

Dear stakeholder

I set out in the accompanying attachment, fully and in context, a new approach to pilotage law reform.

In summary, a staged approach is proposed, with an interim pilotage regime to come into play on 1 April 2003. This regime will essentially maintain the status quo for a period of two years. During this time, proposals for long-term pilotage law reform will be developed. Depending on the Government's response to officials' policy advice and other priorities, it is envisaged that these measures should be in place from 1 April 2005.

I cannot overstate that the approach outlined represents a new departure. All previous informal drafts of Part 90B are, in all respects, superceded and should be discarded.

The draft rules for the interim regime will be released for consultation in early September.

A handwritten signature in black ink, appearing to read 'R. Kilvington', written in a cursive style.

Russell Kilvington
Director of Maritime Safety

Staged approach to pilotage law reform

Draft rules' development to date

As you know, MSA has over the past year been working on developing draft maritime rules to replace the vestiges of the pilotage regime established by the Harbours Act 1950 and that Act's subsidiary legislation. These remnants subject to sunset provisions contained in the Local Government Amendment Act (No.2) 1999, are due to expire at the end of March 2003.

The work underway builds on the 1999 amendments to the Maritime Transport Act 1994 that, in addition to the existing rule-making power enabling the Minister of Transport to regulate pilots' licensing, signal that maritime rules will in future prescribe pilotage limits and govern pilotage exemptions. The amendments also established an obligation on masters to comply with the rules' requirements (once such requirements are in place) in respect of carrying pilots; and conferred on the Director the power to require a pilot to be carried. Associated offences were created to deal with breaches. Further, the legislative instruction concerning limitation of liability where pilots are required to be carried, which had appeared in the Harbours Act 1950 (repealed in 1999), was inserted in the Maritime Transport Act.

That same year, the Local Government Amendment Act (No.2) 1999 defined the extent of regional council general controls of navigational safety, through bylaws, that make no specific reference to pilotage.

Developing the draft maritime rules has not been altogether straightforward. While the formal draft of Part 90A, released for comment in December 2001, attracted little comment, the same cannot be said for the informal drafts of Part 90B that have been circulated to stakeholders over the past four months. These drafts have attracted a great deal of comment. Much of the comment has been strongly adverse. But some is equally strong in its support.

While there have, as noted, been several matters of contention, this has been more based upon emerging proposals than an opposition to change *per se*. For the record, it is helpful to summarise the need for successor requirements and the imperative for reform.

- In the first instance, rules are necessary to fill the legislative vacuum that will otherwise exist from 1 April 2003. Without successor rules, there will be no licensed pilots and no documented, exempt masters. There will be no pilotage districts and compulsory pilotage areas. Ships will be subject to no general legislative instruction to carry a pilot.
- In the second instance, there is the compelling case, in the successor regime, to address the clear deficiencies – when judged by contemporary standards – of the old arrangements:
 - the absence of comprehensive national standards for pilot and exempt master training and certification. These include such basic elements as defined competencies; a transparent and consistent scheme of certificate grading/ endorsement; comprehensive medical/eyesight requirements; appropriate fit and proper person criteria; and defined currency requirements
 - the lack of quality control of examinations for pilots and exempt masters
 - the absence of a clearly defined and objective process for imposing conditions on, restricting, suspending, and revoking pilots' licences and masters' exemptions.

I must stress that I make a clear distinction in pilotage matters between the legislative regime as it has been to date and best practice. There is a great deal of the latter in New Zealand ports and regional council harbours' departments. This is a tribute to the parties involved. But our legislative underpinning of pilotage should make a greater contribution to the system's integrity, supporting best practice and providing a basis for a durable system extending beyond the careers of the present officeholders.

Development of staged approach

I have participated in some of the consultation on the current informal draft of Part 90B and learned at first hand of stakeholders' views, both those with concerns and those who support it. I have asked my staff for, and taken part in, some first principles analysis of the pilotage proposals. I have reflected on this. I have reflected too on the wider issues that impinge on the development of our future pilotage law and respondents concerns that insufficient time is available to properly address all the important policy issues involved.

In consequence, I now propose a new, staged approach to the development of the successor pilotage regime, running from now until 31 March 2005. In so doing, I am mindful of the following key considerations:

- Pilotage is practised within a larger port environment and institutional framework. To create a pilotage regime for the long-term, these factors need consideration. Such wider developments are particularly pertinent at the present time. They include the role of harbourmasters as officers of regional councils, emerging security concerns, and the increasing emphasis being given, in New Zealand and other countries, to the development of "whole-of-port" approaches to risk management. None of these are simple issues and their pertinence will extend beyond the expiry of the current pilotage regime at the end of March 2003.
- There has been a clear lack of buy-in from some sectors to some of the proposals contained in the informal draft of Part 90B. The reasons for this are various. They include concerns about aspects of the consultation undertaken by MSA; the somewhat opaque wording of some sections of the draft; a clear attachment in some sectors to the current arrangements and an equal reluctance to entertain the more innovative aspects of the draft rules. A number of respondents have also registered concern that the process is being rushed. Together, these factors have worked against an entirely objective consideration of the policy issues by some stakeholders.

The goals, objectives and principal mechanisms of the two stages are outlined below.

Stage 1: 12 August 2002 – February 2003.

The goal of stage 1 is to develop an interim national pilotage regime, which will operate from 1 April 2003 until definitive requirements are developed and implemented. The objectives of this regime will be to:

- maintain the contribution of pilotage to safety of navigation, protection of the marine environment, and efficiency of seaborne commerce
- maintain the existing privileges of pilots and exempt masters currently in the system
- enable new pilots' licences and masters' exemptions to be issued.

- ensure transparency and consistency in respect of sanctions for non-performance and protection of the rights of individuals
- set minimum national standards while enabling port-specific risks to be addressed
- recognize and support industry best practice.

The following mechanisms are proposed:

- draft rules will reproduce the coordinates of the existing pilotage districts and compulsory pilotage areas, The Minister of Transport will have the power, by notice in the *Gazette*, to prescribe amendments to districts and areas, Any amendments will be subject to the test of reasonable cost.
- the existing privileges of licensed pilots' will be recognized through the issue of maritime documents under Part V of the Maritime Transport Act. That Part's document control provisions apply: fit and proper person criteria; the Director of Maritime Safety's discretionary powers to suspend and revoke; the right to appeal a Director's decision to a District Court. The successor maritime documents recognizing the privileges conferred by those licences will be valid for two years and will be subject to specified currency provisions, including medical and exercise-of-privilege requirements. Renewal requirements will be prescribed, including compliance with any new general and local training requirements that may be applicable.
- the existing privileges of exempt masters will be recognized by the grant of an exemption by the Director of Maritime Safety under s.47 of the Maritime Transport Act. The exemptions will be valid for two years. Conditions on exemptions will restrict the privileges to strictly those held under a regional council pilotage exemption; require the master to continue to be a fit and proper person; and define the grounds on which the Director may withdraw an exemption (which process will parallel that for the suspension and revocation of a maritime document)
- new pilots' licences will be issued as maritime documents, which will be subject to the Part V provisions noted above. Candidates must meet prescribed prerequisites, and undergo specified general and local training.
- new pilotage exemptions will be issued under s.47 of the Maritime Transport Act on the basis of the criteria set down in that section. The Director will not delegate this power. The Director will determine, in consultation with the relevant regional council, the syllabus for local training and local knowledge. The conditions on new exemptions will parallel those imposed on masters with recognized existing privileges
- examination and assessment of pilot candidates for general and local training and local knowledge will be carried out by individuals delegated the Director's powers of examination under s. 48 of the Maritime Transport Act. These external parties, entitled under s.444(12) of the Act to charge a reasonable fee for the exercise of delegated functions, will be nominated by the chief executive of the relevant regional council (unless a CEO chooses not to do so) and any such nomination would be expected to include that region's harbourmaster
- examination and assessment of exemption candidates for local training and local knowledge will be carried out by individuals authorized by the Director on the nomination of the chief executive of the relevant regional council in the same manner as for an examiner of pilots. (It is anticipated that the same individuals will undertake both pilot and exemption candidate examination and assessment.)

The rules will require the carriage of a licensed pilot on ships greater than 500 gross tons unless the master holds a s.47 exemption, The Director, however, may consider the case, on application from a regional council for a lower tonnage limit. The lower limit must satisfy the test

of safety at reasonable cost. The Director must notify any departure from the default of 500 gross tons in the *Gazette*.

Pilotage will be compulsory for all tankers, and gas/chemical carriers but the Director may consider the grant of an exemption on the clearly defined and stringent grounds set out in s.47 of the Act.

Under s.444 of the Act, the power of Director at s.60A(2) to require a pilot to be carried in the interests of safety or protection of the environment will be delegated to harbourmasters.

Stage 2: 1 April 2003 – 31 March 2005

Stage 2 is currently being scoped and requires further discussion with the government agencies concerned. The intention would be to undertake a first principles review. Some key issues, which appear relevant at this stage, include:

- consideration of pilotage within a wider assessment of "whole-of-port" risks, including emerging security concerns, and the integrated management of these risks
- the need to review of the future role of regional councils in the management of navigational safety and the scope and purpose of the office of the harbourmaster and that officer's functional relationship with local government and the Maritime Safety Authority, and the legislation (navigational safety bylaws and maritime rules) that these bodies administer
- . development of "whole-of-port" risk management measures, including pilotage.

The policy work for stage 2, which is likely to involve government agencies other than the Ministry of Transport and MSA (for instance, the Department of Internal Affairs in respect of local government matters, and various departments in reference to security matters), should be completed by 31 March 2004, subject to the agreement of the agencies concerned. It is envisaged that any associated law reform, including both primary and delegated pilotage legislation, would take another twelve months and, depending on the Government's response to officials' policy advice and legislative priorities, could be complete by 31 March 2005.