

28 March 2013

SeaCert Consultation
Maritime New Zealand
PO Box 27006
Wellington

Dear Consultation Coordinator,

SUBMISSION: on the Draft SeaCert Rules (Parts 20, 31, 32, 35)

Thank you for the opportunity to respond to the rules associated with Maritime New Zealand's (MNZ's) SeaCert proposals. The Marine Transport Association (MTA) has reviewed each draft rule separately and would like to draw MNZ's attention to several issues associated with the proposals.

These are summarised on the following pages by Rule number, following a brief introduction to our Association.

About the Marine Transport Association

The Marine Transport Association (MTA) was formed in 1970 to represent the owners of restricted limits shipping. As an Incorporated Society, the MTA represents many fleet operators throughout the country along with owners of charter, ferry, rescue, aquaculture and work boats.

The NZ Marine Transport Association is an authoritative voice within the marine transport industry. It believes that providing all customers with safe, pleasant journeys to industry approved standards is good business practice and enhances NZ's overall tourism and environmental image.

Goals of the Association

- To promote and advance the interests and welfare of all members
- To provide an advocacy role to guide the direction of central and local government policy and actions in accordance with the wishes of Members and the vision of the Association
- To represent the interests of Members at all public forums as they arise
- To provide the information, services and products which will assist Members to meet their business goals
- To maintain regular and close contact and communication with Members to listen to and understand their views and aspirations
- To improve the public's understanding of the importance of the marine transportation industry to the nation and promote the professionalism, hospitality and efficiency of Members in the eyes of the wider community.

The Association is made up of members who represent a high number of passenger fleet and other owner/operator vessels throughout the country. These range from work boats, ferries (passenger and vehicular), charter boats, bare boat charters, tug and barge operators, fishing boats and aquaculture vessels.

SPECIFIC ISSUES RELATING TO SEACERT DRAFT RULES

Part 20 – Operating Limits

1. **Inconsistency in defining some areas:**

Inshore

During the development of these rules MNZ proposed that Cook Strait would be classified as an inshore limit (like the Foveaux inshore limit). MNZ also established a new inshore limit to the Three Kings Islands – more than 50 nautical miles from the nearest safe haven.

In the SeaCert Seafarer Qualification document published in November 2012, the Cook Strait Inshore limit has been removed, and replaced with a requirement for inshore passenger and non-passenger vessel operators to pass an exam and have their Skipper Restricted Limits (SRL) endorsed. The same requirement was not imposed on the open sea voyage to Three Kings Islands.

We respect that MNZ has concerns about Cook Strait being “busy” and “dangerous.” However, in considering MNZ's accident statistics (a fairly robust indicator of risk), we see that Cook Strait has had less incidents than even the Foveaux Strait, despite being busier. Cook Strait also offers fast and efficient emergency response capabilities, unlike the more remote proposed area of Three Kings Islands.

The MTA would like it noted that it strongly disagrees with the redefinition of the Three Kings Islands to Inshore and believe that allowing transit to this area with Inshore manning and equipment, opens the door to possible accidents of a serious nature in the future. Our recommendations would be to consider a compromise for operators and these are noted below.

Near-Coastal

There is no reference in Part 20 to a ‘near-coastal’ area. Interested parties are required to search other rules such as Parts 31 and 32 to find a definition which is stated as ‘***near-coastal area*** means the combined area of the coastal limits and offshore limits, as those terms are defined in rule 20.2 of Part 20 of the maritime rules.’ We would like to see this definition defined in MR Part 20.

2. **Contradiction with MOSS/Part 82 regarding non-commercial use requirements**

Provisions for using commercial vessels for recreational purposes, and other purposes, not directly for hire and reward, were produced in the recent round of draft MOSS rules.

The MTA are not yet privy to the final outcomes in the MOSS rule, but recall there was an intent to transfer provisions from the existing Part 20 Rule. These provisions allowed SSM Companies to approve one-off voyages outside restricted limits for the purpose of relocation, delivery etc.

The Draft MOSS Rule (Part 19) amended this with a requirement for operators to *notify* the Director of their intention to use vessels non-commercially, which would thereby exempt them from commercial manning and operating limit requirements.

A reading of the current draft Part 20 rule (Section 20.44) seems to indicate a contradiction of this. The rule now requires operators to *ask permission* from the Director of MNZ to have a family day out on their commercial vessel. This was unacceptable and unworkable in the current Part 20 and seems to be repeated in the new draft Part 20. It also seems to contradict the draft MOSS rule (and the new commercial Jetboat rule – Part 82).

Recommendations:

1. That MNZ define the Cook Strait as an inshore limit, with a possible compromise for vessels under say 12 metres, requiring skippers to be assessed for this passage through the proposed Cook Strait endorsement. An alternative approach could be to consider a minimum vessel size for transits across the Cook Strait commercially.
2. That MNZ include the definition of the 'near-coastal' area in proposed draft Maritime Rule Part 20.
3. That MNZ redefine the Three Kings as a restricted coastal operating area, thus ensuring life rafts and appropriate manning are carried on board.
4. That MNZ remove section 20.44, which requires operators to seek a permit for non-commercial use, as it is an imposition on vessel operators ownership rights and is at odds with other Maritime rules.
5. The new specified limit referred to in the draft MR20 is designed to cater for very restricted operations close to shore. We support this concept but request further information on the compliance process. The MTA requests confirmation from MNZ on what level of compliance, assessment and validity period would be required for these vessels, i.e. Part 35? SOP?

Part 31 – Crewing and Watchkeeping

3. Manning Tables

The MTA are unable to support this rule based on their being insufficient information provided to comment. Some of our concerns are summarised below:

3.1 There are several endorsements referred to (ref 32.39-32.46) for the new tickets being Qualified Deck Crew (QDC) and Skipper Restricted Limits (SRL). These include the following:

- passenger endorsement for over 12 pax
- over 24 metre
- Cook Strait
- over 500 GT
- over 3000 GT
- Sailing
- Square Rig
- High Speed

The MTA seek clarification as to whether an existing LLO and ILM ticket holder who currently enjoys these privileges, will be required to undergo further training and assessment, or will these endorsements be automatically granted when they transition to the new SRL.

3.2. There are no manning tables for any of the Sealink vessels and many of the Fullers, Real Journeys or other major tourism and ferry operations throughout NZ.

It is unacceptable to expect these operators to make a submission on the basis of applying for MSCD's under the future SeaCert regime, without any guidelines or manning tables. This situation could also lead to manning inconsistencies across the sector.

In summary, we are unable to offer any informed comment or submission on this particular rule without knowing what future crewing levels might be (and associated costs) for these vessels.

The manning table in *Appendix A* of this submission sets out a random selection of comparative manning requirements for current vessel operators versus proposed manning under SeaCert. We request clarification in particular, for those vessel types highlighted in Yellow, as there do not appear to be any manning guidelines for them.

- 3.3. Under the proposed rule “Proposal for minimum safe crewing level” (31.23) there are some subtle changes as compared to the old Part 31B.

The original rule 31B.7.2(f) states: *‘specify what consultation on that proposed minimum safe crewing level has taken place, and what the results of that consultation were.’*

The proposed new drafting under 31.23 reads: *‘specify what consultation with employers, employees and their representatives on the proposed minimum safe crewing level has taken place, and what the results of that consultation were.’*

This appears to place an obligation on the owner to negotiate the minimum safe crewing assessment with crew or union representatives. Members already consult with their Masters and crew and do not consider this change to be necessary as it could set a dangerous precedent by giving the union powers over operational aspects of the vessel. We seek clarification as to why this change was made in the new draft rule.

- 3.4. *MR 31.83 : Sailing Ships*

Under the current regulations, masters and crew of sailing ships are classified within MR31B as for Passenger. In other words, the manning requirements are in line with any other passenger vessel operating within the same limits.

The proposed rule part 31.83, appears to increase crewing requirements (and costs) significantly for sailing craft, putting them at a significant disadvantage to power boat operators.

If it was intended that Masters of sailing craft be offered a choice between Master Yacht 24m as an alternative to SRL, then we have no issue with this as it allows flexibility and freedom of choice. Some Masters may operate both power boats and sailing craft however, and should have the ability to use either ticket within restricted limits.

The MTA seek clarification as to why MNZ require additional endorsements for restricted limit sailing craft? We would expect to see evidence of safety concerns, history of incidents and a regulatory impact assessment to support this.

We do support the option for sailing craft skippers to hold the Master Yacht <24m but as an optional choice to SRL, not a requirement. We also support additional endorsements for sailing craft in coastal and offshore limits.

Recommendations:

- MTA request that MNZ provide proposed manning tables for ALL vessels, including large passenger, non passenger and fishing sectors. We also seek manning table guidelines for those vessels not currently covered in proposed Maritime Rule Part 31.
- We further request that MNZ provide details of training/assessment requirements plus associated costs for endorsements required to be held by existing and future applicants. If further assessment is required, who will undertake this (i.e. MNZ?) and what will the content/cost be?
- The MTA seek clarity on the additional requirements for Sailing Craft and in particular, transition requirements for existing holders of LLO/ILM tickets, who are currently operating sailing craft in restricted limits.
- MNZ to clarify the change in wording of Rule Part 31.23. We further recommend that the wording revert back to that in MR Part 31B.7.2(f).

Part 32 – Seafarer Certification

4. Removal of existing privileges and a Transition process which disadvantages many existing license holders

Throughout the SeaCert consultation period, MNZ indicated that existing certificate holders would not be disadvantaged. This may be the case for some, but for others (e.g. ILM holders), the disadvantages are likely to be large. With a current ILM, a skipper may currently command any size passenger vessel within restricted limits, but is limited to 99 passengers in enclosed waters and 49 passengers within inshore waters. ILM holders can currently skipper sailing vessels and carry dangerous goods, although special training is required for the latter under Rule Part 24A.

Under SeaCert, ex-ILM holders appear to be restricted to operating a vessel *under 24m*, with passenger endorsements required for over 50 passengers. Other passenger number restrictions (*i.e fewer than 13 passengers*) have also been introduced along with endorsements required for over 12 and 24 metres respectively. Further restrictions will be applied to motor vessels (sailing vessels will require a sailing ticket endorsement) and skippers wishing to carry dangerous goods will require even further endorsements to their current privileges.

The same downsizing of privileges also applies to non-passenger vessels within enclosed limits. Currently, an ILM holder can operate a non-passenger vessel of any size in enclosed waters. Under the proposed rules, this will be reduced to less than 24m. Whilst vessel length is not a factor for inshore limits (ILM holders are currently already restricted to vessels under 24m in this instance), they will, under SeaCert, require a dangerous goods endorsement to carry dangerous goods.

Ex-ILM holders will also be disadvantaged in terms of their ability to command fishing vessels. They will no longer be able to operate fishing vessels of any size within enclosed waters, as the new SRL license will restrict them to vessels of less than 24m. However, those operating within inshore limits will be able to operate vessels 4 metres longer than is currently possible. This appears to be one of the few transition points that represents an increase in privileges - many others have been markedly reduced. The table below summarises some of these changes.

ILM Privileges					Skipper Restricted Limit privileges (3a)
Role	Vessel Type	Vessel Length	Operating Limit	Max Passengers	
Skipper	Passenger	Any	Enclosed	99	Vessel length reduced to <24. Passengers reduced to <13 and requires endorsements for sailing and dangerous goods.
	Passenger	Any	Inshore	49	Vessel length reduced to <24. Passengers reduced to <13 and requires endorsements for sailing and dangerous goods.
	Non Passenger	<24m	inshore	N/A	Same but requires endorsement for dangerous goods.
	Non Passenger	Any	Enclosed	N/A	Vessel length reduced to <24 and requires endorsement for dangerous goods.
	Fishing	20m	Inshore	N/A	Vessel length increases by 4m
	Fishing	Any	Enclosed	N/A	Vessel length reduced to 24m

Further issues include reference in Table 3 of MR part 32 to NZOM or NZOW seafarers operating as master of a vessel less than 500GT in the coastal area. It then states that these ticket holders will no longer be able to operate in these capacities after 31 December 2016 without meeting the ancillary requirements of the equivalent new certificate as required by STCW-10.

For vessels over 500Gt there are further problems. During the QOLs initial stages of development, discussions and an agreement amongst the working group (in conjunction with MNZ) was given to the inclusion of the Master 500-3000GT (near-coastal) certificate. This was seen as the next logical step to allow the holders of under 500GT to gain sea time on over

500GT vessels. An undertaking was also given by the then QOLs team that the intended changes would not apply to existing operations and that no one would be disadvantaged by the proposed changes under QOLs. This does not appear to have been clarified within the current draft rules.

In conclusion, ILM holders, and possibly many others, appear to be considerably disadvantaged as a result of the transition to SeaCert. The rules lacks detail in this area and the transition to SeaCert could entail a significant curtailment of *opportunities* for ILM and other ticket holders in terms of their ability to move easily between positions and jobs (e.g. those who usually carried 12 passengers under their ILM may now need to go back to school to carry 15 passengers under their SRL).

Employers will also bear the financial burden of these changes in terms of additional training and recruitment costs for staff whose tickets were previously sufficient to allow their holders to undertake a broader range of responsibilities. In our view, MNZ have provided very little evidence, to support such wide-ranging withdrawal of privileges, in particular for ILM holders. This type of information would normally be supplied in a regulatory impact statement which has not been produced thus far for SeaCert.

An independent comparison of ILM privileges with the proposed SRL at its various levels, concludes that the default transition to SRL 3a endorsed to 24m sells the maritime industry short for no obvious benefit to anyone. An automatic transition of ILMs through to SRL 3b, with all available endorsements (for high speed vessels, where this was held under the ILM), would more closely match current ILM privileges. It would also go a considerable way to avoiding a time consuming and unnecessarily expensive process.

5. Proposed Fee Structure

The proposed costs for both new entrants and existing ticket holders, as detailed in Part 32 (invitation to comment App 2) are significantly higher than expected.

By way of demonstration, we have detailed two scenarios below (note that these costs *exclude* any additional training or assessment costs that may be required):

Existing ILM with over 12 metre boat carrying more than 50 pax plus DG

Application fees to MNZ:

Transition to SRL (Application Base Fee)	\$1251.00
<i>required within max 5 years ; this fee is for submission on line ; add a further \$125 for paper based applications!</i>	
Endorsement for carriage of passengers	\$1042.00
Endorsement for Dangerous Goods	\$ 417.00
<i>(assumed as not on schedule)</i>	

Further to this, a sailing ship can expect to pay an additional \$417.00 for the sailing endorsement (extra if square rigged) and if the vessel is over 24 metres and over 500 GT, add another \$417.00 for each.

If it is the intention of MNZ to charge fees in Appendix 2 to existing licence holders when they transition, then we oppose this new regime. Such high application fees for both SRL and Master Yacht<24m including an increase of over 200% for an SRL applicant is unacceptable and would constitute a significant barrier (ref. Part 32 Invitation to Comment, Appendix 2).

The introduction of SeaCert and significant increases to fees will predominantly affect smaller domestic operators.

MNZ is basing its licensing fees on a rate of \$125 (plus GST) an hour, which is based on the work underpinning the MNZ's recent Funding Review. The licensing work conducted by MNZ is largely of a clerical rather than professional nature. From this point of view, an hourly rate of \$125 is difficult to justify as the true cost of the service.

The maritime industry has a large number of small owner operators, who operate on low margins. The new licensing fees, plus the huge fee hikes that are likely to accompany MOSS, will likely drive many out of the industry to the detriment of New Zealand's fishing and tourism industries. Why MNZ has chosen to target smaller operators through the Funding Review process and now SeaCert is uncertain.

If the operating costs are so high, we would recommend MNZ consider outsourcing the administration of seafarer licensing to the private sector. For example, the Automobile Association conducts land transport licensing on behalf of the Transport Agency. This approach could also be considered for the delivery of SeaCert and MOSS services to improve value for money to operators.

Recommendations:

- That MNZ consider automatically transitioning ILM holders through to SRL 3b, with sufficient endorsements to ensure that privileges allowed under the ILM are transferred to the SRL
- That MNZ conduct a comparison of other existing and new certificates and take such steps as are necessary to ensure that other existing certificate holders are not similarly disadvantaged.
- That MNZ publish a Regulatory Impact Assessment
- That MNZ reinstate the Master 500-3000GT (near-coastal) Ticket

- The MTA request clarification regarding “Transition” fees where transition is affected by revalidation of existing licences. The fee stated on (page 66) is \$236.13. We request that, if not already considered, that this revalidation fee apply to all “Transitions”, not the Application Fees detailed in Part 32 Invitation to Comment, Appendix 2.
- That MNZ review the option to outsource the administration of licensing services to the private sector.

Regulatory Impact Statement/Analysis

In line with the Government's *Statement on Better Regulation*, regulatory decisions should only be made when ‘*all implementation issues, costs and risks have been fully assessed and addressed*’. The normal vehicle for this is a regulatory impact analysis and associated “regulatory impact statement” (RIS).

MNZ does not appear to have produced these for QOLS or SeaCert to date, and the MTA request that, if available, industry have the opportunity to review those documents. This may require an extension to the submission closing date.

The RIS documents are crucial to the review of maritime rules by industry, as they contain information surrounding the background and analysis to support proposed rule changes. A summary of some of the information we would expect to find in the Regulatory Impact analysis, would also assist us with making a more informed submission.

We also request information covering the following:

- Possible financial and non-financial impacts on the industry.
- Information surrounding decisions to include new medical examination requirements; it appears that hearing and speech requirements will now be required, in addition to the normal eyesight tests. Some existing seafarers could be put out of their jobs because of the changed medical requirements and this needs to be acknowledged in the SeaCert documentation.

By not supplying a Regulatory Impact Statement, there is a perceived lack of transparency in the QOLS/SeaCert process imposing a significant barrier to those wishing to make a fully informed submission on the SeaCert proposals. This could also expose MNZ to criticism from the Regulations Review Select Committee.

Recommendation:

1. That MNZ confirm that a thorough impact assessment of all aspects of the SeaCert proposals has been completed and make this public in sufficient time to allow it to inform submissions on the new rules.

Concluding remarks

The new licensing framework will certainly produce more flexibility in some cases (e.g. for those entering the profession looking for a career path, those working close to shore (in marinas etc) and for some working in certain operating areas).

We are concerned however, that these advantages are seriously undermined by other aspects of the SeaCert proposals. These disadvantages include:

1. Inconsistency in defining some Inshore areas
2. Contradiction with MOSS/Part 82 regarding non-commercial use requirements
3. Removal of existing privileges and a Transition process which disadvantages many existing license holders
4. A transition process which is unnecessarily complex, time consuming and expensive and which will reduce employment opportunities for many existing certificate holders
5. Incomplete manning tables and guidelines within MR31
6. A lack of transparency over the impact of the regulatory changes associated with the SeaCert proposals

Thank you for your time in reviewing our comments and we would welcome the opportunity to speak to our submission at a later date.

Yours sincerely



Margaret Wind
Executive Officer
NZ Marine Transport Association

Manning Table Comparisons - MR31B/C versus SeaCert

Vessel Type	O/L	G/T	Vessel Type:	Operating Limits	Passenger numbers	Current Manning	Engineer ?	Total current minimum complement	Proposed SeaCert Manning	Additional Endorsements?	Total current minimum complement
Passenger	49	540	Passenger/Vehicle Ferry	Inshore	400	Master NZOW endorsed command Mate - ILM Deckhand - ADH	MEC 6 (may be the mate or deckhand)	5	NO MANNING TABLE in new Part 31 for over 24m Passenger Inshore		
Passenger	27	210	Charter/Tourism	Enclosed	40	ILM + 1 other seafarer	not required if under 750kW	2	Master - SRL under 500GT	Passenger endorsement MEC6 if engine over 750kW	2
Passenger	9.5	-	Charter/Tourism	Inshore	14	LLO	not required if under 750kW	1	SRL	Passenger endorsement for over 12 pax	1
Passenger	15	-	Sport Fishing charters	Restricted Coastal	12	NZOW with command Mate - ILM	MEC 6 (may be the mate)	2	Skipper coastal/offshore (equivalent to NZOW with ILM endorsement) + Skipper restricted limits <24m + MEC.5 (and may be the Mate)	Clarify requirements for under 24m endorsement.	2
Passenger	11	-	Hire Drive Charter Yacht	Inshore	10	experience assessed by owner/operator	not required if under 750kW	1	experience assessed by owner/operator		1
Passenger	15	-	Sailing Charter	Inshore	15	LLO	not required if under 750kW	1	SRL with Sailing Ship endorsement	Sailing ship endorsement and/or square rigged endorsement if applicable +Endorsement for carrying over 12 pax?	1
Non Passenger	15	-	Tug	Inshore	-	LLO (note MSCD application required for Tug)	not required if under 750kW	1	Master - SRL under 24m	No, but MSCD still required	1
Non Passenger	44	561	Bulk Carrier	Offshore	-	NZOM with STCW endorsement +Mate - NZOW + Deckhand - ADH	Chief - MEC 4 + MEC 6 (maybe mate or deckhand)	4	NO MANNING TABLE in new Part 31 for over 24m Non Passenger Offshore		

Vessel Type	O/L	G/T	Vessel Type:	Operating Limits	Passenger numbers	Current Manning	Engineer ?	Total current minimum complement	Proposed SeaCert Manning	Additional Endorsements?	Total current minimum complement
Non Passenger	44	561	Bulk Carrier	Coastal	-	Master - NZOM + Mate - NZOW	MEC 6 (may be the mate)	3	NO MANNING TABLE in new Part 31 for over 24m Non Passenger Offshore		
Non Passenger	5.5	-	Work Boat	Enclosed	-	LLO (or Part 35 ISTQ)	not required if under 750kW	1	SRL (or Part 35 ISTQ)		1
Fishing	16	-	Crayfishing	Restricted Coastal	-	Master - NZOW endorsed ILM	MEC 6 (may be Master or other seafarer)	2	Master - SCO + MEC 6 (may be the Master of other seafarer)		2
Fishing	24.5	-	Trawler	Offshore	-	Master - NZOM Deckhand - ADHF Mate - NZOW	Chief - MEC 4	4	NO MANNING TABLE in new Part 31 for over 24m Fishing Offshore		
Fishing	16	-	Line	Inshore	-	Master - ILM	not required if under 750kW	1	SRL endorsed to 24m	Clarify requirements for under 24m endorsement.	1
Fishing	35	-	Trawler	Offshore	-	Master - NZOM Deckhand - ADHF Mate - NZOW	Chief - MEC 4 (no other engineer if HP engine under 750KW)	5	NO MANNING TABLE in new Part 31 for over 24m Fishing Offshore		
Aquaculture	21	90	Mussel Harvester	Inshore	-	ILM + 1 other seafarer	not required if under 750kW	2	Master - SRL under 24m	Clarify requirements for under 24m endorsement.	1