

# Regulatory Impact Statement: International Convention on Standards of Training, Certification and Watchkeeping for Seafarers - Manila Amendments

## Regulatory Impact Statement

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Transport.

It provides an analysis of options to give effect to the 2010 Manila amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (the Convention). New Zealand is a party to the Convention which sets basic requirements for training, certification and watchkeeping for seafarers at an international level.

The analysis identifies the amendments required to update New Zealand's maritime rules to align with the Manila amendments. The rule amendments are relatively minor, but are required for New Zealand to meet its international obligations under the International Maritime Organisation.

The impacts for the industry are not considered to be significant and are beneficial overall. The changes will make available four new seafarer qualifications introduced at Manila and will ensure that New Zealand maritime training institutions can provide both domestic and international students with training that reflects current international standards. The amendments are a response to changes in technology and the greater complexity of ship's systems, and will support the New Zealand maritime sector.

Transitional provisions have been made to assist the holders of existing qualifications affected by changes to certification requirements.

The proposed amendments will not impair property rights, market competition, incentives on business to innovate or invest, or override any of the fundamental common law principles (as referenced in chapter 3 of the Legislation Advisory Committee's *Guidelines on Process and Content of Legislation*). The proposal is consistent with the government's August 2009 statement *Better Regulation, Less Regulation*.

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## Status quo

1. The 1978 International Convention on Standards for Training, Certification and Watchkeeping for Seafarers (the Convention) sets the basic requirements for training, certification and watchkeeping for seafarers at an international level and prescribes minimum standards that contracting states are obliged to meet or exceed. New Zealand has been a party to this Convention since 1995.
2. The Convention applies only to international commercial vessels and domestic vessels with seafarers who are required to carry certificates issued under this Convention. It does not apply to fishing or domestic recreational vessels or to commercial vessels of any size within existing coastal limits.
3. In New Zealand, the provisions of the Convention are given effect through Maritime Rules Part 31A (Crewing and Watchkeeping – Unlimited, Offshore and Coastal (Non-Fishing Vessels) and Part 32 (Ships' Personnel – Qualifications), and supporting administrative processes. Part 31A identifies the ships that must be crewed to the standards of the Convention. Part 32 sets the criteria for eligibility for certificates issued under the Convention.

## Problem definition

4. Amendments to the Convention and the associated mandatory Code were adopted in Manila on 25 June 2010 (the Manila amendments). Provisions from the Manila amendments are to be phased in over a five year period from 1 January 2012, with full compliance required by 1 January 2017. The current rule amendments are only addressing the most immediate of the revised requirements under the Manila amendments (with the exclusion of provisions relating to drugs and alcohol, which will be addressed separately). The implementation of the full provisions of the Manila amendments is discussed in paragraph 23.
5. The Manila amendments aim to bring the Convention and the Code up to date and to address current issues. The Manila amendments can be broadly split into the following two categories.
  - I. To provide new qualifications to reflect the changing needs of the maritime sector and introduce a greater focus on competence in the qualifications framework, as covered by this rule amendment.
  - II. To prevent drug and alcohol abuse in seafarers. The Convention requirements to establish an alcohol limit for on-duty seafarers is being addressed separate to this rule amendment.
6. Maritime New Zealand is developing a new Qualifications and Operational Limits framework which is intended to replace the existing framework for operational limits, for domestic seafarer qualifications and for qualifications issued under the Convention. The new framework will also reflect the Manila amendments.
7. The final Qualifications and Operational Limits framework will comply with the Manila amendments and maintains New Zealand's ongoing 'White List' status<sup>1</sup>. It ensures

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<sup>1</sup> The 'White List' lists states who are signatory to the Convention who are compliant with their obligations under the International Maritime Organisation for this convention. If a state who is party to the Convention loses their position on the 'White List', qualifications gained in that state would no longer be recognised internationally. This jeopardizes the viability and reputation of the maritime training sector in that state.

Maritime New Zealand qualification holders can be employed internationally and the qualification is also aligned with International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (Fishing) to ensure the framework is future-proofed.

8. Failure to make the changes to the maritime rules necessary to comply with the Manila amendments in the specified timeframes will place New Zealand in breach of its international obligations. This may potentially put New Zealand's 'White List' status at risk.
9. Ultimately, removal from the 'White List' would limit the ability of New Zealand qualified seafarers to work overseas, as their New Zealand maritime certificates will not be recognised internationally. This would threaten the viability of New Zealand's maritime schools as international students may no longer choose to study here if our Convention certificates are no longer recognised internationally.
10. States that were not able to meet the requirements by the in-force date of 1 January 2012 had the option of seeking a twelve month extension from the International Maritime Organisation before 31 December 2011. New Zealand chose to seek an extension, which was granted, and New Zealand will now be expected to comply by 1 January 2013.
11. The Manila amendments are given effect through the tacit acceptance procedure, so their implementation is mandatory for all states who are party to the Convention. Under the tacit acceptance procedure, amendments are considered to have been accepted by the contracting party, unless it has formally notified the International Maritime Organisation of its objection to the amendments. New Zealand has not taken this option.

## Objectives

12. The objectives of the proposed amendments are as follows.
  - To ensure New Zealand meets its international obligations for the International Convention on Standards for Training, Certification and Watchkeeping for Seafarers.
  - To provide the regulatory framework to support New Zealand's maritime training institutions providing internationally recognised qualifications for both domestic and international students.

## Regulatory impact analysis

*Option one: Retain the status quo.*

13. If New Zealand retains the status quo, it will fail to meet its obligations as a party to the Convention, which potentially jeopardises New Zealand's 'White List' status. The Manila amendments are mandatory and have been accepted by tacit acceptance, so retaining the status quo would be a failure to meet the compulsory standards.

*Option two: Use non-regulatory methods to introduce the Manila amendments.*

14. To have international effect, qualifications under the Convention issued in New Zealand, and the training provided, must have the backing of regulatory measures that give legal force in New Zealand to the Convention requirements that are behind them. This cannot be achieved using administrative practice or other non-regulatory methods.

*Option three: Amend Maritime Rules Part 31A and Part 32 to align with the requirements of the Manila amendments – preferred option.*

15. By using regulatory methods to align law with the requirements of the Manila amendments, New Zealand will be meeting its international obligations and will maintain its position on the White List.
16. The main changes being introduced and their likely impacts are summarised in Appendix A (Table of proposed amendments). As the Manila amendments affect provisions in existing rules, it is necessary to change these rules in order to give effect to these amendments.
17. The changes to Part 31A and Part 32 to implement the Manila amendments are summarised as follows:
  - I. introduction of the following new maritime qualifications: Able Seafarer Deck; Able Seafarer Engine; Electrotechnical Rating and Electrotechnical Officer
  - II. revision of the requirements for the existing Marine Engineer certificates (Class 1,2 and 3)
  - III. amendment of the requirements for revalidating certificates of competency and tanker endorsements
  - IV. amendment of the current requirements for the hours of rest and fitness for duty to strengthen the existing measures to address fatigue in seafarers assigned to watchkeeping duties.

## Consultation

18. Public consultation was conducted in September – October 2011 via email and the issue of hard copy documents. Notifications were emailed to approximately 1000 individuals who have registered to receive information and to be advised of website updates from Maritime New Zealand. The notifications included a link to consultation documents on the Maritime New Zealand website. Around 300 of the recipients accessed the link.
19. On 1 October 2011 a notice was published in each of the daily newspapers in four main centres of New Zealand (Auckland, Wellington, Christchurch, Dunedin) inviting comments on the draft amendments to Part 31A and Part 32. A notice was also published in the New Zealand Gazette on 29 September 2011.
20. A targeted letter was sent to the following relevant industry organisations inviting comment on the proposed changes: New Zealand Maritime School; Mahurangi Technical Institute; Nelson Maritime School; Timaru Fishing School; Maritime Union of New Zealand, New Zealand Merchant Services Guild, Aviation and Maritime Engineers Association; New Zealand Shipping Federation; Interisland Line; Strait Shipping; Silver Fern Shipping; Golden Bay Cement; Holcim New Zealand Limited; PB Seatow; Pacifica Shipping and NIWA. These organisations train, employ or represent the interests of seafarers who are certified under the Convention
21. Only one written submission was received during the public consultation period (ending 28 October 2011). The submission was made by the New Zealand Maritime School. Maritime New Zealand considered this submission and provided a written response to the matters it raised. Minor amendments to the rules were made in response to its submission. The school broadly supports the changes proposed and has actively sought to have the new qualifications issued under the Convention made available in

New Zealand at the earliest opportunity. Many of the matters raised in their submission will be dealt with in a future package of rules amendments which will implement the new qualifications and operational limits framework.

22. In July 2011, Maritime New Zealand established an industry working group to focus on the issues relating to the implementation of the Manila amendments and to subsequently address the implementation of the new qualifications and operational limits framework. The initial meeting of the group set the groundwork for ongoing discussions on syllabi for the new qualifications and transitional issues.

## Implementation

23. The full provisions of the Manila amendments will be given effect within the rules in two stages.
  - Stage one: A limited package of amendments to give effect to the immediate requirements of the Manila amendments, introducing the four new qualifications issued under the Convention and addressing some related issues with the current Part 32 (by 1 January 2013).
  - Stage two: A more comprehensive review of the maritime rules to implement the new Qualifications and Operational Limits framework, including the remaining Manila amendments to be in force by 1 January 2017.
24. Maritime New Zealand is preparing guidance material on the new qualifications and changes to the existing ones. A syllabus for the new Able Seafarer Deck qualification has already been developed by Maritime New Zealand and approved by the Director. Syllabi for the new electrotechnical qualifications will be developed as the demand for this certification develops.
25. Existing International Labour Organisation Able Seafarer certificates will remain valid (as long as they are not passed their expiry date), but will be withdrawn at a future date (which is yet to be determined) with the implementation of the qualifications and operational limits framework. Holders of these certificates will be able to upgrade them to a new Able Seafarer Deck qualification under transition provisions in the amended rules.
26. Maritime New Zealand manages the issuing and revalidation of qualifications via the maritime document system. This system conforms with the requirements of the Convention.

## Monitoring, evaluation and review

27. The effect of the amendments will be monitored as part of Maritime New Zealand's existing activities. For example, monitoring the watch schedules and hours of rest to check compliance with Part 31A is carried out as part of Maritime New Zealand's flag and port state control inspections. The impacts of changes to qualifications will be monitored as part of the work by Maritime New Zealand's seafarer certification team.
28. Maritime New Zealand will also receive feedback through ongoing liaison with industry, specifically with maritime training institutions and the shipping operators and their representatives. With the future implementation of the new qualifications and operational limits framework, of which the Manila amendments are a part, there will continue to be ongoing dialogue between Maritime New Zealand and the aforementioned parties.



**Appendix A: Table of proposed amendments**

Status quo and problem	Proposed change	Likely impact	Benefits
<p>The Manila amendments introduce two new Able Seafarer certificates. New International Labour Organisation Able Seafarer certificates can no longer be issued after this amendment comes into force.</p>	<p>Add the two Convention certificates – Able Seafarer Deck (rule 32.7A) and Able Seafarer Engine (rule 32.8A). Revoke the International Labour Organisation Able Seafarer certificate (rule 32.7).</p>	<p><b>New qualifications</b></p> <p>Seafarers will no longer be able to obtain new International Labour Organisation Able Seafarer certificates, but will be able to continue using their existing certificates until a future date (which is yet to be determined).</p> <p>Maritime New Zealand has issued approximately 850 International Labour Organisation Able Seafarer certificates under Part 32 since 2001 but as these certificates are not required to be revalidated, it is not known how many are actively used.</p> <p>The transitional provisions recognise the experience of existing International Labour Organisation Able Seafarer certificate holders and allows them to obtain the new qualification without having to meet the full training requirements for the new certificate. Maritime training providers must have syllabuses and training programmes approved by the Director of Maritime New Zealand before they can offer courses for the new qualifications.</p> <p>The implementation of the new qualifications will create costs for Maritime New Zealand. These costs are in part covered within “business as usual” but the majority of the costs will be provided as part of the Qualification and Operational Limits implementation, of which these amendments are the first phase.</p> <p>The maritime training institutions operate as commercial businesses and it is in their interest to offer the latest qualifications to meet the demand for seafarer training from both domestic and international students. The cost of setting up new courses is part of their normal business development and responding to the changes in the international maritime sector. Maritime training institutions have the choice of what they charge for these courses.</p>	<p>This change will enable seafarers to obtain the new Able Seafarer Deck and Engine certificates, subject to Maritime New Zealand approval of syllabuses and courses under Maritime Rule Part 35 (Training and Examinations).</p>

Status quo and problem	Proposed change	Likely impact	Benefits
Two electrotechnical certificates were introduced in the Manila amendments, which cater for the increasing demand for specialised electrotechnical skills and qualifications in the international shipping sector.	Add the new Electrotechnical Rating (rule 32.8B) and Electrotechnical Officer certificates (rule 32.27A).	These certificates and training courses are not currently available in New Zealand. There will be a development cost for the training institutions to provide such courses but they will also generate new business and ensure they remain attractive to prospective students.	The new qualifications will meet future demand for specialist electrotechnical training in the sector. The availability of these certificates in the future will also enhance the capability of New Zealand's maritime training institutions, potentially attracting more students.
<b>Amendments to existing qualifications</b>			
Seagoing service requirements for the revalidation of Convention certificates are changing. Part 31A, which contains the revalidation requirements, needs to reflect this change.	Amend subrules 31A.6(1) and (3) to align with the Manila changes. These rules specify the seagoing service requirements to demonstrate the continued professional competence for the purpose of revalidation of certificates of competency and tanker endorsements.	<p>For the purposes of revalidation of certificates of competency, the seagoing service has to be more recent (3 months of service within the last 6 months, instead of 3 months of services in the last 12 months). Maritime New Zealand have indicated that this is not likely to be an issue for the majority of seafarers who are currently at sea.</p> <p>This change only affects one of the five options to gain revalidation of the certificate of competency. The alternative four options for gaining revalidation of the certificate of competency have remained unchanged.</p> <p>For the revalidation of tanker endorsements, the seagoing service requirements are relaxed under the Manila amendments, from 6 months in the last 5 years to 3 months.</p>	The benefit of relaxing the requirement for tanker endorsements is that it makes it easier for seafarers to get revalidation of their certificates of competency. The benefit of requiring sea service for certificates of competency to be more recent is that it ensures that the seafarers' experience is relevant and current, reflecting a greater focus on competence and maintaining skills.
The Manila amendments introduce significant changes to the maritime engineering qualifications. In addition the current rules for Marine Engineer Class 3 and Marine Engineer Class 2 lack clarity and create uncertainty about eligibility for applicants. They also create significant administrative costs for Maritime New Zealand.	<p>Amend sub-rules in Part 32 relating to Marine Engineer Class 1, 2 and 3, and Marine Engineer Class 2 - Endorsed Chief Engineer in order to:</p> <ul style="list-style-type: none"> <li>- reflect changes to sea-time requirements in the Convention</li> <li>- clarify that the Marine Engineer Class 3 is a pre-requisite for the Marine</li> </ul>	<p>The time required to obtain a Marine Engineer Class 2 or 3 certificate remains the same, but the amendments are more explicit about the way in which the specified sea time must be served. This change reflects the focus of the Manila amendment's on competence. Under the changes, there is no longer a direct route to Marine Engineer Class 2, and Marine Engineer Class 3 is now a pre-requisite for Marine Engineer Class 2. However, this does not result in an increase in the minimum time required to obtain a Marine Engineer Class 2 certificate.</p> <p>Maritime New Zealand issued over 440 Marine Engineer</p>	These changes will assist Maritime New Zealand's certification process, enhance standards, provide clarity for applicants and ensure New Zealand's compliance with the Convention in respect of the Marine Engineer Class certificates. It will also provide more options for candidates seeking

Status quo and problem	Proposed change	Likely impact	Benefits
	<p>Engineer Class 2</p> <ul style="list-style-type: none"> <li>- provide the alternative of a direct pathway from Marine Engineer Class 3 to Marine Engineer Class 1.</li> </ul>	<p>Class certificates between 1 July 2009 and 30 June 2011 and the demand for these certificates is expected to grow.</p>	<p>certification.</p>
<b>Other amendments</b>			
<p>The International Maritime Organisation has identified that fatigue is a contributory factor to accidents at sea, and ensuring seafarers are properly rested plays an important role in preventing casualties.</p> <p>The Manila amendments introduce changes to strengthen existing measures to address fatigue in seafarers assigned to watchkeeping duties.</p>	<p>Amend Maritime Rule Part 31 (specifically, 31A.24, 31A.25 and 31A.26) to give effect to the revised hours of rest and fitness for duty requirements in the Convention Code Chapter A-VIII/1.</p> <p>The Manila amendments increase the minimum hours of rest from 70 hours to 77 hours in any seven day period. The provisions allow for a number of exceptions to ensure that ships can still operate when special circumstances require a diversion from these requirements, such as to ensure the safety of the ship, persons on board or cargo. The Manila amendments have made the exceptions more explicit to ensure that seafarers' rest is not unreasonably compromised.</p>	<p>Depending on the existing crewing levels, more personnel may be required to satisfy the new requirements. This will need to be determined on a case-by-case basis, depending on existing crew levels and schedules.</p> <p>The exact impact on New Zealand ships whose seafarers are subject to provisions under this Convention is uncertain, as this will depend on the crewing arrangements on individual ships. During the consultation process, Maritime New Zealand did not receive any submissions on this matter from operators, so it is likely that the impact will be minimal. The operators are aware that New Zealand is obligated under the Convention to give effect to the changes.</p>	<p>New and enhanced measures to prevent fatigue among seafarers on watch is expected to positively impact on safety.</p>

- The proposed rule amendment also makes minor changes relating to terminology, language and definition of terms.