



MINISTRY of TRANSPORT
Te MANATŪ WAKA

WELLINGTON NEW ZEALAND

PURSUANT to Section 36 of the Maritime Transport Act 1994

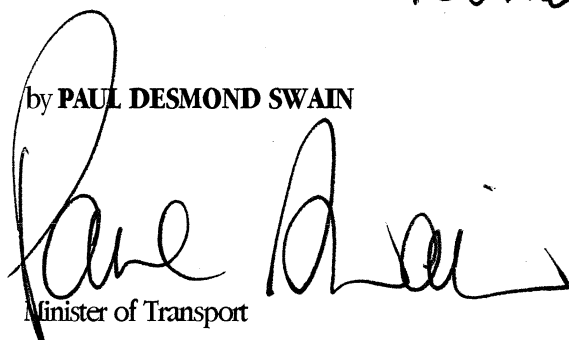
I, PAUL DESMOND SWAIN, Minister of Transport,

HEREBY MAKE the following maritime rules.

SIGNED AT Wellington

this 25th day of February 2003

by **PAUL DESMOND SWAIN**


Minister of Transport

Maritime Rules

Part 90

Pilotage

Maritime Transport Act 1994

Maritime Rules

PART 90

PILOTAGE

Maritime Rules

PART 90

PILOTAGE

Part Objective, Extent of Consultation and Commencement

Objective

The objectives of Part 90 are to —

- maintain the contribution of pilotage to safety of navigation, protection of the marine environment, and efficiency of seaborne commerce
- maintain the existing privileges of pilots and exempt masters currently in the system
- enable new pilots' licences and masters' exemptions to be issued
- ensure transparency and consistency in respect of sanctions for non-performance and protection of the rights of individuals
- set minimum national standards while enabling port-specific risks to be addressed
- recognize and support industry best practice.

Part 90 provides an interim pilotage regime for New Zealand pending the completion of a wide-ranging first principles review of port risks, including pilotage. This review is scheduled for completion by 31 March 2004. It is envisaged that any associated law reform, including both primary and delegated pilotage legislation, would take another twelve months and, depending on the Government's response to officials' policy advice and legislative priorities, could be complete by 31 March 2005.

The basis for Part 90 is found in section 36(1)(i) of the Maritime Transport Act 1994.

Maritime rules are subject to the Regulations (Disallowance) Act 1989. Under that Act the rules are required to be tabled in the House of Representatives. The House of Representatives may, by resolution, disallow any rules. The Regulations Review Committee is the select committee responsible for considering rules under this Act.

Extent of Consultation

On 21 September 2002 the Maritime Safety Authority published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed Part 90. A notice was also published in the *New Zealand Gazette* on 19 September 2002. The Authority then made its invitation to comment and draft Part 90 available to the public with electronic and hard copies being sent automatically to interested parties. The draft was also posted on, and available for downloading from, the MSA website. Comments on the Part were requested to be made by 25 October 2002.

Thirty-four submissions were received on the first draft. All submissions and any oral comments were considered, and where appropriate, the proposed rules were amended to take account of the comments made. A revised draft of rule 90.5 was circulated to the ports industry, maritime pilots, shipowners and regional councils. Three written submissions and one oral response were received. These were all taken into account when the rule was further revised.

In inviting comment on Part 90, the Authority withdrew from consideration a formal draft of Part 90A, on which comment was invited in December 2001, and the various informal drafts of Part 90B circulated to pilotage stakeholders in mid-2002.

Commencement

Part 90 comes into force on 1 April 2003, succeeding the vestiges of the pilotage regime established by the Harbours Act 1950 and that Act's subsidiary legislation. These remnants, supported by "Part 90 – Pilotage (Appointment of Pilots and Pilotage Exemptions)" made by the Minister of Transport on 4 October 1999, expire at the end of March 2003 under the Local Government Amendment Act (No.2) 1999.

Maritime Rules

PART 90

PILOTAGE

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Pilotage areas

General**90.1 Entry into force**

Part 90 comes into force on 1 April 2003.

90.2 Application

This Part applies to all ships within New Zealand waters except warships.

90.3 Definitions

In Part 90 —

“**Act**” means the Maritime Transport Act 1994:

“**Director**” means the person who is for the time being the Director of Maritime Safety under section 439 of the Act:

“**Master**” means any person (except a pilot) having command or charge of a ship:

“**Mile**” means nautical mile:

“**Minister**” means the Minister of Transport:

“**Pilot**”, in relation to any ship, means any person not being the master or a member of the crew of the ship who has the conduct of the ship:

“**Pilotage areas**” means the areas specified in the Schedule to this Part:

“**Regional Council**” means a regional council as specified in the Local Government Act 1974 and any territorial authority that has responsibility under the Local Government Act 1974 for navigation safety within its district.

Requirement to hold pilot's licence**90.4 Requirement to hold pilot's licence**

No person may act as a pilot within any pilotage area unless that person holds a pilot's licence issued under this Part.

Compulsory pilotage**90.5 Compulsory pilotage**

- (1) The master of an oil tanker, chemical tanker or gas carrier must ensure that the ship, when navigating in any pilotage area –
 - (a) carries a pilot entitled under this Part to pilot that ship; or
 - (b) where a pilot is unable to transfer to or from the ship safe safely, receives advice from a pilot entitled under this Part to pilot that ship, for example via shore signal, radio communication, or guidance from another vessel.
- (2) Subject to rule 90.5(3), the master of any ship other than an oil tanker, a chemical tanker or a gas carrier must ensure that the ship –
 - (a) carries a pilot entitled under this Part to pilot that ship; or
 - (b) where a pilot is unable to transfer to or from the ship safely, receives advice from a pilot entitled under this Part to pilot that ship, for example via shore signal, radio communication, or guidance from another vessel –when navigating in a pilotage area if the ship meets or exceeds any of the limits specified for that pilotage area in the third column of the Schedule.
- (3) Subject to any direction under section 60A of the Act¹, the master of a ship other than an oil tanker, a chemical tanker or a gas carrier is not required to ensure the carriage of a pilot on the ship in a pilotage area if the master holds a master's pilotage exemption issued under rule 90.10 that is applicable to –
 - (a) the pilotage area; and
 - (b) the type or size of ship; and

¹ Section 60A enables the Director of Maritime Safety to direct that a pilot be carried when satisfied, due to weather conditions or other circumstances, that this is in the interests of navigation safety or the protection of the marine environment. This power is delegated to harbourmasters around the country.

- (c) the propulsion and steering arrangements on the ship, if specified on the exemption.
- (4) For oil tankers, chemical tankers and gas carriers, no exemptions from this rule are to be granted under section 47 of the Maritime Transport Act 1994.

Pilots' licences

90.6 Licence issue and endorsement

- (1) An applicant is entitled to a pilot's licence if —
 - (a) the application is made in accordance with section 35 of the Act; and
 - (b) the Director is satisfied that the requirements specified in —
 - (i) rules 90.7, 90.8 and 90.9; and
 - (ii) section 41 of the Acthave been complied with.
- (2) Every pilot's licence issued must be endorsed with —
 - (a) a pilotage area or areas; and
 - (b) the size and types of ship that may be piloted without restriction or supervision; and
 - (c) the size and types of ship that may be piloted under training and supervision; and
 - (d) the exercise-of-privilege conditions determined by the Director under rule 90.6(3).
- (3) Subject to rule 90.6(4), the Director must specify exercise-of-privilege conditions that include the minimum number of pilotages that the pilot must undertake under specified operating conditions within a defined period of time and any other requirements that the Director considers appropriate in the interests of maritime safety.
- (4) In determining exercise-of-privilege conditions for a pilotage area, or size or type of ship, the Director must —
 - (a) have regard to the specific operational and environmental conditions of the pilotage area or areas concerned, including —
 - (i) the complexity of navigation; and
 - (ii) the traffic density; and

- (iii) the environmental sensitivity; and
 - (iv) factors influencing the consequences of any accidents, including the density of adjacent populations and the proximity of significant commercial and recreational values; and
- (b) take into account any recommendations on the matters described in rule 90.6(4)(a) made by any employer of pilots in the pilotage area, the chief executive of the relevant regional council (based on nautical advice to that chief executive), the port company and any other affected owner of significant port assets.

90.7 General requirements

An applicant for a pilot's licence must —

- (a) hold a certificate of competency as master of a foreign-going ship issued or recognised under section 41 of the Act; and
- (b) hold a current medical certificate of category "A" or "B" issued under Part 34.

90.8 General training

An applicant for a pilot's licence must have —

- (a) satisfactorily completed a course of general training approved by the Director under rule 90.14; and
- (b) passed an assessment by a person delegated the Director's power of examination under section 48 of the Act that tests knowledge of a syllabus approved by the Director for this licence under rule 90.14.

90.9 Local and advanced training

- (1) An applicant for a pilot's licence must have —
 - (a) satisfactorily completed a course of local training and local knowledge approved by the Director under rule 90.14; and
 - (b) passed an assessment by a person delegated the Director's power of examination under section 48 of the Act that tests knowledge of a syllabus approved by the Director for this licence under rule 90.14.
- (2) The Director must endorse a pilot's licence to confer any new privileges, such as the entitlement to pilot larger ships or different types of ships, where the pilot has —

- (a) completed a course of advanced training and supervised practice of tasks relevant to the new privileges approved by the Director under rule 90.14; and
- (b) passed an assessment by a person delegated the Director's power of examination under section 48 of the Act in the performance of the new privileges.

Pilotage exemptions

90.10 Master's pilotage exemption issue and endorsement

- (1) An applicant is entitled to a master's pilotage exemption if—
 - (a) the application is made in accordance with section 35 of the Act; and
 - (b) the Director is satisfied that the requirements specified in —
 - (i) rules 90.11 and 90.12; and
 - (ii) section 41 of the Act
 have been complied with.
- (2) Every master's pilotage exemption issued must be endorsed with —
 - (a) a pilotage area or areas; and
 - (b) the type and size of ship, and any propulsion and steering arrangements to which the exemption applies, which limitations must be no more permissive than those applicable to the pilotage area or areas concerned under bylaws made under the Harbours Act 1950 and in place at 31 March 2003; and
 - (c) exercise-of-privilege conditions determined by the Director under rule 90.10(3).
- (3) Subject to rule 90.10(4), the Director must specify exercise-of-privilege conditions that include the minimum number of pilotages that that master must undertake under specified operating conditions within a defined period of time and any other requirements that the Director considers appropriate in the interests of maritime safety.
- (4) In determining exercise-of-privilege conditions for a pilotage area, or size or type of ship, the Director must —
 - (a) have regard to the specific operational and environmental conditions of the pilotage area or areas concerned, including —
 - (i) the complexity of navigation; and

- (ii) the traffic density; and
- (iii) the environmental sensitivity; and
- (iv) factors influencing the consequences of any accidents, including the density of adjacent populations and the proximity of significant commercial and recreational values; and
- (b) take into account any recommendations on the matters described in rule 90.10(4)(a) made by the owner of any ship subject to compulsory pilotage in that area, the chief executive of the relevant regional council (based on nautical advice to that chief executive), the port company and any other affected owner of significant port assets.

90.11 General requirements and conditions

- (1) An applicant for a master's pilotage exemption must hold –
 - (a) a validated certificate of competency as master of a ship of the size and type for which the exemption is sought that has been issued or recognised under section 41 or accepted under section 42 of the Act; and
 - (b) a medical certificate of the category required to be held by the master of that ship or, where no certificate is required to be held, any other current medical certificate that the Director is satisfied is equivalent to category "A" or "B" issued under Part 34.
- (2) The grant and maintenance of a master's pilotage exemption is subject to the master satisfying the currency and exercise-of-privilege requirements set out in rule 90.13.
- (3) A master's pilotage exemption may only be exercised while the holder of the exemption is the master of that ship.

90.12 Local training and local knowledge

An applicant for a master's pilotage exemption must have –

- (a) completed a course of training in piloting in the area concerned and local knowledge approved by the Director under rule 90.14; and
- (b) passed an assessment by a person delegated the Director's power of examination under section 48 of the Act that tests knowledge of a syllabus approved by the Director for this exemption under rule 90.14.

Currency and exercise-of-privileges**90.13 Currency and exercise-of-privilege requirements**

- (1) A pilot's licence issued under rule 90.6 remains valid if a pilot –
 - (a) continues to hold a current medical certificate (by renewal as appropriate) of category "A" or "B" issued under Part 34 or other medical certification acceptable to the Director; and
 - (b) satisfactorily completes any competency audits or assessments required by the Director in the event of any absence from piloting duties on medical grounds or for any other reason that may reasonably be considered to potentially affect the pilot's ability to exercise his or her privileges; and
 - (c) fulfils the exercise-of-privileges conditions attached to that licence.
- (2) A master's pilotage exemption issued under rule 90.10 remains valid if the master –
 - (a) continues to hold a validated certificate of competency and satisfies any medical fitness requirements applicable to that master; and
 - (b) where maritime rules do not require a medical certificate to be held, continues to hold a current medical certificate that the Director is satisfied is equivalent to category "A" or "B" issued under Part 34; and
 - (c) satisfactorily completes any competency audits or assessments required by the Director in the event of any absence from seagoing duties on medical grounds or for any other reason that may reasonably be considered to potentially affect the master's ability to exercise his or her privileges; and
 - (d) fulfils the exercise-of-privileges conditions attached to that exemption.

Miscellaneous**90.14 Training course approvals**

- (1) The Director may approve courses for the purposes of rules 90.8(a), 90.9(1)(a), 90.9(2)(a), and 90.12(a) after –

- (a) taking into account the criteria set out in rule 90.14(2) and, as appropriate, rules 90.14(3) and 90.14(4); and
 - (b) in the case of a course of local training and local knowledge, taking into account any recommendations made by the chief executive of the relevant regional council (based on nautical advice to that chief executive), the port company and any other owner of significant port assets.
- (2) Any course submitted for the Director's approval must comprise –
 - (a) a syllabus incorporating, as appropriate, the recommendations on pilots' training made by the International Maritime Organisation from time to time; and
 - (b) a description of the examination and assessment procedures.
- (3) Any course of general training referred to in rule 90.8(a) must include human factors and bridge resource management.
- (4) Any course of local training referred to in rule 90.9(1)(a) must include –
 - (a) relevant local knowledge; and
 - (b) local emergency response procedures; and
 - (c) shiphandling ability relevant to the specific local operations; and
 - (d) any other topics that may be specified from time to time by the Director.

90.15 Transitional provisions

- (1) In this rule an **existing pilot** is a person who at 31 March 2003 held a valid pilot's licence continued by section 15(2) of the Local Government Amendment (No 2) Act 1999 or issued under rule 90.4 of Part 90 of the maritime rules dated 4 October 1999; and an **existing master** is a person who at 31 March 2003 held a valid pilotage exemption continued by the same section or issued under rules 90.6 or 90.7(2) of the same rules.
- (2) Rules 90.7(1)(b) and 90.13(1) (a) (which relate to medical certificates) do not apply to existing pilots until 1 November 2004.
- (3) Any existing pilot who applies for a licence under rule 90.6 before 30 September 2003 is deemed to have met the other requirements of rules 90.7, 90.8 and 90.9.
- (4) An existing pilot is deemed to hold a pilot's licence under rule 90.6 with all privileges and limitations of that pilot's current licence until whichever is the sooner

of –

- (a) the issue of a pilot's licence under rule 90.6; or
 - (b) 31 March 2004.
- (5) Any existing master who applies for a master's pilotage exemption under rule 90.10 before 30 September 2003 is deemed to have met the requirements of rules 90.11 and 90.12.
- (6) An existing master is deemed to hold a master's pilotage exemption under rule 90.10 with all privileges and limitations of that pilotage exemption until whichever is the sooner of –
- (a) the issue of a master's pilotage exemption under rule 90.10; or
 - (b) 31 March 2004.

90.16 Revocation

Part 90 of the maritime rules dated 4 October 1999 is revoked.

Schedule (91.5(2))**Pilotage Areas**

A ship that meets or exceeds any of the limits specified in the third column of this Schedule is subject to compulsory pilotage within the applicable pilotage area.

Pilotage areas	Area description	Limits
<i>Auckland</i>	The area of tidal waters, excluding the waters of Otara Creek eastwards of the weir as shown on plan marked MD 12604, inside a straight line drawn from the northern extreme of the eastern head of the Tamaki River to the southern extreme of Park Point (Waiheke Island); thence by the high water mark of ordinary spring tide to the northern extreme of the western entrance to Owahanake Bay; thence by a straight line to the south-western most point of Rakino Island; thence by a straight line from the northernmost point of Rakino Island to Shearer Rock, thence by a straight line to the southernwest extreme of Tiritiri Matangi Island, thence by a straight line to the southeastern extreme of Whangaparoa Peninsula.	500 gross tons
<i>Bay of Islands</i>	All the waters within the harbour of the Bay of Islands, whose outward seaward limit is a line commencing at high-water mark at the eastern extremity of Tapeka Point, and proceeding in a 350 degree direction to high-water mark at the eastern extremity of Black Rocks; thence proceeding in 019 degree direction to high-water mark at the eastern extremity of Harakeke Island; thence proceeding in a 271 degree direction to high-water mark on the mainland.	100 gross tons
<i>Bligh Sound Harbour</i>	Being all that area of the sea and tidal waters inside a straight line from Tommy Point to Chasland Head.	500 gross tons until 1 April 2004, after which the limit is 100 gross tons

Pilotage areas	Area description	Limits
<i>Breaksea & Dusky Sound Harbours</i>	Being all that area of the sea and tidal waters inside a straight line from Oliver Point to North Point of Breaksea Island and from the West Point of Breaksea Island in a 180 degree true direction to the opposite shore and from Five Finger Point to South Point.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons
<i>Bluff</i>	The area where the seaward limit is the arc of a circle, radius 2 miles, centred on Stirling Point (46°36'.7S, 168°21'.6E)	500 gross tons
<i>Caswell Sound</i>	Being all that area of the sea and tidal waters inside a straight line from McKerr Point in a 030 degree true direction to the opposite shore.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons
<i>Chalky Inlet Harbour</i>	Being all that are of the sea and tidal waters inside the arc of 6.5 nautical miles radius centred on Surf Head.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons
<i>Charles Sound Harbour</i>	Being all that area of the sea and tidal waters inside a straight line from Hawes Head in a 090 degree true direction to the opposite shore.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons
<i>Dagg Sound Harbour</i>	Being all that area of the sea and tidal waters inside a straight line from Castoff Point to Towing Head.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons
<i>Doubtful & Thompson Sounds Harbour</i>	Being all that area of the sea and tidal waters inside a straight line from Febroro Point to Southwest Point on Secretary Island and from Colonial Head to Shanks Head.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons

Pilotage areas	Area description	Limits
<i>George Sound Harbour</i>	Being all that area of the sea and tidal waters inside a straight line from the west head at George Sound entrance in a 090 degree true direction to the opposite shore.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons
<i>Gisborne</i>	The area bounded seaward by the arc of a circle, radius 3 miles, centred on the southern end of Butlers wall (38°40'.6S, 178°01'.2E)	500 gross tons
<i>Lyttelton</i>	The area having a seaward limit east of a line joining Godley Head and Adderly Head.	500 gross tons
<i>Manukau</i>	All waters bounded to seaward by the arc of a circle radius 4 miles centred on Paratutae Island (37° 02'.9S, 174° 30'.6E)	500 gross tons
<i>Milford Sound Harbour</i>	The area of the sea and tidal waters of Milford Sound south of a straight line drawn from St Anne Point in a 090 degrees true direction to the opposite shore, and including the wharf limits at Deep Water Basin.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons
<i>Nancy Sound Harbour</i>	Being all that area of the sea and tidal waters inside a straight line from Burnett Point to Anxiety Point.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons

Pilotage areas	Area description	Limits
<i>Napier</i>	The area comprising all port waters between latitudes 39°25'S and 39°29'S, to west of longitude 176°59'E. (Port limits: the seaward limit of the port is the arc of a circle radius 3 ½ miles centred on East Pier Light (39°28'.7S, 176°53'.7E))	40 metres length overall
<i>Port Nelson</i>	The area bounded by the seaward arc of a circle, radius 3 miles, centred on Boulder Bank Old Lighthouse (41°15'.3S, 173°15'.9E)	100 gross tons
<i>Otago</i>	The area within the seaward limit of which is a line drawn 020° for 3 miles from Heyward Point (45°45'.5S, 170°41'.5E), thence 126° for 1 ¾ miles, and thence 200° to Howletts Point on W side of Taiaroa Head.	500 gross tons
<i>Poison Bay Harbour</i>	Being all that area of the sea and tidal waters inside a straight line from Seabreeze Point in a 215 degrees true direction to the opposite shore.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons
<i>Preservation Inlet Harbour</i>	Being all that area of the sea and tidal waters inside a straight line from Gulches Head to Lee Head and across Otago Reach at its narrowest width.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons
<i>Queen Charlotte Sound</i>	The area where the seaward limit is a line drawn 303° from Paparoa Point (41°07'.0S, 174°20'.9E), on Arapawa Island to the mainland coast, 4 ½ miles WNW.	500 gross tons
<i>Sutherland Sound Harbour</i>	Being all that area of the sea and tidal waters inside a straight line from Jagged Rock in a 060 degree true direction to the opposite shore.	500 gross tons until 1 April 2004 after which the limit is 100 gross tons

Pilotage areas	Area description	Limits
<i>Taharoa Terminal</i>	The area bounded by the seaward arc of a circle radius 3 miles centred on the terminal pumping station (38°10'.6S, 174°42'.4E)	500 gross tons
<i>Taranaki</i>	The area bounded by the seaward arc of a circle, radius 2 ½ miles, centred on Mount Moturoa (39°03'.8S, 174°01'.7E)	100 gross tons
<i>Tauranga</i>	The area comprising the Bay of Plenty Harbour bounded by an arc of a circle of radius five nautical miles centred on North Rock and including all the commercial area of Tauranga Harbour.	100 gross tons
<i>Timaru</i>	The area within an arc of a circle radius 2 ½ miles centred on a light exhibited from Eastern Extension Mole Spur Breakwater Head (44°23'.2S, 171°16'.0E).	500 gross tons 40 metres length overall
<i>Tory Channel</i>	The area where the seaward limit is the arc of a circle, radius 1 mile, centred on West Head Light (41°12'.8S, 174°18'.9E)	500 gross tons
<i>Wellington</i>	The area of enclosed water inside the harbour from a line joining Point Gordon (41°23'.9S, 174°49'.5E) and the point 41°23'.9S, 174°53'E.	500 gross tons
<i>Westport</i>	The area within the Buller River and a circle centred on the signal station light on the west breakwater with a radius of 1.5 nautical miles extending from Carters Beach at mean high water springs around to North Beach at mean high water springs.	100 gross tons 3 metres draught

Pilotage areas	Area description	Limits
<i>Whangarei</i>	All the waters comprised within the Harbour of Whangarei having their outward seaward limit a right line drawn in a 270 degree direction from Busby Head to the shore, and in addition, those waters enclosed within parallel lines drawn one mile on either side of a right centre line drawn in a 140 degree direction for a distance of 4.5 miles from Marsden Point inner leading beacon, the outward seaward limit being bound by a right line drawn in a 050/230 degree direction through the seaward extremity of the right centre line.	100 gross tons

Maritime Rules

PART 90

PILOTAGE

Consultation Details

(This text does not form part of the rules contained in Part 90. It provides details of the consultation undertaken before making the rules.)

Summary of consultation

Written submissions were received from the individuals and organisations listed below.

Auckland Regional Council	
Buller Port Services	
Canterbury Regional Council	
Environment BOP (two submissions)	
Hawke's Bay Regional Council	
RA Hunter, Relief Master, Pacifica Shipping	
Kenton Trawling	
Marlborough District Council	
KG Marshall, Master, Pacifica Shipping	
Nigel Meek, maritime pilot	
National Topographic Hydrographic Authority	
Nelson City Council	
New Zealand Marine Transport Association	(NZMTA)
New Zealand Maritime Pilots' Association	(NZMPA)
New Zealand Merchant Service Guild	(NZMSG)
New Zealand Shipping Federation	(NZSF)
Northland Regional Council	
Bill Oliver, maritime pilot	
Otago Regional Council	
Pacifica Shipping (1985) Limited	
Port of Napier Ltd	

Primeport Timaru
 Saunders Unsworth on behalf of 13 port companies
 Sealord Group
 Silver Fern Shipping Limited (SFSL)
 Southland Regional Council
 The Nautical Institute
 T.T.Veitch, maritime pilot
 DW Wardle, Master, Pacifica Shipping
 Ian Webb, former maritime pilot
 Wellington Regional Council
 Andy Whitrd, Master, Pacifica Shipping

A summary of comments made by respondents is set out below. The MSA response is in italicised text.

Application of rules to warships

NZMPA, Wellington Regional Council, Northland Regional Council, and Bay of Plenty Regional Council questioned the exclusion of warships from the rules, at least for berthing and unberthing and ship shifts. Submissions called for all such ships to be covered, or, alternatively, for requiring pilots only on foreign warships. It was submitted that at least all auxiliaries, such as oilers, should be subject to pilotage requirements.

***MSA Response:** The MSA agrees that there is no safety basis for treating warships any differently from merchant ships. The MSA notes too that the application of Crown prerogative, which informs the current policy, has evolved considerably in recent years in other safety related contexts. The matter should be dealt with in the context of the substantive pilotage review to commence in April 2003. In the meantime, it is considered that the exclusion should remain.*

Definitions

NZMPA, SFSL and Nigel Meek commented on the definitions, proposing that these be amended or that, where they reproduce definitions in the Maritime Transport Act 1994, that they are incorporated by reference. Proposed amendments included the definition of "pilot" to clarify the relationship to the master and elements of the definition of "accident" (to clarify the meaning of the term unseaworthiness).

***MSA Response:** Definitions are generally used strictly as worded in the Act on the basis that the Act's definitions are paramount and would prevail in any interpretation of the rules.*

In consequence of the proposed deletion of the accident reporting requirement at draft rule 90.15, the definitions of "accident", "incident" and "mishap" have been deleted.

Compulsory pilotage

A large number of respondents commented on the lower tonnage limit for compulsory pilotage for all ships, including tankers and gas carriers. The concerns raised and proposals made are summarised below in respect of the principal elements of draft rule 90.5.

Eligibility of tankers and gas carriers for exemptions

NZMPA submitted that oil tankers, gas carriers and chemical tankers should not be eligible to be exempt compulsory pilotage at all, on the basis of the risk posed by these types of ships. On this basis, it was submitted that draft rule 90.5(2) is in conflict with the function of the Authority under s.430(1)(c) (to ensure reviews to promote the improvement and development of safety) and represents an inappropriate use (application to a particular case rather than the benefits and costs to the nation) of the test of reasonable cost. It is submitted that the rule is thus potentially ultra vires. It is further submitted by the NZMPA that the port asset owner should be able to determine whether ships (of any kind) with exempt masters should be entitled to use their facilities.

The port companies joint submission submitted that oil tankers, gas carriers and chemical tankers should only be eligible to be exempt compulsory pilotage if this is recommended by the regional council/harbourmaster (on the basis that such an intermediate step more closely approximates the Harbours Act regime where eligibility for an exemption from the regional council required the sanction of the Minister or, post-1994, the Director).

Marlborough District Council, Auckland Regional Council, Northland Regional Council, Roger Dunn, Canterbury Regional Council Deputy Harbourmaster, Marine Manager Primeport, and Tom Veitch submitted that oil tankers, gas carriers and chemical tankers should not be eligible to be exempt compulsory pilotage in general and only, in the view of some respondents, in exceptional cases under the most stringent conditions. Such restrictions are justified by community expectations, and the risks involved. It was also observed that any departure from the status quo could impact on risk profiles of councils and port operators, who have insurance based on compulsory pilotage for higher risk ships.

In commenting on remote pilotage (see below) the Shipping Federation and Pacifica Shipping also took the opportunity to submit their views on the intended requirements, in this same rule, for the pilotage of oil and chemical tankers and gas carriers : that pilotage is compulsory in all cases unless the Director issues an exemption under section 47 of the Maritime Transport Act. It was suggested that this amendment was more restrictive than the current requirements applied to tankers and that it should not go forward, on the basis that the interim rules are intended to preserve as far as possible the status quo.

MSA Response: *The MSA proposes to include an express provision that the Director has no ability to grant exemptions under section 47. This reflects the present position in practice, and makes the position clear pending the full review.*

Tonnage limits

NZMPA submitted that the harbourmaster rather than the Director should undertake the assessment of any case for a lower tonnage limit under draft rule 90.5(3) taking into account the full range of relevant factors in that port, which should then be submitted to the Director. It is submitted that the application of the test of reasonable cost is inappropriate (application to the particular when the test under the Act applies to the nation) and makes this draft rule potentially ultra vires.

The port companies joint submission commented that the rules should reflect current bylaws boundaries for compulsory pilotage, including sub-500 gross tons and length and draught restrictions.

The following respondents notified specific sub-500 gross tons and other bylaw compulsory pilotage boundaries -

- Northland Regional Council (100 gross tons limits in the Bay of Islands and Whangarei)
- Nelson City Council (100 gross tons limit in the port of Nelson)
- Bay of Plenty Regional Council (100 gross tons limit in Tauranga)
- Buller Port Services Limited (100 gross tons and/or 3 metre draught limits in Westport Harbour).
- Canterbury Regional Council/Primeport (500 gross tons or 40 metres overall length limits in the port of Timaru)
- Hawke's Bay Regional Council (40 metres overall length limit in port of Napier and distinction between inwards and outwards limits)

Tom Veitch submitted that the rules should enable a 43 metres length or 500 gross tons limit (whichever comes first) to be set on a regional basis, aimed particularly at ensuring appropriate levels of pilotage for smaller foreign fishing ships.

The port companies joint submission commented that the rules should permit discretion in the compulsory pilotage of ships of 100 to 500 gross tons, as at present, enabling the harbourmaster to require the carriage of pilots in appropriate circumstances – for example, on initial port entry or a small number of familiarisation transits until satisfied that the master and crew have sufficient local and port operational knowledge. The submission proposes that draft rule 90.5(3) be amended to enable harbourmasters to approve lower tonnage limits.

Auckland Regional Council submitted that there should be a requirement for a certificate of local knowledge for masters of ships of less than 500 gross tons covering harbour risks, harbours management, communications and emergency procedures.

Marlborough District Council commented that there may be a case for local knowledge certification, and it was observed that there is no provision (as at present) to require a pilot on all ships of more than 150 gross tons limit carrying explosives.

Ian Webb submitted that consideration should be given to a low cost, low-grade exemption for ships of 200 to 1500 gross tons.

Kenton Trawling Limited commented that there should be no provision at draft rule 90.5(3) for councils to seek a limit below 500 gross tons as this may be used by ports to secure revenue without any safety justification. A lower limit is only acceptable in extreme cases and after consultation with all affected parties.

SFSL submitted that safety risk factors should be taken into account in amending tonnage limits and applications should not be made by the regional council but rather initiated by the Director. There is no justification for differentiating between oil tankers, chemical tankers and gas carriers. There should, however, be differentiation on the basis of flag.

NZMTA and SFSL commented that there should be explicit provision for upward revisions in tonnage limits.

Nigel Meek submitted that the references to specific ship types (oil tankers, chemical tankers and gas carriers) should be deleted and additional risk factors incorporated relating to population density of the area and recreational and commercial activities within the pilotage area.

MSA Response: *Subsequent legal advice indicates that the mechanism envisaged in the earlier draft rule 90.5(4) is not supported by the Minister's rule writing powers. This provision has therefore been deleted. Ports that have a 100 gross tons limit (and, in some cases, limits in respect of draught and length) are specified in the schedule.*

Remote pilotage

NZTMA submitted that pilotage from shore, if permitted, should be recognised in the rules. Accordingly, in December 2002 MSA developed an amendment to draft rule 90.5 to recognise the practice in some New Zealand ports of piloting by leading vessel or some other remote means. The amendment was circulated to the ports industry, the maritime pilots, shipowners and regional councils. Three written submissions and one oral response were received.

The New Zealand Shipping Federation submitted that the addition of remote pilotage is outside the status quo of the existing rules and therefore is not acceptable. The Federation also noted that the amendment is contrary to section 60A of the Maritime Transport Act.

Pacifica Shipping submitted that it cannot see how a pilot on shore can be better qualified to pilot a ship than the master. The safety case for such an approach is not apparent, and the company suggested that the proposal seems aimed at keeping pilots in jobs and pilotage service providers with a revenue stream.

Auckland Regional Council, while content with leading in, expressed some unease with the proposal in respect of its application to the Manukau Bar, where the council lacks the necessary tracking devices and skilled personnel. The council was also concerned to understand how operational restrictions are to be defined and who is to decide if these exist. It queries whether rotary wing aircraft only are envisaged.

Buller port Services orally submitted that operational conditions should be defined, and questioned whether aircraft could be used for conducting pilotage remotely.

MSA Response: *MSA propose to remove the reference to operational conditions, and to substitute a reference to circumstances where the pilot is unable to board or disembark from the ship safely. The inclusion of disembarkation is necessary to save a pilot from being taken to the next port of call on outward-bound voyages. Additionally, the types of advice that can be received remotely are now expressed as examples only. The reference to aircraft has been deleted and the ability to be helped by another vessel has been made more general.*

Other matters

Hawkes Bay Regional Council commented that the rules should elaborate outwards limits and adverse weather procedures in order to ensure that pilots do not remain unnecessarily on board or undertake high-risk transfers.

MSA Response: *The MSA considers that the decision as to when the pilot should leave the ship must be left to the pilot in consultation with the master. In some situations it may not be safe for a pilot to depart within prescribed limits. The variables involved in making such a decision make it imprudent to prescribe such outwards limits in a rule.*

NZMTA considered that all ships under safe ship management regardless of tonnage should be exempt pilotage in consequence of SSM audits verifying safe operation in home areas (rules 90.12 and 90.13 are read as permitting this).

MSA Response: *This is not the case. A ship in SSM that is of compulsory pilotage size must carry a pilot unless the master holds an exemption.*

New and amended pilotage areas

Southland Regional Council proposed that identified areas of the Fiordland be added to the scheduled pilotage areas.

MSA Response: *The areas have been listed and require ships over 100 tons to carry a pilot. A transition has been provided for the introduction of the new pilotage areas to the effect that ships of*

between 100 and 500 gross tons will not be subject to compulsory pilotage until 1 April 2004. Most ships over 500 tons already carry a pilot in these areas under an administrative arrangement.

The NZMPA submission argues that –

- the application of the test of reasonable cost is inappropriate as it is applied in the particular in conflict with the Act's direction to use the test in the general – value to the nation as a whole. The rule is considered potentially ultra vires.
- the application should come from the harbourmaster, who has responsibility for navigational safety under the Local Government Act, rather than the regional council chief executive.
- the port company should be party to the decision making process, given its infrastructure interests, its legislative instruction to run a successful business, and role as pilotage provider.
- the Minister's power to amend or create a new area should, it is argued, be limited to approval (without discretion) of cases submitted by the relevant harbourmaster.

MSA Response: *Subsequent legal advice on the mechanism envisaged in draft rule 90.6 indicates that it is not supported by the Minister's rule writing powers. This provision is deleted and all new or amended pilotage areas are specified in rules.*

Pilots' licences

While there was widespread support for pilots' licences becoming maritime documents and the licensing requirements in general, submissions raised a range of specific points. These are summarised in this section.

NZMPA submitted that the harbourmaster should, on behalf of the Director, develop and recommend the port-specific parameters under which the general pilot's licence should be exercised after consultation with the local pilotage provider and wharf asset owners and operators. This is considered a more appropriate and logical arrangement given harbourmasters' local knowledge and contacts and existing statutory responsibilities for navigational safety. It would also make the licensing more flexible enabling pilots under appropriate supervision to perform higher levels tasks beyond those endorsed on their documents.

MSA Response: *The MSA agrees that the harbourmaster has an important role in developing the licensing package, for the reasons outlined in the NZMPA submission. The rule as drafted should, however, enable this role to be substantially fulfilled where the harbourmaster is qualified to do so. The second phase of pilotage law reform, as part of the large port risk review, will enquire further into the role of the harbourmaster in pilots' licensing.*

The NZMPA submitted that an applicant for a pilot's licence should hold a seagoing licence.

MSA Response: *The MSA does not agree. The training required for a STCW seagoing licence is not specifically relevant to the role of the pilot. More appropriate specialist training is found in IMO guidelines incorporated under rule 90.14(2)(a).*

Wellington Regional Council commented that making endorsements on licences reflect a pilot's progress under training could be administratively cumbersome.

NZMSG submitted that the endorsement arrangements would be too rigid for training purposes, preventing supervised practice of tasks above currently endorsed privileges.

MSA Response: *An amendment to the rule has been made to provide the flexibility sought.*

Wellington Regional Council commented that the revalidation process in draft rule 90.7(3) for a lapsed licence should be specified in rules.

MSA Response: *This proposal is discussed in relation to currency and exercise-of-privileges.*

SFSL submitted that provision should be made (if it is not already accommodated within the draft) for shipowners to secure pilots' licences for suitably qualified staff with licences limited to company ships and company load and discharge ports.

MSA Response: *This is permitted under the draft rules, in our view.*

Nigel Meeks commented that additional risk factors relating to population density of the area and recreational and commercial activities within the pilotage area should be incorporated in draft rule 90.7(4).

MSA Response: *The MSA agrees that the factors referred to may not be covered in the current list of operational and environmental conditions. It is noted, however, that this list is not intended to be exhaustive as the use of the term "including" clearly indicates. An amendment has been made recognising these risks.*

NZMSG submitted that the requirement for a medical certificate category B should not come into force until 1 November 2004 when it is anticipated that appropriate exit provisions will have been negotiated with employers.

Roger Dunn, Deputy Harbourmaster, Canterbury Regional Council, Marine Manager, Primeport commented that the requirement will place some pilots at risk of losing their jobs without, at present, any provision for compensation.

MSA Response: *The MSA accepts these submissions and the requirement to have medical certificate category B will not come into force until 1 November 2004.*

Pilotage exemptions

The Nautical Institute, KG Marshall, Richard Anthony Hunter, Andy Whitrd and DW Wardle submitted that pilotage exemptions under Part 90 should, in the interests of operational and administrative efficiency, not be specific to a named ship (as specified in draft rules 90.11(2) and 90.12(3)) but apply to all like-configured ships within a specified upper limit, such as overall length or tonnage. It was also noted by some respondents that identifying a ship by name would not be sufficient as a limiting mechanism in the event of more than one ship having the same name – suggesting the need for, say, tying the privileges to a ship's IMO number.

MSA Response: *The rules are amended to enable exemptions to be applicable to ships of a like size and propulsion/steering arrangements. The privileges under such exemptions cannot extend, in terms of ship size, beyond what is currently available under bylaws applicable within a particular port.*

Pacifica Shipping, New Zealand Shipping Federation, and SFSL submitted that first mates with masters' certificates should be eligible for exemptions and, in the interests of safety and safeguarding a companies' ability to ensure the availability of appropriately skilled relief/successor masters, be entitled to exercise privileges under such exemptions.

NZMSG submitted that mates should not undertake pilotage unless acting up as master. Otherwise, it was noted that, potentially, the third mate could pilot a ship with the responsibility continuing to rest with the master, which is not considered a measure likely to result in safety at reasonable cost.

MSA Response: *The rules preserve the status quo – a command-qualified mate can only undertake pilotage when acting as master. This issue is to be further explored in the second phase pilotage review.*

Hawkes Bay Regional Council commented that upper size limits on pilot exempt ships should be written into the rules for specific pilotage areas, rather than left to the Director to determine through the limits specified on individual documents. The concern is that the system proposed would be cumbersome and unreliable given that the Director is required to take into account the views of shipowners, which may be driven by commercial concerns.

Canterbury Regional Council, Wellington Regional Council and Nelson City Council submitted that the rules should recognise maximum tonnage or maximum length restrictions on pilotage exemptions for particular ports under existing bylaws.

MSA Response: *This concern is addressed in the interim rules by restricting the upper ship size to those defined in bylaws for any particular port. The longer-term arrangements to safeguard against any concerns of this nature will be considered in the second phase of pilotage law reform.*

NZMPA commented that the harbourmaster should, on behalf of the Director, develop and recommend the port-specific parameters under which an exemption should be exercised after consultation with the local pilotage provider and wharf asset owners and operators. This is considered a more appropriate and logical arrangement given harbourmasters' local knowledge and contacts and existing statutory responsibilities for navigational safety.

NZMPA also considered an applicant for an exemption should have a seagoing licence.

MSA Response: *The MSA agrees that this is appropriate where licensing requirements apply – which is not always the case – for example, fishing skippers. Requiring a “validated” certificate already covers this point.*

Wellington Regional Council and Marlborough District Council considered there would be a need for administrative procedures to ensure harbourmasters in ports are kept advised of all current pilotage exemption holders so they are aware of which master/ships do not require pilotage services.

MSA Response: *This is noted and agreed. This will be done administratively outside the rules.*

Wellington Regional Council submitted that the revalidation process at draft rule 90.11(3) for a lapsed exemption should be specified in rules.

MSA Response: *This proposal is discussed in relation to currency and exercise of privileges.*

Wellington Regional Council, Ian Webb, and DW Wardle considered that foreign ships and holders of foreign qualifications should not be entitled to apply for pilotage exemptions as a matter of equitable shipping policy as it is the one trading advantage of New Zealand ships over tax-advantaged foreign ships.

MSA Response: *This is a matter of shipping policy and is strictly beyond the scope of the rules being developed for safety and protection of the marine environment. The matter is referred, as a shipping policy issue, to the Minister's attention.*

Nigel Meeks submitted that additional risk factors relating to population density of the area and recreational and commercial activities within the pilotage area should be incorporated in draft rule 90.11 (4)(a).

MSA Response: *The MSA agrees that the factors referred to may not be covered in the current list of operational and environmental conditions. The MSA notes, however, that this list is not intended to*

be exhaustive as the use of the term "including" clearly indicates. An amendment is made to address these risks.

Currency and exercise-of-privilege requirements

Northland Regional Council considered that conditions should be agreed between regional councils (including input from an experienced and qualified mariner, the port operator(s) and the Director.

MSA Response: *The MSA agrees. The rules are amended to emphasise the importance of nautical advice.*

The Port companies' joint submission commented that regard should be had to the views of the port company in determining such requirements for both pilots' licences and masters' exemptions.

MSA Response: *The MSA agrees. The rules are amended accordingly.*

NZMPA submitted that competency audits and assessments for pilots and exempt masters (at draft rules 90.14(1)(b) and (2)(c) respectively) should involve experienced local pilots for the port(s) concerned.

MSA Response: *The MSA agrees. This should be done administratively and does not need to be written into the rules.*

Canterbury Regional Council submitted that the rules (or at least administrative arrangements) should require competency audits and assessments at licence and exemption renewal at 5 and 2 year intervals respectively. There should also be a requirement to use an exemption at least twice a year or a licence at least every three months involving at least 10 transits in a year with four in darkness. The pass mark, preferably set in rules, should be 90 percent for written and oral assessments with provision for resits within two months if only one part has been failed.

MSA Response: *The MSA agrees that licences and exemptions should be subject to currency requirements and ongoing audit and assessment as appropriate. As this regime is short term, and further work on these matters is envisaged in the substantive pilotage review, it is proposed to amend the rules to leave as far as possible the currency and exercise-of-privilege conditions to the Director to determine after taking appropriate advice. The same approach is taken for the revalidation of lapsed exemptions.*

Marlborough District Council commented that traffic density is problematic as an exercise-of-privilege condition for pilots' licences and masters' exemptions given its variability. Port companies should also have a say in conditions e.g. in rule 90.11(4)(b).

MSA Response: *As noted above, port companies are recognised as a relevant party. It is not proposed that any particular traffic density must be present when privileges are being exercised –*

only that the level of traffic density in general in that port is, in conjunction with the other considerations, taken into account when the conditions are imposed.

SFSL noted that the possibility of a conflict of validity as between medical certification under Part 34 and competency audit and assessment required by the Director at draft rule 90.14(2) (c) on medical grounds.

MSA Response: *The MSA considers that the need for any competency audit and examination stands alone and is not tied to medical certification – a pilot may be passed medically for a return to work but time out from participating in pilotage may, on its own, indicate a need to check on-the-job performance.*

Nigel Meeks submitted that Rule 90.14(2)(e) should be extended to require the currency of the conditions of a pilotage exemption to be confirmed with the regional council prior to each use of the exemption.

MSA Response: *The MSA would not support the interim rules prescribing such requirements. Arrangements to check currency can be done administratively.*

Training and assessment

NZMPA commented that terms such as “advanced course of training” and “supervised practice of tasks” in draft rules 90.10(2)(a) are non-specific and do not create certainty about what is required. Queries were raised too by Pacifica Shipping as to whether “training in piloting in the area concerned” in draft rule 90.13 permits company training, submitting that requiring external providers would impose unreasonable costs.

MSA Response: *The MSA can confirm that company training is permissible under the rules, as indicated in the draft advisory circular.*

The intention is to enable participants to make their case for their training arrangements, on the understanding that such arrangements are already in place in some areas. The second phase of the pilotage review will inquire further into these matters and may result in more prescription.

It was noted by NZMPA that, at draft rules 90.9 and 90.10, experienced pilots from the locality should be involved in assessing trainee pilots for endorsement to operate in that area – simulator training in itself is not a substitute. Should NZQA standards be involved, then the assessor should be appropriately qualified.

MSA Response: *The MSA support the comment in respect of local pilots’ involvement. The relation between NZQA standards and pilot qualifications under the maritime rules should be further explored in the substantive policy review.*

Marlborough District Council commented that a generic syllabus should be prescribed by MSA, particularly in respect of BRM in the general training component at rule 90.9(a). A set standard should be prescribed for local knowledge in rule 90.10 to ensure consistency between regions.

MSA Response: *The MSA agrees that examinations should test knowledge against approved syllabuses. The rules have been modified to provide for this.*

NZMPA commented that the Director at draft rule 90.10(2) should have no discretion in conferring new privileges where all the requirements have been met – the wording should therefore read the “The Director shall endorse ...”

MSA Response: *The MSA agrees. The word “must” is substituted for “may”.*

Ian Webb submitted that pilot training should be formalised and incorporate the IMO recommendations. The regime, to be approved by the Director and to differ only slightly as between ports, should provide for –

- radar simulator training for fog pilotage, as New Zealand pilots get so little experience in these conditions
- the minimum time/number of transits for trainee pilots
- a specified regime for gaining experience as a licensed pilot
- periodic revalidation involving theory tests and practical peer appraisal
- in the case of pilotage exemptions (which should be only available to New Zealand ships), a comparable but ship-specific programme in recognition of the commercial pressures on masters to exercise their exemption in all conditions.

MSA Response: *These are all valid technical considerations, that will be considered when approving syllabuses.*

NZMPA submitted that assessments should be carried out by a panel of at least three, comprising two experienced pilots one of whom should be current for the port, the harbourmaster or representative of the Director. Any panel for a pilot examination should have the prior approval of the Director

SFSL commented that one examiner should be sufficient.

The Port Companies joint submissions commented that appropriately skilled persons should be involved in the training and assessment of new pilots, and more than one person should do the assessments. A panel should comprise at least two persons, both foreign-going masters and at least one holding a pilot's licence for the area.

MSA Response: *These are matters to be considered further in the substantive review. In the meantime, we propose that they are dealt with administratively.*

Northland Regional Council commented that the content of local and advanced training for pilots and local training and knowledge for exempt masters at draft rules 90.10 and 90.13 should be set by regional councils (including input from an experienced and qualified mariner and port operator(s)) and approved by the Director. The approved training course at draft rule 90.16 should be subject to prior consultation with the regional council and port operator(s).

MSA Response: *The MSA agrees that these parties have an important contribution to make towards the development of syllabuses for local training. Their role is specifically acknowledged in the amended rules.*

NZSF commented that where port companies and regional councils carry out training and assessment, there should be some last resort control over prices as a safeguard against any monopoly pricing.

Pacifica Shipping submitted that there should be MSA control of local knowledge requirements to ensure no unreasonable requirements are imposed by regional councils.

MSA Response: *Under the amended rules, the Director determines the standard for local knowledge requirements by approving syllabuses. Under the Maritime Transport Act, where functions are carried out under delegation from the Director (such as the function of carrying out examinations and assessments) the fees charged must be reasonable.*

SFSL commented that the requirements for local training and local knowledge for both pilots' licences and masters' exemptions at draft rules 90.10(1)(a) and 90.13 respectively should be conditioned by the phrase "if required following the review of port risks at the relevant local port."

MSA Response: *This submission was contrary to the majority of submissions which supported the concept of local training and local knowledge assessments at all ports subject to compulsory pilotage.*

Reporting of accidents

Most respondents did not support draft rule 90.15. Submissions made the following points –

- the definitions of "accident" and "mishap" in draft rule 90.3 are unclear – specifically, in respect of the terms "unseaworthiness" in the former and the lack of limitation to maritime safety related matters in the latter. It is suggested that the meaning of seaworthiness be tied to a specific list of circumstances (NZMPA)
- there is no guidance as to what constitutes reasonable grounds for reporting and the duty is thus unfair on pilots. It would be more appropriate to incorporate the recommendation on pilots'

reporting found in the draft IMO Assembly resolution on pilotage (NZMPA)

- the law already provides for reporting. It there is significant under-reporting, the law should be enforced. (*Port companies' joint submission*)
- pilots' reporting should be limited to safety related accidents – reporting incidents and mishaps creates problems with customers and should not be required (*Roger Dunn, Canterbury Regional Council Deputy Harbourmaster, Marine Manager Primeport*)
- such an obligation is appropriate only if a comparable obligation is imposed on the master (SFSL)
- the obligation is wide open to interpretation and dispute and impractical to implement (*Nigel Meek*)
- the obligation is onerous and unreasonable as the pilot cannot know what the master intends to do. It is strenuously opposed. (NZMSG, Marlborough District Council)
- compulsion in reporting opposed. The pilot should be confined to reporting safety matters. (*Tom Veitch*)

There was support for draft rule 90.15 from the Northland Regional Council while the New Zealand Shipping Federation considered the rule redundant, as pilots are already required to report under the Maritime Transport Act. The Canterbury Regional Council suggested only that the means of communication be specified and a requirement inserted that it was to be made as soon as practicable and in any case not more than 12 hours after the event.

MSA Response: MSA proposes to delete this requirement. The question of what pilots should report is to be considered fully in the second phase pilotage review.

Regional council and harbourmaster roles

The large number of comments on the role of the regional councils and harbourmasters under the proposed interim pilotage regime are summarised in this section. These submissions are in addition to the remarks noted above on the role of harbourmasters in developing and recommending to the Director the port-specific privileges to be held by pilots and exempt masters and the roles of councils in training and assessment.

Wellington Regional Council commented that the role of the harbourmaster alluded to in the invitation to comment and the draft advisory circular to Part 90 in respect of the involvement of regional council chief executives should be made explicit in the rules. Council CEOs, it was noted, are not nautically qualified and are involved in commercial issues via port company shareholdings.

For the avoidance of possible commercial conflicts of interest and in the interests of best practical advice on maritime safety, the harbourmaster's role should be sanctioned by the rules.

Northland Regional Council commented that the rules should provide that the CEO takes advice from an appropriately qualified and experienced mariner (such as the local harbourmaster may be).

MSA Response: *The second phase of the pilotage review will fully consider these matters. In the redraft of these interim rules, however, the CEO is required to take nautical advice.*

The Bay of Plenty Regional Council sought assurance that there would be mechanisms to recover the costs for any involvement in training and assessment of pilots and pilot exempt masters.

MSA Response: *Under the Maritime Transport Act, where functions are carried out under delegation from the Director (such as the function of carrying out examinations and assessments) the fees charged must be reasonable.*

Hawkes Bay Regional Council submitted that harbourmasters should, in draft rule 90.5, be given the power to require a pilot to be taken on board a ship where not otherwise required due to exceptional circumstances in the port - such as wind strength, sea and swell conditions, heavy traffic conditions, hazardous cargoes.

Marlborough District Council and Auckland Regional Council suggested that the harbourmasters' powers at s.650C, D and E of the Local Government Act, if indeed these are available in pilotage matters, could be invoked to override normal arrangements under unusual conditions.

MSA Response: *The power of the Director under section 60A of the Maritime Transport Act to require a pilot to be carried when not otherwise required under rules is to be delegated to harbourmasters. The grounds for the exercise of this power - navigational safety and protection of the marine environment - are considered sufficiently broad to cover the circumstances referred to.*

Submissions from the New Zealand Shipping Federation and SFSL, and from the Otago Regional Council questioned the policy of council involvement in high-level navigational safety matters such as pilotage and welcomed the scrutiny of this subject planned for the substantive pilotage and other port safety risks review. To avoid conflicts of interest inherent in the commercial port ownership interests of councils, SFSL suggested the transfer of responsibility for navigational safety from regional councils to the Maritime Safety Authority as a matter of high priority. Analogies with land and aviation modes were made.

MSA Response: *As respondents observed, these are matters for the second phase of the port risks review.*

Port companies

The submissions from port companies, noting the recognition given to the views of the chief executive of regional councils at draft rules 90.7(4)(b), 90.11(4)(b) and 90.16(1)(b), proposed that, in view of their interests in protecting their infrastructure, they should have the same opportunity to make recommendations to the Director. This view was also taken by ARC in respect to pilotage exemptions.

MSA Response: *These rules as amended require the Director to take into account any recommendations made by the port company.*

Nelson City Council and Marlborough District Council commented that as a trainee pilot's employer, the port company has a critical interest in training and assessment and should have input into the training and assessment process.

MSA Response: *Part 90 envisages port company participation in setting of syllabuses and the provision of training courses. Rule 90.14 also requires the Director to take into account recommendations from port companies on the approval of local training and local knowledge courses.*

Transitional provisions

Wellington Regional Council submitted that the existing maximum tonnage or maximum length conditions on a licence or pilotage exemption for a particular port should be retained.

MSA Response: *The transition provisions have been amended to specifically refer to privileges and conditions on existing licences and exemptions.*

Nelson City Council considered that the transitional period for existing holders of pilotage exemptions to apply for a successor maritime document is too short given the large numbers of exemptions in existence. A minimum extension to 31 March 2004 is proposed (to tie in with the completion of the wider review) with, ideally, an extension for a further year to 31 March 2005.

MSA Response: *The MSA agrees with an extension until 31 March 2004 for the issue of both pilot licences and pilotage exemption documents and have amended the draft rules accordingly.*

Marlborough District Council considered that as some pilotage exemptions have not been exercised in recent years, an effort should be made to check currency before issuing a maritime document.

MSA Response: *The entitlement to have an exemption deemed a maritime document is dependent on validity as at 31 March 2003. If currency requirements have not been met, then there will be no transition to a maritime document. Currency requirements imposed on the exemption that were*

valid on 31 March 2003 will continue for the period that the exemption is deemed to be a maritime document. The rule has been amended accordingly.

Northland Regional Council submitted that any exemption issued under rule 90.7(2) of Part 90 of the maritime rules dated 4 October 1999 should be given some status under the new Part 90.

MSA Response: *The MSA agrees that these exemptions should be acknowledged and the transition rule is amended accordingly.*

Description of pilotage areas

A number of respondents noted omissions and inaccuracies in some of the descriptions in the pilotage area in the schedule to Part 90.

MSA Response: *These have been remedied on respondents' advice.*

SFSL deplored the rules' perpetuation of the current limits for Wellington, noting that pilots board in the harbour during rough weather.

MSA Response: *The continued limits for Wellington reflect the policy of Part 90 carrying over the status quo until a substantive review of pilotage is completed.*

Support for the rules

Many submissions supported the general thrust of the rules, including -

- centralisation of pilots' licensing and pilotage exemptions under the Maritime Transport Act 1994 with the provision for local input into training and examination
- the creation of an interim regime to create the opportunity for a first principles review of pilotage and other port risks.

SFSL suggested that the timetable for completion of the first principles review should be brought forward to 30 June 2003. This respondent also submitted that draft Part 90 was a retrograde and potentially unsafe step from the policy envisaged in the informal draft of Part 90B released in mid-2002.

Other matters

The submission of NZMTA expressed disappointment that rules do not deal with the relationship between master and pilot so that the chain of command - that the master is always in command - is made clear.

MSA Response: *The law is, in our view, already clear that this is the case.*

The rules are silent on funding of training, pilot numbers, liability, insurance and responsibility.
(Marlborough District Council)

Minimum hours of rest should be specified for pilots. (CRC, SFSL)

SFSL commented on the lack of provisions dealing with future supply of pilots, pilots' professional development, drug and alcohol management, pilot stand-down post accident and was critical of the dropping of provisions dealing with pilot liability, trainee pilots and passage planning.

MSA Response: *These are matters for consideration in the next phase of the pilotage review.*

The NZMTA suggested metrication of the schedule of pilotage areas while CRC submitted that it should be made clear that all references to miles in the schedule to the rules are to nautical miles.

MSA Response: *The MSA supports inserting a definition of miles but not metrication.*

Auckland Regional Council commented that the importance of involving insurance interests in the review was noted, given the large insurances carried by port companies and regional councils in respect of maritime risks.

Auckland Regional Council also considered that the rules should provide for a formal three-year review cycle for the pilotage system as a whole, complementing the provision made for re-validation of pilots' licences and masters' pilotage exemptions.

MSA Response: *As a larger review is already scheduled, the MSA considers this unnecessary. It may be appropriate to consider a formal review provision when the longer term provisions are being developed.*

The New Zealand Shipping Federation proposed that the immediate lessons learnt from recent accidents involving ships under pilotage should be incorporated in the draft rules.

MSA Response: *The findings of accident investigations will be given careful consideration in the course of the second stage review.*

A number of respondents, looking forward to the larger review of port risks outlined in the invitation to comment, made the following points –

- the long-term regime should promote best practice that has developed in ports ahead of the regulatory framework for pilotage
- a number of organisations, involved in different aspects of pilotage activities and practising sound risk management, should be considered potential partners in the review
- risk assessment and local input from port operators and harbourmasters are fundamental. The UK Marine Port Safety Code is considered a sound model in these respects.

The *NZMPA* raised a number of other matters in the context of the draft pilotage rules including –

- MSA has, under s.431 of the Maritime Transport Act 1994, no authority to investigate or report on mishaps
- harbourmasters should be required under maritime rules to hold nautical qualifications
- it is questionable whether the MSA has the authority to report on accidents and incidents – its role being limited under the Act to investigation only.

