MINISTRY OF TRANSPORT
TE MANATŪ WAKA

Nō te rere moana Aotearoa
MARITIME NEW ZEALAND
Nō te rere moana Aotearoa

Effective Maritime Legislation
Maritime Transport Act 1994

WORKING PAPER – NOT GOVERNMENT POLICY

November 2025

Contents

Glossary

Term	Meaning
Annex VI	Annex VI of MARPOL focuses on preventing air pollution from ships. It sets limits on emissions of harmful substances like nitrogen oxides (NOx) and sulphur oxides (SOx) from ship engines.
Bunkers Convention	The International Convention on Civil Liability for Bunker Oil Pollution Damage. This is an international treaty which aims to ensure that shipowners are held responsible for oil pollution damage caused by spills of bunker oil, which is used as fuel in ships.
Cape Town Agreement	The Cape Town Agreement 2012 is an international agreement that sets minimum requirements on the design, construction, equipment, and inspection of fishing vessels of 24 meters in length and over or equivalent in gross tons. It will come into force once at least 22 countries, with a combined fleet of 3,600 or more fishing vessels of that size, have agreed to be bound by it.
CLC Convention	The International Convention on Civil Liability for Oil Pollution Damage. This is an international treaty which aims to ensure that those who suffer damage from oil pollution caused by maritime accidents receive adequate compensation.
Customs	New Zealand Customs Service.
Director	The Director and Chief Executive of Maritime NZ.
Foreign-flagged vessels	Vessels registered and flying the flag of a country other than the one where they are operating. In New Zealand, this means vessels registered and flying the flag of a State outside of New Zealand.
Harmful substance	Section 247 of the Maritime Transport Act 1994 defines “harmful substance” as (a) any substance specified as a harmful substance for the purposes of Section 225 by the marine protection rules: (b) any hazardous substance other than oil.
Hazardous ship	Section 247 of the Maritime Transport Act 1994 defines “hazardous ship” as a ship that is in the internal waters of New Zealand or in New Zealand continental waters, or on the high seas and, as a result of a shipping casualty or acts related to such a casualty, is discharging, or is likely to discharge, a harmful substance into the internal waters of New Zealand or New Zealand continental waters or the seabed below them.

Term	Meaning
IMO	The International Maritime Organization is a specialized agency of the United Nations responsible for regulating shipping. The IMO sets global standards for the safety, security, and environmental performance of international shipping.
Internal waters	The internal waters of New Zealand are formally defined by Section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977. In plain language, internal waters are all those areas of the sea that are on the inside of New Zealand including any areas of the sea that are on the landward side of the Territorial Sea Baseline.
Maritime NZ	Maritime New Zealand.
Maritime Rules and Marine Protection Rules	Maritime Rules and Marine Protection Rules are secondary legislation made under the Act. The rules can be found on Maritime NZ's website at https://www.maritimenz.govt.nz/rules/all-rules/.
MARPOL	MARPOL means the International Convention for the Prevention of Pollution from Ships. It is an international agreement aimed at preventing marine and air pollution from ships. It sets standards to minimize pollution from both routine operations and accidents.
MLC	The Maritime Labour Convention is an international agreement that sets out rights and protections for seafarers.
The Act	Maritime Transport Act 1994.
New Zealand waters	Section 2 of the Act defines New Zealand waters as: (a) the territorial sea of New Zealand; and (b) the internal waters of New Zealand; and (c) all rivers and other inland waters of New Zealand.
Non-oil fuels	Alternatives to traditional oil-based fuels used in shipping, such as liquefied natural gas, biofuels, hydrogen, ammonia and methanol.
Port state jurisdiction	The authority a State has to exercise control and impose regulations on foreign ships that visit its ports.
SAR Convention	The International Convention on Maritime Search and Rescue is an international agreement aimed at coordinating search and rescue operations at sea. It sets out standardised procedures for search and rescue operations, divides the world's oceans into specific SAR regions and requires countries to set up rescue coordination centres to manage their search and rescue operations.

Term	Meaning
SOLAS	The International Convention for the Safety at Life at Sea 1974 in an international agreement that sets minimum safety standards for ships.
Territorial sea	The territorial sea is formally defined in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977. In plain language, the territorial sea is the belt of sea adjacent to the coast out to a distance of 12 nautical miles from the Territorial Sea Baseline.
Territorial Sea Baseline	The term Territorial Sea Baseline refers to the line from which the seaward limits of New Zealand's maritime zones are measured. A map of New Zealand's baseline is available on the Land Information New Zealand website here: https://data.linz.govt.nz/layer/50845-12-mile-territorial-sea-limit-basepoints/
UNCLOS	The United Nations Convention on the Law of the Sea. This is an international treaty that establishes a legal framework for all marine and maritime activities and defines the rights and responsibilities of nations regarding the use of the world's oceans.
Yachting NZ	Yachting New Zealand is a not-for-profit organisation which acts as the national sports organisation in New Zealand for the sport of sailing.

Introduction to this working paper

1. The Maritime Transport Act 1994 (the Act) and the Maritime Security Act 2004 are the key legislation regulating the maritime transport system. The Ministry of Transport (the Ministry) is responsible for the regulatory stewardship of the transport system and, in partnership with Maritime New Zealand (Maritime NZ), is reviewing these Acts to identify areas that need updating or improving to ensure that the regulatory system is fit-for-purpose.

2. This working paper identifies issues with the Act that the Ministry and Maritime NZ believe (based on analysis by officials and previous engagement with stakeholders) are the highest priority areas for change, along with possible solutions. The Ministry and Maritime NZ are also engaging with stakeholders on a separate working paper focussed on changes to the Maritime Security Act 2004.

3. Decisions are yet to be taken about timing, sequencing and progressing any changes. We are engaging now to inform our understanding of the issues and possible solutions so that we are ready to progress legislative changes when there is an opportunity.

Context: The Maritime Transport Act 1994

4. The Act sets out the legal framework for maritime safety and protection of the marine environment, including:

    4.1 licensing of ships and crew

    4.2 settings for local government regulation of maritime safety

    4.3 responses to, and investigation of, maritime accidents

    4.4 oil spill planning, preparedness and response

    4.5 other aspects of maritime law such as salvage, liability for pollution damage, limitation of liability, and compensation

    4.6 the roles and responsibilities of Maritime NZ and its Director in enforcing the legislation and ensuring compliance.

5. The Act empowers the Minister of Transport and the Governor-General to make maritime and marine protection rules, which set out standards and requirements for the maritime sector. The Act also allows the Governor-General to make regulations on a range of matters, including to set offences and penalties for breaches of maritime rules, marine protection rules, and bylaws.

We want to get your feedback on this work

6. This working paper is intended to invite written feedback from maritime sector stakeholders on the issues and possible solutions we have identified and stimulate discussion on the

appropriate changes to the Act. The Ministry and Maritime NZ are also open to meeting with stakeholders to discuss the issues and possible solutions identified.

7. For each of the issues, we have defined the problem, set out possible solutions, and identified questions for discussion. Where problem areas have more than one possible solution, this means that one or more solutions could be advanced, so they are not mutually exclusive. Some possible solutions include 'options', which means a choice needs to be made about the design or detail of the changes we are considering. You are welcome to suggest other options, including those that could be implemented without amending legislation.

8. We are particularly interested to get stakeholder feedback on the impacts of the possible solutions we are considering, including any information that would help us value these impacts. This includes any combined impacts that could arise from implementing changes across all the problem areas and possible solutions we have identified. Feedback is also welcome on other matters, and you should not be constrained by the questions in this document if there are other comments you would like to provide.

9. You can provide us with written feedback any time before 5pm on Friday 30 January 2026.

10. Please send written feedback to maritimelegislation@maritimenz.govt.nz. Please include your name, the name of your organisation (if applicable) and your contact details. Please also direct any questions that you to maritimelegislation@maritimenz.govt.nz.

11. Any written feedback provided is public information. We may publish a summary of written feedback and identify those who provided feedback, but we will contact you if we want to attribute a quote to you / your organisation. Even if we do not publish any details of the feedback received, it may be subject to release under the Official Information Act 1982. If you want your response to be withheld under the Official Information Act (e.g. because it is commercially sensitive), please tell us in your response why you think it should not be released if requested. However, this does not guarantee we will be able to withhold it.

Effective prevention of and responses to maritime incidents

12. The Act gives Maritime NZ powers to respond in emergency situations. These include powers to give directions to a ship's master, or to require a third party to provide assistance. Different parts of the Act apply, depending on the scenario:

    12.1 **Where a ship or aircraft is in distress:** Section 100 gives the Director power to give directions "if any ship or aircraft is wrecked, stranded, or in distress at any place on or over or near the coasts of New Zealand or any river or lake or other inland water". Directions may be given for the purpose of preserving the lives of the people aboard, along with the ship or aircraft and its equipment and cargo.

12.2 **In relation to ships discharging a harmful substance:**[1] Section 248 gives the Director power to issue instructions to the ship's master, owner or agent, and to take any measures, including taking control of the ship, moving the ship, removal of cargo, salvage, and the sinking or destruction of the ship, its cargo or both. These powers apply to "a ship that is in the internal waters of New Zealand or in New Zealand continental waters, or on the high seas when the ship is discharging or likely to discharge a harmful substance into the waters concerned."

12.3 **In relation to structures (e.g. an offshore installation or pipeline) discharging a harmful substance:** Section 249 gives the Director a range of powers including issuing instructions to the owner, taking measures with respect to the structure, moving the structure and the sinking or destruction of the structure.

12.4 **In relation to marine oil spills:** Section 305 provides that an "on-scene commander" (who can be appointed by a regional council or the Director, depending on the circumstances) can make a range of decisions relating to the management of the spill. Powers to issue directions to a master or owner of a ship only apply to New Zealand ships.

13. This working paper refers to the scenarios listed in paragraph 12 as 'response scenarios' and to the powers that the Director or on-scene commander have in these response scenarios as 'response powers.' In practice, most maritime incidents that require a safety response will require consideration of the risk of oil pollution, and vice versa.

14. Recent maritime incidents (such as the *Shiling* losing power in New Zealand waters twice[2] and the grounding of the *Manahau*[3]) have exposed issues with response powers in the Act. These include a high threshold for Maritime NZ to issue directions during safety incidents, gaps and inconsistencies in response powers, and gaps and inconsistencies in arrangements relating to liability and cost recovery powers.

15. These issues can inhibit preventive measures or an effective incident response. Given the risks to safety and the environment that can arise from serious maritime incidents, as well as flow on effects on supply chains in some cases, it is important to make sure these parts of the Act work well.

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[1] "Harmful substance" is defined in the Act as (a) any substance specified as a harmful substance for the purposes of Section 225 by the marine protection rules: (b) any hazardous substance other than oil.

[2] In November 2024, the *Shiling*, a container ship registered in Singapore, lost power while sailing in New Zealand waters about 22 nautical miles northwest of Farewell Spit. The crew issued a distress call, and the ship was eventually towed to a bay near the northern tip of the South Island for inspection and repairs.

[3] In August 2024, the Niue-flagged barge *Manahau* ran aground at Carters Beach near Westport after its anchors failed during a storm. All crew were safe, and an investigation was launched to examine the vessel's anchoring and procedures.

Enabling timely intervention in maritime incidents

What is the problem we are trying to solve?

Intervention threshold for safety incidents (Section 100)

16. Section 100(1) of the Act provides that the Director "may give such directions as he or she thinks fit for the preservation of all or any of the following: (a) of the ship or aircraft, (b) the lives of passengers or crew… (c) the equipment and cargo of the ship or aircraft." This power to give directions is triggered if "any ship or aircraft is wrecked, stranded, or in distress."

17. In most situations the earliest point at which the Director can issue directions under Section 100 is when a ship (or aircraft) is "in distress". This is because the other events mentioned either involve a more serious situation (a "ship or aircraft is wrecked") or only involve a particular type of incident ("stranded" usually means a ship is aground).

18. "Distress" is not defined in the Act, but case law and other guidance define distress to mean that the ship (or aircraft) or its crew are in grave and imminent danger.[4] The term "distress" is commonly used in international maritime law, such as the International Convention for the Safety at Life at Sea 1974 (SOLAS) and the International Convention on Maritime Search and Rescue (SAR Convention), but is not defined in those Conventions.

19. Maritime NZ's experience is that the level of 'hazard' needed before the Director can issue directions under Section 100 is too high. In responding to a maritime incident, a key goal is to improve the situation and if possible, stop it from getting worse. Requiring the Director to be satisfied that the situation is one of "distress" is inhibiting early or timely safety interventions.

Intervention threshold for oil spill response powers (Section 305)

20. Section 305 sets out various powers that are available to a regional on-scene commander or a National on-scene commander if they determine that it is appropriate for a regional council or Maritime NZ to take action in respect of a marine oil spill. An "oil spill" is defined in Section 281 of the Act as "any actual or probable release, discharge, or escape of oil", meaning that Section 305 response powers can be activated if a release of oil is "probable". The Act does not define 'probable' but it can be understood as meaning something is 'likely to happen'. This is a high threshold for activating the Section 305 response powers and will involve a serious situation.

[4] The SAR Convention defines the distress phase as "a situation wherein there is reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance". This appears to be based on case law definitions: A ship 'in distress' faces imminent danger. The distress must be 'something of a grave necessity' (The Eleanor [1809] ER 161). 'The necessity must be urgent, and proceed from such a state of things as may be supposed to produce on the mind of a skilful mariner, a well-grounded apprehension of the loss of vessel and cargo or of the lives of the crew' (The New York [1818] 16 US at 68).

21. There have been a number of recent events involving ship groundings (e.g. the *Manahau* and the *Aratere*[5]) where Maritime NZ has considered it desirable to remove the ship's fuel to lower risks of an oil spill, despite uncertainty about whether the 'probable' threshold was met. The 'probable' threshold is too high to allow for preventive measures in circumstances such as these recent groundings. This inhibits effective measures to avoid potentially serious marine pollution events.

Information to make intervention decisions

22. A master of a ship is not obliged to provide Maritime NZ with information about the condition of a ship or its crew, unless a mishap, incident or accident has been notified to Maritime NZ. This can make it difficult for Maritime NZ to form a view as to whether a ship is in distress or likely to become so. Uncertainty about the condition of a ship can delay Maritime NZ taking action in response to a developing or potential incident.

Questions for stakeholder feedback and further analysis

- *Do you agree with these descriptions of the problems? If not, why not?*

What possible solutions have we identified?

Possible Solution 1 – A lower threshold for safety interventions

23. We are considering a lower threshold for the Director to issue directions under Section 100 (i.e. on safety grounds), to enable more timely action from Maritime NZ. The intention is to allow steps to be taken before an incident develops to the level of severity that would amount to a "grave and imminent threat" to safety.

24. We are considering two options for a lower threshold for the Director to issue directions under Section 100.

Option A – The Director can issue directions under Section 100 for a broad purpose (e.g. ensuring maritime safety)

25. This option would mean that the power to issue directions under Section 100 would be subject to a broad purpose requirement instead of being triggered by a particular circumstance (e.g. a ship or aircraft being wrecked, stranded or in distress). This would provide the Director with a very wide discretion on when to issue directions under Section 100, which would avoid delays due to legal uncertainty about use of powers in situations which inherently require rapid decision making.

26. This would be similar to the basis for the exercise of harbourmaster powers of direction under Section 33F of the Act (*Harbourmasters general powers*), which can be used "for the purposes of ensuring maritime safety". However, the Director has broader powers under

[5] In June 2024, the Interislander ferry *Aratere* ran aground near Picton after an autopilot issue caused it to veer off course. No injuries were reported, and the vessel was refloated the next day as investigations began.

Section 100 than harbourmasters do under Section 33F. This option may not provide enough certainty about when an intervention is appropriate or can be expected.

Option B – The Director can issue directions under Section 100 in circumstances less dangerous than distress (e.g. if the Director judges that a ship is in need of assistance) (preferred option)

27. This option would keep wrecks and strandings as circumstances which trigger the power to issue directions under Section 100, and would replace the "in distress" threshold with a threshold set at a lower level of hazard. This option would still require a judgment from the Director that the directions they give are necessary for the preservation of life, the ship or cargo (as is currently required under Section 100).

28. The lower hazard threshold could reflect the concept of a ship in need of assistance. An International Maritime Organization (IMO) Resolution setting out "Guidelines on Places of Refuge for Ships in Need of Assistance" defines a ship in need of assistance as meaning "a ship in a situation, apart from one requiring rescue of persons on board, that could give rise to loss of the vessel or an environmental or navigational hazard".[6] This appears to be a higher threshold than the one for harbourmaster powers of direction under Section 33F of the Act, but is still lower than the "grave and imminent danger" threshold.

Impacts

29. Either option would facilitate earlier safety interventions, which will avoid costs from incidents that would develop into more serious incidents if intervention was delayed (e.g. damage to a ship or its cargo, environmental damage, or avoided injuries/loss of life).

30. Either option will increase costs to the sector if the changes result in interventions that would not have taken place under the status quo. Section 100(6) allows for the Director to recover from the owner of a ship or aircraft, or of cargo and equipment, the costs of intervention other than costs in respect of preservation of life. This means ship or cargo owners could incur the costs of more interventions. Any additional costs that Maritime NZ could incur to preserve lives would be covered by other funding streams, such as Search and Rescue funding provided by Section 9 of the Land Transport Management Act 2003.

31. We are interested in feedback about how ships or operators could be impacted by an earlier use of the Director's power to issue directions under Section 100, including impacts on insurance and liability arrangements.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of a lower threshold for safety interventions? How likely are those impacts?*
- *Would lowering the threshold for safety interventions impact insurance and liability arrangements? If so, please explain how.*

[6] IMO Resolution A.949(23), 2003

- *Would the impacts for each option be materially different?*
- *Which of these options provided here do you prefer? Please explain why.*
- *Are there other options that we should consider? If so, please explain why.*

Possible Solution 2 – Enable oil spill response powers to be used where there 'may' be a discharge of oil

32. We are considering a lower threshold for activating the powers in the Act to prevent an oil spill occurring.

33. This would shift the oil spill response powers towards the threshold in the International Convention on Oil Pollution Preparedness, Response and Co-operation,[7] which defines an "oil pollution incident" to include occurrences that "*may* result in a discharge of oil …and which requires emergency action or other immediate response" (emphasis added).

34. The intention is that this change would provide support for preventive removal of fuel in the event of a maritime incident. We are considering a similar change in relation to Section 248 of the Act (*Powers of Director in relation to hazardous ships*) to empower preventive removal of fuel (see proposal 5).

35. We are not intending to change the threshold for the notification obligations in Section 299 of the Act (*Duty to notify if unable to contain and clean up marine oil spills*).

Impacts

36. A lower threshold for activating the powers in the Act to prevent an oil spill occurring could both avoid costs by preventing more serious events and add costs if it results in more interventions.

37. Again, we are interested in feedback about how ships or operators could be impacted by an earlier use of oil spill response powers, including any impacts on insurance and liability arrangements.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of a lower threshold for initiating an oil spill response? How likely are those impacts?*
- *Would lowering the threshold for an oil spill response impact insurance and liability arrangements? If so, please explain how.*

[7] The International Convention on Oil Pollution Preparedness, Response and Co-operation is an international agreement which provides a global framework for international co-operation in combating major incidents or threats of marine pollution.

- *Are there other options that we should consider? If so, please explain why.*

Possible Solution 3 – Add a requirement for a master or operator to provide Maritime NZ information about the condition of a ship or its crew, when requested

38. This would create a requirement for the master or operator of any New Zealand ship, or any foreign ship in New Zealand waters, to provide Maritime NZ with information about the condition of a ship or its crew, when requested by Maritime NZ.

39. Section 31(5) of the Act already creates a requirement for the master or operator to provide information to Maritime NZ on request. However, Section 31(5) only applies when a mishap, incident or accident has been notified to Maritime NZ. We are considering adding into the Act a requirement to provide Maritime NZ with information about the condition of a ship or its crew, when requested, even where no mishap, accident or incident has been notified.

Impacts

40. This new requirement would enable Maritime NZ to proactively seek information which it can then use to assess whether an intervention is, or could become, necessary. It would reduce the potential for delay in responding to a developing incident, because Maritime NZ would not need to wait for a master to report an incident or accident or to request assistance. We do not expect this requirement to have a significant impact on operators.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of creating a requirement for a master or operator to provide Maritime NZ information when requested about the condition of a ship or its crew? How likely are those impacts?*
- *Are there other options that we should consider? If so, please explain why.*

Providing consistent and appropriate incident response powers

What is the problem we are trying to solve?

Unclear powers in some response scenarios

41. Maritime NZ's experiences with the management of recent incidents (as well as examination of maritime incidents overseas) has highlighted gaps, inconsistencies, or a lack of clarity with the Act's 'toolbox' of response powers across different response scenarios.

42. The powers provided for each response scenario differ across matters such as who directions may be given to, the level of discretion about the type of directions that may be

given, and where (geographically) directions may be given. Different response scenarios require some different powers, due to the nature of the response as well as the requirements of relevant international conventions. However, some inconsistencies between the response scenarios do not have a clear reason.

43. Maritime NZ's experience is that uncertainty about whether a particular type of direction is allowed can create operational difficulties in carrying out a response. In other cases, gaps in the Director's powers can hinder an effective response. Issues that have been identified include:

    43.1 no power to create exclusion zones around a hazardous ship or the area of a safety intervention. In contrast, Section 305 of the Act (*Powers of on-scene commander*) provides an on-scene commander with a clear power to create an exclusion zone when an oil spill response is underway. Exclusion zones can be needed for a range of reasons, including safety assurance, environmental protection, and to prevent interference with response work. The lack of such a power means Maritime NZ is not able to effectively manage risks related to responses other than oil spill responses.

    43.2 oil spill response powers under Section 305 only apply to New Zealand ships. This is a significant limit on the usefulness of these powers. The effect is that these powers are not available for foreign ships, including ships which could have a high impact if an oil spill were to occur (e.g. fuel imports arriving in foreign ships).

    43.3 no clear ability to require the removal of fuel from a ship in situations where it will be sensible to remove fuel to avert or mitigate spill or release risks, without necessarily triggering the oil spill response framework in Part 23 of the Act (*Plans and responses to protect marine environment from marine oil spills*).

    43.4 the Director has only limited powers to deal with floating objects that have fallen off a ship, such as logs and containers, that could create navigational safety and environmental protection issues. Powers are available to regional councils in Section 33J (*Removal of wrecks by regional council*) and to the Director under Section 33K (*Removal of wreck by Director*). The Director also has powers under Section 110 (*Removal of hazards to navigation*), but only in areas where regional councils have no jurisdiction. While these powers may be sufficient for cleaning up after an incident, they do not work well for dealing with an incident as it is unfolding. Harbourmasters do have this power (Section 33F(1)(f)). However, because some incidents traverse multiple regions or extend beyond the jurisdiction of a harbourmaster, incident management could be improved if the Director had the same power. The Director also has no powers that can be used to prevent an object from falling off a ship.

    43.5 inconsistencies as to whether the Director or a harbourmaster's directions prevail, depending on the circumstance.

No power for Maritime NZ to issue directions to ports to provide facilities to a stricken ship

44. There is no explicit power in the Act for Maritime NZ to require a port to provide a berth or other facilities to a ship that has been affected by a maritime incident.

45. Where a ship has lost power, or been otherwise damaged, it will typically require a berth in New Zealand waters to allow repairs to be carried out before it can depart New Zealand. Provision of a berth must be negotiated commercially between a port, the shipowner and their respective insurers. This has resulted in delays in securing a berth for ships during several recent incident responses.

46. International examples, such as the *MV Prestige*, also show the risks of a ship not being able to find a berth during or after a maritime incident. In 2002, The *MV Prestige*, a large oil tanker, received structural damage during a storm off the coast of Spain. After the ship was refused a place to dock in Europe due to its deteriorating condition and the potential environmental risks it posed, the ship was forced to anchor offshore, where it broke apart, spilling its cargo of oil into the Atlantic Ocean.

Questions for stakeholder feedback and further analysis

- *Do you agree with these descriptions of the problems? If not, why not?*

What possible solutions have we identified?

Possible Solution 4 – Extend exclusion zone powers to all response scenarios and to include foreign ships

47. We are considering amending the Act to provide explicit and broad powers for the Director to create an exclusion zone across all of the response scenarios described in paragraph 12. This would be largely in line with the current power to create an exclusion zone in respect of an oil spill response under Section 305 (*Powers of on-scene commander*). This would enable the Director to:

    47.1 remove any person obstructing a maritime response from an area, or any part of an area, where a maritime response is being carried out

    47.2 require the evacuation or the exclusion of persons, vehicles, or ships from any area, or any part of an area, where a maritime response is being carried out

    47.3 totally or partially prohibit, or restrict, public access on any road or to any public area or any part of the sea, that is within an area where a maritime response is being carried out

    47.4 remove from any road, public place, or from the sea, in an area where a maritime response is being carried out, any ship, any vehicle, or other thing impeding that response, and where reasonably necessary for the purpose, may enter forcibly any such ship, vehicle, or other thing.

48. We are also considering whether these powers to create an exclusion zone should apply to both New Zealand and foreign ships across all of the response scenarios described in paragraph 12 (including oil spill responses), as far as is compatible with international laws.

Impacts

49. Use of powers to create an exclusion zone will enable Maritime NZ to better manage safety or environmental risk during incident responses. People who will benefit from avoiding or mitigating safety risks could include the crew of the vessel that is the subject of the response, people carrying out response activities and third parties in the area of the response.

50. Specific impacts from expanded powers to create an exclusion zone will depend on the circumstances in which the power was used and on the duration for which powers are used. In some cases, impacts will include direct and indirect costs from disruption to planned activities.

Possible Solution 5 – A power to remove fuel from a hazardous ship under Section 248

51. We are considering an amendment to Section 248 (*Powers of Director in relation to hazardous ships*) to provide power for the Director to give directions concerning the discharge/removal of fuel from the ship.

Impacts

52. A power for the Director to give directions concerning the discharge/removal of fuel from a hazardous ship could save costs if an intervention is enabled that prevents a more serious leak. However, it could increase costs if an intervention occurs in a situation that would not have resulted in an oil spill. Due to the counterfactual nature of these situations, it is difficult to quantify these costs. We are interested in feedback on the impact of this possible solution, including potential direct costs and any impacts on insurance or liability arrangements.

Possible Solution 6 – Clearer powers to deal with floating objects

53. We are considering amending the Act to provide an explicit power for the Director to require the removal of floating objects or potential floating objects that are a hazard to navigation or that pose an environmental hazard, across all response scenarios.

Impacts

54. Clearer powers to deal with floating objects would reduce costs if an intervention is enabled that prevents more significant damage. However, it would increase costs if an intervention occurred that would not have resulted in significant damage. Due to the counterfactual nature of these situations, it is difficult to quantify these costs. We are interested in feedback on the impact of this proposal, including potential direct costs and any impacts on insurance or liability arrangements.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of explicit and broad powers for the Director to create an exclusion zone across the response scenarios? How likely are those impacts?*
- *What do you think are the impacts (positive and negative) of a power for the Director to give directions concerning the discharge/removal of fuel from a hazardous ship? How likely are those impacts?*
- *What do you think are the impacts (positive and negative) of a power for the Director to deal with floating objects or potential floating objects that are a hazard to navigation or that pose an environmental hazard, across all response scenarios? How likely are those impacts?*
- *Would any of proposals 4, 5, or 6 impact insurance and liability arrangements? If so, please explain why.*

Possible Solution 7 – Director directions to prevail over harbourmaster directions in all response scenarios

55. We are considering an amendment to the Act to provide that directions given by the Director will prevail over directions given by a harbourmaster, across all response scenarios. Directions under Sections 248 (*Powers of Director in relation to hazardous ships*) and 249 (*Powers of Director in relation to hazardous structures and operations)* already prevail over harbourmaster directions, so this change would affect directions issued under Section 100 (*Powers and duties of Director where ship or aircraft in distress*), which do not currently prevail over harbourmaster directions.

Impacts

56. This possible amendment is expected to improve the effectiveness of safety responses by creating consistency about whose directions prevail across all response scenarios. A clear and consistent approach that Director directions prevail over Harbourmaster directions will avoid potential confusion for people who need to follow such directions.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of providing that directions given by the Director will prevail over directions given by a harbourmaster, across all response scenarios? How likely are those impacts?*

Possible Solution 8 – Create a new power to direct a port to provide facilities following a maritime incident

57. We are considering creating a new power for the Director to require a port to provide facilities to a ship following a maritime incident. Facilities could include making a berth

available for the ship and making facilities available for repair, refuelling and for the offloading of cargo, crew or passengers.

58. This power would apply in circumstances where powers have been triggered under Section 100 (*Powers and duties of Director where ship or aircraft in distress*), Section 248 (*Powers of Director in relation to hazardous ships*) or Section 305 (*Powers of on scene commander*). We are proposing that the power could apply to any port (e.g. directions could be issued to a marina where appropriate for a pleasure craft or smaller vessel). We expect that in most cases the port nearest to a maritime incident would be directed to provide facilities. However, we intend that the power would allow the Director to identify which port is most suitable to direct in the circumstances (e.g. to minimise disruption or to ensure the right facilities are available).

Impacts

59. This new power we are considering will enable some costs to be avoided – e.g., costs from a more serious incident (such as loss of cargo or oil pollution if an affected ship is left without a port for a material length of time).

60. The new power may increase costs for affected ports. These include direct costs of providing facilities, and indirect costs from any disruption to normal business. Such disruption could have flow on effects on other port users too (e.g. via disruption to other ships that would have used the berth, and therefore to the users of disrupted shipping services).

61. The new power to ban deficient ships that we are considering (possible solution 10) would mitigate these impacts. Poor quality ships arriving in New Zealand waters would mean that a power to direct a port to provide facilities might be called upon relatively often. With a power to ban ships, the need to direct a port to provide facilities should arise less often than would be the case under the status quo.

62. We anticipate that this power would include a right for the port to recover from the owner of the ship the costs incurred by the port in complying with the direction. We are interested in feedback about how such a right might either complement or alternatively, interfere with, any other mechanisms for recovery of such costs (such as commercial agreements or salvage arrangements). There is a risk that recoverable costs will not be paid by the liable party, and we are interested in feedback on potential mitigations for this.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of a power for the Director to direct a port to provide facilities to stricken ships? How likely are those impacts?*
- *What information could help us assess the value of those impacts?*
- *Should a power to direct ports to provide facilities apply to all ports as proposed? If you think some ports should be excluded, please indicate which type of ports and why.*

- *Would a right to recover costs impact any other mechanisms for recovery of such costs (such as commercial agreement, insurance or salvage arrangements)?*
- *Are there other options that we should consider? If so, please explain why.*

Protection from liability for use of safety intervention (Section 100) powers

What is the problem we are trying to solve?

63. Section 256 of the Act provides criminal and civil liability protection to the Director (and persons instructed by the Director to take specific actions) when exercising powers under Section 248 (*Powers of Director in relation to hazardous ships*) and Section 249 (*Powers of Director in relation to hazardous structures and operations*). Section 327 of the Act (*Protection from liability*) provides similar protection for actions undertaken by relevant organisations and decision-makers in respect to actions taken in response to oil spills. There is no equivalent liability protection for the Director exercising powers under Section 100 (*Powers and duties of Director where ship or aircraft in distress*). This could expose Maritime NZ staff and others involved in safety responses to legal risk arising from actions taken in emergency situations which inherently involve uncertainty and require rapid decision making.

What possible solutions have we identified?

Possible Solution 9 – Criminal and civil liability protection for issuing or following directions

64. We are considering amending the Act to provide criminal and civil liability protection to the Director, and persons instructed by the Director in respect of actions taken under Section 100 (*Powers and duties of Director where ship or aircraft in distress*). Liability protection in emergency situations is important as it ensures that decision-makers can act decisively to protect lives, the environment and property without fear of legal repercussions. It similarly provides persons instructed by the Director with confidence that they can comply with the directions without fear of personal legal repercussions.

65. Section 121 of the Crown Entities Act 2004 provides a protection in respect of employees of Crown Entities for Acts or omissions in good faith and in performance or intended performance of the entity's functions. The protection provided by Section 121 of the Crown Entities Act 2004 will overlap to some extent with the protection granted by the amendment we are considering. However, Section 121 of the Crown Entities Act 2004 does not protect persons instructed by the Director unless they are employees of Maritime NZ or another Crown Entity.

Impacts

66. The amendment we are considering will protect the Director, and persons instructed by the Director, from the effects of potential liability for actions taken under Section 100 (*Powers and duties of Director where ship or aircraft in distress*). This will avoid the potential impacts of such liability, which could include financial costs (from a finding of liability, or from associated court proceedings) as well as non-financial impacts such as stress. It will remove a potential disincentive to comply with these directions (which may be particularly important for individuals involved in responses who are not employees of Maritime NZ or other response agencies).

67. This proposal may affect the right to justice protected under the New Zealand Bill of Rights Act 1990. However the intention would be only to protect individuals from liability, not to change the legal position of Maritime NZ.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of providing criminal and civil liability protection to the Director, and persons instructed by the Director in respect of actions taken under Section 100 (Powers and duties of Director where ship or aircraft in distress)? How likely are those impacts?*
- *Are there other options that we should consider? If so, please explain why.*

Reducing the burden on New Zealand from poor-quality foreign ships

What is the problem we are trying to solve?

68. There has been an increase in poor-quality, high-risk ships visiting New Zealand ports. This includes ships in a poor state of repair or not meeting environmental protection or labour standards. Incidents, injuries and near misses because of ship deficiencies have included major incidents such as steering loss (through power loss or loss of a rudder), as well as numerous more minor incidents such as workers falling through floors, people slipping due to oil slicks, a stevedore falling overboard due to faulty handrails, and injuries due to faulty pilot ladders and poor-quality ship cranes. Concerns about ship quality have been raised by Maritime NZ, harbourmasters, port companies, regional councils, marine pilots and stevedores in recent years.

69. Maritime NZ has limited ability to prevent a deficient ship from visiting New Zealand ports for marine protection reasons under Section 397 of the Act (*Detention, etc, of ships and seizure of marine protection products*). However, there is no corresponding power in the Act to prohibit a ship from visiting a port for maritime safety reasons or non-compliance with maritime conventions such as the Maritime Labour Convention (MLC).

70. In contrast, regulatory bodies in Australia, the USA and the EU have the power to ban ships for safety reasons. For example, Australia's Navigation Act 2012 provides a broad power for the Australian Maritime Safety Authority to direct that a foreign vessel must not enter or

use any port, or specified ports, in Australia. This means New Zealand is exposed to a level of maritime safety and environmental risk from visiting ships that comparable jurisdictions do not accept. The risk would increase over time if New Zealand were to become a 'dumping ground' for poor quality ships that are not welcome elsewhere. We would also face reputational damage if our ports were associated with environmental, safety, or labour concerns.

What possible solutions have we identified?

Possible Solution 10 – Additional powers to ban ships

71. We are considering enabling the Director to ban foreign ships from using New Zealand ports for maritime safety reasons or non-compliance with maritime conventions such as the MLC. We are considering two options for this power. Neither option is intended to affect a foreign ship's right to innocent passage through the territorial sea or to use New Zealand as a 'place of refuge' under international maritime law.

Option A – A narrow power with specific criteria relating to maritime safety and labour non-compliance

72. This option would add a banning power into Section 55 of the Act (*Detention, etc, of ships and maritime products*). Section 55 already includes the power to detain a ship, or impose conditions on its use, for reasons related to maritime safety. This option would extend Section 55 to include a banning power where any of the criteria in Sections 55(2) or (3) is met, and would add additional criteria to allow a ship to be banned due to non-compliance with labour standards.

73. The existing criteria under Sections 55(2) and (3) are specific and set a relatively high threshold (e.g. "the Director believes on clear grounds that…(a) the operation or use of any ship … or class of ship …, endangers or is likely to endanger any person or property, or is hazardous to the health or safety of any person").

Option B – A broader power for the Director to ban ships

74. This option would add a broader power to ban foreign vessels from New Zealand ports (or to impose conditions on the use of ports), similar to the power in Section 246 of the Australian Navigation Act 2012. This option would not set criteria for use of the power. Instead, it would give the Director wide discretion, with guidance on the use of the power published by Maritime NZ from time to time.

75. This option would allow broader use of a banning power than appears to be available under Section 397 (*Detention, etc, of ships and seizure of marine protection products*) – for example, prohibiting all ships operated by a particular company, where there has been a pattern of repeated non-compliance.

76. We are interested in feedback on whether the Director should have regard to the impact of a decision to ban a ship on owners of cargo, or, more broadly, on supply chains. This would be a relatively unusual consideration for the Director, whose functions focus on safety and marine protection. It could create judicial review risks which undermine the effectiveness of

the power. On the other hand, this power is potentially more far-reaching than other enforcement powers in its impacts on users of the maritime transport system.

Alternative possible solution – Operational change to increase inspections

77. Maritime NZ has increased the capacity of its Maritime Inspections team to meet the challenge of increasing numbers of poor-quality vessels on our coast. Maritime NZ undertook more than 350 inspections in the 2023-24 financial year, up from 144 in 2020-21.

78. Over time, Maritime NZ could consider further increases to its inspection capacity. This option would require increased funding, or diverting resource from other Maritime NZ functions. With additional capacity, Maritime NZ could also make greater use of its existing power under Section 397, where sub-standard ships raise both safety and marine protection issues. This could have a deterrent effect by increasing the costs to operators of sending poor quality ships to New Zealand.

79. The Ministry and Maritime NZ consider that this option would be less effective at deterring poor quality ships than either of the options we are considering for expanded banning powers. The existing power could not be used for issues that have no strong connection to marine protection. For repeated non-compliance, this option increases the risk of safety or marine protection events arising before an inspection has taken place, or while a ship is detained. Detaining more poor-quality ships would also create operational challenges and extra costs for ports (e.g. by contributing to port congestion). Securing additional funding to enable this option may also be difficult or unpredictable over time.

Impacts

80. Banning ships or increasing inspections would both avoid costs from maritime incidents, which would be prevented by fewer poor-quality ships visiting New Zealand. Banning ships would avoid more costs than increased inspections because it would be more effective at deterring poor quality ships.

81. Banning ships or increasing inspections could both result in higher shipping costs. Meeting regulatory standards will generally be more expensive than not doing so, particularly if those standards shorten the useful life of older vessels. Operators of poor-quality ships visiting New Zealand would be directly impacted.

82. Shipping companies are likely to pass on extra costs to users of shipping in New Zealand. There could be broader impacts to supply chains if the effect of a ban is that some operators choose not to serve New Zealand ports, or choose to provide less frequent service. Importers and exporters could also incur direct costs in a situation where a vessel is banned while on the way to New Zealand, if it means that alternative shipping arrangements have to be put in place, possibly at short notice, and shipments are delayed.

83. The broader banning power (Option B) could have greater impacts (positive and negative) as it will allow for more ships to be banned than the narrower banning power (Option A).

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of an expanded power to ban foreign flagged ships from using New Zealand ports? How likely are those impacts?*
- *What information could help us assess the value of those impacts?*
- *Which of these options provided here do you prefer? Please explain why.*
- *Are there other options we should consider?*
- *Should the Director have regard to the impact of a decision to ban a ship on owners of cargo, on, more broadly, on supply chains? Why or why not?*

Addressing issues with Annex VI-related enforcement powers

What is the problem we are trying to solve?

84. Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL) is aimed at preventing and minimising air pollution from ships. Annex VI is implemented by the Act and Marine Protection Rules Part 199.

85. Annex VI substances include the following:

    85.1 ozone depleting substances

    85.2 nitrogen oxides

    85.3 sulphur oxides

    85.4 volatile organic compounds

    85.5 shipboard incineration of substances such as cargo residues or related contaminated packaging, polychlorinated biphenyls, garbage with more than trace amounts of heavy metals, refined petroleum products containing halogens, and any sewage or sludge not generated on board the ship

    85.6 waste from any emissions-reduction system used as an equivalent – for example exhaust gas cleaning systems (scrubbers).

86. Examples of the types of breaches of Annex VI requirements that can occur include:

    86.1 not maintaining or providing monitoring information for scrubbers (e.g. documents, electronic records)

    86.2 using incorrect shipboard procedures for equipment related to Annex VI substances

    86.3 not notifying Maritime NZ of scrubber malfunctions or if a non-compliant discharge occurs, and

86.4 the actual discharge (deliberate or unintentional) of the prohibited Annex VI substances listed above.

87. There are gaps in the enforcement powers provided by the Act in relation to discharge of prohibited Annex VI substances as compared to those provided in relation to discharge of other harmful substances such as oil and ballast water, where investigation powers for suspected breaches are available under parts 19 (*Protection of marine environment from harmful substances*) and 19A (*Protection of marine environment from ballast water*) of the Act. This means that Maritime NZ is very limited in its ability to investigate discharges of prohibited Annex VI substances.

88. Examples of gaps include not being able to summon witnesses for an interview, issue search warrants, or require a person to produce any relevant documentation. For example, the power to seize Annex VI-related documents is limited to “marine protection products”, which can be contrasted with the Director’s power under Section 235 (*Additional powers of Director*) to seize “anything the Director believes on reasonable grounds will assist in establishing the cause of the discharge, escape, or pollution incident” in regard to other harmful substances.

89. In the absence of powers like those provided for discharge of other harmful substances, certain powers in Section 397 (*Detention, etc, of ships and seizure of marine protection products*) can be used. However, invoking these powers is reliant on there being 'likely to be' a contravention, meaning the powers apply only to anything happening at the time, or likely to happen in future. It is not sufficiently clear that these powers can be used to address any suspected or actual breach that has already occurred. This is a problem, as breaches (or potential breaches) are generally identified via inspections, which turn up evidence of something having occurred, not about to occur. For example, if a crew member reports a non-compliant discharge of an Annex VI substance to Maritime NZ that has occurred prior to entry into port, the status quo does not allow for broader investigative powers.

90. An associated issue is that there is no offence in the Act relating to Annex VI substances. The absence of an offence means that Maritime NZ can only pursue infringement offences for a breach. We consider that some breaches of Annex VI requirements (e.g. actual discharges of prohibited Annex VI substances) are serious enough to warrant an Act-level offence rather than an infringement.

What possible solutions have we identified?

Possible Solution 11 – Aligning enforcement powers for Annex VI requirements to those for other harmful substances

91. We are considering amending the Act to provide offence provisions for serious Annex VI breaches. For example, serious breaches would include:

91.1 the actual discharge (deliberate or unintentional) of the prohibited Annex VI substances listed in paragraph 85), or

91.2 not reporting a discharge, or not notifying Maritime NZ of scrubber malfunctions or if a non-compliant discharge or pollution event occurs.

92. We anticipate that similar penalties would apply to the new offence as apply to the offences relating to discharges to water in Sections 237 (*Discharge or escape of harmful substances from ship into sea or seabed*), 238 (*Failure to report discharge of harmful substance into sea or seabed*) and 239 (*Failure to notify pollution incidents*). We anticipate that similar defences would apply to the new offences as apply to offences under Sections 237, 238 and 239.

93. This will enable the Director to utilise Act powers that are specifically tied to investigating an offence under the Act, such as the issuing of a warrant to search and enter in Section 455 (*Entry in respect of offences*).

94. We are also considering an amendment to the Act to provide investigation powers in relation to prohibited discharges of Annex VI substances. These would be similar to the investigation powers provided under Sections 235 (*Powers of investigation of Director*) and 235A (*Additional powers of Director*) for discharges of harmful substances into water. For example, these include the power to make inquiries from individuals, to issue a summons, and to take possession of documents. This will ensure that the Director has the same powers for Annex VI substance-related investigations that are available for other types of investigations.

Impacts

95. The main impact of the changes we are considering in relation to Annex VI requirements would be that Maritime NZ would have more appropriate tools to deal with instances of the most serious forms of non-compliance with Annex VI requirements. This would help to uphold New Zealand's international reputation for exercising effective port state control and having high environmental standards. Non-compliant, or potentially non-compliant operators could face additional costs or other impacts due to these powers being exercised. Use of these enforcement powers would be funded by existing funding streams for Maritime NZ compliance activity.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of aligning enforcement powers for breaches of Annex VI requirements with those for harmful substances? How likely are those impacts?*
- *Do you support solution we are considering here? Why or why not?*

Recovering the costs of oil spill response interventions

What is the problem we are trying to solve?

96. There is a 'gap' between when an oil spill or hazardous ship response can be initiated under the Act and when the costs of that response can be recovered from a shipowner. Recently, this has raised issues in respect of the groundings of the *Manahau* and the *Aratere*.

97. As discussed above (possible solution 2), an oil spill response can be activated if a release of oil is "probable". Section 248 (*Powers of Director in relation to hazardous ships*) can be activated if a discharge of a harmful substance is "likely." Under Sections 344 (*Liability to the Crown and marine agencies for costs of cleaning up pollution*) and 345 (*Liability of shipowners for pollution damage*), shipowners are only liable for the costs of reasonable prevention measures where there was a "grave and imminent threat" of discharge or escape of a harmful substance. The thresholds for using response powers are therefore not aligned with the threshold for recovering the cost of using those powers from shipowners.

98. This means that costs caused by an individual ship are not being paid by the ship owner, but are instead being paid by regional councils or Maritime NZ, which are in turn funded by ratepayers, levies, etc. This may disincentivise the use of powers by Maritime NZ or regional councils in some cases.

99. As discussed above, (possible solution 2), we are considering a lower threshold for use of oil spill response powers. We are also considering adding an explicit power into Section 248 (*Powers of Director in relation to hazardous ships*) to enable preventive removal of fuel (possible solution 5). If adopted, these changes would further widen the gap between the threshold for using response powers and the threshold for recovering costs of that response.

100. We note that the "grave and imminent" threat reflects the Civil Liability Convention, which applies to ships carrying oil in bulk (CLC Ships), and the Bunkers Convention, which applies to certain ships using oil as fuel. New Zealand would not be able to change liability arrangements for these ships but could change the liability arrangements for other ships.

What possible solutions have we identified?

Possible Solution 12 – lower the threshold for liability for the costs of reasonable prevention measures to eliminate or reduce a threat of discharge or escape of a harmful substance

101. We are considering a lower threshold for liability for the costs of reasonable prevention measures to eliminate or reduce a threat of discharge or escape of a harmful substance. The new threshold would reflect the threshold for using powers under Section 248 (*Powers of Director in relation to hazardous ships*) or 305 (*Powers of on-scene commander*), as applicable. Note that we are considering changes to those powers (possible solutions 2 and 5) so the threshold for liability for costs would reflect any such changes, if adopted.

102. As noted above, this change would not apply in respect to ships covered by the CLC or Bunkers conventions.

Impacts

103. A lower threshold for liability for the costs of reasonable prevention measures to eliminate or reduce a threat of discharge or escape of a harmful substance will increase costs for affected shipowners, specifically in a situation where cost recovery would now be possible where it would not have been possible previously. However, in that situation, it would decrease costs to regional councils or Maritime NZ by the same amount. It will also remove the possible disincentivising effect of the current gap. A response framework that encourages oil spill preventive measures will have a mitigating effect on ship owner liability exposure overall. An incident that resulted in an actual oil spill would result in substantial ship owner liability.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of removing the 'gap' between when an oil spill or hazardous ship response can be initiated under the Act and when the costs of an oil spill response can be recovered from a shipowner? How likely are those impacts?*
- *Would this change impact insurance and liability arrangements? If so, please explain why.*

New Zealand Bill of Rights Act

104. Some of the possible solutions that we are considering to enable more effective responses to maritime incidents will have implications for rights protected by the New Zealand Bill of Rights Act 1990 (BORA). The table below identifies the relevant rights impacted by each possible solution and provides some commentary on whether limits to relevant rights are justifiable.

105. We are interested in your feedback on the initial analysis set out below.

Possible Solution	BORA right	Commentary
Possible solution 1 – A lower threshold for the Director to issue directions on safety grounds	Freedom of movement (Section 18)	Section 100 creates a discretionary power which can be used to direct or restrict the movement of crew and passengers of ships and aircraft. Possible solution 1 would increase existing limits on freedom of movement by setting a lower threshold for use of that discretion. The Ministry and Maritime NZ consider the proposed limits to be justifiable. Directions that limit movement will be limited to the duration of the intervention. A wide discretion is appropriate because it is not possible to anticipate all types of directions that could be needed in an emergency. Option B would apply in more limited circumstances so may be preferable.

Possible solution 3 – Add an obligation for a master or operator to provide Maritime NZ information when requested about the condition of a ship or its crew	Freedom of expression (Section 14) Unreasonable search and seizure (Section 21)	Possible solution 3 requires the provision of information. The right to freedom of expression includes the right to remain silent. Obligations to provide information can also be considered a 'search' under Section 21. The Ministry and Maritime NZ think the limits we are considering are likely to be justifiable. The proposed limits only apply to the information about the ship or its crew in certain circumstances – it is not a general obligation to provide information (e.g. for other regulatory purposes).
Possible solution 4 – Extend exclusion zone powers to all response scenarios and to include foreign ships	Freedom of movement (Section 18)	The Ministry and Maritime NZ think the limits we are considering are likely to be justifiable. The proposed limits are to (a) protect the safety or crew, passengers, responders and/or third parties and (b) prevent third parties from creating or exacerbating risks of (potentially severe) environmental damage. The proposed limits only apply in the area around a response and are limited to the duration of response activity.
Possible solution 9 – Criminal and civil liability protection for issuing or following directions	Rights to natural justice (Section 27)	Possible solution 9 bars the exercise of rights by affected people to seek remedies and hold public officials accountable. The Ministry and Maritime NZ think the limits we are considering are likely to be justifiable. Without some form of liability protection, individuals may be reluctant to take necessary steps in emergency situations that inherently require rapid decision-making with significant effects on people and property. The intention would be only to protect individuals from liability, not to change the legal position of Maritime NZ.

Questions for stakeholder feedback and further analysis

- *Do you agree with the NZBORA analysis provided here? If not, why not?*
- *Are there other factors we should consider in relation to affected rights?*

Ensuring effective co-regulation: national and local powers

106. Regional councils, unitary authorities, and the Chatham Islands Council ('regional councils') have a range of powers to regulate ports, harbours, waters and maritime-related activities in their regions for the purpose of ensuring maritime safety.[8] These include powers to make navigation bylaws and powers to appoint harbourmasters.

[8] The Department of Internal Affairs exercises these powers for Lake Taupō, the Buller District Council does the same for Westport Port and Grey District Council for the Greymouth Port.

107. Setting regulatory requirements at the right 'level' of regulation for the circumstances will support good regulatory practice, ensure that consultation and accessibility requirements are met, and promote cohesiveness across regions. Maritime NZ works with regional councils and harbourmasters to try to resolve differences about appropriate use of local regulation powers, but legislative change could help to clarify regulatory powers and improve the operation of the regulatory system.

Bylaw making powers

What is the problem we are trying to solve?

108. Section 33M of the Act sets out regional councils' power to make bylaws for the purpose of ensuring maritime safety in their region ('navigation bylaws'). Some regional councils have made bylaws under Section 33M of the Act with elements that create regulatory uncertainty and unnecessary costs for maritime sector operators. For example:

    108.1 Some navigation bylaws give the harbourmaster a range of discretions and powers in relation to the matters identified in Section 33M. These bylaws often do not set procedural controls (e.g. consultation or publication of decisions) around the use of such discretions and powers. These broad discretionary powers create regulatory uncertainty and costs for maritime operators, particularly those which operate across different regional councils. For example, a commercial operator visiting ports in more than one region can be subject to regulatory decisions with 'bylaw-like' effects that differ across regions, have not been consulted on and/or are not easily accessible. This makes compliance difficult in practice.

    108.2 Some navigation bylaws provide for the harbourmaster to grant exemptions to bylaw requirements. This creates a problem where the bylaw duplicates requirements also included in a maritime rule, for which only the Director may grant an exemption. Conversely, in some cases, the wording of bylaws could be interpreted as allowing a harbourmaster to override the effect of an exemption to maritime rule granted by the Director. This results in uncertainty for operators about the legal effect of an exemption granted by either a harbourmaster or the Director, depending on the circumstances.

109. Regional councils' local knowledge is a key input into making sure that navigation bylaws reflect local conditions and meet the needs of their communities. However, bylaws that overlap with the content of maritime rules (e.g. by setting safety systems for vessels already regulated by maritime rules) create regulatory uncertainty. Maritime rules are subject to procedural controls to ensure that decision-makers consider the trade-offs and complexities inherent in quality regulation. In particular, Section 39 of the Act sets out matters that must be had regard to when making maritime rules, including international practices and international circumstances (recognising that much of the safety regulation for international shipping is negotiated internationally), as well as the costs of implementation.

110. In some cases, it will be appropriate for a regional council to apply a higher standard than provided in a maritime rule. But in other cases, a higher standard than that set by the maritime rules will undermine regulatory decisions made at the national level.

111. Regional councils are required to consult the Director of Maritime NZ when making navigation bylaws. Maritime NZ has been working with regional councils to improve the processes for this consultation, and overall the situation in respect to genuine consultation and responding to feedback through draft bylaw revision, is improving. However, regional councils are not obliged to follow Maritime NZ's advice, and there are limited levers to address problematic bylaws after they are adopted. The main avenues available to remedy problematic bylaws are to seek judicial review or apply to the High Court to have the bylaws quashed. Either alternative (never exercised) would be costly and time consuming, would damage relationships, and would require a piecemeal approach to resolving problems that are systemic.

Questions for stakeholder feedback and further analysis

- *Do you agree with this description of the problem? If not, why not?*

What possible solutions have we identified?

112. We are considering changes to regional councils' navigation bylaw making powers to clarify the scope of those powers, and to strengthen the oversight of central government over the content of navigation bylaws. The Department of Internal Affairs is also undertaking a review of the local government bylaw system. The Ministry and Maritime NZ will stay connected with the Department of Internal Affairs review to ensure that any changes arising from that review and this review of the Act are aligned.

Possible Solution 13 – Clarifying the scope of powers to make navigation bylaws

113. We are considering amending the Act to explicitly provide that bylaws may not:

113.1 create or grant discretionary powers (sometimes called "controls") for regional councils or harbourmasters unless such discretionary powers are explicitly provided for or contemplated under the Act, rules or regulations. We are interested in feedback on whether there are discretionary powers that navigation bylaws do need to provide for that are not explicitly provided for in the Act, regulations, or rules. We are also interested in feedback about what mechanisms might be appropriate to accommodate any such discretions (while still avoiding inappropriately wide discretions). For example, this could be via an ability for the Director to approve bylaws that create such discretions, or for bylaws to provide that regional councils can make some decisions by resolution.

113.2 create or grant powers for regional councils or harbourmasters to grant exemptions in relation to matters only the Director has an exemption power under the Act.

113.3 create powers that limit or affect or encroach on the ability of the Director to perform or undertake duties, roles and responsibilities assigned to the Director under the Act or regulations or rules made under the Act.

Possible Solution 14 – Strengthen the oversight of central government over the content of navigation bylaws

114. **A clearer consultation obligation:** We are considering an amendment to the Act to strengthen the wording of Section 33M to say that a regional council must not make a navigation bylaw unless there has been consultation with the Director. This is not a policy change, as Section 33M already requires bylaws to be made 'in consultation' with the Director. However, clearer wording would align the Act with other transport laws[9] and may give more influence/force to the consultation requirement.

115. **Director approval of some bylaws:** We are also considering an amendment to the Act to provide that a regional council cannot make a bylaw relating to a matter that is currently regulated under a maritime rule, or that creates a traffic management scheme outside a harbour limit, without the approval of the Director. The requirement for Director approval of bylaws relating to a matter that is currently regulated under a maritime rule is intended to address the problems created by overlap between bylaws and maritime rules, as discussed above. Traffic management schemes in the territorial sea can trigger notification requirements and other processes under IMO Ship's Routing rules, and also must be aligned with freedom of navigation and the other provisions of UNCLOS.

116. **Minister power to revoke bylaws:** We are, in addition, considering an amendment to the Act to give the Minister the power to amend, replace, or disallow a bylaw if it is inconsistent with any enactment, or is unreasonable or undesirable in so far as it relates to or may affect maritime activity. As part of this change, regional councils would be required to send a copy of navigation bylaws to the Minister of Transport within a week after being made. Similar arrangements currently apply to bylaws made under the Land Transport Act 1998. We do not intend that this power could be used to revoke bylaws in place prior to any changes made to the Act through this review.

Impacts

117. In the medium-to-long term, the changes we are considering are expected to result in lower compliance costs for the sector due to removal of bylaws that cause confusion or create additional compliance costs. These impacts may take up to ten years to be fully realised due to the timing of bylaw reviews.

118. In the short term, these changes may require regional councils and Maritime NZ to commit more resources to developing bylaws, as new arrangements are embedded and both Maritime NZ and regional councils become familiar with what has changed. Maritime NZ expects that any additional resource needs can be accommodated within its normal funding arrangements. We are interested to hear from regional councils about potential impacts for them.

119. In the medium-to-long term we expect that these changes will improve the efficiency of regional council and Maritime NZ processes to develop bylaws, due to clearer expectations.

[9] Section 236 of the Civil Aviation Act 2023.

Questions for stakeholder feedback and further analysis

- *What do you consider are the impacts (positive and negative) of the changes we are considering to navigation bylaw making powers? How likely are those impacts?*
- *What information could help us assess the value of those impacts?*
- *Are there discretionary powers that are not explicitly provided for in the Act, regulations, or rules that navigation bylaws do need to provide for? If so, are there mechanisms that could allow for such discretions while also preventing navigation bylaws that create inappropriately wide discretions?*
- *Are there other steps Maritime NZ or regional councils could take to improve the operation of the navigation bylaws regime?*

Harbourmaster powers of direction

What is the problem we are trying to solve?

120. Under Section 33F(1)(c) of the Act, a harbourmaster may, for the purposes of ensuring maritime safety within the waters to which they have been appointed, "give directions regarding the time and manner in which ships may enter into, depart from, lie in, or navigate waters within the region." Some harbourmasters have used this power to create what they have called General Directions. These directions are not time limited; apply to all vessels or to a class of vessel; and have been issued with limited or no consultation with affected parties. These types of directions can create significant cost, disruption, and confusion for operators. For example, such directions have included:

    120.1 altering vessel pilotage limits created by the Minister of Transport under maritime rules Part 90 (Pilotage)

    120.2 giving the harbourmaster the power to approve (or not) the design and construction of vessels (a matter regulated under national maritime rules and in some cases under international conventions)

    120.3 giving the harbourmaster the power to require vessels, already operating under a regulated safety system administered by the Director, to go through a risk assessment process before they are allowed to operate, or continue to operate, in the event of a navigation issue being reported.

121. Some of the matters regulated under General Directions could legitimately be regulated under navigation bylaws by the regional council. In such cases, regulation via bylaw would ensure that affected parties (including Maritime NZ) are consulted and that the regulatory requirements are published.

Questions for stakeholder feedback and further analysis

- *Do you agree with this description of the problem? If not, why?*

What possible solutions have we identified?

Possible Solution 15 – Explicit statement that Harbourmaster powers of direction apply only to individual ships

122. We are considering changes to Section 33F to make it explicit that harbourmaster powers of direction under Section 33F(1)(c) can only be exercised in relation to an individual ship and in relation to a specific entry into, departure from, lying in, or navigation in waters within the region.

123. Section 33F(1)(j) provides a broadly framed power for harbourmasters to regulate and control traffic and navigation on the occasion of unusual or extraordinary maritime traffic. It is appropriate that this power *can* be used in respect of more than one ship or more than one ship movement. To make the difference between Section 33F(1)(c) powers and Section 33F(1)(j) powers clear, we are also considering an amendment to the Act to provide that harbourmaster powers of direction under Section 33F(1)(j) can apply to more than one ship, but must be of a specified time period and in relation to a particular situation of unusual or extraordinary maritime traffic, or in response to a maritime incident.

124. We are also considering changes to Section 33F to state that harbourmaster directions may not:

124.1 create or grant discretionary powers for harbourmasters not already provided under this Act or regulations or rules made under the Act

124.2 create powers for harbourmasters to grant exemptions from navigation bylaws or rules made under the Act

124.3 create powers that limit or affect or encroach on the ability of the Director to perform or undertake duties, roles and responsibilities assigned to the Director under the Act or regulations or rules made under the Act

124.4 be inconsistent with maritime rules.

Impacts

125. The changes we are considering are expected to lead to lower costs for the sector by avoiding harbourmaster directions that create confusion or additional compliance costs.

126. Harbourmasters' knowledge of local conditions will still be a key input into local regulation, but some matters currently dealt with by harbourmaster directions will need to become bylaws. These changes may require increased resource from regional councils and Maritime NZ because bylaw processes carry additional process costs (e.g. due to consultation requirements).

127. In the medium-to-long term we expect that these changes will improve the relationship between Maritime NZ and harbourmasters, due to clearer expectations about each others' regulatory roles.

Questions for stakeholder feedback and further analysis

- *What do you think are the impacts (positive and negative) of the changes we are considering to harbourmaster powers of direction? How likely are those impacts?*
- *What information could help us assess the value of those impacts?*
- *What costs would regional councils incur if some matters currently dealt with by harbourmaster directions need to become bylaws?*

Non-oil fuels

What is the problem we are trying to solve?

128. The Act is designed for an oil-fuelled maritime transport system. The frameworks for responding to spills or the uncontrolled release of fuels other than oil are less developed compared to those for oil.

129. The Government anticipates that future reform will be required as the international landscape for the adoption and regulation of non-oil fuels becomes clearer. This may mirror the current frameworks for oil pollution and include provisions for pollution preparedness, prevention and response activities, as well as liability frameworks, and funding arrangements.

130. At this point in time, the Government's approach is to minimise regulatory barriers to the adoption of lower carbon fuels by the shipping industry while ensuring that potential risks to the environment from an unintentional release of non-oil fuels are appropriately managed. We expect a 'multi-fuel' future in which heavy fuel oil remains in use for several decades, but alternative fuels including biofuels, LNG, methanol, hydrogen and ammonia are also adopted.

The planning framework for oil spills is detailed and specific

131. The planning framework in Part 23 of the Act includes an Oil Pollution Advisory Council (OPAC), and a three-tiered structure which places planning obligations on ships, offshore installations, oil transfer sites, and regional councils as well as on Maritime NZ. There is a well-established strategy, with dedicated resources funded though the collection of Oil Pollution levies for use in relation to oil spill planning and responses.

The Act anticipates the need to respond to non-oil pollution events

132. Section 430 of the Act states that "the objective of [Maritime NZ] is to undertake its safety, security, marine protection, and other functions in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable transport system".

133. Maritime NZ's functions (Section 431) include to promote "protection of the marine environment in New Zealand" which would include planning for and responding to non-oil pollution events. Section 191 (*Maritime levies*) also allows for levies to be used to pay for activities undertaken by the Authority to exercise its functions under the Act.

134. Part 19 of the Act is about protection of the marine environment from harmful substances. These provisions are implicitly geared towards escape or discharge of those substances when carried as cargo, but could arguably also be used in the event of incidents involving hazardous substances as fuel rather than cargo, for example,

    134.1 obligations to notify escapes, discharges or pollution events in Sections 227 and 228

    134.2 Director powers to issue instructions about the management of a hazardous ship in Section 248.

135. In some cases, the link to substances as cargo is explicit, which might create regulatory gaps. For example, Section 229 of the Act requires notification of a prospective ship arrival carrying oil or noxious liquid substances as cargo, but there is no requirement to notify the arrival of ships using a hazardous substance as a fuel.

The scope of rulemaking powers for non-oil hazardous substances is broad but uncertain

136. Rulemaking powers for harmful and other substances are set out in Section 388 but are more relevant to prevention rather than planning and responding to spills. Section 390 (*Marine protection rules in relation to marine oil spills and other matters*) allows for some specific maritime rules for matters relating to oil spills, including the contents of spill contingency plans.

137. There are other broadly framed powers, including:

137.1 Section 390(2) which allows for maritime rules to provide for such other matters as are contemplated by or necessary for giving full effect to the provisions of Parts 18 to 26A and for the due administration thereof, and

137.2 Section 36(za)(iv) and (zb) also provide broad rulemaking powers related to Maritime NZ's functions or any other matter contemplated by the Act.

138. However, in the absence of a more comprehensive planning and responsive system for hazardous substances other than oil in the primary legislation, it is uncertain to what extent these broad rulemaking powers could be used to develop components of a planning and response system for non-oil fuel spills.

What possible solutions have we identified?

Possible Solution 16 – Clarify Maritime NZ's mandate to plan for non-oil fuels

139. We are considering a limited clarification to the Act so that Maritime NZ has an explicit mandate to plan for the adoption of non-oil fuels, including making provision to prevent, prepare for and respond to non-oil fuel spills.

Impacts

140. This change will provide a clearer mandate to Maritime NZ to undertake some planning for non-oil fuels. This work would be done in collaboration with other regulatory agencies that have obligations in this space, including Fire and Emergency New Zealand, and would have some limitations as we are not proposing additional levies at this time to fund this work.

Possible Solution 17 – Require advance notification of arrival for non-oil-powered vessels

141. We also consider that non-oil-powered vessels coming to New Zealand should provide advance notification of their arrival through Customs' existing systems so that appropriate preparations can be made. This would exclude foreign ships traveling through New Zealand's territorial sea on innocent passage, in accordance with international law.

142. We expect that the Ministry and Maritime NZ will need to work with Customs to improve information sharing in relation to imports and exports of non-oil fuels. We do not foresee that this would require any changes to primary legislation.

143. In the longer term, the Government expects to revisit this aspect of maritime legislation as it will become clearer which alternative fuels have been adopted by the sector, and the international framework for spill prevention, response, and liability will be established.

Impacts

144. The changes we are considering would provide information to enable Maritime NZ to identify individual ships powered by non-oil fuels which are intending to arrive in New Zealand. Over time it will also strengthen our evidence base about the use of non-oil fuels.

145. Maritime NZ will work with Customs to identify impacts on Customs' systems, if any.

Questions for stakeholder feedback and further analysis

- *Do you support the suggested approach of clarifying that Maritime NZ has an explicit mandate to plan for the adoption of non-oil fuels, including making provision to prevent, prepare for and respond to non-oil fuel spills? Why or why not?*
- *Should vessel operators be required to give Maritime NZ advance notification if they intend to operate a non-oil powered vessel to a New Zealand port?*
- *Should some vessels be excluded from this requirement (e.g. pleasure craft)? If you think some vessels should be excluded, please indicate which type of vessel and why.*
- *Are there any other actions we should consider to ready New Zealand for the widespread use of non-oil fuels?*

Regulatory efficiency and effectiveness

A regulatory framework for equivalent solutions

What is the problem we are trying to solve?

146. The Act provides for exemptions to be granted where a ship or person does not meet a prescriptive requirement of the Maritime or Marine Protection Rules, but the requirement is substantially fulfilled or exceeded.[10] Currently, exemption powers are used to manage short-term or exceptional cases as well as ongoing regulatory approval of alternative technologies that do not meet the requirements of rules. Some other jurisdictions, such as Australia, provide the competent authority with separate powers to grant exemptions and

[10] See Sections 40AA(2)(b)(i)-(ii) and 395(2)(b)(i)-(ii).

approve equivalent solutions, in recognition of the different purpose of each tool in the regulatory framework, and to enable different processes and approaches to the exercise of each power.

147. Maritime NZ is increasingly being asked to respond to proposals involving innovative or alternative technologies (e.g. autonomous technologies, and ship/aircraft hybrids). The Act's current tools for dealing with new technologies, (i.e. powers to make rules and to issue exemptions from rules), are under increasing pressure due to the number and variety of new technologies emerging in a relatively short period of time. This is leading to increased costs and delays for operators and acting as a barrier to innovation. More generally, the current framework is highly prescriptive.

What possible solutions have we identified?

Possible Solution 18 – Introduce a framework for regulatory approval of "equivalent solutions"

148. We are considering an amendment to the Act to allow rules to authorise the Director to approve "equivalent solutions" for matters (e.g. vessel design or equipment) that do not meet the prescriptive requirements of the rules but achieve the underlying safety or marine protection outcome.

149. The Ministry and Maritime NZ consider that having two separate regimes for exemptions and equivalent solutions would support better outcomes over time. Creating a clearer distinction in the Act between exemptions (for short term or exceptional cases) versus 'approved equivalents' (ongoing regulatory approval of alternative technologies that do not meet the requirements of rules) would improve the coherence of the overall regulatory system and help to avoid confusion.

150. The distinction would also support a move toward an outcomes-based regulatory framework. Examples of such performance-based regulatory provisions include the Building Code's "alternative solutions" and the Civil Aviation Rules' "alternative means of compliance".

151. Finally, having separate regimes for exemptions and equivalent solutions would allow for differentiation of the two schemes in terms of requirements, processes, cost recovery approaches, etc. This would enable the frameworks to balance and prioritise different desired outcomes including safety, environmental protection and innovation.

152. For example, the framework could enable 'equivalent solution' approvals to be either permanent or time-limited, with the length of the approval period dependent on the level of risk associated with the proposal. This would be different from exemptions, which would be used for short-term and exceptional cases.

153. Another point of differentiation could be that equivalent solutions, once approved, could be included in Maritime or Marine Protection Transport Instruments, so that other operators would have the option to comply with the prescriptive requirement of the rule or the equivalent solution. If this approach were taken, it would likely have implications for who should bear the cost of getting an equivalent solution approved.

154. Introducing a framework for regulatory approval of "equivalent solutions" would require making a clearer distinction in the Act between exemptions and equivalent solutions. The intention is that:

154.1 an approved equivalent would be an ongoing operational solution to provide flexibility in the regulatory regime

154.2 exemptions would be used as a short-term or narrowly applied measure.

155. There are existing Maritime and Marine Protection Rules that allow for equivalents, including where such equivalents are contemplated in international agreements. Maritime Rule Part 404 implements the Cape Town Agreement[11] and allows for equivalents. Maritime Rule Part 199, which implements MARPOL Annex VI, has similar provisions. A common formula in both Parts 199 and 404 is the Director being satisfied that the equivalent is "at least as effective" as the standard required by the Rule. However, there is no single place in the Act where the power is clearly defined.

156. We anticipate that approvals of equivalent solutions would be considered secondary legislation. This would make the existence and terms of the approval publicly accessible by triggering the publication requirements for secondary legislation prescribed in Part 3 of the Legislation Act 2019.

157. The Director could decline to approve an equivalent solution if (a) relevant expertise to evaluate an application is unavailable either in-house or externally and/or (b) on the evidence submitted by an applicant, the Director is unable to be satisfied that the proposed equivalent is "at least as effective" as the standard required by the relevant Rule.

158. This change may require Regulations to be made under Section 445 (*Regulations for fees and charges*) to enable Maritime NZ to recover the costs involved in assessing 'equivalent solutions' from the applicant.

Alternative Possible Solution – Rely on transport instruments

159. The Act was amended in 2021 to allow for transport instruments as an additional form of secondary legislation that can be authorised by regulations or rules. Transport instruments could be used to adopt an equivalent solutions framework without legislative changes. However, the Act doesn't give the Minister or Director a clear mandate to use transport instruments in this way. It would be preferable to have an explicit mandate for Maritime NZ to shift towards accommodating a performance-based regulatory approach.

Impacts

160. We are seeking your feedback on the potential impacts of this possible solution.

[11] The Cape Town Agreement 2012 sets safety standards for fishing vessels over 24 meters long, covering construction, equipment, and inspections. It will only come into force once at least 22 countries, with a combined fleet of 3,600 or more fishing vessels of that size, have signed on.

Questions for stakeholder feedback and further analysis

- *What do you consider are the impacts (positive and negative) of allowing for "equivalent solutions"? How likely are those impacts?*
- *What information could help us assess the value of those impacts?*
- *Are there other options that we should consider? If so, please explain why.*

Regulation of pleasure craft on overseas voyages

What is the problem we are trying to solve?

161. Section 21 of the Act applies to any pleasure craft departing on an international voyage, and requires that the Director of Maritime NZ is satisfied that the vessel, equipment and crew are adequate for the voyage.

162. This requirement shifts the onus of responsibility away from the master of the vessel and towards the Director. This at odds with how recreational craft are otherwise regulated in New Zealand. Section 19 of the Act (*Duties of master*) places responsibility for the safety of vessels, passengers and crew on each vessel's master. Section 21 effectively requires Maritime NZ to check whether the masters of pleasure craft are fulfilling these responsibilities in relation to voyages that make landfall at an international port. Until recently, Yachting NZ implemented this provision on behalf of Maritime NZ, requiring masters to apply for a Category 1 (CAT 1) certificate.[12] Maritime NZ now administers Section 21 requirements directly, through the issue of International Voyage Certificates.[13]

163. We acknowledge that pleasure craft on international voyages often pose a greater risk than those on voyages in internal or coastal waters. However, domestic voyages with similar safety risks are not captured by Section 21, such as crossing the Cook or Foveaux Straits, and visiting the Chatham or Kermadec Islands. Moreover, the requirements of Section 21 are inflexible and may require disproportionate resourcing on the part of Maritime NZ. For example, if Maritime NZ were to identify that another category of vessel posed a greater risk and required more regulatory effort, it would be unable to divert resources from implementing Section 21 in order to meet this need. We consider that recreational boating is best regulated through the maritime rules rather than the Act, because of the relative difficulty of amending primary legislation.

[12] CAT 1 is a safety certification that indicates a yacht is suitably equipped for offshore racing. Up until 2024, masters of recreational craft were required to apply to Yachting NZ for a CAT 1 certificate in order to comply with Section 21.

[13] See more at https://www.maritimenz.govt.nz/recreational/boating-basics/taking-your-boat-overseas/

What possible solutions have we identified?

Possible Solution 19 – Revise or repeal Section 21

164. We are considering options to remove the requirement that the Director of Maritime NZ must be satisfied that pleasure craft are adequately crewed and equipped for international voyages.

Option A – Repeal of Section 21

165. This option would involve repealing Section 21 and relying on the requirements in Section 19 for masters to take responsibility for the safe operation of the ship on a voyage and requirements for recreational craft under Part 91 of the Maritime Rules, as applied in New Zealand waters. This option aligns with New Zealand's approach to regulating other recreational craft. This could be supplemented by guidance from Maritime NZ encouraging the operators of pleasure craft on international voyages to take extra safety precautions.

Option B – Repeal Section 21 and replace with appropriate maritime rules (preferred)

166. This option would involve repealing Section 21 and introducing proportionate safety requirements via maritime rules for pleasure craft departing on a voyage on international voyages (e.g. to have a radio and emergency locator beacon). This would allow flexibility to change requirements for pleasure craft over time.

167. The repeal of Section 21 would be coordinated with a separate rules amendment process, which would include additional opportunities for feedback.

Option C – Revise Section 21

168. This option would involve revising Section 21 so that the onus is on the master of the pleasure craft to inform Maritime NZ of the voyage and to ensure that the vessel, its safety equipment, and crew are adequate for the voyage. Maritime rules could also specify how masters should meet these requirements. This option would highlight that voyages beyond NZ waters require greater preparation than other voyages. However, it may not meaningfully add to maritime safety (given the duties of masters are already set out in Section 19).

169. We do not consider that a provision under statute is necessary to achieve particular safety or security outcomes for recreational vessels. We also consider that this option is misaligned with the broader approach to regulating pleasure craft. On balance, we favour Option B – repealing Section 21 and introducing maritime rules with safety requirements for pleasure craft on voyages beyond NZ waters (whether departing from or arriving in New Zealand).

Impacts

170. Option A would remove the current compliance costs that pleasure craft owners incur to meet Section 21 requirements. It could result in an increased need for search and rescue responses.

171. Options B and C would involve replacing Section 21 with new regulation that is proportionate to the risks involved. This means some compliance costs would remain and these would be assessed through the rule-making process. We do not consider that Options B or C would increase the need for search and rescue assistance, but this would also be assessed in more detail through the rule-making process.

Questions for stakeholder feedback and further analysis

- *Which of the options provided here do you prefer? Please explain why. If Options B or C are progressed, what safety requirements should apply to pleasure craft departing on international voyages or voyages outside New Zealand waters?*

Confirming New Zealand's ability to regulate foreign-flagged vessels

What is the problem we are trying to solve?

172. A 1998 Court of Appeal decision has limited New Zealand's ability to regulate foreign-flagged vessels using New Zealand ports. The Court of Appeal's decision in *Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44 *(Sellers)* was about how Section 21 of the Act applied to a foreign-flagged pleasure craft.

173. Section 21 of the Act sets out requirements for pleasure craft departing New Zealand ports for any place outside of New Zealand. The Court of Appeal found that applying Section 21 of the Act to a foreign-flagged pleasure craft unduly restricted those vessels' right to freedom of navigation on the high seas. In short, the effect of this decision is that New Zealand's port state jurisdiction for foreign-flagged vessels is limited to enforcing internationally agreed standards.

174. The Court's decision is unique in international maritime law. Ports are in a coastal state's internal waters. The coastal state has sovereignty in this zone, with both legislative and enforcement jurisdiction. Other countries have used their port state jurisdiction to enforce requirements that exceed international standards. For example, Singapore requires that all craft within its extensive harbour operate tracking equipment to improve maritime safety.

175. While New Zealand's general preference is to follow international standards, there are some instances where it is important to be able to set higher requirements than those agreed internationally for foreign-flagged vessels in port. For example, requiring pleasure craft departing New Zealand waters to carry a radio and an emergency locator beacon appears to be necessary and reasonable considering:

175.1 the effectiveness of this equipment in mitigating the risk of loss of life, and

175.2 the cost search and rescue operations across New Zealand's 30 million square kilometre area of responsibility.

176. Unless the effect of the *Sellers* decision is legislated over, such requirements could not be enforced for foreign-flagged vessels using ports.

177. The limitation created by *Sellers* might also prevent New Zealand from applying rules to foreign-flagged vessels on matters for which international standards have not yet been agreed. For example, in the future, New Zealand might wish to set construction, design, or equipment rules for vessels using New Zealand ports to reflect novel technologies, new risks arising from the use of non-oil fuels or alternative means of propulsion.

What possible solutions have we identified?

Possible Solution 20 – Confirm ability to impose standards beyond international conventions on vessels using New Zealand ports and while they are in New Zealand's internal waters

178. We are considering amending the Act to confirm that secondary legislation under the Act can impose standards on vessels using New Zealand ports and while they are in New Zealand's internal waters that exceed international conventions, or which have no international equivalent.

179. Section 39(1) of the Act says that maritime rules (and emergency maritime rules) must not be inconsistent with international standards relating to maritime safety, and the health and welfare of seafarers, to the extent adopted by New Zealand.

180. The amendment we are considering would qualify the existing requirement in Section 39(1) by explicitly stating that:

180.1 secondary legislation made under the Act may apply standards that are more stringent than relevant international standards, where the intention to do so is clearly stated in the rule and the more stringent standard is as consistent as practicable with the objects and purpose of the relevant international standard; and

180.2 secondary legislation made under the Act may apply standards even if the standard has no international equivalent.

181. An alternative option would be to address the issue through litigation, for example by appealing the Sellers case to the Supreme Court or taking an analogous case through the appellate courts. However, this would be costly and the outcome would be uncertain.

Impacts

182. We do not expect this change to directly impact operators or Maritime NZ. Any impacts would be the result of future legislative processes enabled by this clarification, with corresponding consultation processes. We are interested in your feedback on whether there are indirect impacts that we should consider.

Questions for stakeholder feedback and further analysis

- *Do you support the amending the Act to confirm New Zealand's ability to regulate foreign-flagged vessels using New Zealand ports or while they are in New Zealand's internal waters? If not, why not?*
- *Do you agree that this change will not directly impact operators or Maritime NZ? If not, why not?*
- *What other impacts we should consider?*

We welcome your comments on other matters

183. As noted earlier, this working paper identifies issues with the Act that the Ministry and Maritime NZ believe (based on analysis and previous stakeholder engagement) are the highest priority areas for change, along with possible solutions. We are also open to feedback from stakeholders identifying other aspects of the Act that stakeholders consider should be a priority to ensure that the regulatory system is fit-for-purpose.

Questions for stakeholder feedback and further analysis

- *Are there other aspects of the Act that should be considered a priority for change to ensure that the regulatory system is fit-for-purpose? If so, please provide details on what and why, and comment on the relative priority of those aspects of the Act, compared with the issues identified in this discussion document.*

Effective Maritime Legislation – Maritime Transport Act 1994

WORKING PAPER – NOT GOVERNMENT POLICY

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