
Workplace Health and Safety

Section Detail Report

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Overview

The New Zealand Government takes the health and safety both its national commercial fishers and the foreign national fishers that work in New Zealand waters seriously. All commercial fishers are required to comply with legislative acts, rules and regulations to keep them and their peers healthy and safe in the workplace.

Duties are placed on the seafood industry by Maritime New Zealand (the marine regulatory body) to ensure that health, safety and wellbeing responsibilities are clear and enforced, not only for the operator or business owner, but everyone within the business.

This paper provides an overview of the legislation, regulatory entities and operational aspects of health and safety for the fishing industry. It also outlines the compliance tools of the regulator and how New Zealand's approach aligns with the expectations of international standards.

To create this document it is acknowledged and appreciated that materials from both the Maritime New Zealand and WorkSafe New Zealand websites have been incorporated.

Key facts

1. By law, every single fishing or aquaculture vessel must operate under an approved safety system before they can operate commercially.
2. The Health and Safety at Work Act 2015 (HSWA) governs safety in New Zealand workplaces, including commercial fishing vessels.
3. Maritime New Zealand is the 'regulator' under HSWA for work on board commercial vessels and for commercial vessels as workplaces.
4. Maritime New Zealand also administers the Maritime Transport Act 1994 (MTA). This Act outlines the principles of maritime law that govern the commercial fleet and is supported by secondary legislation 'Maritime Rules' which provide the detailed requirements to comply to the MTA.
5. *"In broad terms, the MTA and the Maritime Rules focus on the safety of the vessel and navigational safety, while HSWA focuses on the health and safety of people on board the vessel. However, there is a degree of overlap."*¹

Key statistics as at 2018

1. Around 2,500 people work in commercial fishing and aquaculture operations at sea. Roughly 50% of these workers are self-employed.²
2. There are 572 MOSS operators involved in Inshore and Offshore fishing operations with 735 fishing vessels associated with these operations.
3. In the 2017-18 financial year, Maritime New Zealand conducted 461 MOSS audits.
4. 148 active fishing operations use the SOP system. This system is available for less than 6m dive or fish vessels.
5. In the period 1/7/2017 to 30/6/2018, Surveyors of Ships recognised by Maritime New Zealand conducted 414 surveys of vessels to ensure they remain fit for purpose and in line with MOSS and the maritime rules requirements - 349 were solely fishing vessels, while 65 had multiple categories assigned to them.

¹ Maritime New Zealand – A Guide for Mariners

² Maritime New Zealand Annual Report 2017/2018 (Domestic Fishing – Workforce)

6. Domestic fishing is one of the most dangerous occupations in NZ with a high average injury and fatality rate relative to other commercial sectors, with an average of 21 serious harm incidents and 2 fatalities a year.³
7. Causal factors include tough working conditions, long hours and time away at sea, drug and alcohol issues and a high tolerance for risk and danger.⁴
8. The New Zealand Government has set a target of an at least 25 percent reduction in workplace deaths and serious injuries by 2020 (for all New Zealand workplaces).⁵ Maritime New Zealand's safety target specific to the seafood industry is to *"Reduce maritime sector fatalities and serious harm injuries by 25 percent by 2021."*⁶

Scope

This report covers workplace health and safety requirements for commercial fishing and aquaculture activities within the New Zealand Exclusive Economic Zone (EEZ) and Territorial Sea (marine zone) regulated by Maritime New Zealand.

The health and safety system requirements set out in New Zealand's Health and Safety at Work Act 2015 and Regulations apply to every single vessel catching fish commercially in its marine zone.

The use of the term 'commercial vessel' is inclusive of vessels fishing commercially and vessels servicing commercial aquaculture operations. The report also uses the term 'ship' in instances specific to legislation. 'Ship' is inclusive of 'commercial vessel'.

For the purpose of this report the industry scope is non-SOLAS⁷ New Zealand commercial fishing and aquaculture vessels including fishing vessels under 6 metres in length.

All foreign fishing vessels operating within New Zealand's EEZ are also included. This is because any foreign fishing vessels must be flagged to New Zealand, and therefore all of New Zealand's health and safety requirements apply.

There are a number of Acts and Regulations that relate to the functions of Maritime New Zealand and the land-based workplace safety regulator WorkSafe NZ. The focus within this report is on the Health and Safety at Work Act 2015 and the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016.

While the Health and Safety at Work Act is the focus, the report will also explain the Maritime New Zealand functions under the Maritime Transport Act 1994 and the Maritime Rules, the Maritime Operator Safety System (MOSS) and use of the Safe Operational Plans (latter for fishing vessels that are six metres or less in length that operate in enclosed waters, or not more than two miles from the New Zealand coast⁸).

Together the blend of the workplace safety and maritime acts, with their supporting legislation, work together to keep those safe in all workplaces.

The New Zealand approach

3 Maritime New Zealand Annual Report 2017/2018 (Domestic Fishing – Safety / Environmental Performance)

4 Maritime New Zealand Annual Report 2017/2018 (Domestic Fishing - Safety / Environmental Performance)

5 WorkSafe New Zealand – Website (Who We Are)

6 Maritime New Zealand Annual Report 2017/2018 (System Performance)

7 Non-SOLAS vessels typically do not engage in international voyages and must adhere to an appropriate safety management system that accounts for vessel type, size and operations.

8 Maritime New Zealand – website www.maritimenz.govt.nz, Safe Operational Plans for Fishing Vessels

There are two primary statutes that specify the legal health and safety requirements for commercial fishing operations in New Zealand:

1. the Maritime Transport Act 1994 (and its Maritime Rules) administered by Maritime New Zealand; and
2. the Health and Safety at Work Act 2015, administered by WorkSafe New Zealand (which has designated Maritime New Zealand as the regulator for health and safety on ships as places of work).

Health and Safety at Work Act 2015

New Zealand's primary workplace health and safety legislation is the Health and Safety at Work Act 2015 (HSWA), which came into force on 4 April 2016. From a maritime perspective, the HSWA applies to a New Zealand commercial vessel wherever it may be and also to a foreign vessel on demise charter⁹ to a New Zealand-based operator when it is operating in New Zealand.

"The main purpose of HSWA¹⁰ is to:

1. *... provide for a balanced framework to secure the health and safety of workers and workplaces by —*
2. *protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant; and*
3. *providing for fair and effective workplace representation, consultation, co-operation, and resolution of issues in relation to work health and safety; and*
4. *encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting PCBU's and workers to achieve a healthier and safer working environment; and*
5. *promoting the provision of advice, information, education, and training in relation to work health and safety; and*
6. *securing compliance with this Act through effective and appropriate compliance and enforcement measures; and*
7. *ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under this Act; and*
8. *providing a framework for continuous improvement and progressively higher standards of work health and safety.*
9. *In furthering subsection (1), (a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable."*

Regulatory Bodies

WorkSafe New Zealand is the national workplace health and safety regulator. For the maritime industry Maritime New Zealand (MNZ) is designated to carry out health and safety regulatory functions for vessels as workplaces (except naval vessels) and work aboard vessels.

⁹ Demise charter, in relation to a ship, means the demise, letting, hire, or delivery of the ship to the charterer, by virtue of which the charterer has whole possession and control of the ship, including the right to appoint its master and crew

¹⁰ Health and Safety at Work Act 2015, Part 1, Health and safety at work, Subpart 1 Preliminary provisions, 3 Purpose

Seafood Industry Responsibilities and Duties

Under HSWA responsibilities and duties in regard to health and safety in the workplace have been assigned to all levels of an organisation, namely:

3. PCBU – ‘Person conducting business or undertaking’

e.g.: company, self-employed person, a maritime transport operator, government agency. Under the Act PCBU’s have a primary duty of care, to ensure ‘so far as **reasonably practicable**’, that the health and safety of workers and other persons is not put at risk by the work they undertake.

There are two parts to ‘reasonably practicable’(section 22 of HSWA). You first consider what is possible in your circumstances to ensure health and safety. You then consider, of these possible actions, what is reasonable to do in your circumstances. You need to achieve a result that provides the highest protection that is reasonably practicable in your circumstances. 11 **Officer** – a person with significant influence over the management of the PCBU

e.g.: company directors, business partners or chief executives. Officers must exercise ‘**due diligence**’ to make sure the PCBU meets its health and safety obligations under the Act.

Due diligence requires taking reasonable steps to understand the PCBU’s operations and health and safety risks, and to ensure that they are managed so that the organisation meets its legal obligations. It does not mean the officer has to be a health and safety expert; rather that they proactively seek out information and collaborate with someone skilled in health and safety to establish business risks and how to mitigate and monitor them.

4. Worker – a worker is a person who does work in any capacity for a PCBU

e.g.: employee, share fisher, labour contractor, trainee or volunteer. Workers must take reasonable care to keep themselves and others healthy and safe when they are doing work.

5. Others

Other people at workplaces include passengers, visitors, customers and casual volunteers. Others must keep themselves safe and not cause harm to others.

Duties are not mutually exclusive; a person may have more than one duty (e.g.: a person can be a PCBU and a worker if they are a sole operator) or more than one person may have the same duty (e.g.: different PCBUs may have the same duty towards the same worker i.e.: shared duty, where multiple PCBU’s are working on a site / vessel).

Duties are neither transferable nor able to be excluded from contracts.

It follows then that all New Zealand commercial operators and those working within these operations have responsibilities under HSWA as they either:

1. own or operate a New Zealand-registered vessel on a commercial basis;
2. own or operate a New Zealand company that operates a foreign-flagged vessel under a ‘demise charter’ arrangement;

11 WorkSafe New Zealand – Fact Sheet ‘Reasonably Practicable’ – July 2017

3. operate (i.e. on a regular basis) a foreign-flagged vessel between New Zealand and a workplace in the New Zealand exclusive economic zone or on the continental shelf and that workplace is carrying out an activity regulated under the Exclusive Economic Zone (Environmental Effects) Act 2012;
4. work on a New Zealand registered vessel in any kind of employment or contract relationship;
5. are a New Zealand business (PCBU) that carries out work on a New Zealand registered or foreign-flagged vessel (e.g. a port company, stevedore company, diving business, catering company, fish processing company, Ministry for Primary Industries, Maritime New Zealand);
6. a person doing work in any kind of employment relationship or contract relationship for a PCBU that is contracted to carry out work on a New Zealand-registered or foreign flagged vessel (e.g. a pilot, ships' agent, stevedore, provedore, surveyor, maintenance worker, fisheries officer);
7. are an officer of a business (PCBU) that does any of the above. You may also have responsibilities under HSWA or the regulations if you design, manufacture, import or supply plant to be used on a vessel.

Under the HSWA, PCBUs sharing the same workplace share responsibility for health and safety. This means that maritime transport operators share responsibility for health and safety with any other businesses (PCBUs) also working on the vessel (overlapping duties). The operator and any other PCBU must consult, cooperate and coordinate their management of health and safety in the workplace. An example of this is when contractors are working on the vessel at a turnaround – in this situation there are multiple PCBU's working in the principal PCBU's workplace, e.g.: provedores, electricians, engineers etc. All the PCBU's must communicate on safety matters to reduce the risk of harm during operations.

Risk Management

Under section 30 of the HSWA, risks in the workplace must be managed. Practically speaking, all involved in workplaces have a duty to be safe and keep those around them safe and are encouraged to participate in this process. Section 58(2) of HSWA covers the duty to engage with workers and stipulates that the 'PCBU must, so far as is reasonably practicable, engage with the workers who carry out work for it and who are, or are likely to be, directly affected by a work health and safety matter'.

Worker engagement brings integrity to the process of identifying hazards and risks within work areas and working with management to either eliminate or mitigate them with controls. Worker engagement is fulfilled through a number of avenues, including (not limited to) – management having an open-door policy, safety alerts, safety / toolbox meetings, safety observation walks.

Operators must undertake risk assessments of any vessel hazards identified and note how it will be / is controlled. Operators may have a range of documentation to record this information, e.g.: risk registers, confined space registers, chemical registers, etc.

Worker participation also encourages the creation of safe operational procedures. These are an essential part of a safety system and are used primarily for Workers to understand the risks associated with machinery and equipment they will use onboard.

Part of the operator's duties is to manage critical risks e.g.: vessel instability, fire and grounding etc. To achieve this, they work through the risk identification and assessment process putting in place controls, emergency procedures and post event procedures. These are put in place to ensure that in the event something does go wrong there are measures in place to

minimise harm. These scenarios also feature in maritime safety legislation and practices, such as the Maritime Operator Safety System¹³.

New Zealand Maritime Safety Legislation

The Health and Safety at Work Act 2015 is the workplace health and safety legislation; however, the maritime industry must also comply with the Maritime Transport Act 1994¹⁴ (MTA).

The MTA is administered by Maritime New Zealand and sets the requirements for owners and operators to maintain their vessels and keep their crew and environment safe.¹⁵

Compliance to HSWA does not necessarily mean compliance to MTA and vice versa. However, the successful implementation of both means a robust safety structure for the fishing industry.

Maritime Transport Act 1994

The Maritime Transport Act 1994 is the primary legislation that describes the role and functions of Maritime New Zealand and its Director. It sets out the legal framework for maritime safety and protection of the marine environment, including:

1. licensing of ships and crew
2. investigation of maritime accidents
3. offences, response for oil spills planning and preparedness
4. other aspects of maritime law such as salvage, liability for pollution damage, limitation of liability, and compensation.

The MNZ Director is responsible for enforcing this Act however the Ministry of Transport (MoT) administers it. The MoT is responsible for this legislation and for making recommendations to the Government if it needs to be improved or changed in any way.¹⁶

Under Section 37 of the Maritime Transport Act 1994, the Director of MNZ also has the power to make emergency maritime rules “...if the Director considers that such rules are necessary to alleviate or minimise any risk of the death of or a serious injury to any person, or of damage to any property; and it is not practicable in the circumstances of the particular case for the Minister to make maritime rules to effectively alleviate or minimise the risk concerned.”

Maritime Rules

Maritime Rules¹⁷ relate to the safety of vessels and people. The rules prescribe requirements for vessel design, construction, equipment, crewing, operation and tonnage measurement, and for the carriage of passengers and cargoes. Many of the standards are based on international vessel safety conventions.

While the Maritime Transport Act stipulates broad principles of maritime law, the rules contain detailed technical standards and procedures. Compliance with the rules is required because they form part of New Zealand maritime law. Failure to comply with the rules may be an offence under the Maritime Transport Act.

13 Maritime New Zealand - www.maritimenz.govt.nz/commercial/safety/safety-management-systems/MOSS

14 New Zealand Legislation – www.legislation.govt.nz/act/public/1994/0104/latest/DLM334660.html

15 Maritime New Zealand – website www.maritimenz.govt.co.nz

16 Maritime New Zealand – www.maritimenz.govt.nz

17 Maritime New Zealand - www.maritimenz.govt.nz/rules

Complying with the New Zealand approach

New Zealand commercial vessels are required by law to have safety management systems and workplace health and safety processes in place. These systems must be tailored to individual fishing and aquaculture activities and must also be reviewed by MNZ prior to any commercial operations being allowed.

Whilst legislation provides the basis for establishing minimum health and safety requirements in the commercial fishing industry, the regulatory body that administers it takes a proactive and preventive approach to its implementation. Maritime New Zealand seek to improve systems and safety through ongoing operator education, information and risk reduction rather than relying exclusively on a compliance approach.¹⁸

Safety Management Systems

Maritime Rules require operators of commercial fishing vessels to have a safety management system.

This will verify an adequate safety management system is in place to ensure and that the vessels are maintained and operated safely to prevent maritime accidents and to protect the marine environment. These systems make vessel owners and operators responsible for the daily safe operation of their vessels. Complying with a safety systems ensures that the safety of a vessel and its crew, and protection of the marine environment, is maintained throughout the year instead of just on an annual 'survey day'.

Safety management systems cover:

- safe operating parameters
- the qualifications and training of the vessel's crew
- vessel maintenance
- emergency procedures
- some health and safety considerations
- continuous improvement.

Depending on the nature of the commercial operation (such as the size of vessel, where it fishes, how many crew it has, etc.) there are five safety management system types:

1. **Maritime Operator Safety System** (MOSS) covers most commercial operations in New Zealand waters, including those using, fishing vessels, large vessels, foreign charter fishing vessels and non-SOLAS foreign-flagged vessels.
2. **Safe Operational Plan** covers smaller commercially-operated specialist vessels and their operations (e.g.: commercial fish and dive boats less than 6 metres in length).
3. **International Safety Management** covers SOLAS vessels, both New Zealand-owned and foreign-flagged vessels visiting New Zealand.
4. **Safety Case** covers specialised operations or operations that do not fit under existing Maritime Rules.
5. **Specified Limits Permit** covers a commercial operation within a restricted area.

¹⁸ www.maritimenz.govt.nz/about/what-we-do/compliance/documents/Compliance-Strategy

Approximately 67% of New Zealand fishing ships use the MOSS system. The remainder generally use a Safe Operational Plan. Only under very rare circumstances would a New Zealand commercial fishing vessel use the other systems.

Maritime Operator Safety System (MOSS)

The Maritime Operator Safety System¹⁹ (MOSS) was introduced by Maritime New Zealand in 2014. It is a safety system designed specifically for maritime transport operations.

Under the MOSS system, vessels must apply for a Maritime Transport Operator Certificate (MTOC) prior to any commercial fishing activity taking place. A Maritime Transport Operator Plan which details the maintenance and safety system (safety equipment, emergency procedures etc.) to manage any safety risks for both the vessel and its crew. This plan is the written description of the vessel's (or vessel fleet's) safety system and is required under Maritime Rules Part 19.²⁰

As the holder of a Maritime Transport Operator Certificate (MTOC) it is the operator's responsibility to ensure that their Maritime Transport Operator Plan (MTOP) is up to date at all times and appropriate for their operation.

The MOSS safety system needs to:

1. identify the hazards and safety risks in the operation, including those relevant to protecting the maritime environment;
2. include procedures to manage the hazards and safety risks you that have been identified;
3. ensure compliance with the relevant maritime and marine protection rules;
4. be consistent with the relevant Maritime New Zealand safety information and industry codes of practice;
5. health and safety considerations – emergency procedures;
6. ensure everyone knows their responsibilities and follows the procedures relevant to them;
7. continue to be improved and adapted to meet the vessel's changing needs;
8. pollution control;
9. document control and MTOP review.

MOSS addresses many duties required under HSWA. However, the scope of the HSWA is broader than the scope of MOSS and as such, some duties are not specifically provided for.

If a vessel follows their approved MTOP, it will generally have in place processes and procedures to:

- manage risks
- ensure the safety of others in the workplace

¹⁹ Maritime New Zealand - www.maritimenz.govt.nz/commercial/safety/safety-management-systems/MOSS

²⁰ The two Maritime Rules key to MOSS are:

- Part 19 - Maritime transport operator - certification and responsibilities: Part 19 requires maritime transport operators to develop (and operate in accordance with) safety systems that are relevant and appropriate to their maritime transport operation.
- Part 44 - Surveyor responsibilities and survey, certification, and maintenance for ships in maritime transport operations. Part 44 prescribes requirements for recognition as to who may be a surveyor and requirements for survey, certification, and maintenance of ships operated under a Maritime Transport Operator Certificate in accordance with Part 19.

- develop emergency management plans
- notify events
- periodically review workplace controls
- provide health and safety information to workers.

The additional requirements under HSWA that are not covered within the MOSS are:

- overlapping duties
- upstream duties
- officers' due diligence
- duty to manage asbestos
- worker engagement, participation and representation
- facilities.

Operators can incorporate these requirements into their MTOP²¹ or have a Health and Safety Plan or Manual to complement it. Regardless, all vessel operators have the duty to comply with both Acts. Only Maritime New Zealand can issue a Maritime Transport Operator Certificate (MTOC) to verify that the operator meets the requirements of Maritime Rule 19.

There are 572 MOSS operators involved in fishing operations. There are 735 vessels associated with these operations.

Process for MOSS Certification

When an operator applies for MOSS approval, they submit their Maritime Transport Operator Plan (MTOP), completed application form and relevant documentation (e.g.: Risk Register, vessel certificates, survey plans etc.) to MNZ.

Only a "Fit and Proper Person" is able to be responsible for the operations of a vessel or fleet, including the implementation of the MTO.^{22 23}

Once an operator's MTOP has successfully passed a desktop review of its documented safety system processes by MNZ, a Maritime Officer²⁴ will visit the vessel to perform an initial audit and interview key personnel regarding the vessel processes. This verifies that the processes as detailed in the vessel MTOP are valid. Should there be a conflict between the two, MNZ will require corrective actions to be undertaken. Once the Maritime Officer has verified that the processes and MTOP match, a Maritime Transport Operator Certificate (MTOC) is issued to the operator.

21 Maritime New Zealand – How MOSS and HSWA work together HSWA (2015) Guidance

22 A 'Fit and Proper Person' is a term that describes an assessment of an individual's competence and suitability for a specific occupation or privilege. In the case of the MTOP, the operation must have at least one approved "Fit and Proper Person" designated. Approval as a 'Fit and Proper Person' can only be granted by MNZ and is based on certified evidence, including a police check.

23 The Maritime Transport Operator Plan also requires a "Fit and Proper Person" be specified and given responsibility for one or more of the following:

1. Person responsible for the maritime transport operation – this person has overall control. In a single-vessel operation, it is likely to be the skipper or owner. In a large company, it is usually the chief executive.
2. Person responsible for resourcing of the operation – this person approves spending in the operation, including spending on safety and pollution prevention.
3. Person responsible for crew training and competency assessments – this person ensures crew are trained appropriately for their role and remain competent on an ongoing basis. This may be a specialised role in a large operation. Only the person who holds overall responsibility in this area needs to be named here. This does not necessarily apply to the personnel who provide the training (for example, a skipper).
4. Person responsible for operational decisions – this person controls and schedules maintenance and internal quality assurance (for example, checking that crew are following procedures). In a large company, this may be the responsibility of a fleet manager.

24 The role of Maritime Officers is discussed in more detail later in the report.

If an operator has more than one vessel (e.g. four vessels fishing owned by the same company), each can have an individual MTOP or they can collectively be under one MTOP. However, if they choose the latter and one vessel in the fleet is found to have a systemic safety failure, all the vessels under the MTOP may be detained until the issue(s) is resolved.

Safe Operational Plan

A Safe Operational Plan (SOP) is a safety management system that covers smaller commercially-operated specialist vessels and their operations.²⁵ It provides a practical set of safety requirements to ensure that certain specialised operations or craft have appropriate safety systems.

The following vessels are eligible for a safe operational plan:

- Jet boats carrying passengers at planning speed on any river for hire or reward.
- Rafts carrying passengers on any river, for hire or reward.
- Hovercraft operating in New Zealand for hire or reward.
- Registered fishing vessels that are six metres or less in length, operating in enclosed waters, or not more than two miles from the New Zealand coast.
- Recreational dive vessels of six metres or less in length engaged solely in recreational diving, which do not proceed beyond enclosed waters, or more than five miles from a safe haven on the coast of New Zealand.

A safe operational plan must include the operator's details, the vessel particulars, safety equipment list, manning, training, risk management, emergency and safe operational procedures, maintenance and survey requirements.

As with HSWA, the safe operational plan provides processes for risk management and identifies the responsibilities of key personnel working on the vessel.

There are 148 active fishing operations that use the SOP system. There are 186 vessels associated with these operations.²⁶

Process for Safe Operational Plan Certification

The operation and its vessel meet the criteria for a Safe Operational Plan dependent on the type of vessel. The information in each Safe Operational Plan may vary, reflecting local conditions and the individual circumstances of each operation.

Once documentation is ready for review the operator contacts an Authorised Person / Safety Auditor²⁷ appropriate for their particular type of vessel.

Once approved, the operator is issued with a Certificate of Compliance. Each operation must undergo and pass an annual Safe Operational Plan audit for their Certificate to remain valid. This ensures the Safe Operational Plan is properly used and maintained so that the operation continues to comply.

²⁵ <http://www.maritimenz.govt.nz/commercial/safety/safety-management-systems/SOP>

²⁶ Maritime New Zealand – Navigator System

²⁷ Maritime Rule 40D.84 - www.maritimenz.govt.nz/rules/part-40D/Part40D-maritime-rule-current. The requirements for an Authorised Person / Safety Auditor are detailed in Rule 40D.83 and (in brief) detail that “Every person, other than an employee of the Maritime Safety Authority, who inspects or audits an operation for the purposes of rule 40D.83, must hold a valid certificate of recognition authorising the person to conduct those inspections or audits. A person is entitled to a certificate of recognition as an authorised person if— that person makes an application in accordance with section 35 of the Act; and the Director is satisfied that the person has appropriate technical qualifications and practical experience in the operation of fishing boats, to which this rule applies, necessary to undertake the inspections and audits to be authorised by the certificate; . . .”

Operators and Responsibilities

As per Maritime Rule Part 19: Maritime Transport Operator – Certification and Responsibilities, maritime transport operators have to develop, and operate in accordance with, safety systems that are specific and appropriate to their maritime transport operation. To comply and continue to comply with this requirement, operators must ensure that the commercial vessels are maintained to a safe standard and those that work on them are suitably trained to operate and work on them.

Within both the MOSS and SOP systems, the ‘operator’ will be the person who has overall responsibility for the commercial fishing activities. For much of the New Zealand commercial fishing industry this is likely to be the person in command of the vessel. In larger operations, this is likely to be the company or organisation (PCBU); but the person behind the wheel will always have a key role in making sure safety systems are put into practice.

Current initiatives

Maritime New Zealand is currently targeting a reduction in the maritime sector of fatalities and serious harm injuries by 25 per cent by 2021, monitoring this through an annual measure of the rate of maritime fatalities and serious harm injuries for each sector per 100,000 NZ population. The most up to date status on this target can be found on the Maritime New Zealand website (Annual Reports).

In June 2017, Maritime New Zealand and the New Zealand Federation of Commercial Fishermen launched a joint campaign, Safe Crews Fish More, focusing on six risk areas for fishers at sea; fatigues, manual handling, safety on deck, winches, uncovered machinery and intoxication.

In March 2017, MNZ also started enforcing new rules under the IMO Maritime Labour Convention (MLC)²⁸. This move was designed to protect domestic and international seafarers alike, improving safety and wellbeing on-board foreign-flagged and New Zealand vessels. New Zealand now has the jurisdiction to:

- inspect foreign-flagged ships to check for compliance with the standards set by the Convention;
- inspect and certify its own ships which travel internationally, to demonstrate compliance with the Convention.

Conformance and verification measures

(MNZ compliance model ex website)

MNZ has a range of tools, or interventions, available when non-compliance with rules is identified. Some tools are designed to assist maritime sector participants to get things right, and others are about using enforcement, where necessary.

MNZ can tailor the approach to the circumstances. MNZ can select the tool that they think will have the most impact on achieving desired health and safety outcomes, taking into account risk, attitude and capability, plus the likely consequences of an incident or harm occurring.

The range of interventions available, (including the above), enable MNZ to:

1. provide information and educational materials to operators
2. give advice and suggest improvements in safety and marine environment protection
3. issue safety updates and advisory circulars
4. issue notices requiring corrective action on deficiencies or improvements to be made

²⁸ <http://www.ilo.org/global/standards/maritime-labour-convention/lang-en/index.htm>

5. impose conditions
6. investigate, and issue warnings
7. detain vessels
8. prohibit operations
9. suspend and revoke a seafarer's licence
10. prosecute.

MNZ may prosecute operators under the Marine Transport Act 1994 or the Health and Safety at Work Act 2015.²⁹ This could be the case in instances of active or intentional non-compliance, where serious harm has occurred (or could have occurred) or where action is necessary to deter others.³⁰

MNZ will also publicise the intervention action through their website (www.maritimenz.govt.nz) and the media if they believe there is public interest in the outcome.

Maritime Officers

MNZ's frontline officials are called Maritime Officers³¹. Maritime Officers inspect and enforce requirements of both maritime legislation and the workplace health and safety legislation within their scope.

Maritime Officers work to improve safety outcomes within the maritime industry. Their role is to inspect, audit and investigate all vessels and maritime operations for safety and seaworthiness, and to liaise with and educate all vessel users to operate safely on New Zealand waters. They also inspect foreign ships in New Zealand as part of what is known as Port State Control.

Maritime Officers have wide ranging power, including the power to detain vessels should the safety of any seafarer be at risk.

Vessel safety inspections are a pivotal part of the work of Maritime Officers. They check for anything that could endanger the lives of a vessel's crew or other people or put the marine environment at risk. This includes checking a vessel's certification of its officers and crew, and operating practices such as the maintenance of lifesaving and firefighting equipment.

Maritime Officers also attend the scene of significant maritime accidents or incidents in New Zealand waters, and provide safety advice to recreational boaties and the wider public³².

Maritime Officers are based at all of New Zealand's major ports and travel to other ports as required.

Safety Management System Inspections

All Safety Management Systems must be assessed by MNZ prior to any commercial fishing operations being allowed. The approval process requires an onsite visit and interview by a Maritime Officer.

When the operator is first issued an MTOC, an operator's risk profile gets completed for their operation. The timing of the first audit is set by the risk profile score. It can be from 6 to 24 months from the date of issue of the MTOC. Subsequent audits will also be based on the risk profile score and will occur between 24 to 48 months after the first audit.

²⁹ Under the Marine Transport Act 1994, the people who perform compliance and enforcement roles are called 'maritime officers'. Under HSWA the people who perform these roles are called 'inspectors'. Maritime New Zealand field staff are warranted under both Acts – they are maritime officers and health and safety inspectors for the maritime sector. Ref: MNZ A guide for mariners

³⁰ Source: MNZ Publication - Health and Safety – A Guide for Mariners

³¹ Maritime Officers possess a broad range of backgrounds and experiences within the maritime and compliance sector. Their backgrounds range from the New Zealand Police, the domestic and foreign fishing industry, other domestic maritime sectors such as commercial rafting, passengers and non-passenger vessels, and international shipping such as foreign going master mariners and chief engineers.

³² Maritime New Zealand – website www.maritimenz.govt.nz

Maritime Officers work with vessel operators and workers to improve safety standards via MOSS audit program. The Maritime Officers also provide ongoing communication and conduct vessel visits between structured audits.

The following items are checked as part of the audit:

- vessel details and requirements including maintenance of the vessel, survey requirements and compliance with relevant maritime rules
- people who have control and responsibility over the operation
- crew training and manning levels
- changes to the operator plan including activities, ports or harbours and vessels
- the operator plan is kept up to date and changes recorded
- management of safety risks and hazards, including emergency preparedness
- harm prevention
- protection of the environment.

The ongoing audit also involves a review of the risk profile. This looks at the safety system across the whole of operation. It includes:

- safety culture
- compliance history
- operating practice
- experience and capability
- organisational factors.

The smaller vessel alternative safety management system SOP inspection process is similar (albeit tailored to the SOP) and can be conducted by an Authorised person not a Maritime Officer.

In the 2017-18 financial year, MNZ has conducted 461 MOSS audits³³ of fishing operations and surveyors recognised by MNZ have conducted 349 surveys of fishing vessels under MTOC or Safe Ship Management systems.

Industry Responsibilities

The vessel operator will have a survey plan and a maintenance plan in place which has internal checks and inspections done at set periods. All documentation on board must be kept current (e.g. Certificate of Survey, emergency equipment servicing, training records, etc.). Operators have to demonstrate internal checks and processes (including internal audits) are in place to ensure they keep their records current so as to provide clear evidence of compliance. MNZ may visit and request this evidence to verify the operator is meeting their fishing industry requirements at any time.

Fisheries Observers

³³ Note that the number of vessels active in the MOSS scheme is fluid - vessels move in and out of operations as depending on the requirements of the operators. The MOSS scheme is designed to make this type of change simple for operators.

From time to time, Fisheries Observers from the Ministry of Primary Industries may be on board the vessel to monitor fisheries management compliance processes while the vessel is at sea. While at sea, the Fisheries Observers document health and safety observations and report findings back to the skipper, operator and the Ministry for Primary Industries. This provides another source of external verification of compliance by the operator.

The Skipper is in command while at sea and is responsible for the safety of the vessel and crew while at sea. The Operator also has duties under the MTA and HSWA and must support and resource the skipper so both can meet all their duties at sea or while undertaking land-based activities in relation to the maritime operation.

Comparability to international best practice

The Maritime Transport Act 1994 is the New Zealand interpretation of International Maritime safety requirements set out by the International Maritime Organisation (IMO). It is common practice that national domestic authorities either fully adopt IMO requirements or use these as the basis for their own national standards.

The Health and Safety at Work Act 2015 is the New Zealand interpretation of the Robens approach. This remains the preferred method for legislating for workplace health and safety across many Commonwealth jurisdictions. Australia and the United Kingdom have both confirmed their Robens-based models as the best approach after recent reviews of their legislative systems.

International Parity of Fisher Certifications

In 2016, the New Zealand Government acceded to the International Maritime Organisation's International Convention on Standard of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (known as STWC-F).

The Convention covers crew working on fishing vessels of more than 24m in length or with propulsion power of 750kW or more, operating beyond 12 nautical miles from shore. There are around 60 New Zealand-flagged vessels of this type operating in New Zealand's EEZ.

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