



# Invitation to Comment

Maritime Rules  
Part 91– Navigation Safety Rules

and wearing of PFDs



# Invitation to comment

You are invited to comment on the Draft Rule Part 91, Navigation Safety Rules.

The text of the draft rules is set out in this document, along with explanatory material on the policy, application and impact of the amendments. It may be useful to refer to Maritime Rules Part 91 – Navigation Safety Rules. This document is available from the Maritime New Zealand (MNZ) website: [www.maritimenz.govt.nz](http://www.maritimenz.govt.nz) or by phoning 0508 22 55 22.

This invitation is issued to partly fulfil formal consultation requirements under the Maritime Transport Act 1994 (MTA).

## Background to maritime rules

Maritime rules are delegated legislation made by the Minister of Transport under the MTA for the purpose of promoting maritime safety. The rules establish requirements in relation to maritime documents, and prescribe minimum standards and requirements for other maritime safety matters related to the Minister's, Authority's and Director's functions under the MTA.

Maritime rules are divided into parts, which relate to a particular maritime subject area, such as, the minimum qualifications to be held by seafarers operating within particular limits. Advisory circulars accompany many rule parts and contain information about standards, practices and procedures that Maritime New Zealand (MNZ) has established as an acceptable means of compliance.

A strict process for rules development is prescribed by the MTA, including public notification of the intention to make a rule, and stakeholder consultation on the draft text. These tasks are assigned to MNZ by the Ministry of Transport (acting on behalf of the Minister). Under these arrangements, MNZ carries out policy analysis, any informal consultation, preparation of the formal draft rule text and explanatory material, formal consultation, and preparation of the final draft rule.

Once MNZ has finalised a draft rule, it is passed to the Ministry of Transport. The Minister's officials, who apply their own policy and legal scrutiny to all draft rules, arrange for review by the House of Representatives' Regulations Review Committee and Cabinet clearance, prior to the Minister signing the rule.

Every signed rule, including details of the consultation carried out in its development, is tabled in the House of Representatives. A copy of this tabled version of the rule is sent by MNZ to all those who made submissions on the draft.

Rule development takes time. A new rule or substantive draft amendment may take up to 18 months or more to develop and to bring into law.

Electronic versions of final rules are available at no direct charge from the MNZ website. Hard copies are available for purchase from Baseline, PO Box 30309, Lower Hutt, or by phoning 0800 BASELINE.



# Purpose of this consultation document

This consultation document addresses three issues:

1. Providing the Director of MNZ with the ability to reserve an area for a specific navigational purpose (where this cannot be done by a local authority).
2. Mandatory wearing of personal flotation devices (PFDs<sup>1</sup>), and the circumstances where mandatory wearing is required.
3. Providing the Director with the ability to revoke certain measures carried over from the Water Recreation Regulations 1979.

Each of these issues is addressed in separate parts of this document.

## 1. RESERVED AREAS

### The issue

Navigation safety laws apply throughout New Zealand, either as bylaws introduced by local authorities, or as Maritime Rules Part 91 in those areas administered by MNZ. Navigation safety bylaws introduced by local authorities must not be inconsistent with maritime rules.

Local authorities can make bylaws under the Local Government Act 1974 to reserve an area of water for a specific navigational safety purpose. In effect, this allows the separation of activities, which by their interaction increase maritime risk. For example, jet skis operate at high speed, which potentially creates conflicts with other people on the water, such as those kayaking. Consequently, a local authority could set aside an area for use by jet skis. Other examples are excluding boats from an area for swimming events such as triathlons, and areas reserved for international yachting regattas.

While local authorities such as Auckland Regional Council have accepted jurisdiction for navigation safety in all waters of the region, about one-third of the country is not subject to navigation safety bylaws. In these areas, which include Taranaki and West Coast, the responsibility for navigation safety lies with Director of MNZ and Rule 91 applies. In some regions, local authorities have selected waterways in their area where navigation safety bylaws have not been put in place. Examples include the Ruamahanga River in the Wellington Regional Council area and Lake Waikaremoana in Hawke's Bay. MNZ administers navigational safety in these areas.

Unlike local authorities, MNZ does not currently have the ability to introduce reserved areas in the areas where it has responsibility for navigational safety. This amendment is intended to allow the Director to establish reserved areas where these are needed for navigational safety. The Director was not provided with this power when Maritime Rule 91 was introduced in 2003, as it was assumed that each local authority would pass navigational safety bylaws for all waters in their area.

In practice, MNZ is administering navigational safety in a number of areas, without the full complement of regulatory tools to allow it to do so effectively (particularly the ability to create a reserved area for a specific navigational purpose). Many of the waterways and coastal areas that MNZ is managing have multiple types of users, in restricted environments. While MNZ can encourage voluntary separation of different types of use, it cannot require it. MNZ cannot erect signs and install marker buoys. In practice, most water users conform with suggested separation of activities, however, separation is not universal. This creates a situation where potentially vulnerable users (eg swimmers) are expecting to not have to mix with boats, when boats can – and do – legally enter the “swimming area”. MNZ has received complaints and reports of near misses in this type of situation.

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<sup>1</sup> A buoyancy aid that is designed to be worn on the body. A lifejacket is a type of PFD.



## Application of the rule

Rule 91 is written in such a way that the navigation rules apply everywhere except where local authorities have passed navigation bylaws. Rule 91, however, provides three instances where the navigation rules apply everywhere. Examination of Rule 91.12, reserved areas, shows that this section should also apply everywhere. This section of the rule:

- prohibits obstructing another person from using a reserved area for the purpose for which it is reserved
- prohibits use of a reserved area when it is being used for its intended purpose
- requires regional councils, where a reserved area is defined by bylaws, to take certain actions, such as erecting signs.

Consequently it is proposed that Rule 91.3 – Application, which specifies the extent of application of each section of the rule, be amended to apply section 91.12 – reserved areas – universally, including in areas where navigation bylaws exist.

## Revoking the saved clause about reserved areas

The Water Recreation Regulations 1979 contained provisions about access lanes, reserved areas and speed upliftings. When Part 91 was introduced, the Water Recreation Regulations were repealed. To allow the provisions about access lanes, reserved areas and speed upliftings to continue, Part 91 incorporated these provisions through a “savings” clause – rule 91.22.

Under 91.22, the savings clause can be amended or revoked by a navigation bylaw or a rule in a plan made under the Resource Management Act 1994. However, not all local authorities exercise their ability to make navigation bylaws. In these instances, the Director of MNZ takes regulatory responsibility for navigational safety. Currently, the Director cannot amend or revoke provisions of the Water Recreation Regulations 1979, which were saved under clause 91.22.

## Proposed rule amendment

The draft rule provides the Director of MNZ with the power to create reserved areas for specific navigational purposes. The Director would be required to consult with relevant local authorities and the public generally.

This option provides the Director of MNZ with the same power to set aside areas for a specific navigational purpose as is available to local authorities (which have chosen to accept it by passing appropriate bylaws). There is potential for conflict with a regional plan, in that a regional authority may lay down rules in a regional plan about the allocation of space in the coastal marine area. To avoid any conflicts, the Director will be required to consult with relevant local authorities about any proposed reserved areas. In practice, MNZ staff work with local authorities to establish the optimal way to manage navigational safety within their area.

The Director will be required to provide signage to the same standard as is expected of local authorities, as is required in Part 91.12 (3).

It is proposed to allow the Director of MNZ to amend or revoke provisions of the Water Recreation Regulations 1979, which were saved under clause 91.22.

The draft rule provides the same level of safety management throughout New Zealand.

## Maritime (offences) regulations

No change to these regulations is planned. Under the regulations, penalties are specified for obstructing any person who is using a reserved area for a proper purpose, and for improper use of a reserved area. For both types of offences the maximum penalty for summary conviction for an individual is \$1,000, and the infringement fine for an individual is \$100.



## What will the costs of the amended rule be?

At present, MNZ actively administers navigational safety in a number of areas. The proposed rule amendment does not add to this workload, and is likely to reduce it. Signs and information leaflets are being produced, on a scale greater than is anticipated under the proposal, in an attempt to achieve voluntary co-operation on the water. Consequently, it is anticipated that providing the Director of MNZ with the power to designate reserved areas for a specific navigational purpose will reduce MNZ's costs. It is not anticipated that the proposal will add any costs to local authorities or water users.

## What are the likely benefits of the amended rule?

All of New Zealand's waterways and coastal areas will be covered by the same regulatory regime.

All parts of New Zealand waterways and coastal areas where there is increased risk to maritime safety through mixed use of vessels will be able to be regulated, to minimise the risk through clear separation of different types of activity.

## Informal consultation

This proposal has been discussed with regional council harbourmasters.

## Key stakeholders

- local authorities
- water users.



## 2. REQUIREMENT TO WEAR A PFD

### Current situation

Maritime Rule Part 91.4 (6) states:

“... no person in charge of a recreational craft may use that craft in circumstances where tides, river flows, visibility, rough seas, adverse weather, emergencies or other situations cause danger or a risk to the safety of persons on board, unless every person on board is wearing a properly secured personal flotation device of an appropriate size for that person.”

In summary, the default requirement is to not wear a personal flotation device (PFD), with mandatory wearing required only in situations of heightened risk.

The accompanying advisory circular states that it is the skipper’s responsibility to ensure all on board comply. This interpretation follows on from section 19 of the Maritime Transport Act 1994, which reads in part:

- (1) The master of a ship shall -
- a) Be responsible for the safe operation of the ship on a voyage ... ; and
  - b) Have final authority to control the ship while in command and for the maintenance of discipline by all persons on board; and
  - c) Be responsible for compliance with all relevant requirements of this Act and regulations and maritime rules made under this Act.

The thrust of the above rule has been adopted into local government bylaws in a number of parts of New Zealand, consequently the requirement can be enforced at a local level.



This option has been the basis for the gains in PFD wearing rates made to date (on which there is limited data). It provides a qualified basis for developing communications messages, where the intention is to encourage usage in a wide range of situations. Enforcement of local authority bylaws on the wearing of PFDs (which must be consistent with the rule) has proved difficult.

### The problem

#### Accident data

People using recreational boats continue to drown, and most are not wearing a PFD at the time of their death. The *2007 Review of the New Zealand Pleasure Boat Safety Strategy*<sup>2</sup> (Maritime New Zealand, 2008), published on behalf of the National Pleasure Boat Safety Forum, assessed the success of the 1999 recreational boating strategy and barriers to its implementation. It also examined changes to the strategy, which may lead to further improvements in maritime safety. The report identified that:

“The failure to wear lifejackets in small craft that are prone to capsize (those less than 6 m in length) remains the principal reason for loss of life in boating accidents, even while the increased use of lifejackets has saved lives.”

In review examined the cause of 123 recreational boating fatalities between 2000 and October 2006. The analysis showed that 63% of fatal boating accidents over the period were due to capsize/foundering. A further 17% fatal accidents involved a person falling overboard.

The review found that a critical feature of the capsize/foundering type of accident is the length of the boat. For boats 6 m or less, 75% of fatalities (79 fatalities) followed the boat capsizing/foundering. In contrast, for boats over 6 m 28% of fatalities (5 fatalities) followed the boat capsizing/foundering.

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<sup>2</sup> This report and an 8 page summary of the report, are available from the MNZ website [www.maritimenz.govt.nz](http://www.maritimenz.govt.nz). Alternatively, contact MNZ on 0508 22 55 22 to request a hard copy.

Falls overboard resulted in 10% of the fatalities in boats 6 m or less in length (11 fatalities), whereas for boats over 6 m, falls overboard resulted in 39% of fatalities (7 fatalities). For boats over 6 m, most of the falls overboard occurred were when the boat was not in motion.

Of the accidents studied, PFDs were carried on board in 50% of cases and worn in 29% of cases. It should be noted that halfway through the study period (March 2003), it became compulsory to carry a PFD suitable for each person on board. For each fatality, a rating was given, estimating the chances of the person surviving if she or he had been wearing a PFD. It was estimated that wearing PFDs could have prevented 66% of the boating fatalities, or 7 lives each year of the study period.

### **Wearing rates**

There is no reliable data available on wearing rates of PFDs. However, it is widely reported by those active in boating organisations, MNZ recreational boating staff, Coastguard staff and harbourmasters that wearing rates have increased markedly over the past few years. Anecdotal evidence suggests there is considerable variability around the country.

Increased wearing rates are attributed to a combination of the legal requirement to carry PFDs (therefore making them available in boats), publicity and information encouraging boat users to wear PFDs, and enforcement of the wearing requirement.

### **Education, enforcement and the law**

It has been demonstrated in many aspects of road safety (eg seatbelt wearing, cycle helmet use) that voluntary use of safety devices does not usually lead to high usage rates. Laws requiring mandatory use, combined with removal of barriers to use, information/publicity, and enforcement, typically lead to significantly higher usage rates than voluntary regimes.

Over the past few years MNZ has placed considerable emphasis on promoting the use of PFDs. It has used an integrated mass media campaign, including television commercials. Promotional material has also been made available at boat shows and launching ramps. The need to have an up-to-date marine weather forecast and to carry communications equipment has also been actively promoted.



Neither MNZ nor local authorities have actively enforced the wearing requirement, partly due to staffing resources. However, the requirement to carry PFDs on board is being actively enforced in some locations. Local authorities cover about 75% of the country and an estimated 90% of boating activity.

For a law to be complied with, its requirements need to be clear. The current Rule Part 91.4 (6) does not specify who is responsible for deciding whether or not a PFD should be worn – the rule must be applied in conjunction with the Maritime Transport Act 1994 to determine that the skipper is responsible for this decision.

## **Problem statement**

How can the rule be changed to encourage universal wearing of PFDs?

How can the intent of the rule be made clearer?

## **Proposed rule change**

The above issues were explored in the 2007 report from the National Pleasure Boat Safety Forum. The report suggested that mandatory wearing of PFDs in recreational craft under 6 m at all times is probably unacceptable to the maritime community. The report concluded that if the rule was amended to require skippers of recreational craft under 6 m to make a positive determination that the level of risk was acceptable for **not** wearing PFDs, before they could be removed, this would probably result in more people wearing PFDs. This course of action was recommended.

Subsequently, MNZ concluded that the rule is best written in such a way that the decision to wear or not wear a PFD is based on an objective test of risk, not a subject assessment of risk.

The forum report acknowledged the following as successful strategies, developed as a result of the 1999 recreational boating strategy:

- safety awareness – nationwide promotion
- education – information, courses
- enforcement – improved capacity
- Safe Boating Advisors – volunteers and honorary enforcement officers
- accident analysis – providing information for developing strategy.

The proposed rule change is:

*For recreational craft of 6 m or less in length the default requirement is to wear a PFD, unless:*

- *there is no significant increase in the risk to safety to any person caused by not wearing a PFD;*  
*and*
- *the skipper gives permission for PFDs not to be worn.*

*For recreational craft over 6 m in length, the current situation or status quo will continue to apply.*

For recreational craft of 6 m or less in length the default requirement will be to wear a PFD, with removal of the PFD requiring conditions to be such that there is no significant increase in risk and the skipper gives permission for PFDs to be removed. This provides a positive base for communications messages, to promote the use of PFDs. It is expected to make enforcement easier, in that there will be an objective test as to when PFD use is required.

Six metres was chosen as the “cut-off” for this proposed requirement, owing to the increased risk for vessels of 6 m or less in length.

The rule change was proposed by the National Pleasure Boat Safety Forum, following consideration of the analysis of fatal accidents.

It is also proposed to make a minor amendment to section 91.4(1), which requires the carriage of PFDs. This is to remove any ambiguity that wearing a PFD is covered by this section of the rule.

## Maritime (offences) regulations

No change to the penalties specified in these regulations is planned. However, the wording in the regulations will be updated to reflect any change to the wording in the rule. The maximum penalty for summary conviction for an individual is \$1,000 and the infringement fine for an individual is \$100.

## What will be the costs of the amended rule?

There are no additional direct costs associated the proposal. PFDs are currently required to be carried, It is only the circumstances of their use that will change.

The implementation of changes to laws that affect the public will be assisted by publicity about the change. Any publicity will be met from MNZ’s existing budget.

## What are the likely benefits of the amended rule?

With a clear basis for providing messages to the recreational boating community about wearing a PFD, it is expected that skippers of recreational craft will pay closer attention to situations that clearly involve heightened risk, when making decisions about when to wear or not wear a PFD. It is anticipated that PFD wearing rates will increase, especially with the most vulnerable boats, namely those under 6 m, thereby resulting in fewer deaths.



## Informal consultation

This proposal has been extensively discussed with National Pleasure Boat Safety Forum.

## Key stakeholders

- boating organisations
- recreational boaters
- local authorities.

## Making submissions

The deadline for making comments on the draft amendment rules is 18 December 2009 (ie your comments must be received by that date). Submissions must include the name and contact details of the person making the submission.

You may make comments by:

- **emailing** to [rules.coordinator@maritimenz.govt.nz](mailto:rules.coordinator@maritimenz.govt.nz)  
**posting** to PO Box 27 006, Wellington 6141
- **faxing** to (04) 494 8901
- **delivering** to Maritime New Zealand, Level 10, Optimisation House, 1 Grey Street, Wellington.



## Submissions are public information

Submissions are public information.

All submissions received will be acknowledged and all submitters will receive a summary of the full consultation once the rule is finalised.

Submissions provided to MNZ on this rule will be subject to the provisions of the Official Information Act 1982 (OIA). This Act requires information to be made available on request unless there is good reason, pursuant to the Act, to withhold the information.

If you do not wish any material in your submission to be released, or if you are submitting as an individual and do not wish your identity to be disclosed, please specify the material that you wish to be withheld and the grounds (as set out in the Act) for withholding it. The decision whether to release information under the terms of the Act rests with the Director of MNZ. Any decision to withhold information is subject to appeal to the Office of the Ombudsmen.

Subject to the provisions of the OIA, you can view all submissions at the Wellington office of MNZ between 8.30 am and 4.30 pm on weekdays (except statutory holidays). Please make arrangements with the Manager [of] Safety Research and Analysis by phoning (04) 494 1249 beforehand.

# Advisory Circular

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**ISSUE NO. 90-2, 15 OCTOBER 2009**

## RULE 91 – NAVIGATIONAL SAFETY RULES

### 1 GENERAL

#### 1.1 Purpose of advisory circulars

Maritime New Zealand (MNZ) advisory circulars are designed to give assistance and explanations about the standards and requirements set out in the maritime rules. However, the notes contained in advisory circulars should not be treated as a substitute for the rules themselves, which are the law.

If an advisory circular sets out how a rule can be satisfied, then compliance with that advice ensures compliance with the rule. Other methods of complying with the rule may be possible, however MNZ would first need to be satisfied that those alternative methods were of an equivalent standard to the advice in the advisory circular. The advisory circular would then be amended to include those equivalents.

This advisory circular supports Maritime Rules Part 90, and when a number reference (such as 90.2) is used it relates to a specific rule within Part 90.

#### 1.2 Application of Rule Part 91

The rule applies to all vessels inside the New Zealand 12-mile limit, including all inland waters – both natural and man-made.

This rule is of particular relevance to operators of recreational craft. It should be read in conjunction with Maritime Rules Part 22: Collision Prevention.

Regional councils can establish navigation safety bylaws (91.3). When they do this, the bylaws apply. However, such bylaws must not conflict with this maritime rule. In effect, this means that there is one consistent set of requirements throughout New Zealand. Other maritime rules, including the collision prevention rules, also apply in all waters throughout the country.

## 2. Supportive guidance to the rule part

### 2.1 Person in charge (91.2 – definitions)

Every boat has a *person in charge, or skipper*.

The Maritime Transport Act 1994 places certain responsibilities on the skipper of every vessel. The skipper is responsible for:

- the safety of the vessel
- the safety of all persons on board
- discipline on board
- complying with all maritime rules and any other regulations.

The Maritime Transport Act also states that it is an offence to operate a vessel in such a way that it causes any *“unnecessary risk or danger to persons or property”*.

### 2.2 Carrying personal flotation devices (91.4)

Using personal flotation devices (PFDs) is one of the ways of preventing loss of life for people using boats of any description.

The main requirements for carrying PFDs are:

- there should be a PFD on board for every person
- each PFD must be an appropriate size for each person
- the PFD must be in a readily accessible location.

Note: A boat capsize happens quickly and PFDs that are “tucked away” are often impossible to reach. PFDs in the forward compartment cannot be accessed after a capsize.

### 2.3 Wearing PFDs (91.4)

Where a boat is under 6 metres in length:

- a PFD must be worn, unless the skipper has given permission to not wear a PFD
- the skipper must not give permission for PFDs not to be worn, unless conditions are such that there is no significant increase in the risk to safety to any person caused by not wearing a PFD.

Where a boat is 6 metres or greater in length:

PFDs must be worn in any circumstances where risk is heightened (where not wearing them results in a significant risk to safety). Situations where there can be an increased risk include a consideration of tides, river flows, visibility, rough seas, adverse weather and emergencies. People who may be particularly vulnerable, if something goes wrong, also face increased risk, for example, non-swimmers, young children, and alcohol-affected people.

### Towing

Everyone being towed, including those water-skiing, on a “biscuit”, on a board, swimming, in a dinghy, or in a vessel that has had a mishap, must wear a PFD unless taking part in an activity such as “trick” skiing/boarding, where wearing is not a practical option. The New Zealand Water Ski Association Rules should be used as a guide for water skiing.

## 2.4 Exemptions from wearing a PFD (91.4)

There are circumstances where wearing a PFD is not practicable, or the New Zealand standard is not appropriate. A number of exemptions are provided for (Rule 91.4(2)):

**Surfboards**, when being used to surf. However, when being used as transport, the surfboard is viewed as a boat and a PFD must be worn.

**Sailboards and windsurfers**, provided a wetsuit is worn.

**Divers** on boats less than 6 metres in length, provided a wetsuit is worn and the boat is within 5 miles of shore.

**Persons training for or participating in a sporting event**, where the Director of MNZ or the relevant regional council has approved the exemption. This rule will not apply, therefore, where a boat is operated under the umbrella of a national organisation’s safety system that has been approved by the Director of MNZ. National organisations wishing to take advantage of this rule should apply in writing to the Director of MNZ, providing details of the organisation’s status and the safety systems it has in place.

**Members of foreign water sports teams**, provided the PFD is approved in their own country.

## 2.5 Standards for PFDs (91.4)

PFDs must meet New Zealand Standard (NZS) 5823: 2001 or 2005. If the Director of MNZ is satisfied that a buoyancy aid substantially complies with NZS 5823, the Director can approve that buoyancy aid – so long as it provides a minimum of 53 newtons of buoyancy.

### Matching PFDs to the activity

By adopting NZS 5823, which includes 6 different types of PFD, as the standard, boat owners are able to use a PFD that best suits their particular type of activity. For example, when sailing a small yacht, which is likely to trap a person underneath in a capsized, a type 403 buoyancy vest provides adequate flotation, while allowing the wearer to escape. Only types 401 and 406 will keep an unconscious person’s nose and mouth above water. Inflatable jackets are included in the standard, and often are the most comfortable to wear.

### Types of PFD

A PFD is a buoyancy aid designed to be worn on the body. This description, based on the definition in NZS 5823:2005, is included here to explain the difference between various devices designed to minimise the chance of drowning. The different types of PFD covered by NZ 5823/2005 are as follows:

#### **Type 401: open-waters Lifejacket**

These are used on pleasure vessels going overseas. As well as the conventionally-constructed PFD, many inflatable jackets meet this standard. This lifejacket is designed to turn an unconscious person face-up in the water.

#### **Type 402: inshore-waters lifejacket**

This type of jacket must not allow the wearer to tilt forward of vertical, but it is not guaranteed to hold an unconscious person's mouth clear of the water. It has less buoyancy than a type 401, but this makes it more comfortable to wear continuously. It is probably the most common lifejacket used on-board pleasure vessels. Some styles provide increased thermal protection. Small children's lifejackets must be fitted with a crotch strap to prevent the lifejacket riding up, or the wearer from slipping out the bottom. A crotch strap is also recommended for larger sizes.

#### **Type 403: buoyancy vest**

No collar is fitted to a buoyancy vest and it has lower buoyancy than a lifejacket. It is designed for use in aquatic sports, such as dinghy sailing.

#### **Type 405: buoyancy garment**

This is similar to a type 403 vest, but is not required to be fitted with reflective tape. It is designed for special-use situations.

#### **Type 406: specialist lifejacket**

This is designed for white water rafting or jet boating or kayaking. It has the same buoyancy rating as a type 401.

#### **Modified Type 406 standard for PFDs used in paddle craft**

Part 91 permits a modified type 406 standard for use in paddle craft applications. The modified standard does not require the device to be certified by a recognised authority, tested for resistance to petroleum, or to meet the colour requirements. These devices must be marked to say that their use is restricted to paddle craft applications only.

## 2.6 Age for operating power-driven boats (91.5)

On boats capable of 10 knots or more, a person under the age of 15 may be at the controls only if a person 15 years or over is closely supervising. This allows young persons to gain experience and learn boat handling skills.

It is possible for exemptions to be made in certain circumstances, such as the need for a younger person to use a boat for transport to school, or in some sports competitions.

Personal water craft or "jet-skis" are powered vessels.

## 2.7 Vessel speed (91.6)

Every year there are a number of fatal accidents where high speed is the most important factor involved. Keeping a safety zone between vessels travelling at speed and other water users or dangers is necessary to help prevent such accidents.

A vessel must not exceed 5 knots:

- within 50 metres of any other vessel, raft, or person in the water
- within 200 metres of the shore or any structure. This provides a safe area for swimmers and others
- within 200 metres of any vessel or raft that is flying a dive flag (Flag A of the International Code of Signals)
- where any part of person's body extends over the forepart, bow or side of the vessel.

These requirements also apply to persons who are being towed.

Exceptions to the above requirements include:

- if there is a reasonable excuse (taken as relating to safety), such as when using full power and speed when leaving a surf beach
- yachts that are racing or training for racing (can come closer than 50 metres)
- where the speed requirement has been uplifted, such as in a ski lane.

## 2.8 Wake (91.7)

Wake is caused by a combination of factors, including hull shape, speed and water depth. An essential part of every skipper's lookout duty is to monitor the wake and its effect. If a wake causes damage or injury, the skipper of the vessel creating the wake may be liable to enforcement action.

## 2.9 Water skiing (91.8 and 91.9)

Both the skipper of the vessel towing a skier and the skier are responsible for ensuring that a person (who is at least 10 years of age) is acting as lookout on the towing vessel, in addition to the skipper. Wake boards, sea biscuits, dinghies, boogie boards, and similar devices being towed, are all included in the skiing rule.

Because of the impracticality of carrying suitable navigation lights, skiing and similar activities are prohibited from sunset to sunrise on safety grounds. All vessels must display the correct lights from sunset to sunrise.

## 2.10 Access lanes and reserved areas (91.10, 91.11 and 91.12)

The collision prevention rule requiring vessels to stay as far as possible to starboard applies in access lanes.

When an access lane is not being used for its declared purpose (eg water skiing), other users must obey the usual navigation rules – as if the area was not an access lane.

When someone wishes to use an access lane for its declared purpose, other water users must leave.

Areas of water can be reserved by regional councils or the Director of MNZ for specific purposes (eg water skiing, jet boat use, racing). If a reserved area is being used for its intended purpose all other users must leave that area.

Access lanes and reserved areas are marked with posts and buoys. Signs should provide information for the public.

## 2.11 Anchoring and obstructions (91.13)

Every boat must anchor well clear of other boats already anchored. Sufficient room must be left to allow for movement with the wind and tide.

If a boat is anchored and then drags in such a way that it becomes a hazard to other anchored craft, the skipper of the craft that drags may have committed an offence.

Proper anchoring technique and the use of adequate ground tackle is the responsibility of every skipper.

## 2.12 Distance from Flag B (91.15)

Oil tankers and vessels that have explosives on board show Flag B (of the International Code of Symbols) to indicate they are potentially hazardous. You must stay at least 200 metres away from these vessels.

## 2.13 Duty to vessels over 500 tonnes (91.16)

When in a harbour area, boats under 500 tonnes must not impede the navigation of vessels over 500 tonnes. Large ships frequently need to travel at a considerable speed in order to maintain control. This is often very deceptive, with the ship appearing to be travelling much more slowly than actually it is.

The exact area where this rule applies is marked on charts.

## 2.14 River safety (91.17)

Boats must keep to the starboard side of the river channel. With limited visibility around river corners, this is particularly important for maintaining a safe approach to navigation.

As boats travelling upstream against the current are usually more easily controlled, they are required to give way to boats travelling downstream.

Skippers should check river and weather conditions before setting out. If the river is unsafe for any reason, they must not operate their vessel on the river.

## 2.15 Flags (91.18)

All vessels that have a diver operating must display code Flag A (diver flag) in such a way that it can be clearly seen from a distance of at least 200 metres. Dive flags must be a minimum of 600mm by 600mm. Those on-board the vessel need to make sure the flag is displayed in such a way that the skipper of any approaching vessel is able to see it easily.

## 2.16 Exemptions from speed requirements (91.19 and 91.20)

Any person can apply for a speed restriction to be temporarily removed for a race or other organised event. This is commonly termed a “speed uplifting.” Applications can also be made for a permanent speed uplifting. Jet boat events and races on rivers are examples of the temporary removal of speed requirements.

Where a regional council has chosen to be responsible for navigation, the application should be to that regional council. Otherwise, the application should be to the Director of MNZ.

Applicants to MNZ should allow a lead time of at least 4 weeks. Applicants will have to demonstrate they have consulted with affected parties.

## 2.17 Safe boating advisors (91.21)

The Director of MNZ appoints suitably qualified people as Safe Boating Advisors. Safe Boating Advisors aim to educate and raise awareness, as well as generally advising the boating public throughout New Zealand about safe boating practice and legal requirements, on behalf of MNZ. They also help MNZ Small Craft Safety Advisors with campaigns and events in their area, such as boat shows and fishing competitions.

Safe Boating Advisors do not have enforcement powers. However, regional authorities can also appoint Safe Boating Advisors as honorary enforcement officers.

To become a safe boating advisor, a person must have:

- a Coastguard Boatmaster Certificate (or equivalent qualification)
- been involved in boating for at least 5 years.

## General enquiries

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All of MNZ's current rules advisory circulars can be found and are available for purchase on our website [www.maritimenz.govt.nz](http://www.maritimenz.govt.nz).

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## Maritime Transport Act 1994

# Maritime (Part 91 Amendment) Rules 2009

## Part 91 – Navigation Safety Rules

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## Rules

### 1. Title

These rules are the Maritime (Part 91 Amendment) Rules 2009.

### 2. Commencement

These rules come into force on [\[28 days after the date of their notification in the Gazette\]](#).

### 3. Principal rules amended

These rules amend the Maritime Rules Part 91, Navigation Safety Rules.

### *Part 91 (Operating Requirements)*

### 4. Definitions:

Rule 91.2 is amended as follows:

- (a) The following new definitions are inserted in the appropriate place:

“**local authority** means a regional council or territorial authority:

“**territorial authority** has the same meaning as in the Local Government Act 2002:

“**regional council** has the same meaning as in the Local Government Act 2002:”

- (b) For the definition of “**Reserved area**” is substituted the following:

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

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

## 5. Personal flotation devices

For rule 91.4(1) is substituted the following:

- “(1) No person in charge of a recreational craft may use it unless there are on board at the time of use, and either worn or in a readily accessible location, sufficient personal flotation devices of an appropriate size for each person on board.

For rules 91.4(5) and (6) is substituted the following:

- “(5) Rules 91.4(1) and (6) shall not apply in respect of any sporting event, training activity, ceremonial event, or other organised recreational activity if the regional council with jurisdiction for the applicable region has given approval in writing for the craft involved to be operated contrary to rules 91.4(1) and (6). A regional council may only give approval for a specified period, and only if the regional council is satisfied that adequate safety precautions are made for rescuing any person participating in the event or activity.

- (6) (a) Every person on board a recreational craft that is less than 6 metres in length must wear a properly secured personal flotation device unless the person in charge of that recreational craft has expressly given permission for personal flotation devices not to be worn; and
- (b) the person who is in charge of a recreational craft that is less than 6 meters in length must not give permission for personal flotation devices not to be worn, unless conditions are such that there is no significant increase in the risk to safety to any person caused by not wearing a personal flotation device; and
- (c) the person in charge of a recreational craft that is 6 metres or more in length must not use that craft where conditions are such that there is a significant increase in the risk to safety to any person caused by not

wearing a personal flotation device, unless every person on board is wearing a properly secured personal flotation device.

## **6. Reserved areas**

For rule 91.12 is substituted the following:

### **“91.12 Reserved areas**

- (1) A reserved area may be defined –
  - (a) by the Regional Council by bylaw; or
  - (b) by the Director by notice published in the Gazette.
- (2) Where a reserved area is defined by bylaws, the regional council must ensure that –
  - (a) adequate signs are provided in the immediate vicinity of the 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 demarcated 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) Where the area is defined by notice in the Gazette, the Director must ensure that –
  - (a) the regional council and other local authorities are consulted about the proposed reserved area; and
  - (b) a notice that provides clear details of the proposed reserved area is published in 1 or more newspapers circulating in the region of the area to be reserved; and
  - (c) interested persons are given a reasonable time, the period of which shall be specified in the notice published in paragraph (b), to make submissions on the proposal; and

- (d) where an area is reserved, that adequate signs are provided in the immediate vicinity of the area that meet the requirements of sub-rules (2)(a), (b) and (c).
- (4) No person may obstruct any other person while that other person is using a reserved area for the purpose for which it is reserved.
- (5) If any 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 for any other purpose.”

### *Part 91 (Administration)*

#### **7. Savings**

For rule 91.22 is substituted the following:

##### **“91.22 Savings**

- (1) Any access lane designated under regulation 10 of the Water Recreation Regulations 1979 that was in force on the day before Part 91 came into force is an access lane for the purposes of Part 91 unless a navigation bylaw, rule in a plan made under the Resource Management Act 1994, or the Director by notice published in the Gazette, amends or revokes that designation.
- (2) Any area reserved under regulation 18 of the Water Recreation Regulations 1979 that was in force on the day before Part 91 came into force is a reserved area for the purposes of Part 91 unless a navigation bylaw, rule in a plan made under the Resource Management Act 1991, or the Director by notice published in the Gazette, amends or revokes that designation.
- (3) Any waters not subject to a speed limit of 5 knots by virtue of a notice in the Gazette made in accordance with regulation 20 of the Water Recreation Regulations 1979 on the date before Part 91 came into force are not subject to the speed limit specified in rule 91.6 and are subject to any conditions that were specified in the applicable Gazette notice unless a navigation bylaw, rule in a plan made under the Resource Management Act 1994, or the Director by notice published in the Gazette, amends or revokes that designation.”