

## **Questions and Answers – Cape Town Agreement of 2012**

### **1. *What is the Cape Town Agreement of 2012?***

The Cape Town Agreement of 2012 (the Agreement) sets internationally agreed minimum standards for the design, construction and equipment of seagoing fishing vessels 24 metres in length and over. The Agreement supersedes the 1977 Torremolinos Convention and the 1993 Torremolinos Protocol.

### **2. *What type of vessels does the Agreement apply to?***

The Agreement would apply to New Zealand fishing vessels 24 metres in length and over.. The Agreement also applies to foreign fishing vessels 24 metres in length and over visiting New Zealand ports.

Twenty-four metres in length and over is recognised as a fishing vessel size that can effectively operate on the open sea, distinct from those designed to operate primarily in coastal waters.

The Agreement mostly affects new vessels. As New Zealand rarely constructs or converts new vessels, the Agreement is not expected to greatly affect New Zealand's fishing sector.

Some provisions in the Agreement apply to existing fishing vessels (e.g. radiocommunications, life-saving equipment and arrangements, navigational equipment and arrangements, emergency procedures and muster drills).

Subject to the extent of application of the Agreement, approximately 28 vessels registered to New Zealand may be affected by the Agreement's requirement for annual survey of life-saving equipment and surveys of structure, machinery and equipment.

### **3. *Are there any costs to industry in acceding (or signing up to) the Agreement?***

We don't expect New Zealand fishing vessel owners and operators will need to make significant changes to current practices to implement the Agreement.

This is because New Zealand legislation is already largely consistent with the Agreement.

Maritime rules and regulations were developed to largely align to the Agreement's predecessor, the 1993 Torremolinos Protocol. The Cape Town Agreement did not alter the provisions of the 1993 Torremolinos Protocol — its main function was to lower the entry into force requirements.

### **4. *Who will benefit from New Zealand acceding to the Agreement?***

Being party to this Agreement would enable Maritime New Zealand officers to inspect foreign fishing vessels. The officers would be able to check for compliance with international design, construction and equipment standards when foreign fishing vessels visit a New Zealand port.

We expect the Agreement will level the playing field. The Agreement will do that by ensuring foreign-registered vessels competing with New Zealand vessels are not unfairly advantaged by operating with lower safety standards and lower costs.

#### **5. What New Zealand vessels will be affected by the Agreement?**

If the Agreement were to come into force in New Zealand, its standards would apply to all fishing vessels that are:

- existing New Zealand-registered vessels of 24 metres in length and over, excluding vessels that navigate exclusively in restricted limit areas (enclosed water and inshore fishing limits)<sup>1</sup>
- new New Zealand vessels (or major conversions of existing vessels) of 24 metres in length and over, excluding vessels that navigate exclusively in restricted limit areas (enclosed waters and inshore fishing limits)
- foreign-registered vessels visiting New Zealand ports.

#### **6. How does the Agreement relate to the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F Convention)?**

The STCW-F Convention sets training, certification and watchkeeping standards on fishing vessels of 24 metres in length and over. The STCW-F Convention and Cape Town Agreement are complementary: one relates to training, competence, certification and watchkeeping while the other concerns the safety and integrity of the vessel itself.

#### **7. How will the Agreement be affected by the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill 2014, which requires reflagging of foreign fishing vessels?**

From 1 May 2016, only New Zealand-registered vessels will be able to catch quota in New Zealand waters. Any foreign charter fishing vessel (FCV) currently operating in the New Zealand fishery will have to be reflagged as a New Zealand vessel, to be able to continue to catch quota in New Zealand waters. This means a FCV flagged to New Zealand will be subject to the same legal obligations as locally-owned and flagged vessels. Those requirements include adhering to labour law, health and safety requirements, and maritime and marine protection rules (including vessel design, construction and equipment, operational safety and pollution prevention).

If New Zealand signs up to the Agreement:

- foreign flagged vessels will not be able to fish New Zealand quota from 1 May 2016 and, given our law is largely aligned to the Agreement, vessels would essentially comply with the Agreement anyway<sup>2</sup>

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<sup>1</sup> As defined and explained in Maritime Rule Part 20 – Operating Limits.

<sup>2</sup> A maritime transport operation that operates an FCV that is subject to NZ fisheries law is subject to the relevant maritime rules.

- vessels using New Zealand only as a supply port (but not fishing New Zealand quota) are not covered by the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014. The Agreement, once it enters into force, would allow Maritime New Zealand to conduct port state control on these vessels, to check they comply with the standards of the Agreement<sup>3</sup>. The checks would ensure safer vessel operation in waters New Zealand has an interest in.

#### **8. What about merchant (cargo and passenger) vessels operating internationally?**

The Agreement does not apply to merchant vessels — vessels carrying cargo or passengers. Merchant vessels are covered by a parallel convention — the International Convention for the Safety of Life at Sea (SOLAS) 1974. New Zealand is a party to SOLAS, which is in force internationally.

#### **9. How will New Zealand fishing vessels be inspected for compliance with the Agreement?**

Twenty-eight New Zealand fishing vessels are likely to be affected by the Agreement, depending on how we apply the Agreement's provisions.

Maritime New Zealand will inspect these vessels for compliance with the Agreement, in accordance with relevant maritime rules.

These rules include Maritime Rule Part 19: Maritime Transport Operator – Certification and Responsibilities, relating to the Maritime Operator Safety System (MOSS). MOSS applies to New Zealand maritime transport operators, including those operating foreign charter fishing vessels.

#### **10. How will foreign vessels be inspected in New Zealand for compliance with the Agreement?**

If the New Zealand Government signs up to the Agreement, a Maritime New Zealand officer will check foreign vessels for compliance with the Agreement, as part of routine port state control inspections on foreign flagged fishing vessels. If a foreign vessel is from a state party to the Agreement, they are likely to have an *International Fishing Vessel Safety Certificate*, which is treated as evidence the vessel complies with the Agreement.

If the Maritime New Zealand officer suspects the vessel does not comply with the Agreement, a more detailed inspection could be carried out. This inspection would clarify if there are any issues with the design, construction and equipment of the vessel.

The Agreement contains a clause requiring member states to ensure vessels from a state not party to the Agreement do not receive more favourable treatment than a vessel from a state that is party to the Agreement. This means New Zealand would be able to apply the Agreement standards to all foreign flagged fishing vessels visiting New Zealand ports.

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<sup>3</sup> 'Port State Control' enables the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations

### ***11. What would Maritime New Zealand do if a foreign ship did not comply with the Agreement?***

If the Agreement is in force and New Zealand has signed up to it, Maritime New Zealand could:

- notify the state in which the ship is registered (the 'flag state') that the ship is not complying with the Agreement
- ask the vessel owner to make changes so the ship complies with the Agreement and detain the vessel until this is done
- investigate further.

### ***12. What are the next steps?***

Following public consultation, the Ministry of Transport will consider submissions received. We will then advise the Minister of Transport on whether to seek Cabinet agreement for New Zealand to sign up to the Agreement. This advice will include a national interest analysis, outlining advantages and disadvantages of the New Zealand Government signing up to the Agreement.

The Minister will then provide advice to a Select Committee. The Select Committee may produce a report with recommendations to the Government.

If the Government decides to sign up to the Agreement, changes to New Zealand rules are required to enable New Zealand to fulfil its obligations under the Agreement. Once changes are made, New Zealand can sign up to the Agreement.

The Agreement will come into force when at least 22 States (having at least 3,600 fishing vessels 24 metres in length and over operating on the high seas) express consent to be bound by the Agreement.

As of April 2015, three States had signed the Agreement. A further 16 States had either signed its predecessor (the Torremolinos Protocol) or were contracting parties to it. This suggests the Agreement could come into force internationally in the near future.

## Questions and Answers — STCW-F Convention

### **1. *What is the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F Convention)?***

The Convention is the first international treaty to establish requirements on training, certification and watchkeeping for fishing vessel crew.

The Convention aims to improve the quality of education and training of those employed on fishing vessels. It also aims to improve training and safety standards in the international fishing industry.

The Convention will help reduce death and injury rates of fishing vessel crew internationally, by mandating requirements for well-trained and competent crews.

### **2. *Who will the Convention affect?***

The Convention would apply to New Zealand-registered fishing vessels of 24 metres or over in length, operating outside the inshore fishing limits.

Twenty-four metres in length and over is recognised as the size of fishing vessel that can operate effectively on the open sea, distinct from those designed to operate primarily in coastal waters.

Crew on an estimated 53 fishing vessels (out of a total fleet of approximately 1,500 New Zealand fishing vessels) will be subject to the Convention's standards if New Zealand signs up to the Convention.

### **3. *What are the main benefits of New Zealand signing up to the Convention?***

Signing up to the Convention would:

- enable the New Zealand Government to recognise crew qualifications issued under the Convention
- New Zealanders holding STCW-F qualifications will be able to have their qualifications recognised by other states that are party to the Convention
- enable New Zealand to exercise port state controls over visiting fishing vessels with respect to Convention requirements<sup>4</sup>
- assist foreign fishing vessel reflagging to New Zealand where crew qualifications are issued by a state party to the Convention.

Signing up to the Convention would be a further New Zealand contribution to effective international maritime regulation.

### **4. *Who may be interested in the New Zealand Government's potential signing of the Convention?***

Those who may be interested include:

- operators of New Zealand flagged fishing vessels 24 metres in length and over, operating outside inshore fishing limits

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<sup>4</sup> 'Port State Control' provides for the inspection of foreign ships in national ports, to verify the condition of the ship and its equipment complies with requirements of international regulations

- crew working on these vessels
- crew not working on these vessels but who hold STCW-F-aligned New Zealand qualifications
- students studying for STCW-F-aligned qualifications at New Zealand maritime schools
- New Zealand maritime schools offering STCW-F-aligned qualifications.

Maritime New Zealand has already consulted on, and implemented, amendments to Maritime Rules Part 31: Crewing and Watchkeeping and Part 32: Seafarer Certification in order to align them with the Convention requirements.

Sector feedback on the rule alignment was positive. Submissions to the Ministerial Inquiry into the use and operation of Foreign Charter Vessels also supported accession to the Convention.

**5. Are there any costs to industry if the New Zealand Government signs up to the Convention?**

Signing up to the Convention would not affect operations of New Zealand fishing vessels, nor impose any additional compliance costs as New Zealand law is already compliant with the Convention.

**6. I have a seafarer certificate issued by a country that has not signed the Convention. Will it still be recognised if New Zealand signs up to the Convention?**

If the New Zealand Government signs up to the Convention, holders of certificates issued by states not party to the Convention (except Australia) would need to apply for a New Zealand *Certificate of Competency*, which is consistent with the current process.

Holders of foreign certificates issued by a state party to the Convention would have their certificates recognised by Maritime New Zealand. This will provide a streamlined recognition pathway.

**7. Australia is not yet a party to the Convention. If New Zealand signs up to the Convention, what does this mean for the recognition of Australian-issued seafarer certificates in New Zealand?**

The Ministry of Transport's preferred solution is that if the New Zealand Government signs up to the Convention, Australian seafarers' certificates will continue to be recognised under the *Trans-Tasman Mutual Recognition Arrangement*.

**8. What are the next steps?**

Following public consultation, the Ministry of Transport will consider submissions received. We will advise the Minister of Transport on whether to seek Cabinet agreement for the New Zealand Government to sign up to the Convention. This advice will include a national interest analysis, outlining advantages and disadvantages of New Zealand signing up to the Convention.

The Minister will then provide advice to a Select Committee. The Select Committee may produce a report with recommendations to the Government.

Maritime rules (Part 31: Crewing and Watchkeeping and Part 32: Seafarer Certification) have already been aligned with the Convention. If the New Zealand Government signs up to the Convention, these rules will need slight amendment to accommodate Article 8 of the Convention. Article 8 provides for non-preferential treatment of vessels visiting New Zealand ports from non-signatory States, compared to those visiting from STWC-F signatory States.

No other maritime rule changes are necessary to support the New Zealand Government signing up to the Convention.