



Regulatory approach to enforcing lookout and watchkeeping requirements on commercial vessels (MS616).

Issued 3 April 2023.

Introduction

Inadequate lookout and watchkeeping practices are significant causes of maritime incidents involving commercial vessels. Collisions, groundings, strandings, sinkings, that could involve the loss of life, will continue to occur if people do not comply with the lookout and watchkeeping responsibilities.

Maritime NZ's Compliance Strategy¹ sets our strategy for anyone operating in the commercial and recreational maritime environment. Maritime NZ's Compliance Intervention Guidelines² set out high-level guidance on our approach to interventions.

Due to the number of incidents involving inadequate lookout and watchkeeping on commercial vessels, this document provides further information on Maritime NZ's approach to improving lookout and watchkeeping on these vessels. In particular, there is a focus on commercial fishing vessels because of the number of prosecutions, incidents and reports of non-compliance from Fisheries NZ.

This document's purpose

This document:

- highlights lookout and watchkeeping rules and vessel operators' responsibilities under both the Maritime Transport Act 1994 (MTA) and the Health and Safety at Work Act 2015 (HSWA),
- requires Maritime Inspectors and Officers to take an educational approach with vessel operators in the first instance where appropriate and discuss the importance of having and following good watchkeeping, fatigue and minimum safe crewing procedures, and
- sets out the regulatory approach and tools that will be considered if:
 - an operator fails to have adequate processes in place in their MTOP to ensure that they comply with watchkeeping requirements,
 - an operator indicates that they do not intend to comply with the lookout and watchkeeping requirements, or

Key Terms

The following abbreviations have been used in this policy:

COLREGs means the Convention on the International Regulations for Preventing Collisions at Sea, 1972

HSWA means the Health and Safety at Work Act 2015

IMO means the International Maritime Organization

MTA means Maritime Transport Act 1994

MTOC means Maritime Transport Operator Certificate

MTOP means Maritime Transport Operator Plan

PCBU means a person conducting a business or undertaking.

¹ [Maritime New Zealand Compliance Strategy \(maritimenz.govt.nz\)](https://maritimenz.govt.nz/compliance-strategy)

² [Compliance Intervention Guidelines \(maritimenz.govt.nz\)](https://maritimenz.govt.nz/compliance-intervention-guidelines)

- Maritime NZ receives information that suggests an operator is not complying with the lookout and watchkeeping requirements.

Scope of this document

This document applies to lookout and watchkeeping requirements on commercial vessels, with a particular focus on fishing vessels. It does not apply to engineer watches.

Commencement

This document takes effect on 3 April 2023.

Legislation

International obligations, which have been implemented into domestic legislation, require all vessels to maintain a proper lookout to prevent collisions. The health and safety, and watchkeeping duties and responsibilities that operators must comply with are set out under:

- Maritime Rules, made under the MTA, Parts 22 “Collision Prevention” and 31 “Crewing and Watchkeeping”,
- HSWA,
- Health and Safety at Work (General Risk and Workplace Management) Regulations, and
- International conventions such as COLREGs and Chapter IV “Watchkeeping” of the Annex to the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel.

Our regulatory approach

Maritime NZ’s regulatory approach to improving safety on commercial vessels includes:

- provision of lookout and watchkeeping guidelines for fishing vessel skippers, owners and operators, and guidance for crew on fishing vessels, which can be found at <http://www.maritimenz.govt.nz/commercial/safety/watchkeeping-on-vessels/>
- a focus on inadequate lookout and watchkeeping when conducting fishing operator audits and exercising powers under HSWA, and
- assessing the validity of all information received that suggests an operator is not complying with the lookout and watchkeeping requirements and undertaking enforcement action if necessary.

In particular, guidance, audits and enforcement focus on requirements under Maritime Rules Parts 22 and 31 and section 36 of HSWA. The relevant rules and HSWA section can be found at:

[Maritime Rules Part 22 - Maritime NZ](#),

[Maritime Rules Part 31 - Maritime NZ](#), and

[Health and Safety at Work Act 2015 No 70 \(as at 28 October 2021\), Public Act 36 Primary duty of care – New Zealand Legislation](#) .

Maritime Rules

The relevant Maritime Rules include:

- 22.5 Every vessel must maintain a proper lookout
- 31.20 General duties related to minimum crewing
- 31.21 Minimum safe crewing assessment

- 31.61 Navigational watchkeeping arrangements and principles, and
- 31.85 (1) and (2) Watchkeeping arrangements and principles for fishing vessels within inshore limits.

Maritime NZ's regulatory position on Maritime Rule 22.5

Maritime Rule 22.5, requires "Every vessel must at all times maintain a proper lookout by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions"

At 'all times' means during the day and night when travelling to and from fishing grounds, when fishing, and while at anchor or drifting.

To keep a proper lookout by sight and hearing as well as by all means available operators must use their eyes, ears, and any available navigational equipment to keep track of where the vessel is and if there is any risk of collision. Using one method may not be enough.

Appropriate in the prevailing circumstances and conditions means operators must think about what is required for the conditions, for example, the weather, visibility, and how close other vessels are. For example, an increased level of lookout may be required in bad weather.

HSWA

Under HSWA, part of a PCBU's duty is to ensure, as far as is reasonably practicable, the provision and maintenance of safe systems of work. This includes ensuring that adequate procedures for keeping lookout and watch keeping, and fatigue management are in place.

As a PCBU, operators have the primary duty to make sure their work does not put the health and safety of workers and other people at risk (section 36 of HSWA). In particular, requirements under subsection (3) include (among other things) that a PCBU must ensure, so far as is reasonably practicable:

- the provision and maintenance of a work environment that is without risks to health and safety,
- the provision and maintenance of safe systems of work;
- the provision of adequate facilities for the welfare at work of workers in carrying out work, including ensuring access to those facilities,
- that the health of workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness of workers arising from the conduct of the business or undertaking, and
- the provision of information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking.

A PCBU who is a self-employed person must also ensure, so far as is reasonably practicable, his or her own health and safety while at work.

Intervention and use of compliance tools

When non-compliance is identified via information received, or as the result of audit or incident, seven categories of intervention are potentially available depending on the nature, circumstances and seriousness of the compliance issue.

- 1 Education
- 2 Identification of a non-conformity at audit and agreed corrective action
- 3 Improvement notices under HSWA
- 4 Imposition of conditions under the MTA
- 5 Suspension under the MTA, and

- 6 Investigation and potential prosecution under the MTA or HSWA
- 7 Refusal to issue a maritime document or revocation of a current maritime document (e.g. an MTOC).

Education

If an operator indicates that they do not intend to keep a proper lookout, or the Maritime Officer or Inspector is of the view that the processes and procedures for operating the vessel mean that there is inadequate provision for a proper lookout to be kept safely, they should discuss the rules and risks to the operation.

Compliance options

If education is not sufficient to ensure compliance with legal obligations, the choice around whether to use MTA or HSWA compliance tools will depend on the nature of the concern to be addressed. Tools under the MTA may be the more appropriate tool if an operator is clearly not making adequate provision to comply with specific Maritime Rules in their MTOP. HSWA may be more appropriate if an operator has processes and procedures in place reflecting the Maritime Rules in their MTOP, but the Maritime Officer or Inspector may have good reasons to believe they will not apply systems that enable them to operate safely in practice.

If the operator does not have the procedure in their MTOP, which covers watchkeeping (Refer to Maritime Rules 31.20, 31.21, 31.61, and 31.85 (1) and (2)), then the Maritime Officer or Inspector should identify any non-conformities or breaches of the relevant rules at audit. The Maritime Officer or Inspector should also consider the best action following the identification of a non-conformity or breach. For example, corrective action could be agreed, conditions could be imposed on the operator's MTOC, or, for major breaches, the operator's maritime document could be suspended under the MTA as set out below.

If the operator refuses to respond to a non-conformity or does not have an adequate response, the Maritime Officer or Inspector may need to issue an Imposition of Conditions relating to a specific rule requirement.

If the Maritime Officer or Inspector has a reasonable belief that the person is or is likely to contravene HSWA an improvement notice should be issued. An improvement notice should be issued where the operator is failing to implement a safe system of work taking into account fatigue and minimum safe crewing.

It may be that MTA and HSWA tools may both be needed where different issues arise with the same operator. For example, an operator may change their MTOP in response to education, audit, or the imposition of conditions under the MTA; but subsequently the Maritime Officer or Inspector has concerns about the operator's willingness to apply systems that adequately ensure safety, at which point an improvement notice may be appropriate.

The following diagram sets out the compliance tools by category that are available under the MTA and HSWA depending on the specific circumstances of each case. This diagram necessarily simplifies the process, and the categories are not linear. In practice, things may be more complex and tools may be used based on the levels of risk, the actual or potential consequences, and the behaviour, attitude and capability of operators. Further information on each category of tool is also provided under the diagram.

Category 1: Education

Discussions with the operator about the rules and risks to their operation, and the lookout and watchkeeping guidance, which is available

<http://www.maritimenz.govt.nz/commercial/safety/watchkeeping-on-vessels/>

Category 2: Identification of a non-conformity at audit and agreed corrective action

A non-conformity is raised when objective evidence is found, which indicates a breach of, or non-compliance with, a specific legal requirement identified at audit. It can be an isolated incident, or it can come from one or more examples of a deviation from a legal requirement.

The auditor should discuss the non-conformity with the operator and attempt to agree corrective actions the operator will take to comply with the specified legal requirement.

Category 3: Improvement notice under HSWA (issued under s101 in relation to a breach of s 47, 48 or 49)

Under HSWA or its regulations, an improvement notice is issued by an Inspector in order to rectify a breach or prevent non-compliance with HSWA, within a set timeframe.

The purpose of an improvement notice is to focus the duty holder on the tasks to be carried out in order to remedy a breach. An improvement notice will generally be issued where a type of non-compliance is detected that does not involve an immediate risk to health and safety and/or when there is a risk or gap that is not considered extreme or substantial. Improvements are therefore not necessarily required or able to be corrected immediately.

An improvement notice can only be issued to a duty holder when a Maritime Officer or Inspector reasonably believes that a duty holder is, or is likely to, breach HSWA or HSWA regulations. The notice must stipulate the breach (or likely breach), the provision that is being breached (or is likely to be breached), and provide a time period (a compliance period) by which the duty holder must comply with the notice. The notice may also contain recommendations concerning measures that could be taken to rectify the breach or prevent the likely breach, or things or activities causing the breach or likely breach.

Category 4: Imposition of conditions (s55 of the MTA)

In some circumstances, it may be appropriate to impose conditions on the operation of a ship to ensure specific Maritime Rules are followed. Conditions need to be actionable and specific so Maritime NZ can determine when the condition(s) have been met. Condition(s) cannot repeat the law; they must be actions that will result in compliance with the law.

Category 5: Suspension of MTOC (s43 of the MTA)

A suspension of an operator's MTOC may be considered when necessary in the interests of maritime safety.

Category 6: Investigation and potential prosecution for a breach of HSWA or MTA

Prosecution action may be taken following an investigation where an offence has been identified, whether or not a breach has resulted in death or injury actually occurring. Some potential prosecution outcomes may include an offence under:

- section 47, 48 or 49 of HSWA, or failure to comply with a relevant notice (e.g. section 103 or 107 HSWA); or
- section 64 or 65 of the MTA, or failure to comply with a relevant notice (e.g. section 55(9) and (10) of the MTA).

Category 7: Refusal to issue a maritime document or revocation of a current maritime document (e.g. an MTOC).

If the Director (or his/her delegate) considers that the operator will not be able to comply with the MTA, this may be grounds to refuse to issue a MTOC (or other maritime document) at the time of application, or to revoke a current maritime document following the process set out in section 44 of the MTA.

Disclaimer

This document provides information on commercial operators' duties under relevant legislation (including the Maritime Transport Act 1994, Maritime Rules, and the Health and Safety at Work Act 2015 and its relevant Regulations). It also sets out Maritime NZ's approach improving safety, but this document is not a substitute for the rules and legislation.

Operators must make sure they are operating to the latest Maritime Rules and other legislation. Operators must also obtain legal advice where appropriate. This document may not be the most current version available so please check maritimenz.govt.nz/rules/ to confirm that you are referring to the current version of this publication.