

## Qualification Review Key Issues

New Zealand Maritime School 30 August 2010

### 1. The 12 mile non-STCW Area

The consultation currently proposes that the entire New Zealand coast out to the 12 mile territorial limit will be deemed 'closely adjacent to sheltered waters' with the sole objective of excluding these waters from the application of STCW.

This proposal is troubling on two key fronts.

The proposed qualification requirement for vessels operating in the Inshore Limit up to 500 tons is effectively the replacement qualification for the LLO/ILM with an unspecified additional learning component. The proposed requirement to operate vessels over 500 t within this limit is a non-specified higher qualification to be determined by the Director on a case by case basis. Neither requirement has the safety net of having to meet STCW minimum requirements nor the integrity of predefined requirements. At its ludicrous extreme, there is therefore no regulatory safeguard within the proposal that would preclude the Director from approving someone with an ILM level certificate from taking command of a coastal tanker or Cook Strait passenger ferry.

Whilst this outcome is unlikely, the possibility that it could occur is concerning. It is also our view that the internal expertise required to advise the Director increases significantly with the level of discretion available in decision making. Maritime New Zealand's challenges in attracting and retaining adequate credible maritime expertise and capability to appropriately advise the Director are therefore problematic in this regard. This is not a criticism of the organisation but simply recognition of the worldwide scarcity of such people and the relative competitiveness of MNZ as an employer. It is therefore our belief that this proposal therefore has very significant safety implications and also confers excessive discretion to the Director without adequate regulatory safeguards such as a defined and transparent process or the opportunity for all stakeholders to have input into decision making.

It should also be noted that the IMO Conventions including STCW also limit the ability of coastal states to apply less favourable regulatory and control requirements to vessels carrying overseas flags. This raises significant potential issues in terms of applying the certification, hours of rest and alcohol requirements of STCW and national legislation to visiting ships moving around the coast within the 12 mile limit when local vessels completing the same passage are intended under the proposal to be exempt from these requirements.

Secondly, we believe that the proposal contravenes the STCW Convention and Code and therefore places the future employment of a significant number of New Zealand seafarers, the New Zealand maritime training industry and ultimately the wider industry at risk.

The STCW Convention and Code (including amendments) apply to all seagoing vessels. Article 2 of the Convention defines such vessels as all ship's other than those that 'navigate exclusively in inland waters or in waters within, or closely adjacent to sheltered waters or in areas where port regulations apply'. The operational requirements of the Convention and Code then apply to all 'seagoing ships' which then operate either in 'near coastal' or 'unlimited' operating areas. There is no provision in the Convention or Code that allows a 'seagoing ship' to operate in a restricted limit set inside the near coastal limit. The 'within or closely adjacent to sheltered waters provision' is therefore intended to clarify what is meant by a 'seagoing ship' and was included in the '95 amendment to cater for vessels operating out of and returning to a single port, bay or harbour without proceeding

to 'sea'. It is simply not possible under any reasonable interpretation of the wording of Article 2 to consider New Zealand's entire territorial sea to be 'closely adjacent to sheltered waters', particularly when this is also proposed to be 'smoothed out' to allow coastal passages and corridors to the Three Kings etc. After all, few experienced mariners asked to mark on a chart those areas where they considered themselves to be 'closely adjacent to sheltered waters' would identify the entire territorial sea. In our view, this proposal is therefore absolutely in contravention of the intent and spirit of the STCW convention and also with the specific wording of the Article 2 definition which allows only vessel operations that occur exclusively in waters 'closely adjacent to sheltered waters' to occur outside STCW minimum requirements.

We have stated and justified this view at initial consultation with the New Zealand Maritime School, at each of the Design Advisor workshops and at the recent sector advisory workshops with the general support of those present. These views having to date not apparently influenced the proposal. It is therefore important to advise that our view is supported by each of the international competent persons and STCW experts we have been in contact with in recent days since the release of the consultation draft and that we are currently collating such statements from throughout the international STCW community and will include these in our final submission on this proposal.

It is important to note that unlike other IMO conventions, STCW contains a control mechanism whereby full compliance is initially evaluated by a panel of competent persons and continuing compliance through five yearly external independent verification audits. States deemed to be fully compliant are named on a 'white list' approved by the Maritime Safety Committee after evaluation of independent verification reports by competent persons and facilitated by the IMO Secretariat. Seafarer certification from 'white listed' issuers can then be recognised in port state inspections and may be recognised by other flag states either as the basis for being permitted to serve on board vessels of that flag directly or for a certificate of recognition (equivalency). Seafarers with certification from a country not on the current white list would therefore immediately find that their certification could not be accepted during a port state inspection in an overseas port nor on board a vessel of any other flag.

In our view, the consultation process to date does not appear to have balanced the economic benefit of seafarer employment in the international industry against that of local commercial vessel operations. We believe that there are currently approximately 430 New Zealand certificated officers and 'traditional' ratings working on overseas flag vessels or on New Zealand flag vessels that visit international ports. In addition, there are an estimated 1500 New Zealand residents working on cruise ships and superyachts in rating, service and entertainment postings where flag states or employers require STCW Basic Training certification for employment<sup>1</sup>. We therefore estimate that direct seafarer employment of NZ\$60 - \$100 million p.a. is dependent on New Zealand maintaining STCW white list status. This is before standard multiplier effects are applied to determine the value to the economy and before the approximate NZ\$15 million p.a. of earnings by the maritime training industry through international certification training. We therefore urge Maritime New Zealand to ensure that the economic interests of all industry stakeholders are carefully considered and balanced in determining the final qualification requirements, particularly where this would compromise our STCW compliance.

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<sup>1</sup> These numbers have been based on the number of New Zealanders obtaining such certification in the previous 8 years and triangulated against the 1296 seafarer discharge books issued to New Zealand resident seafarers by the New Zealand Maritime School in the same period. Given that such seafarer books are normally sought only by those working overseas who are specifically required to obtain this by international employers, there are a very large number of seafarers reliant on New Zealand's continuing STCW compliance without such books.

### *Alternative Approaches*

It must be noted that a large number of vessels operate within inshore limits and are not 'seagoing ships' within the common interpretations of STCW internationally. Warships and fishing vessels are specifically excluded. Small vessels and recreational vessels are also excluded in most jurisdictions. The grey area is therefore in determining the type and size of 'trading' vessel that operates in the near coastal or unlimited areas and which is not a 'seagoing ship'. Certainly, this cut off limit is intended to be well below 500 GRT as there would otherwise not be any certification requirements for such vessels under the Convention. Many jurisdictions have determined this by length, tonnage or type of operation. There is therefore a reasonably high level of flexibility available to the regulator in this regard. In this context, we believe that MNZ has the option of classifying a region of say 'Kawau to Coromandel' as sheltered waters and therefore, for example, deeming virtually all of the Fullers operation outside STCW. The albacore tuna vessels are 'fishing vessels' and not constrained by STCW. A 20 m charterboat operating out of Auckland could be deemed to be not a 'ship' (US/Canadian approach), 'not seagoing' (NZ approach to date) if it returns to the same port each day (no matter how far it goes out), or either a 'fishing vessel' or 'non trading' vessel (UK approach) for STCW purposes. None of these are defined in STCW, all suggested interpretations are consistent with other international precedent and any of these legitimately takes the operation outside STCW requirements. In other words, MNZ has very significant flexibility to achieve the operating pragmatism sought by all but a very few operators within acceptable STCW interpretations without putting the interests of these few above the very significant interests of a very large number of individual stakeholders who rely on New Zealand maintaining STCW white list status.

## **2. Non Compliant Certificates**

- a) The proposal is to introduce certification for Master of a Ship of Less than 500 GT Restricted to Near Coastal Voyages, Officer in Charge of a Navigational Watch on Ships between 500 and 3000 t restricted to Near Coastal Limits, Chief Mate on Ships of Between 500 and 3000 GT Restricted to Near Coastal Voyages and Master on Ships of Between 500 and 3000 GT Restricted to Near Coastal Voyages for voyages within Near Coastal Waters.

We wish to make the following points:

- i) STCW Regulation II/3 (p3) requires certification also for every officer in charge of a navigational watch on ships below 500 GT on near-coastal voyages. The omission of this qualification will lead to a non compliance.
- ii) STCW Regulation II/1 makes no provision for an officer in charge of a navigational watch between 500 and 3000GT. Such officers must meet all of the requirements for certification as an officer in charge of a navigational watch on ships of 500 gross tons or more. The proposed certificate is therefore non compliant.

Section A-II/1 (p7) does allow the issue of an officer in charge on ships of 500 gross tons or more to be endorsed for near coastal voyages only with the only effective difference being the omission of the requirement for competency in celestial navigation.

- iii) There is no differentiation in STCW Regulation II/2 of the requirements for Chief Mate and Masters on vessels of between 500 and 3000 GT between unlimited and near coastal waters. The proposed certification must therefore be fully compliant with Regulation II/2 in terms of the requirements for issue. Section A-II/2 (p8) allows the issue of a Chapter II/2 Chief Mate or Master 3000t certificate to be endorsed for near coastal voyages and the competencies not applicable on a near coastal voyage to be omitted. In

effect, it is important to note that the only significant difference between a Chief Mate or Master 3000 t unlimited and one endorsed for near coastal voyages only is the requirement for competency in celestial navigation.

- b) A sailing vessel less than 24 m operating commercially in the coastal or offshore limit is a vessel of less than 500 GT operating within the coverage of STCW unless a methodology is applied to take this outside the 'seagoing ship' application. As explained earlier, there are such mechanisms available. As the proposal currently stands, however, the requirements for this certificate would have to be STCW compliant and in effect would become a sailing endorsement on top of the STCW requirements.
- c) It is proposed that a Qualified Deck Crew holder can operate as a rating in the coastal area with STCW Basic and in the offshore with STCW Advanced. If the vessel is operating as a 'seagoing ship' in these limits (and also in the inshore under the arguments put forward earlier), these personnel must meet the STCW requirements for a Deck Watch Rating if they are to be engaged in supporting watchkeeping activity. The STCW Basic suite of programmes comprises Basic Firefighting, First Aid, Personal Survival, Personal Safety and Social Responsibilities and now Ship Security Familiarisation training<sup>2</sup> (under the Manila Amendments) and is a prerequisite for Deck Watch Rating. On this basis, the requirement for STCW Basic is reasonable. Advanced training is normally taken to mean Proficiency in Survival Craft and Rescue Boats, Advanced Fire and Medical First Aid. These requirements are excessive for the type of vessel envisaged and are not STCW requirements for deck watch ratings under STCW.

### **3. Revalidation Requirements**

The proposal is silent on the STCW requirements for demonstrations of continuing practical competence in the safety competencies of STCW Basic Training, Proficiency in Survival Craft and Rescue Boats, Advanced Fire etc. These are now required to be physically demonstrated every five years with subsequent Maritime Safety Committee resolutions significantly restricting which of these can be done in service or on board a ship. This potentially has the most detrimental impact of all of the STCW Manila amendments on industry and seafarers and we believe this needs to be flagged at this time when we are considering what is inside and what is outside the convention.

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<sup>2</sup> Note that this requirement applies to all certification where STCW Basic training is required throughout the proposal