

Maritime Transport (Class Exemption — Carriage of Personal Flotation Devices on Stand-up Paddleboards in Surfing Zone) Notice 2022

Pursuant to section 40AA(1)(b) of the Maritime Transport Act 1994, the Director of Maritime New Zealand, being satisfied of the matters set out in section 40AA(2) of that Act, gives the following notice.

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Notice

1. Title

This notice is the Maritime Transport (Class Exemption — Carriage of Personal Flotation Devices on Stand-up Paddleboards in Surfing Zone) Notice 2022.

2. Commencement

This notice comes into force on 1 December 2022

3. Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Maritime Transport Act 1994

Out back means the area of open water where waves are not breaking, that is adjacent to the area of breaking waves, where a SUP surfer may wait before attempting to ride a wave

Rules means Maritime Rules, *Part 91: Navigation Safety Rules*

Stand-up paddleboard means a recreational craft similar to a surfboard, of rigid or inflatable construction, that—

(a) provides sufficient buoyancy for the user to stand upright on the board when the board is stationary; and

(b) is powered solely manually by the SUP surfer using a paddle or by pumping (if using a board with hydrofoils),

but does not include a board that is powered by a motor of any kind

SUP means a stand-up paddleboard

SUP surfer means every person in charge of a stand-up paddleboard for the purpose of SUP surfing

SUP surfing means the act of riding breaking waves toward the shore, on a stand-up paddleboard, in a surfing zone, where the board is propelled by the slope of the advancing wave, and includes activities directly related to riding waves such as—

- (a) paddling through the transit zone;
- (b) waiting or resting out back;
- (c) attempting to catch waves;
- (d) returning to a position to catch waves, or out back

Surfing zone means an area of water lying between the shore and open water, where waves advancing toward the shore are breaking due to wave shoaling, to form rideable waves, and includes—

- (a) any body of salt or fresh water where wind or swell waves exist with sufficient magnitude to produce rideable waves;
- (b) out back;
- (c) transit zone,

but does not include—

- (d) river waves or any area where waves are formed by flowing water such as standing waves, tidal bores or upstream waves;
- (e) areas of open water where a SUP surfer may paddle an extended distance to reach the breaking waves or out back

Transit zone means the area of water between the nearest appropriate point of entry to, or exit from, the water and the surf or out back, through which a SUP surfer may transit in order to safely enter or exit the water.

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

4. Exemption for personal flotation devices

- (1) The class of person described in subclause (2) is exempt from the requirements specified in rule 91.4(1) of the Maritime Rules, *Part 91: Navigation Safety Rules*.
- (2) The class is every person in charge of a stand-up paddleboard for the purpose of SUP surfing.

5. Condition of exemption

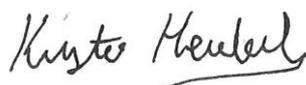
- (1) The exemption in clause 4 is granted subject to the condition set out in subclause (2).
- (2) The SUP surfer must be attached to the stand-up paddleboard by means of a board leash that is fit for purpose and suitable for the circumstances.

6. Expiry of exemption

The exemption in *clause 4* expires on:

- (a) the date that rule 91.4(1) is replaced with a rule which has a similar or same effect as this exemption or is revoked; or
 - (b) the date that this exemption is revoked or replaced; or
 - (c) 1 December 2027,
- whichever is sooner.

Dated at Wellington this 16th of November 2022



Kirstie Hewlett

Chief Executive/Director

Maritime New Zealand | Nō te rere moana Aotearoa

Statement of reasons

This notice exempts a class of person from compliance with specified requirements in Maritime Rules, *Part 91: Navigation Safety Rules* made under the Maritime Transport Act 1994 (see section 40AA(1)(b) of the MTA).

General provisions relating to the exemption

The exemption in *clause 4* of this notice relates to rule 91.4(1) of the Maritime Rules, *Part 91: Navigation Safety Rules*. The rule requires the person in charge of a recreational craft to ensure there are on board at the time of use, and in a readily accessible location, sufficient personal flotation devices of an appropriate size for each person on board.

In respect of the requirements specified in maritime rule 91.4(1), the exemption will apply to a class of person, being every person in charge of a stand-up paddleboard for the purpose of stand-up paddleboard surfing.

The exemption in *clause 4* is subject to the condition that the stand-up paddleboard surfer must be attached to the stand-up paddleboard by means of a board leash that is fit for purpose and suitable for the circumstances.

This exemption comes into force on 1 December 2022 and it expires on 1 December 2027, or the date when rule 91.4(1) has been replaced with a rule which has a similar or same effect as this exemption or is revoked, or the date that this exemption is replaced or revoked, whichever is sooner.

Director may grant exemptions from maritime rules

The Director of Maritime New Zealand, after being satisfied as to the matters set out in section 40AA of the Act, thinks it appropriate to grant the class exemption because:

- requiring persons in charge of stand-up paddleboards in the surfing zone to comply with the specified requirements to carry PFDs is inappropriate in the circumstances of the activity;
- this exemption aligns with the objective of Maritime Rules, *Part 91: Navigation Safety Rules*, which allows exemptions from personal flotation device requirements where compliance is impractical or inappropriate.

The Director is further satisfied that the exemption meets the criteria in section 40AA(2) of the Act and conditions are appropriate as:

- **No international convention requirements:** the requirements are purely domestic requirements that do not implement any international conventions. Therefore granting the exemption will not breach New Zealand's obligations under any convention (s.40AA(2)(a)).
- **One of the criteria in s.40AA(2)(b) applies:**
 - (iii) the requirement is clearly inappropriate in this particular case:
 - the stand-up paddleboard itself provides ample buoyancy for the user, and far greater buoyancy than that provided by any personal flotation device;

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- persons being attached to the stand-up paddleboard by means of a board leash that is fit for purpose and suitable for the circumstances provides a more effective safety outcome than compliance with the requirement to carry a personal flotation device;
- Part 91 does not directly reference stand-up paddleboards. It does however exclude surfboards from the requirement to carry personal flotation devices. From a practical and safety perspective, SUP surfing is more similar to surfing on a surfboard than any other activity involving a watercraft. The only practical difference is the use of a paddle to power the craft. This has no relevance to the safety considerations in relation to personal flotation device carriage or use while surfing.
- **Risk of harm to the marine environment:** there are no specific or unique environmental risks related to the requirements to carry personal flotation devices. Therefore the granting of the exemption will not significantly increase risk of harm to the marine environment (s.40AA(2)(c)).
- **Risk to safety:** granting the exemption will decrease risk to safety (s.40AA(2)(d)):
 - Personal flotation devices reduce the user's ability to participate in the sport, and have direct impact on safety by reducing the user's ability to avoid the energy of breaking waves, and to avoid being injured directly by interaction with the stand-up paddleboard in the breaking waves. Further, personal flotation devices could contribute to exhaustion during the normal participation in the sport. In the event of exhaustion, or being swept out to sea, the stand-up paddleboard remains the most important buoyancy aid;
 - The buoyancy of a stand-up paddleboard significantly exceeds that of any personal flotation device, and is sufficient to allow the user to climb onto the board and out of the water, reducing the risk of drowning and hypothermia while also increasing visibility;
 - The design and construction of stand-up paddleboards mean they cannot take on water and will not lose buoyancy even if capsized or completely submerged by a breaking wave;
 - Stand-up paddleboard surfers need to avoid being unintentionally separated from, or completely losing control of their board, even when tumbled in heavy surf. This is essential for the safety of the user to ensure the buoyancy of the board is available if needed, and for the safety of other water users who could be injured by and out of control board in the surfing zone. Therefore board leashes should always be used when stand-up paddleboard surfing. Appropriate board leashes are designed specifically for this purpose and the environment within the surfing zone.