



**Maritime Rule**  
Part 21: Amendment 2010  
Invitation to Comment  
**9 August 2010**





## Invitation to comment

You are invited to comment on the following draft amendment **Part 21: Amendment 2010**. This will amend parts of the current Section 2 of maritime rule Part 21.

This invitation is issued to fulfil formal consultation requirements under the Maritime Transport Act (MTA) 1994. The formal consultation process will run until 20 August 2010 and we encourage you to have your say by making a submission.

The draft rule, an overview of the consultation process, and details for making submissions are provided at the back of this Invitation to Comment.

## Background to maritime rules

Maritime rules are delegated legislation made by the Minister of Transport under the MTA. The rules establish the minimum standards that participants in the maritime environment must meet to ensure safe, secure and clean seas.

Maritime rules are divided into 'Parts' relating to particular subject areas such as ship construction. Advisory circulars accompany many rule Parts and contain information about standards, practices and procedures that Maritime New Zealand (MNZ) has established as acceptable means of compliance.

A strict process for rules development is prescribed by the MTA, including public notification of the intention to make or amend a rule and stakeholder consultation on the draft text. These tasks are assigned to MNZ by the Ministry of Transport (acting on behalf of the Minister). Under these arrangements, MNZ carries out policy analysis, any informal consultation, preparation of the formal draft rule text and explanatory material, formal consultation, and preparation of the final draft rule.

Once MNZ has finalised a draft rule, it is passed to the Ministry of Transport. The Minister's officials apply their own policy and legal scrutiny to all draft rules. Every signed rule, including details of the consultation carried out in its development, is tabled in the House of Representatives. A copy of this tabling version of the rule is sent by MNZ to all those who made submissions on the draft.

Rule development takes time. A new rule or substantive draft amendment may take up to 18 months or more to develop and bring into law. A shorter timeframe may be appropriate where the rule change is urgent and does not introduce significant policy changes.

Electronic versions of final rules are available free of charge from the MNZ website at [www.maritimenz.govt.nz/Rules/](http://www.maritimenz.govt.nz/Rules/)

## Rationale

Domestic commercial vessels in New Zealand are required to operate under an SSM system administered by an SSM organisation approved by the Director of MNZ. Until recently, this approval was treated as a maritime document issued by the Director under Section 41 of the MTA (in accordance with Part 21.12 of the maritime rules).

A recent High Court decision (*Survey Nelson v Director of Maritime New Zealand*, HC Wellington, CIV-2009-485-2398) held that the approval issued by the Director under Part 21.12 is not a maritime document. This limits the ability of the Director of MNZ to discharge statutory responsibilities. It also creates uncertainty about the procedural protections that should be afforded to SSM organisations under the MTA.

The judgement included a recommendation that this issue be resolved as a matter of priority.

## Summary of the proposed amendment

The proposed amendment to Maritime Rule Part 21.12 explicitly defines the status of an SSM organisation approval as a maritime document issued under Section 41 of the MTA.

It is intended that the amendment enter into force on 1 October 2010.

## **Transitional provision**

The amendment makes provision for existing approvals under Part 21.12 to be deemed maritime documents under Section 41 of the MTA until their stated expiry date. This means that SSM organisations will not need to reapply for their approvals as a result of the amendment coming into force.

## **Impact**

This change will affect the powers of the Director of MNZ and the status of approvals granted to SSM organisations.

The Director of MNZ will be able to apply an appropriate regulatory tool for overseeing SSM organisations. SSM organisations, in turn, will be able to take advantage of the statutory protections afforded to the holders of maritime documents.

Under the current rule, the Director can either grant or withdraw an approval for an SSM organisation. Under the proposed changes, a number of intermediate measures are available. For example, the Director can suspend or impose conditions on a maritime document holder. Furthermore, any such actions can be challenged by document holders through a District Court.

The change will not have a material financial impact on either party.

## **Making a submission**

The submission deadline for making comments on the draft amendment rules is **20 August 2010**. Submissions must include the name and contact details of the person making the submission. They can be made:

- via the online submission form **[www.maritimenz.govt.nz/Part21](http://www.maritimenz.govt.nz/Part21)**
- by E-mail to **[rules.coordinator@maritimenz.govt.nz](mailto:rules.coordinator@maritimenz.govt.nz)**
- by post addressed to Rules Coordinator, PO Box 27006, Marion Square, Wellington 6141
- by fax to (04) 494 8901
- by delivery to Maritime New Zealand, Level 10 Optimisation House, 1 Grey Street, Wellington.

Submissions may be made orally only under special prior arrangement, and MNZ must be notified of the intention by 15 August 2010.

## **Submissions are public information**

Please indicate clearly if your comments are commercially sensitive or if, for some other reason, you consider they should not be disclosed. In addition, if you are an individual (that is, your comments are made personally and not on behalf of a company or an organisation), please indicate if you consider for some reason that your identity should not be disclosed.

We will acknowledge all submissions that we receive. Once the rule is finalised, you will receive a summary of the full consultation.

Subject to the provisions of the Privacy Act and the Official Information Act, you may view the submissions made by other people at the Wellington office of Maritime New Zealand between 8.30am and 4.30pm on weekdays (except statutory holidays). Please arrange this beforehand with the Manager, Safety Research and Analysis, by phoning (04) 494 1233.

# **MARITIME TRANSPORT ACT 1994**

## **Marine Protection Rules**

### **Part 21: Amendment 2010**

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- 3 Rule 21.12 Safe ship management system**

## **Rule 21.11 Definitions relating to Section 2**

Rule 21.11 is amended as follows:

- (a) the existing definition of “approved safe ship management system” is replaced with—
  - “**approved safe ship management system**” means a safe ship management system that has a Certificate of Approval or Interim Certificate of Approval issued in respect of it by the Director.”; and
- (b) insert in the appropriate place the definitions for—
  - “**Certificate of Approval**” means the maritime document issued under Section 41 of the Maritime Transport Act 1994 and deemed by rule 21.11A(1) or in accordance with rule 21.12(1) to be issued in accordance with this Part:
  - “**Interim Certificate of Approval**” means the maritime document issued under Section 41 of the Maritime Transport Act 1994 in accordance with rule 21.12(2).”.

## **2 Rule 21.11A Transitional provisions and savings provision**

Insert the following new rule after rule 21.11.

### **“21.11A Transitional provisions and savings provision**

- (1) An approval that—
  - (a) was validly issued in accordance with Section 2 of Part 21 before 1 October 2010; and
  - (b) was in force immediately before 1 October 2010;is deemed to be a certificate of approval issued in accordance with this Part.
- (2) A certificate of approval deemed to be issued in accordance with this Part in subrule (1) is valid until the expiry date noted on the approval.”.

## **3 Rule 21.12 Safe ship management system**

Rule 21.12 is amended as follows:

- (a) in subrule 21.12(1), insert “in writing under Part 35 of the Maritime Transport Act 1994” to read—
  - “(1) If an organisation applies in writing under Section 35 of the Maritime Transport Act 1994 to the Director for approval of that organisation's safe ship management system, and the Director is satisfied that—“; and
- (b) insert (d) immediately following subrule 21.12(1)(c)(ii) and substitute the rest of the rule with—
  - “(d) all other requirements of Section 41 of the Maritime Transport Act 1994 are met, then the Director must grant a Certificate of Approval for that organisation's safe ship management system.”; and
- (c) subrule 21.12(2) is substituted with—
  - “(2) For the purpose of approving a safe ship management system, the Director may issue an interim certificate of approval to permit an organisation to operate a safe ship management system for a specified period and maximum number of ships prior to the organisation's system obtaining the Certificate of Approval referred to in rule 21.12(1).
    - (a) An interim certificate of approval shall only be issued under Section 41 where—

- (i) an organisation has applied under Section 35 of the Maritime Transport Act 1994 to the Director for a certificate of approval; and
  - (ii) the organisation meets all prescribed requirements other than the requirement to possess a certificate issued by a recognised accreditation body under rule 21.12(1)(a).”; and
- (d) subrule 21.12(6) is substituted with—
  - “(6) It shall be a condition of every Certificate of Approval issued by the Director that—
    - (a) the organisation continues to have a valid certificate issued by a recognised accreditation body indicating that the organisation has implemented a quality assurance system which has been approved by that body and is subject to continuing audit; and
    - (b) the scope and field of application of the organisation's quality assurance system continues to be for the safe management of ships in accordance with the New Zealand Safe Ship Management Code; and
    - (c) the organisation continues to have quality assured supplier status as referred to in rule 21.12(1)(c); and
    - (d) the organisation continues to meet the requirements of rules 21.12(3), 21.12(4), 21.12(5), 21.13(6), 21.13(8) and 21.13(10).”.