

# Regulatory Impact Statement

## Management of Drugs and Alcohol in the Adventure Tourism Sector

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment in consultation with the Ministry of Transport. It provides an analysis of options to strengthen the management of drug and alcohol-related safety risks across the adventure tourism industry.

In the last two years there have been two high profile accidents in the adventure tourism industry, which resulted in 20 deaths:

- The Fox Glacier tandem skydiving plane crash in September 2010; and
- The Carterton hot air ballooning accident in January 2012.

In the Transport Accident Investigation Commission (TAIC) reports into the accidents it was found that the persons providing the adventure activities, or their staff, had traces of drugs in their system. While the Fox Glacier accident report did not identify recreational drug use as a contributing factor to that accident, it is likely to be a focus of attention for the investigation of the Carterton accident, which is on-going. The outcomes of the accidents resulted in multiple fatalities, international news coverage and likely damage to New Zealand's reputation as an adventure tourism destination.

The analysis of options was commissioned by the Minister of Labour at the request of the Prime Minister. The analysis considers changes to the three regimes that cover adventure tourism activities, the Health and Safety in Employment (Adventure Activities) Regulations 2011 (the Regulations), Civil Aviation Rule Part 115 and Maritime Rule Part 82.

The regulatory problem is to ensure that systems and processes are in place to minimise the risk to adventure tourism participants from adventure tourism providers impaired due to drugs or alcohol. This must be achieved while meeting the identified objectives and without imposing undue compliance costs on adventure tourism operators.

Four options were considered:

- *Option 1:* retain the status quo with increased awareness raising and stakeholder engagement
- *Option 2:* change the audit requirements to include a requirement for operators to develop appropriate policies and processes for the management of drug and alcohol-related safety risks, without regulatory change
- *Option 3a:* an amendment to the Regulations and the Rules to require the management of drug and alcohol-related safety risks in the safety audit, through a drug and alcohol policy
- *Option 3b:* an amendment to the Regulations and the Rules to require the management of drug and alcohol-related safety risks in the safety audit, through specific processes for operators to follow

- *Option 4*: a legislative amendment to the Health and Safety in Employment Act 1992 and changes to the Rules to require mandatory drug and alcohol testing in the industry

The key assumptions were that:

- As New Zealand's second biggest export industry, reputational damage to the tourism industry has significant negative economic implications and needs to be addressed.
- Due to the diverse nature and composition of the adventure tourism industry there is a lack of material evidence of the extent of drug and alcohol problems in the industry.
- Because of the diverse nature of the adventure tourism industry, any proposed changes need to be designed so as to be effectively implemented and monitored in this environment.
- Consistency is needed across the adventure tourism industry, therefore any changes must be made across all the regimes that regulate adventure tourism activities; the Health and Safety (Adventure Activities) Regulation 2011, Maritime Rule Part 82 and Civil Aviation Rule Part 115.

The proposed *Option 3b* is consistent with objectives and the unique needs of the industry. Consultation with the industry indicated strong support for increased assurance in the adventure tourism industry's ability to manage drug and alcohol-related safety risks.

*Option 4* has the potential to impose additional costs on businesses and is not consistent with the nature and the requirements of the industry.

This Regulatory Impact Statement meets RIAT requirements.

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## Status quo

Adventure activity operators must comply with the Health and Safety in Employment Act 1992 (the HSE Act). The HSE Act requires employers to take “all practicable steps” to ensure the safety of employees and other people in the vicinity of the place of work, and requires employees to take “all practicable steps” to ensure both their own safety and that no action or inaction of the employee while at work causes harm to any other person.

Recently the Transport Accident Investigation Commission (TAIC) released reports into accidents in the adventure aviation industry which indicated that operators or their employees had been found to have recreational drugs in their system (the Fox Glacier tandem skydiving plane crash and the Carterton ballooning accident). While the Fox Glacier accident report did not identify recreational drug use as a contributing factor to that accident, the investigation of the Carterton accident is ongoing. The outcomes of the accidents resulted in multiple fatalities, international attention and likely damage to New Zealand’s reputation as an adventure tourism destination and has again called into question whether the current regulatory framework provides sufficient assurance about the safety measures that apply in the industry.

### *Health and Safety in Employment (Adventure Activities) Regulations 2011*

As a result of previous fatalities and serious harm incidents in the industry, Government directed the former Department of Labour to review safety measures in the industry. The review (undertaken in 2009/2010) found that there was an insufficient level of assurance in the adventure tourism industry around managing the heightened and inherent risk involved in adventure activities. After considering the review’s recommendations Cabinet approved the Health and Safety in Employment (Adventure Activities) Regulations 2011 (the Regulations) [CAB Min (10)30/7] and they were introduced on 10 October 2011.

The Ministry of Business, Innovation and Employment (MBIE) administers the Regulations and is currently in the implementation stage of the changes made as a result of the findings of the review.

The Regulations provide a definition of “adventure activities” that are covered by the Regulations. This can be found in Appendix One. What differentiates adventure tourism from other tourist activities is that the participant is deliberately exposed to a risk of serious harm that must be managed by the provider of the activity and the provider must have safety management systems in place to avoid this. The Regulations prescribes processes to manage this inherent risk.

The Regulations require that all adventure activities operators of specified adventure activities must obtain a safety audit and be registered before 1 November 2014, after which they can no longer operate without registration. A safety audit is valid for three years, after which the operator must be audited again.

Following the promulgation of the Regulations, all defined adventure activity providers were required to send a notification to the Department of Labour (now MBIE) that with details of their operation, in advance of a safety audit. So far MBIE has received over 450 notifications from operators.

The Regulations also recognised safety audits already completed by accredited providers and some operators will be registered on this basis.

### *Civil Aviation Rules*

The Civil Aviation Authority (CAA) administers the HSE Act for the adventure aviation sector as a whole under a designation made by the Prime Minister in 2003. In addition, adventure aviation operators also come under Civil Aviation Rule Part 115, made under the Civil Aviation Act 1990. There are currently approximately 43 adventure aviation operators.

The rules for adventure aviation activities require the adventure aviation operator to be certified and a certificate is only issued if the operator and the operator's senior staff are "fit and proper persons". Adventure aviation operators must also have organisational management systems, which are audited regularly at intervals determined by individual risk assessments. The organisational management system must include a procedure for hazard identification and a procedure for risk assessment and mitigation.

### *Maritime Rules*

A range of water-based adventure activities are covered by the Regulations, including canoeing and kayaking in dangerous waters, river boarding, and scuba diving. However, any activities for which a maritime document is required (such as jet boating and river rafting) are not covered by the Regulations. They are instead covered by HSE Act requirements and separate Maritime Rules for each activity under the Maritime Transport Act 1994.

Maritime Rule Part 82 for Commercial Jet Boat Operations - River require operators to meet the "fit and proper" criteria. Jet boat drivers must hold a licence, and also meet the "fit and proper" criteria, including holding a full medical certificate. The rules also require commercial jet boat operators to have safe operational plans, which are audited every year. There are 42 jet boating operators and it is estimated that they carry over 370,000 passengers a year.

Under Maritime Rule Part 81 the operators of commercial rafting operations are also required to have a "safe operational plan", which is audited every year. There are 42 commercial river rafting operators and it is estimated that they carry over 80,000 passengers a year.

### *The Regulations and Rules do not explicitly address drug and alcohol-related safety risks*

The HSE Act and Regulations do not contain prescriptive requirements for managing impairment from drugs or alcohol, although operators are required to take "all practicable steps" to manage hazards. Impairment by drugs and alcohol is one of the hazards that operators would be expected to identify and manage.

Enforcement action can be taken when the regulator is able to prove that the operator has failed to fulfil their obligations to take "all practicable steps" to ensure the safety of employees and any other person who is not an employee. As there is not an explicit expectation in regards to drug and alcohol management in adventure tourism, it is difficult to establish that an operator has failed to meet the standard necessary under "all practicable steps", particularly with respect to ex-ante enforcement actions.

Although Civil Aviation Rule Part 115 requires an organisational management system, the rules do not explicitly mention this risk. In response to the accidents that have given rise to the proposed regulatory changes, the CAA has already issued an expectation statement to the adventure aviation sector. The expectation statement aims for zero tolerance for impaired performance at work as a result of drug, alcohol, or substance use:

“The CAA expects that adventure aviation employers and principals will manage drug, alcohol and substance impairment as a significant hazard, and develop and implement policies and procedures that give assurance that, while performing work in a key role, neither themselves, their employees, contractors nor sub-contractors are impaired by drugs, alcohol or substances. The CAA expects assurances to be evidenced by data derived from testing.”

The rules for river rafting are already explicit about the need to manage the risks associated with drug or alcohol impairment. Commercial rafting operators are required to have a ‘safe operational plan’, which is audited every year. The plan must include “a description of how the commercial raft operator ensures that guides are medically and physically fit to work as guides, including arrangements the operator has in place to ensure that guides do not take part in any raft trip where, in the opinion of the operator, a guide is impaired.” Impairment is defined as “affected by fatigue, injury, medical condition, or by the consumption of alcohol or other drugs to such a degree that the person may be a risk to the safety of himself or herself or of any other person on a raft.”

The rules for jet boating under the Maritime Rules Part 82 do not make an explicit reference to drug and alcohol-related safety risks. Although the safe operational plan must include a section on managing hazards, which is intended to include identifying and managing the risks associated with drug or alcohol impairment, the Rules do not explicitly mention this risk.

This lack of an explicit reference creates a situation where businesses may operate below optimum safety levels by not prioritising the safety risk of drug and alcohol use, whether knowingly or unknowingly.

#### *Adventure tourism is important to New Zealand’s economy*

Tourism is New Zealand’s second biggest export earner and in 2008, 849,200 international tourists participated in adventure activities while in New Zealand<sup>1</sup>. In the year ending in March 2011 tourism generated a direct contribution to the Gross Domestic Product (GDP) of \$6.9 billion, or 3.8 percent of the GDP. The indirect value added of industries supporting tourism generated an additional \$8.6 billion.<sup>2</sup> While these figures reflect the broader tourism industry, adventure tourism plays a large role in attracting people to New Zealand.

Adventure activities are a significant part of New Zealand’s tourism attraction infrastructure. In the year to June 2011 domestic and international tourists who took part in at least one adventure tourism activity spent \$4.1 billion. In 2008 38 percent of all international tourists took part in at least one adventure tourism activity while in New Zealand.<sup>3</sup>

The tourism industry provides a substantial number of jobs. In 2010 it was estimated that the tourism industry directly and indirectly employs nearly one in ten New Zealanders in full-time equivalent jobs.<sup>4</sup>

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<sup>1</sup> Department of Labour, 2010, *Stock-take of risk management and safety provisions in the adventure and commercial sectors in New Zealand*, p.6

<sup>2</sup> Statistics New Zealand, 2011, *Tourism Satellite Account 2011: at a glance*, p.1.

<sup>3</sup> Department of Labour, 2010, *Stock-take of risk management and safety provisions in the adventure and commercial sectors in New Zealand*, p.6

<sup>4</sup> Department of Labour, 2010, *Stock-take of risk management and safety provisions in the adventure and commercial sectors in New Zealand*, p.3-4.

The adventure tourism industry is by its nature very diverse. More than 85% of tourism operators are small-to-medium enterprises (SMEs) and many have fewer than five staff members<sup>5</sup>. Many tourism operations are seasonal and employ seasonal workers or contractors to meet seasonal demand which results in high rates of staff turn-over.

There is considerable fragmentation in the industry across a variety of categories and scales; different sizes, scope, customers and geographical spread. This results in a lack of cohesion and consistency in practice across the industry, which the Regulations are aimed to address. This diverse nature and composition of the adventure tourism industry has made it hard to define the problem, as there is a lack of material evidence of drug and alcohol-related risk.

#### *Potential harm from maintaining the status quo*

Retaining the status quo through the absence of any further government action, while inexpensive, is almost certain to mean impairment from drugs and alcohol will cause or will be implicated in further accidents and incidents in the sector and lead to further harm to the appeal of New Zealand as a high quality adventure tourism destination.

Doing nothing would seem to imply that the Government condones the potential risks caused by drug and alcohol impairment. On the other hand, the diverse nature of the sector, the locations in which it operates, the varied demographic of its workforce, and the seasonal nature of many activities means that a single adjustment from the status quo is unlikely to have a significant impact. Instead, any solution will need to be flexible enough to achieve the desired level of assurance while allowing appropriate responses within the diversity of operations in the sector.

### **Problem definition**

Given the nature of the two recent high profile accidents in the adventure tourism industry, it is necessary to address the issue of drugs and alcohol and give assurance to participants that the potential harm presented by operators providing adventure activities while impaired by drugs or alcohol is explicitly addressed.

Assurance needs to be provided to protect adventure activity participants and New Zealand's reputation as a high quality adventure tourism destination. There is clear support in the sector for this.

There is no data that indicates that there is a higher risk of drug and alcohol use in the adventure tourism industry than other industries. However, as these activities already deliberately expose the participant to a risk of serious harm, the additional risk from drugs and alcohol impairment needs to be explicitly addressed. We currently cannot be sure that all operators are managing drug and alcohol-related safety risks appropriately, which places participants at risk. Operators do not know what steps they need to take or will have a limited understanding of what is required. There is also inconsistency of advice to the sector, which an explicit regulatory measure will help overcome.

The regulatory problem is to ensure that systems and processes are in place across the industry to minimise the risk to adventure tourism participants from adventure activity providers impaired due to drugs or alcohol. This must be achieved while meeting the objectives below and without imposing disproportionate compliance costs on adventure activity operators.

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<sup>5</sup> Lincoln University, 2011, *State of the Tourism Sector 2011*, p.3.



## Objectives

There are four objectives to the regulatory change proposed. These objectives target four separate aspects of the current system. The objectives are to:

- reduce the potential for serious harm and fatalities arising from adventure activity providers impaired by drugs and/or alcohol
- provide ongoing assurance for participants, operators and the industry that the New Zealand adventure tourism industry appropriately manages drug and alcohol-related safety risks
- ensure that New Zealand protects its reputation as a high quality destination for adventure activities
- ensure change is achievable and consistent with the nature of the industry and the conditions under which it operates.

There should not be an expectation that all accidents in the industry can be eliminated. However, the HSE Act includes the expectation that operators take “all practicable steps” to minimise the risks of accidents caused by operator impairment due to drugs or alcohol.

As the adventure tourism industry is a key component of the second biggest export industry for New Zealand, the options must be considered against their ability to ensure the sector is able to continue to operate viable, innovative and profitable businesses, while improving the measures for participant safety and protecting New Zealand’s reputation as an adventure tourism destination.

## Regulatory impact analysis

Five options have been analysed comprising of 3 regulatory and 2 non-regulatory options. The options are compared with the objectives in Table 1 below.

- *Option 1:* Retain the status quo with increased awareness raising and stakeholder engagement
- *Option 2:* Change the audit requirements to include a requirement for operators to develop appropriate policies and processes for the management of drug and alcohol-related safety risks, without regulatory change
- *Option 3a:* An amendment to the Regulations and the Rules to require the management of drug and alcohol-related safety risks in the safety audit, through a drug and alcohol policy
- *Option 3b:* An amendment to the Regulations and the Rules to require the management of drug and alcohol-related safety risks in the safety audit, through specific processes for operators to follow
- *Option 4:* A legislative amendment to the HSE Act and changes to the Rules to require mandatory drug and alcohol testing in the industry.

All options offer varying degrees of savings in public health costs as a result of injuries, ACC costs and lower impacts on economic growth. Additionally, preventing the very significant costs to the industry arising from reputational damage associated with loss of life further increases the value of benefits over costs.

## ***Implications, benefits and costs of each option compared***

### ***Option 1: Retain the status quo with increased awareness raising and stakeholder engagement***

This option requires no regulatory or rules changes. It would include a targeted publicity and awareness raising campaign by regulators and industry groups to highlight the hazard of drugs and alcohol in adventure tourism activities.

Retaining the status quo through the absence of any further regulatory action, while inexpensive, is likely to mean further harm to New Zealand's reputation as a high quality adventure tourism destination. The industry has been slow to develop formal processes and there is a lack of incentive to follow best practice.

### ***Option 2: Change the audit requirements to include a requirement for operators to develop appropriate policies and processes for the management of drug and alcohol-related safety risks, without regulatory change***

This is another non-regulatory option. It would require an addition to the current audit standards across the three regimes, for operators to provide evidence that drug and alcohol-related safety risks are being managed. There would be no additional cost to MBIE or the transport sector as the regulators, and would be minimal additional compliance costs for operators.

There is a risk with this option that, without a clear statement at the regulatory level of the audits' intentions, over time and in certain contexts there will be a drift in the purpose and required outcome of the policies and practice. This option would be less effective at reducing the potential for serious harm and fatalities as it does not address the enforcement issues that are present in the current framework due to the lack of explicit reference to drug and alcohol-related safety risks.

As a result, this option is unlikely to make a substantial difference to how the industry operates over time and is unlikely to provide the desired increase in the level of assurance for participants.

### ***Option 3a: An amendment to the Regulations and the Rules to require the management of drug and alcohol-related safety risks in the safety audit, through a drug and alcohol policy***

This option would require regulatory and rules-based changes to require each operator to have a drug and alcohol policy, which would be checked and verified by the safety auditor.

This option would place no, or very minor, additional compliance costs on operators, but its efficacy in terms of managing the risk of impairment is uncertain, because it describes a policy, without prescribing the desired outcome for operators.

As there is already a duty for operators who come under the Regulations or Rules to complete an audit there would not be additional compliance costs, unless an operator voluntarily engages a consultant to advise them on how to manage drug and alcohol-related safety risks and develop a policy. Instead, it is likely that "pro forma" policies would proliferate.

All operators already have a duty under the HSE Act to, among other things, provide and maintain a safe working environment, and develop procedures for dealing with any emergencies that may arise. In order to comply with this they need to have a comprehensive safety system, particularly given the heightened inherent risks in the industry. Some



operators may already fulfil the proposed requirements to manage drug and alcohol-related drug risks.

The requirement to have a policy has the same problem of not incentivising best practice and some operators may still continue to operate below optimal safety levels. Without processes in support of a policy comes the danger that operators will develop a policy to achieve compliance, but will not carry out the actions necessary to make the policy effective. As with *Option 2* it has limited effectiveness for enforcement action.

*Option 3b: An amendment to the Regulations and the Rules to require the management of drug and alcohol-related safety risks in the safety audit, through specific processes to operators to follow*

This option is similar to Option 3a but would be more explicit by requiring operators to **demonstrate** that they are monitoring and responding to drug and alcohol-related safety risks. The formal processes will prescribe the desired outcome and ensure all operators achieve best practice. The processes required can be made to suit the risks of the particular activity.

There would be some additional compliance costs for the operator and no additional costs for the regulators. In practice this option would lead to the development of a range of responses, including combinations of pre-employment and post-incident testing for cause. Random testing could be introduced voluntarily in certain circumstances in accordance with existing privacy and employment law.

By specifying the processes that an operator must follow there will be less ambiguity around what is required. This is particularly helpful for SMEs who often struggle to understand and meet non-specific performance-based requirements. As SMEs make up a majority of the industry this is an important consideration.

This option will provide consistency of outcomes, while allowing audits to provide operators with a range of options to manage, monitor for, and respond to drug and alcohol-related safety risks. These options will range from developing a policy and procedures, and may include testing (pre-employment and post incident on reasonable grounds, although some larger operators may maintain random testing for safety critical roles by consent, as allowed under the current law). The operator must choose the approach that is right for the level of risk in their business, and will be required to demonstrate why they made that decision.

Any testing will need to comply with current employment and privacy laws. The cost of testing set out in this option is not significant. Where required, a test for both drugs (up to five classes), and alcohol by an accredited agency can be carried out for under \$100 per individual.

There will be some time-costs for adventure aviation and jet boating operators who need to review their existing systems, in light of the proposed new rules and new guidance material. Some operators will have to establish new monitoring and management procedures for drug or alcohol impairment, and have them approved.

Audit costs associated with the Civil Aviation and Maritime Rules are recovered from operators. Many operators already have approved systems in place for monitoring and managing drug or alcohol impairment. Implementation of rule changes will attempt to minimise any audit and approval costs for operators, by using existing regular audit processes as much as possible. In this way costs will only be incremental.

Using Statistics New Zealand average hourly over time earnings in the private sector<sup>6</sup>, and Maritime New Zealand's and the Civil Aviation Authority's 2013/14 estimated hourly audit rates, which are similar, the below table outlines estimated costs.

*Table 1: Estimated costs for Rule changes.*

	<b>Low estimate based on a small operator who does not take up testing</b>	<b>High estimate based on a medium sized operator who takes up testing</b>
Review rule change and new guidance material	\$41 (1.5 hours)	\$82 (3 hours)
Develop new monitoring and management procedures (if required)	\$136 (5 hours)	\$272 (10 hours)
Staff training for new procedures	\$163 (3 staff plus trainer for 1.5 hours)	\$449 (10 staff plus trainer for 1.5 hours)
New equipment purchase	No testing equipment required	\$1,000 for testing equipment or 10 accredited agency tests
Auditing and approval costs	\$83 (1/2 hour)	\$499 (3 hours)
<b>Total</b>	<b>\$423</b>	<b>\$2,302</b>

Developing and implementing rule changes will have some operational costs for Maritime New Zealand and the Civil Aviation Authority. These will be managed from existing funding and resources, so there may be an impact on the delivery of the agencies' existing rules programs and other priorities.

*Option 4: A legislative amendment to the HSE Act and changes to the Rules to require mandatory drug and alcohol testing in the industry.*

This option would involve legislative change to the HSE Act and changes to the Rules to require adventure activity operators to carry out pre-employment, post-incident and potentially random testing on all employees in safety critical roles. Processes could be established through the audit, or by an independent agency or authority.

This option would provide the most assurance of the safety of the adventure tourism industry. It would also have the highest compliance costs for the operator and, depending on the means chosen, for the regulator. Mandatory testing would impose additional costs on all operators, no matter the size of operation or level of risk.

To ensure that all operators are complying with the testing requirements would impose significant enforcement costs for the regulators, in this case MBIE, Maritime New Zealand and the Civil Aviation Authority.

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<sup>6</sup> Statistics New Zealand, Quarterly Employment Survey: June 2012 quarter, table 8, average overtime hourly earnings for June 2012 quarter were \$27.23

The requirement for mandatory testing would mean that an amendment to the HSE Act would be need for this option to be implemented.

Due to the diversity of the industry, remoteness of many operators and the relatively small size of most operators, this option would be difficult for many operators to implement and for the regulator or another testing body to monitor. The location of certain businesses would make testing difficult. Small operations with few staff may not be able to comply with the requirements. Given the number of SMEs in the industry the requirement for mandatory testing would create situations were owner-operators would have to self-monitor.

For some smaller businesses this requirement would impose a high cost on operators for questionable improvements to the level of assurance.

*Table 2: Comparison of options with objectives.*

Options	Objectives				Costs for operator	Risk associated with option
	Reduce the potential for serious harm and fatalities	Provides ongoing assurance for participants, operators and the industry	Ensures that New Zealand protects its reputation as a high quality destination for adventure activities	Change is achievable and consistent with the nature of the industry		
<i>Option 1</i>	No	No	No	Yes	None	Significant to sector, participants and Government
<i>Option 2</i>	Partial	Partial	Partial	Yes	Incorporated into existing cost to operator for the safety audit	Limited, but risk to Government of not being seen to respond
<i>Option 3a</i>	Partial	Yes	Yes	Yes	Minimal/ Incorporated into existing costs of safety audit	Requirement to produce a policy could be seen as ineffective or tokenism
<i>Option 3b</i>	Yes	Yes	Yes	Yes	Increased, but in proportion to the risks	Least risk of process not being implemented by

						operators.  Least risk to Government and sector
<i>Option 4</i>	Yes	Yes	Yes	Not without considerable changes to practice and costs. Would require legislative change	Considerable additional cost for both the operator and the regulator.  Costs may not be in proportion to the risk for individual operators	Difficult to implement. Could be very expensive while not effective, and so seen as undermining the sector and Government

## Consultation

Relevant government agencies and tourism organisations were consulted and the substantive points raised are set out below. The response to their advice is also provided.

Agency	Comment	Response
Civil Aviation Authority	Agreed with regulatory change and proposed Rule changes to provide consistency across the industry.	Incorporated proposal to include Rules changes for civil aviation.
Tourism Industry Association of New Zealand	The Tourism Association of New Zealand did not agree with the regulatory amendment, and suggested that improvements could be achieved without regulatory change.	Regulatory change is needed as it provides the assurance needed in response to the high profile accidents in the industry and it provides a strong platform for enforcement and education. Alternative non-regulatory options do not provide the level of assurance required.
Maritime New Zealand	Agreed with regulatory change and proposed Rule changes to provide consistency across the industry.	Incorporated proposal to include Rules changes for maritime.
Department of the Prime Minister and Cabinet	Provided structural feedback and more information about the publicity in regards to the proposed changes.	Addressed.
Ministry of Foreign Affairs and	No comments provided.	No response required.

Trade		
Department of Conservation	No comments or concerns about the contents of the RIS or Cabinet paper.	No response required.
Treasury	Asked about the level of detail provided in the safety audit and stated that if options were too narrow they would not be effective.	A broad range of options will be provided and operators will be able to choose the option that best fits their level of risk.
Te Puni Kokiri	Asked for increased clarity around the creation of audit standards, and of the testing requirements for <i>Option 3b</i> .	Addressed and included in appendix of documents.
State Services Commission	Questioned whether pre-employment and post-incident testing would reduce the risk of accidents happening.	<p>This issue will be addressed by the policy and processes set out in the safety audit which will support any testing required.</p> <p>The publicity campaign and harm reduction project undertaken by the Ministry will raise awareness about the issue of drugs and alcohol-related safety risks.</p>
Sports New Zealand	Supported the Regulatory amendment and suggested changes to strengthen the structure of the argument.	Suggestions were considered and incorporated where appropriate.
New Zealand Maori Tourism Society	No comments provided.	No response required.
Ministry of Pacific Island Affairs	Informed the Ministry that they do not wish to be consulted on adventure tourism issues.	Noted.
MBIE - Tourism	Supported the Regulatory amendment and suggested changes to strengthen the structure of the argument.	Suggestions were considered and incorporated where appropriate.

## Conclusions and recommendations

Option 3b is the preferred approach that will best strengthen the management of drug and alcohol-related safety risks in the adventure tourism industry, while achieving the objectives at proportionate cost and in a way that best suits the nature of the adventure tourism industry.

This option requires an amendment to the Regulations and Rules. The addition would require that the audits must include processes for operators to minimise the risk of workers in the industry being affected by drugs and alcohol, and respond to situations where a worker or other person providing an adventure activity is affected by drugs or alcohol. The guidance material supporting the audits will provide a number of options for the operator to choose from.

These options will range from developing operating policy and procedures, and may include testing (pre-employment and post incident on reasonable grounds, although some larger operators may maintain random testing for safety critical roles by consent, as allowed under the current law). The operator (or groups of operators who develop their own activity specific audit standards) will choose the approach that is right for the level of risk in their business, and will be required to demonstrate why they made that decision.

Additionally, the administrative tasks associated with approving the alcohol and drugs policy and processes is the responsibility of the safety auditor and will be incorporated in the existing cost of the audits in all three regimes.

This option is most likely to provide the required degree of assurance in the safety of the adventure tourism industry without imposing undue costs on operators. Option 3b is recommended for this reason.

## Implementation

Amendments to the Health and Safety in Employment (Adventure Activities) Regulations 2011 would come into force within 28 days of promulgation.

Amendments to the audit standard are underway in anticipation of an amendment and will be Gazetted by the Secretary of Labour after promulgation.

In addition, Labour Group of the Ministry will revise the deadline for the safety audits. The Ministry will divide adventure operators into high, medium and low-risk groups and will establish a formal process for ensuring operators within all groups are audited by November 2014, beginning with those in the high-risk group. This can be achieved under the current Regulations by providing notice to operators at least 9 months in advance of the required date to complete the audit.

Adventure activity operators have been required to provide notification of their operation to the Ministry since the current Regulations came into force on 1 November 2011 and these are progressing well. So far over 450 notifications have been received.

### *Raising awareness about the new requirement in the safety audit*

The Ministry considers that the safety audit providers and industry representatives will provide a substantial amount of awareness raising to inform the industry of the new requirement under the safety audit. The Ministry will complement this with its own awareness raising initiatives funded from its baseline. This will make it clear to all adventure activity



operators that come under the Regulations that in order to obtain a safety audit they must also comply with the formal processes set out in the audit standard in relation to drug and alcohol-related safety risks.

The Ministry, Maritime New Zealand and the Civil Aviation Authority will receive regular reports from the audit providers on the operators who fail to comply with the new requirement of the safety audit within the specified period, to enable them to carry out their enforcement functions.

An amendment to Civil Aviation Rule Part 115 would explicitly state that the organisational management system needs to include a description of how the operator will manage safety risks associated with drug or alcohol impairment.

An amendment to Maritime Rule Part 82 would explicitly state that the safe operational plan needs to include a description of how the operator will manage the risks associated with drug or alcohol impairment.

These rule changes would come into force in December 2012, following rule development and consultation with industry. The existing rules for river rafting are already explicit about the need to manage the risks associated with drug or alcohol impairment, so not changes are required.

Maritime New Zealand and the Civil Aviation Authority will use the proposed rule changes as the focal point for education and awareness campaigns to highlight the risks associated with drug or alcohol impairment and the responsibility of operators to monitor and manage these risks through:

- a consultation with industry participants on the proposed rules changes
- b advice and guidance to industry participants about the rule changes, implications and expectations following rule approval and again when they come into force
- c involvement with operators individually through audit processes.

## **Monitoring, evaluation and review**

MBIE will track the progress of completed audits against the notification register to ensure that adventure activity operators are complying with requests to obtain safety audits are providing sufficient evidence of managing the risk of drug and alcohol. MBIE will divide adventure activity operators into groups by priorities based on and a formal process will be established for ensuring operators within all groups are audited by November 2014, beginning with those in the high-risk group.

The Regulations will be reviewed as part of MBIE's regular assessment of regulations. If these proposed measures do not produce the desired improvements in the industry, there is the option to move to the stronger stance provided by *Option 4*.

Maritime New Zealand, the Civil Aviation Authority and the Ministry of Transport will review the rules as part of their regular rules assessment. If these proposed measures do not produce the desired improvements in these sectors, there is the option to move to the stronger stance provided by *Option 4*.

## APPENDIX ONE: Existing Adventure Activity Regulations

### *Implementation of the existing Regulations*

The Health and Safety in Employment (Adventure Activities) Regulations 2011 (the Regulations) arose from the *Review of risk management and safety in the adventure and outdoor commercial sectors 2009/2010* (the Review) requested by the Prime Minister. The Review found that there was an insufficient level of assurance in the adventure tourism industry around managing the heightened and inherent risks involved in adventure activities.

To prevent accidents and to protect New Zealand's reputation as an international visitor destination the Adventure Activities Regulations were implemented following Cabinet decisions [CAB Min (10) 30/7] and were enacted on 10 October 2011. The Regulations requires adventure tourism operators to be registered, by obtaining a safety audit from an accredited provider, before being able to provide defined types of adventure activities. Defined activities are listed in a schedule of the Regulations.

The Regulations are administered and enforced by the Labour Group of the Ministry of Business, Innovation and Employment (the Ministry). The Regulations require that all adventure activities operators that meet the criteria in Regulation 4 must obtain a safety audit and be registered before 1 November 2014 (or earlier, if given 9 months notice by the Secretary of Labour), after which they can no longer operate without registration.

### *Adventure activities covered by the Regulations*

Under Regulation 4 in the Regulations an adventure activity is defined as an adventure activity:

- i. That is provided to a participant in return for payment; and
- ii. That is land-based or water-based; and
- iii. That involved the participant being guided, taught how, or assisted to participate in the activity; and
- iv. The main purpose of which is recreational or educational experience of the participant; and
- v. That is designed to deliberately expose the participant to a risk of serious harm that must be managed by the provider of the activity; and
- vi. In which -
  - a. Failure of the provider's management systems (such as failure of operational procedures or failure to provide reliable equipment) is likely to result in serious harm to the participant; or
  - b. The participant is deliberately exposed to dangerous terrain or dangerous waters.

Activities not covered by the Regulations include those that are not paid for or are not guided, and activities that are primarily undertaken in environments that are generally of a low risk. Activities specifically not covered include snow sports that are indoors or within patrolled ski areas.

Operators providing activities not covered by the Regulations are required to meet their general duties under the HSE Act, including establishing systems for managing hazards that arise from those activities.