



environment
SOUTHLAND
REGIONAL COUNCIL
Te Taiao Tonga

Deed of Agreement

Between

Cruise Ship Operators

and

Environment Southland

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Environmental Partnership, Deed of Agreement between Cruise Ship Operators and Environment Southland

Dated the day of 2021

Parties

The entities listed in clause 19 (Cruise Ship Operators).

Southland Regional Council, a Regional Council pursuant to the Local Government Act 2002 (Environment Southland).

Background

- A. Environment Southland is the regional council for the Southland region.
- B. The Coastal Marine Area (CMA) referred to is that area adjacent to Southland region under the management and control of Environment Southland.
- C. Parts of the Internal Waters of the CMA adjacent to the Fiordland National Park and Stewart Island/Rakiura are subject to growing environmental management pressures brought about in part by the expansion of the number of visits of cruise ships.
- D. The increasing level of ship activity has increased the level of management activity that Environment Southland considers it necessary to undertake in order to meet its statutory obligations under Resource Management Act 1991.
- E. The parties have entered into this Agreement for the purpose of setting out their respective rights and obligations and as an alternative to the regulatory provisions of the Regional Coastal Plan.

The Agreement

1. Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires:

Annual Consultative Meeting [ACM] has the meaning set out in clause 8.

Business Day means a day on which banks are open for business.

Contaminant includes any substance (including gases, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar or other substances, energy, or heat—

- (a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or
- (b) when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged (S.2 RMA 1991).

Cruise Ship means any ship at or over 1000 gross tons (International Convention System) the main purpose of which is to carry passengers for hire.

CMA means the coastal marine area of the Southland region.

Environment Southland [ES] is the brand name of the Southland Regional Council, and includes Council, and where authorised, its officers, contractors, agents and appointees.

Environment Southland Marine Fee [ESMF] is the name of the fee established under clause 7 of this Agreement.

Internal Waters means the internal waters of Fiordland and Stewart Island/Rakiura as identified in the charts in Appendix A to this Agreement. Within the terms of this Agreement, cruise ship operators party to this Agreement can operate in the 'green' areas, without the need for further resource consent. Resource consent(s) is required for any cruise ship or related activity in the 'red' areas.

MARPOL means the International Convention for the Prevention of Pollution from Ships.

MNZ means Maritime New Zealand.

NZCA means New Zealand Cruise Association Incorporated which is the current incorporated body under the Incorporated Societies Act 1908.

Port agents are responsible for organising, overseeing and coordinating all aspects of shipping services.

RCP means the Regional Coastal Plan for Southland publicly notified on 15 February 1997 and includes the Regional Coastal Plan and any amendment to either document.

RMA means the Resource Management Act 1991.

Zero discharge for the purposes of clause S6.2.3 of the Schedule means no discharge of contaminants.

1.2 **Terms** not defined in this Agreement shall have the meaning given to them in the RCP, RMA or the New Zealand Oxford Dictionary.

1.3 **Headings**

Clauses and other headings are for ease of reference only and do not form any part of the context nor affect the interpretation of this Agreement.

1.4 Parties

Reference to parties is to the parties to this Agreement.

1.5 Defined Expressions

Expressions defined in the main body of this Agreement bear the defined meaning in the whole of this Agreement, including the appendices and schedule.

1.6 Plural and Singular

Words importing the singular number shall include the plural and vice versa.

1.7 Negative Obligations

Any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.

1.8 Statutes

A reference to a statute includes reference to the statute, regulations, orders or notices and amendments made pursuant or in substitution to that statute or regulation.

1.9 Clauses and Appendices

References to a clause, appendix or schedule will be construed as references to a clause in or an appendix or schedule to this Agreement.

1.10 Whole Agreement

This Agreement includes the appendices and schedules to it, which shall be read with and deemed to be part of the Agreement.

2. Parties to Agreement

2.1 The parties to this Agreement shall be the signatories.

2.2 A body or person signing this Agreement in accordance with clause 2.1 shall be a party from the date of signing unless it is otherwise agreed between ES and that body or person. Those signatures bind the owners, operators, master and crew of those cruise ships who become parties to the Agreement.

2.3 Any cruise ship operator may by 31 March in any calendar year, give notice in writing to ES requesting withdrawal from this Agreement. From the effective date of withdrawal, the provisions of this Agreement shall cease to apply to it, provided that withdrawal in accordance with this clause shall not affect that party's liability for any monies owing to ES in accordance with this Agreement or prejudice the right of ES to recover the same.

- 2.4 In withdrawing from this Agreement, the provisions and requirements of the Regional Coastal Plan (RCP) will apply, including any requirement to apply for resource consent(s).

3. Purpose of Agreement

- 3.1 The purposes of this Agreement are to:

- Enable managed access to unique parts of New Zealand's CMA and a World Heritage area;
- Foster and promote the sustainable management of the Internal Waters in a manner consistent with the principles and provisions of the RCP and RMA;
- Meet ES's coastal management and control obligations in the CMA generally; and
- Provide a collaborative management framework between ES and cruise ship operators allowing as far as possible the management and growth of cruise ship operations in the Internal Waters.

- 3.2 In carrying out their obligations of this Agreement the parties shall use their best endeavours to ensure that the purposes of this Agreement are adhered to and promoted. Any interpretation of this Agreement shall be such as best promotes the purposes set out in this clause.

- 3.3 Failure to comply with the provisions and terms of this Agreement may result in ES requiring resource consent(s) from the cruise ship operator concerned.

4. Relationship of Agreement to RMA and RCP

- 4.1 This Agreement applies only in respect of cruise ship activities in the Internal Waters.

- 4.2 Cruise ship operators, that are signatories to this Agreement, will be complying with Rule 13.1.1 (a)(i) of the RCP (see Annex 1). Compliance with the terms and conditions of this Agreement will comply with Rule 13.1.1 (a)(ii) and (iii) such that resource consent is not required with respect to activities referred to in Chapter 13 of RCP.

- 4.3 This Agreement does not exempt cruise ship operators from obligations and duties under the RMA or RCP, that this Agreement does not specifically or by reasonable implication deal with.

- 4.4 This Agreement does not permit cruise ship operators to discharge any contaminants to air or water where those discharges are explicitly required to be authorised under the RMA, RCP or resource consent.

5. Environmental Obligations of Cruise Ship Operators

When operating cruise ships in the Internal Waters the cruise ship operators, including the master, and crew, and pilots shall adhere to the obligations on them as set out in clause S6 of the Schedule.

6. Number and Timing of Visits to Internal Waters

- 6.1 All scheduling and duration of cruise ships in and through the Internal Waters shall be co-ordinated between port agents and ES. Port agents shall submit a schedule of intended cruise visits for the forthcoming year/season to ES in July of each year, or at any other mutually agreed time. Any subsequent alterations to scheduling and duration shall be notified by the cruise ship operators to the port agent, who in turn will notify ES. Changes shall be approved by ES in advance.
- 6.2 As per Rule 13.1.1 (a)(iii) of the RCP, parties shall ensure that no more than two cruise ships shall enter any waterway, passage, fiord, bay or inlet in any one day.
- 6.3 ES retains the power to refuse to allow the visit of any particular cruise ships identified in the schedule or any part of it, on the following grounds:
- (a) That the number of cruise ships specified and the scheduling and duration of visits is inconsistent with the provisions of the RCP; and
- (b) In the case of any particular cruise ship(s):
- Previous misconduct in Internal Waters or breach of obligations under this Agreement; and/or
 - The vessel's environmental systems and management practices fail to meet international standards.
- 6.4 In the event of any refusal under clause 6.3, the cruise ship operator in question shall have the opportunity in the first instance, to put their case to a formal meeting of ES. If a decision by ES is made to endorse the refusal under clause 6.3, the provisions of clause 17 may then apply. Unless explicitly stated to the contrary by ES in its decision, the provisions of this Agreement will not apply to the specified cruise ship or ships in the sailing season or seasons subsequent to the decision being made in clause 6.3. A resource consent application would be required for any particular cruise ship(s) in this situation.

7. Environment Southland Marine Fee

- 7.1 Each cruise ship operator shall pay to ES a fee to be known as the Environment Southland Marine Fee (ESMF), for each cruise ship visit in or through the Internal Waters.
- 7.2 The purpose for which the ESMF will be used is to assist ES to manage the coastal marine area of Southland and shall include any costs ES incurs with harbour management and navigation and safety activities. For clarity, such costs will not include port dues or port charges such as costs of pilots, tugs, wharf infrastructure or cargo handling. These latter costs are outside the scope of ES responsibilities.
- 7.3 ES shall invoice the relevant New Zealand shipping agent on completion of each cruise ship visit. Payment shall be received by ES within seven days of receipt of the invoice by the New Zealand shipping agent and made without deduction.
- 7.4 The ESMF shall be calculated as follows:
- Total Gross Tonnage of cruise ship x \$NZ 0.385 cents, plus GST if applicable.
- 7.5 The ESMF will increase every two years unless otherwise agreed by the parties at the same level as the total average Consumer Price Index (CPI) from each of the two preceding years.
- 7.6 Where a cruise ship operator cancels a visit through the Internal Waters of Fiordland within sixty (60) days of the scheduled visit, for any reason other than those listed below, a cancellation fee shall be payable and will be invoiced by ES following cancellation. The cancellation fee shall not apply:
- (a) If cancellation is caused by inaccessibility for reasons beyond the cruise ship operator's control;
 - (b) If the cruise ship is unable to visit because of a decision or action of ES or any other government body or official agency in New Zealand (including travel limitations or restrictions);
 - (c) If adverse weather during the cruise ship's itinerary prevents passage or forces the ship to change itinerary; or
 - (d) Because of force majeure, including ship technical issues and any medical matter that causes an itinerary disruption.
- 7.7 The cancellation shall be fixed at 25% of the anticipated ESMF as if the visit had occurred.

8. Annual Consultative Meetings and Review of Agreement

- 8.1 New Zealand Cruise Association (NZCA), Cruise Lines International Association (CLIA), port agents and cruise lines shall be invited to meet with ES annually at an agreed time, to consider the following matters:

- Previous year's visits and any matters arising from those visits;
- Review of ES's coastal activities for past year;
- Preview of forthcoming year's monitoring programmes and projects that will be included in ES's next available Annual Plan round;
- Update on ES's coastal management activities proposed for the forthcoming year;
- Level of visits for forthcoming year;
- Any technology and/or environmental advances, improvements and issues relating to the operation of cruise ships;
- Any need for a review of this Agreement; and
- Other matters of relevance or mutual interest.

8.2 If, as a result of any matter arising out of an annual consultative meeting (ACM), the parties agree that there is a need to review the Agreement, ES and a properly appointed delegate or representative of cruise ship operators shall use their best endeavours to agree on amendments.

8.3 Amendments

- (a) This agreement may not be amended or varied in any way unless such amendment or variation is made in writing and approved by ES and all signatories.
- (b) Any amendment agreed shall be binding on all parties unless that party advises ES in writing. In such a case, the party shall be deemed to have withdrawn from the Agreement.

9. Insurance and Indemnity

9.1 Each cruise ship operator shall hold insurance with a reputable insurance firm for an amount suitable to cover the liability assumed by it under this agreement. ES has the right to request evidence of this insurance.

9.2 The insurance referred to in clause 9.1 means that:

- (a) The cruise ship operator shall save, hold harmless, defend and indemnify ES in respect of all losses, claims, actions, damages, judgements and expenses incurred by, claimed or awarded against ES attributable to any act or omission on the part of the cruise ship operator, its servants, agents, contractors and passengers, arising out of the cruise in the Internal Waters; and
- (b) The cruise ship operator warrants that any vessel that it operates within the Internal Waters will hold P&I Insurance with a P&I Association that is a member of the International Group of P&I Club.

9.3 Indemnity

Each cruise ship operator indemnifies, and will keep indemnified, ES from and against any losses, damages, costs, actions, proceedings, claims and demands which ES incurs or is subject to (including any reasonable legal fees or amount paid by way of settlement) as a direct result of any failure by the cruise ship operator to perform its obligations under this agreement or any wilful or negligent act or omission of the cruise ship operator in the course of performing its obligations under this agreement. Indemnity will apply only to direct losses/costs reasonably incurred and will not apply to the extent any loss or damage is caused or contributed to by ES or any of its contractors or agents. The Parties agree that this clause 9.3 will survive the termination of this agreement.

10. Term of Agreement

10.1 The term of this Agreement shall expire on 1 October 2030 or the date a new RCP is made operative, whichever occurs first.

10.2 Negotiations should commence prior to expiry of this Agreement, and a further one-year transition period shall apply if necessary. This transition period recognises that cruise itineraries are planned two years in advance and the subservient nature of this Agreement to the RCP.

10.3 At the ACM immediately prior to the termination of this Agreement the Parties shall consider:

- Renewal/new agreement; and
- Terms.

11. Termination for Cause

11.1 ES may terminate this Agreement in regard to any cruise ship operators for the following reasons:

- Significant breach and/or non-compliance by the cruise ship operator of any of the provisions of RMA and/or RCP (as it applies to activities under this Agreement);
- Failure to hold insurance in terms of clause 9;
- Serious breaches of rules and/or indiscretions relating to safety and good navigation practices; or
- Wilful failure on the part of the cruise ship operator to follow the reasonable directions of ES or MNZ.

11.2 Notice of termination shall be in writing and shall specify the reasons for the termination (arbitration clause to apply as to validity and/or reasonableness of the notice of termination) and the time and date proposed for the termination

with the final date of termination being subject to any arbitration decision in terms of clause 17.

- 11.3 For the avoidance of doubt, if the Agreement is terminated in respect of any cruise ship operator the benefits covered on the cruise ship operator shall cease from the time and date of the termination (as fixed by arbitration if any arbitration occurs) and all of the provisions of the RCP including Chapter 13, shall apply to the activities of that cruise ship operator in the Internal Waters.

12. Notices

12.1 Written Notice

All notices and other communications to be given under this agreement must be in writing and be addressed to the Party to whom it is to be sent at the physical address, postal address or email address designated by that Party in writing to the other Party.

12.2 Deemed Delivery

Any notice or communication given under this agreement shall be deemed to have been received:

- (a) by hand: if delivered by hand, at the time of delivery;
- (b) by post in New Zealand: if sent by post or courier within New Zealand, three Business Days after the date of mailing;
- (c) by post from overseas: if posted, couriered or delivered from overseas, 10 Business Days after the date of mailing; or
- (d) by email: if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by a recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.

- 12.3 A designated address for the cruise ship operator and its New Zealand port operator for the purposes of this Agreement shall be those as set out in the Schedule, or, as supplied by a port agent at the ACM, or, as the relevant cruise ship operator advises in writing.

13. Waiver

No party shall be deemed to have waived any right under this Agreement unless such waiver is in writing and signed by such party. Any such waiver by a party of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent or

continuing breach of such provision or of the breach of any other provision of this Agreement by that party.

14. No Assignment

No cruise ship operator may assign its interests under this Agreement, except with the prior written approval of ES, which shall not be unreasonably withheld. Any change in the effective control of a cruise ship operator, as noted in the Annual Visits Schedule as submitted by a port agent in May each year shall be deemed to be an assignment.

15. Governing Law

This Agreement will be governed by and construed in accordance with the laws of New Zealand.

16. Submission to New Zealand Jurisdiction

Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of New Zealand for the purpose of hearing and determining any disputes or proceedings arising out of or in connection with this Agreement.

Invercargill shall be deemed to be the place nearest to where any dispute or material part of any dispute arose.

17. Dispute Resolution

17.1 If any difference or dispute arises as to the interpretation of this Agreement or as to any other matter arising out of or in connection with this Agreement then the parties in dispute shall by notice in writing served on the other party or parties to the dispute set out the details of the difference or dispute.

17.2 The parties undertake to use their best endeavours to resolve any difference or dispute between them by amicable and bona fide negotiation or by utilising appropriate alternate dispute resolution techniques.

17.3 Where a difference or dispute remains unresolved for more than one month, the parties or any of them shall be entitled to refer such difference or dispute to arbitration in accordance with the Arbitration Act 1996 or its amendments passed in substitution.

17.4 The decision of the arbitrator is final and binding on both parties.

17.5 Nothing in this clause shall entitle any party to arbitrate any matter which is the statutory responsibility of ES to decide.

18. Entire Agreement

- 18.1 This Agreement constitutes the entire agreement and understanding of the parties relating to the matters dealt with in this Agreement and supersedes and extinguishes any previous agreement (whether oral or written) between the parties in relation to such matters.
- 18.2 For the avoidance of doubt, this Agreement replaces the Deed of Agreement between the parties dated 1 October 2008, and the terms of this Agreement will apply from 01 January 2021.

19. Accession to the Deed

- 19.1 The cruise ship operator acknowledges that it has been given a copy of the entire Deed of Agreement and has read and understands its terms.
- 19.2 With effect from the date of this deed, the cruise ship operator agrees that it will become a party to the Deed of Agreement and will be legally bound by its terms.
- 19.3 The cruise ship operator agrees that, for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017, this deed is made to confer a benefit on, and is intended to be enforceable by, the parties and any other party or parties who may, after the date of this deed, become a party to the Deed of Agreement.
- 19.4 The deed will be governed by, and construed in accordance with, the laws of New Zealand and the cruise ship operator irrevocably submits to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this deed.

Signed for and on behalf of the **Southland Regional Council** and by affixing the common seal:



[Chairman]



[Chief Executive]

21 April 2021

[Date]



Signed for and on behalf of:

[Name of Cruise Ship Operator]

[Signature]

[Date]

Name of Cruise Ship Operator	Name/s of cruise ships covered by the agreement

Annex 1 – Rule 13 of the Regional Coastal Plan

Rule 13.1 - Cruise Ships within the internal waters of Fiordland and Stewart Island

- 1 Within:
 - i Milford Sound
 - ii Thompson Sound
 - iii that part of Doubtful Sound extending from open coastal waters to a line between Joseph Point and Espinosa Point, excluding First Arm and areas east of First Arm
 - iv Breaksea Sound west of Acheron Passage
 - v Acheron Passage
 - vi Dusky Sound west of the western end of Cooper Island
 - vii Halfmoon Bay
 - viii Paterson Inlet
 - a it is a permitted activity for cruise ships to enter into and pass through such waters, provided that:
 - i the operator of the ship is a party to the “Environmental Partnership, Deed of Agreement between the New Zealand Cruise Ship Industry and Environment Southland”.
 - ii except for Milford Sound, Paterson Inlet and Halfmoon Bay:
 - a no passengers are on-loaded or off-loaded onto shore or into other ships
 - b no anchoring or mooring takes places
 - iii no more than two cruise ships shall enter any water way, passage, fiord, bay or inlet in any one day.
 - b except as provided for by paragraph (a) above, it is a discretionary activity for cruise ships to enter into and pass through such waters;
- 2 Except as provided for by (1) above, it is a non-complying activity for cruise ships to enter into and pass through the internal waters of Fiordland and Stewart Island.

Explanation - Cruise ship intrusions are not compatible with a remote wilderness environment. Therefore, the waters available to these ships are confined to the most commonly used waterways where some encounters with other ships can be expected. This Rule will reduce such intrusions in a significant part of Fiordland and Stewart Island.

In areas, other than those referred to in (1), the outstandingly high natural, wilderness, ecological, isolation and heritage values must be protected. As a consequence, it will generally not be appropriate for cruise ships to enter such waters even for a limited duration.

Appendix A – Charts of Internal Waters

Visits by cruise ships to areas other than those shaded green on these charts are either prohibited in the RCP or require a specific resource consent to be sought from ES prior to the visit.

The anchorages shown on the charts are those identified by ES as being the positions normally used by vessels that operate under this Agreement. Any changes or additions to those positions shown requires endorsement at the ACM. It is recognised that any other anchorage may be used at the discretion of the ship's Master or Pilot during times of adverse weather or in the event of an emergency.

The charts include:

Chart 1	Milford Sound
Chart 2	Poison Bay (Temporary anchorage option ONLY – Not to be used for cruising purposes)
Chart 3	Thompson and Doubtful Sounds
Chart 4	Breaksea and Dusky Sounds and Acheron Passage
Chart 5	Halfmoon Bay and Paterson Inlet, Stewart Island/Rakiura

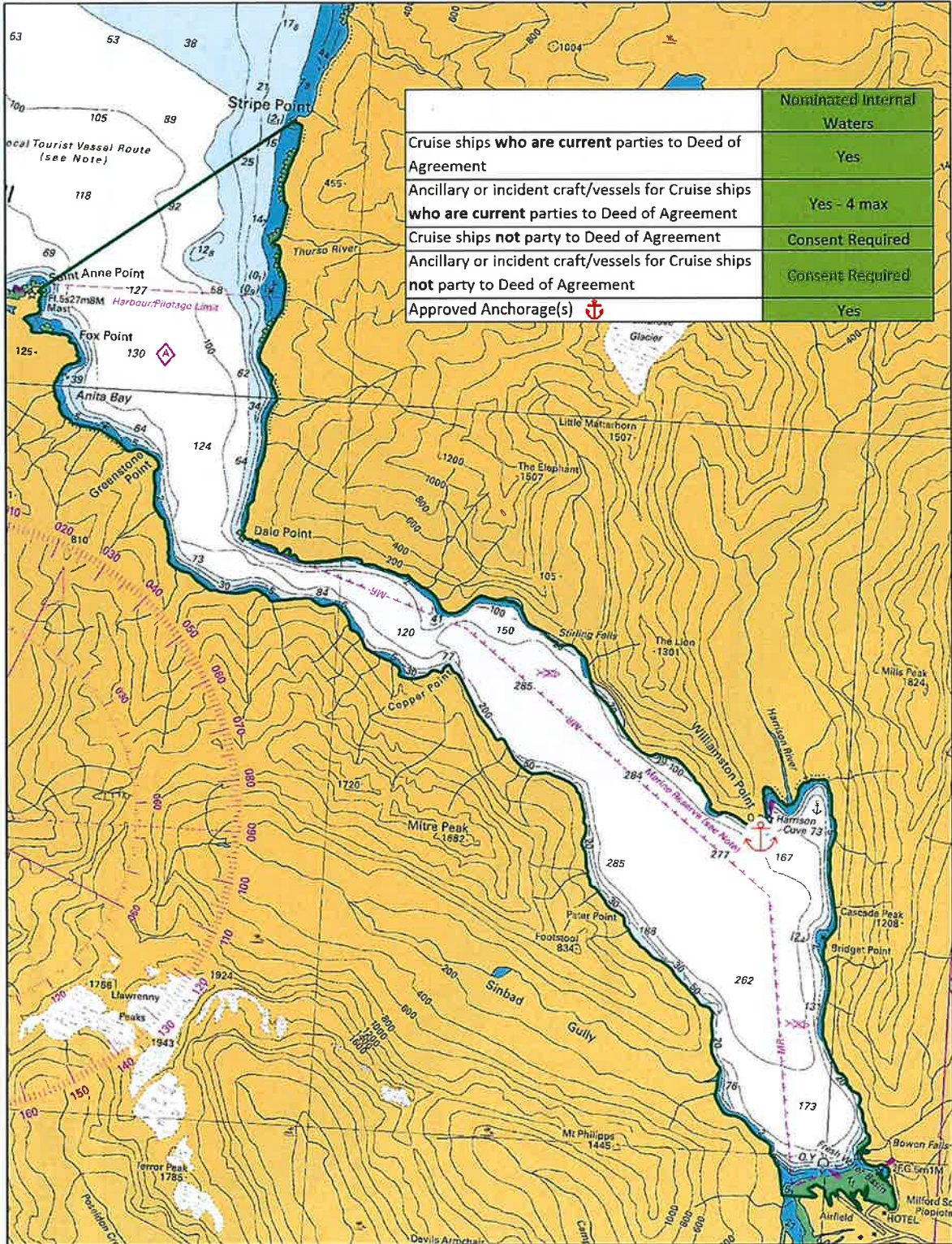
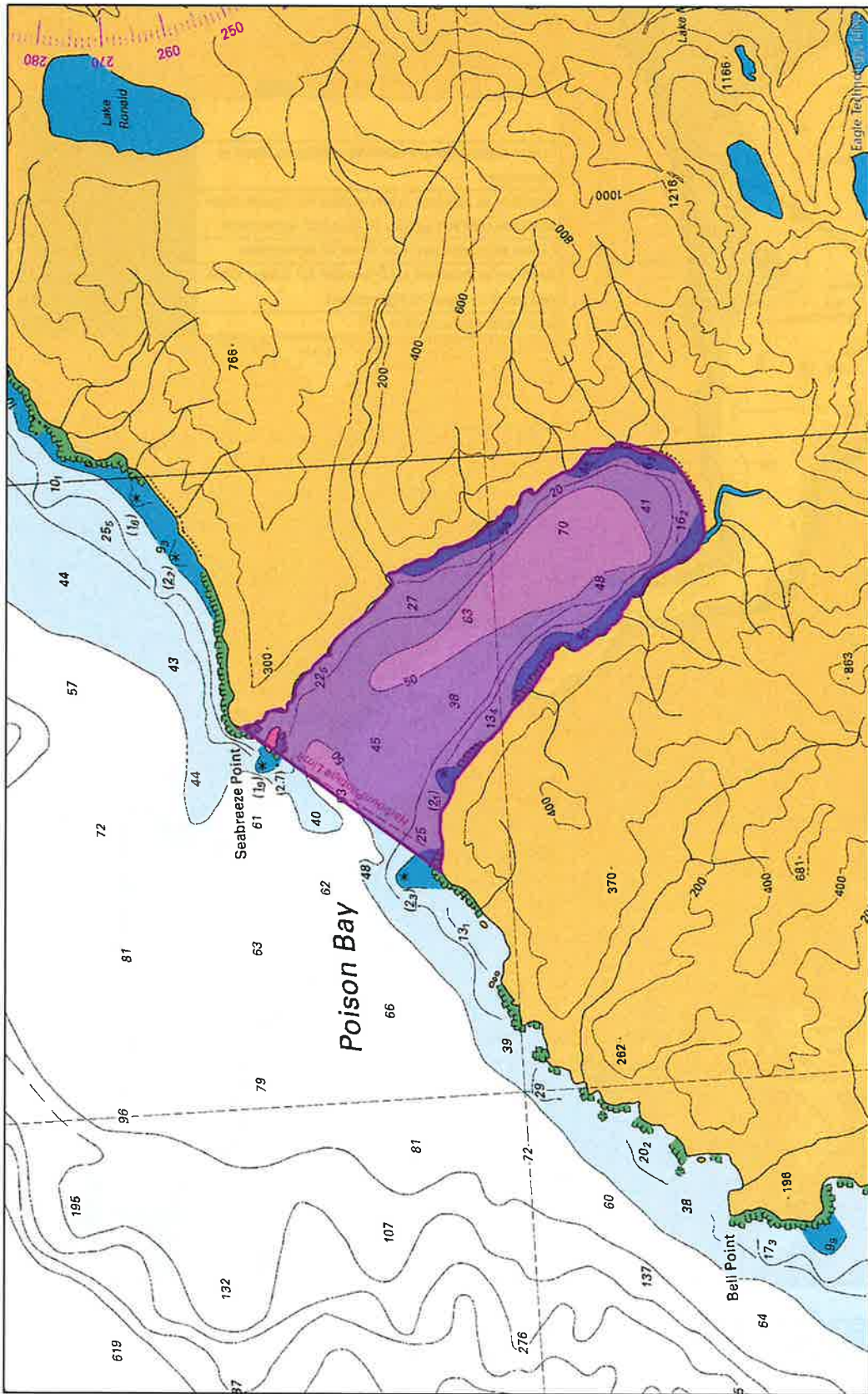


Chart 1 - Milford Sound
Date: 16/06/2020

1:60,000

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**TEMPORARY ANCHORAGE OPTION ONLY
NOT FOR CRUISING PURPOSES**

Entry only by Pilot and with prior agreement of Regional Harbourmaster

Chart 2 - Poison Bay
Date: 16/06/2020



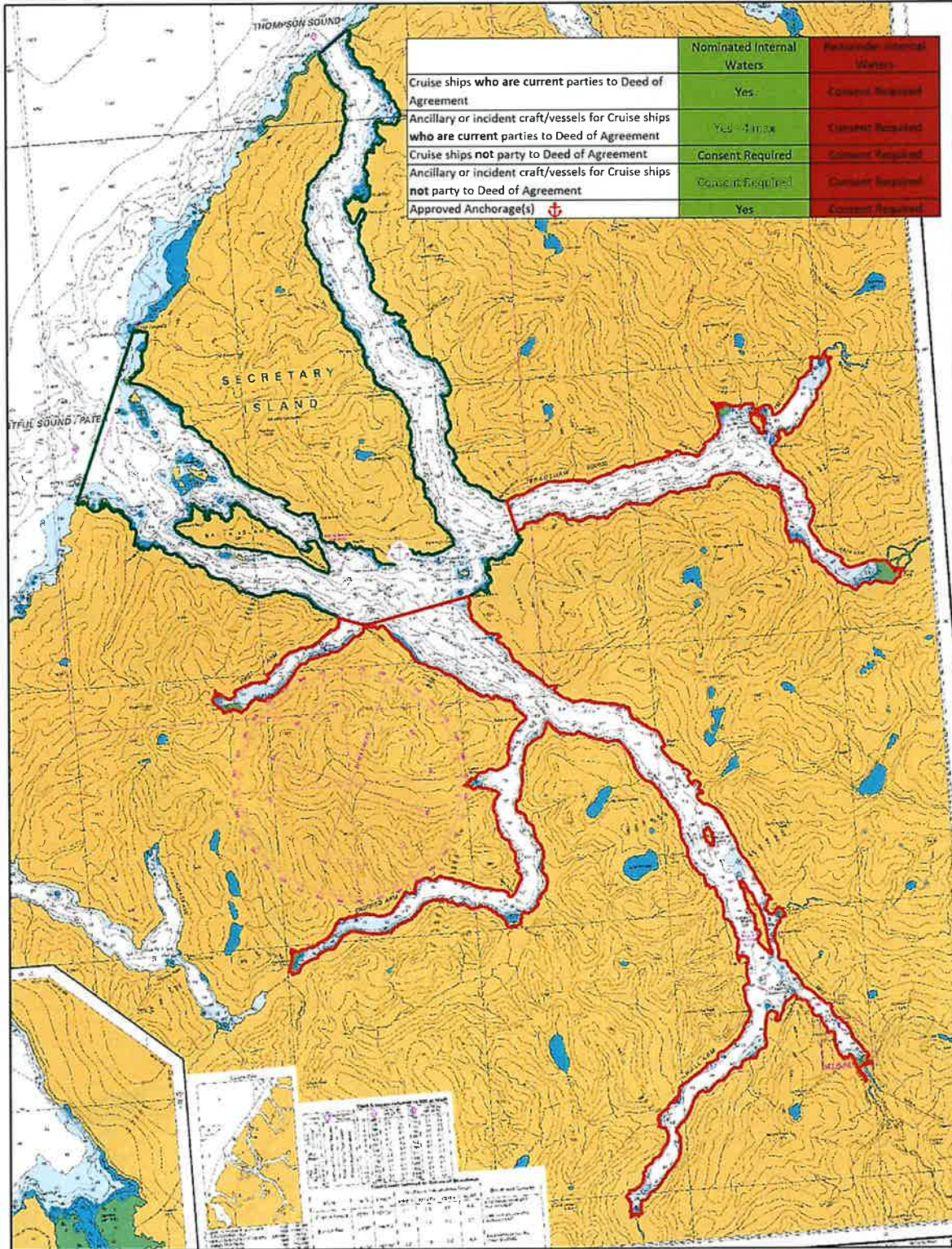


Chart 3 - Thompson and Doubtful Sounds
Date: 16/06/2020

1:160,000

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DATA SOURCE: LS GIS 2/20

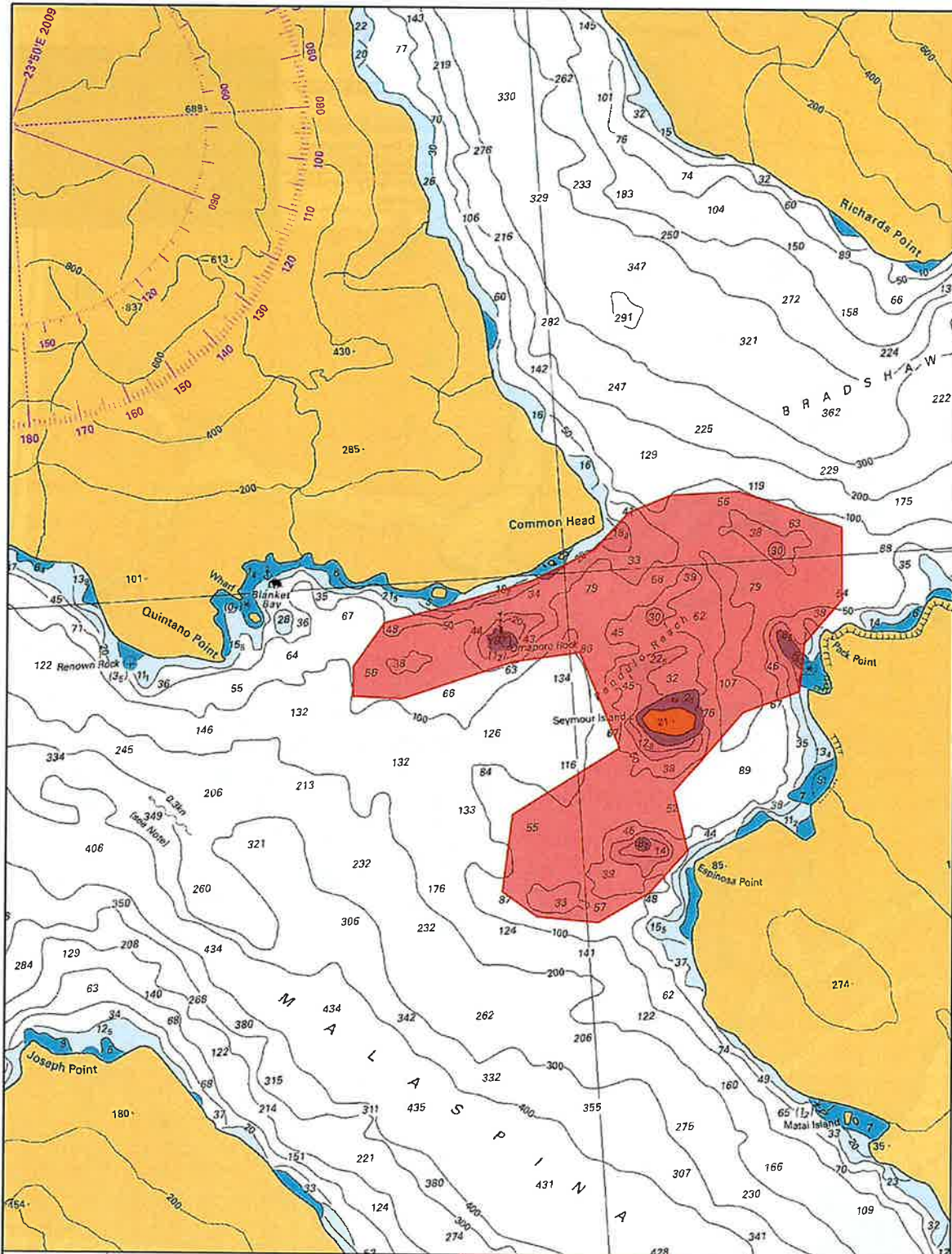


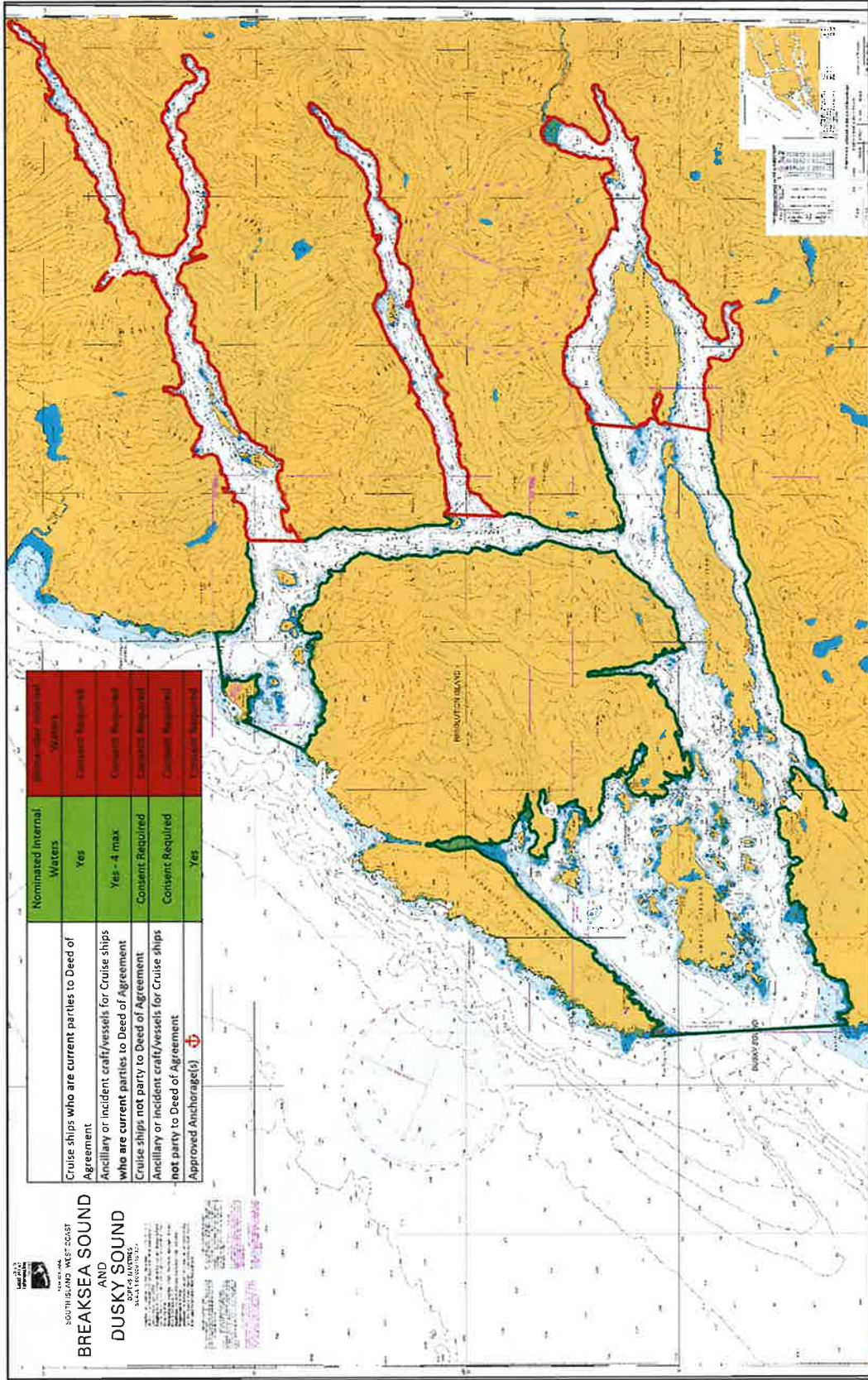
Chart 3a - Thompson and Doubtful Sounds
Sensitive Areas - Anchoring Prohibited
 Date: 16/06/2020

No Anchorage

1:25,000

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DATA SOURCE: LS GIS 2020



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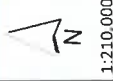
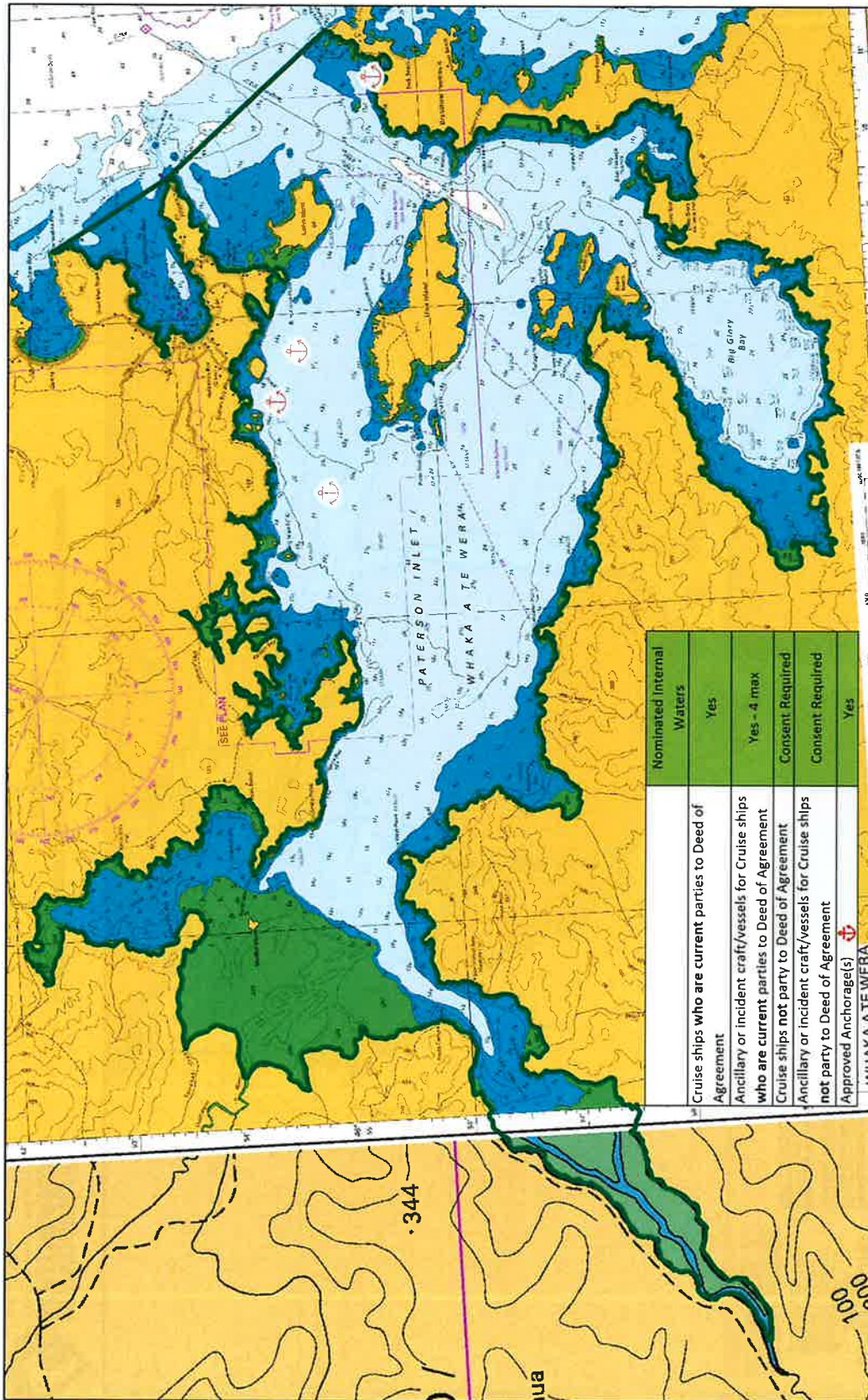


Chart 4 - Breaksea Sound, Dusky Sound and Acheron Passage
Date: 16/06/2020

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Chart 5 - Halfmoon Bay and Paterson Inlet
 Date: 16/06/2020

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Appendix B – Contact Details

Environment Southland

Phone: During normal office hours (8.00 am–5.00 pm Monday to Friday
excluding public holidays) – +64 3 211 5115
Outside normal office hours (24hr answering service) – +64 3 211 5115

Fax: +64 3 211 5252

Email: service@es.govt.nz

Personnel: Policy and Planning Manager

Maritime Manager/Regional Harbourmaster
Marine Oil Spill Regional On-Scene Commander

Port Agents

ISS-McKay Ltd

Richard Carvalho Cruise Operations Manager
Phone: +64 (09) 3740372
Mobile: +64 (0) 272046634
Direct Email: Richard.carvalho@iss-mckay.co.nz
Cruise Dept: cruise@iss-mckay.co.nz

Wilhelmsen Ships Service Limited

Nigel Smith Ship Agency Manager New Zealand & Pacific Islands
Phone: +64 9 8494783
Mobile: +64 21 743900
Email: nigel.smith@wilhelmsen.com

Schedules

S1. Introduction

- S1.1 The rapid expansion of tourism and in particular eco-tourism in and around the Southland coast over the last decade has given a new urgency for different environmental management solutions. The Fiordland and Stewart Island/Rakiura coastal areas of Southland in particular are the present destinations of interest for tourism operators, including increasing cruise ship visits.
- S1.2 The Fiordland National Park and associated World Heritage Area, and Rakiura National Park and Stewart Island/Rakiura provide considerable draw cards for visitors to the Southland region. The Parks have an extensive coastline/coastal interface which also acts as the boundary between two management regimes that belong to the Department of Conservation (as the Park Manager under the National Parks Act) and ES (as the Coastal Manager under the Resource Management Act (RMA), in conjunction with the Minister of Conservation).
- S1.3 The potential for the increasing level of cruise ship activity to adversely impact on the coastal environment is a contributing factor to the increase in the level of management activity that ES has to undertake the CMA. Consent holders in the area contribute through their consent processes to the ongoing monitoring of their activities and consent compliance. Cruise ships do not at this point have any such similar requirements and because of that there are equity concerns for the Southland community.
- S1.4 The cruise industry has stated that it is dedicated to preserving the marine environment and oceans upon which their ships sail. The industry, through CLIA, representing around 50 international cruise companies, has developed responsible environmental practices that lead in environmental stewardship. CLIA's oceangoing members follow waste management and recycling practices to prevent waste in oceans. CLIA's Waste Management Policy states:

"The cruise industry is inextricably linked to the environment. Our business is to bring people to interesting places in the world, by travelling via water. The future of the industry depends on a clean and healthy environment. Cruise industry senior management has demonstrated its commitment to stewardship of the environment by establishing industry practices that will make CLIA members leaders in environmental performance".

Worldwide, cruise lines are embarking on projects to create social benefits and help minimise their impact on the environment. Cruise ship operators acknowledge their commitment to reduce carbon emissions from cruise ships, including working to meet CLIA's target to reduce the rate of carbon emissions by 40% by 2030 (compared to 2008) and relevant IMO targets. Investment is now focused on ships with energy-efficient technology and cleaner fuels.

S2. Relationship of Agreement with RMA and RCP

- S2.1 This Agreement deals with the issue of potential environmental impacts of cruise ship activity within the Southland CMA and implements the requirements of the RMA provisions and those of the RCP.
- S2.2 All parties to the Agreement are bound by the terms and conditions of the Agreement. The intent is not to duplicate the provisions and consent regimes imposed on cruise ship operations as set out in the RCP while an operator is a signatory to this Agreement. To remove any doubt, this Agreement is complying with Rule 13.1.1 (a)(i) of the RCP. Compliance with the terms and conditions of this Agreement will comply with Rule 13.1.1 (a)(ii) and (iii) such that resource consent is not required with respect to activities referred to in Chapter 13 of RCP. The RCP provisions specifically recognise this Agreement.
- S2.3 It should be noted however that the provisions and exclusions provided for in this Agreement do not exempt the parties from their general duties and obligations under the RMA or any other legislation. The majority of discharges from ships, whether they be to water or to air, are covered by national and international legislation such as MARPOL, or other maritime rules. However, the cruise ship operators party to this Agreement will implement and operate a 'zero discharge' regime while in the Southland CMA. Any changes to the legislation or rules that are applicable to the intent of this Agreement will be automatically considered to be part of this Agreement and will be formally included in the Agreement as part of any review.
- S2.4 Any cruise ship operator who is not a party to this Agreement will be required to meet the provisions of the RCP in order to operate within the Southland CMA. These operators will be required to undertake resource consent applications for their operations as set out in Section 13 of the RCP.

S3. Environment Southland's Coastal Management Obligations

- S3.1 Under both the RMA and other legislation, ES is responsible for the development and implementation of the RCP and for ongoing management of the CMA under both the RMA and RCP. The RCP forms the environmental management framework for Southland's coastal marine area and coastal environment.
- S3.2 Since its inception, the Council has been concerned with the cost of its coastal management activities particularly around Fiordland and Stewart Island/Rakiura. The region only has 3 % of the country's population, but is expected to manage 17 % of the country's coastline (3,095kms) much of which is nationally or internationally significant, and adjoins a vast amount of non-rateable land held for the benefit of the nation as a whole. Local residents bear a disproportionate amount of the management cost compared to other beneficiaries.

S3.3 ES's coastal management activities include but are not limited to:

- Development and implementation of the RCP;
- Administration;
- Research;
- Environmental Education;
- Information dissemination;
- Coastal State of the Environment Monitoring;
- Consent Monitoring;
- Coastal Permit processing and monitoring;
- Enforcement (including complaint response);
- Regional level Oil Spill Contingency Planning and Response;
- Navigation and safety functions; and
- Harbourmaster responsibilities.

S4. Benefits to the Cruise Ship and Tourism Industry

S4.1 As the world and potential cruise line passengers become more discerning over which line they should travel on, combined with the increase in competition within the industry as more new cruise ships enter the market, it is important to have an edge. The cruise ship industry is achieving significant advances internationally in its responses and action on environmental matters relating to the industry.

Despite only comprising around 1% of the world shipping fleet, the cruise industry is leading the way in responsible practices and the use of innovative technologies. Commitments have been made to improve exhaust gas cleaning systems, increase shore-side power capability and increase the use of liquefied natural gas and advanced wastewater treatment systems on-board ships.

S4.2 Benefits to the industry from of this Agreement could include but are not exclusive to:

- (a) Immediate and tangible benefit for operators is that they do not need to seek and obtain resource consents under the provisions of the RCP to enter the Southland CMA, thus saving time and costs from such processes;
- (b) Improved research, management and information programs through an environmental partnership;
- (c) An enhanced coastal environment within the Southland coastal marine area to retain the area as a destination of demand for cruise ship companies and passengers by providing the opportunities for maximum flexibility in cruise ship movements and to maximising opportunity for financial return and business growth within the industry;
- (d) Ability is provided to add value to the passenger's experience by having interpretative services provided either by DOC and/or by a local person;

- (e) A means of minimising the adverse effects or impacts of cruise ship operations in the CMA;
- (f) Offers a marketing option for the promotion of a 'green ship' approach to eco-cruising by using the environmental partnership agreement and contribution as an example of collaboration with the local community;
- (g) Provides the cruise companies with an avenue and working example to develop their environmental business plan options;
- (h) The opportunity to be leaders in the industry through a working partnership arrangement with the local community;
- (i) An opportunity to further the industry's goals, objectives and commitment to protect the environments it visits and to leave no 'ship print';
- (j) Assists the local community through ES to achieve its coastal management goals;
- (k) Ability to retain the very reasons why people visit Fiordland and Stewart Island/Rakiura by assisting to ensure that the demands of eco-tourism do not create such pressures on the environment that it 'fails';
- (l) Provides a means for compliance with local, national and international standards and conventions; and
- (m) Assists in achieving a 'win/win' for the environment, the community and the cruise ship industry.

S4.3 The tourism industry nationally also benefits from the unique response taken to the opportunity for flexibility in dealing with normally regulatory practices and approaches. The example provided by the Agreement can be promoted to other aspects of the tourism industry as a possibility for non-regulatory environmental management.

S5. How the Southland Coastal Environment Benefits

S5.1 All funds raised by the ESMF are to be used by ES for the purposes set out in Clause S3 of the Schedule. The fees are used in conjunction with other financial contributions raised under the RCP; monies obtained under the Coastal Occupation Charging regime; and contributions from the General Funds and other sources to achieve this purpose. ES's coastal management activities are developed and promoted publicly through the ES's Annual Plan process. The public is able to contribute ideas about the relevant priorities of such activities.

S5.2 The reason the tourists visit this unique part of the world is to see and experience the wildlife, and the grandeur of their natural habitat and surroundings. It is that environment that everyone is seeking to preserve and enhance, minimising all of the anthropocentric impacts that can occur. That work comes with a cost that has to be borne by all the users.

S5.3 The ESMF in this instance is a means of the user paying or contributing to the upkeep of the environment that the user gains a benefit from. It is a means of assisting the Southland community and ES in the management of the local coastal environment, and to some extent a way of compensating in some way

for the residual, indirect or unavoidable effects that remain of cruise ship visits after all avoidance, mitigation and remedial measures have been applied. The fee is not intended to be a substitute for prudent environmental operations and activity by the cruise ship operators.

S6. Conditions – The Cruise Industry’s Environmental Obligations

S6.1 The provisions and exclusions provided for in this Agreement do not exempt the parties from their ordinary duties and obligations under the RMA, or from their duties as good citizens.

S6.2 In accordance with clause 6, when operating cruise ships in the Internal Waters, cruise ship operators, masters, crew and pilots shall observe the following:

S6.2.1 **General** – no cruise ship is permitted to enter any Internal Waters, other than those areas shaded green on the charts in Appendix A, except in the case of an emergency where it is necessary to secure the safety of persons.

Any scheduling clashes are to be resolved prior to entry to Internal Waters through communication between operators, agents, and ES.

S6.2.2 **Discharges to air** – take all reasonable steps to minimise smoke emissions.

S6.2.3 **Discharges to water** – take all reasonable steps to operate a ‘zero discharge’ regime while in the Southland CMA.

S6.2.4 **Certification** – each cruise ship operator must obtain and hold all relevant environmental protection certification under MARPOL for all cruise ships it operates under this agreement and adhere to the CLIA environmental monitoring policies.

A copy of the environmental protection certifications held by the cruise ship operator shall be provided to the regional harbourmaster on request.

S6.2.5 **Cleaning and painting** – all hull cleaning, painting, and hull scraping activities or any other hull maintenance is prohibited while the vessels are within Internal Waters.

This prohibition includes the ships’ other structures where the possible discharge of cleanings, rust, chemicals, detergents and/or paints may be dislodged and enter the Internal Waters.

S6.2.6 **Pilotage** – take a pilot on board for the period of time that the vessel is in the Internal Waters.¹ No pilotage exemptions will be considered.

- (a) Cruise ship masters must ensure that the approved Environment Southland Fiordland passage plans are used for reference². The vessels own passage plans must be reviewed against these and any changes made well in advance of:
 - i. entering Fiordland Pilotage Limit waters; and
 - ii. master/pilot exchange taking place.
- (b) Arriving vessels must not venture inwards past the Milford Sound Pilot Boarding Station prior to embarking a pilot, unless the pilot has instructed the vessel to do so for safety reasons.
- (c) Where breaches of (i) or (ii) are considered a navigation safety concern, that vessel may be denied entry.

Cruise ship vessels are prohibited from entering the Internal Waters of Fiordland between Nautical Dusk and Nautical Dawn, unless the pilot or harbourmaster decides that it is necessary to do so due to adverse weather or an emergency. Specific permission may also be given by the harbourmaster in circumstances where overall navigation safety is not compromised.³

S6.2.7 **Cruise ship speeds** – exercise judicious control over cruise ship speed when in the Internal Waters. A maximum speed of 5 knots within 200 metres of shore and *within 50 metres of any other vessel shall be maintained except where ship handling conditions make that speed inappropriate.*

Apart from the obvious safety issue, this will ensure some degree of control over potential damage occurring from vessel wake.

S6.2.8 **Going ashore** – landings ashore are permitted, as per Rule 13.1.1 (a)(ii) of the RCP, provided the cruise ship operator holds concession(s) to land from the Department of Conservation before any landings take place.

In most instances, going ashore at places other than existing wharf or jetty areas, will mean landing in National Park areas. DOC concession requirements may apply in these instances.

¹ The Fiordland sections of the Internal Waters are compulsory pilotage areas under Maritime Rules Part 90 for ships of 500GT or greater. The Deed of Agreement includes the Stewart Island/Rakiura Internal Waters as a compulsory pilotage area as well.

² Approved passage plans can be found on the Environment Southland website under Maritime/Cruise Ships.

³ Refer Environment Southland, Harbourmaster's Direction 2020 – Version 1

- S6.2.9 **Wildlife protection** – comply with the requirements and directions of the Department of Conservation in relation to stand-off distances from seal colonies and bird nesting areas, including any seasonal restrictions reflecting breeding or similar periods.

Advice note: The Department of Conservation has established Dolphin Protection Zones within Doubtful Sound. Cruise ship operators will be required to comply with the relevant protection measures within these zones.

Cruise ship operators are encouraged to comply with the Marine Mammal (and Other Wildlife) Code of Management.⁴

- S6.2.10 **Fishing** – fishing from any cruise ship or ancillary or incidental vessel is prohibited.

- S6.2.11 **Shipboard noise** – the provisions of the RCP with regard to noise shall be complied with.

Noise transmitted on outside decks of the ship travels readily over water and can interfere with the wilderness and remoteness values of the Fjords and Paterson Inlet.

- S6.2.12 **Underwater noise** – make best endeavours to minimise levels of underwater noise.

There is no current evidence that this is causing a significant adverse effect from cruise ship activity within Fiordland.

Radiated noise from cruise ships (as for all propeller driven vessels, particularly higher revolution/higher frequency vessels) can contribute to underwater sound levels in the CMA having the potential for inducing behavioural changes in marine mammals which may ultimately affect reproductive capability or survival.

- S6.2.13 **Interpretation** – maximise the involvement of local interpreters either from the Department of Conservation and/or other locals with extensive knowledge of the history, culture and wildlife of the areas being visited, for the purposes of interpretative services.

- S6.2.14 **Litter** – particular effort must be made to ensure that rubbish and other materials are not discarded or blown from vessels.
The 'green ship' concept applies.

- S6.2.15 **Helicopters** – use of helicopters is not provided for by this Agreement.

⁴ This document implements the statutory requirements of the Marine Mammals Protection Act 1978

S6.2.16 Use of ancillary or incidental vessels – the launching, use and movement of vessels ancillary or incidental to the principal activity, such as kayaks, 'Zodiacs', and tender vessels for sightseeing purposes shall be kept to a minimum within the 'green' areas (refer to charts in Appendix A) on the following basis:

- The maximum number of vessels in any one area at any one time shall be four in any combination (i.e. four kayaks, two 'Zodiacs' and two kayaks etc.), from any one cruise ship.
- In the 'red' areas (refer to charts in Appendix A) resource consent must be granted for the activity before entering the area.
- Personal water craft (PWC, commonly known as jet skis) may not be used.⁵

S6.2.17 Anchorages and moorings – ensure that all anchoring and mooring activities take place only at recognised and/or agreed anchorages and moorings within the 'green' areas (refer to charts in Appendix A).⁶

This provision shall not apply to emergency situations or situations where the ship's Master deems it necessary for the safety of the ship and its passengers and crew.

S6.2.18 Anchoring in Poison Bay (see Chart 2 in Appendix A) – Poison Bay is intended to be for temporary anchorage only to effect shipboard duties. It is not to be used for cruising purposes. Entry is to be by pilot only and with the prior approval of the regional harbourmaster (when possible).⁷

S6.2.19 Anchoring in Doubtful Sound (see Chart 3a in Appendix A) – during underwater surveys completed in 2012 sensitive areas were discovered south of Secretary Island, and anchoring is now prohibited in the shaded area shown in Chart 3a. An anchorage location outside the sensitive areas is shown on this chart at 45° 18.1'S; 166° 58.95E.

S6.2.20 Ballast water – the ship will neither ballast nor deballast in Internal Waters.

S6.2.21 Emergency situations – in the event of any of the above obligations not being complied with, the master shall advise ES immediately. Contact addresses are set out in Appendix B to the Agreement.

⁵ Rule 16.3.1 of the RCP prohibits the use of PWC in the Internal Waters of Fiordland.

⁶ Rule 13.1.1 (a)(ii)(b) of the RCP for Southland permits anchoring and mooring in Milford Sound, Paterson Inlet and Halfmoon Bay, and this condition allows anchoring or mooring in other locations provided it takes place at recognised and/or agreed anchorages and moorings within the 'green' areas.

⁷ Given the remote location and the difficulties with communications the prior approval of the harbourmaster may be dispensed with provided the pilot agrees.

S6.2.22 Logbooks – within ten days of each visit the cruise ship operator must provide ES with confirmation of the route taken, location and duration of any stops made during the visit, and the reasons for those stops and the activities undertaken at each stop.

The logbook information must be supplied on the appropriate form provided by ES for this purpose and completed either by the Purser or the Master. The completed form can be emailed to ES, or, the visit information can be registered on the cruise ships system login on ES's website.

S6.2.23 Aquatic and terrestrial biosecurity – Rules 2 and 3 of the Fiordland Marine Regional Pathway Management Plan and any relevant Ministry of Primary Industry's standards must be complied with.