of the Police.

(4) Where a warrant under subsection (1) of this section has been issued subject to conditions, the person exercising it—  
(a) Shall not enter or search the place specified in it otherwise than in accordance with the conditions; and  
(b) Shall in all other respects comply with the conditions.

(5) Subject to subsection (4) of this section, a person exercising a warrant under subsection (1) of this section may use such force in entering the place specified in it (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.

456. Duties on exercising power of entry—(1) Any person duly authorised by the Director, or member of the Police, exercising a power of entry conferred by section 454 or section 455 of this Act—  
(a) Shall have with him or her—  
   (i) Evidence of his or her identity, and appointment as a duly authorised person or member of the Police; and  
   (ii) Except in the case of entry under section 454 of this Act to a place that is not a dwellinghouse, a marae, or a building associated with a marae, the warrant under section 454 or section 455 of this Act authorising the entry; and  
(b) Shall produce them to any person appearing to be in charge of the place entered—  
   (i) On entering the place (if such a person is then present); and  
   (ii) At any reasonable time thereafter, if asked to do so by the person; and  
(c) If there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection or search concerned has been completed, shall, as soon as is practicable after completing the inspection or search, give an occupier or person in charge of the place written notice stating
that the place has been entered, and specifying the following matters:

(i) The time and date of entry:
(ii) The circumstances and purpose of entry:
(iii) The name, office or position, and employer of every person entering:
(iv) If entry was under warrant, the principal contents of the warrant:
(v) Everything that has been seized, or that nothing has been seized, as the case may be.

(2) A duly authorised person, or member of the Police, exercising a power of entry conferred by section 454 or section 455 of this Act in relation to a marae, or a building associated with a marae, shall have regard to the kawa of the marae.

457. Additional powers—(1) A person lawfully exercising the powers conferred by section 453 or section 455 of this Act may make or take copies of any document or any information recorded or stored in a computer or other device, and for that purpose may take possession of and remove any document, tape, or disk from the place where it is kept for such period of time as is reasonable in the circumstances, or may require a person to reproduce, or assist the person duly authorised by the Director to reproduce, in usable form, information recorded or stored in a computer or other device.

(2) A duly authorised person who has lawfully entered premises under section 453 or section 455 of this Act may do on or in respect of any such premises all such acts and things as appear to the duly authorised person to be reasonably necessary or expedient.

Service of Documents

458. Service of documents—Where for the purposes of this Act any document is to be served on, or any notice, notification, or instructions is or are to be given to, any person, that document may be served and any notice, notification, or instructions may be given,—

(a) In any case, by delivering a copy personally to the person concerned or by leaving a copy at his or her last known place of abode; or

(b) If the person concerned is a master of a ship, where there is a master, or a person belonging to a ship, by leaving a copy for him or her on board the ship with the person appearing to be in command or charge of
the ship and explaining to that person the nature of
the document, notice, notification, or instructions; or
(c) If the person concerned is a master of a ship, where there
is no master and the ship is within the limits or
territorial sea of New Zealand, on the owner of the
ship resident in New Zealand, on the agent of the ship
in New Zealand, or, where no such agent is known or
can be found, by fixing a copy to the mast of the ship
or (if there is no mast) to some other conspicuous part
of the ship; or
(d) In any other manner provided for service of that
document, notice, notification, or instruction by this
Act or by rules or regulations made under this Act.

Cf. 1952, No. 49, s. 498.

Detention of Ship and Distress on Ship

459. Recovery of fines, etc., by distress—(1) Where any
Court—
(a) Adjudges any person convicted of an offence against this
Act to pay any fine or other money; or
(b) Adjudges any person to pay wages owing to any seafarer
or master; or
(c) Makes any order for payment of costs or expenses of or
incident to any such proceeding,—
and the person adjudged or ordered to pay the same is the
owner or master of a ship, and the same are not paid within the
time and in the manner limited by the conviction or specified in
the order of the Court, or, if in the case of a proceeding or the
recovery of wages no time for payment is specified, within 7
days after judgment is given or the order made, the Court may
exercise the powers specified in subsection (2) of this section.

(2) In any such case the Court may,—
(a) In addition to any other power it may have to compel
payment, direct the amount remaining unpaid to be
levied by distress or by the sale of the ship and the
ship's equipment; and
(b) If, at any time thereafter while that fine or those wages or
other money remain unpaid, that ship is found within
the internal waters or the territorial sea of New
Zealand, issue an order for the detention of the ship.

(3) An order for the detention of a ship under this section
shall be directed to the Director, a Collector of Customs, or
other officer named in the order, requiring him or her to detain
the ship until the judgment or order of the Court has been satisfied.

Cf. 1952, No. 49, s. 489

460. Enforcing detention of ships—(1) Where under this Act a ship is to be or may be detained, the Director, a Collector of Customs, or any person to whom an order for detention made by any Court or Judge under powers conferred by this Act is directed, may detain the ship; and if, after detention or after service on the master of any notice of or order for detention, the ship proceeds to sea before it is released by competent authority, the master and the owner, and also any person who sends the ship to sea if he or she is a party or privy to the offence, each commits an offence and shall be liable,—

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

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

(2) If a ship proceeds to sea while there is on board any person who is detaining the ship under this Act, the owner and the master of the ship each commits an offence against this Act and shall, in addition to the liability he or she incurs under subsection (1) of this section, be liable in respect of each offence,—

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

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

(3) Where under this Act a ship is to be detained, a Collector of Customs shall, and, where under this Act a ship may be detained, a Collector of Customs may, refuse to grant a clearance to that ship.

Cf. 1952, No. 49, s. 490

461. Consular officer to be notified of detention of foreign ship—(1) Where pursuant to any provision of this Act any foreign ship is detained at a port in New Zealand, or any proceeding is taken against the owner of a foreign ship or any other person for the time being responsible for the navigation and management of the ship or against the master of the ship, the following provisions shall apply:

(a) In any case where the person ordering or giving notice of that detention, or, as the case may be, instituting that
proceeding, is not the Director, that person shall forthwith inform the Director thereof and of the reason therefor:

(b) In every case the Director shall forthwith cause notice thereof to be served on a consular officer of the country in which the ship is registered or to which the ship belongs; and the notice shall specify the grounds on which the ship has been detained or, as the case may be, the grounds on which the proceeding has been taken.

(2) Nothing in this section shall affect the provisions of section 55 or section 397 of this Act.

Cf. 1952, No. 49, s. 491

462. Cost of detention and inspection to be paid by owner—(1) Where any ship is detained at a port in New Zealand under or pursuant to this Act, the owner of the ship, or other person for the time being responsible for the navigation and management of the ship, shall be liable to pay to—

(a) The Authority where the ship is detained by the Director; or

(b) The Crown in any other case—

the costs of and incidental to the detention and to any inspection and audit under this Act; and those costs shall, without prejudice to any other remedy, be recoverable as a debt due to the Authority or the Crown, as the case may be, in any Court of competent jurisdiction.

(2) Nothing in this section shall affect the provisions of section 56 or section 398 of this Act.

Cf. 1952, No. 49, s. 492

463. Detention in lieu of security for civil claims—

(1) For the purposes of this section, where the owner of a ship is a corporation, it shall be deemed to reside in New Zealand if it has an office in New Zealand at which service can be effected.

(2) Subject to subsection (3) of this section, where a person has been convicted of an offence under this Act in respect of the discharge of a harmful substance from a ship or convicted of an offence of contravening or permitting a contravention of section 15B of the Resource Management Act 1991 in respect of the discharge of a harmful marine substance and,—

(a) Property has been or is likely to be damaged by that discharge; and

(b) None of the owners of that ship reside in New Zealand,—
a District Court Judge may, on being satisfied as to the matters in paragraphs (a) and (b) of this subsection, order any officer of Customs or other officer named by the District Court Judge to detain that ship until such time as security for costs, damages, or other money that may be payable as a result of any civil proceedings has been given.

(3) A certificate issued under section 363 of this Act or a certificate complying with the terms of Article VII of the Civil Liability Convention shall be sufficient security for the purposes of this section.

(4) On any order being made under subsection (2) of this section, the officer to whom the order is directed shall detain the ship.

(5) Procedure on an application for an order under subsection (2) of this section shall be as the District Court Judge considers appropriate.

(6) Any person affected by an order made under subsection (2) of this section may appeal against that order to the High Court.

Cf. 1974, No. 14, s. 62

464. Agents' contracts of indemnity—(1) Where any person enters into an agreement to act as the agent in New Zealand of the owner, charterer, manager, or operator of a ship, he or she shall be entitled to enter into a contract of indemnity whereby 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 any proceedings (whether civil or criminal) against the agent, in the capacity of such agency, in any Court under any provision of this Act or the Resource Management Act 1991, or both.

(2) Where any proceedings are brought in a New Zealand Court by an agent seeking to enforce a contract of indemnity entered into with the owner, charterer, manager, or operator of a ship, the Court may enforce the contract of indemnity except where the proceedings have resulted from the wilful act or neglect or default of the agent.

Cf. 1974, No. 14, s. 65A; 1977, No. 12, s. 7

465. Designation of parties to conventions—(1) The Minister shall keep a list of and may give a certificate stating—

(a) The Contracting Parties to any convention declared by Order in Council under section 2 (2) of this Act:
(b) The Contracting Parties to any marine protection convention declared by Order in Council under section 222 (4) of this Act.

(2) Any list or certificate under subsection (1) of this section shall specify the date on which any such Government or State became or ceased to be a Contracting Government, a State Party, a Contracting Party, or a Contracting State, as the case may be.

(3) In the absence of proof to the contrary, a certificate issued under subsection (1) of this section shall be conclusive evidence of the matters stated in the certificate.

Cf. 1974, No. 14, s. 67 (1), (2), (4)

466. Other enactments not affected—Subject to section 467 of this Act, and except where this Act or any other enactment otherwise provides, the provisions of Parts XIX to XXVIII of this Act are in addition to and not in substitution for the provisions of any other enactment, and, except as expressly provided by this Act, nothing in this Act shall derogate from the provisions of any other enactment.


(a) Anything done by or on behalf of the Director under section 248 or section 249 of this Act or by or on behalf of any person in accordance with any instructions under either of those sections of this Act; or

(b) Anything done by or on behalf of an on-scene commander—

(i) Under section 305 or section 311 of this Act; or

(ii) In accordance with a direction given under section 310 of this Act; 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 section 311 of this Act; or

(d) Anything done—

(i) By or on behalf of the Director; or

(ii) By any person in accordance with any instructions issued by the Director—
under section 305 or section 311 of this Act.
PART XXXI
CONSEQUENTIAL AMENDMENTS, TRANSITIONAL PROVISIONS,
AND REPEALS

468. Savings relating to Shipping and Seamen Act 1952—(1) Any proceeding, action, or investigation commenced under—

(a) The Shipping and Seamen Act 1952; or

(b) Any regulations, rules, or order revoked by section 202 of this Act,—

that is pending or in progress immediately before the commencement of this section, may be continued, completed, or enforced, as the case may require, as if that Act had not been repealed, or those regulations or rules or that order had not been revoked, by the said section 202.

(2) Any proceeding, action, or investigation commenced under any regulations, rules, or order deemed by section 204 of this Act to have been made under this Act, that is pending or in progress immediately before the expiry of that section under section 205 of this Act, may be continued, completed, or enforced, as the case may require, after the expiry of the said section 204 as if that section had not expired.

(3) Any proceeding, action, or investigation commenced under any regulations, rules, or orders deemed by section 204 of this Act to have been made under this Act, that is pending or in progress immediately before the date of the revocation of those regulations, rules, or that order under subsection (2) of that section (where such revocation takes effect before the expiry of that section), may be continued, completed, or enforced, as the case may require, as if those regulations or rules or that order had not been revoked under that section.

(4) Any proceeding, action, or investigation commenced under Part X or Part XI or Part XII of this Act, that is pending or in progress immediately before the expiry of that Part under section 187 of this Act, may be continued, completed, or enforced, as the case may require, as if that Part had not expired under that section.

(5) Every licence, certificate, permit, authorisation, approval, or other document issued, recognised, or accepted by or under the Shipping and Seamen Act 1952, or any regulations or rules or order made under that Act, shall,—

(a) If issued, recognised, or accepted by the Minister, the Authority, the Director, or any employee of the Authority, or by any person or organisation acting
pursuant to and in accordance with authority delegated under any enactment; and

(b) If in force immediately before the repeal of that Act by section 202 (1) of this Act,—

be deemed to be issued, recognised, or accepted, as the case may be, as a maritime document under Part V of this Act.

(6) Every certificate declared by Order in Council made under section 18 of the Shipping and Seamen Act 1952 to be of the same force as a certificate of a specified kind or grade under that Act shall, if in force immediately before the repeal of that Act by section 202 (1) of this Act, be deemed to be recognised as a maritime document under Part V of this Act.

(7) Every licence, certificate, permit, authorisation, approval, or other document—

(a) Issued, recognised, or accepted under any regulations, rules, or order deemed by section 204 of this Act to have been made under this Act; and

(b) Either—

(i) In force immediately before the commencement of that section; or

(ii) Issued, recognised, or accepted on or after the commencement of that section—

shall be deemed to be issued, recognised, or accepted, as the case may be, as a maritime document under Part V of this Act and, until revoked under this Act, shall continue to have effect accordingly after the expiry of those regulations or rules or that order under section 205 of this Act or the sooner revocation of those regulations or rules or that order.

(8) Every licence, certificate, permit, authorisation, approval, or other document issued, recognised, or accepted by or under Part X or Part XI or Part XII of this Act and in force immediately before the expiry of that Part under section 187 of this Act shall, after the expiry of that Part, have effect as a maritime document under Part V of this Act until revoked under this Act, as if that Part had not expired.

(9) In the case of any person who was, immediately before the commencement of this Act, a suspended person as defined in section 40A of the Shipping and Seamen Act 1952, the following provisions shall apply:

(a) If the person is required by or under this Act to hold any maritime documents, the maritime documents (if any) held by that person shall be deemed to be suspended under section 43 of this Act:

(b) In any other case, the person shall be deemed to be suspended under section 52 of this Act.
(10) Notwithstanding the repeal of the Shipping and Seamen Act 1952 by section 202 (1) of this Act, the Minister may exercise all the powers of the Minister under that Act in relation to money received under Part II of that Act prior to the commencement of this Act.

469. Permits and other documents issued under Marine Pollution Act 1974—(1) Except as provided in subsection (2) of this section, every permit issued in accordance with section 22b of the Marine Pollution Act 1974 and any regulations under section 22a of that Act, being a permit in force immediately before the repeal of that Act by section 481 of this Act, shall be deemed to be a marine protection document issued on the same terms and conditions and shall have effect and be subject to the provisions of this Act accordingly.

(2) Every permit issued in accordance with section 22b of the Marine Pollution Act 1974 and any regulations made under section 22a of that Act that, being a permit—

(a) Issued to authorise, in relation to the coastal marine area (as defined in section 2 (1) of the Resource Management Act 1991),—

(i) The dumping or incineration of waste or other matter; or

(ii) The dumping of any ship, aircraft, or offshore installation; and

(b) In force immediately before the repeal of that Act by section 481 of this Act,—

shall be deemed to be a coastal permit granted under the Resource Management Act 1991 on the same terms and conditions by the appropriate regional council; and the provisions of the Resource Management Act 1991 shall apply accordingly.

(3) Notwithstanding section 12 (6) or section 15 (3) of the Resource Management Act 1991, a coastal permit deemed by subsection (2) of this section to have been granted does not authorise any person to do anything that would otherwise contravene section 12 or section 15 of that Act.

(4) Every document issued under the Marine Pollution Act 1974 or regulations made under that Act, other than a document referred to in subsection (1) or subsection (2) of this section, that is in force immediately before the repeal of that Act by section 481 of this Act, shall, on the commencement of that section, be deemed to be a marine protection document issued under this Act on the same terms and conditions
applying in respect of that document under the Marine Pollution Act 1974.

**470. Proceedings under Marine Pollution Act 1974—**
(1) Nothing in this Part of this Act shall prevent proceedings being commenced under the Marine Pollution Act 1974 where the events to which those proceedings relate have occurred before the repeal of that Act.

(2) In any proceeding to which subsection (1) of this section applies, the provisions of the Marine Pollution Act 1974 and any regulations and Orders in Council made under that Act shall apply as if they had not been repealed or revoked.

(3) For the purposes of subsection (1) of this section and section 60 (7) of the Marine Pollution Act 1974, the regional council within whose region the relevant harbour is located and the Director shall be deemed to be authorised to institute proceedings for an offence (other than an offence against section 12 (7) of the Marine Pollution Act 1974) committed in or in relation to the waters of a harbour.

**471. No liability for continuing offences after repeal—**
(1) No person shall be held liable for any continuing offence under the Shipping and Seamen Act 1952 in respect of any period after the repeal of the provision creating that continuing offence.

(2) No person shall be held liable for any continuing offence under the Marine Pollution Act 1974 in respect of any period after the repeal of the provision creating that continuing offence.

**472. Compensation for loss in acting in respect of marine casualties—** Every claim for compensation under Part III of the Marine Pollution Act 1974, being—

(a) A claim made before the repeal of that Act by section 481 of this Act and pending or in progress immediately before that repeal; or

(b) A claim that may be made immediately before that repeal,—

may be continued, made, or enforced, as the case may require, after that repeal as if that Act had not been repealed.

**473. Instructions in relation to marine casualties unaffected—** (1) Subject to subsection (2) of this section, any instructions issued under Part III of the Marine Pollution Act 1974 before the repeal of that Act by section 481 of this Act
shall continue to have effect, according to their tenor, after that repeal.

(2) Instructions to which subsection (1) of this section applies may be overridden or modified by the Director under Part XX of this Act.

474. Levies under Marine Pollution Act 1974—
(1) Subject to subsection (2) of this section, the provisions of—
(a) Part IIIA of the Marine Pollution Act 1974; and
(b) Every regulation and Order in Council made under that Act relating to levies that is in force immediately before the repeal of that Act—
shall continue in force after that repeal and apply in respect of any period before that repeal as if that Act and those provisions had not been repealed or revoked.

(2) Levies to which subsection (1) of this section applies shall be paid and receipts in respect of those levies shall be issued as if section 337 of this Act applied.

475. Ships detained under Shipping and Seamen Act 1952 or Marine Pollution Act 1974—(1) Every ship that was, immediately before the repeal of the Shipping and Seamen Act 1952 by section 202 of this Act, subject to detention under that Act shall remain subject to such detention after the repeal of that Act and the provisions of that Act relating to such detention shall continue to apply in respect of that ship as if that Act had not been repealed.

(2) Every ship that is, immediately before the repeal of the Marine Pollution Act 1974 by section 481 of this Act, subject to detention under that Act shall remain subject to such detention after the repeal of that Act and the provisions of that Act relating to such detention shall continue to apply in respect of that ship as if that Act had not been repealed.

476. Applications for permits under Marine Pollution Act 1974—(1) Where, before the date of the commencement of this Act, an application has been made for a permit under section 22b of the Marine Pollution Act 1974 and the application has not been granted, declined, or withdrawn before that date, the Minister shall deal with that application.

(2) Where an application to which subsection (1) of this section applies relates to the coastal marine area (as defined in the Resource Management Act 1991),—
(a) The appropriate regional council or regional councils or territorial authority or territorial authorities shall be notified of that application:

(b) A regional council or territorial authority notified of the application may report to the Minister, in writing, on any aspect of the application:

(c) The Minister may request and receive information from any regional council or territorial authority to assist in determining the application.

(3) In determining an application that relates to the coastal marine area, the Minister may—

(a) Have regard to the provisions of the Resource Management Act 1991; and

(b) In addition to any other conditions, impose conditions of the kind described in section 108 of that Act.

(4) Where any permit is issued under this section, in relation to the coastal marine area, that permit shall be deemed for all purposes (including appeals) to be a coastal permit issued by the appropriate regional council under the Resource Management Act 1991 and the provisions of that Act shall apply accordingly.

(5) Notwithstanding section 12 (6) or section 15 (3) of the Resource Management Act 1991, a coastal permit deemed by subsection (2) of this section to have been granted does not authorise any person to do anything that would otherwise contravene section 12 or section 15 of that Act.

Amendments to Harbours Act 1950

477. Effect of bylaws on port company operations—Section 232b (2) of the Harbours Act 1950 (as inserted by section 46 of the Harbours Amendment Act (No. 2) 1988) is hereby amended by omitting the words “are the responsibility of the Harbour Board in relation to marine pollution”, and substituting the words “relate to responsibilities in respect of marine pollution other than from oil (as defined in section 222 (1) of the Maritime Transport Act 1994)”.

478. No marine pollution dues—The Harbours Act 1950 is hereby amended by inserting, after section 232b (as inserted by section 46 of the Harbours Amendment Act (No. 2) 1988), the following section:

“232c. (1) Nothing in section 232 of this Act shall permit the Board to make any bylaw imposing any dues in respect of its responsibilities in relation to oil pollution.”
“(2) Any bylaw in force immediately before the commencement of this section shall cease to have effect to the extent that it imposes any dues in respect of a Board’s responsibilities in relation to oil pollution.

“(3) In this section, ‘oil’ has the same meaning as in section 222 (1) of the Maritime Transport Act 1994.”

Amendment to Local Government Act 1974

479. Functions of regional councils—Section 37s (1) of the Local Government Act 1974 (as substituted by section 6 of the Local Government Amendment Act 1992) is hereby amended by repealing paragraph (f), and substituting the following paragraph:

“(f) The functions, duties, and powers of a regional council under the Maritime Transport Act 1994:”.

Amendment to Environment Act 1986

480. Acts under which consents may be granted—The Schedule to the Environment Act 1986 is hereby amended by omitting the item “The Marine Pollution Act 1974”, and substituting the following item:


Repeals, Savings, and Transitional Provisions

481. Repeals and saving—(1) The enactments specified in the Seventh Schedule to this Act are hereby repealed.

(2) Notwithstanding the repeal of the Marine Pollution Act 1974, every Order in Council and regulation made under that Act and in force immediately before the repeal of that Act by subsection (1) of this section shall, until revoked, continue in force after the repeal of that Act as if that Act had not been repealed.

482. Oil Pollution Levies Order 1978—Notwithstanding anything in the Marine Pollution Act 1974, until the repeal of that Act by section 481 of this Act, the Governor-General may from time to time, by Order in Council, amend the Oil Pollution Levies Order 1978 by making any provision that could be made under either or both of sections 333 and 335 of this Act, if those sections were in force.

488. Transitional provisions relating to Maritime Safety Authority of New Zealand—(1) Every person who held office as a member of the Maritime Safety Authority of New Zealand immediately before the commencement of this
section shall be deemed to have been appointed as a member of the Authority under section 429 of this Act.

(2) The term of office of every person deemed by subsection (1) of this section to have been appointed to the Authority shall expire on the date on which, but for the passing of this Act, his or her appointment would have expired under the provisions of the Maritime Transport Act 1993.

(3) The person holding office as the Director of Maritime Safety immediately before the commencement of this section shall be deemed to have been appointed as the Director of Maritime Safety under section 439 of this Act.

484. Transitional provisions relating to Oil Pollution Advisory Committee—Notwithstanding anything in section 282 of this Act,—

(a) Every person who held office as a member of the Oil Pollution Advisory Committee established by section 29c of the Marine Pollution Act 1974 shall be deemed to have been appointed under subsection (2) of the said section 282 on the terms and conditions that applied to him or her immediately before the commencement of that section:

(b) The Director shall continue to be the chairperson of the committee until the Minister appoints a new chairperson under the said section 282.

485. Savings relating to Ministry, etc.—(1) Where, before the repeal of the Shipping and Seamen Act 1952 by section 202 of this Act, the Ministry or any officer of the Ministry had become a party to any proceedings under that Act, the proceedings may be continued, completed, and enforced after the repeal of that Act as if the Authority or the Director, as the case may require, were that party.

(2) Where, before the repeal of the Marine Pollution Act 1974 by section 481 of this Act, the Ministry or any officer of the Ministry becomes a party to any proceedings under that Act, the proceedings may be continued, completed, and enforced after the repeal of that Act as if the Authority or the Director, as the case may require, were that party.

(3) Where, before the repeal of the Shipping and Seamen Act 1952 by section 202 of this Act, the Ministry or any officer of the Ministry had commenced an action under that Act or regulations made under that Act, the action may be continued, completed, and enforced after the repeal of that Act as if the
Authority or the Director, as the case may require, had commenced it.

(4) Where, before the repeal of the Marine Pollution Act 1974 by section 481 of this Act, the Ministry or any officer of the Ministry commences an action under that Act or regulations made under that Act, the action may be continued, completed, and enforced after the repeal of that Act as if the Authority or the Director, as the case may require, had commenced it.

(5) Where, before the repeal of the Shipping and Seamen Act 1952 by section 202 of this Act, the Ministry or any officer of the Ministry had commenced an investigation under that Act or regulations made under that Act, the investigation may be continued and completed after the repeal of that Act as if the Director had commenced it.

(6) References to the Maritime Safety Authority of New Zealand or the Director of Maritime Safety in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatever in force at the commencement of this Act shall, unless the context otherwise requires, be read as references to the Authority continued by section 429 of this Act or the Director appointed or deemed to be appointed under section 439 of this Act, as the case may require.
Section 429 (11)

FIRST SCHEDULE

PROVISIONS RELATING TO MARITIME SAFETY AUTHORITY OF NEW ZEALAND

Membership

1. The Minister shall appoint one of the members of the Authority as the Chairperson and another member as the Deputy Chairperson, and those appointees shall hold office until removed by the Minister.

2. If the Chairperson or Deputy Chairperson vacates office as a member or is removed by the Minister as Chairperson or Deputy Chairperson, the Minister may appoint any existing member or any new member as Chairperson or Deputy Chairperson. If the Deputy Chairperson is appointed as Chairperson, he or she shall vacate office as Deputy Chairperson.

3. Every member shall hold office for a term not exceeding 3 years, and may from time to time be reappointed.

4. Every member, unless removed from office under clause 6 of this Schedule, shall continue in office until his or her successor comes into office, notwithstanding that his or her term of office may have expired.

5. Any member may at any time resign from office by written notice to the Minister.

6. Any member may at any time be removed from office by the Minister.

7. If any member dies or resigns or is removed from office, the vacancy shall, as soon as practicable, be filled by the appointment of another member, and, if the term of the vacating member has not expired at the time of the appointment, the member appointed to fill the vacancy shall hold office by virtue of that appointment for the residue of the term of the vacating member. In making any appointment under this clause, the Minister shall maintain on the Authority the balance of representation referred to in section 429 of this Act.

8. The powers of the Authority shall not be affected by any vacancy in its membership.

Remuneration and Expenses of Authority Members

9. There shall be paid to the members of the Authority such remuneration by way of fees, salary, or allowances, and such travelling allowances and expenses as are from time to time agreed between members of the Authority and the Minister.

Meetings

10. Meetings of the Authority shall be held at such times and places as the Authority or the Chairperson or the Deputy Chairperson from time to time appoints.

11. The Chairperson shall preside at each meeting of the Authority. In the event of the absence of the Chairperson from any meeting of the Authority, the Deputy Chairperson shall preside at that meeting and, if he or she is also absent, the meeting shall be presided over by a member appointed by the members present.
12. At all meetings of the Authority, the quorum necessary for the transaction of business shall be a majority of the members then in office.

13. At any meeting of the Authority, the person presiding at the meeting shall have a deliberative vote and, if the voting is equal, shall also have a casting vote.

14. A resolution in writing signed, or assented to in writing, by every member shall be as valid and effective as if it had been passed at a meeting of the Authority duly called and constituted. Any such resolution may consist of several documents in like form each signed, or purported to have been signed, by one or more members.

15. The contemporaneous linking together by telephone or other means of communication of a number of members, whether or not one or more of the members is out of New Zealand, shall be deemed to constitute a meeting of the Authority if the following conditions are met:

(a) Notice shall have been given to every member for the time being entitled to receive notice of a meeting of the Authority;

(b) The number of members taking part in the meeting by telephone or other means of communication shall not be less than the quorum provided by clause 12 of this Schedule and each of the members taking part must—

(i) Be linked by telephone or such other means for the purposes of the meeting; and

(ii) At the commencement of the meeting acknowledge, to all the other members taking part, that member's presence for the purpose of a meeting of the Authority; and

(iii) Be able throughout the meeting to hear each of the other members taking part; and

(iv) On any vote, individually express his or her vote to the meeting;—

and the following provisions shall apply to teleconference meetings:

(c) A member shall not leave a meeting held under this clause by disconnecting the member's telephone or other means of communication unless the member has previously obtained the express consent of the Chairperson of the meeting;

(d) A member shall be conclusively presumed to have been present, and to have formed part of the quorum, at all times during the meeting by telephone or other means of communication unless the member has previously obtained the express consent of the Chairperson to leave the meeting.

16. Subject to this Act, the Authority may regulate its procedure in such manner as it thinks fit.

Disclosure of Interest

17. A member who, otherwise than as a member, has, directly or indirectly, any pecuniary interest in—

(a) The Authority's performance of any function or exercise of any power; or

(b) Any arrangement, agreement, or contract, made or entered into, or proposed to be made or entered into, by the Authority,—
shall, as soon as is practicable after the relevant facts have come to the member’s notice, disclose the nature of the interest in accordance with clause 19 of this Schedule.

18. For the purposes of clause 17 of this Schedule, a member—
   (a) Has a pecuniary interest if that pecuniary interest is one to which section 6 of the Local Authorities (Members’ Interests) Act 1968 would apply if he or she were a member of a local authority; but
   (b) Does not have a pecuniary interest if the pecuniary interest is not different in kind from the interests of other persons involved in the maritime transport system.

19. A member required by clause 17 of this Schedule to disclose the nature of an interest shall disclose it—
   (a) To the Minister, if—
      (i) The person is the Authority’s Chairperson; or
      (ii) The person is the Authority’s Deputy Chairperson, and for the time being the Authority has no Chairperson; and
   (b) To the Authority’s Chairperson or Deputy Chairperson, in any other case.

20. After becoming required by clause 17 of this Schedule to disclose the nature of an interest, a member—
   (a) Shall disclose to the members present at any meeting of the Authority at which any deliberation or decision of the Authority relating to the matter takes place or is made that the member has an interest in the matter; and
   (b) Shall not take part in any deliberation or decision of the Authority relating to the matter in which the member has the interest.

21. A member required by clause 17 of this Schedule to disclose the nature of an interest in any matter shall be disregarded in determining whether or not there is a quorum of the Authority present for any part of a meeting of the Authority during which a deliberation or decision of the Authority relating to the matter takes place or is made.

22. The Minister may by written notice to the Authority waive or modify any of the provisions of clauses 17 to 21 of this Schedule in respect of any particular member or matter, or class of matters that, in the Minister’s opinion, does not constitute a direct or indirect material interest.

23. The Minister shall lay before the House of Representatives a copy of any notice issued under clause 22 of this Schedule within 12 sitting days after the date on which the Minister issues the notice.

24. The Authority may from time to time constitute, reconstitute, and dissolve committees. Any such committee may include among its membership persons who are not members of the Authority, but every such committee shall at all times have a majority of members who are members of the Authority.

25. The Authority may from time to time, in writing, authorise any one or more members or employees of the Authority to execute any deeds,
instruments, contracts, or other documents on behalf of the Authority, and may at any time in the same manner revoke any such authority.

26. Any authority given under clause 25 of this Schedule to any employee of the Authority may be given to—
(a) The Director; or
(b) Any specified employee; or
(c) Any employee of a specified class; or
(d) The holder for the time being of any specified office or of any office of a specified class.

27. Every person purporting to execute any document on behalf of the Authority pursuant to any such authority, shall, in the absence of proof to the contrary, be presumed to be acting in accordance with such an authority.

Powers to Borrow, Etc.

28. The Authority may borrow money subject to the approval of the Minister of Finance.

Director

29. The terms and conditions of employment of the Director appointed under section 439 of this Act shall be determined from time to time by the Authority.

30. The Authority shall not, in determining terms and conditions under clause 29 of this Schedule, agree to any conditions of employment for a Director of the Authority without—
(a) Consulting the State Services Commissioner; and
(b) Having regard to all recommendations the Commissioner makes to the Authority about them within a reasonable time of being consulted.

Appointment of Staff

31. The Director may appoint such employees, including employees on secondment from other organisations, as he or she thinks necessary for the efficient performance of the Authority’s functions.

32. Subject to the terms and conditions of employment, the Director may at any time terminate or suspend the employment of any of the Authority’s employees.

33. Before entering into any collective employment contract under the Employment Contracts Act 1991, the Authority shall consult with the State Services Commissioner about the conditions of employment to be included in the collective employment contract.

34. No member or employee of the Authority shall be personally liable for any liability of the Authority, or for any act done or omitted by the Authority, or by the Director or any other employee of the Authority in good faith in pursuance or intended pursuance of the functions or powers of the Authority or of the Director.

35. The Authority shall operate a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of
employees in all aspects of their employment, including provisions requiring—

(a) Good and safe working conditions; and
(b) The impartial selection of suitably qualified people for appointment; and
(c) Recognition of—
   (i) The aims and aspirations of Maori; and
   (ii) The employment requirements of Maori; and
   (iii) The need for greater involvement of Maori as employees of the Authority; and
(d) Opportunities for the enhancement of the abilities of individual employees; and
(e) Recognition of the aims and aspirations, and the cultural differences, of ethnic and minority groups; and
(f) Recognition of the employment requirements of women; and
(g) Recognition of the employment requirements of people with disabilities.

36. In each financial year, the Authority shall—

(a) Develop and publish an equal employment opportunities programme for the Authority; and
(b) Ensure that the programme is complied with.

37. For the purposes of clause 36 of this Schedule, an equal employment opportunities programme is a programme aimed at identifying and eliminating all aspects of policies, procedures, and other institutional barriers, that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any people or group of people.

Superannuation or Retiring Allowances

38. For the purposes of providing superannuation funds or retiring allowances for employees of the Authority, sums by way of subsidy may from time to time be paid into any scheme registered under the Superannuation Schemes Act 1989.

39. Notwithstanding anything in this Act, a person who, immediately before becoming an employee of the Authority, is a contributor to the Government Superannuation Fund under Part II or Part IIIA of the Government Superannuation Fund Act 1956 shall, for the purposes of the Government Superannuation Fund Act 1956, be deemed to be employed in the Government service so long as that person continues to be an employee of the Authority; and the Government Superannuation Fund Act 1956 shall apply to that person in all respects as if that person's service as an employee of the Authority is Government service.

40. Nothing in clause 39 of this Schedule entitles any person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

41. For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with clause 39 of this Schedule, to an employee of the Authority who is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to that employee, means the Authority.
42. No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment or co-option as a member or appointment as an employee of the Authority.

Consultants, Agents, Etc.

43. The Authority or the Director may from time to time appoint consultants, agents, specialists, and advisory committees to advise it or him or her in relation to the exercise of its or his or her functions and powers, and to exercise such functions and powers as may be delegated under this Act to such persons or committees.

44. The Authority or the Director may—
(a) Pay to any such persons or members of committees so appointed such remuneration by way of fees, salary or allowances, and such travelling allowances and expenses, as the Authority or the Director thinks fit; and
(b) Contribute towards the remuneration, travelling allowances, and expenses of any such persons or members of committees, whose employers provide services for the Authority or the Director.
Section 82 (6)

SECOND SCHEDULE

PROVISIONS APPLYING IN RESPECT OF MARITIME APPEAL AUTHORITY

1. The person appointed as the Maritime Appeal Authority shall be a barrister or solicitor of not less than 7 years' practice of the High Court, whether that person holds or has held any judicial office.

2. The Minister may appoint a person, being a person qualified for appointment as the Maritime Appeal Authority, to be a deputy for, and to act in the absence from whatever cause of, the Maritime Appeal Authority.

3. The person appointed as the Maritime Appeal Authority shall be appointed for a term of 3 years, but may from time to time be reappointed.

4. The person appointed as the Maritime Appeal Authority shall cease to hold office if that person—
   (a) Is adjudged bankrupt; or
   (b) Is convicted of any offence punishable by imprisonment; or
   (c) Becomes a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;—
and, if by reason of disability that person becomes incapable of performing the functions of the office, that person may be removed from office by the Minister.

5. The person appointed as the Maritime Appeal Authority may at any time resign by notice in writing to the Minister.

6. Any deputy of the Maritime Appeal Authority shall hold office during the pleasure of the Minister.

7. Meetings of the Maritime Appeal Authority shall be held at such times and places as the Authority considers necessary.

8. The Maritime Appeal Authority may receive as evidence any statement, document, information, or matter that may, in the opinion of the Authority, assist the Authority to deal effectually with the application being considered, whether or not the evidence would be otherwise admissible in a Court of law.

9. Subject to clause 8 of this Schedule, the Evidence Act 1908 shall apply to the Maritime Appeal Authority, and to all applications before the Authority, in the same manner as if the Maritime Appeal Authority were a Court within the meaning of that Act.

10. The Maritime Appeal Authority shall, within the scope of the Authority's jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908; and, subject to the provisions of this Act, all the provisions of that Act, except sections 2 and 4A, shall apply accordingly.

11. Every application to the Maritime Appeal Authority shall be considered at such place and at such time as the Authority considers convenient having regard to the nature of the matters to be decided, and may be adjourned from time to time and place to place.

12. The applicant shall be entitled to appear before the Maritime Appeal Authority in support of the application or be represented by counsel or a solicitor or an agent.

13. Except as otherwise provided by this section, the Maritime Appeal Authority may determine the Authority's own procedure, but shall follow the rules of natural justice.
14. Every application heard by the Maritime Appeal Authority shall be determined by the decision in writing of the Maritime Appeal Authority alone, and shall be final.

15. Every application to the Maritime Appeal Authority shall be in writing specifying the grounds thereof, and shall be lodged with the Director, who shall forthwith refer it to the Maritime Appeal Authority.

16. The Maritime Appeal Authority is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

17. There shall be paid to the Maritime Appeal Authority by the Maritime Safety Authority remuneration by way of fees or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

18. Notwithstanding clause 16 of this Schedule, any money received under that clause by the Maritime Appeal Authority who is an employee of the Public Service shall be subject to the provisions of the State Sector Act 1988.
PART I

Repeals

1952, No. 49—The Shipping and Seamen Act 1952. (R.S. Vol. 4, p. 275.)
1954, No. 88—The Shipping and Seamen Amendment Act 1954. (R.S. Vol. 4, p. 796.)
1957, No. 86—The Shipping and Seamen Amendment Act 1957. (R.S. Vol. 4, p. 796.)
1959, No. 102—The Shipping and Seamen Amendment Act 1959. (R.S. Vol. 4, p. 798.)
1964, No. 127—The Shipping and Seamen Amendment Act 1964. (R.S. Vol. 4, p. 810.)
1965, No. 28—The Shipping and Seamen Amendment Act 1965. (R.S. Vol. 4, p. 812.)
1968, No. 55—The Shipping and Seamen Amendment Act 1968. (R.S. Vol. 4, p. 817.)
1969, No. 4—The Shipping and Seamen Amendment Act 1969. (R.S. Vol. 4, p. 821.)
1969, No. 25—The Shipping and Seamen Amendment Act (No. 2) 1969. (R.S. Vol. 4, p. 823.)
1971, No. 79—The Shipping and Seamen Amendment Act 1971. (R.S. Vol. 4, p. 831.)
1972, No. 24—The Shipping and Seamen Amendment Act 1972. (R.S. Vol. 4, p. 832.)
1975, No. 29—The Shipping and Seamen Amendment Act 1975. (R.S. Vol. 4, p. 834.)
1985, No. 49—The Shipping and Seamen Amendment Act (No. 2) 1985.
1987, No. 74—The Immigration Act 1987: So much of the Fourth Schedule as relates to the Shipping and Seamen Act 1952.
1988, No. 211—The Shipping and Seamen Amendment Act (No. 2) 1988.
1990, No. 121—The Shipping and Seamen Amendment Act 1990.
### PART II

**Revocations**

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<thead>
<tr>
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<tbody>
<tr>
<td>The Shipping Casualty Rules 1937</td>
<td>1937/221</td>
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<td>The Shipping and Seamen Amendment Acts Commencement Order 1965</td>
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<td>The Shipping and Seamen Amendment Acts Commencement Order 1966</td>
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<td>The Shipping (Accepted Safety Convention Certificates) Regulations 1968</td>
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<td>The Shipping and Seamen Amendment Act Commencement Order 1974</td>
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Revocations—continued

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<tr>
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<tr>
<td>The Shipping (Engagement of Seamen) Exemption Notice 1975</td>
<td>1975/70</td>
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<tr>
<td>The Shipping and Seamen Amendment Act Commencement Order 1976</td>
<td>1976/93</td>
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<tr>
<td>The Shipping (Certificates of Competency as A.B.) Order 1978</td>
<td>1978/201</td>
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<tr>
<td>The Shipping and Seamen Amendment Act Commencement Order 1986</td>
<td>1986/109</td>
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<tr>
<td>The Shipping (Recognition of Certificates of Competency) Order 1988</td>
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<tr>
<td>Enactment</td>
<td>Amendment</td>
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<td>1924, No. 49—The Chattels Transfer Act 1924 (R.S. Vol. 15, p. 33)</td>
<td>By inserting in paragraph (d)(ii) of the exceptions to the definition of the term “instrument” in section 2 (as substituted by section 88 (2) of the Ship Registration Act 1992), before the words “under the Ship Registration Act 1992”, the words “in Part A of the Register”.</td>
</tr>
<tr>
<td>1947, No. 3—The Contributory Negligence Act 1947 (R.S. Vol. 1, p. 539)</td>
<td>By repealing subsection (1) of section 5, and substituting the following subsection: “(1) This Act shall not apply to any claim to which section 94 of the Maritime Transport Act 1994 applies, and that Act shall have effect in relation to every such claim as if this Act had not been passed.”</td>
</tr>
<tr>
<td>1950, No. 334—The Harbours Act 1950 (R.S. Vol. 2, p. 551)</td>
<td>By repealing the definition of the term “harbour light” in section 2 (1), and substituting the following definition: “‘Harbour light’ means any light erected in aid of navigation within harbour limits or near the approaches to any harbour, and which is declared by the Director not to be a coastal light; and includes all fog signal apparatus, lightships or other fixed or floating lights erected, moored, or placed for that purpose, and also any radio aid to marine navigation.”</td>
</tr>
</tbody>
</table>
| | By omitting from sections 5 (1), 7, 176 (2), 177 (1), 177 (2), 177 (2) (b), 177 (2) (c), 177A (1), 177A (1) (a), 177A (2), 177A (4) (b), 177c, 180, 181, 182 (1), 182 (2), 202 (2), 203 (1), 203 (2), 204, 205 (1), 206 (1), 206 (2), 215 (5), 215 (6), 216 (3), 216 (5), 218 (1), 218 (2), 219, 232 (50), 232 (50A), 241A (1) (b), 241A (1) (bb), 241A (3), and 241c (2) the words “Minister” and “Minister of Transport” wherever they occur, and substituting in each case the word “Director”.
| | By inserting in sections 35 (3), 35 (4), 39 (7) and 39 (8), after the words “the Secretary”, the words “of the Board”.

FOURTH SCHEDULE—continued

ENACTMENTS AMENDED—continued

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<th>Enactment</th>
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| 1950, No. 334—The Harbours Act 1950 (R.S. Vol. 2, p. 551)—continued | By repealing paragraphs (b) and (c) of section 100 (1) (as substituted by section 6 of the Harbours Amendment Act 1968), and substituting the following paragraphs:

"(b) Where the ship is registered in a foreign country and an Order in Council or maritime rule made under the Maritime Transport Act 1994 specifies that the tonnage of any ship registered in that country shall be the tonnage denoted in the ship's certificate of registry or other national papers, the ship shall be deemed to be of the tonnage so denoted:

"(c) In the case of any other ship, the tonnage of the ship shall be ascertained in accordance with regulations or maritime rules made under the Maritime Transport Act 1994."

By omitting from section 102 (1) (as substituted by section 7 of the Harbours Amendment Act 1968) the words "(not being a home-trade ship within the meaning of the Shipping and Seamen Act 1952)". By repealing paragraph (b) of section 102 (2) (as substituted by section 3 of the Harbours Amendment Act 1970), and substituting the following paragraph:

"(b) In the case of any covered space not included in the cubical contents forming the ship's register tonnage, be determined in the manner prescribed by regulations or maritime rules made under the Maritime Transport Act 1994."

By repealing subsection (1) of section 215 (as substituted by section 55 (1) of the
FOURTH SCHEDULE—continued

ENACTMENTS AMENDED—continued

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<th>Enactment</th>
<th>Amendment</th>
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| 1950, No. 334—The Harbours Act 1950 (R.S. Vol. 2, p. 551)—continued | Harbours Amendment Act 1977), and substituting the following subsection: “(1) A person who holds a certificate of competency as master or skipper (being a maritime document issued or recognised under the Maritime Transport Act 1994) may, in accordance with bylaws made under section 232 of this Act, apply to a Board to be examined as to his or her competency to pilot ships which, pursuant to those bylaws, he or she is eligible to pilot within the pilotage district attached to the harbour under the control of the Board or any part of that district.” By repealing paragraph (b) of section 230 (as substituted by section 63 of the Harbours Amendment Act 1977), and substituting the following paragraph: “(b) When so engaged at night, the lights required for that pilot boat by maritime rules or regulations for the prevention of collisions at sea made under the Maritime Transport Act 1994.” By repealing paragraph (b) of section 241 (1), and substituting the following paragraph: “(b) Providing for the design approval, inspection, and testing from time to time, by the Director or other competent person authorised in that behalf by the Director of all cargo containers, machinery, ropes, stagings, and all other appliances and gear (whether or not on board any ship) used in connection with the loading, unloading, or transhipment of any goods; and prohibiting the use for any such purpose of any machinery, ropes, staging, appliances, or gear that may


FOURTH SCHEDULE—continued

ENACTMENTS AMENDED—continued

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<tr>
<th>Enactment</th>
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<tbody>
<tr>
<td>1951, No. 22—The Births and Deaths Registration Act 1951 (R.S. Vol. 1, p. 333)</td>
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<tr>
<td>1951, No. 22—The Births and Deaths Registration Act 1951 (R.S. Vol. 1, p. 333)</td>
<td>By inserting in section 260, after the words “the Minister” wherever they occur, the words “or the Director”.</td>
</tr>
<tr>
<td>1957, No. 19—The Explosives Act 1957 (R.S. Vol. 6, p. 361)</td>
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<tr>
<td>1957, No. 19—The Explosives Act 1957 (R.S. Vol. 6, p. 361)</td>
<td>By repealing the definition of the term “aircraft” in section 2, and substituting the following definition: “‘Aircraft’ has the same meaning as in the Civil Aviation Act 1990:’.”</td>
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<td>Enactment</td>
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<tr>
<td>1957, No. 19—The Explosives Act 1957 (R.S. Vol. 6, p. 361)—continued</td>
<td>By repealing the definition of the term “ship” in section 2, and substituting the following definition: “‘Ship’ has the same meaning as in section 2 of the Maritime Transport Act 1994:”.</td>
</tr>
<tr>
<td>1966, No. 19—The Customs Act 1966 (R.S. Vol. 2, p. 57)</td>
<td>By inserting in section 16, after paragraph (d), the following paragraph: “(da) In the case of goods carried by any ship, from the time when the goods are accepted for carriage at an examination station or an examining place at or near one port in New Zealand until the time when the goods are released from an examination station or an examining place at or near another port in New Zealand:”.</td>
</tr>
<tr>
<td>1973, No. 119—The Admira lty Act 1973 (R.S. Vol. 18, p. 1)</td>
<td>By repealing the definition of the term “Collision Regulations” in section 2, and substituting the following definition: “‘Collision Regulations’ has the same meaning as in section 168 of the Maritime Transport Act 1994:”.</td>
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<td></td>
<td>By omitting from paragraph (i) of section 4 (1) the words “sections 356 and 357 of the Shipping and Seamen Act 1952”, and substituting the words “sections 113 and 114 of the Maritime Transport Act 1994 or any maritime rules made in relation to salvage”.</td>
</tr>
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<td></td>
<td>By repealing paragraph (l) of section 4 (1), and substituting the following paragraph: “(l) Any claim in respect of goods, materials, or services (including stevedoring and lighterage services) supplied or to be supplied to a ship in its operation or maintenance:”.</td>
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<td></td>
<td>By repealing paragraph (n) of section 4 (1).</td>
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<td>Enactment</td>
<td>Amendment</td>
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<tr>
<td>1973, No. 119—The Admiralty Act 1973 (R.S. Vol. 18, p. 1)—continued</td>
<td>By omitting from paragraph (o) of section 4 (1), and also from the proviso to section 4 (4), the words “Shipping and Seamen Act 1952”, and substituting in each case the words “Maritime Transport Act 1994”. By omitting from section 5 (2) the words, “(except claims in paragraph (n) of that subsection)” and also the words “(except paragraph (n))”. By omitting from section 7 the words “Commonwealth or”.</td>
</tr>
<tr>
<td>1977, No. 28—The Territorial Sea and Exclusive Economic Zone Act 1977</td>
<td>By repealing the definitions of the terms “New Zealand fishing craft” and “New Zealand Government ship” in section 2 (1), and substituting the following definitions: “‘New Zealand fishing craft’ means a fishing craft— “(a) That is a New Zealand ship within the meaning of section 2 (1) of the Maritime Transport Act 1994; or “(b) That is an aircraft registered in New Zealand under the Civil Aviation Act 1990; or “(c) In which no person who is not a New Zealand citizen has any legal or equitable interest (except by way of security only for any advance made by him or her to the owner): “‘New Zealand Government ship’ means a ship that belongs to Her Majesty or is held by any person on behalf of or for the benefit of Her Majesty; but does not include a ship that is set aside for or used by the New Zealand Defence Force:”.</td>
</tr>
<tr>
<td>1978, No. 80—The Marine Mammals Protection Act 1978</td>
<td>By repealing the definition of the term “aircraft” in section 2 (1), and substituting the following definition:</td>
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</table>
FOURTH SCHEDULE—continued
ENACTMENTS AMENDED—continued

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<tr>
<th>Enactment</th>
<th>Amendment</th>
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</table>
| 1978, No. 80—The Marine Mammals Protection Act 1978—continued | "'Aircraft' has the same meaning as in section 2 of the Civil Aviation Act 1990:'.
  By repealing the definition of the term "hovercraft" in section 2 (1), and substituting the following definition:
  "'Hovercraft’ means a machine designed to be supported in the atmosphere, wholly or partly by air expelled from the machine to form a cushion extending beneath the machine to the surface of any ground, water, or other portion of the earth's surface:'.
  By repealing the definition of the term "New Zealand ship" in section 2 (1), and substituting the following definition:
  "'New Zealand ship' has the same meaning as in section 2 (1) of the Maritime Transport Act 1994:'.

1980, No. 54—The Harbours Amendment Act 1980 | By repealing section 5 (1).

1981, No. 53—The Antarctic Marine Living Resources Act 1981 | By repealing the definition of the term "aircraft" in section 2 (1), and substituting the following definition:
  "'Aircraft' has the same meaning as in section 2 of the Civil Aviation Act 1990:'.
  By repealing the definition of the term "hovercraft" in section 2 (1), and substituting the following definition:
  "'Hovercraft’ means a machine designed to be supported in the atmosphere, wholly or partly by air expelled from the machine to form a cushion extending beneath the machine to the surface of any ground, water, or other portion of the earth's surface:'.
  By repealing the definition of the term "New Zealand ship" in section 2 (1), and substituting the following definition:
### FOURTH SCHEDULE—continued

#### ENACTMENTS AMENDED—continued

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<tr>
<th>Enactment</th>
<th>Amendment</th>
</tr>
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<tbody>
<tr>
<td>1981, No. 53—The Antarctic Marine Living Resources Act 1981—continued</td>
<td>“‘New Zealand ship’ has the same meaning as in section 2 (1) of the Maritime Transport Act 1994:”.</td>
</tr>
<tr>
<td>1987, No. 65—The Conservation Act 1987</td>
<td>By repealing so much of the Second Schedule as relates to the definition of the term “harbour light” in section 2 (1) of the Harbours Act 1950.</td>
</tr>
<tr>
<td>1987, No. 74—The Immigration Act 1987</td>
<td>By adding to section 11 (1) the following paragraph:</td>
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<td></td>
<td>“(g) A member of the crew of, or any passenger on, any ship in respect of which the Minister of Transport has, pursuant to section 198 (2) of the Maritime Transport Act 1994, authorised the carrying of cargo or passengers, for the period of 28 days commencing with the day on which the ship arrives at its first port of entry in New Zealand.”</td>
</tr>
<tr>
<td>1989, No. 148—The Radio-communications Act 1989</td>
<td>By omitting from section 111 (1) (b) the words “Shipping and Seamen Act 1952”, and substituting the words “Ship Registration Act 1992”.</td>
</tr>
<tr>
<td>1990, No. 28—The Defence Act 1990</td>
<td>By omitting from the definition of the term “ship” in section 2 (1) the words “and includes a hovercraft as defined in section 2 of the Hovercraft Act 1971”, and substituting the words “and includes a machine designed to be supported in the atmosphere, wholly or partly by air expelled from the machine to form a cushion extending beneath the machine to the surface of any ground, water, or other portion of the earth’s surface”.</td>
</tr>
<tr>
<td>1990, No. 99—The Transport Accident Investigation Commission Act 1990</td>
<td>By adding to the definition of the term “accident” (as substituted by section 2 of the Transport Accident Investigation Commission Amendment Act 1992) in section 2 the expression “; and” and the following paragraph:</td>
</tr>
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<td>“(c) In relation to maritime transport, has the same meaning”</td>
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<td>Enactment</td>
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| 1990, No. 99—The Transport Accident Investigation Commission Act 1990—continued | as in section 2 (1) of the Maritime Transport Act 1994:” By repealing the definition of the term “Authority” (as inserted by section 39 of the Civil Aviation Amendment Act 1992) in section 2, and substituting the following definition: “ ‘Civil Aviation Authority’ means the Civil Aviation Authority of New Zealand established by section 72A of the Civil Aviation Act 1990:”. By adding to the definition of the term “incident” (as substituted by section 2 of the Transport Accident Investigation Commission Amendment Act 1992) in section 2 the expression “; and” and the following paragraph: “(c) In relation to maritime transport, has the same meaning as in section 2 (1) of the Maritime Transport Act 1994:”. By inserting in section 2, in their appropriate alphabetical order, the following definitions: “ ‘Aeronautical product’ has the same meaning as in section 2 of the Civil Aviation Act 1990:” “ ‘Maritime product’ has the same meaning as in section 2 (1) of the Maritime Transport Act 1994:” “ ‘Maritime Safety Authority’ means the Maritime Safety Authority of New Zealand continued by section 429 of the Maritime Transport Act 1994:” “ ‘Ship’ has the same meaning as in section 2 (1) of the Maritime Transport Act 1994:” “ ‘Transport related thing’ includes any aircraft, rail service vehicle, ship, aerodrome, aeronautical product, maritime product, building, or place:
FOURTH SCHEDULE—continued

ENACTMENTS AMENDED—continued

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| 1990, No. 99—The Transport Accident Investigation Commission Act 1990—continued | "'Warship' has the same meaning as in section 2 (1) of the Maritime Transport Act 1994.” By inserting, after section 2, the following section:  
"2A. Application of Act—(1) Except as otherwise expressly provided in this Act or in any other Act, or in the regulations or rules concerned, nothing in this Act shall apply to the New Zealand Defence Force.  
(2) Nothing in this Act shall be interpreted as limiting the privileges and immunities of—  
(a) Any foreign military aircraft, foreign warship, or any ship owned or operated by a State other than New Zealand, if the ship is being used by that State for wholly governmental purposes, other than commercial purposes; or  
(b) The members of the visiting force and crew members of any such foreign military aircraft, foreign warship or such other ship.  
By repealing paragraph (f) of section 8 (2) (as substituted by section 35 of the Land Transport Act 1993), and substituting the following paragraph:  
(f) Where—  
(i) A notification under section 27 of the Civil Aviation Act 1990; or  
(ii) A notification under section 39c of the Transport Services Licensing Act 1989; or  
(iii) A notification under section 60 of the Maritime Transport Act 1994—has not been received, to request from the Civil Aviation Authority, the Land Transport

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<td>Authority, or the Maritime Safety Authority, as the case may be, such further information as it considers appropriate regarding any accident that the Commission believes is required to be investigated under section 13 (1) or section 13 (2) of this Act:</td>
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By repealing subsection (1) of section 9, and substituting the following subsection: |

"(1) The Commission may make such preliminary reports and recommendations to— |

"(a) The Civil Aviation Authority, in the case of aviation accidents and incidents; or |

"(b) The Land Transport Authority, in the case of rail service accidents and incidents; or |

"(c) The Maritime Safety Authority, in the case of maritime accidents and incidents,— as the case may be, as may be necessary in the interests of transport safety."

By omitting from section 10 the words "Authority or the Land Transport Authority" (as substituted by section 39 of the Civil Aviation Amendment Act 1992 and by section 85 of the Land Transport Act 1993), and substituting the words "Civil Aviation Authority, the Land Transport Authority, or the Maritime Safety Authority".

By repealing section 12, and substituting the following section:

"12. Powers of entry and investigation—(1) Without limiting the powers conferred by section 11 of this Act, for the purposes of exercising any of its functions, duties, or powers under this Act, the Commission and any
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| 1990, No. 99—The Transport Accident Investigation Commission Act 1990—continued | person authorised in writing for the purpose by the Commission shall have power to do all or any of the following: “(a) To enter and inspect any transport related thing where the Commission believes on reasonable grounds that it is necessary to do so for the purposes of investigating an accident or incident: “(b) To inspect, make copies of, or take extracts from, or retain any document or record that the Commission believes on reasonable grounds is relevant to the investigation of an accident or incident: “(c) Where the Commission 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 place or thing involved in any manner in an accident or incident, to prohibit or restrict access of persons or classes of persons to the site of any accident or incident: “(d) To seize, detain, remove, preserve, protect, or test any place or thing that the Commission believes on reasonable grounds will assist in establishing the cause of an accident or incident. “(2) Nothing in subsection (1) of this section shall confer on any person the power to enter any dwellinghouse, or any marae or building associated with a marae, unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall
FOURTH SCHEDULE—continued
ENACTMENTS AMENDED—continued

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<tr>
<td>1990, No. 99—The Transport Accident Investigation Commission Act 1990—</td>
<td>not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.</td>
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<td>continued</td>
<td>“(3) Every warrant issued under subsection (2) of this section shall be directed to a named person and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.</td>
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<td>“(4) Every person exercising the power of entry conferred by subsection (1) or subsection (2) of this section shall carry a warrant of authority issued by the Chief Commissioner specifying—</td>
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<td>“(a) The name and the office or offices held by the person; and</td>
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<td>“(b) That the person is authorised by the Chief Commissioner to exercise the powers conferred by subsections (1) and (2) of this section to enter any transport related thing and to carry out such inspection.</td>
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<td>“(5) Every person exercising the power of entry conferred by subsection (1) or subsection (2) of this section shall produce the warrant of authority and evidence of identity—</td>
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<td>“(a) If practicable on first entering the transport related thing; and</td>
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<td>“(b) Whenever subsequently reasonably required to do so.”</td>
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<td>By repealing section 13 (as substituted by section 9 (1) of the Transport Accident Investigation Commission Act 1992),</td>
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<td>and substituting the following section:</td>
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<td>“13. Accidents to be investigated—</td>
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<td>(1) As soon as practicable after an accident has been notified to the Commission under section 27 of the Civil Aviation Act 1990, section 39c of</td>
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the Transport Services Licensing Act 1989, or section 60 of the Maritime Transport Act 1994, the Commission shall investigate the accident if,—

“(a) In the case of an aviation accident,—

“(i) The accident involves a foreign aircraft (being an accident that is required by the Convention to be investigated); or

“(ii) The accident is at the interface of the civil and military aviation systems; or

“(iii) The accident involves an aircraft that is used principally for air transport operations; or

“(iv) The accident involves an aircraft exceeding a weight of 2250 kilograms maximum certified takeoff mass; or

“(v) The accident involves the death of any person; or

“(vi) The accident involves a missing aircraft; or

“(b) In the case of a rail service accident, the accident involves the death of any person; or

“(c) In the case of a maritime accident, the Commission believes the circumstances of the accident have, or are likely to have, significant implications for transport safety, or may allow the Commission to establish findings or make recommendations which may increase transport safety; or

“(d) In the case of a maritime accident in respect of which the Commission has decided not to investigate under paragraph (c) of this subsection, the Minister
FOURTH SCHEDULE—continued
ENACTMENTS AMENDED—continued

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| 1990, No. 99—The Transport Accident Investigation Commission Act 1990—continued | has directed the Commission to undertake an investigation in respect of that accident.  
“(2) Notwithstanding subsection (1) (c) of this section, the Commission shall not investigate any accident where the implications of that accident relate exclusively to the safety of persons employed or engaged solely to—  
“(a) Maintain a ship while it is not at sea; or  
“(b) Load or unload a ship; or  
“(c) Both—  
unless the Minister directs the Commission to investigate that accident.  
“(3) The duty to investigate an accident referred to in paragraph (a) (ii) or paragraph (b) or paragraph (c) of subsection (1) of this section shall include the power to investigate any aviation, maritime, or rail service accident or incident that involves any combination of military and non-military persons, transport related things, or transport related services.  
“(4) The Commission may investigate such additional accidents or incidents referred to it in accordance with section 27 of the Civil Aviation Act 1990 or section 39c of the Transport Services Licensing Act 1989 or section 60 of the Maritime Transport Act 1994 as it deems necessary.  
“(5) If an accident or incident has not been notified to the Commission in accordance with section 27 of the Civil Aviation Act 1990 or section 39c of the Transport Services Licensing Act 1989 or section 60 of the Maritime Transport Act 1994, and the accident or incident is one that would be required to be investigated under subsection (1) or subsection (2) of this section if it were so notified, the Commission,—
FOURTH SCHEDULE—continued

ENACTMENTS AMENDED—continued

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| 1990, No. 99—The Transport Accident Investigation Commission Act 1990—continued | “(a) In the case of an aviation accident, shall commence an investigation of the accident:  
“(b) In the case of an aviation incident, may commence an investigation of the incident:  
“(c) In the case of a rail service accident or incident, may commence an investigation of the accident or incident:  
“(d) In the case of a maritime accident or incident, may commence an investigation of the accident or incident.

“(6) Where the Commission proposes to undertake an investigation under this section, the Commission shall notify the Civil Aviation Authority, the Land Transport Authority, or the Maritime Safety Authority, as the case may require, of its proposal as soon as is practicable.

“(7) For the purpose of subsection (8) of this section, ‘military’ means, with respect to any transport related thing, a transport related thing operated by the New Zealand Defence Force or a visiting force.” |

By omitting from section 14(3) (as amended by section 39 of the Civil Aviation Amendment Act 1992 and by section 35 of the Land Transport Act 1993) the words “Authority and the Land Transport Authority”, and substituting the words “Civil Aviation Authority, the Land Transport Authority, and the Maritime Safety Authority”.

1992, No. 89—The Ship Registration Act 1992 | By repealing the definition of the term “Director” (as substituted by section 20(1) of the Maritime Transport Act 1993) in section 2(1), and substituting the following definition:
**FOURTH SCHEDULE—continued**

**ENACTMENTS AMENDED—continued**

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| 1992, No. 89—The Ship Registration Act 1992—continued | “'Director' means the person who is for the time being the Director of Maritime Safety under the Maritime Transport Act 1994:”. By repealing the definition of the term “ship” in section 2 (1), and substituting the following definition: “'Ship' means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—

(a) A barge, lighter, or other like vessel:

(b) A hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates:

(c) A submarine or other submersible:”.

By omitting from paragraph (a) of the definition of the term “gross tonnage” in section 2 (1) the words “Shipping and Seamen Act 1952”, and substituting the words “Maritime Transport Act 1994”.

By omitting from paragraph (a) of the definition of the term “net tonnage” in section 2 (1) the words “Shipping and Seamen Act 1952”, and substituting the words “Maritime Transport Act 1994”.

By omitting from the definition of the term “prescribed form” in section 2 (1) and also from sections 6 (3), 68 (2), 68 (3), 68 (4), 84 (1), 84 (2), 84 (3), 85, and 91 (2) the word “Minister” wherever it occurs, and substituting in each case the word “Director”.

By repealing the definitions of the terms “Superintendent of Mercantile Marine” and “Surveyor of ships” in section 2 (1).

By repealing the definition of the term “The tonnage regulations” in section 2 (1), and substituting the following definition:
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<td></td>
<td>By repealing paragraph (c) of section 6 (2), and substituting the following paragraph:</td>
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<td>“(c) The ship is a New Zealand-owned ship.”</td>
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<td>By inserting, after paragraph (b) of section 8 (2), the following paragraph:</td>
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<td>“(ba) Any ship that is jointly owned in equal proportions by a New Zealand citizen or New Zealand citizens and a person or persons (not being a New Zealand citizen or New Zealand citizens) who is or are entitled, in terms of the Immigration Act 1987, to reside in New Zealand indefinitely.”</td>
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<td>By omitting from section 15 (1) (a) the words “A surveyor of ships, or another competent person approved by the Director for the purposes of this section, has surveyed the ship and issued a certificate signed by that surveyor or other person specifying”, and substituting the words “The Director has surveyed the ship and issued a certificate specifying”.</td>
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<td>By omitting from section 15 (1) (b) the words “surveyor’s or other person’s”.</td>
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<td>By repealing subparagraph (iii) of section 15 (2) (b), and substituting the following subparagraph:</td>
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<td>“(iii) An organisation approved for the purposes of this section by the Director.”</td>
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<td>By repealing subsection (3) of section 15, and substituting the following subsection:</td>
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<td>“(3) Where none of the matters required by subsection (1) (a) of this</td>
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| 1992, No. 89—The Ship Registration Act 1992—continued                  | section to be specified in a tonnage certificate have altered since the ship was previously registered, whether under Part XII of the Shipping and Seamen Act 1952 or in Part A of the Register, the Registrar may accept in place of a tonnage certificate, a statutory declaration to that effect made by the owner or any owner of a share in the ship.” By repealing section 19 (6). By inserting in section 19 (7), after the words “exempt any ship”, the words “or any class of ship”.
|                                                                          | By repealing paragraph (b) of section 24 (1), and substituting the following paragraph: “(b) The serial numbers of the maritime document held, in compliance with the Maritime Transport Act 1994 and any regulations or rules made under that Act, by each master in relation to the competence of that master.” By omitting from section 24 (2) the words “a Superintendent of Mercantile Marine”, and substituting the words “the Director”.
<p>|                                                                          | By repealing paragraph (b) of section 65 (5), and substituting the following paragraphs: “(b) May, at any such time, inspect any document lodged in association with any entry in the Register; and “(c) Is entitled to obtain a copy of or an extract from any entry in the Register or document lodged in association with any entry in the Register.” By omitting from section 66 (1) the words “The Minister may, by notice in the Gazette”, and substituting the words “The Director may”. |</p>
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<tr>
<td>1992, No. 89—The Ship Registration Act 1992</td>
<td>By repealing subsection (1) of section 71, and substituting the following subsection:</td>
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<td>continued</td>
<td>&quot;(1) A ship may be detained under section 6 (4) or section 59 (3) of this Act by any of the following officers:</td>
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<td>&quot;(a) The Director:</td>
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<td>&quot;(b) Any member of the New Zealand Police:</td>
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<td>&quot;(c) Any proper officer of Customs.&quot;</td>
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<td>By repealing subsection (4) of section 71, and substituting the following subsection:</td>
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<td>&quot;(4) The provisions of the Maritime Transport Act 1994 shall, with any necessary modifications, apply in relation to any ship detained under this section as if it were a ship detained under section 55 of that Act.&quot;</td>
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<tr>
<td>1992, No. 96—The Health and Safety in Employ-</td>
<td>By inserting in section 2 (1), after the definition of the term &quot;person who controls a place of work&quot;, the following definition:</td>
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<td>ment Act 1992</td>
<td>&quot;Petroleum operations&quot; means petroleum operations prescribed for the purposes of this Act by regulations made under this Act:</td>
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<td>By inserting in section 2 (3), after the word &quot;ship&quot; where it first occurs, the words &quot;(other than a ship carrying out petroleum operations in New Zealand continental waters as defined in section 222 (1) of the Maritime Transport Act 1994)&quot;.</td>
</tr>
<tr>
<td>1992, No. 112—The Transport Accident Investiga-</td>
<td>By repealing sections 5, 6 (1), 7, 8, 9, and 10 (b).</td>
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<td>tion Commission Amendment Act 1992</td>
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<tr>
<td>1993, No. 88—The Land Transport Act 1993</td>
<td>By repealing so much of the Second Schedule as relates to sections 8 (2) (f), 9 (1), 10, 13 (5), and 14 (3) of the Transport Accident Investigation Commission Act 1990.</td>
</tr>
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</table>
In this convention the following words are employed with the meanings set out below:

(a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

(b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(d) "Ship" means any vessel used for the carriage of goods by sea.

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

ARTICLE 2

Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE 3

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—

(a) Make the ship seaworthy.

(b) Properly man, equip and supply the ship.

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods.
FIFTH SCHEDULE—continued

THE AMENDED HAGUE RULES—continued

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). [However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.]

The words in square brackets were added by the Protocol of 23 February 1968.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

[Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.]

The words in square brackets were substituted by the Protocol of 23 February 1968.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

[6bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.]

The words in square brackets were inserted by the Protocol of 23 February 1968.

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall
FIFTH SCHEDULE—continued

THE AMENDED HAGUE RULES—continued

have previously taken up any document of title to such goods, he shall
surrender the same as against the issue of the "shipped" bill of lading, but
at the option of the carrier such document of title may be noted at the port
of shipment by the carrier, master, or agent with the name or names of the
ship or ships upon which the goods have been shipped and the date or
dates of shipment, and when so noted, if it shows the particulars
mentioned in paragraph 3 of Article 8, shall for the purpose of this article
be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving
the carrier or the ship from liability for loss or damage to, or in connection
with, goods arising from negligence, fault, or failure in the duties and
obligations provided in this article or lessening such liability otherwise than
as provided in this convention, shall be null and void and of no effect. A
benefit of insurance in favour of the carrier or similar clause shall be
deemed to be a clause relieving the carrier from liability.

ARTICLE 4

1. Neither the carrier nor the ship shall be liable for loss or damage
arising or resulting from unseaworthiness unless caused by want of due
diligence on the part of the carrier to make the ship seaworthy, and to
secure that the ship is properly manned, equipped and supplied, and to
make the holds, refrigerating and cool chambers and all other parts of the
ship in which goods are carried fit and safe for their reception, carriage
and preservation in accordance with the provisions of paragraph 1 of
Article 3. Whenever loss or damage has resulted from unseaworthiness the
burden of proving the exercise of due diligence shall be on the carrier or
other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or
damage arising or resulting from—
(a) Act, neglect or default of the master, mariner, pilot, or the servants of
the carrier in the navigation or in the management of the ship.
(b) Fire, unless caused by the actual fault or privity of the carrier.
(c) Perils, dangers and accidents of the sea or other navigable waters.
(d) Act of God.
(e) Act of war.
(f) Act of public enemies.
(g) Arrest or restraint of princes, rulers or people, or seizure under legal
process.
(h) Quarantine restrictions.
(i) Act or omission of the shipper or owner of the goods, his agent or
representative.
(j) Strikes or lock-outs or stoppage or restraint of labour from whatever
cause, whether partial or general.
(k) Riots and civil commotions.
(l) Saving or attempting to save life or property at sea.
(m) Wastage in bulk or weight or any other loss or damage arising from
inherent defect, quality or vice of the goods.
(n) Insufficiency of packing.
(o) Insufficiency or inadequacy of marks.
(p) Latent defects not discoverable by due diligence.

B—12
FIFTH SCHEDULE—continued

THE AMENDED HAGUE RULES—continued

(q) Any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the Bill of Lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in subparagraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the
FIFTH SCHEDULE—continued

THE AMENDED HAGUE RULES—continued

International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

(i) in respect of the amount of 666.67 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 10,000 monetary units;

(ii) in respect of the amount of 2 units of account mentioned in subparagraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness "900'. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in subparagraph (a) of paragraph 5 of this Article as is expressed there in units of account.

States shall communicate to the depository the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

[(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(f) The declaration mentioned in subparagraph (a) of this paragraph, if embodied in the Bill of Lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in subparagraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that subparagraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the Bill of Lading.]

Paragraph 5 (a) was inserted by the Protocol of 21 December 1979.
Paragraphs 5 (b) and 5 (c) were inserted by the Protocol of 23 February 1968.
Paragraph 5 (d) and the succeeding unlettered paragraphs were inserted by the Protocol of 21 December 1979.
Paragraphs 5 (e) to 5 (h) were inserted by the Protocol of 23 February 1968.
FIFTH SCHEDULE—continued

THE AMENDED HAGUE RULES—continued

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

[ARTICLE 4bis

1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.

4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

This article was inserted by the Protocol of 23 February 1968.

ARTICLE 5

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this convention, provided such surrender or increase shall be embodied in the Bill of Lading issued to the shipper. The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a Bill of Lading of any lawful provision regarding general average.

ARTICLE 6

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to
public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

ARTICLE 7

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE 8

The provisions of this Convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

[ARTICLE 9

This Convention shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

ARTICLE 10

The provisions of this Convention shall apply to every Bill of Lading relating to the carriage of goods between ports in two different States if:
(a) the Bill of Lading is issued in a Contracting State, or
(b) the carriage is from a port in a Contracting State, or
(c) the contract contained in or evidenced by the Bill of Lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each Contracting State shall apply the provisions of this Convention to the Bills of Lading mentioned above.

This Article shall not prevent a Contracting State from applying the rules of this Convention to Bills of Lading not included in the preceding paragraphs.]

Articles 9 and 10 were added by the Protocol of 23 February 1968.
SIXTH SCHEDULE

INTERNATIONAL CONVENTION ON SALVAGE, 1989

THE STATES PARTIES TO THE PRESENT CONVENTION,

RECOGNIZING the desirability of determining by agreement uniform international rules regarding salvage operations,

NOTING that substantial developments, in particular the increased concern for the protection of the environment, have demonstrated the need to review the international rules presently contained in the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, done at Brussels, 23 September 1910,

CONSCIOUS of the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment,

CONVINCED of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger,

HAVE AGREED as follows:

CHAPTER I—GENERAL PROVISIONS

ARTICLE 1

Definitions

For the purpose of this Convention:

(a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.

(b) Vessel means any ship or craft, or any structure capable of navigation.

(c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.

(d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.

(e) Payment means any reward, remuneration or compensation due under this Convention.

(f) Organization means the International Maritime Organization.

(g) Secretary-General means the Secretary-General of the Organization.

ARTICLE 2

Application of the Convention

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

ARTICLE 3

Platforms and drilling units

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral sources.
ARTICLE 4

State-owned vessels

1 Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.

2 Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

ARTICLE 5

Salvage operations controlled by public authorities

1 This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

2 Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3 The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

ARTICLE 6

Salvage contracts

1 This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.

2 The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

3 Nothing in this article shall affect the application of article 7 nor duties to prevent or minimize damage to the environment.

ARTICLE 7

Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if:
(a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
(b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

CHAPTER II—PERFORMANCE OF SALVAGE OPERATIONS

ARTICLE 8

Duties of the salvor and of the owner and master

1 The salvor shall owe a duty to the owner of the vessel or other property in danger:
(a) to carry out the salvage operations with due care;
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(b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimize damage to the environment;
(c) whenever circumstances reasonably require, to seek assistance from other salvors; and
(d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

2 The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:
(a) to co-operate fully with him during the course of the salvage operations;
(b) in so doing, to exercise due care to prevent or minimize damage to the environment; and
(c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

ARTICLE 9
Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

ARTICLE 10
Duty to render assistance

1 Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.

2 The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.

3 The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

ARTICLE 11
Co-operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.
ARTICLE 12

Conditions for reward

1 Salvage operations which have had a useful result give right to a reward.

2 Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.

3 This chapter shall apply, notwithstanding that the salved vessel and the vessel undertaking the salvage operations belong to the same owner.

ARTICLE 13

Criteria for fixing the reward

1 The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:
   (a) the salved value of the vessel and other property;
   (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
   (c) the measure of success obtained by the salver;
   (d) the nature and degree of the danger;
   (e) the skill and efforts of the salvors in salving the vessel, other property and life;
   (f) the time used and expenses and losses incurred by the salvors;
   (g) the risk of liability and other risks run by the salvors or their equipment;
   (h) the promptness of the services rendered;
   (i) the availability and use of vessels or other equipment intended for salvage operations;
   (j) the state of readiness and efficiency of the salver's equipment and the value thereof.

2 Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salved values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3 The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved value of the vessel and other property.

ARTICLE 14

Special compensation

1 If the salver has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
2 If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

3 Salvor’s expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1 (h), (i) and (j).

4 The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 18.

5 If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6 Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

ARTICLE 15

Apportionment between salvors

1 The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.

2 The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

ARTICLE 16

Salvage of persons

1 No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.

2 A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

ARTICLE 17

Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.
ARTICLE 18

The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

ARTICLE 19

Prohibition of salvage operations

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

CHAPTER IV—CLAIMS AND ACTIONS

ARTICLE 20

Maritime lien

1 Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.

2 The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

ARTICLE 21

Duty to provide security

1 Upon the request of the salvor a person liable for payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.

2 Without prejudice to paragraph 1, the owner of the salved vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.

3 The salved vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

ARTICLE 22

Interim payment

1 The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.

2 In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.
ARTICLE 23

Limitation of actions

1 Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.

2 The person against whom a claim is made at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.

3 An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

ARTICLE 24

Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

ARTICLE 25

State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings in rem against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognised principles of international law.

ARTICLE 26

Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

ARTICLE 27

Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

CHAPTER V—FINAL CLAUSES

ARTICLE 28

Signature, ratification, acceptance, approval and accession

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 July 1989 to 30 June 1990 and shall thereafter remain open for accession.

2 States express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or amendment; or
SIXTH SCHEDULE—continued

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(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
(c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 29

Entry into force

1 This Convention shall enter into force one year after the date on which 15 States have expressed their consent to be bound by it.

2 For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect one year after the date of expression of such consent.

ARTICLE 30

Reservations

1 Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply the provisions of this Convention:

(a) when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
(b) when the salvage operations take place in inland waters and no vessel is involved;
(c) when all interested parties are nationals of that State;
(d) when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed.

2 Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3 Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

ARTICLE 31

Denunciation

1 This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.
INTERNATIONAL CONVENTION ON SALVAGE, 1989—continued

ARTICLE 32
Revision and amendment

1 A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2 The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of eight States Parties, or one fourth of the States Parties, whichever is the higher figure.

3 Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 33
Depositary

1 This Convention shall be deposited with the Secretary-General.

2 The Secretary-General shall:
   (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
      (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
      (ii) the date of the entry into force of this Convention;
      (iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
      (iv) any amendment adopted in conformity with article 32;
      (v) the receipt of any reservation, declaration or notification made under this Convention;
   (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3 As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 34
Languages

This convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned* being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE at LONDON this twenty-eighth day of April one thousand nine hundred and eighty-nine.

*Signatures omitted.
SEVENTH SCHEDULE  

ENACTMENTS REPEALED


This Act is administered in the Ministry of Transport.