



Rarotonga Pilotage Regulations 2017

His Excellency, Tom Marsters

Queen's Representative

Order in Executive Council

At Avarua, Rarotonga this 24th day of October 2017

Present:

His Excellency the Queen's Representative in Executive Council

Pursuant to section 73 of the Ports Authority Act 1994-95, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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Schedule

Regulations

- 1 Title**
These regulations are the Rarotonga Pilotage Regulations 2017.
- 2 Commencement and force**
 - (1) These regulations come into force on the day after the date on which they are made.
 - (2) These regulations take effect, also, as maritime rules made by the minister responsible for the Maritime Transport Act 2008.

- (3) They take effect under that Act on the day that minister makes a maritime rule, acting under section 19 of that Act, bringing their content into force as maritime rules.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Ports Authority Act 1994-95

the Authority means the Ports Authority

administering authority means the Ministry of Transport

approved medical practitioner means a medical practitioner approved by the administering authority in compliance with STCW Regulation 1/9

Avatiu harbour means the enclosed navigable waters within the Avatiu pilotage area whose entrance is bounded by the western and eastern breakwater installations

Avatiu pilotage area means all navigable waters within a 1 nautical mile radius from position Latitude 21° 12.15' S, Longitude 159° 47.05' W

check pilot means a person who—

- (a) holds a current and valid pilot licence for the Avatiu pilotage area;
- (b) has held that pilot licence for a period of at least 5 years;
- (c) accompanies a trainee pilot while that trainee pilot is piloting a vessel within the Avatiu pilotage area; and
- (d) does so to assess the competency and performance of that trainee pilot in carrying out those duties

ETA means estimated time of arrival of a vessel

Minister means the Minister with responsibility for the Cook Islands Investment Corporation

pilot licence means a licence issued under regulation 23

pilot means a pilot holding a valid and current pilot licence

pilotage means to act as a pilot, giving pilotage advice to the master of a ship navigating in or in the vicinity of the Avatiu pilotage area

pilot boarding ground means each of the following boarding grounds as applicable in the circumstances—

- (a) Alpha Pilot Boarding Area - 21°11'7.00"S / 159°47'0.60"W
- (b) Bravo Pilot Boarding Area - 21°11'7.00"S / 159°46'8.30"W

Ports Authority means the Ports Authority established under the Act

Secretary means the secretary of the administering authority

STCW means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and includes the 2010 Manila Amendments and all subsequent amendments together with all regulations made under the Convention

SOLAS means the International Convention for the Safety of Life at Sea 1974, its Protocol of 1988, and articles, annexes and certificates incorporating all amendments in effect from 1 July 2009

trainee pilot means a person undergoing the training referred to in regulation 19

- (2) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

4 Force majeure

- (1) In these regulations, the term force majeure means a situation in which 1 or more of the following circumstances exists, or is likely to exist unless a vessel is brought into, moved within, or taken out of the Avatiu pilotage area—
- (a) the vessel is in grave or imminent danger:
 - (b) there is a risk of death or serious personal injury to a person on board:
 - (c) the vessel poses a risk within the Avatiu harbour because mooring and securing lines, bollards, fenders and other securing and restraining measures have failed or may fail:
 - (d) the vessel is contacting or colliding the Avatiu harbour wharf face in a way that is damaging 1 or more of the following—
 - (i) the vessel:
 - (ii) another vessel:
 - (iii) the wharf face:
 - (iv) other fittings, fixtures, plant or machinery on the wharf:
 - (e) the vessel is causing damage to other property:
 - (f) the vessel is suffering significant impact damage that may give rise to holing, wrecking or stranding:
 - (g) the vessel is becoming a hazard to navigation of other vessels:
 - (h) the vessel is preventing the use of the Avatiu harbour in whole or in part:
 - (i) there is any other immediate accepted peril of the sea.
- (2) Despite anything to the contrary in these regulations a person may operate a vessel without a pilot carrying out pilotage if—
- (a) force majeure circumstances exist; and
 - (b) the services of a pilot are not immediately available.

5 Application

- (1) These regulations apply to every vessel that—
- (a) enters, departs or manoeuvres within the Avatiu pilotage area and is of 100 tonnes (gross tonnage) or above:
 - (b) requests the assistance of a pilot:
 - (c) is required by the harbourmaster to carry a pilot.
- (2) Unless its master requests the assistance of a pilot, or the harbourmaster requires the vessel to carry a pilot, these regulations do not apply to—
- (a) a naval vessel:
 - (b) a passenger vessel that neither enters the Avatiu harbour nor anchors within the Avatiu pilotage area:
 - (c) a fishing vessel 24 metres long, or less:
 - (d) a vessel of less than 100 tonnes (gross tonnage):
 - (e) a dredger or barge manoeuvring solely within the Avatiu harbour.

Part 1 Pilotage

6 Vessels subject to these regulations must use pilot

- (1) This regulation applies to a vessel that must carry a pilot under these regulations.
- (2) The master of a vessel that wishes to enter, depart or manoeuvre within the Avatiu pilotage area must engage a pilot while manoeuvring within that area.

7 Any other vessel may request a pilot

- (1) This regulation applies to a vessel that does not need to carry a pilot under these regulations.
- (2) The vessel's master may request a pilot for the vessel—
 - (a) to enter or depart the Avatiu harbour;
 - (b) to proceed to an anchorage within the Avatiu pilotage area.
- (3) The master is excused from compliance with clauses 9 and 10 but non-compliance is a factor the harbourmaster may take into account in deciding whether it is practicable to make a pilot available.
- (4) However, the master must give all relevant information needed to make sure that the pilot can safely board the vessel.
- (5) The harbourmaster must, wherever it is reasonably practicable to do so, make a pilot available for that vessel.

8 Night-time vessel movements

- (1) This regulation applies—
 - (a) despite anything to the contrary in these regulations;
 - (b) (whether or not its master is exempted from the need to engage a pilot) that—
 - (i) is engaged in the carriage of cargo for reward;
 - (ii) is engaged in the carriage of passengers for reward;
 - (iii) uses sails as its primary propulsion.
- (2) Unless the harbourmaster gives permission, the master of a vessel, in navigating that vessel, must not, during the hours of darkness—
 - (a) enter the Avatiu harbour;
 - (b) leave the Avatiu harbour.
- (3) The harbourmaster has complete discretion as to whether—
 - (a) to give that permission;
 - (b) to require that the vessel carries a pilot for that movement.
- (4) The master does not have permission under this regulation unless the harbourmaster has, for each movement, issued a written confirmation of that permission, either to the master or to the ship's agent.

9 Notifying the Authority of ETA

- (1) The master must notify the Authority of the vessel's ETA at the pilot boarding ground not less than 48 hours before that time.
- (2) The master must reconfirm the vessel's ETA—

- (a) not less than 24 hours prior to arrival; and
 - (b) 2 hours prior to arrival.
- (3) The 48 hour and 24 hour notifications may, instead, be made by the vessel's agent.
- (4) If arms, ammunition or dangerous goods are aboard the vessel either the master or the vessel's agent must notify full details of that fact to the harbourmaster not less than 72 hours prior to arrival.

10 Information to be communicated

- (1) On approaching the island of Rarotonga, the master of a vessel must establish communication by VHF or dedicated radio channel with the harbourmaster or the pilot as soon as possible.
- (2) The master must—
 - (a) confirm his ETA for the outer limit of the pilot boarding ground; and
 - (b) give all relevant information needed to make sure that the pilot can safely board the vessel.
- (3) The master of a vessel that has not previously operated in the Avatiu pilotage area must, in addition, provide all further information reasonably required by the harbourmaster and the pilot, including (but not limited to) the following—
 - (a) ship's name, call sign and ship's agent;
 - (b) ship's characteristics such as length, breadth, draught, air draught (if relevant), speed, number and power of thruster(s);
 - (c) ship's navigating equipment, such as compasses, radar, electronic aids to navigation and its status, noting any defects.
- (4) The master of a vessel within the Avatiu pilotage area must, at least 4 hours before the ETD of that vessel, notify the harbourmaster of his intention to depart.
- (5) In this regulation, ETD means the estimated time of departure—
 - (a) in the case of a vessel that is berthed, its departure from that berth;
 - (b) in the case of a vessel that is anchored, the estimated time of its departure from that anchorage.

11 Exemption from requirement to engage a pilot

- (1) Subject to section 37 of the Act, the harbourmaster, in consultation with the Secretary, may exempt the master of a vessel from the need to engage a pilot if the harbourmaster and the Secretary determine that the master—
 - (a) has gained the experience required to competently and safely manoeuvre that vessel within the Avatiu pilotage area;
 - (b) has successfully completed an examination whose content is, from time to time, agreed between the harbourmaster and the Secretary; and
 - (c) possesses a current, valid medical certificate issued by an approved medical practitioner that complies with STCW.
- (2) If the conditions of subclause (1) are met, the Secretary may issue a written confirmation of that fact to that master.
- (3) The confirmation qualifies that master to act, in place of a pilot, where that vessel would otherwise need a pilot under these regulations.

- (4) That confirmation has effect for a period of 12 months from the date it is issued.
- (5) The confirmation may be reissued by the Secretary for successive 12 month period, but only if—
 - (a) the holder continues to possess a valid medical certificate; and
 - (b) on each occasion, the harbourmaster has confirmed the holder—
 - (i) has operated in the Avatiu pilotage area on at least a regular quarterly basis over the current 12 month period; and
 - (ii) has, in that way, demonstrated continued competence.

12 Vessel refusing a pilot

- (1) This regulation applies if—
 - (a) a vessel must have a pilot under these regulations; and
 - (b) for any reason a pilot is either refused access to that vessel or refused access to its bridge or navigational control area.
- (2) The vessel must not enter, depart, or manoeuvre within the Avatiu pilotage area unless the harbourmaster expressly authorises it to do so.
- (3) The harbourmaster must report every refusal of this sort to the Secretary.

13 Obligations of pilots

- (1) A pilot for the Avatiu pilotage area must—
 - (a) possess a pilot licence; and
 - (b) possess a current medical certificate in compliance with the STCW Manila Amendments; and
 - (c) possess a restricted radio transmission operator's certificate, issued by the appropriate Cook Islands authority.
- (2) The pilot must at all times comply with—
 - (a) the Act;
 - (b) these regulations;
 - (c) any conditions of that pilot's pilot licence;
 - (d) standard operating procedures or guidelines that the harbourmaster may issue from time to time; and
 - (e) instructions of the harbourmaster.

14 Information exchange between master and pilot

- (1) The pilot and the master of a vessel that is being piloted must cooperate with each other in the exchange of information to make sure the vessel movement is carried out without incident or accident.
- (2) If information is exchanged in a written form, it must be simple and easy to understand.
- (3) The master and the pilot must not treat written information as a substitute for ongoing verbal exchange of information during the pilotage of the vessel.
- (4) The master must be ready to give ongoing information to the pilot regarding all matters relevant to vessel, including—
 - (a) the vessel's characteristics:

- (b) any navigational procedures relevant to the vessel.
- (5) The pilot must be ready to give ongoing information to the master regarding all matters relevant to vessel movement within the Avatiu pilotage area including—
 - (a) navigational procedures in that area;
 - (b) local conditions;
 - (c) the pilot's proposed passage plan.

15 Vessel movements

- (1) In making sure the vessel movement is safe and carried out without accident or incident, the pilot must consider all relevant matters, including but not limited to—
 - (a) the weather and sea conditions at the time;
 - (b) the handling characteristics of the vessel;
 - (c) the draught, trim and loaded condition of the vessel;
 - (d) the position of other vessels; and
 - (e) any hazards to safe navigation.
- (2) The pilot's decision as to any vessel movement is final but the pilot must reassess each decision continuously in the light of changing conditions with the aim of making sure any vessel movement—
 - (a) can be carried out in a safe way, without accident or incident and, if so;
 - (b) is carried out in a timely way.

16 Pilot transfer arrangements

- (1) This regulation applies to—
 - (a) the master of every vessel that must use the services of pilot under these regulations;
 - (b) the master of a vessel who makes a request under regulation 7.
- (2) The master must make sure the pilot can board and disembark the vessel safely.
- (3) The master must provide equipment and supervision that is—
 - (a) consistent with the good seamanship and international safety practices; and
 - (b) in full compliance with the provisions of Regulation 23 of Chapter V of SOLAS (whether or not the vessel is otherwise subject to those provisions).
- (4) The pilot must give sufficient instructions to the master of the vessel with regard to the position, course, and speed of the vessel to make sure the pilot can board safely.

17 Pilotage guidelines

The harbourmaster may, from time to time, issue guidelines, not inconsistent with the Act or these regulations, to make sure that pilotage—

- (a) complies with international standards;
- (b) reflects other applicable standards or requirements.

Part 2

Training, competence and capability

Training

18 Preconditions for training

- (1) A person is not eligible for training as a pilot unless that person—
- (a) is at least 25 years old;
 - (b) has successfully passed a medical examination by an approved medical practitioner that complies with STCW;
 - (c) has, in the opinion of the administering authority, an appropriate level of—
 - (i) sea time;
 - (ii) other relevant experience;
 - (d) holds either—
 - (i) a restricted radio transmission operator's certificate, issued by the appropriate Cook Islands authority; or
 - (ii) a certificate that, in the opinion of the administering authority demonstrates an equivalent (or higher) level of competence in maritime radio communications;
 - (e) provides a reference as to that person's character, basic maritime competence and experience in ship handling and sobriety from a person (not being a relative) acceptable to the administering authority.

19 Training programme

- (1) The harbourmaster, must, in consultation with the Secretary, establish a training programme to qualify any eligible person who wishes to train as a pilot.
- (2) Without limiting the previous sub-clause, the training programme must include—
- (a) training in theoretical, legal and administrative aspects of pilotage with associated assessments in a form agreed between the harbourmaster and the Secretary;
 - (b) on the job training in practical aspects of pilotage within the Avatiu pilotage area.
- (3) That on the job training may be carried out by—
- (a) the harbourmaster;
 - (b) a check pilot.
- (4) If a person completes that training programme to the satisfaction of both the harbourmaster and the Secretary, that trainee pilot may act as pilot for a vessel, accompanied by a check pilot.
- (5) The trainee pilot must successfully, and safely, complete at least four vessel movements under the supervision of a check pilot, two of which must be on a different vessel, and all of which must consist of pilotage both inbound and outbound.

20 Record of training

- (1) The harbourmaster must keep a record of all training which must be readily available to the Secretary.
- (2) The check pilot must report, in writing, to the harbourmaster, on each vessel movement that a trainee pilot carries out.
- (3) That report must give full details of the level of competence shown by the trainee pilot together with full details of any incident or accident (and of any averted incident or accident).

21 Reduced training requirements in some cases

- (1) If a person has relevant prior experience or competencies, the Secretary, acting together with the harbourmaster, may waive compliance with any part of regulation 19 to the extent that both agree is appropriate in the circumstances of that person.
- (2) That person must produce documentary evidence, to the satisfaction of the administering authority, of relevant prior experience or competencies.
- (3) Those include, but are not limited to—
 - (a) prior, satisfactory, experience of pilotage within the Avatiu pilotage area;
 - (b) prior, satisfactory, experience of pilotage in any other port.

22 Training and qualification guidelines

The harbourmaster may, from time to time, issue guidelines, not inconsistent with the Act or these regulations, to make sure that training and qualification requirements under these regulations meet recognised regional and international standards.

Licensing

23 Issue of a pilot licence

- (1) Once the harbourmaster is satisfied, from the reports of check pilots, of a trainee pilot's core competence, the harbourmaster must notify both the Secretary and the trainee pilot of that, in writing.
- (2) The trainee pilot may then apply to the Secretary to be granted a pilot licence.
- (3) Prior to the issue of a pilot licence, the Secretary must seek the comments and opinions of the harbourmaster in order to make a final decision as to the competence and capability of applicant trainee pilot.
- (4) The Secretary may—
 - (a) issue pilot licences in a form decided on by the Secretary;
 - (b) modify that form from time to time as the Secretary thinks appropriate.
- (5) In this regulation **core competence** means competence and capability to a level that allows the harbourmaster, with confidence, to recommend a trainee pilot be allowed to carry out pilotage duties without a check pilot present.

24 No right to pilot licence

- (1) No-one has the right to a pilot licence under these regulations.

- (2) The harbourmaster has responsibilities under the Act and these regulations, and because of this, the final decision to issue a pilot licence to a trainee pilot depends on the degree of confidence that the harbourmaster has in that person's competence and capability.
- (3) If, despite a trainee pilot having passed all examinations and assessments, the harbourmaster (acting reasonably) has remaining concerns as to the competence or capability of that person to act as a pilot, he may report to the Secretary that the person should not be issued with a pilot licence.
- (4) If the harbourmaster does so, the Secretary must give that person an opportunity to meet with both the Secretary and the harbourmaster to address them (at that person's option, by way of a written submission), on the harbourmaster's concerns.
- (5) Unless, as a result of that meeting and any written submissions made, both the Secretary and the harbourmaster are fully satisfied as to that person's competence and capability, the Secretary must not grant a licence.

25 Validity of pilot licence

Unless sooner revoked, a pilot licence is valid for five years from the date of issue.

26 Revocation of licence

- (1) The Secretary may revoke a licence if requested to do so by its holder.
- (2) The Secretary may also revoke a licence on the following grounds—
 - (a) the Secretary becomes aware that the holder has given false information, relevant to the grant of the licence, either to the Secretary or the harbourmaster:
 - (b) the holder has demonstrated a lack of competence or capability in performing pilotage in the Avatiu pilotage area, or elsewhere, to a degree that—
 - (i) exposes either persons or property to serious risk:
 - (ii) results in an accident or incident that the Secretary believes to be serious:
 - (c) the holder is convicted of an offence under these regulations:
 - (d) the holder is convicted of any other offence that casts reasonable doubt as to the competence or capability of the holder to carry out the duties of a pilot or as to the holder's honesty.

27 Secretary to give notice of revocation of licence

- (1) The Secretary may decide to revoke a licence without—
 - (a) giving the licensee prior notification of an intention to make that decision:
 - (b) allowing the licensee an opportunity to make submissions as to that proposed decision.
- (2) However, the Secretary must give notice of its decision to the licensee once that decision has been made, and allow that licensee an opportunity to seek a review of that decision.

- (3) The Secretary, having considered the licensee's case in light of that review, may either confirm the earlier decision or reinstate the licence.

28 Conditions of licence

- (1) The Secretary may specify conditions in any licence that the Secretary grants under these regulations.
- (2) At any time after granting a licence, the Secretary may vary that licence to—
 - (a) add a condition to an unconditional licence:
 - (b) add an additional condition to a conditional licence:
 - (c) amend a condition:
 - (d) revoke a condition.
- (3) Before taking action under subsection (2), the Secretary must—
 - (a) give the holder 7 days' notice in writing of the changes proposed; and
 - (b) consider any submission in response received from the holder within 7 days following the Secretary receiving that submission.
- (4) The Secretary must give notice of the Secretary's decision to the holder once that decision has been made.

Capability

29 Medical examination

- (1) The Secretary may, at any time, require a medical examination if—
 - (a) the holder of a pilot licence has undergone medical or surgical treatment which may, in the Secretary's opinion, affect the holder's ability to safely perform the duties of pilot:
 - (b) the Secretary reasonably believes the health of the holder of a pilot licence may affect that ability.

30 Revalidation

- (1) This regulation applies if the holder of a pilot licence—
 - (a) is involved in any accident or incident that, in the Secretary's opinion makes it necessary to reconsider the competence and capability of that holder:
 - (b) has not undertaken pilotage within the Avatiu pilotage area for a period of 12 months or more.
- (2) The Secretary in consultation with the harbourmaster may request that the holder of a pilot's licence demonstrate ongoing capability and competence to hold that pilot's licence.
- (3) The Secretary may require that person to carry out 1 or more of the requirements of regulation 19. Once that person successfully has done so, the Secretary must endorse the pilot licence with the fact and date of that revalidation.
- (4) This regulation applies, with appropriate amendment to its application to any person who has been exempted under regulation 11.

Part 3

Miscellaneous and general provisions

Limitation of Liability

31 Regulations not to affect statutory protections

- (1) Nothing in these regulations affects, in any way, the protections given to persons under—
- (a) the Act 1994-95;
 - (b) the Maritime Transport Act 2008.

Fees

32 Pilotage fees

- (1) This regulation applies where the Authority fixed fees, under the Act, by means of by-laws—
- (a) for pilotage;
 - (b) for the training of pilots.
- (2) The Authority may—
- (a) impose a booking fee that is payable regardless of whether the pilotage is carried out; and
 - (b) by means of by-laws, set out the conditions (if any) under which that booking fee may be refundable.
- (3) The Authority, in fixing fees, must take into consideration all relevant matters, including—
- (a) the time taken in pilotage, calculated—
 - (i) during normal working hours, from the time the pilot leaves the wharf hardstand to the time the pilot returns to the wharf hardstand;
 - (ii) to the extent that pilotage is undertaken outside normal working hours, from the time the pilot leaves the pilot's usual place of residence to the time the pilot returns to that residence;
 - (b) any necessary tug assistance in manoeuvring the vessel;
 - (c) whether pilotage is requested out of normal working hours;
 - (d) any need for a pilot to remain on stand-by.

33 Liability to pay pilotage fees

If pilotage fees are payable under these regulations, each of the following is liable to pay those fees—

- (a) the master of the vessel;
- (b) the owner of the vessel;
- (c) the person who requests the pilotage; and
- (d) the person who is or claims to be the agent of the vessel on Rarotonga.

Offences

34 Refusing a pilot

- (1) This regulation applies to a person who is on board a vessel to which these regulations apply when that vessel is—
 - (a) in the Avatiu pilotage area; or
 - (b) within five nautical miles of that area and on course to enter it.
- (2) A person commits an offence if that person refuses a pilot access to 1 or more of the following—
 - (a) the vessel;
 - (b) its bridge;
 - (c) its navigational control area.
- (3) On conviction that person is liable to a fine not exceeding \$5,000.
- (4) The burden of proving a force majeure defence rests on the person who asserts it.
- (5) Nothing in this regulation prevents a prosecution under regulation 37 for any breach of regulation 12.

35 Interfering with pilot

- (1) This regulation applies to a person who, at the time, is on board a vessel that has taken on board a pilot who acts under these regulations.
- (2) A person commits an offence if that person, intending to interfere with the pilotage of the vessel, obstructs or interferes with that pilot.
- (3) On conviction that person is liable to a fine not exceeding \$5,000.

36 False declaration

- (1) A person commits an offence who, intending to obtain a pilot licence or an exemption under these regulations—
 - (a) makes a false declaration;
 - (b) issues, obtains or uses forged or false documents;
 - (c) obtains documents by fraud.
- (2) On conviction that person is liable to a fine not exceeding \$2,000.

37 General offence provision

- (1) This regulation applies unless another clause of these regulations creates a specific offence.
- (2) A person commits an offence who—
 - (a) contravenes any provision of these regulations;
 - (b) does something that is prohibited by these regulations;
 - (c) fails to do something prescribed by these regulations.
- (3) On conviction that person is liable to a fine not exceeding \$5,000.

Transitional and savings provisions

38 Existing pilots

- (1) The persons listed in the Schedule are entitled to hold a pilot licence under these regulations and the Secretary must issue those licences as soon as these regulations come into force.
- (2) Each of those persons is also qualified as a check pilot for the purposes of these regulations.

39 Ability to prosecute under other legislation unaffected

Nothing in these regulations affects the liability of a person to prosecution for offences under—

- (a) the Act:
- (b) the Maritime Transport Act 2008.

Schedule

List of existing pilots—

- (i) Saungaki Rasmussen
- (ii) Tuariki Henry
- (iii) Tepaki Baxter
- (iv) Aseri Douglas

Aukino Tairea

Clerk of the Executive Council

These regulations are administered by the Ports Authority.

These regulations were made on the _____ day of _____ 2017.