

New Zealand Safer Boating Forum Position on the use of Personal Floatation Devices on Recreational Vessels

Purpose

This paper sets out the policy rationale for the NZ Safer Boating Forum's position on the use of personal floatation devices (PFDs) on recreational vessels. The position is as follows:

That all persons on recreational vessels of 6 metres or less in length wear personal floatation devices at all times while the vessel is underway.

The Forum encourages local authorities to introduce this as a mandatory requirement in local bylaws.

The grounds for the position, the evidence that supports it, and how it aligns with the strategic focus of the Forum, are covered in this document.

It is intended that a full statement of the position is formally promulgated to all regional councils, along with a recommendation that it is promoted for adoption as navigation safety bylaws are introduced or reviewed.

Background

The Safer Boating Forum is a formal network representing a cross-section of national and regional government agencies, local body groups, organisations, and the marine industry, involved in promoting recreational boating safety in New Zealand. The group has been active since 2000.

At the highest level the purpose of the Forum is to advance education and regulation focused on skipper responsibility and the four key risk factors in fatal and non-fatal recreational boating accidents. Failure to wear PFDs in small craft is one of the key risk factors¹.

The Forum's Strategic Plan for 2015 -2018 included a review of its position on the mandatory wearing of PFDs on vessel under 6 metres in length. The position decided and elaborated in this paper reflects the findings of that review, which was completed in early 2015.

¹ The other three, in order of priority are: not being able to communicate in the event of an accident, bad weather and sea conditions, and alcohol.

The context

There are an estimated 840,000 recreational vessels of 6 metres or less in length owned by New Zealanders. The breakdown is as follows:

Vessel category	Estimated number owned
Kayaks	328,484
Power boats	255,488
Dinghys	164,242
Sail boats	54,747
Jet skies	36,498
Total	839,459

Source: Research NZ, 2016.

The rationale

The proposal is premised on some fundamental certainties about the safety benefits of **wearing PFDs** – derived from available evidence, research, and fatality statistics. These are as follows:

- PFD's save lives (a Fatality Review Panel reviewed 123 fatalities that occurred between 2000 and 2006, and concluded that PFDs, if worn, would have had a high likelihood of preventing a fatality)²
- Out of all the factors that may prevent a boating fatality, carrying and wearing an appropriately fitted PFD was ranked highest³
- PFDs are not the only safety measure available to those involved in recreational boating. Others include checking the weather forecast, carrying a means of communication, avoiding alcohol and drugs, and using a vessel appropriately. But with or without those other measures being taken, the wearing of a PFD can in many situations be the difference between surviving (or surviving long enough to be located) and not surviving an unanticipated entry into the water.
- While in a few cases whether or not a PFD is worn will have no bearing on the outcome (that is; a person involved in a boating accident is dead before the benefits of a PFD can be realised), this does not diminish the strength of the general proposition that PFDs save lives.

² Boating Safety Strategy: 2007 Review of the New Zealand Pleasure Boat Safety Strategy. Maritime NZ. Page 32

³ Ibid page 71. A Fatality Review Panel assessed 28 of the 32 recreational boating fatalities that occurred over the course of the 2011/12 and 2012/13 financial years found that out of 18 factors that contribute to a safe boating trip, PFD carriage and wearing is the highest ranked in terms of having the potential to prevent a fatality

- There has been a reduction in young New Zealanders who are competent swimmers⁴, and more New Zealanders are becoming involved in recreational boating. A PFD is the most reliable safety measure for someone who cannot swim or lacks confidence in the water.
- There is wide range of PFDs available in the market today that are tailored to meet the needs of different types of boating activities, meaning the arguments of the past that PFDs are too big, bulky and uncomfortable to be worn all of the time are no longer valid.

The rationale for requiring the wearing of PFDs **on vessels of 6 metres or less** is as follows:

- The failure to wear PFDs in small craft that are prone to capsize was found in 2007 research to be the principal reason for loss of life in boating accidents⁵
- The smaller a vessel the more vulnerable it is if there are sudden changes in tides, weather or sea conditions – this can give little time for carried PFDs to be put on
- If a small vessel is overcrowded or low in the water it is particularly vulnerable to capsize or to swamping – this gives no time for carried PFDs to be put on.
- There is generally less room in small boats for the storage of PFDs and this could influence a decision not to carry them at all.

The rationale for requiring the wearing of PFDs on vessels of 6 metres or less **while underway** is as follows:

- Limiting the requirement to ‘while underway’ recognises that requiring persons on a small vessel to always wear a PFD can create safety risks, and can be an onerous requirement in some circumstances.
- Many vessels of less than 6 metres in length have cabins and can provide overnight accommodation for passengers. Requiring sleeping passengers in an anchored or rafted vessel to wear a PFD would not only create unnecessary discomfort; it would potentially create risks if they needed to move quickly through a small cabin space in the event of an emergency.
- The risk of an anchored or moored vessel capsizing, and people falling out, is much less than for a vessel that is underway. While it can happen, a vessel cannot drift further than the length of the anchor chain (or drift can be significantly inhibited when anchored), and the risk to passengers not wearing PFDs in such events is considerably reduced.

Most plainly, “while underway” is when a vessel **is being navigated** (using whatever source of power - manual or motor - applies). However, that simple definition has a ‘loophole’ where a boat is deliberately allowed to drift or be carried but is not being navigated. For example, a canoeist who lifts their paddle out of the water and allows a current to move the boat, or a person doing ‘drift’ fishing in a powered vessel with the engine off. In such situations the

⁴ Water Safety New Zealand conducted surveys in 2001 and 2008 on (inter alia) the swimming ability of 12 year old children. In the time between the two surveys there was an average 10% reduction in the number of children able to swim 200 meters. In 2001 just 21% of 12 year olds could do so.

⁵ 2014 Review of the New Zealand Pleasure Boat Safety Strategy Iain Matheson for Maritime NZ page 8

vessel is not being navigated; so linking active navigation to being 'underway' does not provide a complete definition. Therefore, the definition of "underway" includes both a) when a vessel is being navigated, or b) when a vessel is *not deliberately being prevented from moving across the water*.

The issues

Regulatory burden

The Forum's position does not increase the regulatory burden for any affected person. All bylaws require the carriage of PFDs on recreational vessels (and of sufficient number and appropriate size for each person on board). The compliance burden, which is substantively the price of lifejackets, has therefore already been imposed. Research New Zealand's survey of recreational boating indicates that 96% of boaties carry PFDs on board their boats. This suggests the regulatory burden of PFDs has already been met⁶. Requiring those who are already required to carry PFDs, to wear PFDs, therefore creates no new compliance costs, but ultimately this will depend on the extent to which the *type* of PFDs that may be required is consistent with the type owned by recreational boaties.

To the extent that time is a compliance burden, this is also not increased. It potentially takes longer to secure a PFD or stow it, than it does to put it on.

Skipper discretion

The position adopted by the Forum makes no provision for skipper discretion. Such discretion is an element of both Rules Part 91 and many local bylaws, and extends to the skipper making the call on when PFDs must be put on, or in some bylaws, when they can be removed.

Maritime Rules Part 91 leaves a decision on whether PFDs should be worn up to the skipper. This discretion is articulated as no person in charge (of the recreational vessel) being able to use that vessel in circumstances where tides, river flows, visibility, rough seas, adverse weather, emergencies or other situations cause danger or risk to the safety of persons on board, unless every person on board is wearing a properly secured (and appropriately sized) PFD. A number of the bylaws include an equivalent skipper discretion – that goes variously to the skipper being responsible for ensuring people are wearing PFDs or allowing PFDs to be removed at his/her direction.

Such discretion, or reliance on the judgement of the skipper as to whether it is safe enough to take PFDs off, or rough enough to put them on, is based on an assumption that the person in charge of the vessel (usually the owner) is well or best equipped to make such decisions. Given that, in theory, a skipper best knows their vessel, and is the best judge of their ability to manage a vessel in different situations, this discretionary approach makes sense.

However, being best placed to use discretion to best effect at all times relies on more than knowing one's boat and having a realistic understanding of one's ability. There are other factors that affect good (timely and appropriate) use of discretion. Research undertaken by

⁶ We should note however that the same research indicated that the more people carried the less likely there would be sufficient PFDs. This implies that while boaties have met the compliance cost associated with having a lifejacket (and potentially having purchased several), requiring the wearing of PFDs would expose the gap between the number owned and the required number in any given voyage. This would compel more PFDs to be purchased.

Research New Zealand indicates that 24 % of recreational boaties never (12%), not very often (4%), or some of the time (8%) check the marine forecast before they depart on a voyage. This means that at first instance a significant proportion of skippers may be taking themselves, or their passengers, into a situation where conditions could deteriorate unexpectedly, and where the discretion to put on PFDs should and could have been exercised *ahead* of time.

Given how quickly conditions can change at sea (large waves or high winds “coming out of nowhere”) it is also the case that the time between conditions being ‘safe’ and there being heightened risk can be minutes or seconds. This leaves very little time for a skipper to respond by putting on their PFD or ensuring passengers have put on theirs. If PFDs were worn at all times, this would not be an issue.

The Research New Zealand research also found that of the 14% of recreational vessel users who consume alcohol before or during a vessel outing, 10% do so some of the time, 2% do so most of the time, and 2% do so every time. This suggests that tens of thousands of recreational boaties consume alcohol as part of their boating activity. Alcohol can impair judgement and speed of reflex, which means the use of skipper discretion in respect the wearing of PFDs could regularly be being affected or impaired.

A third factor that impacts appropriate and timely use of discretion is PFD carriage. Research New Zealand found that the more passengers being carried the less likely there are enough PFDs on board. Twenty five percent of the time when two or three passengers are carried, there are not enough PFDs. This increases to 30% where there are five or more passengers. Skipper discretion to require passengers to don PFDs where the situation is assessed as of *heightened risk*, becomes something of a nonsense if there are not enough PFDs. Rule Part 91, and all current bylaws, require at a minimum that sufficient PFDs of appropriate size for every passenger are carried at all times on a recreational vessel. Notwithstanding that the research suggests this requirement is routinely not being complied with; because of the skipper discretion provision, the fact of inadequate PFDs may not be being made evident until it is too late. Removing the discretion would remove any chance of there being insufficient PFDs.

Further, fatality statistics would suggest that a generally very experienced boating public does not translate to good use of judgement at all times. Having an effective discretionary provision (that is, a provision that advances the intended public safety outcome) relies on those using such discretion having a nuanced appreciation of the various factors that contribute to risk. Judgement can be trained; as can recognition of inherent and variable risk. Public education campaigns go some way to increasing awareness of risk and improving the use of discretion, but they cannot be as effective as actual training or testing of skippers. Such testing and training is not part of the regulatory framework - and may never be - so there is limited opportunity to deliberately improve skipper discretion. Removing that discretion and simply requiring people to wear PFDs when a vessel is underway is therefore considered appropriate as an immediate and more certain regulatory response.

Finally, from a practical point of view, the enforceability of discretionary requirements, or requirements that turn on and give a right to individual judgement, are more difficult to enforce than requirements that are unequivocal. While there will be some situations where it is obvious that a state of ‘heightened risk’ exists, in many others it will be a much more subjective assessment and the onus of proof will lie with the regulatory agency.

Regional variation

The Forum’s position is not only that there should be particular PFD wearing requirements for those in small recreational vessels, but that those requirements are promoted for

consistent adoption in all navigation safety bylaws. Currently there are requirement variations across the 17 navigation safety bylaws. These include: compulsory wearing of PFDs at all times on vessels less than 6 metres in length unless the skipper gives permission to remove them; carriage of PFDs on all vessels at all times with a requirement to wear them at times of heightened risk; wearing of PFDs at all times on vessels of 6 metres or less in length; and wearing of PFDs on vessels of 6 metres or less while the vessel is underway.

Notwithstanding the variation, there is an increasing number of bylaws that have a base requirement for those on vessels of 6 metres or less to *wear* (as opposed to *carry*) PFDs. The main points of difference across the compulsory wearing bylaws are skipper discretion in respect the removal of the PFDs, and “at all times” versus “while underway”.

While no research has been conducted of recreation boaties views or experience of this regional variation, it is probable that many people boat in multiple regions and under different PFD requirements.

If the inconsistency could be analogized to seatbelts (for example, being required to always wear them in Hamilton; have them installed in Gisborne but only wear them if travelling over 80 kms; and wear them in Wellington but take them off in the city limits), this would be reasonably viewed as an absurdity. Cars move across regional boundaries at significantly higher scale and frequency than boats, but seatbelts and PFDs are closely analogous as proven safety measures that equally justify consistent regulation.

Further, it is recognised that different parts of the New Zealand coast and inland waterways are variously perilous (in terms of hazards e.g. currents, water temperature, prevailing climatic conditions), but the nature of the activities people undertake recreationally and the vessels they use are the same all over the country. This commonality of vessels and activities, together with the essential nature of PFDs as a life-saving safety measure, justifies a consistent regulatory approach.

If such consistency could be achieved this would deliver the following benefits:

- removing room for confusion, uncertainty and mixed messages to boaties
- a single regulatory framework on which to base national and regional public education about PFD requirements on small recreational craft.

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