Consultation document – New Zealand’s potential accession to the STCW-F Convention April 2015

Making a submission

1. Submissions can be made:
   ▶ via post to the Ministry of Transport:
     Consultation on New Zealand’s accession to the STCW-F Convention
     The Ministry of Transport
     PO Box 3175
     Wellington 6140
   ▶ via email to info@transport.govt.nz

2. Submissions should be received by the Ministry of Transport no later than 5pm 6 May 2015.

3. You should indicate in your submission whether it would be acceptable, if required, for officials from the Ministry of Transport to contact you to discuss your submission. If you need more information to assist you in preparing a submission, please contact Brian Nijman on (04) 439 9379 or through the above contact information.

4. Your submission may be the subject of a request under the Official Information Act 1982, which could result in its publication. The withholding of particular submissions for any reason will be determined in accordance with the Official Information Act. If you feel that any part, or all, of your submission should be withheld from any request made under the Official Information Act, you should indicate this clearly.


The purpose of this document

6. This document seeks feedback on whether New Zealand should accede to the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (the Convention, commonly known as the STCW-F Convention), an International Maritime Organisation treaty.

7. The Convention sets the regulatory framework for the training and certification of personnel employed on board fishing vessels in order to improve the safety of life and property at sea in the fishing industry and fishing vessels. It also sets standards for watchkeeping.

8. Following the completion of consultation, the Ministry of Transport will consider the submissions received and provide advice to the Minister of Transport on whether to seek Cabinet agreement that New Zealand accede to the Convention.
9. In August 2011, the Minister of Fisheries and Aquaculture and the Minister of Labour convened a Ministerial Inquiry (the Inquiry) in response to widespread concerns about the operation of foreign charter vessels fishing in New Zealand’s Exclusive Economic Zone. Allegations included the underpayment, mistreatment and trafficking of crew and other breaches of employment rules, and breaches of vessel safety standards and fisheries and environmental regulations.

10. In its February 2012 report to Government¹, the Inquiry recommended 15 corrective actions to improve the regulation and operation of foreign charter vessels operating in the Exclusive Economic Zone. The major recommendation was that fishing in the Exclusive Economic Zone be carried out by New Zealand registered vessels, thereby necessitating ‘reflagging’ of foreign charter vessels. The Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014 requires this reflagging by 1 May 2016.

11. Another key recommendation was that New Zealand announce its intention, subject to a National Interest Analysis, to accede to the Convention and the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (Torremolinos Protocol).

12. New Zealand’s accession to these International Maritime Organisation conventions would complement the reflagging of foreign charter vessels by bringing New Zealand into line with international standards for crew training and certification and the seaworthiness and equipping of fishing vessels.

13. This consultation paper deals solely with whether New Zealand should accede to the Convention.

14. The Cape Town Agreement of 2012² (the successor treaty to the Torremolinos Protocol), which deals with the design, construction and equipment of fishing vessels, is being consulted on separately.

The Convention

15. The Convention came into force internationally on 29 September 2012 and applies to fishing vessels of 24 metres or more in length operating outside the inshore limits i.e. outside 12 nautical miles. These vessels constitute approximately five per cent of New Zealand’s fishing fleet.

16. The Convention sets standards for: the certification of skippers, engineer officers and radio operators; the basic training required for personnel on fishing vessels to which the Convention applies; and watchkeeping. It is the first international instrument to establish basic requirements on training, certification and watchkeeping for fishing vessel personnel.

17. Internationally, the Convention is expected to reduce death and injury rates in the global fishing industry by mandating training and safety requirements for crews. The International Maritime Organisation estimates that, worldwide, approximately 24,000 people die each year in fishing operations.

Reputational Advantages of Acceding to the Convention

18. The negative international publicity surrounding the employment conditions on foreign fishing vessels chartered in New Zealand was not limited to the foreign owners and operators, but also targeted the New Zealand companies using them, and the New Zealand Government for allowing such activities. The Inquiry identified that such publicity has the potential to damage New Zealand’s reputation and the demand for New Zealand exports and trade.

19. Currently, all crew on foreign-flagged fishing vessels operating in New Zealand waters must comply with the requirements of the jurisdiction in which that vessel is registered, but New Zealand cannot verify compliance, due to a lack of jurisdiction. Accession to the Convention would protect New Zealand’s reputation and enable New Zealand to exercise Port State Control over visiting fishing vessels with respect to Convention requirements.

20. Accession to the Convention would also underscore New Zealand’s contribution to the effective regulation of international and domestic shipping.

21. Accession would therefore enable Maritime New Zealand to verify training, certification or watchkeeping standards on all foreign fishing vessels of 24 metres or over in length entering New Zealand ports and operating in the EEZ. A secondary benefit is that safe operations of these vessels would reduce the possibility of accidents involving such ships within New Zealand’s search and rescue region.

22. New Zealand law is already compliant with the Convention. Maritime Rules Part 31: Crewing and Watchkeeping and Part 32: Seafarer Certification are the domestic maritime rules relevant to the Convention. Amendments to these maritime rules, which brought them into alignment with the Convention, came into force on 1 April 2014.

Administrative Advantages of Acceding to the Convention

23. In the absence of bilateral arrangements, such as the Trans-Tasman Mutual Recognition Arrangement (TTMRA), all seafarers with overseas certificates are required to apply for a New Zealand Certificate of Competency that is issued if prior learning requirements for certificates are met. Experience has shown that it can be difficult and time consuming to get this information and assess it to the level necessary to have confidence in the foreign qualifications and ensure requirements are met.

24. If New Zealand accedes to the Convention, holders of foreign certificates issued by a State that is Party to the Convention would have their certificates recognised by Maritime New Zealand. Holders of foreign certificates that are issued by States that are not Party to the Convention would need to apply for a New Zealand Certificate of Competency as per the normal process.
25. Accession to the Convention would also make it easier for New Zealand seafarers who are working in overseas jurisdictions that are Party to the Convention. Maritime New Zealand is receiving intermittent approaches from New Zealand seafarers who have either been denied or lost employment in overseas jurisdictions that are party to the Convention, because New Zealand is not a Party. This would be resolved once New Zealand accedes to the Convention.

International Legal Obligations

26. Australia is not currently a Party to the Convention, but it is actively considering accession.

27. Under the TTMRA, people registered to practise an occupation in either New Zealand or Australia can do so in the other country without having to undergo further testing or examination. This is given effect in New Zealand law through the Trans-Tasman Mutual Recognition Act 1997. The TTMRA is important to New Zealand’s economic welfare and is central to the trans-Tasman relationship.

28. If New Zealand accedes to the Convention, provision needs to be made for Australian seafarers’ certificates to continue to be recognised under the TTMRA.

Options to deal with TTMRA issue

29. The simplest way to address this TTMRA issue would be to include, with the instrument of accession to the Convention, a reservation\(^3\) to the effect that the TTMRA shall continue to apply with respect to recognition of certificates of Australian seafarers (Option 1).

30. Other options to address the TTMRA issue are:

- timing New Zealand’s accession to coincide with that of Australia’s accession. The Australian Maritime Safety Authority is currently in the process of aligning Australia’s Marine Orders (equivalent to New Zealand’s Maritime Rules) with the provisions of the Convention in preparation for potential accession (Option 2)

- obtaining an exemption under paragraph 5.11 of the TTMRA and section 84 of the Trans-Tasman Mutual Recognition Act 1997 for the domestic legislation relating to certification matters outlined under the Convention (Option 3)

31. Options 2 and 3 would likely delay New Zealand’s accession to the Convention, possibly for an appreciable period, because of the administrative and timing issues involved. Option 1 is therefore the Ministry of Transport’s preferred option to deal with the TTMRA issue.

Alignment of the Convention with New Zealand maritime rules

32. Maritime Rules Part 31: Crewing and Watchkeeping and Part 32: Seafarer Certification, are the domestic maritime rules relevant to the Convention.

---

\(^3\) A reservation excludes or modifies the legal effect of the treaty provision concerned with respect to its application to the State that lodges the reservation.
33. The rules came into force on 1 April 2014, hence New Zealand is now compliant with Convention provisions. No further amendments to existing legislation are necessary to implement the Convention.

Costs to New Zealand of compliance with the Convention

34. No compliance or administration costs associated with accession are anticipated. This is in large part because New Zealand laws are already aligned with the Convention’s requirements.

Do you agree or disagree that New Zealand should accede to the STCW-F Convention? In either case, please explain why.

Are there any benefits or costs associated with accession to the Convention that you think should be considered? Please outline what these might be.
Appendix 1: Submission template

This submission template is suggested for your feedback and comments on the discussion paper. Submitters are welcome to use additional pages outside of the template to comment. **The closing date for submissions is 6 May 2015.**

Please email your submission to:  info@transport.govt.nz

or you may post it to:  New Zealand’s potential accession to the STCW-F Convention  
Ministry of Transport  
PO Box 3175  
WELLINGTON 6140

<table>
<thead>
<tr>
<th>Contact Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of submitter</td>
</tr>
<tr>
<td>Address</td>
</tr>
<tr>
<td>Phone</td>
</tr>
<tr>
<td>Email</td>
</tr>
<tr>
<td>Are you submitting as an individual or on behalf of an organisation?</td>
</tr>
<tr>
<td>May we contact you to discuss your submission?</td>
</tr>
</tbody>
</table>

**If submitting on behalf of an organisation:**

| Organisation you represent |
| Who the organisation represents |
| How the views of the members were assembled |
**Disclosure of information**

Your submission, or the information it contains, may be subject to public release, or to disclosure under the Official information Act 1982. Persons making submissions that include commercially or otherwise sensitive material that they wish the Ministry to withhold under the Act should clearly identify the relevant information and the applicable grounds under which the Ministry could withhold the information.

<table>
<thead>
<tr>
<th>Is this information commercially or otherwise sensitive?</th>
<th>OK to disclose / Sensitive material – please do not disclose the information that I have identified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do you wish for your comments to be disclosed publicly?</td>
<td>OK to disclose / Please do not disclose</td>
</tr>
<tr>
<td>If you are an individual, do you wish for your identity to be disclosed?</td>
<td>OK to disclose / Please do not disclose</td>
</tr>
</tbody>
</table>

**Questions sought for comment**

- Do you agree or disagree that New Zealand should accede to the STCW-F Convention? In either case, please explain why.

- Are there any benefits or costs associated with accession to the Convention that you think should be considered? Please outline what these might be.

For more information contact the Ministry of Transport by email at:

info@transport.govt.nz or by phone on (04) 439 9000.