

IN CONFIDENCE



25 February 2025

OC241364

Hon James Meager**Action required by:****Associate Minister of Transport**

11 March 2025

cc Hon Chris Bishop

Minister of Transport

GISBORNE DISTRICT COUNCIL - INFRINGEMENT FEES FOR NAVIGATION OFFENCE REGULATIONS

Purpose

Seek your authority for the Ministry of Transport (Ministry) to:

1. issue drafting instructions to the Parliamentary Counsel Office (PCO) for infringement regulations relating to the Tairāwhiti Navigation Safety Bylaw 2024 (2024 Bylaw).
2. share drafts of the infringement regulations with the Gisborne District Council (the Council), to ensure these regulations are fit for purpose.

Key points

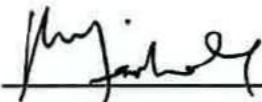
- Navigation safety bylaws allow councils to manage and regulate maritime safety within their waterways. Corresponding infringement regulations support the effective enforcement of these bylaws.
- Without infringement regulations, the only way councils can enforce a bylaw is by prosecuting alleged offenders through the District Court. Prosecution is generally a disproportionate response to the level of offending envisaged by these bylaws.
- The Council has requested infringement fees for offences regulations be made to correspond to the 2024 Bylaw which came into force on 4 August 2024.
- Your authority is needed for the Ministry to issue drafting instructions to PCO to enable regulations to be drafted. Your authority is also needed to allow the Ministry to share drafts of the regulations with the Council to ensure the regulations are fit for purpose, as the drafts are legally privileged to the Crown, and the Council sits outside the core Crown.

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Recommendations

We recommend you:

1. **authorise** the Ministry of Transport to issue drafting instructions to the Parliamentary Counsel Office for the Maritime Transport (Infringement Fees for Offences – Tairāwhiti Navigation Safety Bylaw 2024) Regulations 2025 Yes / No
2. **authorise** the Ministry of Transport to share drafts of the Maritime Transport (Infringement Fees for Offences – Tairāwhiti Navigation Safety Bylaw 2024) Regulations 2025 with the Gisborne District Council. Yes / No



Ruth Fairhall
Deputy Chief Executive, Policy



Hon James Meager
Associate Minister of Transport

26 / February / 2025

Minister's office to complete:

☐ Approved

☐ Declined

☐ Seen by Minister

☐ Not seen by Minister

☐ Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Ruth Fairhall, Deputy Chief Executive, Policy	s 9(2)(a)	
Annelies McClure, Principal Solicitor	s 9(2)(a)	✓

The Gisborne District Council has requested infringement fees for offences regulations

- 1 We have received a request from the Gisborne District Council (the Council) to progress infringement fees for offences regulations relating to the Tairāwhiti Navigation Bylaw 2024 (2024 Bylaw). The 2024 Bylaw is made under section 33M of the Maritime Transport Act 1994 (the Act) and is attached at Annex Two.
- 2 The Council has already passed the 2024 Bylaw, which came into force on 4 August 2024. The Bylaw applies to all navigable waters within the Gisborne District.
- 3 The Ministry's role is to instruct PCO to draft the offences regulations and support the legislative process. As part of its role, the Ministry also ensures that the offences as described in the regulations are correctly framed and are compliant with the empowering provisions.

What are navigation safety bylaws and their corresponding infringement fees for offences regulations?

- 4 Navigation safety bylaws allow regional councils to manage and regulate maritime safety within their region. They play a crucial role in minimising the risk of fatalities, injuries, accidents, and collisions on waters within regions.
- 5 Corresponding infringement fees for offences regulations support the effective enforcement of these bylaws by dissuading breaches. Under section 33Q of the Act, a regional council is entitled to retain any infringement fee it receives in respect of an infringement offence.
- 6 Infringement offences are a subset of criminal offences that do not result in criminal convictions. In the case of navigation safety bylaws, these involve low-level infringement fees (capped by the Act at \$1,000) and are imposed by the issuing of an infringement notice. The purpose of infringement offences is to deter conduct that is of relatively low seriousness and that does not justify the full imposition of the criminal law. Infringement offences prevent the courts from being overburdened with a high volume of relatively straightforward and low-level offences. Without them, the law may otherwise not be enforced because it is unlikely a prosecution would be in the public interest.
- 7 Without infringement fees for offences regulations, the only way regional councils can enforce a bylaw is by prosecuting alleged offenders through the District Court. Prosecution is generally a disproportionate response to the level of offending envisaged by these bylaws.

Repeal of the existing Maritime Transport (Infringement Fees for Offences— Tairāwhiti Navigation Safety Bylaw 2012) Regulations 2015

- 8 The previous navigation safety bylaw for the Gisborne region was the Tairāwhiti Navigation Safety Bylaw 2012 (2012 Bylaw).
- 9 The Maritime Transport (Infringement Fees for Offences—Tairāwhiti Navigation Safety Bylaw 2012) Regulations 2015 (2015 Regulations) were made in respect of the 2012 Bylaw. We will need to repeal these regulations as part of the process of creating infringement fees for offences regulations for the 2024 Bylaw.

Your authority is required to issue drafting instructions to the Parliamentary Counsel Office

- 10 Cabinet approval is not required to issue drafting instructions to PCO because the infringement regulations are routine and do not require new policy decisions¹. You can therefore authorise the Ministry to issue drafting instructions for the infringement regulations to PCO without reference to Cabinet.

Your authority is required to share PCO drafts outside of the Crown

- 11 Your authority is needed to share drafts of the regulations with the Council, as draft regulations are legally privileged to the Crown and the Council is not part of the core Crown. Sharing these drafts is necessary to make sure the regulations are fit for purpose.
- 12 Sharing drafts is done in accordance with CO (19) 2: Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown. Sharing will occur on the basis that the drafts are:
- 12.1 subject to legal professional privilege
 - 12.2 released on an in-confidence basis
 - 12.3 a work in progress
 - 12.4 subject to PCO's quality assurance methods.

The Gisborne District Council has produced, in conjunction with the Ministry, proposed infringement offences and fees

- 13 In conjunction with the Ministry, the Council has produced proposed infringement offences and associated penalty levels. These have been attached at Annex One. The current infringement offences and infringement fees were set in 2015, under the 2015 Regulations. The new proposed offences set out in Annex One include many newly created offences (approximately 55%). Generally, these new offences deal with commercial shipping safety requirements. New offences relating to recreational vessels have also been created. Examples of these include new requirements for waterproof communication devices to be held, and obligations for diving flags to be shown. The proposed fees for just under 50% of the existing offences have remained the same. Of the remaining existing offences, approximately 50% are proposed to be increased (these largely affect commercial shipping), and approximately 50% are proposed to be decreased. The proposed decreases generally apply to recreational uses where the offender is not in charge of the vessel, for example, where the person has allowed themselves to be towed in a way that is in breach of the Bylaw.
- 14 These proposed infringement offences and fees are in draft and are subject to change as the Council works with the Ministry and PCO. We are required to consult on proposed penalties with the Ministry of Justice². We will provide the Ministry of Justice with a copy of the new regulations once drafted to ensure they are consistent with its expectations.

¹ 7.91(d) Cabinet Manual 2017.

² 7.34 Cabinet Manual 2017.

Risk and impacts

- 15 The creation of regulations that prescribe fees for infringements of the 2024 Bylaw will impact individuals in the Gisborne region who have been issued with an infringement fee notice for a breach of the 2024 Bylaw. However, it should be noted that:
- 15.1 there was extensive public consultation carried out by the Council before the 2024 Bylaw was adopted. Pre-engagement commenced in September and October 2022. Submissions on the draft Bylaw were invited between 20 April 2024 and 17 May 2024.
 - 15.2 the creation of infringement offences is suitable for the type of low-level breaches described in the 2024 Bylaw and does not result in criminal convictions.
 - 15.3 the penalties are largely consistent with infringement fee for offences regulations applying in neighbouring regions.
 - 15.4 under the Act, the prescribed infringement fee is capped at \$1,000.
 - 15.5 the proposed new regulations will provide the Council with a straightforward and efficient way of enforcing maritime safety in its region.
 - 15.6 the infringement fees will provide an important deterrent effect to those who may be minded to breach the 2024 Bylaw.
- 16 If the regulations are not made, the risk is that the Council's only recourse for breach of the 2024 Bylaw is to take District Court proceedings.

Next steps

- 17 Once drafts of the infringement fees for offences regulations have been finalised, we will provide you with the necessary papers for the Cabinet Legislation Committee and Executive Council, to enable the infringement fees for offences regulations to be made.

Annex One

Proposed infringement fees for offences for the Tairāwhiti Navigation Safety Bylaw 2024

Clause	Proposed description of Offence	Fee (\$)
Cl 7(1)	Operating a vessel in breach of Maritime Rules about collision prevention, including Part 22 (Collision Prevention)	200
Cl 7(4)	Failing to report an accident or incident on navigable water	200
Cl 7 (6)	Moving vessel that has damage that may affect or is likely to affect its seaworthiness other than in the circumstances described in cl 7(6)(a), (b) or (c)	200
Cl. 8(1)	Failing to have sufficient lifejackets for each person on board a recreational craft that are readily accessible and of appropriate size for each person on board.	200
Cl. 8(2)	Failing to wear a properly secured lifejacket of an appropriate size when on board a recreational vessel of 6 metres or less in length.	200
Cl. 8(3)	Failing to ensure that every person on board a recreational craft is wearing a properly secured lifejacket of an appropriate size for that person in situations of heightened danger or risk	200
Cl. 8(7)	Failing to ensure a person being towed wears a properly secured lifejacket of an appropriate size	200
Cl 8(8)	Failing to ensure, as a person being towed, that a properly secured lifejacket of an appropriate size is being worn	100
Cl.9(1)	Failing, as the person in charge of a vessel, to carry two waterproof means of communication in good working condition, other than in the circumstances described in cl 9(2) and (3)	200
Cl 9(2)	Failing, as the person in charge of a vessel, to ensure that at least one waterproof means of communication in good working condition is carried on an unpowered vessel being operated within the Gisborne Harbour Limits or within 1000 metres of the coast	200
Cl. 10(1)	Failing to ensure, as a diver, that flag A (diver flag) is displayed when diving is in progress, in a manner that is clearly identifiable to the watchkeeper of a vessel more than 200 metres away.	100
Cl. 10(2)	Failing to ensure, as a person in charge of a vessel from which a person is diving, that flag A (diver flag) is displayed in a manner that is clearly identifiable to the watchkeeper of a vessel more than 200 metres away	200
Cl. 10(3)	Failing to display flag A (diver flag) on a safety float or raft when diving without a vessel more than 200 metres from shore.	100
Cl. 10(4)	Failing to use, as a shore SCUBA diver that intends or is likely to surface more than 200 metres from shore, a diver's marker that marks the diver's position when surfacing.	100
Cl. 10(5)	Failing, as a person undergoing dive operations, to submit a completed dive notification form to the Harbourmaster within the timeframe specified in Cl 10(5)	300
Cl. 10(6)	Failing, as a person undergoing dive operations, to comply with all conditions imposed by the Harbourmaster	300
Cl. 11(1)	Diving, jumping, or swimming in certain areas in breach of requirements	100
Cl. 12	Swimming unaccompanied by a support vessel in navigable waters more than 200 metres from shore without towing a safety float, swim buoy or wearing a cap	50
Cl. 13(1)(a)	Towing person or object without lookout of 10 years of age or over	200

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Clause	Proposed description of Offence	Fee (\$)
Cl. 13(1)(b)	Towing a person or object between sunset and sunrise	100
Cl. 13(2)	Being towed without a lookout between sunset and sunrise.	50
Cl. 14(2)	Failing to operate or manoeuvre vessel in access lane by most direct route and on starboard side of lane	100
Cl. 14(3)	Failing to travel through access lane by most direct route and on starboard side of lane while being towed or towing any object	50
Cl. 14(4)	Failing to ensure vessel in access lane is operated so as to ensure that obstruction or damage is not caused to any other vessel or person in the access lane	100
Cl. 14(5)	Entering, remaining in, using, or obstructing access lane when it is being used by another person for a declared purpose	100
Cl. 15(2)	Entering, remaining in, or using reserved area for another purpose while it is being used for the purpose for which it has been reserved	100
Cl. 15(3)	Obstructing person while that person is using access lane on reserved area for purpose for which it has been reserved	100
Cl. 16(3)	Carrying out activities for which the area has not been flagged when in navigable waters and within 200 metres of the shore of a flagged area and where a temporary event authorization has not been issued	100
Cl. 18(1)	Allowing person under 15 years of age to be in charge of, propel or navigate a power-driven vessel capable of exceeding speed of 10 knots without direct supervision	100
Cl. 18(2)	Allowing person under 15 years of age that is in charge of, propels or navigates a power-driven vessel capable of exceeding speed of 10 knots to contravene cl 19(1) requirements	100
Cl. 19(1)	Operating a vessel exceeding 5 knots in areas specified in cl 19(1)	200
Cl. 19(2)	Operating a power-driven vessel at a speed exceeding 5 knots while a person has any portion of their body outside the vessel	200
Cl. 19(3)	Towing a person behind a vessel or any other means when required not to, or not being exempted, at a speed of over 5 knots	50
Cl. 19(4)	Failing to stop to recover dropped water ski or to take measures to ensure that water ski is visible to other users	100
Cl. 19(5)	Navigating a vessel in a manner that causes a nuisance to others	100
Cl. 20	Failing to ensure wake does not cause danger or risk of damage or harm to other vessel, person or structure	200
Cl. 21(1)	Operating a propulsion system of a vessel while at any wharf, boat ramp or designated boat launching area in such a way that it may damage any structure or property, scour waterbeds, or injure any person	200
Cl. 22(1)	Failing to keep a vessel anchored or moored in navigable water in seaworthy condition	200
Cl. 22(3)	Failing to comply with Harbourmaster direction to move unseaworthy vessel that may become a navigation hazard	200
Cl. 23(1)	Navigating vessel so as to impede seaplane in the process of take-off or landing	200
Cl. 23(2)	Navigating vessel with mast or superstructure over 15m within aircraft approach area	200

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Clause	Proposed description of Offence	Fee (\$)
Cl. 24(1)(a) and (b)	Anchoring vessel so as to cause obstruction or create hazard	300
Cl 24(1)(c)	Leaving vessel unattended for more than 24 hours without harbourmaster's prior permission	200
Cl. 24(2)	Interfering with the mooring or the fastenings securing a vessel other than in emergency	200
Cl. 25	Anchoring or mooring vessel within prohibited anchorage	1000
Cl 26(1), (2) and (3)	Vessel over 500 GT or cruise ship to be anchored or moored other than at permitted anchorage position	1000
Cl. 27(1)	Obstructing the passage of other vessel, or restricting the navigation of any waterway, or access by water to wharf, pier, jetty, landing place, boat ramp, launching area, fuel berth or mooring	300
Cl. 27(2)	Navigating in swinging basin or in entrance channel when vessel over 500 GT is in channel or swinging basin	300
Cl. 27(3)	Causing or allowing any thing to be placed, left behind, dropped, or discharged over or near any navigable waters.	300
Cl 27(4)	Placing obstruction in any waters	300
Cl. 27(5)	Placing obstruction in Set-Net and Crayfish Pot exclusion areas	200
Cl. 28(1)	Tying vessel to buoy, beacon or other device or structure erected as a navigation aid without permission	500
Cl. 28(2)	Damaging, removing, defacing or interfering with buoy, beacon or other navigation device	500
Cl. 28(3)	Erecting, maintaining or displaying any beacon, buoy or other device which may be used or mistaken for navigation aid without permission	500
Cl. 29(1)	Using flashing lights, sirens or other sound or light signals not prescribed in a maritime rule without permission	200
Cl. 29(3)	Displaying purple flashing lights in circumstances where use is not required or as directed	200
Cl. 29(4)	Blowing or sounding whistle, siren or horn of vessel except as navigation safety signal, or with permission, or for testing of equipment before leaving wharf	200
Cl. 30(1)	Placing mooring in navigable waters without a valid resource consent or mooring licence	200
Cl. 31(1) and (2)	Placing marker buoy in navigable waters that is not clearly and permanently marked or fitted with replacement tag showing required details, or sufficiently buoyant or otherwise clearly visible	100
Cl 31(3)	Placing buoy in navigable waters so as to become a hazard to navigation	100
Cl. 32(1)(a)	Failing to notify harbourmaster of bunkering operations in accordance with Fuel Transfer Notification form requirements before commencement of operations	500
Cl. 32(1)(b)	Failing to monitor bunkering operation in accordance with MARPOL regulations and recommendations and Marine Protection Rules	500
Cl. 32(2)	Conducting oil transfer to or from any vessel or operating oil transfer site without holding an approved and Marine Protection rule compliant marine oil spill contingency plan	500

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Clause	Proposed description of Offence	Fee (\$)
Cl. 32(3)	Failing to always monitor, or leaving unattended, automatic pumping arrangement when conducting bunkering operations.	500
Cl 33(1)	Failing to operate an oil tanker in accordance with ISGOTT	500
Cl 33(2)(a), (b), (c) and (d)	Failing to berth or moor a tanker at place specified by harbourmaster; failing to keep specified oil cargo tanks securely closed, failing to ensure sufficient motive power and minimum safe crewing is always available to enable vessel to be moved; failing to submit plan of layout and details of products carried within specified timeframe	500
Cl 34(1) and (2)	In relation to a commercial vessel over 500 gross tonnage, failing to notify the harbourmaster and Gisborne port of commencement of drills or exercise, or immobilization or testing of the vessel's main engines, within required timeframes, or conduct	300
Cl 34(3)	Conducting the cl 34(1) or (2) activities other than at anchor	300
Cl 34 (4)	Where a large vessel has inoperative or faulty navigational or manoeuvring equipment, failing to obtain the approval of the harbourmaster before the vessel navigates within a pilotage area	500
Cl 35 (1) and (2)	Failing to ensure vessel that has on board, or intend to load or discharge explosives complies with specified requirements	500
Cl 36(1)	Allowing a vessel carrying Class 1 explosives to approach any other vessel within 30 Metres of any other vessel without harbourmaster approval	500
Cl 36(2)	Where a vessel is carrying Class 1 explosives, berthing at a berth that does not comply with Designated Transfer Zone provisions of a Dangerous Goods Handling Plan.	500
Cl 37	Failing to display Flag B by day or an all round red light at the masthead by night, when dangerous goods are on board or intended to be loaded onto or discharged from the vessel.	500
Cl 38(2)	Where a vessel is underway, failing to maintain as much clearance as possible from a vessel displaying Flag B or an all round red light while it is at berth, anchored or underway	500
Cl. 39(1)	Failing to notify Harbourmaster before carrying out Hotworks within specified timeframe.	1000
Cl 39(2) and (3)	Failing to take appropriate precautions while Hotworks operations are being carried out and that the requirements and conditions of the Hot Works Notification are met	1000
Cl. 40(1)	When loading logs, failing to ensure plan submitted to the harbourmaster relating to loading and recovery of logs or failing to monitor lost logs and track them until removal	500
Cl. 41(1)	Where in charge of a vessel 500 gross tonnes or more that is navigating in the Gisborne Pilotage area, failing to ensure that specified navigational requirements are met	1000
Cl. 42 (1), (2) and (3)	When using a personal watercraft on navigable waters, failing to display identification on personal water craft in accordance with specified requirements	100
Cl 42(4)	Failing to prominently display identification number on personal water craft trailer	100
Cl 42(5)	Failing to notify Council of personal water craft identification number before it is used on navigable waters	100
Cl 42(6)	Failing to advise the Harbourmaster within 30 days of the sale or disposal of a personal water craft	100
Cl 43(1) and (2)	Failing to ensure power-driven vessel of more than 4 metres is clearly marked in accordance with requirements, does not have the potential to be mistaken for enforcement agency vessels, and that markings are prominently displayed when on	100

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Clause	Proposed description of Offence	Fee (\$)
	navigable waters	
CI 43(5)	If the vessel is a non-power driven vessel, or a power driven vessel of 4 metres or less in length, failing to display identification including the name and contact details of owner	\$100

PROACTIVELY RELEASED BY
MINISTRY OF TRANSPORT TE MANATŪ WAKA