

# Operational Cooperation

## INTRODUCTION

1. This Schedule is produced under the Memorandum of Understanding (MOU) between WorkSafe New Zealand (WorkSafe) and Maritime New Zealand (Maritime NZ) (the Parties), dated 20 February 2024.
2. This Schedule revokes and replaces 'Schedule 1: WorkSafe Assistance in the Event of a Major Maritime Incident'.

## PURPOSE

3. This Schedule outlines:
  - a. how the Parties will work together operationally from 1 July 2024, to achieve better health and safety outcomes on New Zealand's Major Ports; and
  - b. how the Parties will cooperate in the following areas:
    - i. when there is a regulatory overlap
    - ii. in situations where harm has occurred or is likely to occur, and there is a need for a joint response to an event
    - iii. where either Party needs additional technical support from the other to assist its regulatory activities on a Major Port; and
    - iv. during an Emergency on board a ship or on a Major Port.

## DEFINITIONS

4. The definitions that apply to this Schedule are detailed in Appendix 1.

## ROLES AND RESPONSIBILITIES OF THE PARTIES

5. WorkSafe and Maritime NZ are both regulators under the Health and Safety at Work Act 2015 (HSWA).
6. The Health and Safety at Work (Maritime New Zealand) Agency Designation 2023 (the Designation) extends Maritime NZ's existing powers under the 2015 Designation (which relates to work on board ships and ships as workplaces) to work at Major Ports and work at ports used in connection with the Cook Strait inter-island ferries.
7. Under the Designation Maritime NZ may perform all functions and exercise all the powers under HSWA on Major Ports, except for functions named in the Designation that WorkSafe retains (covered below).
8. The physical scope of New Zealand's 13 Major Ports is identified in the *Port Profiles* Schedule.

## **REGULATORY FUNCTIONS ON MAJOR PORTS RETAINED BY WORKSAFE**

### **Major Hazard Facilities**

9. WorkSafe is responsible for regulating Major Hazard Facilities (MHFs) on Major Ports – both work at MHFs, and MHFs as workplaces.
10. The *Port Profiles* Schedule identifies MHFs that are on or adjacent to a Major Port.
11. Pipelines that are considered part of an MHF according to the Hazardous Substances (Major Hazard Facilities) Regulations 2016, will be treated consistently with how they are described in the *Port Profiles* Schedule.
12. Where WorkSafe need to physically interact with, or assess, an MHF on a Major Port, it will access the Major Port in accordance with the access provisions detailed in this Schedule.
13. Where Maritime NZ becomes aware that a facility within its designation is holding a volume of specified hazardous substances that is equal to or exceeds the lower threshold of the MHF Regulations, and it knows or suspects that the operator has not notified WorkSafe, it will notify WorkSafe by contacting the appropriate contact in the *Designated Coordinators* Schedule.
14. If WorkSafe revokes the MHF status of a facility on a Major Port, it will notify Maritime NZ by contacting the appropriate contact in the *Designated Coordinators* Schedule.

### **Where WorkSafe is named in legislation**

15. WorkSafe retains regulatory responsibility where it is explicitly named in legislation. Where WorkSafe is named relating to Notifications, the handling of these Notifications is covered below and, in the *Data and Information Sharing* Schedule.

### **Energy Safety**

16. WorkSafe is the regulator for ensuring the safe supply and use of electricity and gas under the Electricity Act 1992 and the Gas Act 1992.

### **WorkSafe delegations**

17. WorkSafe retains all powers associated with any delegations granted under other Acts.

## **JOINT COOPERATION**

### **Areas where there is a regulatory overlap**

18. To ensure good regulatory outcomes on Major Ports, the Parties agree to cooperate and communicate when regulating in areas where their responsibilities overlap.
19. The Parties agree to cooperate where there is a regulatory overlap, including (but not limited to) the following areas:
  - a. pipework crossing the boundaries of a Major Port
  - b. events at a MHF that impact Duty Holders based at a Major Port

- c. Notifications, including Protected Disclosures, where appropriate
  - d. events involving authorised activities where the authorisation has been issued by WorkSafe, in line with the *Authorisations and Exemptions* Schedule; and
  - e. where a Party produces guidance or an Approved Code of Practice which is relevant to the other Party's regulatory role.
20. The Parties agree to inform each other, in accordance with the *Data and Information Sharing* Schedule, when incidents occur that may impact their role as a regulator on Major Ports.
21. In some circumstances there may be an incident that occurs on or across the regulatory overlap of the Parties, or an incident may occur that is indicative of a system-wide problem, not limited to a single Party's area of responsibility. In these cases, the Parties agree to meet and discuss jurisdiction and areas of specific responsibility as soon as practicable to agree an approach to the situation using the relevant contact in the *Designated Coordinators* Schedule.

#### *Pipework*

22. Pipework on Major Ports can fall under different regulations. Pipework can cross boundaries and connect sites outside a Major Port to ships by passing through a Major Port.
23. How pipework is managed on a Major Port is described in the *Port Profiles* Schedule.
24. The Parties agree that cooperation and support is needed to ensure good regulatory outcomes where pipework at a Major Port is concerned and will act in accordance with the principles of the MOU and the provision of technical capability section below.

#### *Events at a MHF that impact Duty Holders based at a Major Port*

25. While WorkSafe is responsible for regulating MHFs, there may be instances where an event at a MHF affects Duty Holders at a Major Port. Where this event occurs, the Parties agree that cooperation and support is needed and will act in accordance with the principles of the MOU, and the provision of technical support section below.
26. If an event occurs at an MHF that is likely to affect or has affected Duty Holders at a Major Port, WorkSafe will notify MNZ using the relevant contact in the *Designated Coordinators* Schedule.

#### *Notifications*

27. If Maritime NZ receives a Notification relating to a function where WorkSafe is named in legislation or where WorkSafe is the regulator, Maritime NZ will refer the Notification to WorkSafe following the process outlined in the *Data and Information Sharing* Schedule.

28. If WorkSafe receives a Notification relating to a function where Maritime NZ is the regulator, it will refer the Notification to Maritime NZ following the process outlined in the *Data and Information Sharing Schedule*.

#### *Energy Safety on Ports*

29. If Maritime NZ receives a Notification of a notifiable incident occurring that involves electricity or gas, it will direct the notifying PCBU to notify WorkSafe through the WorkSafe Energy Safety Notification portal.
30. Where Maritime NZ is aware of a notifiable incident occurring that involves electricity or gas but has not received that Notification, it will direct the PCBU with the responsibility to notify WorkSafe using the WorkSafe Energy Safety Notification portal.

#### *Guidance and Approved Codes of Practice*

31. At times, each Party may produce guidance or Approved Codes of Practice (ACOP) which are relevant to the other Party's regulatory role. Where this occurs, the Parties agree they will promote regulatory consistency by cooperating and communicating during the development and finalisation of the guidance or ACOP using the appropriate contact in the *Designated Coordinators Schedule*.
32. The Parties agree, where practicable, to a consistent interpretation of, and communication to the Port Sector and associated PCBUs about any relevant existing and newly developed guidance or ACOP to ensure clarity in the Sector.

#### **During an event where serious harm has occurred or has the potential to occur**

33. Subject to clauses 36 and 37, the Parties agree that at times, they may request support from each other during events where there is serious harm or a potential for serious harm. This support may take the form of a request for personnel to attend a site, technical expertise using the process outlined below, or a direct request for support from Inspectorate personnel.

#### **Provision of technical support**

34. At times support over and above a Party's HSWA capacity and capability may be requested to execute their regulatory responsibilities. The following section:
  - a. outlines the type, timing, and process for sharing technical expertise to support the extended designation; and
  - b. provides agreement on what happens when existing relevant material is revised, or new relevant material is developed.
35. The Parties agree that they may request support from each other to execute their duties under the Designation.
36. Any request for provision of WorkSafe support may be declined, limited, adjusted or terminated as deemed necessary by WorkSafe. The provision of WorkSafe support will be

assessed on a case-by-case basis and will be subject to the availability of WorkSafe resources.

37. Any request for provision of Maritime NZ support may be declined, limited, adjusted or terminated as deemed necessary by Maritime NZ. The provision of Maritime NZ support will be assessed on a case-by-case basis and will be subject to the availability of Maritime NZ resources.

*Areas where WorkSafe provision of technical support may be requested*

38. Subject to clause 36, WorkSafe agrees to provide Maritime NZ with technical support in areas where they relate to work within the scope of the Designation defined in the *Port Profiles* Schedule. Technical support may include but is not limited to:

- a. high hazard units (non-MHF bulk liquid)
- b. pipework (including pipelines and transfer lines), where Maritime NZ has regulatory responsibilities
- c. construction, including underwater construction
- d. high harm Notifications where Maritime NZ Investigates; and
- e. complex manufacturing.

39. Types of support that may be provided include:

- a. personnel, technical expertise or advice
- b. HSWA Inspector training materials
- c. guidance and education products, including online resources or tools
- d. operational policy products; and
- e. other materials relevant to Maritime NZ's operations.

*Process for requesting technical support*

40. In the case of an Emergency, a Notifiable event where a fatality or serious harm has occurred, or in instances where essential services may be disrupted, the Parties may request support from each other via the DCE Operations, of WorkSafe and the DCE Regulatory Operations at Maritime NZ.

41. All other requests for the provision of support between the Parties will be made in writing to the appropriate contacts in the *Designated Coordinators* Schedule.

42. WorkSafe will respond to requests for support in writing within five working days of receiving the request.

43. Maritime NZ will respond to requests for support in writing within five working days of receiving the request.

44. All information shared during the provision of technical expertise or guidance must be shared in line with the *Data and Information Sharing Schedule*.

### **Interventions**

45. The Parties will manage decisions relating to ongoing Investigations or Interventions at 1 July on a case-by-case basis using the relevant operations managers in the *Designated Coordinators Schedule*.

#### *How the Parties carry out assessments and Interventions*

46. Each Party will make its own assessment about whether and how it should intervene and what form that Intervention will take, in line with their relevant legislation, priorities and policies. However, the Parties will share information about relevant Interventions as appropriate and in accordance with the principles of the MOU.

#### *Third parties*

47. Some Notifiable events or complaints may require involvement from third parties. This Agreement does not vary the effect of any Investigation agreements between the Parties to this Agreement and any third party.

### **Communications**

48. When a Party becomes aware of an incident that may require joint communication it will notify the other Party as soon as is practicable. This notification should be made via the appropriate contact in the *Designated Coordinators Schedule*.

### **EMERGENCIES AT A MAJOR PORT OR ON BOARD A SHIP**

49. This section details the responsibilities of Maritime NZ and WorkSafe with respect to the provision of WorkSafe assistance to Maritime NZ when responding to an Emergency at a Major Port or on board a ship.
50. This section also details the regular meetings to be used for discussions on training exercises and operations relating to Emergencies at a Major Port or on board a ship.
51. The provision of WorkSafe support under this Schedule will be subject to the availability of WorkSafe resources and will be assessed on a case-by-case basis. Any support WorkSafe provides may be limited, adjusted or terminated as deemed necessary by WorkSafe to meet other operational requirements.
52. Where appropriate Maritime NZ has the primary responsibility for responding to all Emergencies that occur within the boundaries of its Designation and within New Zealand waters, in accordance with the Maritime Transport Act 1994.
53. WorkSafe support may be sought by specific request of the Director, Acting Director, or National On-Scene Commander of Maritime NZ, to the Chief Executive or the DCE Operations, of WorkSafe.

## **WorkSafe assistance to Maritime NZ**

54. Assistance provided by WorkSafe to Maritime NZ in the event of an Emergency may include, but is not limited to:
  - a. provision of specialist advice on work health and safety matters
  - b. where appropriate, co-ordination between legal teams on work health and safety matters affecting both Parties; and
  - c. augmentation of the 'Investigation Unit', including provision of subject matter experts and specialist technical support.
55. Both Parties will provide a liaison to co-ordinate any requests for advice and guidance on-planning, policy, investigative and response capabilities within the Maritime Readiness and Incident Response Team in order to plan, co-ordinate and conduct the response operation.
56. In limited circumstances WorkSafe may also provide Maritime NZ with staff trained in emergency management to undertake Coordinated Incident Management System (CIMS) roles (outside of a safety function), including management of logistics, communication and intelligence.

## **The provision of WorkSafe support in Emergencies**

57. In the event of an Emergency on a Major Port or ship, the WorkSafe DCE, Operations is the primary contact for the provision of initial WorkSafe support to the response operation. The contact details for the DCE Operations and a secondary on call contact can be found in the *Designated Coordinators Schedule*.
58. Given the nature of WorkSafe's roles and responsibilities, the provision of further WorkSafe support may need to be permitted by using the DPMC Strategic Crisis Management Unit.

## **Liaison and co-ordination**

59. During an Emergency regular liaison and co-ordination will be undertaken by the Deputy Chief Executive, Response Security and Safety Services at Maritime NZ and the DCE, Operations at WorkSafe.
60. The Parties will meet annually to:
  - a. brief each other on their respective roles, responsibilities and capabilities
  - b. investigate opportunities to undertake Maritime Response Training/Exercises; and
  - c. explore other opportunities for collaboration within the intent of the MOU and this Schedule in particular.

## **ACCESS**

61. The Parties agree that WorkSafe can enter Major Ports for regulatory reasons related to:

- a. the Health and Safety at Work (Major Hazard Facilities) Regulations 2016
  - b. the Hazardous Substances and New Organisms Act 1996
  - c. the Electricity Act 1992
  - d. the Gas Act 1992; and
  - e. exercising powers or functions that are reserved for WorkSafe.
62. WorkSafe will notify Maritime NZ, using the relevant contact in *Designated Coordinators* Schedule, when it plans to enter a Major Port for any reason outside of clause 61.

### **REGULAR MEETINGS**

63. The Parties agree to meet at least every six months to ensure joint cooperation is occurring in a way that is consistent with the MOU and this Schedule.

### **REPORTING RELATIONSHIPS**

64. Excluding instances where Maritime NZ is the lead agency for Emergency response under the CIMS control function, where WorkSafe personnel and resources are provided in support of Maritime NZ, these will remain under WorkSafe leadership and direction at all times.

### **DISPUTE RESOLUTION**

65. The Parties will resolve disputes by following the process set out in the MOU.

### **PUBLICATION**

66. The Parties agree this Schedule can be published externally.

### **INFORMATION SHARING**

67. The Parties will share relevant information, data or intelligence when a Party considers that it may assist the other Party in the performance or exercise of its functions, duties or powers under or in relation to any enactment, and when doing so is consistent with the law, including the Official Information Act 1982, the Privacy Act 2020 and the Criminal Disclosure Act 2008.

### **TERM, REVIEWING, VARIATION AND TERMINATION OF THIS SCHEDULE**

68. The Parties will review this Schedule twelve months after the date of signing, or earlier by mutual agreement. Thereafter, the Parties will review the Schedule every three years.
69. If the Schedule is not reviewed within three years after it comes into force, the Schedule will continue to remain in force as if it has been reviewed.
70. Either Party can request a review of this Schedule at any time.
71. Amendments to this Schedule will be made in writing by mutual agreement of the Parties.

**COSTS**

72. The cost of meeting the provisions of this Schedule will be met by the Party incurring the cost unless the Parties agree otherwise.

**DESIGNATED COORDINATORS**

73. The Parties' designated coordinators for the purposes of this Schedule are listed below by title/s. The full names and contact details for the people in these roles are in the *Designated Coordinators* Schedule. The roles of the designated coordinators are:

**WorkSafe New Zealand**

Manager, Operational Policy

**Maritime New Zealand**

Scott Bernie- Acting Manager HSWA Regulatory Operations

<b>Signed</b>	<b>Signed</b>
	
Kirstie Hewlett Chief Executive and Director Maritime New Zealand	Kane Patena Deputy Chief Executive Operations WorkSafe New Zealand
<b>Date</b> 21/06/2024	<b>Date</b> 21/06/2024

## APPENDIX 1: DEFINITIONS

**Emergency** has the same meaning as given in the Civil Defence Emergency Management Act 2002

**Hazard** has the same meaning as section 16 of HSWA.

**Hazardous Substances** in relation to HSWA, has the same meaning as section 2(1) of the HSNO Act 1996, and in relation to the Health and Safety at Work (Hazardous Substances) Regulations 2017, has the same meaning as regulation 4 of those Regulations.

**HSWA** means the Health and Safety at Work Act 2015.

**Inspector** has the same meaning as section 16 of HSWA.

**Intervention** means any activity a Regulator undertakes to prevent harm, alter a course of events, improve a situation, or prevent it from getting worse, or to change behaviour. This includes providing guidance, inspections, or investigations.

**Investigation** means a purposeful, structured process of inquiry that helps them establish facts, finding something out, and decide what action to take (if any).

**Major Hazard Facility** has the same meaning as section 4 (1) of the Health and Safety at Work (Major Hazard Facilities) Regulations 2016.

**Major Maritime Incident** means an instance of something happening; an event or occurrence in New Zealand's maritime area of interest that poses an actual or potential threat to life, the environment or property where the incident's scale, duration and complexity mean the risks and/or consequences of the incident are, or could be, substantive.

**Major Port** has the same meaning as clause 3 of the Health and Safety at Work (Maritime New Zealand) Agency Designation 2023

**Maritime Response Training** means a Maritime NZ or WorkSafe activity designed to prepare members of both Parties to respond effectively to a Major Maritime Incident.

**MOU** means Memorandum of Understanding

**Notifiable event** has the same meaning as section 25 of HSWA.

**Notification** means any notification under HSWA or its Regulations.

**Operations** means routine business operations, excluding a Major Maritime Incident, Hazardous Substances and New Organisms Incident and Maritime Response Training that are conducted by Maritime New Zealand and WorkSafe in the normal course of their day to day operations.

**Protected Disclosure** has the same meaning as section 9 of the Protected Disclosures (protection of Whistleblowers) Act 2022

**Workplace** has the same meaning as section 16 of HSWA.