



Ministry of **Transport**
TE MANATŪ WAKA

Maritime Transport Act 1994

Maritime Rules

Part 91: Amendment 2010

Pursuant to Sections 34 and 36 of the Maritime Transport Act 1994, I, Steven Joyce, Minister of Transport, hereby make the following maritime rules.

Signed at Wellington

This *13th* day of *September* 2010

By STEVEN JOYCE

Minster of Transport

Contents

Part objective	ii
Extent of consultation	ii
Entry into force	ii
Operating requirements	
1. Definitions	1
2. Reserved areas	1
Administration	
3. Savings	3

Part objective

The Maritime Rules Part 91: Amendment 2010 amends Part 91 to allow the Director Maritime of New Zealand to establish reserved areas where he or she has responsibility for navigational safety. The Director must consult with the public, interested persons and local authorities when establishing a reserved area.

The Maritime Rules are subject to the Regulations (Disallowance) Act 1989, which requires that the rules are laid before the House of Representatives. The House of Representatives may, by resolution, disallow any rules. The Regulations Review Committee is the select committee responsible for reviewing the rules.

Extent of consultation

On 15 October 2009, Maritime New Zealand published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed Part 91 amendment. A notice was also published in the *New Zealand Gazette* on 15 October 2010. Copies of the proposed amendment and the invitation to comment were sent to interested parties. Comments on the proposed amendment were requested to be made by 18 December 2009.

Sixty five submissions were received of which 8 related to changes allowing the Director of Maritime New Zealand to define reserved areas. Regional councils supported those changes.

The remaining 57 submissions related to proposed changes to rule 91.4 regarding the wearing of personal flotation devices, which are no longer included in this amendment.

Entry into force

These rules come into force on 1 April 2011.

Operating requirements

1. Definitions

Rule 91.2 is amended as follows:

- (a) by inserting the following definitions in their appropriate alphabetical order:

“**Local Authority**” has the meaning given to it by Section 5(1) of the Local Government Act 2002:

“**Territorial Authority**” has the meaning given to it by Section 5(1) of the Local Government Act 2002.”; and

- (b) by omitting the definition of “**Regional Council**” and substituting the following definition:

“**Regional Council**” has the meaning given to it by Section 5(1) of the Local Government Act 2002.”; and

- (c) by omitting the definition of “**reserved area**” and substituting the following definition:

“**reserved area**” means an area reserved for a specified navigation safety purpose—

- (a) under rule 91.22(2); or
- (b) by a regional council by a navigation bylaw; or
- (c) by the Director under rule 91.12.”.

2. Reserved areas

Rule 91.12 is revoked and the following rule substituted:

“91.12 Reserved areas

- (1) A reserved area may be defined—
 - (a) by a regional council by a navigation bylaw; or
 - (b) by the Director by notice in the *New Zealand Gazette*.
- (2) If a reserved area is defined by a regional council by a navigation bylaw, the regional council must ensure that—
 - (a) adequate signs are provided in the immediate vicinity of the reserved area that—
 - (i) clearly define the reserved area; and
 - (ii) declare the purpose for which the area has been reserved; and
 - (b) if the reserved area is marked on shore, it is marked by black posts with white horizontal bands; and
 - (c) if the reserved area is marked at sea, it is marked by black buoys with white bands.
- (3) The Director must not define a reserved area by notice in the *Gazette* unless the Director has—
 - (a) consulted the local authorities for the area in which the proposed reserved area is located about the proposed reserved area;

- (b) ensured that a notice that provides clear details of the proposed reserved area is published in 1 or more newspapers that are circulated in the region in which the proposed reserved area is located;
 - (c) given interested persons a reasonable opportunity within a period that must be specified in the notice to make submissions on the proposed reserved area; and
 - (d) considered any submissions made by local authorities during the consultation referred to in paragraph (a), or by the interested persons referred to in paragraph (c).
- (4) The Director must ensure that adequate signs that meet the requirements of subrule (2) are provided in the immediate vicinity of a reserved area defined by the Director by notice in the *New Zealand Gazette*.
 - (5) No person may obstruct another person while the other person is using a reserved area for the purpose for which it is reserved.
 - (6) If a person is using a reserved area for the purpose for which it is reserved, no other person may enter, remain in, or use the reserved area.”

Administration

3. Savings

Rule 91.22 is revoked and the following rule substituted:

“91.22 Savings

- (1) An access lane designated under regulation 10 of the Water Recreation Regulations 1979 immediately before Part 91 came into force is an access lane for the purposes of Part 91 , except to the extent that any of the following amends or revokes the designation—
 - (a) a navigation bylaw:
 - (b) a rule in a plan made under the Resource Management Act 1991:
 - (c) the Director by notice in the *New Zealand Gazette*.
- (2) An area reserved under regulation 18 of the Water Recreation Regulations 1979 immediately before Part 91 came into force is a reserved area for the purposes of Part 91 except to the extent that any of the following amends or revokes the reservation—
 - (a) a navigation bylaw:
 - (b) a rule in a plan made under the Resource Management Act 1991:
 - (c) the Director by notice in the *New Zealand Gazette*.
- (3) Any waters to which a speed limit of 5 knots applies by virtue of a notice in the *New Zealand Gazette* made in accordance with regulation 20 of the Water Recreation Regulations 1979 immediately before Part 91 came into force are not subject to the speed limit specified in rule 91.6 (but are subject to any conditions that are specified in the *New Zealand Gazette* notice), except to the extent that any of the following amends or revokes the notice—
 - (a) a navigation bylaw:
 - (b) a rule in a plan made under the Resource Management Act 1991:
 - (c) the Director by notice in the *New Zealand Gazette*.”

Part 91

Summary of Submissions

Introduction

A total of 65 submissions were received.

The first proposed amendment would make it compulsory for all persons on a recreational vessel under 6m to wear a lifejacket. However, the amendment would also give authority to the skipper to permit people to take the lifejacket off, provided there would be minimal risk if they did so.

Currently Maritime Rules Part 91 requires that suitable lifejackets be carried for each person and for them to be accessible at all times. They have to be worn in all situations where there is heightened risk as assessed by the skipper. This rule has been in place since 2003 and has had some effect both in an overall reduction in fatalities and in getting about 15% of boaties who should be wearing a lifejacket (due to increased risk) to wear them. However, some 2/3 of fatalities each year would probably be avoided if lifejackets were worn. This equates to an average of eight or nine lives per year.

The proposed amendment would make it a requirement for all persons to wear a lifejacket at all times in boats less than 6m (those identified as being most at risk of capsize or swamping in the 2008 Pleasure Boat Safety Review). The skipper, who is responsible for safety on board, would be able to permit lifejackets to be taken off at times of very low risk. In practice this can be up to about 20% of the time when on the water. Maritime New Zealand (MNZ) has been assisted by the views expressed by National Pleasure Boat Safety Forum (NPBSF).

[This amendment is no longer being proceeded with at this time].

The second and third proposed amendments would provide the Director of Maritime NZ to put in place reserved areas in places under MNZ jurisdiction. This would provide the same powers to the Director that are currently held by regional councils for the areas where they have introduced navigation safety bylaws.

Summary

Lifejacket amendment Maritime Rules Part 91.4:

16 submitters supported the amendment for lifejacket wearing without any changes.

13 submitters supported the amendment but requested fewer exemptions from wearing, or limiting the power of the skipper to permit lifejackets to be taken off.

12 submitters supported the amendment but requested additional exemptions from wearing.

16 submitters opposed the amendment.

Reserved area/savings amendments Maritime Rules Part 91.12:

7 submitters supported the amendment.

1 submitter opposed the amendment

91.4 – Personal Flotation Devices

The following support the amendment as drafted:

Surf-lifesaving NZ (Dave Hickey), F Harvey Gadd, Katherine McNabb, Whanganui River Institute (Dave Feickert), Taranaki Regional Council, Hawkes Bay Regional Council, Underwater NZ (Bruce Carter), Water Safety NZ, Safekids NZ, NZ Recreational Fishing Council, Whanganui Child Injury Prevention, NZ Trailer Boat Federation (David Beattie), Port Chalmers Yacht Club, Coastguard NZ, Shelley Monrad (Environment Waikato), David Thew,

Comments:

Surf-lifesaving NZ (Dave Hickey) support the amendments.

MNZ response: Nil

F Harvey Gadd supports the proposed amendment and feels that the rule should result in less fatal boating accidents.

MNZ response: Nil

Katherine McNabb supports the proposed amendment

MNZ response: Nil

Whanganui River Institute (Dave Feickert) support the proposed amendment. They recognise the difficulties with enforcement and submits that lifejackets need to be as comfortable as possible to encourage voluntary wearing.

MNZ response: Modern lifejackets, in particular inflatable types, are very comfortable to wear at all times.

They also submit that having a 'master' in charge of a kayak or waka ama is not relevant.

MNZ response: While this submission is outside the scope of the amendment, every boat, including those mentioned in the submission, has a person on board who is in charge who is the master (skipper) and has responsibility for safety.

Taranaki Regional Council supports this proposed amendment as an appropriate response to the increase in water related fatalities which may have been avoided if those people had been wearing a lifejacket.

MNZ response: Nil

Hawkes Bay Regional Council supports this proposed amendment and submits that it will place greater responsibility on the skipper. The council further submits that the change must be supported by a national publicity and education campaign.

MNZ response: If the amendment comes into force, MNZ will promote the change as widely as possible as far as available resources permit.

Underwater NZ (Bruce Carter) support the wording in the amendment and submit that responsibility should belong with the skipper.

MNZ response: Nil

Water Safety NZ support the amendment and submit that more work needs to be done to prevent immersion type accidents from occurring in the first place. They also submit that education is required to underpin any regulations.

MNZ response: MNZ agrees that there is a need for small craft operators to be as informed as possible about safe operation and strongly support the education initiatives undertaken by a wide range of agencies in New Zealand. MNZ also supports the need for continued investigation and analysis of accidents and incidents.

Safekids NZ support the proposed amendment regarding lifejackets as it will improve safety for children.

MNZ response: Nil

NZ Recreational Fishing Council agrees that a PFD should be worn at all times except during low risk periods. The council submits that a clearer definition of when low risk is in effect is required since all skippers may not have the necessary experience and training to make the judgement. In addition,

the council submits that wearing a full wet/dry suit should be accepted as an alternative method of buoyancy.

MNZ response: Guidance about when 'low risk' situations exist will be included in the advisory circular, which will accompany the rule. Until such a decision is made by the skipper, the proposed amendment would require all persons to wear a lifejacket. The skipper of the boat is responsible for all aspects of safety and also for the decision when to make, or continue, a voyage. MNZ believes that the skipper, who is normally the most experienced person on board, is capable of making a decision as to when the risk is sufficiently low to allow lifejackets to be removed. Rules Part 9.4(2)(c) already allows a wetsuit to be substituted for a lifejacket in dive vessels and for windsurfing Rule 91.4(2)(b).

Whanganui Child Injury Prevention support the proposed amendment and submit that the changes will make a positive contribution to preventing boating related drowning, especially in the case of children whom they submit will often tire more quickly in water. They also support the change to identify the skipper as the person who makes the decision to remove a lifejacket and that the amendment should be supported by an education programme or licensing to ensure the skipper has sufficient knowledge to make a decision.

MNZ response: The current rule requires the skipper to make an assessment as to when lifejackets should be put on. MNZ believes that when a skipper makes no decision or is unsure, lifejackets are likely to be left off. However, under the proposed amendment, all persons will be required to wear a lifejacket unless the skipper makes a decision that it can be removed. In this situation, a skipper who is unsure will not make such a decision and lifejackets will more likely be worn. MNZ agrees that there is a need for small craft operators to be as informed as possible about safe operation. Skipper licencing is outside the scope of this amendment.

NZ Trailer Boat Federation (David Beattie) submit that the skipper should be permitted to allow lifejackets on boats less than 6m to be taken off only when the boat is stationary.

MNZ response: There are many occasions when a stationary boat is at more risk than when moving. This is borne out by the evidence from the many fatal accidents that have occurred when a boat is stationary or at anchor. Equally, there are many occasions when there is minimal risk from not wearing a lifejacket on a boat underway. This information will be included in the Advisory Circular accompanying the proposed amendment.

Port Chalmers Yacht Club generally support the proposed amendment about lifejacket wearing but question the statistics provided in various reports which do not indicate whether boating fatalities are due to drowning or hypothermia. The club submits that the intensive advertising campaign on the wearing of lifejackets and persuading boat owners to check the weather before going out has had a more positive effect on behaviour than the existence of a rule. They agree with making the skipper the person responsible. They have doubts as to the effectiveness of rules and question the fatality statistics presented in the 2007 Review.

MNZ response: The 2007 Review of Pleasure Boat Safety drew evidence from accident investigation records and findings. The subsequent analysis showed that almost all fatalities were due to drowning and that a death due to hypothermia is an extremely rare event. MNZ agrees with the club that safety promotion/education is one of the two methods to improve safety, the other being regulation. MNZ believes that a combination of both is most effective.

While the overall fatality statistics alone do not provide a comprehensive report, the detailed analysis of accidents and the methods to prevent fatal outcomes is compelling evidence of the effectiveness of lifejacket wearing.

Coastguard NZ support the proposed rule change. They submit that if lifejackets are removed that they be within easy reach of each crew member and that more research is needed into the groups of vessel and craft represented into the category of 6m or less.

MNZ response: MNZ agrees with Coastguard NZ and Maritime Rules Part 91.4(1) requires lifejackets to be in a readily accessible location when not being worn. The size of each vessel involved in an accident is recorded. There was clear evidence in the 2007 review of boating safety that boats up to 6m in length were more prone to capsize/foundering than those larger than 6m.

Shelley Monrad (Environment Waikato) supports the amendment but suggests the wording in 91.4(6)(c) is unduly complex and could be written with more positive phrases.

MNZ response: Achieving terminology that is legally precise is sometimes complex. The Advisory Circular that accompanies each rule is used to explain the intent of the rule.

David Thew supports the amendment but also suggests the following regulations:

Licensing all boats above a certain size/horsepower
Annual WOF for boats
Driver licensing for all skippers on boats above a certain size/horsepower
Mandatory flares if more than 1 nautical mile off shore.
Mandatory EPIRB if more than a specified distance from shore
Mandatory VHF Marine Radio if more than a certain distance from shore
Alcohol limits that reflects the road limits.

MNZ response: Submissions 1, 2 and 3 are outside the scope of this amendment but are covered in the 2007 Review of Boating Safety. Submissions 4, 5 and 6 are also outside the scope of this amendment but are currently under consideration for a possible subsequent amendment regarding communications equipment to the rule. Alcohol limits proposed for skippers of boats underway are subject to a Ministry of Transport review of alcohol and drugs in the wider transport sector.

The following generally support the amendment and suggest fewer exemptions from wearing a lifejacket be permitted, or other similar changes.

Peter Rhodes, Alpine Kayak Guides, Terry Bach, Rex Beer, Grant and Diane Davies, Carla na Nagara (Coroner), Wellington Recreational Fishers Association (Jim Mikoz), Des Howard, Canterbury Outboard Boating Club (David Allan), Environment Southland,, Environment Canterbury, John Hieatt, Young Mariners of NZ (Neville McGrath)

Comments:

Peter Rhodes supports the proposed amendment but does not believe that there should be discretion not to wear lifejackets on any recreational vessels 6m or under. He suggests that the analysis of drowning fatalities does not show of any circumstances that would support the discretionary removal of a lifejacket.

MNZ response: MNZ believes that the skipper should have discretion to allow lifejackets to be removed just as he/she has the responsibility to say when they should be worn in vessels over 6m. The common situations where wearing a lifejacket would not significantly increase safety include:

Persons resting inside the boat in settled conditions
Anchored in a sheltered bay in calm weather
Dinghy/tender use close to shore where others are swimming

Alpine Kayak Guides submit that lifejackets should be compulsory at all times in craft under 6m and that it should not be the skippers decisions when to take them off. They submit that many recreational boating deaths over the last 10 years could have been prevented if the person was wearing a lifejacket. They submit that since there is no compulsory qualification required to skipper a boat, that the rule should be precise, and not give unqualified skippers the decision making power as there are risks that cannot be anticipated, even in low-risk situations.

MNZ response: The skipper of each recreational vessel is responsible for the safe operation of the vessel, including whether to make or continue a voyage. MNZ believes that the skipper should have discretion to allow lifejackets to be removed just as he/she has the responsibility to say when they should be worn in vessels over 6m. The common situations where wearing a lifejacket would not significantly increase safety include:

Persons resting inside the boat in settled conditions
Anchored in a sheltered bay in calm weather
Dinghy/tender use close to shore where others are swimming

Alpine Kayak Guides also submit that MNZ should make it illegal to skipper a craft without a Dayskipper certification and a registered craft.

MNZ response: This submission is outside the scope of this amendment but is covered in the 2007 Review of Boating Safety.

Alpine Kayak Guides submits that correct fitting lifejackets should be compulsory for children in all circumstances and there should be a focus on this in the proposed rule.

MNZ response: Correct size lifejackets are a requirement for each person on a recreational craft; refer Rule 91.4(1)

Alpine Kayak Guides also submit that there is a lack of presence by authorities

MNZ response: This is outside the scope of this amendment

Terry Bach supports the rule and submits that it should be applied to all craft irrespective of size that do not have lifelines or safety rails when people are on deck.

MNZ response: The most frequent cause of fatalities in recreational craft is not persons falling overboard, but boats up to 6m foundering or capsizing. In larger craft other options, such as a safety harness and jack-line, is at times a better option.

Rex Beer submits that the wearing of lifejackets on board a boat should be compulsory since many people don't understand the risks involved in recreation boating where there is not enough time to get a jacket on. He believes that compulsory wearing would be accepted by those in boats, just as wearing a helmet is accepted by cyclists.

MNZ response: MNZ believes that the skipper should have discretion to allow lifejackets to be removed just as he/she has the responsibility to say when they should be worn in vessels over 6m.

He also suggests that safety outcomes are reached when each person is responsible for their own safety.

MNZ response: The proposed amendment would make it an offence for any person not to wear a lifejacket on a boat less than 6m unless that person has the permission of the skipper to take it off.

Rex Beer also submits that vessel size should be increased to 10m as there are still significant accidents that occur in vessels over 6m.

MNZ response: Raising the size to 10m is not supported by the evidence in the 2007 Review, which shows it is very rare for boats over 6m to capsize or founder, but is more frequent for boats less than 6m.

Grant and Dianne Davies submit that it should be compulsory for people in craft under 6m to wear a lifejacket with no ability for the skipper to permit their removal.

MNZ response: MNZ and the National Pleasure Boat safety Forum believe that the skipper should have discretion to allow lifejackets to be removed just as he/she has the responsibility to say when they should be worn in vessels over 6m.

Carla na Nagara (Coroner) recommends (following an inquest into a fatal dinghy accident) that it be made mandatory for all persons on-board vessels of 12 feet (3.7m) in length or less to wear a lifejacket that safely supports an unconscious person.

MNZ response: MNZ believes that the number of drowning fatalities in boats up to 6m warrants compulsory wearing in all boats up to that length. However, there are a number of circumstances where safety would not be compromised by not wearing a lifejacket and the skipper is in the best position to decide when this applies.

Wellington Recreational Marine Fishers Association (Jim Mikoz) does not support the amendment but does support compulsory lifejacket wearing. He suggests it should be the responsibility of each person and does not believe a skipper should have the authority to allow lifejackets to be taken off.

MNZ response: The proposed amendment makes it the responsibility of each person to wear a lifejacket. MNZ believes that there are some circumstances where safety would not be compromised by not wearing a lifejacket and the skipper is in the best position to decide when this applies.

Jim Mikoz also submits that there has been insufficient consultation with particular groups that are the most risk. He believes that MNZ has not adequately researched why people don't like wearing lifejackets.

MNZ response: The consultation on this amendment has resulted in about 60 submissions from a wide range of interested parties. The amendment has been developed during the past two years in conjunction with the National Pleasure Boat Safety Forum, which represents all sectors involved in recreational boating recreational boating, including the fishing community.

Jim Mikoz submits that stipulating that a lifejacket that holds your head up out of the water is the main contributor as to why people are not wearing them whilst fishing.

MNZ response: The rule does not stipulate that only lifejackets that hold the head out of the water (Type 401 lifejacket) are permitted. All types of lifejacket (PFD) including inflatable and type 403 buoyancy vests are accepted for use to give the wearer with the widest choice while providing flotation, even though buoyancy vests do not provide the same safety level as full lifejackets.

Jim Mikoz submits that the lifejacket rule should also apply to those in paddle boats.

MNZ response: Rule 91 requires all recreational vessels, both powered and non-powered, to carry lifejackets and they must be worn at all times when there is heightened risk. The proposed amendment would apply to all recreational craft.

Des Howard submits that lifejackets should be worn whenever a boat is moving at speed, or if the conditions warrant it. He submits that the new rule should make it mandatory to wear lifejackets in these circumstances on any sized recreational craft.

MNZ response: There is no evidence that supports wearing of lifejackets on all recreational craft except in times of heightened risk.

Mr Howard also submits that the person in charge will not enforce the rule. He suggests that all persons should be responsible for wearing a lifejacket whenever a craft travels at 5 knots or more and whenever conditions require it.

MNZ response: The amendment requires all persons on a boat less than 6m to wear a lifejacket. They can only remove it if the skipper gives permission. The evidence from investigations does not indicate that there is more or less risk when on board a boat travelling at over 5 knots. Rule 91 requires that lifejackets be worn on all recreational vessels whenever conditions warrant it.

He submits that fines should be imposed for not complying.

MNZ response: Infringement notices and fines or prosecution can be carried out by council harbourmasters and M NZ staff for non-compliance with the requirements for wearing lifejackets under the navigation safety bylaws or rule.

Canterbury Outboard Boating Club (David Allan) fully supports the proposed amendments and believes they can only benefit boating and save more lives. He submits that the rule should apply to all boat under 10 metres. He also submits that there should be more enforcement officers.

MNZ response: The investigations into boating accidents from 2000 to 2006 show there is a clear risk in boats up to 6m of capsize or swamping, the prime reason for most boating fatalities. Enforcement officers are outside the scope of this amendment.

Mr Allan also submits that there should be maximum alcohol limits set and that testing of skippers should be undertaken by police.

MNZ response: The use of alcohol in all modes of transport is currently under review by the Ministry of Transport.

Environment Southland supports the proposed rule but submit that it should be compulsory for everyone on a recreational boat less than 6m to wear a lifejacket in all circumstances.

MNZ response: MNZ believes that the skipper should have discretion to allow lifejackets to be removed just as he/she has the responsibility to say when they should be worn in vessels over 6m. The common situations where wearing a lifejacket would not significantly increase safety include:

Persons resting inside the boat in settled conditions
Anchored in a sheltered bay in calm weather
Dinghy/tender use close to shore where others are swimming

Environment Southland also suggests that Part 91 should be applied nationally rather than have varying requirements contained in regional bylaws, and that bylaws should deal only with local matters.

MNZ response: This issue is outside the scope of this amendment

Environment Canterbury staff submit that allowing the skipper to be responsible for the removing of lifejackets poses a substantial problem with enforcement. They suggest the skipper should not be able to give permission for lifejackets not to be worn whenever the vessel is under way.

MNZ response: MNZ believes that the skipper should have discretion to allow lifejackets to be removed just as he/she has the responsibility to say when they should be worn in vessels over 6m. The common situations where wearing a lifejacket would not significantly increase safety include:

Persons resting inside the boat in settled conditions
Anchored in a sheltered bay in calm weather
Dinghy/tender use close to shore where others are swimming

There is clear evidence from the research undertaken in the 2007 Review to show that persons can be just as much at risk when a boat is at anchor as when it is underway.

John Hieatt submits that lifejackets should be worn at all times in craft under 6 metres while a vessel is underway and should only be allowed to be removed at the discretion of the skipper while a vessel is at rest.

MNZ response: MNZ believes that the skipper should have discretion to allow lifejackets to be removed just as he/she has the responsibility to say when they should be worn in vessels over 6m. The common situations where wearing a lifejacket would not significantly increase safety include:

Persons resting inside the boat in settled conditions
Anchored in a sheltered bay in calm weather
Dinghy/tender use close to shore where others are swimming

He also submits that some exemptions should be given in such cases like competitive rowing where a PFD would be restrictive.

MNZ response: Rowing and other competitions are specifically exempted from lifejacket wearing under rule 91.4(4) provided alternative safety provisions are in place.

Young Mariners of NZ (Neville McGrath) supports lifejacket wearing in general but submits that in the case of young people undergoing training, it should not be the skipper on the boat who makes such a decision, but parents or leaders on shore.

MNZ response: The proposed amendment does not require a skipper to make the decision to take off lifejackets. Groups involved in training are able to set their own standards to a higher requirement than that required in regulations.

The following generally support the amendment and suggest more exemptions from wearing a lifejacket be permitted, or other similar changes.

Tony Harold, Warwick Hicks, Neil Keating, Bob Rosemergy, Rowan Maxwell, Kevin O'Sullivan, Simon Davies, Ken Bilyard, Lloyd Klee, Bob Tait, Ron Bird, Kathleen Taylor

Comments:

Tony Harold submits that divers on boats less than 6m be exempt from wearing a lifejacket provided they wear diving equipment that provides at least 53 Newtons of buoyancy if the boat is within 5 miles of shore. (Diving equipment should include wetsuits, drysuits and buoyancy compensation devices)

MNZ response: Rule 91.4(2)(c) exempts divers who are wearing a full wetsuit from carrying a lifejacket within 5 miles of shore on boats less than 6m. While recognising the suggestions made by the submitter, they are outside the scope of this amendment.

Warwick Hicks submits that wearing lifejackets be mandatory only when boats are under way. He suggests that recreational fishermen will find that wearing lifejackets when at anchor is very difficult in practice.

MNZ response: A significant number of boats have capsized or been swamped while at anchor and/or fishing. Modern style lifejackets, either foam or inflatable, are not cumbersome or difficult to wear in practice.

Neil Keating submits that experienced sailors know when lifejackets need to be worn. He suggests that the rule should require only inexperienced people in boats to wear a lifejacket. *MNZ response: MNZ accepts that those people with more experience and training are in a better position to make good decisions, but the evidence obtained from 2007 Review strongly indicates that many of the most serious accidents occur with people who have many years of experience rather than newcomers to the sector.*

Bob Rosemergy from Spearfishing NZ submits that wetsuits worn by divers are suitable as an alternative to lifejackets..

He also submits that:

Divers are less likely to have consumed alcohol.

They are generally reasonable swimmers

They are used to being in water and being responsible for themselves

Sudden or long immersion in cold water is much less of a problem

A wetsuit's buoyancy is the equal of or superior to various life jackets approved for use by recreational boat users.

MNZ response: Rule 91.4(2)(c) exempts divers who are wearing a full wetsuit from carrying a lifejacket within 5 miles of shore on boats less than 6m.

Rowan Maxwell submits that the proposed rule does not take more experienced boat operators into account. He suggests that the enforcers of this rule will not recognise those who, through experience and competence, are not in any great danger on the water. He submits that a lifejacket gets the way while rowing.

MNZ response: MNZ accepts that those people with more experience and training are in a better position to make good decisions, but the evidence obtained from accident investigation and incorporated into the 2007 Review strongly indicates that many of the most serious accidents occur with people who have many years of experience rather than newcomers to the sector. Modern style lifejackets, either foam or inflatable, are not cumbersome or difficult to wear in practice. The proposed rule will provide skippers with sufficient authority to make carefully considered decisions about when it is safe not to wear a lifejacket.

Kevin O'Sullivan supports the amendment but submits that in tenders (small dinghies which people use to travel ashore) there will still be strong resistance for lifejackets to be carried onboard. He

submits that the rule should allow removable buoyant apparatus, such as removable seat cushions, in lieu of lifejackets.

MNZ response: A large majority of fatal accidents involving tenders occur to sole occupants. Almost all could have been prevented, but only if the victim had been wearing a lifejacket. In the proposed amendment, the skipper of a tender is recognised as being in the best position to decide if it is sufficiently safe not to wear a lifejacket. At least one fatality per year on average involves the use of tenders.

Simon Davies submits that the rule should not apply to boats under 6 metres that are in the Compliance Plate Certification (CPC) scheme due to the flotation requirements in these vessels. He also questions why the size of 6m was selected.

MNZ response: While vessels in the CPC scheme are designed and built to a safety standard, they are not immune to capsize or swamping. Wearing a lifejacket provides persons in the water with a considerably greater chance of survival. The 2007 Review of Pleasure Boat Safety showed clear evidence, based on accident investigations, that while boats up to 6m were prone to capsize, it was extremely rare for a boat larger than this to capsize or founder.

Ken Bilyard submits that the proposed lifejacket rule is splitting hairs in its wording.

MNZ response: MNZ does not believe that placing the onus on a skipper to decide that it is safe to remove a lifejacket, rather than deciding it is sufficiently unsafe to put it on, is splitting hairs.

Lloyd Klee supports the proposed amendment but submits that it should apply to boats less than 5 metres. He also submits that imported lifejackets should be tested prior to sale in New Zealand.

MNZ response: Accident investigations carried out as part of the 2007 Review included a significant number of vessels between 5 and 6 metres which capsized. Rule 91 requires a skipper to ensure approved lifejackets are carried on board. There is no standard associated with the sale of lifejackets, which can be used in a variety of aquatic situations.

Bob Tait submits that the amendment should apply to boats 5m and less. He supports all initiatives to limit fatalities in recreational boating, including the use of lifejackets, and promoting commonsense guidelines to the point that regulation is not required.

MNZ response: investigations carried out as part of the review included a significant number of vessels between 5 and 6 metres which capsized.

New Zealand has fewer detailed regulations than some countries and any regulations here are evidence based and clearly targeted to achieve specific goals. With support from the National Pleasure Boat Safety Forum, MNZ believes that a combination of education and regulation is the most effective approach to boating safety.

Ron Bird While stating a level of support for this amendment, Mr Bird submits that the definition of "person in charge" needs to be clarified. He suggests that rather than placing the responsibility on a 12 year old on a vessel under 6m, that the definition be expanded to include the words "suitable qualified adult who is in charge of the activity".

MNZ response: The proposed amendment requires that in boats less than 6m all persons must wear a lifejacket. Only if the skipper decides that their removal will not compromise safety, can they be taken off. There is no requirement for the skipper, whatever his/her age, to make such a decision.

Section 19 of the Maritime Transport Act states that the master of the vessel (person in charge or skipper) is responsible for safety. While there are also responsibilities upon anyone involved in a boating activity, transferring the total responsibility to a person who is not on the boat is outside the scope of this amendment.

Kathleen Taylor, (Southern Aqualung Divers Club) submits that in areas where the water temperature is so low that the risk of hyperthermia is just as great as drowning that wearing a 7mm wetsuit should

be permitted as an alternative to a lifejacket since it would provide both flotation and protect against body heat loss.

MNZ response: In situations where a wetsuit is normally worn (board sailing and diving) the carriage of a lifejacket is not mandatory under rule 91.4(2). While wearing a wetsuit in very cold water could, at times, be as effective as wearing a lifejacket, this amendment does not propose to extend the use of wetsuits beyond what is currently permitted.

The following oppose the amendment.

John Duncan, John Ridings, Perry Kostanich, Graham Carter, Patricia Dallas and David Sapiane, Graeme Coughlan, Ross Dawson, Garth Binedell, Jenny Hampton, Alan Jones, Rex Smith, Carl Mather, Stuart Barlow, Paul Hayward, Basil Orr, Rod Slater

Comments:

John Duncan is opposed to the comprehensive nature of the proposed amendment and believes that the current rule gives plenty of scope to hold the skipper of the craft to account if the passengers' lives are put at risk.

MNZ response: The current rule where the skipper must decide when it is necessary to wear a lifejacket will continue unchanged for vessels over 6m. The proposed amendment will allow the skipper to decide if it is sufficiently safe to take lifejackets off in vessels less than 6m in length. The percentage of fatalities due to capsize/foundering from accidents in vessels under 6m is out of proportion to other accident types and MNZ and the National Pleasure Boat Safety Forum are satisfied that this amendment provides sufficient scope for skippers to make decisions while providing a more effective level of safety.

He submits that the view of the National Pleasure Boat Safety Forum is not justification for an amendment to the rules and suggests that an independent group be consulted.

MNZ response: The National Pleasure Boat Safety Forum (NPBSF) supported this amendment, which is evidence based from the 2007 Review of the National Pleasure Boat Safety Strategy. The NPBSF is an independent group representing all sectors of the boating community as well as government and non-government organisations involved in boating.

Dr Duncan submits that the reasons for drowning identified in the 2007 Review about capsizing and alcohol should also be addressed by banning use of boats prone to capsizing and banning the consumption of alcohol.

MNZ response: All boats under 6m have shown that they are capable of a capsize accident with no particular type, model or style being more prone to capsize than others. There is a relationship between size and the likelihood of capsize, but capsize is a complex issue involving not only the boat, but also loading, sea conditions and hull form. The use of alcohol in all modes of transport is currently under review by the Ministry of Transport.

He further submits that wearing a lifejacket in very shallow water is unnecessary and that while recreational fishing, they are often not needed and get in the way.

MNZ response: The proposed amendment provides sufficient scope for a skipper to make a decision when the risk is sufficiently low that lifejackets need not be worn.

John Ridings opposes the compulsory wearing of lifejackets for vessels under 6m. He submits that in practice it is not feasible when working as a commercial fisherman to work with a lifejacket on. He feels that it should be the responsibility of the skipper to make persons wear lifejackets if the conditions warrant it.

MNZ response: The current rule where the skipper must decide when it is necessary to wear a lifejacket will continue unchanged for vessels over 6m. The proposed amendment will allow the skipper to decide if it is sufficiently safe to take lifejackets off in vessels less than 6m in length. The percentage of fatalities due to capsize/foundering from accidents in vessels under 6m is out of

proportion to other accident types and MNZ and the National Pleasure Boat Safety Forum are satisfied that this amendment provides sufficient scope for skippers to make decision, while providing a more effective level of safety. Modern style lifejackets, either foam or inflatable, are not cumbersome or difficult to wear in practice.

Maritime Rules Part 9.4, which deals with lifejacket carriage and wearing, applies to recreational vessels. Commercial vessels are governed by other maritime rules.

Perry Kostanich is opposed to the amendment and also to the current rule. He submits that the proposed amendment is unnecessary and that the wearing of lifejackets limits the sense of freedom that boating provides. He suggests that a properly maintained vessel and relevant experience is the best way to keep safe. He also submits that the effectiveness of lifejackets to protect life is questionable and that wearing a lifejacket when crossing a bar is necessary only on rare occasions.

MNZ response: The requirement to wear a lifejacket on every bar crossing was introduced in 2003 in Maritime Rules Part 91.4(6) and in regional bylaws. There is overwhelming evidence to show the effectiveness of lifejackets in immersion accidents, especially when a person is wearing normal clothing and/or the water is cold. Some 66% of boating fatalities in New Zealand and 80% in Britain would probably have been avoided if a lifejacket had been worn at the time.

Graham Carter submits that the wearing of lifejackets requires common-sense decision making rather than laws. He suggests publicising a number of situations when lifejackets must be worn.

MNZ response: The proposed amendment would require common sense from the skipper, who is best placed to make a decision when is safe to remove lifejackets. The advisory circular, which accompanies any rule, provides information about situations when life jackets could be removed or when they should be worn.

Patricia Dallas and David Sapiane are opposed to the compulsory wearing of lifejackets in tenders due to the likelihood of theft while the dinghy is ashore and unattended. They also submit that the small number of lives lost does not justify additional regulations.

MNZ response: The requirement for lifejackets to be carried in tenders was introduced into law in 2003. Lifejackets can be secured in a dinghy. Basic sheltered water lifejackets are available for under \$30 and other equipment in the dinghy, such as an outboard motor and oars cost significantly more and are also subject to theft.

Graeme Coughlan also opposes the amendment and submits that tenders should be exempted due to the possible theft of lifejackets.

MNZ response: Lifejackets can be secured in a dinghy. Basic sheltered water lifejackets are available for under \$30 and other equipment in the dinghy, such as an outboard motor and oars cost significantly more and are also subject to theft.

Ross Dawson submits that it is a waste of public funding to make such a minor amendment and that the wording is too subtle to be understood by many citizens. He also suggests that the current rule (Maritime Rule 91) be withdrawn.

MNZ response: Nil

Garth Binedell does not support the amendment on the grounds that government should not impose authority through rules and that the boating public is capable of deciding when a lifejacket should be worn.

MNZ response: The proposed amendment would allow the skipper to make a decision as to when it is sufficiently safe not to wear a lifejacket.

Jenny Hampton, while supporting lifejacket wearing in general, does not support the amendment until the definitions of "open waters" and "inshore waters" have been clarified in the lifejacket standard, and where various types of lifejackets can be used. She further submits that the labelling on lifejackets should include the type of activity they can be used for before any further regulations are made.

MNZ response: While outside the scope of this amendment, these suggestions will be forwarded to Standards NZ lifejacket committee for consideration when the lifejacket standard is reviewed.

Alan Jones is not in favour of the amendments to lifejacket wearing.

MNZ response: Nil

Rex Smith supports the safety promotion campaign, but he does not support the compulsory wearing of lifejackets in under 6m boats because they are very restrictive while fishing. He believes that carrying lifejackets on board provides sufficient safety.

MNZ response: Modern style lifejackets, either foam or inflatable, are not cumbersome or difficult to wear in practice. There is clear evidence that several fatalities each year would be prevented by wearing lifejackets. In many cases, these fatalities occurred on boats where lifejackets were carried but not worn.

He further submits that each adult should be responsible for themselves rather than relying on the skipper.

MNZ response: While the skipper carries responsibility for the safety for all on board, the amendment would also make wearing a lifejacket a personal responsibility without the skipper's approval to remove it.

Carl Mather submits that the amendment is unnecessary and counter-productive and that education and practical courses are a better alternative.

MNZ response: While lifejacket wearing is more common, a large majority have chosen not to do so in spite of considerable publicity and promotion of safe practice during the past 10 years. Practical courses with on-water training are readily available and strongly supported by MNZ.

Stuart Barlow is not in favour of the proposed amendment as it will be impossible to police effectively and will not prevent some people from risking their lives. He feels a better rule would be making it compulsory for all skippers and boat owners be licensed and testing before going on the water.

MNZ response: Proactive policing is carried out in some areas by regional harbourmasters, but most policing is reactive following an accident or incident. However, a majority of people are law abiding and having a clear rule provides strong guidance as to what behaviour is expected on the water.

Skipper licencing is outside the scope of this amendment but is discussed in the 2007 Review.

Paul Hayward submits (via the Kiwi Association of Sea Kayakers) that the proposed amendment is well-intentioned but unlikely to alter behaviour.

MNZ response: Since the rule requiring lifejacket carriage came into force in 2003, compliance with the law has risen to over 95% of vessels. By placing a clear onus on a skipper for making decisions about when it is sufficiently safe not to wear lifejackets, MNZ and the NPBSF believe that there will be a marked increase in lifejacket wearing in small craft.

Basil Orr supports the current rule requiring lifejacket carriage, but not the proposed amendment. He submits that it should be a personal decision for people to look after themselves and that failing to wear a lifejacket puts no one else at risk.

MNZ response: MNZ believes that there is sufficient flexibility in the proposed amendment for skippers to make a decision about when lifejackets need not be worn and that the skipper is the best person to make that choice.

Rod Slater does not support the amendment and does not believe it will solve the problem of people who get into trouble at sea.

MNZ response: Nil

91.12 – Reserved Areas

Taranaki Regional Council supports this proposed amendment.

MNZ response: Nil

Hawkes Bay Regional Council supports this proposed amendment

MNZ response: Nil

Whanganui Child Injury Prevention supports the change to provide the Director of MNZ with the power to create reserved areas for specific navigational purposes. They feel this will minimise risk through the clear separation of different activity types on a section of water

MNZ response: Nil

Shelley Monrad (Environment Waikato) supports the proposed changes relating to reserved areas and feels this would enhance the consistent management of all navigable waters.

MNZ response: Nil

Rod Slater submits that local councils should have jurisdiction in all areas not just the Auckland Region.

MNZ response: Under the Local Government Act, councils may put navigation safety bylaws in place and most have done so. MNZ applies Rule 91 where no bylaws are in force.

Environment Southland supports this proposed amendment only for areas where local authorities have local Navigation Safety Bylaws in place.

MNZ response: The proposed amendment would give the Director powers only where no regional navigation safety bylaws are in place