



National Oil Spill Contingency Plan

Chapter 12 – Control and Management of Incident Area



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Overview

It is imperative that all operations proceed in a safe and coordinated manner within the designated area of control. Control of areas on land and at sea are covered by the Powers of the On-Scene Commander and Powers of the Director in Relation to Hazardous Ships under s305 and s248 of the MTA, and by the Powers of the Harbourmaster under the Local Government Act. If required, control of airspace above an incident area is through establishing a Temporary Restricted Airspace through the Civil Aviation Authority.

This chapter outlines the statutory powers available for the control and management of an incident area, and procedures for enforcing these. As part of an oil spill response it may be necessary to:

- close a Port or Restrict Harbour Movements,
- establish a nautical exclusion zone,
- establish temporary restricted airspace,
- control public access to any road or public area,
- require the evacuation of an incident area, and
- restricting a fishing area.

Powers of the On-Scene Commander (Ref; MTA s305)

If a regional on-scene commander or the National On-Scene Commander decides that it is appropriate for a regional council or Maritime NZ, 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:

1. 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 Regional On Scene Commander considers necessary or desirable to control or clean-up the marine oil spill, or both.
2. Remove any person obstructing the marine oil spill response from an area, or any part of an area, where a marine oil spill response is being carried out.
3. Require the evacuation or the exclusion of persons, vehicles, or New Zealand ships from an area, or any part of an area, where a marine oil spill response is being carried out.
4. 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.
5. 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. NB: Only the Harbour Master and in certain circumstances the Director, may control overseas ships.
6. 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.
7. Subject to the restrictions below, 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.

This power does not apply to any land, building, ship, vehicle, or other real and personal property under the control of the New Zealand Defence Force.

The OSC may not issue instructions that are inconsistent with those given by the Director under part 20 of the MTA. The Director has extensive powers in a marine oil spill response in relation to hazardous ships, structures and operations. These powers, which are set out in sections 248 and 249 of the Act, allow the Director to take a wide range of measures if they are considered necessary to avoid, reduce, or remedy pollution, or a significant risk of pollution.

Template For Notice of Requisition Of Property During An Oil Spill Response

To: _____

(Name and address of owner or person in control of the property)

TAKE NOTICE:

That a marine oil spill response has been declared in:

(state the area of the relevant declaration)

2. That this notice is furnished in accordance with the Maritime Transport Act (MTA) 1994 Section 305 (See over).

3. That I _____, being an OSC, Constable, or person authorised by an OSC, believe that the action proposed is necessary and hereby require you to place the following property under my control and direction.

[Description of property] _____

It is an offence to fail to comply with this notice.

You are entitled under the MTA, Section 307 (See over) to apply to:

[Indicate employer of requisitioning officer, e.g. MNZ, territorial authority, NZ Police]

for compensation for:

- (1) the use of this requisitioned property;
- (2) any loss of or damage or injury to that property suffered or incurred whilst under control of organisations involved in this emergency response.

Dated _____ this _____ day of _____

Signed _____ Designation _____

S305 Powers of the On-Scene Commander

- (1) If a regional on-scene commander of the National On-Scene Commander decides that it is appropriate for a regional council, or Maritime NZ, 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:
 - (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 authorized by him or her, and any member of the police.

S306 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.

S307 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.

Powers of the Director in relation to hazardous ships (Ref; MTA s248)

In the case of a ship that, in the opinion of the Director, is a hazardous ship, the Director may from time to time:

- 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; and
- take any measures with respect to the ship, or its cargo, or both, including taking over control of the ship.

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:

- the removal of the ship to another place;
- the removal of cargo from the ship;
- the salvage of the ship, or its cargo, or both; and
- the sinking or destruction of the ship, its cargo, or both.

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.

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:

- 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
- Instruct the master of any New Zealand ship to do all or any of the following:
 - take on board any item or equipment;
 - sail to any place;
 - render assistance to a ship assisting a ship that, in the opinion of the Director, is a hazardous ship; and
 - assist in operations for the cleaning up and control of a harmful substance.

Powers of the Harbourmaster – Jurisdictions

Under the Local Government Act 2002 or navigation bylaws, a Harbourmaster may issue instructions in the interests of navigation safety within their jurisdiction. This power may be relevant in the event of a marine oil spill. Amongst other things, the Harbourmaster can regulate the movement of any ship and how it takes on or discharges cargo. The Harbourmaster can also require the owner to remove a ship or a wreck where it is a hazard to navigation. It is not explicitly clear from the provisions of the Act whether instructions given by an OSC prevail over a harbourmaster's directions. However, it can be inferred from the wide scope of powers given to an OSC, that an OSC's powers take precedence of those of a harbourmaster. The Director's instructions will prevail over any conflicting instructions given by a harbourmaster.

The Civic Defence Emergency Management Act 2002

The Civil Defence Emergency Management Act 2002 ("CDEM Act") authorises the Mayor to declare a state of local emergency, and requires the Civil Defence Emergency Management Group ("CDEM Group") to appoint at least one other person to be authorised to make such a declaration. The

Minister of Civil Defence may also declare that a state of national emergency exists over the whole of New Zealand or any areas or districts if an emergency appears to be outside the response capabilities of the CDEM Group. It appears from the broad definition of “emergency” in the CDEM Act that a state of emergency could be declared in the event of a major actual or potential oil spill. When a state of emergency is in force in the area the CDEM Group may, among other things, “carry out or require the removing or disposing of, or securing or otherwise making safe, dangerous structures and materials wherever they may be”, or “prohibit or regulate water traffic to the extent necessary to conduct civil defence management.” Sections 254 and 312 of the Act prohibit an OSC and the Director from issuing instructions that conflict with the exercise of a power by a person acting under the authority of the CDEM Act.

Notices to Mariners

New Zealand Notices to Mariners include information about new dangers to navigation, and changes to charts and nautical publications. Land Information New Zealand provides official nautical information to assist the safe navigation of ships and boats in New Zealand and Southwest Pacific waters.

Requesting a Notice to Mariners

Mariners are requested to immediately inform Land Information New Zealand, Private Box 5501

Wellington, New Zealand Phone: 0800 665 463 or (04) 460-0110 Fax: (04) 460-0161 or e-mail:

info@linz.govt.nz, of the discovery of new or suspected dangers to navigation, or shortcomings in charts and publications.

Establishing a Nautical Exclusion Zone

The Regional Council have the responsibility inside the coastal marine area, and Maritime NZ has the responsibility outside the coastal marine area for exclusion zones on the water.

For exclusion zones inside harbour limits contact the Regional Council Harbourmaster. For exclusion zones outside harbour limits, phone the RCCNZ on (04) 914 8380 and request that a Coastal Navigation Warning be issued. This warning will be delivered over all marine radio channels and Inmarsat C.

Temporary Restricted Airspace

On rare occasions it may be necessary to establish a temporary restricted airspace during an oil spill response. CAA do not usually support restricted airspace requests and this will only be possible if one of the establishment criteria listed below is met.

It is important that Restricted Airspace does not unduly limit the activities of other airspace users; the lateral and vertical dimensions must be kept to the minimum consistent with the safety and effectiveness of operations within it.

Criteria for establishing temporary restricted airspace

Each individual application for the designation of temporary restricted airspace will be assessed, and it may be justified if it falls within the following guidelines:

- there are a number of aircraft involved in a major fire fighting, search and rescue or civil defence operation and it is likely other aircraft will affect the safety of the operation (for safety within the civil aviation system);
- there is a major accident of radioactive, toxic or explosive materials that could endanger aircraft (for safety within the civil aviation system);
- there is an incident involving firearms that could endanger aircraft (for safety within the civil aviation system);

- there is a major aviation event involving a large number of aircraft or when there is significant aerobatics that could endanger other aircraft (for safety within the civil aviation system);
- there is concern regarding the security of a Head of State or equivalent requiring additional protection (in the interests of national security);
- other aircraft could inhibit the movement of emergency services to an accident or incident site, including civil defence action (in the public interest);
- a police operation depends on a prior media blackout such as a drugs raid or for the protection of juror identities (in the public interest); or
- a large public event requires the intrusion of aircraft to be restricted due to a major adverse affect on the event (in the public interest).

The designation of temporary restricted airspace in the following situations can only be justified when there are additional circumstances which meet the requirements of Section 29A of the Civil Aviation Act 1990:

- the presence of other aircraft (including media helicopters) at an accident or incident scene, but only if their presence inhibits the movement of emergency services; or
- body recovery operation is in progress from an accident scene, and the presence of other aircraft inhibits emergency services providing assistance.

Any request for the establishment of temporary airspace should be directed to the DAT initially, then to: The Civil Aviation Authority, (04) 560 9400.

NOTAM

A NOTAM contains any important information that could affect the safe flight of an aircraft or information that is required by the pilot to conduct safe operations. NOTAM are issued when there is not sufficient time to publish information and incorporate it into the AIPNZ or for changes of short duration. A NOTAM can be requested by completing a NOTAM Request Form or requesting via the Airways IFIS website at www.ifis.airways.co.nz.

NOTAM REQUEST FORM



PART 1 : CONTACT DETAILS			
Contact Person			
Contact Person			
Title			
Contact Telephone	()	Number of pages (including this page)	

****A copy of the issued NOTAM will be sent to the aerodrome Operator designated Fax or Email for verification****

PART 2 : NOTAM DETAILS			
NOTAM Type	New <input type="checkbox"/>	Cancel* <input type="checkbox"/>	Replace* <input type="checkbox"/>
*If you selected <u>CANCEL</u> or <u>REPLACE</u> , please indicate the previous NOTAM number -->			
A	Location		
B	Valid From Time	UTC/Local	FORMAT - YYMMDDhhmm
C	Valid To Time	UTC/Local	FORMAT - YYMMDDhhmm
D	Daily Schedule		
E	NOTAM Text		
			Extra Text Attached <input type="checkbox"/>
F	Lower and Upper Limit	FEET	

PART 3 : AUTHORISATION			
<i>The information in this NOTAM request is declared as accurate/authorized for promulgation.</i>			
Name			
Signature		Date	

FAX REQUEST TO: (03) 358 9192

For information on how to complete this form, please refer to the booklet "Publishing and NOTAM Guidelines for Aerodrome Operators", available on the Airways New Zealand IFIS website (www.ifis.airways.co.nz) under the "Publications" section.

Terrestrial Management

If the OSC intends to control public access to any road or public area, or requires the evacuation of persons, vehicles or ships from an incident area, this should be done with assistance from NZ Police. The police should be contacted if it is necessary to:

- evacuate persons, vehicles, or ships from an area;
- create cordoned areas; or
- ensure security within a cordoned areas (private security firms may also be required).

NZ Police, phone: (04) 474 9499.

Restricting a Fishing Area

The Ministry of Fisheries should be notified in the event of an oil spill. Phone the Head Office on (04) 819 4600 and ask for the relevant local area office. The local area office numbers are also available on the following website: <http://www.fish.govt.nz/>.