



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Maritime New Zealand Update

**The International World Maritime Day's theme for 2014 is "IMO Conventions: Effective Implementation." In light of MLAANZ's interest in law reform, promoting the unification of maritime law and generally providing a forum for maritime law issues, this year's theme should resonate strongly.**

The focus on international conventions also aligns with New Zealand's own focus on IMO conventions. In recent times, NZ has progressed the status of some key international conventions, alongside changes to domestic law and activities in the domestic maritime sector.

### *International maritime conventions*

In April, New Zealand deposited instruments with the International Maritime Organization to enable it to become a party to three international maritime conventions:

1. 1973 Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil (1973).
2. 1996 Protocol to Convention on the Limitation of Liability for Maritime Claims 1976 (LLMC).
3. International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention).

### *Intervention protocol*

This protocol widens the scope for the Director to intervene to prevent harm to the environment from a shipping casualty. In addition to a threat of pollution from oil, the powers now can be exercised when a ship is at risk of discharging noxious liquid substances, harmful substances in packaged form, radioactive material, liquefied gases and any other amenities, or interfering with other legitimate uses of the sea. The protocol was implemented into New Zealand domestic law through a change to the definition of 'harmful substance' under Part 20 of the Maritime Transport Act 1994 in the 2013 amendments to the Maritime Transport Act 1994.

### *Limitation of liability*

The 1996 Protocol increases the limitation of liability for claims that fall within the convention, and affects the amount of insurance required under both domestic law and the Bunker Convention. The concept of limiting liability gained much attention during the grounding of the Rena container ship in October 2011, when there was criticism of New Zealand's failure to ratify the 1996 Protocol to the LLMC, which would have increased the limitation of liability amounts.

The increased limits under the Protocol were directly incorporated into New Zealand domestic law through amendments to Part 7 of the Maritime Transport Act 1994 in 2013, and are already in force. Further increases are likely to come into effect in 2015 following amendments adopted by IMO. Information about the limitation amounts can be found on the IMO website <http://www.imo.org/MediaCentre/PressBriefings/Pages/12-LLMC-Prot-limits.aspx#.U60RGpMn21s>.

### ***Bunker Convention***

Changes to the MTA as a result of the NZ becoming a party to the Bunker Convention are likely to come into force in September 2014.

New Zealand domestic law already has provisions equivalent to the Bunker Convention, which establishes strict liability for pollution damage from bunker spills and requires a certificate of insurance, linked to the limitation of liability under LLMC (above). The changes will introduce a specific requirement for ships over 1000 gross tonnes (GT) to have a "Bunker Oil Certificate of Insurance". This will enable New Zealand ships to travel overseas with internationally recognised certificates, and New Zealand will be able to accept Bunker Certificates issued by other member states.

Following recommendations from IMO, tankers will be required to hold a Bunker Certificate as well as any certificate of insurance required under the civil liability regime (CLC), specific to ships carrying oil as cargo. The Maritime Transport Act 1994 will continue to require all other ships of 400-1000GT to have a domestic certificate of insurance issued or recognised by the Director.

### ***Consultation on new international conventions***

#### ***Supplementary Fund***

The Ministry of Transport has been consulting on a number of maritime-related matters.

Submissions on whether New Zealand should become a party to the Supplementary Fund closed on 27 June 2013. The fund provides a third tier of compensation for oil pollution from an oil tanker, where the amount available under the 1992 Fund Convention may be insufficient. This would see the total amount available for compensation for an incident increase from the current 203 million SDR (IMF special drawing rights) to 750 million SDR.

#### ***Minimum insurance for offshore installations***

On 27 June 2013 consultation also closed on the Ministry of Transport's proposed changes to the minimum insurance amounts for offshore installations. The proposed increase is from approximately NZD 26 million to NZD 300 million. The Ministry is also proposing a broader review of the regime to consider a regime that would allow the minimum level of financial assurance to be scaled depending on an assessment of the likely costs of clean-up incurred by public agencies, and third party damages, associated with a spill incident from each offshore installation.

#### ***Maritime Labour Convention***

Consultation remains open on whether New Zealand should become a party to the Maritime Labour Convention, which entered into force internationally in August 2013. The convention sets internationally agreed minimum standards to address the health, safety and welfare of seafarers in areas such as conditions of employment, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social protection issues.

This consultation closes at 5pm on Friday, 11 July 2014.

Further information about the convention and what it would mean to join it is available from the Ministry of Transport website <http://www.transport.govt.nz/ourwork/sea/maritime-labour-convention-2006/>.

### **Changes to domestic law – maritime rules**

Some of the most significant changes to New Zealand's domestic commercial shipping framework in 15 years will be made in 2014.

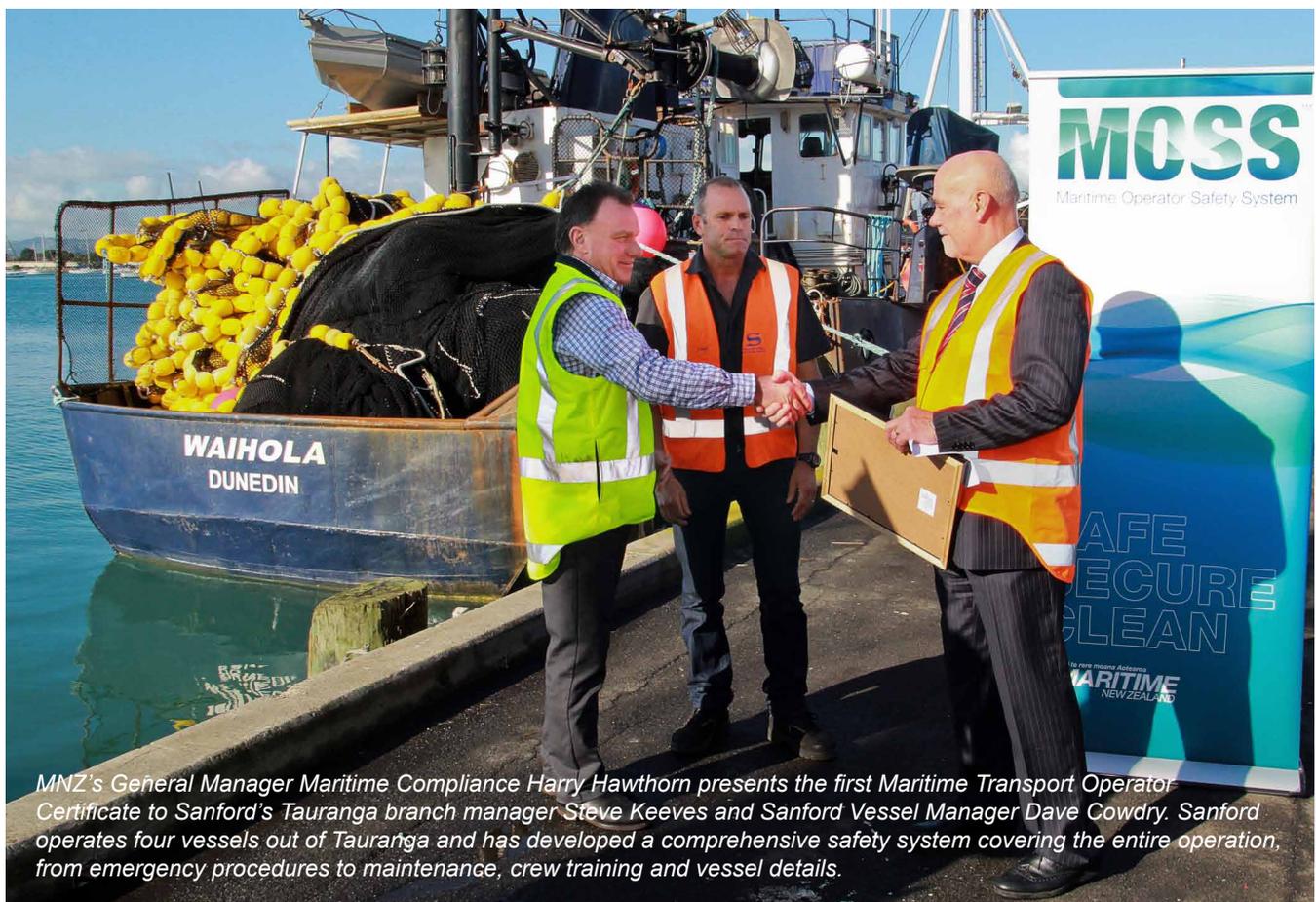
#### **SeaCert and MOSS**

The new seafarer certification framework for national and international certificates of competency and proficiency (SeaCert) came into force on 1 April 2014, and the new Maritime Operator Safety System (MOSS) entered into force on 1 July 2014.

MOSS replaces the safe ship management (SSM) system and involves replacing parts of Maritime Rules Part 46 (which guides surveys, certification and maintenance) with Maritime Rules Part 44, and parts of Maritime Rules Part 21 (which guides the certification of maritime transport operators) with Maritime Rules Part 19.

Existing SSM certificates become deemed Maritime Transport Operator Certificates (MTOCs) from 1 July, and operators must enter MOSS (get a new MTOC) from the date their SSM certificate expires (for a fleet, from the expiry date of the first SSM certificate). MNZ has been receiving applications for MOSS since 1 April 2014, and about 60 operators are expected to enter the system each month. Operators are recommended to submit applications to enter MOSS at least three months before the expiry date of a vessel's SSM certificate. Those with more than one vessel should apply three months before the expiry date on their first vessel's SSM certificate.

For more information about MOSS, including a full rundown of operator responsibilities, key dates and the MOSS fees, visit <http://www.maritimenz.govt.nz/moss>.



*MNZ's General Manager Maritime Compliance Harry Hawthorn presents the first Maritime Transport Operator Certificate to Sanford's Tauranga branch manager Steve Keeves and Sanford Vessel Manager Dave Cowdry. Sanford operates four vessels out of Tauranga and has developed a comprehensive safety system covering the entire operation, from emergency procedures to maintenance, crew training and vessel details.*

### *Dangerous cargoes*

The new Maritime Rules Part 24A: Carriage of Cargoes – Dangerous Goods (2014) also came into force on 1 July 2014 (except for Rule 24A.43 (1) (Dangerous Goods Permits) and Rule 24A.242 (3) (e) and (f) relating to documents of compliance with SOLAS chapter II-2, which will come into force on 1 December 2014). It updates the existing Part 24A.

Part 24A prescribes the rules for the carriage of dangerous goods by sea by certain commercial ships and implements New Zealand's obligations under the International Convention for the Safety of Life and Sea 1974 as amended (SOLAS) Chapter VII. The new Part 24A continues to apply the standard of the IMDG Code to ships that undertake international voyages, or domestic voyages beyond restricted limits and across Cook Strait. It provides alternative standards for smaller commercial ships on domestic voyages within restricted limits, as well as introducing new standards for carriage of dangerous goods by passengers on all domestic voyages.

The new rules focus on the safety management system as being the primary mechanism for the operator to ensure the safe carriage of dangerous goods. Schedule 1 of Part 24A has a set of core principles for the carriage of dangerous goods that, together with prescriptive standards, will inform the development of operator safety systems and safe operating procedures. A copy of the new rule is available on MNZ's website <http://www.maritimenz.govt.nz/Rules/List-of-all-rules/Part24A-maritime-rule.asp>.

### *Maritime news*

#### *Coastal navigation review*

The number of ships, voyages and port calls in New Zealand has increased each year since 2009/10. Prompted by this continuing growth, plus international moves towards larger ships and changes in technology, MNZ has begun a review of coastal navigation safety to identify risks and assess current and potential safety measures.

The review will involve consultation with government agencies, local government and private sector interests, and will consider a broad range of issues, including the types of activity being carried out in the coastal environment, human factors and technology.

The first phase will involve assessing the nature of risks around coastal navigation and how they are being managed. This phase is likely to take about 12 months.

#### *Easy Rider sentencing*

On 27 May 2014, the sole director of AZ1 Enterprises, Gloria Davis, was sentenced in the Invercargill District Court to 350 hours of community service and a fine of \$3,000, after being found guilty of charges under the Maritime Transport Act and Health and Safety in Employment Act. AZ1 Enterprises received total fines of \$204,500.

The charges related to the operation of Easy Rider, which sank off Stewart Island in March 2012 with the loss of eight lives.

#### *Failure to notify grounding*

On 11 June 2014, the master of the 177m Singapore-flagged cargo vessel Lake Triview was fined \$2000 (plus \$130 court costs) after pleading guilty to a charge of failing to notify MNZ of an incident as required under section 31 of the MTA.

This followed an incident on Saturday, 24 May in which the vessel ran aground on a rocky reef in approximately 7 metres of water off New Plymouth. While the anchor was successfully retrieved, the vessel remained grounded for about five minutes until freed by using its own engines.

MNZ was subsequently advised by the harbourmaster that the anchor had dragged and sought details of the incident on 26 May – but received no notification of the grounding until late in the evening of 28 May.

#### *Fine for fishing without maritime documents*

Albacore Fisheries of Wellington was fined \$12,000 in the Wellington District Court for fishing without the required safe ship management (SSM) certificate. The company pleaded guilty to a charge laid by MNZ under section 68 of the Maritime Transport Act of operating a ship without the appropriate maritime document. The charge related to 38 fishing trips by the fishing vessel Star of the Sea between February and May 2013. Catch returns showed the vessel was operating as a commercial fishing vessel on each trip.

#### *Dangerous operation prosecution*

An American recreational skipper was prosecuted for dangerous operation of a ship in the Waitemata Harbour in January this year. Mr Richard Livu Panescu pleaded guilty and was fined \$1,000 and ordered to pay \$2,000 in reparations.

#### *Conviction for dolphin swimming accident*

Mr Mark Vezey, the skipper of Discovery III, a dolphin swimming vessel, was convicted and sentenced following his guilty plea to charges laid under the Health and Safety in Employment Act. It followed an accident in which a young Australian woman tourist sustained serious leg injuries from the vessel's propeller while swimming with dolphins in March 2013.

#### *International Day of the Seafarer*

The IMO international Day of the Seafarer was observed on 25 June. This official United Nations observance day provides an opportunity to acknowledge the world's 1.5 million seafarers and to recognise the important role they play in the global economy, often in trying circumstances, with long hours, harsh weather and sea conditions, and separation from family and friends.

The IMO celebrated with the #thankyouseafarers campaign which can be viewed at <http://www.imo.org/About/Events/dayoftheseafarer/Pages/Day-of-the-Seafarer-2014.aspx>.

While 25 June 2014 may have passed, the campaign is a good reminder for all to take pause and remember how seafarers impact on our everyday lives, in ways often forgotten and underappreciated.

Maritime New Zealand  
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