

## Regulatory Impact Statement

### Introducing a Blood Alcohol Limit for On-duty Seafarers

*The International Convention on Standards of Training, Certification and Watchkeeping 1978*

#### Agency disclosure statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Transport.
2. It provides advice on the implementation of a national obligation under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the Convention) to implement a maximum alcohol limit for merchant seafarers undertaking safety, security, or environmental protection duties.
3. The Ministry of Transport has investigated non-regulatory options but has established that only implementation in primary legislation would fulfil New Zealand's Convention obligation.
4. There are two notable gaps in our analysis of costs and benefits of the proposal.
  - 4.1. The consequences of not implementing this Convention obligation are uncertain because the International Maritime Organization is still considering the sanctions to be taken against party states that do not fully implement their Convention obligations.
  - 4.2. The actual extent of alcohol use on merchant ships, and the impact of an alcohol limit on the behaviour of seafarers, is uncertain because there has not been an alcohol testing regime in the past.
5. The proposed alcohol provisions appear to engage some rights under common law and the New Zealand Bill of Rights Act 1990. We consider that, if rights have been breached, any breaches appear to be justified limitations on rights under section 5 of the New Zealand Bill of Rights Act 1990.
6. The proposal would not impair private property rights, market competition, or the incentives on business to innovate and invest. The proposal is consistent with commitments in the Government's statement *Better Regulation Less Regulation* because it is the minimum regulatory intervention required to achieve the policy objective.

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## Status quo and problem

### *Background*

7. International shipping is crucial for the New Zealand economy, carrying 99.6 percent of its overseas trade by weight. New Zealand has a strong interest in maintaining the integrity of the international convention system, which ensures that ships are not deterred from visiting New Zealand because of a different regulatory environment.
8. New Zealand has been a party to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the Convention) since 1986. The Convention sets global standards for seafarer training, certification, watchkeeping, fitness for duty, hours of rest and watch schedules, and medical standards, and covers 98.9 percent of the world's freight tonnage carried by ship<sup>1</sup>.
9. In June 2010, the International Maritime Organization adopted a major revision of the Convention that includes revised requirements on hours of work and rest, updated medical fitness requirements, and new measures to deal with drug and alcohol use.
10. In the interests of ensuring the fitness and ability of a seafarer to perform, the new alcohol measures include the requirement for party states to:  
  
*“establish an alcohol limit of 0.05<sup>2</sup> BAC (blood alcohol content) or a quantity of alcohol leading to such alcohol concentration for seafarers while performing designated safety, security and marine environmental duties<sup>3</sup>”*
11. The alcohol limit requirement took effect on 1 January 2012 but New Zealand received dispensation under the Convention to defer compliance for 12 months. New Zealand will be in breach of the Convention if it has not given effect to the alcohol limit by 1 January 2013.
12. The alcohol limit only needs to apply to seafarers governed by the Convention. For New Zealand this will include the crew on about 80 domestic ships and seafarers on foreign vessels (including cruise ships and cargo vessels) when they are within New Zealand's territorial waters.

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<sup>1</sup> International Maritime Organization, *Status of Conventions Summary*, 29/02/2012; <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>

<sup>2</sup> 0.05 blood alcohol content means 50 milligrams of alcohol in 100 milliliters of blood. For a male of average height and weight this limit equates to around two standard drinks in the first hour and one drink per hour thereafter.

<sup>3</sup> The specific safety, security, and environmental duties that are subject to alcohol limit requirements are described throughout relevant parts of the Convention.

13. The limit would not apply to seafarers on warships, fishing or recreational vessels, or any other ship where the master is not required to hold an official certificate under the Convention.
14. Typically less than 10 incidents per year in New Zealand occur in circumstances where this alcohol limit might be applied.

### ***Problem***

15. New Zealand law does not have an alcohol limit for seafarers. To give full effect to the Convention, New Zealand would need to amend the Maritime Transport Act 1994 (the Act) to:
  - 15.1. prohibit certain on-duty seafarers from exceeding a 0.05 blood alcohol content while they are carrying out safety, security and environmental duties specified in the Convention
  - 15.2. establish enforcement powers, including an alcohol testing regime.

### **Objective**

16. The objective is to give full effect to New Zealand's obligations as a contracting party to the Convention.

### **Regulatory impact analysis**

#### ***Options***

17. *No action:* If no action were taken, New Zealand would be unable to fulfil its Convention obligation to apply the alcohol limit to New Zealand ships and seafarers, or to enforce the limit, if required, on visiting foreign ships.
18. *Non-regulatory:* Similarly, non-regulatory measures, such as a code of practice, would be insufficient to meet the Convention requirement that measures be enforceable.
19. *Regulation:* Using regulations to implement the alcohol regime would not provide the legal clarity and certainty that is necessary to implement this particular obligation. A regulatory approach is also unsound for an initiative that has New Zealand Bill of Rights Act 1990 implications, and would be inconsistent with the treatment of the equivalent alcohol testing regime for vehicle drivers in the Land Transport Act 1998.
20. *Legislation:* Amending the Act to include alcohol limit provisions would clearly implement the relevant Convention obligation with legal clarity and certainty. This is the best option for achieving the policy objective of giving full effect to the Convention.

21. *Legislation exceeding requirements:* A final option would be to exceed the requirements of the Convention by extending the application of alcohol limits beyond Convention governed seafarers, or by implementing a more stringent blood alcohol limit. This option could impose compliance costs on recreational boat users and non-Convention crews, and greater resource requirements on the New Zealand Police to carry out testing. Implementing alcohol restrictions beyond the requirements of the Convention would require further investigation, analysis and consultation with the Police and affected users, and would make it impossible for New Zealand to give effect to the Convention by 1 January 2013.

### ***Legislative impact***

#### *New alcohol limit provisions in the Maritime Transport Act 1994*

22. Amendments to the Act would be based closely on the existing provisions for alcohol testing in the Land Transport Act 1998. This ensures that well-established processes and procedures for enforcement and testing will be utilised.
23. The provisions would include the establishment of a blood alcohol limit of 0.05 grams of alcohol per 100 millilitres of blood (and an equivalent breath alcohol limit of 250 micrograms per litre of breath) for on-duty seafarers when they are performing certain safety, security, or environmental duties specified in the Convention.
24. The proposed alcohol limit for seafarers would be more stringent than the limit for drivers of vehicles (0.08 blood alcohol content) in the Land Transport Act 1998. This stricter limit reflects the limited application of the offence to only Convention-governed seafarers, and the greater potential safety and environmental risks posed by large commercial ships.

#### *Application*

25. The new provisions would apply to seafarers governed by the Convention, including:
  - 25.1. on-duty seafarers carrying out duties specified in the Convention on foreign-flagged merchant ships within New Zealand territorial limits
  - 25.2. on-duty seafarers carrying out duties specified in the Convention on New Zealand-flagged merchant ships, whether within or outside New Zealand territorial limits

### *Penalty*

26. The penalty for a breach of the alcohol limit for seafarers would be a summary offence punishable by a fine of up to \$10,000 or 12 months imprisonment.
27. This penalty is greater than that applicable to a breach of the alcohol limit in the Land Transport Act 1998. The higher penalty reflects the severity of the offence and the greater potential risk presented by a large commercial ship. The penalty is the same as for other safety offences in the Act related to actions causing unnecessary danger or risk.

### ***Impacts on industry***

28. Since the penalties for a breach of the alcohol limit are imposed on individuals, the initiative will not impose costs on operators.
29. The maximum alcohol limit would apply to crews on about 80 domestic passenger and non passenger ships operating in coastal and offshore areas, and could affect up to 600 individuals when they are carrying out the safety, security, or environmental duties specified in the Convention.
30. The major New Zealand maritime shipping operators already have in-house policies in place that are stricter than the proposed blood alcohol limit of 0.05. The two Cook Strait ferry operators have zero alcohol limits. Pacifica Shipping, a domestic container service provider, has a blood alcohol limit of 0.04 for employees. Employers are likely to be in favour of a statutory testing regime applicable in cases where is reasonable cause to believe that alcohol is involved.
31. The limit would also apply to seafarers on foreign ships within New Zealand territorial limits, including when the vessels are in port. Some 900 foreign vessels visit New Zealand, making about 6,500 port visits per year.

### ***Impacts on the criminal justice system***

32. Implementing the alcohol limit provisions will impose occasional costs on the New Zealand Police, when they are called out to perform breath and/or blood tests, and on the courts if an individual is prosecuted for a breach of the alcohol limit. These costs are expected to be marginal and infrequent and the New Zealand Police have indicated that they will be able to manage any additional demands for alcohol testing within existing resources.
33. Testing will only take place where there is good cause to suspect that a seafarer has recently committed an offence against the alcohol limit, or if there has recently been a safety, security, or environmental incident involving a vessel where there are clear grounds to suspect that

alcohol use could have been involved. Reported shipping incidents where alcohol use might be relevant typically number less than 10 per year in New Zealand.

34. The Ministry of Justice has indicated that the costs of additional court cases resulting from this provision are too difficult to estimate because of the complexities of the Criminal Procedure Act 2011 and the small number of charges likely to be laid. It is likely that seafarers charged with a breach of the alcohol limit would also be charged with another safety-related offence as well, and therefore the additional cost of the alcohol offence is negligible.

### ***Human rights impacts***

35. The new alcohol provisions do appear to engage some rights under common law and the New Zealand Bill of Rights Act 1990.
36. The requirement for seafarers who are suspected of committing an offence against the alcohol limit to undergo breath testing and to permit the taking of blood may breach the right against unreasonable search or seizure and the right to not be arbitrarily arrested or detained.
37. The conclusive presumption that the level of alcohol at the time of alleged offence was the same as that indicated in subsequent testing may breach the right to be presumed innocent until proved guilty.
38. The requirement for seafarers governed by the Convention to undergo a medical procedure (the taking of breath or blood) also appears to breach the common law principle of concern for dignity of the individual.
39. We consider that, if these rights have been breached, any breaches appear to be justified limitations on the rights under section 5 of the New Zealand Bill of Rights Act 1990. Officials will work with officials at the Ministry of Justice to ensure that the resulting legislation is consistent with the New Zealand Bill of Rights Act 1990.

### ***Impacts of non-compliance***

40. New Zealand is dependent on international shipping for trade, and on international conventions to ensure that safety and marine protection provisions are consistently implemented internationally.
41. If we take no action to establish the required alcohol limit by 1 January 2013, New Zealand will be in technical breach of the Convention. The Ministry of Foreign Affairs and Trade is of the view that non-compliance could damage New Zealand's international reputation as a responsible maritime nation.
42. In addition, the International Maritime Organization is developing a way to respond to countries that do not comply with the Convention. We

understand that this could in particular affect international recognition of seafarer certificates issued by non-compliant countries.

43. Non-recognition of New Zealand Convention certificates would affect seafarers with New Zealand issued certificates wanting to work on foreign-flagged ships. It would also discourage foreign maritime students from studying here to obtain New Zealand qualifications. Currently this activity is worth approximately \$15 million annually.
44. The International Maritime Organization has developed these alcohol requirements in the interests of ensuring that seafarers are fit and able to perform their duties safely. Failure to comply with the Convention would leave New Zealand with no testing or penalty provisions for merchant seafarers who are impaired by alcohol while performing their duties.

### **Consultation**

45. Maritime New Zealand, the New Zealand Police, the Ministry of Justice, the Department of Prime Minister and Cabinet, the Treasury, the Transport Accident Investigation Commission, and the Ministry of Foreign Affairs and Trade have been consulted in the development of this policy and informed of this Regulatory Impact Statement.
46. The shipping industry is aware of the Convention and its requirements for seafarers. The industry was widely informed of the changes when the International Maritime Organization was developing the 2010 amendments, and had an opportunity to provide input to the International Maritime Organization at that time.
47. In consulting on the maritime rules to implement the 2010 Convention amendments, Maritime New Zealand reminded industry of the Convention's impending alcohol requirements.
48. Industry will have the opportunity to make submissions on the implementing legislation once it has been introduced and referred to a Parliamentary Select Committee.

### **Conclusions and recommendations**

49. To give full effect to the Convention, the proposed alcohol limit for on-duty commercial seafarers should be included in amendments to the Act.
50. Full compliance with the Convention maintains New Zealand's international reputation and avoids sanction from the International Maritime Organization for non-compliance.
51. The International Maritime Organization has developed these alcohol requirements to ensure seafarers are able to perform their safety,

security, and environmental protection duties. Implementing the Convention's alcohol limit helps to preserve a safe environment for maritime commerce in New Zealand by creating testing requirements and penalties for seafarers impaired by alcohol while performing their duties.

52. Operators with existing employment-based alcohol policies are likely to be supportive of the proposed alcohol limit because it will provide a legal mechanism for testing and sanction in cases where there is reasonable cause to believe that alcohol use has occurred.
53. The costs associated with implementing the Convention's alcohol limit will be minimal, and provisions in the Act will be based closely on alcohol provisions in the Land Transport Act 1998 to ensure that established processes and procedures are used.

### **Implementation**

54. The testing regime and enforcement procedures would be carried out by the New Zealand Police. A Police constable would be empowered to require a seafarer to undergo a breath screening test, if there is good cause to suspect that the person is on duty and impaired by alcohol, or if there has been a safety, security, or environmental incident involving the use of a vessel where there are good grounds to believe alcohol is a contributing factor.
55. Consultation with Maritime New Zealand and the Ministry of Foreign Affairs and Trade will ensure the new provisions are sufficient to meet international obligations.

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

56. Maritime New Zealand will keep a record of incidents where alcohol testing is used as part of their domestic maritime safety, health and safety, and environmental investigations.