



Update - New Zealand's New Biofouling Standards

New Zealand has introduced a new standard requiring all vessels to have a "clean hull" on arrival in the country after 15 May 2018.¹ The objective is to minimise the introduction of unwanted harmful marine organisms into its territorial waters.² Owners and operators of vessels based in New Zealand, voyaging in and out of the country, or international vessels coming to New Zealand need to be aware of and comply with the new requirements.

The Craft Risk Management Standard

Under the Biosecurity Act 1993 (**the Act**), the Ministry for Primary Industries (**MPI**) is tasked with the effective management of the risk of introduction into New Zealand's territorial (**NZT**) waters of invasive aquatic species associated with vessels entering New Zealand and is empowered to create standards that vessels must comply with.³

In May MPI implemented a new standard for biofouling, called the Craft Risk Management Standard (**CRMS**). The CRMS applies to any vessel that will anchor, berth or be brought ashore in NZT waters after a voyage originating outside New Zealand and that intend to remain in New Zealand whether short or long term.

Short-stay vessels" are those intending to stay for 20 days or less and to only visit ports designated under section 37 of the Act as Places of First Arrival. "Long-stay vessels" are those intending to stay for 21 days or longer, or that will visit areas other than ports approved under the Act.

The CRMS requires that these vessels arrive in New Zealand with a "clean hull". The hull will be considered "clean" when no biofouling of live organisms is present, except within the defined thresholds. Short-stay vessels are permitted to have a slime layer and gooseneck barnacles plus small amounts of other fouling organisms. In comparison, long-stay vessels are only allowed a slim layer and gooseneck barnacles. For the hull to be considered clean there must be no other fouling on the hull or niche areas.

Vessels must provide evidence of biofouling management before they arrive in New Zealand.

How can a vessel meet the CRMS?

In principle, a vessel should be able to meet the CRMS requirements by doing one of the following and having documentation to prove it:⁴

¹ Please refer to [Hesketh Henry's Maritime Update dated February 2018](#).

² "Unwanted harmful marine organisms" are defined as being capable or potentially capable of causing unwanted harm to any natural and physical resources or human health.

³ New Zealand's territorial waters refer to the territorial sea and the internal waters which together comprise the sea surrounding New Zealand out to 12 nautical miles from an internal baseline as described in the Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977.

⁴ In certain circumstances, a vessel may not be able to meet the CRMS by following the management options described in this paragraph. In these cases, the vessel can develop a Craft Risk Management Plan (**CRMP**) to meet the biofouling requirements with different methods. MPI expects that cruise vessels, project vessels and some fishing vessels would be the main types of vessels which would require a CRMP (because of the unique operating profile

- Continual hull maintenance using best practices (recommended for short-stay vessels). This includes antifouling coatings, marine growth prevention systems on sea-chests and regular inspections and cleaning. Following the IMO Biofouling Guidelines is recognised as an example of best practices.
- Cleaning the hull less than 30-days before arrival in New Zealand (recommended for long-stay vessels).
- Conducting a hull treatment or cleaning within 24 hours of arriving into NZT waters, by an MPI-approved supplier (recommended for vessels coming to New Zealand for refit or repair).⁵ Currently there are no approved suppliers for in-water cleaning of international vessels in NZT waters. The only MPI approved biofouling treatment available in New Zealand for international vessels is cleaning at a dry dock or haul out. This is only available for vessels less than 120 metres at an MPI-approved Transitional Facility.

What must a vessel provide as proof to MPI?

MPI will ask to see evidence at least 48 hours prior to entry to NZT waters that one of the management options has been undertaken.

Evidence of compliance may include:

- A Biofouling Management Plan and a Biofouling Record Book;
- Current antifouling certificates including information on antifouling system coating;
- The vessel's operational history;
- Reports from a recent hull and niche area inspection or cleaning / treatment by suitably qualified people, with photos and videos.

If a vessel plans to submit dive inspection reports as evidence of hull maintenance, MPI's guidelines for diving service providers must be adhered to.⁶ Indeed, MPI has issued reporting guidelines to assist divers in complying with the CRMS. MPI prefers quantitative assessments referring to the presence of biofouling as percentage coverage and is less likely to accept qualitative assessments consisting of qualitative descriptions such as "typical" or "moderate". Dive inspection reports should include time and date stamped photographs or videos of any biofouling coverage and record of all organisms present on the hull of the vessel.

The information provided to MPI is used to carry out a biofouling risk assessment to determine whether the vessel presents a low, medium or high risk to New Zealand's biosecurity. The level of risk assigned to a vessel determines the level of verification that MPI Quarantine Offices will carry out. It is therefore important to ensure that all information and evidence provided to MPI is detailed and accurate.

Failure to comply with CRMS

MPI retains the power under sections 32 and 33 of the Act to take action where there are "*reasonable grounds to suspect that a craft in New Zealand territory contains any unwanted organism*". This statutory power may be exercised where the vessel has either not complied with one of the prescribed management options or cannot provide documentation or sufficient evidence of compliance.

that some of these vessels may have). The CRMP must be approved by MPI before the vessel departs for NZT waters.

⁵ Cleaning systems are those that physically remove biofouling from the hull and niche areas. Treatment systems are those that use a form of surface treatment such as heat, ultrasonic or chemical, or shrouding by encapsulation or enclosure to kill or render biofouling non-viable. All treatment and cleaning systems used within NZT waters on international vessels must be approved by MPI prior to use, as for the supplier.

⁶ You can access MPI's 'Guidelines For Diving Service Providers: Inspecting Vessels Arriving to New Zealand' here: <https://www.mpi.govt.nz/dmsdocument/27852/loggedIn>.

If this is considered to be the case, MPI may:

- Require a hull inspection upon arrival to New Zealand (to be done by an MPI-approved hull surveyor or company);
- Restrict the vessel's New Zealand itinerary;
- Require the vessel either to manage the biofouling risk within 24-hours (by being treated or cleaned by an approved provider)⁷ or to depart NZT waters; or
- Restrict the vessel re-entering New Zealand until sufficient evidence of hull cleaning can be provided.

As no in-water cleaning can occur on international vessels within NZT waters at present, if the vessel has biofouling on its hull that is in breach of the permitted thresholds, the vessel will be considered non-compliant with the CRMS and is likely to be ordered to leave New Zealand waters.

Experiences to date and recommendations

Hesketh Henry have provided advice to owners and charterers of bulk carriers that have been ordered by MPI to leave New Zealand and in relation to vessels that have had issues prior to calling in New Zealand. To further complicate matters, those vessels that were required to leave New Zealand were also denied entry to other Pacific ports for cleaning. Cleaning was eventually undertaken by teams from New Zealand in international waters at considerable cost.

As noted above, MPI are yet to approve in-water cleaning within New Zealand's territorial waters. Unhelpfully, there are limited options for dry docking and cleaning for commercial vessels within New Zealand. If no cleaning has been done prior to arriving in New Zealand and is required to meet the CRMS, it is likely that this will have to be done in international waters. Such cleaning will be dependent on the weather conditions and the availability of diving service providers to clean the hull. Certain areas outside of New Zealand's territorial waters are not considered appropriate for hull cleaning by MPI due to strong currents which it considers will bring in organisms that will threaten aquatic life in coastal areas.

Owners and charterers that do not understand the stringent requirements under CRMS risk delays and considerable costs if turned away from New Zealand by MPI. Hence, we strongly recommend that before a vessel leaves its last port, owners and charterers ensure the vessel has complied with CRMS and has the evidence to prove it.

Given the potential costs, loss of time and reputational risk associated with an order to leave New Zealand and undertake emergency hull cleaning elsewhere, it is also recommended that owners and charterers of vessels check that charterparties include clauses that clearly set out the obligations for complying with the new standard and allocate responsibility for any failure to do so.

Our specialist Maritime Law team at Hesketh Henry can assist with reviewing your charterparties, ensuring your vessel meets the CRMS, understanding the health and safety requirements of offshore hull cleaning and dealing with any issue arising before or once in New Zealand waters. Please contact us for further advice.

⁷ Note there are currently no MPI-approved providers in New Zealand.