

# Regulatory Impact Statement

## Maritime Rules Parts 81, 90 and 91 – 2010

### Agency Disclosure Statement

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

It provides an analysis of options:

- to improve the safety of rafting and to align Rules governing rafting with the Maritime Transport Act 1994
- to ensure high standards of navigation safety in ports and harbours by maintaining and developing the skills, knowledge and proficiency of pilots and pilotage exempt masters
- to provide for navigation safety in areas where regional councils do not exercise their jurisdiction.

The preferred options are consistent with the Maritime Transport Act 1994 and other maritime Rules. They are risk-based and will ensure greater safety for commercial river rafts, commercial ships and recreational boats. The preferred options are part of a systems approach to maritime safety, so costs and benefits of particular interventions cannot always be ascertained.

Some of the proposed Rules will increase compliance costs for some operators and reduce costs for others, depending on the risks of the activities they are undertaking. The proposed Rules will not impair private property rights, or the incentives for businesses to innovate and 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 Rules are consistent with the government's August 2009 statement *Better Regulation, Less Regulation*.

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## Part 81 Commercial Rafting Operations

### Status quo and problem definition

1. Commercial rafting safety has been regulated by maritime Rules since 1999. The Rules were designed to address the problem of highly variable safety standards among operators and raft guides and the absence of a national safety regime for setting, monitoring and enforcing standards.
2. The 1999 Rules, developed in collaboration with the New Zealand Rafting Association (representing rafting operators and raft guides), incorporated the association's preference for raft guides to hold New Zealand Qualifications Authority (NZQA) registered national awards (issued, at that time, by the Sport Fitness & Recreation Industry Training Organisation and more recently the successor industry training organisation, Skills Active).
3. Today, commercial rafting is a mature industry comprising 42 active commercial rafting operations (24 in the North Island and 18 in the South Island) carrying some 80,000 customers a year. The biggest market (concentrated in the Queenstown and Rotorua districts) is in adventure trips. There are smaller tourist markets for raft fishing, and for scenic or "eco" rafting. A number of outdoor pursuit centres also offer rafting, catering mainly for college-age pupils, typically as one of a number of adventure activities.
4. The Rules for rafting safety have proved serviceable for the most part. However, the status quo imposes excessive costs on some subsectors, and fails to provide coverage of some commercial operations (contrary to the original intention). Additionally, it doesn't provide an appropriate standard for competency in first aid for senior guides and trip leaders, and for ongoing currency in river rescue skills. The Rules are also dated in some areas, and do not reflect the current structure of the national awards required of raft guides.
5. The current Rules do not reflect the risk variance of different rivers. Rafting on grade 4 and 5 rivers carries a higher risk.

<b>Commercial rafting fatalities</b>	<b>1980–2009</b>
Grade 4/5 rivers	24
Grade 3 rivers	0
Grade 1/2 rivers	1 <sup>1</sup>

6. The status quo imposes costs on Maritime New Zealand (in processing exemptions, for example) and on operators (and prospective operators)

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<sup>1</sup> This fatality occurred when the person was swimming while on a rafting trip, not during rafting.

in lower risk settings (eco rafting and fishing guides using rafts), for whom the adventure-focussed requirements in the Rules are excessive.

<b>Exemption</b>	<b>Number of current exemptions</b>
Helmet not required (grade 1 and 2 rivers)	10
Repair kit not required	8
Type of PFD	4
Stem line not required	2
Guide supervising from bank	1
<b>Total</b>	<b>25</b>

7. The current Rules do not align with the Maritime Transport Act 1994. Instead of a maritime document issued by the Director of Maritime New Zealand, approval of a safe operational plan is issued by an 'authorised person'. The Rules specifically mention that the authorised person in the Queenstown district has to be an employee of the Queenstown Lakes District Council. All other authorised persons are individually authorised by the Director of Maritime New Zealand. Authorised persons currently do not have any delegated functions to issue certificates, as required by the Maritime Transport Act 1994. The Rules were initially drafted to preserve historical arrangements, but the Maritime Transport Act 1994 has no provision for such an arrangement. Issuing approvals and certificates outside the provisions of the Maritime Transport Act 1994 has caused problems in other areas governed by maritime Rules and has been criticised by the courts. The Director of Maritime New Zealand may not be able to revoke safe operational plans approved by an authorised person.

## **Objectives**

8. The objectives of the proposed Rules are:
- to protect the welfare of those onboard commercial rafts, whether as customers of rafting operators (on both guided and unguided trips) or raft guide trainees, by limiting the risk of serious harm (objective 1)
  - to improve the quality or fitness-for-purpose of the rafting requirements by making them more risk-based and relaxing the stringency of the existing adventure-focussed Rules that cannot be justified on safety grounds for lower risk settings(objective 2)
  - to align the Rules with the regulatory scheme of the Maritime Transport Act (objective 3).
9. Objectives 2 and 3 are in line with the government's August 2009 statement *Better Regulation, Less Regulation*. The objectives are consistent with the principles identified in the review of safety in adventure and outdoor commercial activities, which began in October 2009.

10. Any option will have to provide for continued commercial rafting on all grades of rivers, provided the necessary safety measures can be met. Rafting is an integral part of New Zealand's adventure tourism industry and contributes to the country's economic well-being.

## **Regulatory impact analysis**

### **Options**

*Objective 1: Limiting the risk of serious harm*

*Option 1: Imposing standards for untreated risks – preferred option*

11. Enhanced first aid and river rescue skills are relevant to managing the situations that contributed to most rafting fatalities: raft capsize (36 percent), being thrown out of the raft (30 percent), being trapped (12 percent), drowning while rafting (12 percent), and being returned to the river and swept away (9 percent).
12. The New Zealand Rafting Association runs annual river rescue workshops. Many guides regularly attend these. The cost per guide is approximately \$350.00 plus travel, if required. This includes first aid revalidation.
13. Reducing the risk of rafting fatalities will not only benefit individuals and society, but also the reputation of New Zealand as an adventure tourism destination. Fatalities and other instances of serious harm in commercial adventure activities are newsworthy events, particularly where the customer is a visitor from overseas. In recent years there were 53,200 international river rafting customers compared with 21,500 domestic customers. Of the 25 fatalities recorded between 1980 and 2009, 9 were international visitors and 16 were New Zealand residents.
14. Any increase in direct costs to the industry in complying with the new requirements for raft guide first aid and river rescue skills would not be significant. While not required by the present Rules, most operators already employ staff with such skills.
15. The extension of the Rules to raft guide training and raft hire has the benefit of creating certainty for operators and Maritime New Zealand, removing any doubts, as have occurred in the past, about the Rules' coverage of these areas.
16. There will be indirect compliance costs associated with new Rules for operators training guides or hiring out rafts. These are unlikely to be significant, because educational providers are familiar with quality systems and commercial rafting operations are only required to add some new information to an existing safe operational plan. There is one raft hire operation in New Zealand at the present time. It appears

to substantially meet the safety management requirements of the new Rules.

17. Additional direct costs for the three polytechnics currently offering raft guide training and the one raft hire operation will be annual audit and inspection charges of around \$425, and the annual marine safety charge of \$228 (assuming 6 rafts each) for the polytechnics and \$266 (assuming 7 rafts) for the raft hire operator.
18. It is assumed that the marine safety charge will not increase for commercial operators that are training guides, as the rafts used for training will already be considered to be in commercial use. It is also assumed that there will be no additional audit and inspection charges for commercial operations due to new raft guide training elements in existing safe operational plans.

*Option 2: Combining safety and accreditation audits*

19. To increase the safety of guides in training, Maritime New Zealand considered relying on Industry Training Organisation accreditation audits of raft guide training providers in order to verify safety management of a raft guide trainee programme. This would have the benefit of reducing the cost to providers, and to Maritime New Zealand as the safety regulator.
20. The limitation of this approach is that accreditation audits are not focussed on safety but on educational outcomes. Skills Active has indicated that it would not be prepared to warrant to Maritime New Zealand that its audits can be relied on for this purpose.

*Option 3: Providing additional supporting material to support the current Rules*

21. Addressing untreated risk areas, and river rescue and first aid competencies, through advisory information and voluntary standards has the advantage of being able to be developed, promulgated, and amended by Maritime New Zealand without invoking Rule amendment procedures.
22. However, the uptake of voluntary standards is likely to be uneven, and fundamental risk may remain unmanaged in a number of operations. Experience prior to the 1999 Rules highlighted differential uptake of voluntary standards, particularly where the level of competition between operators is high.

*Option 4: Requirement for safety training under the Health and Safety in Employment Act 1992*

23. The Health and Safety in Employment Act 1992 requires employers and persons in control of a place of work to take all practical steps that no hazard harms employees or customers. The provision places some

responsibility on the operator and may imply a requirement for adequate staff training.

24. However, the requirement does not specify a particular level of training. To ensure consistency across operators and enhance safety, maritime Rules are a more suitable means to set standards.

*Objective 2: Improving Rules' fitness-for-purpose by making them commensurate with risks*

*Option 1: Use exemptions*

25. Exemptions can be issued to customize standards for a particular operation. They can be used to make best use of individuals' and industry investment in guide training, and enhance passenger satisfaction and value, for example, by not having to wear a personal flotation device (PFD) or helmet on low risk river sections – for example, where the purpose of the trip is fishing.
26. Exemptions are not without costs. For the operator, there is the cost of gathering the information to determine whether the process is potentially relevant to their situation, meeting the direct costs of making an application (including any cost recovery from Maritime New Zealand), and organising periodic renewals. For Maritime New Zealand, there are administrative costs in time for processing applications and renewals, recording information, monitoring compliance with any applicable conditions, and timetabling renewals. These costs are ongoing.

*Option 2: Amend Rules – preferred option*

27. Amending the Rules to make the requirements commensurate with risks will create certainty for operators and Maritime New Zealand. The costs of amending Rules are short term.
28. Relevant amendments cover:
- setting minimum raft guide qualifications at a lower level on low risk rafting activities
  - enabling, for lower risk activities, the raft guide on the day to determine whether passengers must wear PFDs and helmets on certain river sections in accordance with the safe operational plan
  - leaving the frequency of audits to the discretion of the Director.
29. Because the Rules impose less stringent requirements on operations in lower risk settings, some operators should find it easier to recruit and retain raft guides, enabling more efficient use of the industry's and individuals' investment in training and experience.

<b>Licensed Guide by river grade</b>	<b>Number</b>
National Senior Guide grade 4/5	257
National Senior Guide grade 3	86
National Raft Guide grade 4/5	274
National Raft Guide grade 3	246
National Raft Guide grade 2	26

*Objective 3: Alignment with Maritime Transport Act*

*Option: Amend Rules*

30. Amending the Rules to align them with the Maritime Transport Act requires removing the function of the authorised person. Under the Maritime Transport Act audits of vessels and approval of safe operation plans should be conducted under delegation from the Director of Maritime New Zealand.
31. Such an alignment will directly affect the Queenstown Lakes District Council. It is the only council that has historically regulated rafting. Current arrangements tried to preserve that involvement. The council opposed the amendment, giving the following reasons in its submission.
- Potential for duplication in services between the council appointed harbourmaster and the person appointed by Maritime New Zealand.
  - Loss of potential synergies and savings between two organisations.
  - Removal of the local face for commercial waterways activity.
  - Potential loss of on-the-spot response ability for commercial incidents.
  - Loss of the educative role of the regulator with local commercial operators.
32. The Director is proposing to delegate functions under the Rules to the same officer who is currently the authorised person for rafting and jet boating. If the council does not take on the delegation, there may be some temporary loss of efficiency as resources are required to support both a direct Maritime New Zealand involvement in audits and inspections of rafting operations, and a council involvement in audits and inspections of jet boating operations. The council has indicated that it agrees in principle to carry out functions under delegation from the Director.
33. There are potentially significant costs to the industry, Maritime New Zealand and the reputation of New Zealand if the current model is retained. The exercising of the Director's powers under the Maritime

Transport Act 1994 to issue, suspend and revoke documents and carry out inspections and audits can be challenged.

34. Separate new Rules for jet boats are being developed for implementation in 2011. It is proposed to similarly remove the function of the authorised person under the jet boat Rules. Until that time there will be some inconsistency in approaches.

## **Consultation**

35. The New Zealand Rafting Association was fully engaged in the consultation at all stages and has given its support to the proposed new Rules, describing them as workable and relevant.
36. In December 2008 the formal invitation to comment and the draft Rules were sent to 53 identified organisations – comprising all active rafting operations; Skills Active; Water Safety New Zealand; the Tourism Industry Association; the Queenstown Lakes District Council; Environment Bay of Plenty; the three polytechnics involved in raft guide training (Nelson Marlborough Institute of Technology, Christchurch Polytechnic Institute of Technology, and Tai Poutini Polytechnic); and the New Zealand Rafting Association. The proposed Rules were also made available to the public on the Maritime New Zealand website. Comments on the draft Rules were requested by the end of March 2009.
37. Written submissions were received from four raft guides, the New Zealand Rafting Association, the Queenstown Lakes District Council, Skills Active and eight raft operators. All submissions were reviewed and amendments made to the draft Rules as appropriate
38. Five submissions raised concerns about the proposed amendment requiring all senior guides and trip leaders to be assessed as competent to NZQA unit standard 424 - Respond to an emergency care situation for an outdoor activity. Submitters had two areas of concern: difficulties in accessing unit standard 424 courses and assessments, and that the standard is over-specified for raft guides in some operations, given the proximity of emergency services.
39. Improved access to unit standard 424 assessments is predicted in future as a result of the unit moving from the health to the outdoor domain, with Skills Active (the rafting sector ITO) assessors accredited to do this work. Indeed, unit standard 424 is proposed by Skills Active to become a core requirement for the senior raft guide award in future.
40. On the basis of the analysis of accidents, Maritime New Zealand considers that lead guides need to be competent to sustain life, prevent further harm and stabilise a casualty in a dynamic and sometimes remote physical environment.

41. Submissions made during consultation led Maritime New Zealand to drop the proposal in the draft Rules to allow raft guide training providers (newly covered by the Rules) the choice of using NZQA accreditation audits to meet maritime Rule requirements. While this was initially considered an efficient approach, the difference in audit scope and regularity led Maritime New Zealand to conclude that this approach would be unreliable.
42. Maritime New Zealand carefully considered the submission of the Queenstown Lakes District Council to continue to be able to engage, employ or contract the authorised person in its district. No change has been made in consequence, as the benefits advanced by the council (which Maritime New Zealand accepts as valid) are equally available through delegation of the Director's powers.

### **Conclusions and recommendations**

43. The objectives can be met by amending the Rules to require guides to hold first aid and river rescue skills, and to relate qualifications of guides the contents of safe operational plans more closely to the risk setting. The objective of alignment of the Rules with the Maritime Transport Act is necessarily only available through a Rules amendment.

### **Implementation**

44. The new requirements will be set out in a new part of the maritime Rules, which will revoke the existing Rules for commercial rafting operations.
45. A transitional provision will allow operators holding an approved safe operating plan at the date that the new Rules come into force to continue to follow the existing Rules until the earliest of the expiry of the plan's approval, or 12 months after the new Rules come into force.
46. The compliance costs for operators with existing approved safe operating plans are judged to be nil or very small. The rafting sector is stable with very few new entries, and established operators will have been exposed to the new requirements in draft form over a number of years.
47. Maritime New Zealand will determine the frequency of audits and inspections under the new Rules, which is left to the Director's discretion. This contrasts with the existing Rules, where annual audits are prescribed. It is envisaged that the criteria will be communicated to the industry in an advisory circular accompanying the Rules. Maritime New Zealand's emerging compliance policy will guide approaches to administering the Rules, including enforcement action.

## **Monitoring, evaluation and review**

48. The implementation and administration of the new rafting Rules will be carried out as part of Maritime New Zealand's oversight of safety in commercial rafting.
49. An evaluation of rafting safety and the impact of safety interventions is scheduled to occur within the next 2 years. The evaluation will consider data on serious harm from the New Zealand Health Information Service and from accident reports (including investigations carried out by Maritime New Zealand and the Transport Accident Investigation Commission) in commercial rafting.

## Part 90 Pilotage 2010

### Status quo and problem definition

50. Marine pilotage involves directing and controlling the movement of a vessel through inshore coastal waters and harbours unfamiliar to the vessel's master, or providing navigation advice to the master for this purpose. Commonly, pilotage is made compulsory by law in defined pilotage waters for certain types of ships (such as tankers) or ships exceeding specified size limits. The master of a ship subject to pilotage is either required to take a pilot or must obtain (and maintain) a pilotage exemption certificate (PEC). The pilotage system ensures that persons responsible for navigating larger ships within pilotage waters meet minimum standards of knowledge and proficiency relevant to the location and the ship.
51. There are more than 12,000 vessel movements conducted by pilots in New Zealand each year. In addition it is estimated that there are in excess of 18,000 movements by pilotage exempt masters annually.
52. A significant maritime incident within a harbour area results in high costs. Examples of such incidents follow.
- a. On 6 February 2002 the log carrier *Jody F Millenium* had to leave Gisborne port after several of her moorings broke. As the ship left the harbour, she was hit by a heavy swell on her side and ran aground on the beach. Twenty-five tonnes of fuel oil were estimated to have leaked out. This affected an area of about 8km of coastline near Gisborne. Clean-up costs recovered by Maritime New Zealand amounted to \$2.2 million. The owners of the ship claimed \$18 million in damages from the port company.
  - b. On 8 October 2002 the bulk carrier *Tai Ping* ran aground at Tiwai Point near the entrance to Bluff Harbour. The vessel was refloated safely nine days later and no oil was spilt. Nevertheless, costs of at least \$500,000 were incurred.
  - c. On 15 February 1996 the tanker *Sea Empress* was entering the Cleddau Estuary on her way to the Texaco oil refinery in Milford Haven, United Kingdom. The ship was pushed off course by the current and hit rocks in the middle of the channel, which punctured her starboard hull causing oil to leak. The oil caused damage to the coastline and its marine life and wildlife. Cleanup costs amounted to approximately £60 million. Taking into account the damage to the ship and loss of business, the value of the oil, and costs associated with disruption of port operations, total costs were estimated to be £120 million (NZD \$260 million).

53. The NZ Port and Harbour Marine Safety Code (the Code), published in 2004 in response to a series of serious shipping incidents in New Zealand ports, emphasised the critical role of pilotage in ensuring safe navigation in harbour waters and the protection of the marine environment. As part of the wider National Port and Harbour Safety System initiative led by Maritime New Zealand, under which the Code was developed, a comprehensive review of Maritime Rule Part 90 was initiated in 2006.
54. The basic framework and approach in Part 90 is sound. However, the specific issues with the current Part 90 have been highlighted by the review. These include the following.
- 50.1 Local pilotage requirements need updating to better reflect current navigation risks. In some harbour areas, thresholds for pilotage could be relaxed, while in others they require some tightening.
  - 50.2 New pilotage areas are required to manage risks from large ship movements in certain harbours where pilotage is not currently compulsory.
  - 50.3 Lack of flexibility in the entry qualification for pilot licences will limit the future recruitment of trainee pilots, and does not reflect emerging practice elsewhere.
  - 50.4 Training, assessment and examination requirements are unclear. This results in varying interpretation and standards in different pilotage areas, and in recent times, considerable public criticism of the application of the Rules and the conduct of examinations.
  - 50.5 There is no limit to the validity of a pilot licence or PEC and no renewal provision.
  - 50.6 The role of the harbourmaster in overseeing local pilotage standards and practices, ongoing monitoring of licence and PEC holders and involvement in the examination process, is not fully recognised.
  - 50.7 There is no formal provision for ongoing proficiency assessments and for continuing professional development of pilots, which does not reflect current international good practice or promote excellence in the provision of pilotage services.
  - 50.8 Barges and other towed vessels are excluded from pilotage consideration when applying pilotage thresholds, which is inconsistent with the risk-based approach to navigation safety.
55. Regional councils and providers of pilotage services have long awaited completion of a revised Part 90, as it will enhance their regulatory and operational activities respectively in relation to pilotage and ensure the sustainability and reputation of New Zealand's pilotage services.
56. Currently, approximately 90 persons hold a pilot license in New Zealand, about 200 persons hold a PEC and 140 hold an exemption under section 47 of the Maritime Transport Act 1994.

## Objectives

57. The objectives of Part 90 are to:
- a. maintain the contribution of pilotage to the safety of navigation, the protection of the marine environment and the efficiency of seaborne commerce
  - b. set minimum national standards for pilotage while enabling port-specific risks to be addressed
  - c. provide a licensing regime for pilots and pilotage exempt masters within the maritime document provisions of the Maritime Transport Act 1994
  - d. recognise and support industry best practice
  - e. ensure that the provision of pilotage services is sustainable and responsive to future demands, changes in technology and best practice.

## Regulatory impact analysis

58. The main changes introduced by the amendments, and their impacts, are described in the following table.

<b>Issue 1: Update local pilotage requirements</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
Revise thresholds for pilotage in certain areas to better reflect local navigation risks.	Thresholds are unnecessarily onerous in a number of areas e.g. Fiordland, Nelson, Whangārei, Bay of Islands and Tauranga, and are recommended to be tightened in other areas e.g. Tory Channel.	Additional cost to ship operators in a few areas for either: <ul style="list-style-type: none"> <li>engaging a pilot</li> <li>training for, obtaining and maintaining the ongoing currency of a PEC.</li> </ul> These costs will affect a small number of current operators.	Cost reductions for operators of smaller vessels in a number of areas, with minimal impact on safety.  Greater control of navigation in the busy Tory Channel pilotage area.
<b>Issue 2: New pilotage areas established</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
Introduce two new compulsory pilotage areas – Pelorus/Admiralty Bay and Stewart Island. Include additional new compulsory pilotage areas that can be activated in the future if shipping activity demands.	The areas are not included in the current Part 90. Current requirements for pilotage in those areas are insufficiently robust (given effect through the RMA or navigation bylaws), leading to an inconsistent approach nationally.  Other areas such as Whanganui and Greymouth are currently excluded with no provision for future requirements.	Costs expected to be minimal as a de facto pilotage regime is already in place in the areas noted, but not through Part 90.  No immediate change for areas identified for future pilotage.	A consistent approach giving uniform standards and greater certainty, and also the force of national Rules.  Signalling future requirements will ensure that consistent standards can be applied across all harbours in New Zealand where shipping activity warrants it.

<b>Issue 3: Lack of flexibility in entry requirements for pilot trainees, affecting future recruitment and long term sustainability</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
Allow the Director to consider alternative qualifications and experience to the current requirement, subject to internationally established criteria for competency of candidates.	A minimum qualification of Master Foreign Going (MFG) is currently required to obtain a pilot licence. There is a diminishing pool of qualified candidates worldwide. There is no flexibility in Part 90 to accept pilots licensed in other jurisdictions who do not hold a MFG certificate, or to reflect emerging practice in other jurisdictions allowing consideration of alternatives.	Additional costs are expected to be minimal. Maritime New Zealand will need to establish the process and standards for assessing candidates' suitability.	Will allow pilotage providers to consider a wider range of candidates, thereby ensuring the longer term sustainability of pilotage services. Will also accommodate alternative training paths being developed in Australia.
<b>Issue 4: Training, assessment and examination requirements are unclear in the current Rules</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
Make training, assessment and examination requirements within the Rules more specific.	Requirements in the current Rules are too broad, resulting in varying interpretation and inconsistent standards across pilotage areas, with implications for safety.		Greater consistency in the application of standards and as a result, greater certainty for those affected.
<b>Issue 5: No limit on validity of pilot licences and PECs and no renewal provisions</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
Introduce a 5 year limit for licences and PECs and include renewal provisions.	Pilot licences are currently issued for 5 years but this is not supported in the Rules. PECs issued in the past were open ended. There are no formal criteria for renewal and many PECs previously issued are considerably out of date.	Additional costs to operators/masters for 5 yearly renewals of PECs which currently have no expiry. See also Issue 8 below regarding annual assessments.	Issuing of licences and PECs brought into line with international practice for seafarer's certificates under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

<b>Issue 6: A PEC holder may only exercise that certificate if he or she is the master of a vessel.</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
Allow the First Mate of a vessel to exercise a PEC in his or her own right, subject to appropriate limitations.	There is no provision for a First Mate to exercise their PEC without direct supervision of the master, even though they may have control of the vessel.	There should be no extra cost for PEC holders.	Greater flexibility and support for established practice in some situations.
<b>Issue 7: The role of the harbourmaster, in relation to the operation of the pilotage regime, is not fully recognised</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
Make the role of the harbourmaster on examination panels more explicit. Provide recognition and support for their input into training programmes and day-to-day application of the pilotage Rules.	The current Rules do not recognise the central role of the harbourmaster in managing local navigation safety and in the functioning of the pilotage regime.	Additional costs will be minimal, as regional council harbourmasters already play an active role in the pilotage regime (with one or two exceptions) and they are able to recover costs for these functions.	The new Rules support the New Zealand Port and Harbour Marine Safety Code by emphasising the central role of the harbourmaster in local navigation safety.

<b>Issue 8: There is no formal provision for ongoing assessment of pilots' and pilotage exempt masters' proficiency, or for continuing professional education (CPE) of pilots</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
<p> Holders of pilot licences and PECs will be subject to annual assessment requirements. CPE requirements will be made more specific.</p>	<p> No current requirement in the Rules for formal peer review of pilots and PEC holders to ensure continued proficiency and up-to-date knowledge. Most pilotage providers already do this, but most pilotage exempt masters are not subject to regular review. Some regional councils already assess PEC holders annually but the process varies across locations and there is no legislative mandate or national standard.</p> <p> Current Rules require advanced pilot training if a licence is to be endorsed for a higher grade, but the requirements are vague and are not well aligned with good pilotage practice.</p>	<p> PEC holders will be subject to new costs for PEC renewal and annual assessments (where this is not borne by the operators) – see Issue 5.</p> <p> Most pilotage providers already have established peer review systems, so costs for pilots will be minimal. Most already provide some ongoing refresher training, so the new CPE requirements will have limited cost impacts.</p>	<p> Safety will be enhanced by ensuring that all pilots and PEC holders are subject to an annual assessment of proficiency.</p> <p> Professional development for pilots will be ensured and enhanced by having clearer requirements stated in the Rules.</p>
<b>Issue 9: Pilotage for small tankers used for bunkering</b>			
This matter has already been addressed in the 2010 amendment to Part 90 and is incorporated into the new Part 90.			

<b>Issue 10: Barges and other towed vessels are excluded from pilotage consideration</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
Pilotage criteria will be based on combined tonnage and length of both tug and tow. Ships less than 24m in length will be exempted when applying a gross tonnage limit.	The current Rules consider only the towing vessel for the purposes of pilotage. Tug and barge combinations which may have a large 'navigation footprint' are excluded which is inconsistent with a risk-based approach to pilotage.	Most larger barges will become subject to pilotage (requiring a pilot on board, or the master to obtain and maintain a PEC). There are currently 22 barges over 24m length operating in New Zealand. They generally visit the same ports frequently so that masters can obtain a PEC. If the master does not have a PEC, a pilot will be required at about \$1,000 per event. Most smaller barges will not be required to carry a pilot, depending on how the pilotage thresholds are set for each area.	Extending the pilotage regime to cover large barges and other tows will enhance navigation safety in harbours.
<b>Issue 11: Lack of clarity in the Rules leading to inconsistent application of privileges and currency requirements for both licences and PECs</b>			
<b>Preferred option</b>	<b>Status quo and problem</b>	<b>Likely costs</b>	<b>Benefits</b>
More clarity in the Rules governing the privileges and currency requirements.  New administrative processes (external to the Rules) for licence and PEC issue, and improved maritime document formats.	Lack of clarity and guidance over a number of years has led to inconsistent and 'loose' conditions applied to licences and PECs and some ad hoc decision making. This has resulted in variable standards across the country.	May prove more restrictive for some PEC holders whose privileges are currently quite broad and not always well aligned with their training and competence.	These changes will ensure that licence and PEC holders' privileges are more closely linked to training and competence, thereby enhancing navigation safety.

## **Consultation**

59. The proposed changes to Part 90 have been consulted upon extensively. 93 written submissions were received and analysed from two rounds of consultation, in 2007 and 2009. Individuals and organisations consulted included harbourmasters, port companies, providers and users of pilotage services, shipping operators and pilotage exempt masters.
60. The main issues arising from the consultation included:
- the application of pilotage to warships
  - the application of pilotage to tugs and barges
  - minimum entry qualifications for trainee pilots
  - the exercise of a PEC by a First Mate (as opposed to only the Master) of a ship
  - the currency requirements for maintaining the privileges of a pilot licence or PEC
  - the requirements for training, assessment and examination of pilots and PEC holders
  - changes to thresholds for pilotage in some areas; changes to pilotage area boundaries and the establishment of new pilotage areas.
61. The submissions and further discussions with a number of parties were taken into account in finalising the provisions of Part 90.

## **Conclusions and recommendations**

62. The proposed amendments to the pilotage Rules take a risk-based approach and will align the Rules with international practice. They have generally been well received by interested parties. The issues involved have been extensively debated and Maritime New Zealand has worked closely with the harbourmasters and pilotage providers in particular to refine and improve the Rules.
63. A new version of the Rules will assist in the readability and navigability of the Rules. It is recommended that the new version of maritime Rules Part 90 Pilotage is implemented.

## **Implementation**

64. It is anticipated that Part 90 will come into force on 1 October 2010, replacing the current Part 90. The requirements will apply immediately to all new pilot licences and PECs issued or renewed from that date.
65. Transitional provisions will allow existing pilot licences and PECs and certain exemptions issued under section 47 of the Maritime Transport Act 1994 to be carried over to the new Part 90. All existing pilot licences will have to be renewed by 1 October 2011 and existing PECs by 1 October 2012. This timetable will ensure a smooth transition,

while minimising discrepancies between licences and PECs issued for any particular pilotage area as far as possible.

66. Transition provisions allow for phasing in of the requirement for annual assessments for pilots and PECs and approved assessment schemes. They also allow for the phasing in of the tug and tow threshold criteria as this will have the effect of disadvantaging existing operators in some areas.

67. Maritime New Zealand will be planning for the transition stage with the aim of reviewing and reissuing existing licences and PECs area-by-area within the required timeframe. New administrative procedures will be implemented at Maritime New Zealand, including new formats for licence and pilotage exemption certificates.

### **Monitoring, evaluation and review**

68. Maritime New Zealand maintains regular communications with harbourmasters, port companies and pilotage providers through its ongoing New Zealand Port and Harbour Marine Safety Code work programme and its auditing of harbour safety management systems. Maritime New Zealand also is involved in regular annual forums with harbourmasters and port company pilotage providers.

69. Maritime New Zealand will continue to monitor applications for exemptions under section 47 of the Maritime Transport Act to ensure the effectiveness of the pilotage Rules.

## **Part 91 Amendment Rules 2010**

### **Status quo and problem definition**

70. Reserved areas restrict navigation in a particular area for a specific purpose. For example, areas may be reserved for swimming, for the use of non-powered vessels or for water-skiing.
71. Regional councils may, but do not have to, exercise navigation safety control in their region. Maritime New Zealand is the default agency regulating navigation safety if a regional council does not exercise its jurisdiction over safety control.
72. While most local authorities have accepted jurisdiction for navigation safety in all waters in their region, about one-third of the country is not subject to navigation safety bylaws. In these areas, which include Taranaki and West Coast, the responsibility for navigation safety lies with the Director of Maritime New Zealand. In some regions, local authorities have excluded the application of navigation safety bylaws to specific waterways. Examples include the Ruamahanga River in the Wellington Regional Council area and Lake Waikaremoana in Hawke's Bay. Maritime New Zealand administers navigational safety in these areas.
73. Unlike local authorities, Maritime New Zealand does not currently have the ability to introduce reserved areas in the areas where it has responsibility for navigational safety. In practice, Maritime New Zealand is administering navigational safety in a number of areas, without the full complement of regulatory tools to allow it to do so effectively.
74. While Maritime New Zealand can encourage voluntary separation of different types of use, it cannot require it. This creates a situation where potentially vulnerable users (such as swimmers) are expecting to not have to mix with boats, when boats can – and do – legally enter the “swimming area”. Maritime New Zealand has received complaints and reports of near misses in this type of situation.

### **Objectives**

75. The objective of the amendments to Part 91 is to allow for the provision of reserved areas in waters where the Director of Maritime New Zealand exercises jurisdiction over navigation safety.

## **Regulatory impact analysis**

### *Option 1: Allow the Director of Maritime New Zealand to define reserved areas – preferred option*

76. This option provides the Director of Maritime New Zealand with the same power to set aside areas for a specific navigational purpose as is available to local authorities.
77. The Rule provides the Director of Maritime New Zealand with the power to create reserved areas for specific navigational purposes. The Director would be required to consult with relevant local authorities and the public generally.
78. The Rule provides the same level of navigation safety management throughout New Zealand.
79. At present, Maritime New Zealand actively administers navigational safety in a number of areas. The proposed Rule amendment does not add to this workload, and is likely to reduce it. In an attempt to achieve voluntary co-operation on the water, signs and information leaflets are being produced on a scale greater than is anticipated to be needed under the proposal.

### *Option 2: Require regional councils to exercise navigation safety jurisdiction*

80. This option will require changes to the Maritime Transport Act 1994 and the Local Government Act 1974 to require regional councils to exercise navigation safety jurisdiction.
81. Proposed changes in the Maritime Transport Amendment Bill will make navigation safety a function of regional councils under the Maritime Transport Act 1994. The Bill has not yet been introduced to Parliament and it is unclear when the proposed amendments might enter into force. Meanwhile, the Director of Maritime New Zealand requires tools to carry out navigation safety functions.

## **Consultation**

82. Maritime New Zealand invited submissions on the amendments to Part 91 from 15 October to 18 December 2009. Of the 65 submissions received, 8 related to the amendment concerning reserved areas. The submissions were taken into account when drafting the amendment Rules.
83. Regional councils supported the amendment allowing the Director of Maritime New Zealand to define reserved areas.

84. One submitter stated that local authorities should have navigation safety jurisdiction in all local waters.

### **Conclusions and recommendations**

85. The ability for the Director of Maritime New Zealand to define reserved areas allows the Director to carry out navigation safety functions for those waters for which local authorities have not taken up their navigation safety jurisdiction. It will allow the Director to more effectively manage navigation safety in those waters.

### **Implementation**

86. The preferred options will be implemented by amending maritime Rules 91.2, 91.12 and 91.22.
87. A communication strategy has been developed by Maritime New Zealand to inform the public of the changes contained in the proposed Rules. Maritime New Zealand will revise reference material such as advisory circulars and website information accordingly.
88. The location of reserved areas defined by the Director of Maritime New Zealand will be published in the *New Zealand Gazette*. Signs will indicate the reserved areas.
89. The proposed Rules Amendment will be implemented through changes to the Maritime (Offences) Regulations 1998. The proposed level of maximum penalties at \$1,000 for summary conviction and \$100 for infringement offences is the same as currently provided for under the maritime Rules.

### **Monitoring, evaluation and review**

90. Maritime New Zealand will continue to monitor the effectiveness of its local navigation safety functions. As part of the proposed Maritime Transport Amendment Bill, the jurisdiction of regional councils for local navigation safety will be reviewed.