



MINISTRY of TRANSPORT
Te MANATŪ WAKA

WELLINGTON NEW ZEALAND

PURSUANT to Section 36 of the Maritime Transport Act 1994

I, PAUL DESMOND SWAIN, Minister of Transport,

HEREBY MAKE the following maritime rules.

SIGNED AT Wellington

This

27th

day of

January

2003

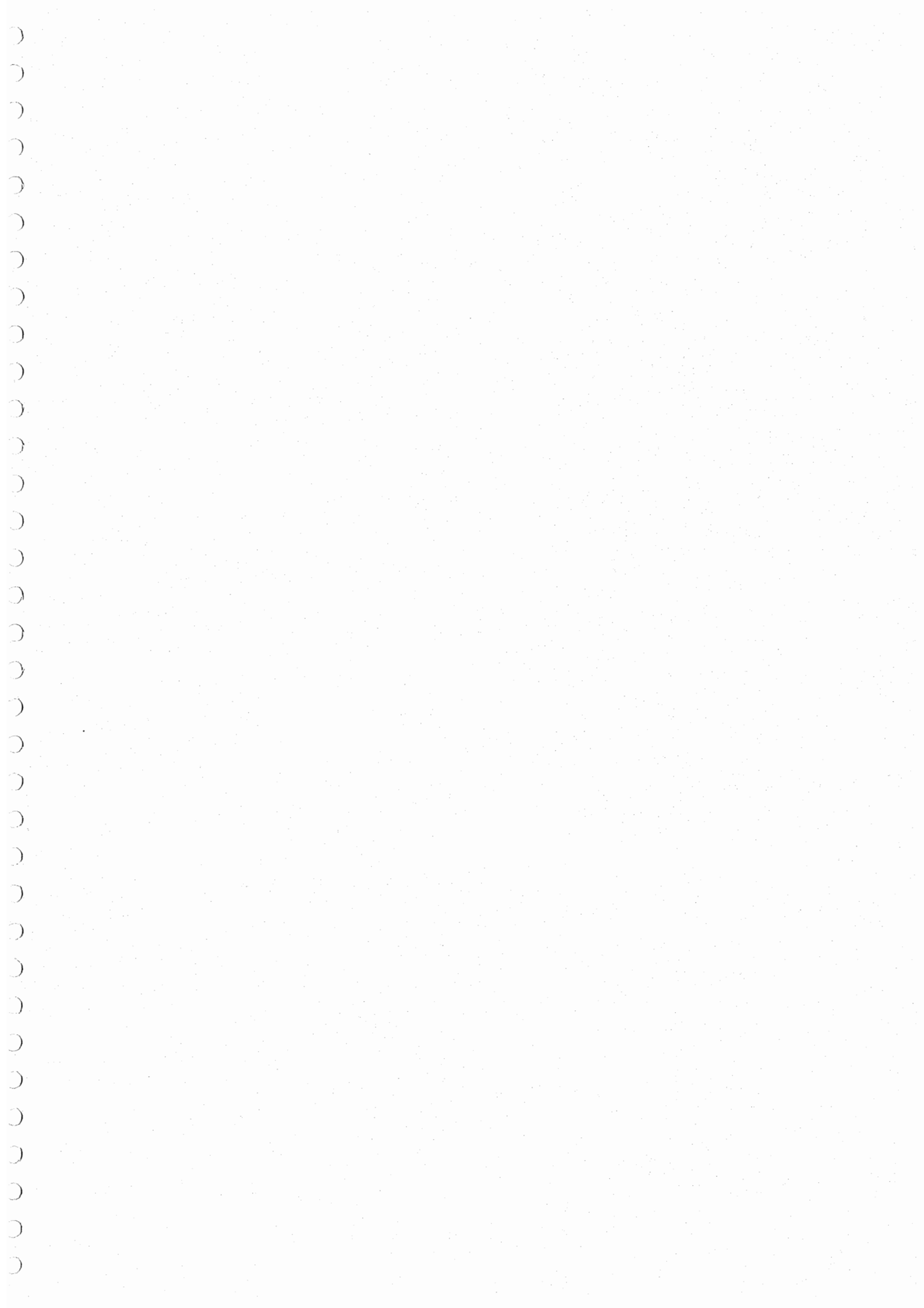
by **PAUL DESMOND SWAIN**

Minister of Transport

Maritime Rules

Part 91

Navigation Safety Rules



Maritime Transport Act 1994

Maritime Rules

PART 91

NAVIGATION SAFETY RULES

Maritime Rules

PART 91

NAVIGATION SAFETY RULES

Part Objective, Extent of Consultation and Commencement

Objective

Part 91 replaces the Water Recreation Regulations 1974. Part 91 continues the basic navigation safety rules contained in those regulations with some modifications and additions to bring the requirements up to date with modern boating conditions and safety expectations.

Part 91 introduces new requirements for the carriage of personal flotation devices (buoyancy aids designed to be worn on the body) on pleasure craft. Provision is made for exemptions to these requirements in restricted circumstances where compliance with the rule is impractical or inappropriate. The rules also make the wearing of personal flotation devices mandatory in some circumstances.

Part 91 also sets a standard for the required personal flotation devices. The standard is taken from the New Zealand standard NZS 5823:2001. The rules propose that personal flotation devices meeting other national or international standards substantially complying with the New Zealand Standard may be accepted by the Director as complying with Part 91. This is consistent with the policy applied to commercial ships. The intention of the rule in setting this standard is to encourage compliance by facilitating choice and price competitiveness while retaining an acceptable level of safety.

Part 91 also modifies and carries over some provisions from the General Harbour (Nautical and Miscellaneous) Regulations 1968 in respect of anchoring and mooring, give way rules, wakes and proximity to oil tankers and ships carrying dangerous goods.

A key object of Part 91 is to set basic national navigation standards. These in turn can be enforced locally by regional councils through consistent navigation safety bylaws made under the Local Government Act 1974. Regional variation is permitted in the navigation safety bylaws through mechanisms prescribed in Part 91. Regional councils can address local navigation safety issues through mechanisms such as temporary and permanent reserved areas, access lanes and speed upliftings.

The basis for Part 91 is found in section 36(t) and (tb) of the Maritime Transport Act 1994.

Extent of Consultation

To establish consistency of navigation safety bylaws around the country, a sub-group of the Harbourmasters Special Interest Group was formed in 2000. This group co-ordinated the drafting of a set of model navigation safety bylaws. The Maritime Safety Authority participated in this group and the Invitation to Comment for Part 91 was based on the model bylaws that resulted from this process.

On 15 December 2001 the Maritime Safety Authority published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed Part 91. A notice was also published in the *New Zealand Gazette* on 13 December 2001. The Authority then made its Invitation to Comment and draft Part 91 available to the public with 310 copies being sent automatically to interested parties. Comments on the Part were requested to be made by 15 March 2002.

Ninety six written submissions were received on Part 91. All submissions and any verbal comments were considered, and where appropriate, the proposed rules were amended to take account of the comments made.

Commencement

Part 91 as amended was referred to and signed by the Minister of Transport.

Part 91 comes into force 28 days after notification in the Gazette.

Maritime Rules

PART 91

NAVIGATION SAFETY RULES

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Amendments to Part 22

General

91.1 Entry into force

Part 91 comes into force 28 days after notification in the *Gazette*.

91.2 Definitions

In these rules, unless the context otherwise requires:

“Access lane” means an access lane referred to in rule 91.22(1) or an area designated as an access lane by a regional council pursuant to navigation bylaws:

“Commercial vessel” means a vessel that is not -

- (a) a pleasure craft; or
- (b) solely powered manually; or
- (c) solely powered by sail:

“Director of Maritime Safety” means the person who is for the time being the Director of Maritime Safety under section 439 of the Maritime Transport Act 1994:

“Explosive” means an explosive or an authorised explosive as defined in section 222 of the Hazardous Substances and New Organisms Act 1996, other than explosives of the first division of the sixth (ammunition) class or the third division of the seventh (firework) class as defined in Schedule 7 of the Hazardous Substances and New Organisms Act 1996:

“Fishing vessel” means a ship used for catching fish, whales, seals, or other living resources of the sea for profit; and includes a ship that is recognised by the Director as being engaged in fisheries research:

“Flag A” means flag A of the International Code of Signals (the divers flag), a burgee (swallow-tailed) flag coloured in white and blue, with white to the mast, or a rigid equivalent:

“Flag B” means the flag B of the International Code of Signals, a burgee (swallow-tailed) flag coloured in red, or a rigid equivalent:

“Harbourmaster” means a person appointed as harbourmaster pursuant to the Harbours Act 1950 or the Local Government Act 1974:

“Internal waters” means the internal waters of New Zealand as defined by section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977:

“Length” in relation to a vessel, means length overall:

“Master” means any person (except a pilot) having command or charge of a vessel:

“Navigate” means the act or process of managing or directing the course of a vessel on, through, over, or under the water:

“Navigation bylaw” means a bylaw continued by section 15(1)(b) of the Local Government Amendment Act (No 2) 1999 or a navigation bylaw made under section 684B of the Local Government Act 1974:

“New Zealand waters” means —

- (a) the territorial sea of New Zealand; and
- (b) the internal waters of New Zealand; and
- (c) all rivers and other inland waters of New Zealand:

“On the surface of the water” in respect of a seaplane that is taking off from, or alighting on the water, means the seaplane is in contact with the water surface:

“Owner”,—

- (a) in relation to a ship registered in New Zealand under the Ship Registration Act 1992, means the registered owner of the ship:
- (b) in relation to a ship registered in any place outside New Zealand, means the registered owner of the ship:
- (c) in relation to a fishing ship, other than one to which paragraph (a) or paragraph (b) of this definition applies, means the person registered as the owner under section 57 of the Fisheries Act 1983:
- (d) in relation to a ship to which paragraph (a) or paragraph (b) or paragraph (c) of this definition applies, where, by virtue of any charter or demise or for any other reason, the registered owner is not responsible for the

management of the ship, includes the charterer or other person who is for the time being so responsible:

- (e) in relation to an unregistered ship or a registered ship that does not have a registered owner, means the person who is for the time being responsible for the management of the ship:

“Person in charge of a vessel” means the master:

“Personal flotation device” means any serviceable buoyancy aid that is designed to be worn on the body and that is certified by a recognised authority as meeting –

- (a) type 401, 402, 403, 404, 405, or 408 in NZ Standard 5823:1989 or NZ Standard 5823:2001; or
- (b) a national or international standard that the Director is satisfied substantially complies with types 401, 402, 403, 404, 405, or 408 of the NZ Standard 5823:1989 or NZ Standard 5823:2001:

“Pleasure craft” means a vessel that is used exclusively for the owner’s pleasure or as the owner’s residence, and is not offered or used for hire or reward; but does not include –

- (a) a vessel that is provided for transport or sport or recreation by or on behalf of any institution, hotel, motel, place of entertainment, or other establishment or business:
- (b) a vessel that is used on any voyage for pleasure if it is normally used or intended to be normally used as a fishing vessel or for the carriage of passengers or cargo for hire or reward:
- (c) a vessel that is operated or provided by any club, incorporated society, trust, or business:

“Power-driven vessel” means any vessel propelled by machinery:

“Proper speed” means speed through the water:

“Publicly notify” means to publish a notice in one or more daily newspapers circulating in the region the waters of which are subject to an application under rule 91.19 or rule 91.20:

“Recognised authority” means an authority that the Director considers is competent to certify a personal flotation device’s compliance with a standard:

“Recreational craft” means a vessel that is –

- (a) a pleasure craft; or
- (b) solely powered manually; or
- (c) solely powered by sail:

“Regional council” has the meaning given to the term “regional council” in section 2 of the Local Government Act 1974; and includes any territorial authority referred to in section 16(1) of the Local Government Amendment (No 2) 1999:

“Reserved area” means a permanently reserved area referred to in rule 91.22(2) or an area of water reserved by a regional council by navigation bylaw for a specified navigation safety purpose:

“Reward” means the payment to or for the benefit of the owner or master of a vessel, of a contribution towards the expenses of a voyage by or on behalf of persons; but does not include payment of any contributions by part owners of the vessel or by persons engaged as bona fide crew members:

“River” includes a stream and any modified or artificial watercourse; but does not include any part of a river within the ebb and flow of the tide at ordinary spring tides:

“Structure” means any building, equipment, device, or other facility made by people and which is fixed to land:

“Support vessel” means any vessel used for coaching, marshalling and rescue attendance for training, regattas and competitions:

“Territorial sea” means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977:

“Vessel” means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes –

- (a) a barge, lighter, or other like vessel:
- (b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates:

- (c) a submarine or other submersible;
- (d) a seaplane while it is on the surface of the water.

91.3 Application

- (1) Rules 91.4(3), 91.5(4) and 91.21 apply everywhere in New Zealand.
- (2) The rest of Part 91 applies to –
 - (a) areas that are not subject to navigation bylaws; and
 - (b) regions where navigation bylaws are in force, if the bylaws are inconsistent with Part 91, in which case the bylaws shall be construed subject to Part 91.
- (3) Part 91 shall not apply to navigable waters subject to navigation bylaws in the manner specified in rule 91.3(2)(b) until 31 March 2004.

Operating Requirements

91.4 Personal flotation devices

- (1) No person in charge of a recreational craft may use it unless 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.
- (2) Rule 91.4(1) and (6) shall not apply to –
 - (a) any surfboard or similar unpowered craft; and
 - (b) any sailboarder or windsurfer, if a wetsuit is worn at all times; and
 - (c) a diver on a boat of 6 metres or less in length overall that is used for recreational diving within 5 miles of shore, if a full body dive suit is worn at all times; and
 - (d) a person training for or participating in a sporting event, if the training or the event is supervised in accordance with the safety system of a national sporting organisation approved by the Director; and

- (e) a member of a visiting foreign watersports team, if the person carries or wears a personal flotation device that is approved by the competent authority for use in that person's country of residence.
- (3) The Director may approve a national sporting organisation for the purposes of rule 91.4(2)(d) if that organisation has in place a safety system that the Director is satisfied provides an equivalent level of safety to the carriage or wearing of personal flotation devices.
- (4) Subject to rule 91.4(5), rule 91.4(1) shall not apply in respect of any sporting event, training activity or ceremonial event if a support vessel that is capable of providing adequate assistance in the event of an emergency remains in the immediate vicinity of the recreational craft and the recreational craft or support vessel or both carry personal flotation devices or buoyancy aids of an appropriate size for each person on board the recreational craft.

In this rule buoyancy aid means –

- (a) a buoyancy aid as defined in NZ Standard 5823:1989 or NZ Standard 5823:2001;¹ or
- (b) a buoyancy aid that the Director is satisfied substantially complies with the standard prescribed in paragraph (a) and that provides a minimum of 53 newtons of buoyancy.
- (5) Rule 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 granted an exemption in writing. A regional council may grant an exemption for a specified period if the regional council is satisfied that adequate safety precautions are made for rescuing any person participating in the event or activity.
- (6) Despite rule 91.4(4), 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.

¹ NZS 5823:1989 and NZS 5823:2001 define a buoyancy aid as any device designed to assist a person to remain afloat in water until rescue is effected. Any type of buoyancy aid categorised in the Standard meets the requirements of this rule.

- (7) No person in charge of a vessel may use it to tow any person and no person may cause himself or herself to be towed by any vessel, unless the person being towed wears a properly secured personal flotation device of an appropriate size for that person.
- (8) Rule 91.4(7) does not apply to a person –
 - (a) training for any trick water skiing element of a sporting event administered by a national sporting organisation approved under rule 91.4(3); or
 - (b) participating in a sporting event that is administered by a national sporting organisation approved under rule 91.4(3).

91.5 Minimum age for operating power driven vessels

- (1) No person under the age of 15 years shall be in charge of, or propel or navigate, a power driven vessel that is capable of a proper speed exceeding 10 knots unless he or she is under the direct supervision of a person over the age of 15 years who is in immediate reach of the controls.
- (2) The owner of a power driven vessel that is capable of a proper speed exceeding 10 knots must not allow any person who is under the age of 15 years to be in charge of or propel or navigate that vessel, unless he or she is under the direct supervision of a person over the age of 15 years who is in immediate reach of the controls.
- (3) Rule 91.5(1) and (2) does not apply in respect of any person who has a written exemption from a regional council issued in accordance with a navigation bylaw or from the Director.
- (4) The Director may issue an exemption in accordance with section 47 of the Act that is valid for any specified place or places to a person under the age of 15 years for transport, training, competitions or other sporting events, if the Director –
 - (a) considers that the person –
 - (i) is competent to propel or navigate a power driven vessel at a proper speed exceeding 10 knots; and
 - (ii) is aware of relevant navigation safety rules and navigation bylaws; and

- (iii) will be under adequate supervision during the proposed activity or activities; and
- (b) consults with the relevant regional council and notifies the council of the decision to issue the exemption.

91.6 Speed of vessels

- (1) No person may, without reasonable excuse, propel or navigate a vessel (including a vessel towing a person or an object) at a proper speed exceeding 5 knots:
 - (a) within 50 metres of any other vessel, raft, or person in the water; or
 - (b) within 200 metres of the shore or of any structure; or
 - (c) within 200 metres of any vessel or raft that is flying Flag A of the International Code of Signals (divers flag).
- (2) No person may propel or navigate a powered vessel at a proper speed exceeding 5 knots while any person has any portion of his or her body extending over the fore part, bow, or side of that vessel.
- (3) No person may cause himself or herself to be towed by a vessel (whether or not on a water ski, aquaplane, or other similar object) at a proper speed exceeding 5 knots in any circumstances specified in rule 91.6(1).
- (4) No person in charge of a vessel may permit the vessel to continue onwards, after any person being towed by that vessel has dropped (whether accidentally or otherwise) any water ski or similar object which may cause danger to any other person or vessel, without first taking appropriate action to immediately recover that water ski or similar object, unless the person has taken measures adequate to ensure that the dropped ski or similar object is clearly visible to other water users.
- (5) Rule 91.6(1)(a) shall not apply to:
 - (a) a vessel over 500 gross tonnage, if the vessel cannot be safely navigated in compliance with this clause; or

- (b) a vessel powered by sail in relation to any other vessel powered by sail, while the vessels are participating in a yacht race or training administered by –
 - (i) a club affiliated to Yachting New Zealand; or
 - (ii) a non profit organisation involved in sail training or racing; or
 - (c) a craft training for or participating in competitive rowing or paddling; or
 - (d) a tug, pilot vessel, harbourmaster vessel, emergency response craft or police vessel, if the vessel's duties cannot be performed in compliance with this clause; or
 - (e) a vessel operating in accordance with a speed uplifting –
 - (i) established under rule 91.19; or
 - (ii) established under rule 91.20; or
 - (iii) continued by rule 91.22; or
 - (iv) established for any river by navigation bylaw.
- (6) Rule 91.6(1)(b) shall not apply to:
- (a) a vessel operating in an access lane or a reserved area for the purpose for which the access lane or reserved area was declared, unless, in the case of a reserved area, a navigation bylaw provides otherwise; or
 - (b) a vessel operating in accordance with a speed uplifting –
 - (i) established under rule 91.19; or
 - (ii) established under rule 91.20; or
 - (iii) continued by rule 91.22; or
 - (iv) established for inland waters by navigation bylaw; or
 - (c) a vessel over 500 gross tonnage, if the vessel cannot be safely navigated in compliance with this clause; or
 - (d) a craft training for or participating in competitive rowing or paddling; or
 - (e) a tug, pilot vessel, harbourmaster vessel, emergency response craft or police vessel when the vessel's duties cannot be performed in compliance with this clause.

91.7 Wake

Subject to rule 91.6, every person who propels or navigates a recreational craft must ensure that its wake does not cause unnecessary danger or risk of damage to other vessels, or structures, or of harm to other persons.

91.8 Lookouts on vessel used for water skiing or towing any person

(1) No person in charge of a vessel may use it to tow any person at a speed exceeding 5 knots unless at least one other person is on board who is –

- (a) 10 years of age or older; and
- (b) responsible for immediately notifying the person in charge of every mishap that occurs to the person who is being towed.

(2) No person may cause himself or herself to be towed by any vessel at a speed exceeding 5 knots unless at least one other person is on board who is –

- (a) 10 years of age or older; and
- (b) responsible for immediately notifying the person in charge of every mishap that occurs to the person who is being towed.

91.9 Water skiing or towing between sunset and sunrise

- (1) No person may operate, between sunset and sunrise,² a vessel that is towing any person on water skis, an aquaplane, surfboard, or similar object, or who is barefoot skiing, or who is on a paraglider or similar object.
- (2) No person may cause himself or herself to be towed in the circumstances described in rule 91.9(1).

91.10 Conduct in access lanes

- (1) No person may propel, navigate, or manoeuvre a vessel in an access lane for the purpose for which it is declared except by the most direct route through the access lane and on that side of the access lane that lies to the starboard (right) side of the vessel.

² The times for sunset and sunrise can be found in the current edition of the New Zealand Nautical Almanac.

- (2) No person may –
 - (a) while being towed by a vessel in an access lane, cause himself or herself or any water ski, aquaplane or other similar object, on or by which he or she is being towed; or
 - (b) cause any object that is being towed by a vessel in an access lane; to travel other than by the most direct route through the access lane and on that side of the access lane that lies to the starboard (right) side of the vessel.
- (3) No person within an access lane may proceed in a manner that is dangerous in relation to any vessel or other person in the access lane.
- (4) No person may obstruct any other person while that other person is using an access lane for the purpose for which it has been declared.
- (5) If one or more persons are using an access lane for the purpose for which it is declared, no person may enter, remain in or use the lane for any other purpose.

91.11 Marking of access lanes

Where an access lane is defined by bylaws, the applicable regional council must ensure that –

- (a) the access lane is demarcated on shore by orange posts with horizontal black bands; and
- (b) if the access lane is marked at its outer edge, it is marked by orange buoys with black bands; and
- (c) an adequate sign or signs are provided in the vicinity of the access lane that declare the purpose of that lane.

91.12 Reserved areas

- (1) No person may obstruct any other person while that other person is using a reserved area for the purpose for which it is reserved.
- (2) 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 area for any other purpose.

- (3) Where a reserved area is defined by bylaws, the regional council must ensure that –
 - (a) adequate signs are provided in the vicinity of the area that –
 - (i) define the 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.

91.13 Anchoring and obstructions

- (1) No person may anchor a vessel so as to –
 - (a) obstruct the passage of other vessels or obstruct the approach to any wharf, pier or jetty; or
 - (b) create a hazard to other vessels at anchor.
- (2) When a vessel is moored in a dock or alongside a wharf or other landing place, the owner or master must ensure that –
 - (a) the vessel is securely fastened to the dock, wharf or landing place; and
 - (b) an adequate and safe means of access to the vessel is provided that is properly installed, secured, and adjusted to suit any tidal conditions.
- (3) No person may place any obstruction, including any fishing apparatus, in any waters that is likely to –
 - (a) restrict navigation; or
 - (b) cause injury or death to any person; or
 - (c) cause damage to any vessel or any property.

91.14 Damage to navigation aids

- (1) No person may tie a vessel to any aid to navigation without the written permission of –
 - (a) if the aid to navigation is operated by a local authority or port company, the harbourmaster; or
 - (b) if the aid to navigation is operated by the Maritime Safety Authority, the Director.
- (2) No person may damage, remove, deface or otherwise interfere with an aid to navigation.

91.15 Distance from vessels showing flag B and Defence premises

Where possible, the master of a vessel must not allow that vessel to approach within 200 metres of –

- (a) an oil tanker or any other vessel that is showing flag B by day or a red all round light by night; or
- (b) any wharf, quay, pier, jetty, or premises belonging to the Crown erected or used in connection with defence works or defence purposes under the Defence Act 1990, unless –
 - (i) a different distance is prescribed in respect of the wharf, quay, pier, jetty or premises by the New Zealand Defence Force; or
 - (ii) the master is authorised to approach within 200 metres by the Defence Officer in charge of the wharf, quay, pier, jetty or premises.

91.16 Duty of master of a vessel under 500 gross tonnage

- (1) The master of a vessel under 500 gross tonnage must not allow the vessel to impede the navigation of any vessel of 500 gross tonnage³ or more if the vessels are in a harbour area.

³ A vessel over 500 gross tonnage is likely to be over 50 m in length overall.

- (2) For the purposes of this rule a harbour area is an area defined as such in bylaws. If a regional council defines a harbour area in bylaws, the council must inform Land Information New Zealand of the defined area so that it may be marked on any applicable nautical chart.

91.17 River safety rules

A person in charge of a vessel on a river must –

- (a) ensure that the vessel keeps to the starboard (right) side of the river channel; and
- (b) if going upstream, give way to any vessel coming downstream; and
- (c) not operate the vessel unless river and weather conditions permit safe operation of the vessel.

91.18 Flags and signals

- (1) The master of any vessel that has on board, or who intends to load or unload, 27 kilograms or more of explosives in a harbour area as defined in rule 91.16(2) must display code Flag B by day and an all round red light at the masthead or where it can best be seen by night.
- (2) The master of any tanker in a harbour area as defined in rule 91.16(2) must display code Flag B by day and an all round red light at the masthead or where it can best be seen by night.
- (3) Every person diving from a vessel must ensure that flag A is displayed in such a manner that it can be clearly identified by the watchkeeper of another vessel at a distance in excess of 200 metres.
- (4) The master of every vessel from which dive operations are in progress must ensure that flag A is displayed in such a manner that it can be clearly identified by the watchkeeper of another vessel at a distance in excess of 200 metres.

Administration

91.19 Temporary events

- (1) Any person intending to conduct a race, speed trial, competition or other organised water activity in an area where navigation bylaws do not apply may apply to the Director –
 - (a) to temporarily suspend the application of any part of rule 91.6 during the conduct of the race, speed trial, competition or other organised water activity; and
 - (b) to temporarily reserve the area for the purpose of that activity.
- (2) If the Director is satisfied that an application may be granted without endangering the public, and that any consultation with affected parties that the Director considers necessary has been undertaken, he or she may grant the application for a specified period or periods and subject to such conditions as he or she may specify in the interests of maritime safety.
- (3) No grant of an application under rule 91.19(2) shall have effect unless, not less than 7 days or more than 14 days before the commencement of the activity, the applicant publicly notifies the period of the activity and details of the suspension or reserved area.⁴

91.20 Permanent speed upliftings

- (1) A person may apply to have any speed limit prescribed in rule 91.6 or navigation bylaws uplifted from waters specified in the application –
 - (a) where navigation bylaws are in force, by application in writing to the appropriate regional council; and
 - (b) where navigation bylaws are not in force, by application in writing to the Director.
- (2) An application under rule 91.20(1) must not be granted unless the regional council or the Director, as applicable, is satisfied that –
 - (a) the application has been publicly notified; and

⁴ Local Authority permits may also be required for land use associated with the temporary speed uplifting.

- (b) affected persons have had reasonable opportunity to comment on the application; and
 - (c) the applicant has provided evidence of the consultation undertaken with affected persons and any navigation safety concerns arising from the consultation process and any measures taken to address the concerns raised; and
 - (d) uplifting the speed limit will not unacceptably increase the risk to navigation safety or endanger persons using the waters that are the subject of the application.
- (3) A regional council must consult with the Director before granting any application made under rule 91.20(1)(a) and must notify the Director when it grants such an application. Any application granted under rule 91.20(1) must be publicly notified and notified in the Gazette as soon as practicable after it is granted.
- (4) The Director may grant an application in accordance with rule 91.20(2) for a specified period or periods and subject to such conditions as he or she may specify in the interests of maritime safety.

91.21 Appointment of Safe Boating Advisors

- (1) The Director may appoint a person as a Safe Boating Advisor for the purpose of promoting safety awareness on recreational craft if the Director is satisfied that the person –
- (a) (i) was appointed as an Honorary Launch Warden under regulation 3 of the Water Recreation Regulations 1979; or
 - (ii) holds a Boatmaster Certificate issued by the Coastguard Boating Education Service or a qualification that the Director considers is equivalent to that certificate; and
 - (b) has a minimum of 5 years recreational craft experience that is acceptable to the Director.
- (2) The Director may appoint a Safe Boating Advisor subject to such conditions as the Director considers necessary in the interests of maritime safety, which shall include the areas within which the Safe Boating Advisor may perform his or her function.

- (3) The Director may revoke the appointment of a person under rule 91.21(1) by notice in writing. The notice must include the grounds for revocation and the grounds must be reasonable.

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 or rule in a plan made under the Resource Management Act 1994 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 or rule in a plan made under the Resource Management Act 1991 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 or rule in a plan made under the Resource Management Act 1994 amends or revokes that designation.

Amendments to Part 22

Rule 22.3 Application

Amend rule 22.3 by adding the following new paragraph (4):

- “(4) Nothing in this Part applies to a vessel participating in a race or training or coaching in relation to other vessels participating in such an activity, if the participants have agreed to comply with the International Sailing Federation Rules, prescribed by the International Sailing Federation.”

Rule 22.18 Responsibilities between vessels

Amend rule 22.18(1) by revoking subparagraph (d) and substituting the following new subparagraph (d):

“(d) a sailing vessel or a vessel under oars:”

Rule 22.30 Anchored Vessels And Vessels Aground

Amend rule 22.30(3) by deleting the words “light or”.

Maritime Rules

PART 91

NAVIGATION SAFETY RULES

Consultation Details

(This text does not form part of the rules contained in Part 91. It provides details of the consultation undertaken before making the rules.)

Summary of consultation

Copies of Part 91 were distributed to approximately 310 organisations and individuals. These included the following representative bodies who were requested to distribute the draft within their organisation and to their members:

Boating Industries Association; Boating NZ Magazine; Coastguard Boating Education Service; Jet Boating NZ; Local Government NZ; Nga Waka Federation; 3 NZ Boating Magazines; NZ Coastguard Federation and all Coastguard Units; NZ Jetski Sports Association; NZ Herald Boating Section; Royal New Zealand Navy; NZ Professional Skipper Magazine; NZ Police Maritime Unit; NZ Sea Kayak Association; NZ Underwater; NZ Waterski Association; Regional Council Harbour Masters; Rowing NZ; Scouting NZ; Shotover Jet; Surf NZ; Trailer Boat Federation; Water Safety NZ; Windsurfing NZ; Yachting NZ and all affiliated boating clubs; Young Mariners of NZ.

Ninety one organisations and individuals provided written submissions on the draft of "Part 91 Water Recreation Rules". Of these submissions 15 were from boating groups, yacht clubs and national boating associations. Ten submissions were from regional councils and 5 were from Government departments and Safety Standards organisations. The boating industry provided 6 submissions and the remainder of submissions were from interested individuals, including a number of Honorary Launch Wardens.

General

Auckland Regional Council supports the Rule as it stands in this draft.

Clearwater Cove Yacht Club supports the rule changes and suggests that there should be a minimum standard for harbourmasters.

MSA response: *While the Minister of Transport does have powers to prescribe harbourmaster standards in maritime rules, it is not proposed to do so in Part 91. The issue of prescribing such standards remains under review.*

David Renouf submits that enforcement fines should be set at a level that recovers all costs. In his view, \$500 is more appropriate than \$100 as the latter is “not even one day’s pay”.

MSA response: *The intention of the infringement notice system is to impose penalties for less serious offences without the need to resort to the court system in the first instance. Regional councils have agreed that fines of between \$100 and \$200 are the appropriate level for breaches of navigation safety bylaws. Fine levels for breaches of Part 91 are set by regulation. While the proposal to make regulations has not yet been made, it is anticipated that the fine levels will be consistent with those set for equivalent breaches of navigation safety bylaws.*

Dereck Wright comments that the rules should empower regional councils to license persons hiring vessels for use on the water. Applications for such a licence should be accompanied by the current MSA registration and the OSH approved health and safety policy. He also suggests identification requirements with the MSA registration number painted on the hull together with the owner’s name.

Environment Southland notes its appreciation for informal consultation undertaken and MSA’s response to submissions made. It expresses disappointment that the issues of pleasure craft skipper licences, registration and alcohol use have not been presented for consultation seeking further comment. Based on concern for navigation safety in its region the council submits that all 3 issues should be addressed through legislative measures. It requests that this submission be passed on to the Pleasure Boat Safety Advisory Group for consideration.

Bren Nelson comments that rather than requiring registration of boats, a requirement for skippers to pass a maritime course such as day skipper would be better.

AW Price comments that all persons in charge of a pleasure craft should have a certificate indicating the holder is aware of the applicable boating regulations.

FH Inder comments that some form of simple low cost registration of boats is required. He suggests that a requirement for trailer registration numbers to be shown on boats might be effective.

Dave Duncan submits that all vessels should be registered as they are in Australia. He supports compulsory education of pleasure craft operators to boatmaster level.

Dereck Wright suggests that given the number of accidents and near misses it is timely to introduce licensing for operators of vessels that are capable of at least 15 knots.

EA Loose comments that it is very disappointing to see no rules proposed relating to vessel identification and minimum qualifications to operate a pleasure craft. He comments that lack of identification makes the Launch Warden position impossible and without reason. He indicates support for rules 91.4 to 91.10, 91.13 to 91.15 and 91.17.

Kerry Thomas submits that a standard qualification is required for harbourmasters and persons enforcing maritime rules. He also submits that a minimum qualification be required, possibly Coastguard day skipper for a power driven craft over 25 ft in length or capable of more than 15 knots.

MG Molineux submits that all boats need to carry an official number for identification. The submission also calls for a requirement on boat owners to attend and pass a Day Skipper course.

NZ Merchant Service Guild states that it is unfair and difficult to enforce rules with penalties where there is no compulsory training for pleasure craft operators. The Guild submits that minimum qualifications be set for harbourmasters and that a licensing regime be established for operators and their craft. These sentiments are echoed by Nigel Meek (POAL pilot), Vicky Gillespie and Bill Smith.

An individual suggests that a standard be introduced to which all recreational operators could work. He suggests a standard safety kit which would be checked periodically and failure to pass check would prohibit use of boat on the water. He notes that harbourmasters should have specific training and that a vessel identification system together with a compulsory reporting system to the harbourmaster could enhance safety.

Queenstown Lakes District Harbourmaster is disappointed that Part 91 does not address the issue of requiring skippers of private craft to have a minimum qualification nor a requirement to register craft, and does not require the wearing of lifejackets on small craft.

Trevor Gibson submits that a requirement should be included for a vessel to be named with letters 50 mm high on each side or across the stern. He comments that this would speed up identification in a SAR or accident situation.

***MSA response to the above comments:** In December 1999, the Pleasure Boat Safety Advisory Group reported to the Minister of Transport following a two year review of safety within the recreational boating sector. The Group, comprising a wide cross section of those involved in recreational boating, recommended the adoption of an integrated*

recreational boating safety strategy. In developing that strategy, the Group was conscious of a simple but crucial message arising out of an analysis of accidents – namely, that the majority of fatalities are the direct result of inadequate boating knowledge, not deliberately reckless behaviour. The Group’s recommendations, therefore, focussed primarily on promoting a “self help” approach to safe behaviour through the provision of more and better targeted safety education for boat operators and passengers, rather than further regulation such as boat registration/identification and compulsory education (operator licensing). Overseas experience indicates that boat registration has only a limited direct impact on safety, being used primarily as a means of raising funds to pay for safety programmes. The Group did, however, suggest that the option of compulsory education be revisited again in a few years time if the “self help” approach proves ineffective.

The only area where further regulation was recommended by the Group was with regard to personal flotation devices (PFDs). With potentially 75 percent of all fatalities being preventable (or at least the chances of survival dramatically increased) through the simple act of wearing a PFD, the Group believed that the case for making the carriage of PFDs compulsory is overwhelming. Part 91 reflects that recommendation, as well as the Group’s recommendation not to proceed with vessel registration and operator licensing at this time. Instead, the MSA, Regional Councils, Water Safety New Zealand, Coastguard, the Boating Industries Association, Yachting New Zealand, the Police, national boating organisations, Waka groups and other members of the newly established National Pleasure Boat Safety Forum are working to implement co-ordinated safety programmes that seek to improve operator knowledge through attendance at boating education courses (some 11,000 people now go through Coastguard Education courses each year) and safety awareness campaigns.

Environment Waikato generally supports the draft rules. It is concerned that there appear to be no mechanisms for regulating new maritime sports such as kite surfing and the unique problems such sports pose. Environment Waikato also asks what transition provisions are to be put in place in respect of existing bylaws that are not consistent with Part 91.

Environment Waikato also suggests that the following bylaws be included as national rules:

- A requirement to comply with navigation light requirements in Part 22
- A prohibition on jumping from a commercial jetty or wharf

- Rules relating to vessels in a harbour that are unseaworthy
- Rules relating to seaplanes on the water
- A requirement for vessels to be adequately moored or secured
- A requirement to notify harbourmasters of accidents or incidents
- Rules addressing licensing of commercial vessel operations not already covered by maritime rules
- A prohibition on placing obstructions to navigation.

MSA response: The rules use generic terms as far as possible to allow new types of activity to be dealt with. Provided the craft involved can be described as a vessel, basic requirements of the rules apply. Scope also remains to isolate activities through reserved areas if this is advisable in the interests of safety. Kite boards and windsurfers are considered sailing vessels.

Most of the proposed requirements relate to local issues that are best dealt with on a local level, as they currently are in regional council bylaws. The rules relating to navigation lights are found in Part 22 of the maritime rules and need not be repeated in this maritime rule. If councils wish to enforce navigation light requirements in their areas, bylaws consistent with Part 22 should be drafted.

The definition of vessel has been amended to include seaplanes while they are on the surface of the water. Unless the context requires otherwise, Part 91 therefore applies to seaplanes while they are on the water.

A prohibition on placing obstructions to navigation has been added to rule 91.13.

Existing bylaws that are inconsistent with Part 91 are expected to be amended. Application of Part 91 to areas with inconsistent bylaws will be delayed 12 months to allow sufficient time for any necessary amendments to the bylaws.

Gulfstream Consultants Limited comments that the ARC bylaws are not consistent with Part 91 in respect of wakes and that local boat operators will not necessarily be aware of Part 91. Hence it submits the rules should require bylaws to have all the provisions in Part 91. In addition Gulfstream submits that provision should be made requiring identification of boats. To enhance enforcement. Gulfstream commends the use of “instant fines” in enforcing navigation safety bylaws and Part 91.

MSA response: Navigation bylaws are required under the Maritime Transport Act 1994 to be consistent with maritime rules. It is expected that regional council bylaws will be amended to resolve any such inconsistencies.

New Zealand Defence Force makes a number of comments on the role of Part 91 in respect of Defence Force areas.

- Part 91 carries over a number of provisions from the General Harbour (Nautical and Miscellaneous) Regulations 1968 as well as the Water Recreation Regulations 1979. Hence the name of the Part should be broadened to reflect this.
- Regulation 64 of the General Harbour (Nautical and Miscellaneous) Regulations 1968 should be carried over to provide general protection (through a public exclusion zone) for the seaward approaches to Defence establishments. NZDF note that the long term solution may be to amend the Defence Act 1990 to implement this, but that this proposal would be an acceptable interim solution.

MSA response: The MSA agrees that a broader name is appropriate, taking also into account the fact that Part 91 applies to all ships, not just recreational craft. The issue of public exclusion zones around Defence areas is dealt with under the comment relating to rule 91.15.

Queenstown Lakes District Harbourmaster is concerned that a number of activities such as schools and other training institutions' field trips are not adequately addressed by rules. He refers to the lack of checking for accidents such as the recent Hanmer Springs fatality.

MSA response: The Ministry of Education is currently working with a range of outdoor education groups and safety organisations (including the MSA) to develop a set of Guidelines for Risk Management in Education Outside the Classroom, which schools will be expected to follow when involving pupils in outdoor activities, including boating. It is expected that these guidelines will be finalised later this year and will go a long way towards addressing the concerns expressed by the Queenstown Harbourmaster.

Roger O'Sullivan comments he is pleased with the rules overall. He asks whether noise is to be addressed in this rule. He also suggests that special training is needed for persons boating in heavy or shallow rivers.

MSA response: There is no rule making power under the Maritime Transport Act in respect of noise as a public nuisance. This issue is dealt with under the Resource Management Act. Training and skipper qualifications are discussed above.

Taranaki Regional Council supports the basic standards set in Part 91 for consistency across New Zealand.

Trevor Robertson questions whether the word “exclusively” in the definition of “pleasure craft” is intended to exclude vessels that are occasionally chartered out. He also queries the definition of reward which excludes friends (not crew) from contributing to expenses of the voyage. He comments that the words “solely powered” in definition of powered vessel must mean at the time used. If not the use of the words in rule 91.6(5)(d) would not permit keel boat racing where most yachts have an auxiliary engine.

MSA response: The definitions of pleasure craft and reward are taken from the Maritime Transport Act with which this rule must be consistent. The commenter’s interpretation of the first 2 definitions is correct. A pleasure craft used occasionally for charter is a commercial vessel. The restriction on contribution to voyages is an issue and an amendment to the Maritime Transport Act may be considered to rectify this. The wording in rule 91.6(5)(b) will be amended to clarify that this rule permits keel boat racing where yachts have auxiliary engines.

Wellington Regional Council suggests an additional rule be added to prescribe a uniform manner for demarcating reserved areas using red and blue poles or buoys.

MSA response: The MSA agrees that uniform colours are desirable. The colours settled upon are black and white.

Young Mariners of New Zealand states that while regional council bylaws have the same structure as maritime rules, as a national body it has concerns that bylaws are being interpreted differently around the country.

MSA response: As the respondent points out, much has been done to ensure national consistency of requirements. In addition, mechanisms exist to assist in consistency of interpretation and application of the rules around the country. These include annual meetings of harbourmasters and the availability of MSA staff for advice to regional councils on matters of interpretation and consistency.

National Pleasure Boat Safety Forum, John Croft and Auckland Volunteer Coastguard submits that a rule should be made requiring powered vessels to give way to vessels under oars. The rationale is that Part 22 requires a vessel under oars to carry the same lights as a sailing vessel. It is therefore implied that power vessels should give way vessels under oars as well as sailing vessels.

NPBSF also submitted that it had been found by the courts that a vessel underway must keep clear of an anchored vessel even though this is not included in Part 22. NPBSF recommended that this finding be adopted by Part 91.

NPBSF's proposals were subject to:

(1) the vessels in question (oars, anchored) acting in accordance with Part 22.9 Channels; 22.30 and 22.35 lights; and 22.40(2) responsibility; and

(2) further consultation with affected parties.

MSA Response: The MSA conducted further informal consultation with a number of harbourmasters and MSA staff on this issue. There was strong support for the proposals. MSA agrees with the first proposal and has amended Part 22 accordingly. While sympathetic to the second proposal (namely that vessels underway be required to keep clear of an anchored vessel), MSA prefers to defer this issue to allow further consultation.

Auckland Volunteer Coastguard submits that Part 22 should be amended to ensure that power should give way to sail, rowing or paddling boats by day as well as by night. Currently rowing boats and kayaks must display the same lights as sailing boats. Powerboats have to give way to sailing boats and because sail and rowing have the same lights; they would therefore have to give way to rowing boats between sunset and sunrise. The current rules during daylight hours do not appear to be consistent.

Auckland Volunteer Coastguard and John Croft also submit that Part 22 should be amended to remove the exemption from vessels under 7 metres from displaying an anchor light. The submission argues that "there are many small vessels which anchor to fish without lights where boats do not often navigate. This is a dangerous practice which should not be permitted. Also many trailer craft under 7 metres long are used for cruising by families and they should show a light when anchored in bays with other craft."

MSA response: The MSA accepts the proposal to require power driven vessels to give way to vessels under oars as well as sailing vessels. It is logically consistent given that the two types of vessels are required to show the same night signals. The give way rules should be the same by day and by night. MSA also agrees with the proposal to remove the exemption from vessels under 7 metres to display an anchor light for the reasons given.

91.2 Definitions:

Auckland Regional Council comment that the definitions of "pleasure craft" and "recreational craft" are confusing and that the term "pleasure craft" does not appear to be used in the rule. It suggests that recreational craft should be deleted as the definition of pleasure craft from the Maritime Transport Act is the most appropriate defined term.

MSA response: The definition of “recreational craft” was inserted to cover a gap left by the definitions of commercial craft and pleasure craft under the Maritime Transport Act. Non powered commercial ships are not covered by either definition. The term is used in rule 91.4.

Auckland Yachting and Boating Association asks whether lakes were included in the definition of “other inland waters”. Further it queries the words “owner’s pleasure” in the definition of the term “pleasure craft” and suggests a number of pleasure craft operations that may not be covered by the definition. It also notes an incorrect cross reference in the definition of “reserved area”. Concern is expressed, in the context of rescue or committee boats, that receiving contributions to fuel costs makes a ship a commercial ship rather than a pleasure craft.

MSA response: Given the context of the definition of “New Zealand waters”, inland waters are considered to include lakes. Regarding the definition of “pleasure craft”, this definition is taken from the Maritime Transport Act 1994 with which the rules are required to be consistent. In addition, the term “owner’s pleasure” is not understood to be restricted to the owner being present on the craft. If an owner consents to another person using the craft for a non-hire or reward operation, then MSA would consider this to be use of the craft for the owner’s pleasure. The cross reference in the definition of “reserved area” has been amended. The definition of “reward” is taken from the Maritime Transport Act with which the rules must be consistent.

B Hinton submits that the definition of “master” does not refer to the condition appropriate to being a pleasure craft operator. He comments that alcohol has been a major factor in many accidents he has assisted with.

MSA response: Alcohol is the subject of an MSA study underway at present. Should legislative amendment be required as a result of the study it is most likely to be made at the level of the Maritime Transport Act rather than at rules level, as the measures required would need the authority of primary legislation.

Colin Robinson proposes that the definition of “pleasure craft” be modified to allow vessels provided by non-profit individuals and organisations to be defined as pleasure craft.

Dave Watson expresses concern that the definition of “recreational craft” excludes many craft that are operated by clubs and organisations. He considers that the rules should apply to such clubs and organisations.

MSA response: Unless they are manually powered commercial craft, all boats are either pleasure craft or commercial craft. The class of vessel described in the submission is

commercial and will be exempted from the requirement to be entered in a Safe Ship Management system by an amendment to Part 21 that the MSA is currently consulting the public on.

Environment Canterbury suggests including the definition of “fishing vessel” from the Maritime Transport Act to clarify the meaning of the term as used in the definition of the term “pleasure craft”. In addition Environment Canterbury suggests amending the definition of “reserved area” to include the words “or the exclusion of specified vessels or classes of vessel”. This is to permit reserved areas for swimming only.

MSA response: *The MSA agrees. Both definitions have been amended taking into account these proposals.*

Environment Waikato requests that definitions be included for the terms “buoy”, “beacon”, “lifejacket”, “access lane”, “anchorage”, “structure”, and “support vessel” and suggest that surfboarders be excluded from the definition of the term “vessel”.

MSA response: *The rule does not use the terms “buoy”, “beacon”, or “anchorage” hence these terms are not defined. The term “personal flotation device” is defined instead of “lifejacket”. It is the preferred term as “lifejacket” is a term with a specialised meaning under the NZ standard. Definitions have been added for the terms “access lane”, “structure”, and “support vessel”. The definition of “vessel” is taken from the Maritime Transport Act and MSA prefers not to make this amendment for reasons of consistency.*

Hawkes Bay Regional Council suggests amending the definition of “recreational craft” to include persons being towed by recreational craft. That way such persons would be required to wear a personal flotation device and would be subject to the wake rule.

MSA response: *The MSA has consulted further with water ski clubs on this issue. MSA agrees that persons being towed should be subject to the requirement to carry a personal flotation device with the exception of tournament trick skiing. Rule 91.4 is amended accordingly.*

Howick Sea Scouts and Papakura Sea Scouts comment that the definition of “recreational craft” should include a vessel that is operated or provided by any club or incorporated society for recreation, or in support of recreation for its members (that is, a safety craft/patrol craft for a yacht club or sea scout group).

MSA response: *The term “recreational craft” is only used in respect of the requirement to carry personal flotation devices and the dangerous wake rule. The term extends the definition of “pleasure craft” to include commercial manually powered and sailing craft. These craft would not otherwise be covered by the requirement for either pleasure craft or*

commercial ship to carry personal flotation devices. The class of vessel described in the submission is not covered by either of the terms pleasure craft or recreational craft. It is a commercial craft, but will be exempt from the requirement to be entered in a Safe Ship Management system.

JM Watkins comments that the definitions of “pleasure craft” and “commercial vessel” mean that support craft of a number of yacht clubs used for sail training are labelled commercial and that this would severely restrict the activities of many yacht clubs. Watkins also queries whether payment by a sailing school pupil (eg a junior sailor) for use of a sailing school optimist dinghy would be deemed to be for a reward. Watkins does not consider that reimbursement of expenses constitutes reward, for example in the reimbursement of clubs for fuel costs for support boats. Watkins comments that the definition of “vessel” does not cover a number of vessels such as kite surfers and surf boards.

MSA response: *While the support craft described does fall into the commercial category, these boats will be exempt from the requirement to be entered in a Safe Ship Management system. Payment for use of a boat is reward, but where a boat is powered by sail only it is not a commercial ship. Reimbursement for fuel costs is considered reward under the definition of reward under the Maritime Transport Act. MSA considers that the definition of vessel is wide enough to cover kite surfers but is unlikely to apply to surfboards.*

JW Bell submits that the definition of “commercial vessel” is difficult to understand requiring reference to the definition of “pleasure craft”. The definition of “recreational craft” is considered equally flawed. He also comments that the exclusion of family trusts as owners of pleasure craft causes problems. Mr Bell considers that the definition of “recreational craft” adds further confusion and suggests that all three definitions, which seem to have to be read together, be tidied up. Mr Bell suggests that the definition of “powered vessel” is in conflict with the definition of the term in the Collision Prevention Regulations. He raises the concern that yachts with a motor on board will be considered powered vessels. In respect of the definition of the term “river” Mr Bell states that “it is really bad to refer to another piece of legislation” and that a simple definition should be inserted in the rule. Regarding the definition of the term “vessel” Mr Bell asks “what about a float plane on the surface of the water?”.

MSA response: *The definitions of “pleasure craft” and “commercial craft” referred to are taken from the Maritime Transport Act 1994 with which the rules are required to be consistent. The definition of “recreational craft” is added for the specific purpose of extending the category of ships to which rule 91.4 and 91.7 apply. The commenter appears to view the definitions as a categorisation in their own right rather than defining terms used for specific purposes within the rule. They do not serve that purpose.*

MSA agrees that the definition of “power driven vessel” under the Collision Prevention regulations should be adopted for the purposes of Part 91.

The definition of river has been amended to remove the reference to other legislation and to emphasise that it applies to non tidal waters only.

The definition of “vessel” has been amended to include seaplanes while they are on the surface of the water. Unless the context indicates otherwise, the requirements in Part 91 apply to seaplanes on the water.

Marlborough District Council notes that there are no definitions for “access lanes” or “reserved areas” and that these areas imply exclusive use. The Council states that their advice has been that determining an exclusive use for an area without a resource consent may be contrary to the RMA.

MSA response: Definitions for these terms have been added to Part 91. As rules 91.10 and 91.12 indicate, a priority use is established in access lanes and reserved areas but they do not prescribe exclusive use. Where use for an area is addressed it is for safety purposes. MSA considers that this is within the ambit of navigation safety rules and bylaws.

Neptune Consultancy comments that the definition of “reward” appears to exclude a pleasure craft owner from receiving reimbursement of expenses if involved in SAR operations or exercises.

MSA response: The MSA agrees that this is the effect of the definition. The definition of reward is taken from the Maritime Transport Act 1994. An amendment to the definition is to be considered at the next opportunity for amending the Act. This issue will be referred for consideration at that stage.

Roger O’Sullivan queries where a yacht with an auxiliary outboard sits in terms of the definitions of “powered craft” and “recreational craft”.

MSA response: The yacht described will fit into both categories. It is a powered vessel if the engine is operating and in gear, otherwise it is a sailing vessel. The definition of powered craft has been replaced with a definition of power driven vessel to align with Part 22 of the maritime rule (Collision Prevention).

Scouting New Zealand states that clarification of the definitions of “commercial”, “pleasure”, and “recreational craft” are required to establish whether Scouting NZ boats are considered commercial and the implications of that. Clarification is also sought on the use of the term vessel instead of ship as occurs in other maritime rules.

MSA response: *The definitions are for the purpose of this rule rather than general classification. The definitions are taken from the Maritime Transport Act 1994 apart from “recreational vessel” which is used for the specific purposes of rules 91.4 and 91.7. SNZ vessels that are not solely powered by sail or oars are technically commercial, but a proposed amendment to the main rule applying to commercial craft, Part 21, excludes application to SNZ and similar non-profit organisations.*

Sea Cadet Association of New Zealand submit that “propel” should be defined given the frequency with which the term is used. The Association also comments that under the definition of “pleasure craft”, Sea Cadet boats are pleasure craft as the Sea Cadet Units are not a club, incorporated society, trust or business.

MSA response: *The term propel is considered self explanatory in the context in which it is now used in the rules.*

Thomas Turnwald JP comments that the words “to be clearly visible from a distance of at least 200 metres” should be added to the definitions of “Flag A” and “Flag B”. He also suggests that “a floatplane or seaplane manoeuvring on the water” be added to the definition “vessel” to make pleasure craft masters aware of the difficulties of manoeuvring such craft.

MSA Response: *The size and shape of these flags is currently under review by a committee convened by Standards New Zealand to assess standards for aquatic signage. A New Zealand standard is expected to result from the review. The suggested addition of “seaplane on the water” has been made to the definition of “vessel”.*

Wellington Regional Council notes its dissatisfaction with the definition of the term “pleasure craft” which does not cover vessels operated by trusts. It acknowledges the attempt to remedy this through the use of the term “recreational craft”, but considers the definition in the Maritime Transport Act needs to be amended to properly remedy the situation.

MSA response: *The MSA will liaise with regional councils and the Ministry of Transport at the next opportunity for amendment of the Maritime Transport Act on this issue. However, this term is used in many contexts and care will be needed to ensure any amendment does not have a negative effect in another context. It may be that the council’s concerns could be best remedied by an amendment to the definition of “pleasure craft” in the Local Government Act.*

Young Mariners of New Zealand Inc submit that the definition of “pleasure craft” would not cover the boats used by their organisation. The boats used include 5.2 m sailing/rowing

cutters, sunbursts, optimists, kayaks and a collection of patrol boats powered by outboards not exceeding 50hp.

MSA response: The definition of “pleasure craft” is taken from the Maritime Transport Act with which these rules must be consistent. The non powered vessels referred to would be covered by the definition of “recreational craft” and would be subject to the requirements in rule 91.4. None of the boats described in the submission will be required to be entered in a Safe Ship Management system by virtue of an amendment to Part 21 that the MSA is currently consulted with the public on.

91.3 Application

Environment Bay of Plenty comments that the national rule should not apply to areas that are subject to regional council navigation safety bylaws, as was the case under the Water Recreation Regulations.

Environment Canterbury comments that the national rule should not apply to areas that are subject to regional council navigation safety bylaws. Environment Canterbury recognises the need for consistency and suggests a further provision to ensure this.

Marlborough District Council comments that the national rule should not apply to areas that are subject to regional council navigation safety bylaws, as was the case under the Water Recreation Regulations.

Environment Southland comments in relation to 91.3(2) that the specific rules with which bylaws need not be consistent should be identified specifically in 91.3. It requests certainty in respect of which rules the bylaws must be consistent with. Environment Southland makes a detailed submission to the effect that regional navigation safety bylaws need not be consistent with rules 91.6, 91.16, 91.18 and 91.19.

Taranaki Regional Council comments that the national rule should not apply to areas that are subject to regional council navigation safety bylaws, as was the case under the Water Recreation Regulations.

Wellington Regional Council states that it is opposed to Part 91 having application in areas where there are existing bylaws. “The practical effect of rule 91.3(2) is that councils become a de facto enforcement agency for the MSA while having no control over what is to be enforced. The council proposes the deletion of rule 91.3(2) and replacing it with “(2) Part 91 does not apply where a navigation bylaw is in force.”

The council concludes that it is opposed to bylaws being subject to the national rule as this provides little incentive for councils to retain responsibility for bylaws. The appropriate

role for Part 91 is to provide guidelines to regional councils for the development of bylaws and to cover areas not subject to regional council bylaws.

***MSA response:** The MSA agrees that regional variation is desirable in addressing region specific issues. However this needs to be balanced with the need for national consistency, as far as possible, with basic navigation safety rules.*

MSA has taken advice from the Crown Law Office on the requirement for consistency between maritime rules and bylaws. It is clear that a requirement for consistency can only exist where the rules and the bylaws apply in the same location. The following guidelines are provided to assist with the issue of consistency.

- If navigation bylaws do not contain substantive provisions found in Part 91, Part 91 applies and will be enforced by the Director of Maritime Safety.*
- If bylaws contain provisions that are inconsistent with or repugnant to Part 91 then in any enforcement action, the bylaws must be interpreted subject to Part 91.*
- Requirements dealing with matters dealt with in Part 91 that set a different standard (higher, lower or substantially different) to that set in Part 91 will generally be considered inconsistent by the MSA.*
- Requirements dealing with matters not dealt with in Part 91 would not be considered inconsistent with Part 91, unless it is clear that Part 91 was intended to deal exhaustively with an area of regulation, for example the equipment required to be carried on a vessel.*

As a result, rule 91.3 has been redrafted to apply to areas subject to navigation bylaws only where they are inconsistent with Part 91. The role of the national rule remains as a statement of basic navigation safety standards and to prescribe the framework for, and the bounds of, regional variation. For bylaws currently in force, the consistency mechanism will not apply until 31 March 2004 to enable Councils reasonable time to amend bylaws if required.

JM Watkins comments that the double negative of “must not be inconsistent with” can be confusing.

***MSA response:** This wording has been removed from the rule.*

Perano Subsea Technology queries which craft are covered by Part 91. It suggests that the word “foreign” should also be included. Perano also queries how the enforcement of the rule is to be implemented and details a number of current breaches of legislation in the Port Underwood area.

MSA response *All vessels, including visiting foreign craft, are subject to Part 91 in the Coastal Marine area.*

Scouting New Zealand expresses concern over the potential fragmentation of navigation safety legislation between regional bylaws and differences in interpretation and enforcement of bylaws in different regions. It prefers one set of rules applying to the whole country as is currently the case with the Water Recreation Regulations. It also supports the right of the Director of Maritime Safety to enforce Part 91 to ensure consistency of regional councils.

MSA response: *The former regime also consisted of both national regulations and harbour bylaws. The replacement system enables the regional bylaws to apply to all the waters within a regional council's jurisdiction, rather than restricted harbour limits.*

Much has been done to ensure national consistency of requirements. In addition, mechanisms exist to assist in consistency of interpretation and application of the rules around the country. These include annual meetings of harbourmasters and the availability of MSA staff for advice to regional councils on matters of interpretation and consistency.

91.4 Personal flotation devices

91.4(1)

All submissions supported the mandatory carriage of personal flotation devices (PFDs) on board recreational craft. Most comments focussed on when, and the extent to which, exemptions from this requirement should apply, and the circumstances under which **compulsory carriage** should become **compulsory wearing**. A range of views were also expressed as to whether the rule should, in addition to NZS certified PFDs, provide for the acceptance of PFDs certified to a overseas national or international standard that 'substantially comply' with the New Zealand standard.

91.4(2)

Richard Brown of the Auckland Yachting & Boating Association suggests that a definition of what constitutes a wetsuit would be useful.

Yachting New Zealand suggests that the type of wetsuit required under (b) be clarified.

MSA response: *The MSA agrees that this would be useful. However, in the case of board sailors, it is considered that the decision as to what constitutes an acceptable wetsuit is the responsibility of the 'skipper'. To clarify the matter, however, an explanation of what constitutes a wetsuit has been put in the advisory circular that accompanies the rule.*

The NZR Class Squadron and the NZ 12-Foot Skiff Association report that both R-Class and 12-Foot Skiffs be exempted from the requirement to wear a PFD under this

section, provided a wetsuit and harness are worn. Such craft have positive buoyancy and a PFD could hinder the ability of the crew to dive out from under the craft when it capsizes, and to dive underwater to free rigging and right the craft. Sailing is also done within the confines of harbours (or similar). In summary, the alternative of a wetsuit/harness is much safer than a PFD, which could in fact “pose a significant and serious safety risk”.

MSA response: *Olympic class yachts now include this type of craft and wearing of buoyancy aids is required on those craft for safety reasons. Given the wide range of PFDs now available, the ability of manufacturers to design a suitable PFD (i.e. a buoyancy vest which has less buoyancy than a full lifejacket) which meets the required standard, and the inclusion of suitably buoyant wet suits in the standard, the MSA is unable to support this submission.*

The NZ Trailer Boat Federation suggests that children paddling a two-person small inflatable dinghy and yachties rowing their dogs ashore are unlikely to wear PFDs, and questions whether it is practical to cover these situations.

Yachting New Zealand reports that “persons transferring from a recreational craft to the shore or another craft when using a secondary craft such as a small dinghy under 3 to 4 metres”, be exempted from the requirement to carry PFDs. YNZ considers that the application of the rule in such circumstances would be impractical, as anyone going ashore would normally have nowhere to store a PFD. The inconvenience of having to carry a PFD when ashore to avoid theft would result in the rule being ignored. It is suggested few accidents/fatalities arise during such trips.

The Kohimarama Yacht Club, while supporting the carriage of PFDs on recreational craft, considers that the requirement is impractical and unnecessary for any person over the age of 15 using a boat tender (a vessel under 4.5 metres with positive buoyancy) for transport between any other vessel and the shore while remaining within 200 metres of the shore. The Club’s reasons are similar to that promoted by Yachting New Zealand.

MSA response: *Given the high numbers of dinghies involved in fatal statistics, the MSA believes that all dinghies should carry PFDs for all persons on board. Dinghies used as tenders to larger vessels are commonly used at night and sometimes overloading and the use of alcohol can be a factor in accidents. Relatively inexpensive PFDs are available, while other equipment such as oars and outboards are equally vulnerable to theft. It is also possible to secure all equipment in such a way that theft is less likely. Inflatable PFDs in a very small pouch are also available.*

The NZ Underwater Association recommends that divers operating from a vessel of 6 metres or less overall be exempted from the requirement to carry a PFD, provided they wear a full body dive suit throughout the voyage. If a PFD is worn, it should comply with Rule 40A. This would recognise current practice throughout New Zealand, recognise the fact that wetsuits protect against hypothermia, as well as providing buoyancy and maintain consistency with Rule Part 40A.

Mr Rex Gilbert, surveyor of under 6 metre dive boats, makes a similar submission to that of NZ Underwater.

Dave Watson recommends that divers be allowed to wear a wetsuit in lieu of a PFD, as “a fully wetsuited diver in NZ waters is much safer than one wearing only a lifejacket, from both a buoyancy and exposure protection perspective. Moreover, it is impractical in small dive boats (say 4 metres) to carry PFDs. Mr Watson also points out that Rule 40A allows commercial divers to wear wetsuits.

***MSA response:** The MSA agrees that there must be consistency with the commercial sector and has amended the rule accordingly.*

The Taranaki Regional Council suggests that because it is unaware of any statistics which show sailboarders and windsurfers to be a high drowning risk due to the lack of PFDs, they should be exempted from 91.4 in its entirety.

Water Safety New Zealand makes a similar recommendation to Taranaki Regional Council, on the grounds that there is little difference between a surfboard (which is exempt) and sailboard, and far more surfboarders have drowned than sailboarders. It also suggests that a wetsuit (which is the alternative to PFDs recommended for sailboarders in the draft rule) is not a buoyancy aid, and varies in both size and thickness.

Janet Watkins, YNZ sailing instructor, suggests that sailboarders/windsurfers should be required to have a foot strap to secure them to their board (which is their means of flotation in lieu of a PFD).

Due to the ‘dubious’ buoyancy provided by wetsuits, **Scouting New Zealand** also recommends that riders of surfboards/sailboards and similar non-powered craft be made to wear PFDs.

Anne and John Osborne, Honorary Launch Wardens, suggest that surfboarders and sailboarders etc. should be required to wear a buoyancy aid, unless in a sporting event where rescue precautions are in place. Buoyancy aids should only include wetsuits that meet the NZS buoyancy standards.

***MSA response:** There have been a number of board sailors (windsurfers) who have been blown out to sea when sailing alone and have lost their lives as a result. Board sailors at Olympic events are required to wear a PFD for safety reasons. Experienced board sailors argue that wearing a bulky PFD restricts the board sailor’s ability to manoeuvre their board and can create a hazard for him/her when in the water and trying to raise the sail and get the board underway. They also note that a board provides a safety flotation device in itself (i.e. it doesn’t sink) which the sailor can sit on/cling to if in trouble. The MSA believes that the requirement for a PFD or a suitable wetsuit, where the skipper of the craft has the responsibility for deciding which wetsuit, is a reasonable and practical safety measure that takes into account the unique aspects of this sporting activity.*

The use of a foot strap is considered unnecessary given that, unlike surfboards, windsurfers and their boards are rarely separated. The board's sail, when in the water, acts a bit like a sea anchor and prevents rapid drift and separation from the sailor.

Mr Ian Butchart of Gulfstream Consultants Ltd recommends multi-chamber inflatables be exempted from the requirement to carry PFDs on the grounds that they are virtually unsinkable and will support all on board when swamped. Also, when used for diving, there is little room on board to stow PFDs.

MSA response: The MSA accepts that inflatables, particularly those with more than one chamber, provide significantly greater safety than small craft with limited (or no) buoyancy. However, unless a person is tethered to the vessel, or has the strength to hold on over a long period, we believe the concept of carrying a buoyancy aid which can be worn is a safety argument that cannot be ignored.

The New Zealand Scouting Association requests that cutter rowing training and cutter rowing in organised regattas be exempted from the requirement to carry PFDs, where a patrol boat is in attendance (carrying the requisite PFDs), on the grounds that the crew can all swim, the cutters are swamp tested (buoyant), carry lifebuoys, and provide little room for PFDs to be carried.

MSA response: The MSA is of the view that 91.4(3) and (4) specifically provide for this situation.

91.4(3)

Richard Brown of Auckland Yachting & Boating Association suggests that this provides an opportunity for some clubs to run races without sailors wearing buoyancy provided there are plenty of rescue boats in attendance. He wonders if sailing events should be excluded.

MSA response: The MSA understands that Yachting NZ and its associated clubs all have rules requiring crew on competing open yachts to wear PFDs. The provisions of rule 91.4 apply to all organisations involved in sporting events.

The New Zealand Trailer Boat Federation wonders whether it is practical for a Waka/dragon boat or the support craft to carry the required number of PFDs.

MSA response: For most waka ama (racing outrigger canoes) and dragon boats, PFDs are usually worn by the crew. The rule and specific national safety guidelines for waka developed in 2001 were arrived at in consultation with the organisers and communities involved. They support and abide by this requirement.

The Coastguard National Headquarters suggests that in the interests of consistency, the term 'buoyancy aid' be replaced with the term 'personal flotation device'.

The Hawke's Bay Regional Council Harbourmaster suggests that the definition for buoyancy aid should be the same as for PFD.

MSA response: For the purposes of this rule, 'PFDs' relate only to those devices which are worn on the body (NZS Buoyancy Aids - Types 401, 402, 403, 404, 405, and 408). The term 'Buoyancy Aid', on the other hand, is used to encompass devices that are designed to be worn on the body and devices such as lifebuoys and lifebelts which support a person in the water (NZS Buoyancy Aids - Types 406 and 407). Rule 91.4(3) allows for support craft involved in sporting, training or ceremonial events to carry these as an alternative to buoyancy aids worn on the body, for practical reasons. The rule has been amended to spell out more clearly what is meant by the terms 'PFD' and 'Buoyancy Aid'.

91.4(3) – (a) and (b)

Richard Brown of the Auckland Yachting & Boating Association supports 91.4(3)(b) as it allows for the boating community to purchase cheaper lifejackets which, while not NZS certified, nevertheless meet similar standards. It would also allow visiting overseas sailors to participate in New Zealand events without having to buy new lifejackets.

The New Zealand Jet Boat Association supports the current proposal to allow PFDs manufactured outside New Zealand that meet the Director's criteria, to be sanctioned under the Rule. It notes that many PFDs are brought in for racing purposes, and to allow only New Zealand Standards approved jackets would provide an "extraordinary commercial advantage without consideration of the user".

The Auckland Coastguard (membership 7000) suggests that "it is important that not only are PFDs sold to a minimum standard, whether that be a New Zealand Standard or approved international standard, but that they are competitively priced to encourage their use".

Yachting New Zealand agrees that PFDs from overseas should be allowed, but states that visiting yachts would be disadvantaged by the rule as it stands if their PFDs had not been approved by the Director, forcing them to purchase new "approved" PFDs or, more likely, ignore the rule. It proposed additional wording to accommodate this situation.

The Wellington Regional Council is concerned to ensure that there is greater clarity about what types of PFDs "substantially comply with" or are "equivalent to" the New Zealand Standard. It recommends, therefore, that the Director issue a list of the most common devices that would comply, or clear guidelines as to what would constitute an equivalent standard.

Burnsco Marine, which imports lifejackets, strongly supports the draft rule as it currently stands, noting that allowing only NZS approved PFDs "may prevent boaties from purchasing satisfactory cheap imported lifejackets", such as those approved by the US

Coastguard. “To our knowledge, the current situation does not encourage dangerous lifejackets to be sold in New Zealand, but it does encourage competition and so keeps prices down and lifejackets affordable. With more stringent standards, this may encourage local manufacturers to keep prices high”.

The National Maritime Museum supports the provision for the Director to approve PFDs from overseas that meet equivalent standards to that of NZS 5823:2001, provided they are monitored to ensure standards are maintained.

The New Zealand Jet Sports Boating Association supports the approval by the Director of imported lifejackets on the proviso that they meet the *same* standards as New Zealand lifejackets.

Bob Tait of Bob Tait and Son Holdings suggests that PFDs meet the New Zealand Standard or that of Bureau Veritas NZ 5823/1989/2001, Australian Standards A51513 or ULA United Laboratory of Lloyd’s, cross-referenced to Bureau Veritas of New Zealand.

Lloyd Klee of Safety at Sea, recommends that imported lifejackets “must undergo inspection testing (at their cost) with an acceptable independent testing authority in New Zealand to ensure importers meet the equivalent of NZS5823”. “Tests could include buoyancy and donning, while inspection would cover labelling, fasteners etc.

The Coastguard Federation National Headquarters recommends that only PFDs that meet the New Zealand Standard should be accepted (i.e. section 91.4(3)(b) be removed). No reason is given.

Bureau Veritas recommends that only PFDs that meet New Zealand Standard 5823 be acceptable under the Rule. It states that “the equivalent method proposed could in fact allow inferior products to gain acceptance and could lead to possible life threatening situations”. It suggests that the New Zealand Standard was developed specifically for New Zealand conditions, while equivalent standards would not have taken into account New Zealand conditions. It also states that the actual processing of non-New Zealand Standards approved lifejackets would be very time-consuming, and that the central criteria listed in the draft Rule for establishing equivalence is too narrow (no reference to retro tape, colour etc. and 53 newtons buoyancy only to adult buoyancy vests).

Standards New Zealand indicated that it is strongly opposed to “the possibility of the legislation allowing a plethora of lifejackets into New Zealand that could be sub-standard”. SNZ believes that this could well happen under the provision of 91.4(3)(b), which would allow the Director to approve PFDs that meet an equivalent international/national standard and, accordingly, recommends that it be deleted. SNZ proposes that anyone wanting to sell jackets in NZ should meet the New Zealand Standard “which is what happens in Australia, Canada and Europe”. The New Zealand Standard sets a minimum level of performance, the attainment of which is regularly checked throughout audits, by certified bodies. SNZ suggests that “most overseas standards vary in terms of performance

requirements” and are “written for boating and legislative conditions that are different to our own”.

Water Safety New Zealand supports the view expressed by SNZ, that only NZS approved PFDs should be sanctioned by the rule, with the additional recommendation that sub-section (b) be replaced by a provision that allows the Director to approve buoyancy aids for specialist type activities if he/she is satisfied that it “provides a level of safety equivalent to the standard prescribed in paragraph (a) and provides a minimum of 53 newtons of buoyancy”. In the latter case, WSNZ “recognises that there are activities such as swift water kayaking etc. where special PFDs may be required.”

In terms of allowing non-New Zealand Standards approved PFDs to be used, WSNZ believes that the NZS provides the wearer with a minimum standard of performance and places a responsibility on the manufacturer to meet these standards and to be accountable if things go wrong. The NZS was developed with New Zealand conditions and environment in mind. If the rule is adopted in its present form, WSNZ believes “many people will bag the cheapest option”, and suppliers will appear who have no knowledge of the sector and “focus only on the sale”. “If those involved in boating activities cannot afford a decent/appropriate PFD then they have no business boating”.

The Boating Industries Association recommends that only PFDs which meet “the (rather than ‘any’) New Zealand Standard 5823:2001” be acceptable under the rule in order “to ensure that there is one standard for all buoyancy aids being sold and legally used in New Zealand”.

The NZ Marine Export Group requests that all PFDs be certified to NZS5823:2001 in order to suit New Zealand conditions.

Mr R O’Sullivan recommends that only NZS PFDs be approved for use in New Zealand to avoid the importation of sub-standard units.

Greg Frampton supports only NZS approved PFDs being sanctioned under this rule, to ensure that minimum safety standards are maintained.

Hutchwilco Ltd submits that it “fully supports the concept of requiring boaties to be responsible and carry lifejackets on board, but is strongly opposed to the possibility of legislation allowing a plethora of lifejackets into New Zealand that could be sub-standard. New Zealand has a well-proven and recently revised standard – NZS 5823:2001 – for buoyancy aids written for NZ conditions. Any one wanting to sell lifejackets in NZ should need to obtain approval to this standard, which is exactly in line with what happens overseas – if we want to sell lifejackets in those markets we need to obtain relevant approvals to their standard”. Hutchwilco are of the view that “there is no question whatsoever that standards and quality of PFDs will drop” if the MSA is allowed to accept PFDs that are not approved to the NZ standard. In summary, the reasons for this are given by Hutchwilco as follows:

- the MSA would have great practical, ongoing difficulties in assessing whether PFD's certified overseas to meet a "similar" standard to NZS 5823:2001, because the draft rule is far too subjective and open to interpretation. Hutchwilco consider that it would be very difficult to establish clear criteria for measuring what is meant by 'similar' or 'substantially complies with' in the draft rule i.e. what percentage compliance would mean that an overseas PFD 'substantially complies with' the NZ standard?
- the MSA would find it difficult to assess whether quality standards are (and continue to be in the future) met by overseas PFD manufacturers. Hutchwilco states that overseas standards vary in terms of performance requirements, including the quality of the materials used in the manufacture and testing of products. The company also states that many overseas standards do not require regular audits (and therefore continuous accountability) which are required of NZ manufacturers to the NZ standard. Some "even allow self monitoring". It suggests that this will create major difficulties when problems with the jackets occur, because it may be difficult to locate the company concerned in a foreign country, or it may have gone out of business. Hutchwilco note that "a few words and assurances on a foreign piece of paper is hardly 'equivalent' to personal visits/inspections and audits of a factory producing PFDs." It urges the MSA to think of the consequences of one faulty PFD imported under these circumstances causing the death of someone in New Zealand. Realistically, Hutchwilco believe that the only way the MSA can assure itself that overseas manufacturers are up to standard is to incur substantial costs travelling overseas to inspect them.
- it would be impossible to police and enforce the rule if it is not clear what standard is acceptable, thereby negating the purpose for which the rule was introduced.
- overseas PFD standards are written for boating and legislative conditions that are different from New Zealand, buoyancy requirements being one obvious example. Hutchwilco states that each country has its own unique characteristics and therefore its safety standards relate to those conditions. Adopting a lesser but 'similar' overseas standard could compromise safety.

In summary, Hutchwilco believe that the passage of the rule as it currently stands "*will bring in uncertainty, unreliability and contentious approvals. Worse still, there is no question whatsoever that standards and quality of PFDs will drop, with inevitable negative consequences*". It also believes it will increase imports of PFDs, which could in turn affect the financial viability of NZ manufacturers, with some forced to close. It states that Quality NZ manufacturers would be forced to import to protect distribution and sales networks against cheaper PFDs of an inferior quality to the NZ standard, with which NZ manufacturers are required to comply. That is not to suggest that NZ manufacturers are any less efficient than their overseas counterparts. On the contrary, Hutchwilco states that NZ manufacturers could easily compete with overseas manufactured imports of lifejackets

at the cheaper end of the market, if allowed to produce PFDs of a similar inferior quality material, no reflective tape and less foam etc.

MSA Response: *The issue raised by the above respondents focuses on whether a PFD manufactured to a “national or international standard that ... substantially complies with ... NZ Standard 5823:2001” should be acceptable under this rule, or whether only PFDs manufactured to the NZ Standard should be acceptable.*

In fact, this section of the rule (91.4(3)(a) & (b)) relates solely to buoyancy aids carried in support craft involved in a sporting event, training activity or ceremonial event, and not to all recreational boats in general. The wider question of whether PFDs manufactured to overseas standards should be acceptable under this rule is addressed under section 91.2 of the rule, which sets out a definition as to what constitutes an acceptable PFD for the purposes of this rule. For ease of reference, however, the MSA’s response to this wider question is set out here, with each of the issues raised in submissions addressed, in turn, below:

- (i) **Assessment Criteria** – *it is suggested that the MSA would have major difficulties in assessing whether or not a PFD certified to an overseas standard substantially meets the NZ Standard (5823 : 2001).*

To obtain the MSA’s acceptance of an overseas certified PFD for use under Part 91, manufacturers would be required to apply to the Director of Maritime Safety, providing full disclosure of the overseas standard that the PFD has been certified to, details of the quality process that it has been manufactured under, together with documentation verifying approvals issued by the recognised overseas certifying authority. If the Director of Maritime Safety considers that the overseas certified PFD substantially complies with New Zealand Standard 5823:2001, the Director would issue a Letter of Acceptance. This system is already in place for a range of overseas certified safety equipment (including PFDs) that are marketed for use in the commercial maritime sector, and has run relatively smoothly for a number of years. The proposal under this rule would simply extend that approach to the recreational boating sector.

In addition, the core criteria for assessing “substantial compliance” – meeting NZS buoyancy requirements; having limitation on use, donning instructions, storage and maintenance available; and constructed under a certified quality practice – would be clearly laid down from the outset, thereby simplifying the process and limiting the need for significant interpretation of what is meant by ‘substantial compliance’ on the part of the MSA. Given this situation, the MSA does not envisage that there would be major difficulties assessing overseas certified PFDs for compliance with Part 91.

- (ii) **Quality Assessment Standards** – *it has been suggested that the quality of PFDs manufactured overseas can vary because quality assessment standards of certifying organisations can be less stringent than in New Zealand.*

Only PFDs that are constructed under a recognised and certified quality process (such as ISO 9000) would be considered by the MSA for approval under Part 91. Quality processes require ongoing testing and auditing of the product and manufacturer concerned. Again, the MSA has gained considerable experience in dealing with this issue when assessing applications from overseas-certified manufacturers of safety products for use in the commercial maritime sector.

- (iii) **Enforcement** – it is stated by Hutchwilco that it would be impossible to police and enforce the rule if it is not clear what standard is acceptable.

The MSA does not expect that a rule that allows for MSA approved, overseas certified PFDs (in addition to NZS certified PFDs) to be carried on board recreational boats would be overly difficult to enforce. Either PFDs will be labelled with the NZ Standard or display a label which accords with a list of approved, overseas-certified PFDs that will be issued by the MSA. That list will be publicly available and would be circulated (and updated as necessary) to enforcement agencies (regional councils and NZ Police) and made available on the MSA's website.

- (iv) **Boating conditions** – it has been suggested that the NZ Standard for PFDs has been written to suit NZ conditions and circumstances (such as weather and sea patterns, environmental conditions, and the size and physique of New Zealanders) and, accordingly, PFDs manufactured to meet overseas standards would not be suitable for New Zealand.

The MSA is not convinced of this argument for two reasons. First, any overseas-certified PFD must substantially comply with the provision of the NZ Standard if it is to gain MSA acceptance under Part 91. Second, the MSA has consulted a number of sources with practical experience of boating around the world, both inside and outside the MSA, who are of the opinion that the coastal waters of New Zealand are no more hazardous or less hazardous than in other parts of the world such as Australia, Europe or the Americas. Conditions do of course differ between countries, as they do between regions of New Zealand, and as the seasons change. It does not appear, however, that there are such fundamental differences that PFD standards around the world substantially differ.

- (v) **Unfair Competition** – it has been suggested by Hutchwilco that manufacturers of PFDs to the New Zealand standard would face unfair competition from overseas certified PFDs because the latter could be manufactured to a lower standard using inferior products, no reflective tape, less foam (and hence buoyancy).

The MSA is confident that this would not be the case. As noted in the comments under issues (i) – (iv) above, an overseas manufacturer would be required to clearly demonstrate to the Director of Maritime Safety's satisfaction that its PFDs substantially comply with NZS5823: 2001, including the same minimum buoyancy requirements, usage instructions, fittings and quality construction process. An application to the Director for acceptance of an overseas certified PFD as substantially complying with the New Zealand Standard for a Type 402 Inshore Waters Lifejacket, for example, would not be successful if it did not have "some means of making it visible at night such as retro-reflective tape or lights" as required by the Standard. However, if the PFD substantially complied with the requirements for approval under Part 91 for a Buoyancy Garment (Type 405), which does

not require retro-reflective tape, it might be accepted by the Director as a buoyancy garment, alongside similar products certified to the NZ Standard.

- (vi) **Financial viability of NZ manufacturers** – *Hutchwilco states that the financial viability of New Zealand PFD manufacturers will be affected (with some forced to close), in the face of imported cheaper overseas PFDs of inferior quality.*

The MSA takes this claim very seriously and has carefully considered the company's arguments. However, there are several reasons why the MSA believes that NZ manufacturers will not be disadvantaged by the current proposal. Indeed, the opposite should be true. First, manufacturers of PFDs that are certified to an overseas standard will not be able to sell their products as being accepted by the MSA under Part 91 unless they can clearly demonstrate that they have been constructed to standards which are very similar to the NZ Standard. In other words, they will not be able to sell an inferior product and gain a commercial advantage. Second, it is difficult to see how the introduction of legislation making it compulsory for recreational boaties to carry PFDs is going to reduce the marketing opportunities open to NZ manufacturers. Rather, it should substantially increase the size of the PFD sales market in New Zealand. Third, New Zealand manufacturers of NZS certified PFDs appear to be competing successfully at present with imported PFDs that are not required to meet any minimum legislative standards.

Conclusion – *respondents are divided in their views on this subject, with a number in favour of accepting overseas certified PFDs, and many who are not. On balance, the MSA does not consider that there is sufficient cause to limit the NZ market for PFDs to only those which have been certified to the NZ Standard. The MSA believes that manufacturers of PFDs that are certified to overseas standards should be given the opportunity to demonstrate that their products are substantially the same as those manufactured to the NZ Standard, and to market them accordingly. At the end of the day, New Zealand standards should not present an unnecessary barrier to trade, and the NZ consumer should be given the opportunity to enjoy the benefits of a wide product range, both in terms of choice and price.*

Standards NZ notes that insisting on a minimum of 53 newtons buoyancy could be dangerous for persons under 40 Kg while conversely a type 401 open waters buoyancy aid requires a minimum buoyancy of 100 newtons.

Richard Brown of the Auckland Yachting and Boating Assn suggests that 53 newtons of buoyancy for PFDs is an adult criteria, and could be lower for children.

The Hawkes Bay Regional Council Harbourmaster notes that the minimum buoyancy force of 53 newtons will vary according to age/size of the wearer.

MSA response: *The 53 newtons refers only to buoyancy aids that will be carried by support boats for craft engaged in a sporting event, training activity or ceremonial event. A buoyancy aid carried for these purposes is likely to be a lifebelt or similar device which can be put on quickly when in the water. Whether for use by a child or adult, the MSA believes that a minimum of 53 newtons for this type of device would seem sensible. For PFDs, a range of buoyancy levels for differing body weights are provided for under the NZ Standard.*

The Morakura Yacht Club questions whether PFDs that were developed under the 1989 New Zealand Standard will comply with this rule.

MSA response: The MSA agrees that the rule should allow for the acceptance of suitably well maintained PFDs manufactured under the 1989 standard. The definition of PFD has been modified accordingly.

Yachting New Zealand agrees that PFDs from overseas be allowed, but suggests that visiting yachts would be disadvantaged by the rule as it stands if their PFDs had not been approved by the Director, forcing them to purchase new “approved” PFDs or, more likely, ignore the rule. It proposed additional wording to accommodate this situation.

MSA response: The MSA agrees that it would be impractical to prevent overseas yachties visiting New Zealand from using their own PFDs. Accordingly, the rule has been amended to allow competing watersport teams from other countries to use PFDs certified to overseas standards. Rule 91.4(3) does not apply to foreign registered recreational craft.

91.4(4)

Environment Waikato notes that section 684B(I) of the Local Government Act only gives a *Council* the power to exempt, not *Harbourmasters*, and therefore provides a rewording of this sub-section which would enable Councils to delegate to Harbourmasters.

MSA response: The MSA has adopted this suggestion.

The Marlborough District Council Harbourmaster questions whether there is a conflict between 91.4(3) and 91.4(4).

MSA response: The potential conflicts have been identified between paragraphs (3) and (4), and between paragraphs (3), (4), and (5). Priority has been given to the harbourmaster’s exemption in the first case, and in respect of conflict with the requirement to wear a pfd, the exemption provisions are given priority.

David Renouf questions whether testing is needed to ensure that PFDs remain serviceable over time.

MSA response: The MSA considers that while it is important that PFDs remain serviceable, it would be unnecessarily difficult and costly to introduce an inspection regime. Also, anecdotal evidence suggests that because the modern materials used in PFD construction last much longer than their old kapok equivalents, the incidence of unsuitable PFDs is much less than it once was. At the MSA, we are not aware of any recent instances where an unserviceable PFD has led to a fatality.

91.4(5)

Richard Brown of the Auckland Yachting and Boating Association questions whether this rule would require a person to wear a PFD in bed or below deck (in rough weather) noting that sometimes the danger is only to those on deck.

MSA response: Within the parameters set out in this rule, it is left up to the individual skipper's discretion to decide what is dangerous and under what circumstances it is necessary and practical to wear a PFD.

The New Zealand Trailer Boat Federation suggests that “danger” and “risk” be formally defined “so that the skipper’s subjective interpretation is less relevant”.

Anne and John Osborne, Honorary Launchwardens, suggest that this section is too subjective and needs clarification if it is to be enforced properly. Similar views are expressed by another **Launchwarden, Ian Clausen**.

John McLeod of the Merchant Service Guild notes that “we fail to see how this rule can be applied or measured”.

John Croft, Lecturer and Examiner, recommends that the compulsory wearing of PFDs should be left to the discretion of the skipper as the need for it will vary significantly according to the type and size of vessel for any given set of conditions.

MSA response: The MSA believes that it would be impractical to set down in legislation what constitutes a ‘dangerous’ or ‘risky’ situation at sea. As John Croft notes above, it will vary enormously according to the type and size of vessel in any given set of conditions, the knowledge and experience of the crew, and the circumstances in which a vessel finds itself. The rule, therefore, has outlined the potential (but not exclusive) causes of risk or danger to a vessel and crew which must be considered, both separately and in combination, by a skipper when deciding whether or not PFDs should be worn. A skipper’s discretion, however, is reasonably tightly constrained by the list of conditions set out in the rule. In this context, section 19 of the Maritime Transport Act, which sets out the duties of a ship’s master (or “skipper”), including being “responsible for the safe operation of the ship on a voyage, the safety and wellbeing of all passengers and crew”, is directly relevant. Case law on this subject, which looks at the skipper’s responsibilities for safe operation of the ship, helps establish the skipper’s obligations for safety in law.

Environment Waikato recommends that surfboarders be excluded from the requirement to carry/wear PFDs.

MSA response: Surfboarders are excluded from this requirement by virtue of rule 91.4(2).

Environment Canterbury recommends that the rule be extended to require all children under 10 years of age in small vessels (under 5 metres) to wear PFDs unless those vessels

are underway and all persons to wear PFDs in small vessels when underway during the hours of darkness.

Taranaki Regional Council considers that “water safety in New Zealand would be further improved if the rule required all persons on board to wear PFDs while on the water”.

Honorary Launchwarden, Clarence Stevenson, advocates not just the carriage but the wearing of PFDs by all recreational boaties.

Marty Black, Queenstown Lakes District Council Harbourmaster, proposed that “for small craft, the wearing of lifejackets should be compulsory, especially for small children”.

B Jury recommends that it be made compulsory for all recreational boaters to wear PFDs. If a person is thrown out of a boat, Mr Jury suggests, a PFD stored in the boat will be of little use.

***MSA response:** The question of compulsory carriage of PFDs vs. compulsory wearing of PFDs was debated at length by the Pleasure Boat Safety Advisory Group (PBSAG) during its two year review of recreational boating safety in New Zealand. The Group, which comprised a wide cross-section of representatives from the recreational boating community, set out a comprehensive strategy for improving New Zealand’s recreational boating safety record in its report issued in December 1999. Making the carriage of PFDs compulsory was an integral part of that strategy. As with the Auckland Regional Council and Environment Bay of Plenty that had introduced bylaws making the carriage of PFDs compulsory in their respective regions, PBSAG recognised that the wearing of PFDs at all times was likely to be more effective in preventing drownings. However, the considerable difficulties in enforcing such a law and its unacceptability to the boating community led to the less stringent requirement of compulsory carriage being adopted.*

A blanket requirement that PFDs be worn at all times on all recreational craft poses some obvious practical difficulties – for example, it would mean that PFDs would have to be worn in bed, on large super yachts and in a range of other circumstances where compliance would be either impractical or perceived by the public to be “over the top”. It would not be possible, in law, to cater for all such circumstances. If the law was not perceived to be fair and reasonable, it could be held up to ridicule and would be more likely to be observed in the breach than in compliance, and almost impossible to enforce. PBSAG concluded, therefore, that compulsory carriage would be more acceptable to the recreational boating community and, hence, more likely to be observed. It agreed, however, that compulsory wearing should be required where there was a heightened risk generated by tides, river flows, visibility, rough seas, adverse weather, emergencies or other situations causing danger or risk to the safety of persons on board (as set out in this section).

The MSA accepts that there may be some merit in the Environment Canterbury suggestion that wearing be made compulsory for children under 10 and those in small craft, as small craft are more likely to capsize or lose people overboard. Again, however, this is a broad brush approach to one sector which excludes other sectors that may be equally vulnerable. For example, there does not appear to be any evidence that that children under 10 are more likely to drown than overweight adults, non-swimming adults or the elderly. By requiring the wearing of PFDs only in situations where there are heightened levels of risk that are relevant to the whole of the recreational boating community (as set out in this section), this problem is avoided.

The Napier Regional Council Harbourmaster recommends that the requirement to wear PFDs be extended to include “any person using water skis, an aquaplane, surfboard or similar object, or who is barefoot skiing, while being towed by a recreational craft”.

The Wellington Regional Council notes that there is no provision for a water-skier (or similar person being towed) to wear a PFD or wetsuit. It recommends that, as a minimum, a spare PFD should be carried in the boat doing the towing.

Gordon Handy suggests skiers and other people being towed be required to wear a PFD, as it not only provides buoyancy but also helps prevent injuries. Ski vests are compulsory at Mr Handy’s Water Ski Club.

MSA response: After consultation with Water Ski New Zealand, the MSA has adopted this suggestion, with minor exceptions.

David Huxley-Jones suggests that the word “secured” be added after “wearing” to clarify that the PFD must be fastened in accordance with the manufacturer’s instructions.

MSA response: The MSA has adopted this suggestion.

91.5 Minimum age for operating powered vessels

David Renouf suggests that no minimum age should apply to power boat vessel operators.

MSA response: The MSA disagrees. Power vessels and personal water craft (PWCs) have caused deaths and can be dangerous under the control of immature operators. We believe the minimum age should be set at 15 if a vessel is capable of exceeding 10 knots, albeit with some controlled exceptions. This is the same minimum age required for a motor vehicle.

Auckland Yachting and Boating Association suggests that the requirement in rule 91.5(1) should be to prohibit persons under 15 navigating at a proper speed exceeding 10

knots, rather than to prohibit use by persons under 15 of a boat capable of speeds over 10 knots.

MSA response: This requirement is carried over from the Water Recreation Regulations 1979. The focus on speed capability of the boat rather than actual speed is for a number of reasons. The rule assumes that if a vessel can travel at high speed it is quite possible that it will do so. The rule is also drafted to take into account the fact that many vessels capable of a speed exceeding 10 knots are of considerable size and complexity and need a mature skipper at whatever speed they are navigated. While some persons under 15 may well be responsible enough to operate a boat capable of over 10 knots, the MSA considers the existing requirements set sensible safety standards. An amendment has been made to allow those under 15 to be at the controls of a such a vessel provided they are under close supervision.

Yachting NZ suggest that persons under 15 should be able to operate a power vessel capable of exceeding 10 knots when supervised by an older person observing, but not on board, if the vessel is a tender to a larger vessel.

MSA response: A tender which is not capable of a speed exceeding 10 knots can be operated by a person of any age, and those which can exceed 10 knots can, if necessary, have motors modified to prevent speed over 10 knots while used by those under 15. Given that tenders start to plane at speeds below 10 knots, the MSA does not accept that anything less than direct supervision is acceptable for power vessels capable of speeds over 10 knots.

Geoff Thorpe submits that the age restriction of 15 should not apply to persons operating boats which are tenders of larger vessels within 200 metres of shore.

MSA response: THE MSA does not agree. The under 15 rule only applies to vessels capable of over 10 knots. Given the 200 metre restriction of 5 knots, a person under 15 complying with the 5 knot rule is complying with the rule if the tender's motor is fitted with a stop to prevent it exceeding 10 knots.

Coastguard National Headquarters, Auckland Coastguard, Yachting New Zealand, The Boating Industries Association, Young Mariners of New Zealand, The Sea Cadet Association, Marty Black (QLDC Harbourmaster), R F O'Sullivan and Trevor Robertson, suggest rule 91.5(2) should be amended to permit closely supervised persons under 15 to be allowed to helm a power boat capable of exceeding 10 knots in order to ensure they gain boating skills at an early age.

MSA response: The MSA agrees. The rule has been amended to reflect this.

Trevor Robertson submits that lack of a definition of the words “propel” and “navigate” lead to confusion.

MSA response: The MSA believes these words are self explanatory. The rule has been amended and it is now clear that the rule applies to the person at the helm and the skipper.

Sea Cadet Association and Ian Hunter suggest that the wording should be altered to include the word ‘master’ to avoid confusion.

MSA response: The MSA agrees. The Rule has been amended and it is now clear that the rule applies to the person at the helm and the skipper.

Trevor Robertson submits that a vessel under sail may not be helmed by a person under 15 if the vessel is capable of a speed exceeding 10 knots while engine driven.

MSA response: The MSA agrees and has replaced the word “powered” with “power driven” vessel to bring the rule into line with the Collision Prevention Rules (Part 22). With this change, the rule will only prohibit persons under 15 being at the helm while the vessel is engine driven and if the vessel is capable of exceeding 10 knots under power.

Greg Frampton, CBES, suggests that persons under 15 should not be permitted to operate any vessels capable of 10 knots, including sailing vessels.

MSA response: The MSA disagrees. Given the level of skill required to operate a sailing vessel at speeds exceeding 10 knots and the lack of accidents or incidents involving young sailors, we see no need to apply the rule to unpowered craft.

New Zealand Jet Boat Association submits that a significant fee be charged for any exemption from the age restriction in rule 91.5. It submits that competency testing be required by a person with sufficient knowledge of safe boating practice on rivers.

MSA response: In the MSA’s experience this provision is mostly used by persons who use a boat to get to school from isolated locations. The fee charged for exemptions will generally be at the discretion of regional councils. The criteria listed for granting the exemption appear to be adequate. It is likely that the MSA would seek further advice before the Director was satisfied whether an applicant was competent to navigate at speed on rivers, but the MSA does not think competency testing is necessary in all cases on a national basis.

Taranaki Regional Council and Sea Cadet Association submit that the Director should have authority to grant an exemption only where regional council bylaws do not apply.

MSA response: *The MSA prefers to retain the power nationally. A concern expressed by other commenters is that exemptions may be required for one person in a number of locations across a number of regions. Rather than requiring individual exemptions for each region, the MSA proposes that it should issue one exemption for a person, if that person is engaged in the same activity in a number of locations. For the Director to grant an exemption, he must do so only after consulting with the local authority. At times sporting events, for example, may include a number of regions. In such circumstances it makes sense for one authority to grant a single exemption after consulting the various regions concerned.*

Yachting NZ suggests that no supervision is necessary once an exemption has been granted by the Director.

MSA response: *While exemptions are frequently given for boats to be used as transport to school from isolated places, the MSA believes some form of control or supervision is still required. Exemptions will be subject to any conditions imposed by the Director or a regional council harbourmaster.*

Young Mariners of NZ submits that they operate on the water training schemes for young persons which include power vessels capable of exceeding 10 knots and ask how an exemption would be handled.

MSA response: *The amendment to the rule allowing closely supervised operators to control a vessel will allow this training to proceed.*

Scouting NZ submits that only the Director should have the discretion to grant exemptions for persons under 15 to operate power vessels capable of speeds exceeding 10 knots.

MSA response: *The MSA believes local conditions and local knowledge are important factors and often the regional council harbourmaster is in the best position to make such decisions. It is important to have the flexibility to allow either the Director or the council to make decisions in some circumstances.*

John Smallridge suggests that exemptions should not be able to be given to persons under the age of 10 years.

MSA response: *The MSA accepts that this may be a useful guideline. However the proposal has not been specified as a mandatory requirement to ensure the rule is sufficiently flexible.*

Richard Pomeroy, National Maritime Museum, submits that tighter conditions should be placed on the ability of harbourmasters to grant exemptions.

MSA response: The MSA believes regional council harbourmasters are well placed to make decisions for their areas.

91.6 Speed of vessels

Taranaki Regional Council supports this rule.

Alastair Blackie, Gordon Handy, B A Murray and Marty Black, QLDC Harbour Master, submit that the 200 metre restriction for vessels exceeding 5 knots is unnecessary and that there are areas where water skiing in particular should be permitted closer to shore.

MSA response: The MSA believes this rule saves lives. It has been in effect in existing legislation for 23 years. The 200 metre requirement provides a safety zone close to the beach for swimmers, for small boats such as kayaks, rowing, and sailing dinghies, for those learning to operate such boats, and where traffic is likely to be dense, for example, near launching ramps. The rule also ensures vessels at high speed are not likely to collide with each other when rocky outcrops, cliffs, headlands, bridge structures, wharves and other structures obscure a skipper's vision. However, where there is good reason in a location to alter the 200 metre rule for a specific purpose, the restriction can be uplifted on a temporary or permanent basis, or an area can be reserved.

Environment Waikato and Taupo Acting Harbourmaster, Les Porter, submit that rule 91.6(1) should not include "without reasonable excuse". **Neil Faulkner** submits it is at times necessary to exceed 5 knots to get off a surf beach.

MSA response: The MSA believes there are circumstances other than emergencies when there is reason to exceed the 5 knot rule, for example when transiting surf off a beach or when flows at a river mouth exceed 5 knots.

Auckland Yachting and Boating Association suggest that the speed limit in 91.6(1) should be limited to powered vessels only. The Association also queries the exception in 91.6(5) for sailing vessels engaged in racing. It asks whether 5 knots may only be exceeded if the other vessels within 50 metres are also racing.

MSA response: The MSA considers that the speed limit should apply to all boats except as provided in rule 91.6(5). Speed is the predominant safety factor in relation to other water users, not the type of boat. The exception for sailing vessels racing is only in respect of other vessels engaged in the same race. This has been clarified in the rule.

New Zealand Trailer Boat Federation states that rule 91.6(1)(b) prevents a boat exceeding 5 knots while passing under the Auckland Harbour Bridge. It suggests this is

clearly impractical. In addition the Federation considers provision could be made to allow standing at the bow on larger vessels where there is an adequate bow rail structure. In rule 91.6(5) the Federation submits that (d) and (e) should be subject to the requirement in 91.6(1)(c). Regarding rule 91.6(5)(f) the Federation suggests that the term pilot vessel be changed to port authority pilot vessel to prevent false claims to acting as a pilot vessel.

MSA response: The MSA does not agree. The 5 knot restriction in proximity to structures prevents close quarters situations developing unexpectedly when vessels emerge from behind an obstruction. Standing behind a rail is not prohibited by the 'bow riding' rule. The exceptions in rule 91.6(5) have been amended to clarify that there is no exception to 91.6(1)(c). The reference to pilot vessels has been retained. Pilot vessels are not necessarily operated by port companies. With the introduction of pilot licensing under the Maritime Transport Act 1994, it will be clear that a pilot vessel must be operating for the carriage of a pilot licensed under maritime rules.

John Ward and the Harbourmaster for Tasman District submit that because many vessels now use GPS to measure speed, they are measuring speed over the ground rather than speed through the water. He points out that river flows can exceed 5 knots and we should alter 'Proper speed' to speed over the ground.

MSA response: While many boats use GPS, many small boats and outboard powered dinghies do not. Speed relative to the water can be estimated visually. While there are a few places where fast flows exceed 5 knot in places, the rule allows for exceeding the speed when there is 'reasonable excuse'.

Richard Pomeroy suggests that in (2) no one should have part of their body outside any part of the gunwale.

MSA response: The MSA agrees that no part of the body should be extend past the fore part or side of the vessel and hence it is not necessary to specify "sitting". The MSA does not consider having part of the body outside the stern gunwale is a safety concern.

Thomas Turnwald suggests in (2) 'their' should be changed to 'his or her' for consistency.

MSA response: The MSA agrees and amendments have been made accordingly.

Dave Huxley-Jones suggests the word 'unless' should be added to (3).

MSA response: The MSA does not agree. This would negate the purpose of the rule which is to make persons being towed responsible for compliance with speed restriction requirements.

Coastguard National Headquarters, Ian Clausen, Dave Huxley-Jones, Gordon Kenton, and B A Murray state that rule 91.6(4) prevents starting with two skis and then dropping one ski while underway. This is a normal technique for learning to single ski.

MSA response: The MSA agrees. The requirement was inserted to address the hazard posed to other water users of a barely visible floating ski. The draft rule has been amended to permit dropping a ski if steps are taken to ensure that the dropped ski is highly visible when floating in the water.

Environment BOP, Environment Waikato and Wellington Regional Council submit exemptions (5)(a), (b), (d) and (e) should not apply to (1)(c) (divers flag).

MSA response: The MSA agrees. The rule has been amended accordingly.

Coastguard National Headquarters and Colin Robinson submit that coastguard vessels should be granted an exemption under 91.6(5)(f).

MSA response: The MSA agrees. The rule has been amended to exempt emergency service vessels.

Environment Waikato suggest that competing dragon boats, waka, rowing etc be included in (6) (e) and that vessels supporting such activities be included in (f).

MSA response: We believe those competing should not be subject to the 50 metre rule when under control of a recognised national body. We do not consider the exemption should extend to the support vessels unless an emergency situation exists. Support vessels could be considered an emergency response vessel and would also have "reasonable excuse" if responding to a situation where another vessel in their group required assistance. The rule has been amended accordingly.

Yachting NZ, Scouting NZ, Sea Cadet Association of NZ, Howick Sea Scouts, Papakura Sea Scouts and Young Mariners comment that the exception in rule 91.6(5) should be expanded to include boats involved in a race administered by any other approved national organisation.

MSA response: The MSA agrees. The rule has been amended accordingly.

New Zealand Jet Boat Association submits that whenever a speed uplifting is made that the 50 metre rule also be automatically uplifted. The Association submits that in many circumstances on rivers it is not safe to navigate at 5 knots, as required when within 50 metres of another craft or person because of an increased risk of grounding and loss of control.

MSA response: *The MSA does not agree. The 50 metre rule is necessary to protect other water users, particularly swimmers from boats travelling at speed in a close quarters situation. If it is not possible to maintain a 50 metre distance from another person or craft while navigating at a speed necessary for safe navigation, then this may constitute reasonable excuse under the rule depending on the circumstances of the case. The object of the rule is to minimise the risk.*

Environment Southland submit that rule 91.6 should not apply where vessel speeds are managed by a regional coastal plan.

MSA response: *The MSA acknowledges that regional coastal plans have the status of regulations under the Resource Management Act and are likely to prevail over maritime rules. However, the purpose of rule 91.6(5) is to set a national standard for when speed restrictions may be uplifted. The MSA is supportive of regional councils addressing local navigation safety issues at a local level. Nevertheless, it considers this should be done within the framework of nationally accepted standards put in place under Part 91.*

Environment Waikato submits that the 5 knot maximum speed provision should also apply to areas specified by a harbourmaster.

MSA response: *The 5 knot rule applies everywhere unless a bylaw states to the contrary through an uplifting process or where an access lane or reserved area is prescribed. The speed restriction may also be uplifted on a temporary basis for an event or activity under rule 91.18. The proposed further mechanism of uplifting does not have sufficient procedural safeguards to protect the rights of other water users.*

Environment Waikato and Wellington Regional Council suggest adding to rule 91.6(5)(d) the words “in accordance with its rules and constitution, or”.

MSA response: *The MSA agrees that this is the desired outcome, but does not consider it necessary to specify this in the rule.*

Wellington Regional Council suggests that the 200 metre restriction should be amended to allow for activities closer to shore where such an area is demarcated by buoys.

MSA response: *The MSA considers that the reserved area process is more appropriate for achieving this objective. In that way there is public consultation over the uplifting of the 5 knot rule.*

Janet Watkins suggests that swimmers should not be allowed to swim beyond the 200 metre limit.

MSA response: *The MSA agrees that swimmers are at much greater risk when beyond 200 metres from the beach, but the behaviour of swimmers is beyond the scope of this rule.*

91.7 Wake

Environment Southland submits that wakes of commercial craft pose a greater hazard than the wakes of pleasure vessels and that alternative methods should be used to address such issues.

MSA response: *We believe that the training of commercial masters ensures that they understand fully they are responsible under the Maritime Transport Act for any damage they cause while operating their vessels. This rule draws the attention of pleasure boat skippers to this responsibility and is particularly relevant to areas where there are high numbers of pleasure craft.*

Taranaki Regional Council supports the rule and suggests “structures” be included.

MSA response: *The MSA agrees. The rule has been amended accordingly.*

John Croft and Geoff Thorpe submit that the wake caused by large power vessels needs to be more regulated than in the draft rule. They suggest distance or speed restrictions for vessels passing anchorages at speed.

MSA response: *We accept that wakes are an important issue. Given the variability of the wake generation of different craft and the effects of water depth on wake creation, we do not believe that increasing separation distances would prevent dangerous wakes. It is the responsibility of all skippers to assess the effects of any wake they generate.*

Gulfstream Consultants submits that it is as important to control wake as it is to control speed.

MSA response: *The MSA agrees and this is now the main focus of rule 91.7.*

Gordon Handy suggests that damage is caused by the wakes deliberately generated by boats towing wakeboarders.

MSA response: *The rule applies to all recreational vessels and will address wakes which create a danger to others.*

Trevor Robertson submits that “hazard” is a vague term which needs defining.

MSA response: *The term has been replaced by wording which is more appropriate for addressing property damage as well as harm to persons.*

91.8 Lookouts on vessel used for water skiing or towing any person

Dave Huxley-Jones supports the rule.

B A Murray suggests that no observer is needed when water skiing where there are no other boats in the area.

MSA response: The MSA does not agree. The point of having an observer is for the safety of the skier while the skipper looks after the safety of the boat and keeps watch for other boats which may arrive in the area.

Auckland Yachting and Boating Association states that this rule as written applies to rescue boats towing small yachts as well as the intended water skiers and similar activities.

MSA response: The rule has been amended so that it only applies when towing at a speed exceeding 5 knots.

David Renouf submits that lookouts on waterski boats be aged 15 or more.

MSA response: The MSA believes that the 10 years minimum age has worked well in practice since 1979 and should be continued.

91.9 Water skiing or towing between sunrise and sunset

Dave Huxley-Jones supports the rule.

David Renouf suggests the rule apply from 1 hour before sunset.

Environment Canterbury prefers the term “hours of darkness” which would apply the rule from 30 minutes after sunset.

MSA response: Maritime Rules Part 22, Collision Avoidance, state that from sunset to sunrise all vessels must display the correct lights. On balance, we believe that sunset and sunrise are easily observed and well documented.

91.10 Conduct in access lanes

Thomas Turnwald JP suggests that rule 91.10(2)(b) should be altered to “or right hand” for consistency with (1).

MSA response: The MSA agrees. The rule has been amended accordingly.

John Bell submits that water ski access lanes are currently used as high speed access lanes by any craft and the rule needs to clarify whether this is acceptable.

MSA response: The MSA agrees. The rule has been amended to clarify that high speed use of access lanes may only be made for the purpose for which they are designated. In most cases this for water skiing only.

Ian Clausen and Dave Huxley-Jones submit that other activity such as mooring, swimming, sailing, rowing, paddling and fishing should not be permitted when the lane is being used for its intended purpose.

MSA response: The MSA agrees and believes rule 91.10(4) and (5) make that clear.

Dave Huxley-Jones submits that the wording of rule 91.10(1) may allow a skier to use the centre of the lane.

MSA response: The MSA does not agree. The wording requires the person to keep as far as possible to the starboard side.

Dave Huxley-Jones submits that after a skier has been dropped the boat should move to the centre of the lane to retrieve the tow line.

MSA response: The MSA does not agree. The boat must not obstruct other boats and skiers who are using the lane to and from the shore. The area in the centre should remain free from traffic to minimise interaction between users.

Dave Huxley-Jones submits that no skier should enter the access lane until it is clear to do so.

MSA response: The MSA accepts that skiing requires plenty of room to manoeuvre but does not accept that 200 metres clearance is always necessary. The rule has been amended to clarify that the 50m 5 knot rule still applies in an access lane and applies to both the skier and the boat.

91.11 Marking of access lanes and reserved areas

Ken Bilyard and Thomas Turnwald JP suggest orange and black buoys should mark the outer end of access lanes.

MSA response: The MSA agrees with the proposed colour of buoys, but the use of buoys remains optional.

Thomas Turnwald JP submits a minimum height for the posts should be stated in the rule.

MSA response: The MSA considers a specific height is unnecessary. The poles should be high enough and situated in a position where they are clearly visible.

Marty Black submits yellow and blue should replace orange and black.

MSA response: The MSA does not agree. Orange and black are widely used and are familiar to the public.

91.12 Reserved Areas

Environment Southland comments that it is unclear if rule 91.12 applies to temporarily reserved areas as well as permanent reserved areas. It comments further that allocation of space issues on a permanent basis for navigation use, while historically dealt with under maritime legislation, are now more appropriately dealt with under the Resource Management Act.

MSA response: The definition of “reserved area” in rule 91.2 has been amended to clarify that this rule applies only to permanent reserved areas. It is clear in the rule that reserved areas do not provide exclusive permanent use of space. The MSA considers it is legitimate to address allocation of space on safety grounds under maritime safety legislation.

Auckland Yachting and Boating Association states that rule 91.12(2) as written would exclude spectators from an area set aside for a yacht race. It suggests the addition of the words “no person without the permission of the organisers may enter”.

MSA response: The rule would only exclude spectators from the race course itself and it would not prevent viewing from the perimeter. Most yacht races do not take place in reserved areas. Those that do, such as the America’s Cup, are dealt with under specific provisions of the Maritime Transport Act.

Wellington Regional Council submit that where a reserved area is defined in bylaws the council must mark the area with poles and/or buoys marked with red and blue horizontal bands.

MSA response: The MSA agrees that uniform colours are desirable. The colours settled upon are black and white.

John Bell submits that reserved areas and ski lanes must not be placed so as to block navigable channels.

MSA response: The MSA agrees. However, this rule deals with conduct in reserved areas rather than the process for establishing them. Responsibility for prescribing reserved areas rests with regional councils after appropriate consultation through the bylaw process.

R W O'Brien submits that areas reserved for a type of craft work only in favour of that craft for which the area is designated. These craft also use unreserved areas adjacent to their reserved areas.

MSA response: Reserved areas and ski access lanes must be situated with care so as to separate incompatible activities effectively. The MSA notes that reserved areas do not provide for exclusive use of an area for a purpose and that others can enter and use the area provided the reserved area activity is not in progress.

91.13 Anchoring and mooring

Environment Waikato suggests that provisions be added prohibiting anchorage or mooring within a prohibited anchorage, that being defined as an area identified in bylaws or within 100 m of a submarine power or telephone cable or pipe.

MSA response: As legally recognised prohibited anchorages are only established by bylaw or under the Submarine Cables and Pipelines Protection Act 1996, the prohibition requested is best located in those bylaws. The requested framework for prohibiting anchoring in cable protection areas is found in the Submarine Cables and Pipelines Protection Act 1996.

Trevor Robertson suggests that the wording should be altered to ... “create a hazard to other vessels already at anchor.”

MSA response. The MSA believes the wording of the rule covers any anchoring activity that creates a hazard to anchored vessels. These situations include anchoring too close to another vessel with subsequent swinging causing a collision or any vessel dragging towards another vessel some time after anchoring.

Alan Perano, launch warden, suggests that definitions of ‘anchoring’ and ‘mooring’ should be included.

MSA response: The MSA considers that these terms are self explanatory.

91.14 Damage to navigation aids

Environment Waikato and Hawkes Bay Regional Council suggest that the rule require approval from the Director or a local authority for the erection of a navigation aid.

MSA response: This is already required under the Maritime Transport Act 1994 section 200(7).

Wellington Regional Council and Environment Bay of Plenty suggest that a further rule be added to prohibit any person from erecting any beacon, buoy, or other device which may be confused with a recognised navigation aid without the permission of the harbourmaster and the Director.

MSA response: The MSA considers this requirement is effectively in place under section 200(7) of the Maritime Transport Act 1994.

Environment Bay of Plenty suggest a requirement to report any damage to navigation aids.

MSA response: This requirement is already covered by section 33 of the Maritime Transport Act 1994.

91.15 Distance from oil tankers or other vessels showing flag B

New Zealand Defence Force comments that this rule is deficient in that it does not enable exclusion of the public according to class and quantity of explosives being transferred and does not address fixed storage of explosives over the sea. NZDF suggest that a new rule be made requiring regional councils to promulgate bylaws to assist in ensuring compliance of any explosive storage, anchoring or transfer site with Hazardous Substances and New Organisms (HASNO) Act 1996. NZDF also suggests that rule 91.12 be amended to permit reserved areas to be made for the above purpose.

MSA response: The MSA considers that reserved areas for Defence and HASNO purposes are not appropriately located in this rule. In addition, the MSA does not consider it practical to establish a signal system for variable distances according to different classes and quantities of explosives. As an interim solution, pending further work on the matter, the MSA proposes inserting reference to Defence areas in this rule so that the 200 m rule applies to these waterfront areas as well as ships unless otherwise designated.

New Zealand Trailer Boat Federation suggests "Perhaps the proper navigation light arrangement for these specific vessels should be used here as there are many vessels which show a red light by night."

MSA response: The MSA has amended the rule to require an all round red light by night.

Taranaki Regional Council suggests that the requirement to stay clear should be in respect of all ships flying flag B irrespective of the type of the ship.

MSA response: The MSA agrees. The rule is amended accordingly.

Wellington Regional Council submit that the rule should read “The master of a pleasure vessel must not allow that vessel to approach within 200 metres of an oil tanker or a vessel showing flag B by day or a red light by night”.

MSA response: Unless “where possible” is included, a navigation channel may be totally closed to other traffic by this restriction. The MSA agrees that commercial vessels may need to approach closer than 200 metres. The MSA believes that only when it is unavoidable should any vessel come closer than 200 metres and the rule should reflect this.

Following consultation with a number of harbourmasters, it became apparent that the requirement to fly flag B and display a red light at night, included in many bylaws, should also be included in the national rule. In addition, the requirement of the master of a ship to fly flag A (or a rigid replica) to indicate that diving operations are in progress was also supported. These new requirements have been inserted in new rule 91.18.

91.16 Duty of master of a vessel under 500 gross tonnage

Dave Watson suggests that this rule would be easier to teach and understand if it related to length rather than tonnage, as tonnage of a ship can be difficult to judge.

MSA response: The MSA accepts that it may be simpler for some to estimate a vessel length rather than tonnage. However, 500 tons is used widely in a number of rules and has been carried forward from existing legislation. The explanatory note accompanying this Rule indicates that a 500 ton vessel is likely to be over 50 metres in length.

Auckland Yachting and Boating Association suggests that the term “harbour limits” be used rather than an area prescribed by bylaws.

New Zealand Trailer Boat Federation states that “defined for the purpose of this rule” needs some clarification.

MSA response: The purpose of the rule is to prescribe the 500 ton rule and to identify those areas in which the 500 ton rule applies. The concept of “harbour limits” is no longer contained in legislation and the term is no longer uniformly used by regional councils. Hence the need to identify the area to which this rule applies. The rule now defines the term “harbour area” in relation to the area prescribed by regional council bylaws. It is the MSA’s intention to have charts marked with the area where the 500 ton rule applies in the Advisory Circular to Part 91.

Environment Southland describes rule 91.16 as somewhat vague and meaningless without stating the purpose and the area defined. It submits that the rule is a bylaw matter.

It suggests that the rule could require bylaws to specify the area in which the rule applies. The council suggests that concerns about the size of area in which the rule applies should be addressed by dealing with the matter through the public consultation stage of bylaw making.

MSA response: The rule has been amended to clarify its application. The rule stipulates that any 500 ton rule must apply in a harbour area defined by bylaws and that that area must be notified to LINZ for inclusion as chart information

91.17 River Safety Rules

Auckland Yachting and Boating Association states that this rule prevents sailing boats sailing on the wind in a river and that this unacceptable. The Association makes 3 suggestions for overcoming this.

MSA response: The definition of "rivers" excludes tidal portions of rivers. Sailing vessels are not likely to sail on non tidal parts of rivers. In tidal rivers, the channel rules in Part 22 are applicable.

Gulfstream Consultants Limited comment that these rules are not appropriate on tidal rivers where Part 22 Collision Prevention rules should prevail.

MSA response: The MSA agrees. The definition of "river" now excludes the tidal portions of rivers.

New Zealand Jet Boat Association submits in respect of rule 91.17(c) that "safe" is a relative concept depending on the skill of the driver and the suitability of the craft and that this provision is unworkable and unenforceable.

MSA response: This standard has been taken from Part 80 of the rules. As there are clear and unambiguous cases where the rule would apply, the standard has been retained.

Thomas Turnwald JP suggests that 91.17(a) be reworded "ensure that the vessel keeps to the river channel that is closest to the starboard or right hand side of the vessel; and". He suggests this will avoid confusion arising from whether the boat is going up or downstream.

MSA response: Boats in non-tidal rivers work the current when going up and down stream. This causes them to select a course which varies from side to side and the proposed rule reflects this universal practice.

Graeme Head and the NZ School of Outdoor Studies submit that the word "starboard" be used rather than "right".

MSA response: The MSA agrees. For consistency in Part 91, the rule has been amended to read "starboard (right)".

91.18 Temporary Events (Now rule 91.19)

Neptune Consultancy comments that notification is adequate and there is no reason to change the present wording in the rule.

Auckland Yachting and Boating Association suggest that the application of this rule is so far out to sea that few people would be affected.

MSA response: The intent of this rule is to cover the inland waters and the coastal waters for which regional councils do not take responsibility. The MSA agrees that temporary events are less likely to be of concern if located out towards the limits of the territorial sea.

Malcolm Hahn comments that it is not sufficiently clear in 91.18(1)(b) that a reserved area for a specified activity excludes other activities and where responsibility for this lies. He suggests text should be added such as "It is the responsibility of the Event Administrator and the final responsibility of the master of the competition boat to avoid a collision or mishap with other water users".

John Croft supports the basis for this rule, both for temporary events and the power to exclusively reserve an area, provided it does not jeopardise safe navigation for other water craft. He advocates strong enforcement of this rule, particularly in relation to speed of craft in proximity to other craft.

MSA response to the above comments: The MSA agrees and has amended the rule to make it clear that temporary event approvals do establish exclusive use of an area. In terms of responsibility for enforcement, this can be dealt with under conditions attached to the grant of the application.

AW Price comments that where a temporary or permanent uplifting or alteration of speed restriction is granted, every local or national boat club or coastguard or other responsible body be notified by the issuing authority.

Taranaki Regional Council supports this rule. It comments that public notification should be sufficient and that consultation would not be practical.

BA Murray comments that it is totally impractical to require public consultation for temporary reserved areas and strongly supports the exclusion of the public from areas temporarily reserved.

Lake Taupo Acting Harbourmaster/Launchwarden considers that public consultation will cause delays and frustration in dealing with temporary speed upliftings. Experience has shown that the existing process is sufficient and has not resulted in complaints.

Coastguard National Headquarters submits that any action to close waterways to public access should have public consultation as part of the process.

Yachting New Zealand submits that public consultation should take place with known clubs in the region where a temporary reserved area is proposed.

Environment Southland comments that it would be difficult for the Director to be satisfied that an application would not endanger the public without undertaking some consultation with locally affected parties. It also comments that a public advertisement is usually sufficient but that consultation with representative interest groups should also be undertaken.

MSA response to the above comments: The MSA's central objective is that persons affected by the temporary uplifting be notified and if the Director considers necessary, consulted on the proposal. The rule has been amended to reflect this. Notification is usually achieved by newspaper advertisement. Where the Director considers local boat clubs or other affected bodies should be consulted, they will be.

Environment Bay of Plenty comments that this provision should only apply in areas to which bylaws do not apply. It reports few problems with temporary event upliftings and considers consultation with affected parties would be difficult.

MSA response: The MSA agrees. The rule only applies in such areas.

New Zealand Jet Boat Association submits in respect of rule 91.18(b) that where an application for uplifting is made for a specific event in an area, that area automatically becomes a reserved area in the interests of safety.

MSA response: It would be more appropriate for a separate application to be made to achieve this. There is a significant difference between uplifting a speed limit and giving a priority right to use of an area. The two issues would best be given separate consideration on a case-by-case basis.

New Zealand Trailer Boat Federation suggests that many public parks have picnic areas that need to be booked in advance. This system should be extended to tracts of water.

MSA response: The MSA does not consider that there is sufficient demand for water areas to justify such a system being established.

Queenstown Lakes District Council Harbourmaster comments that every application for an event should include an event plan to ensure safety of competitors and the public.

MSA response: The MSA agrees. Under rule 91.18(2) an application would be expected to include this information.

RW O'Brien sees no problem with lifting of speed restrictions for special events, except if blocking a safe passage from one area to another. Mr O'Brien also opposes granting regional councils the right to lift speed restrictions in their areas. "This power should go to the Director of Maritime Safety to make decisions as too many decision makers make for confusion."

MSA response: The policy and framework for devolution of responsibility for navigation safety matters to regional councils was established in the amendments to the Local Government Act 1974 that replaced the Harbours Act. This policy is designed to allow local authorities with local knowledge and presence in their region to identify and implement the speed restriction rules. Rule 91.18 has been drafted to address those areas which regional councils choose not to cover under navigation safety bylaws.

Thomas Turnwald JP questions whether "not less than 7 and not more than 14 days" is enough given that some locations are visited in a "holiday manner" only.

MSA response: This requirement was taken from the Water Recreation Regulations. The intent is to ensure sufficient notification time without losing the currency of the notice. The MSA considers the existing notification timeframe is satisfactory.

Wellington Regional Council supports the introduction of this rule. It suggests that the definition of a temporary event be clarified. It recommends that the event be for a period no longer than 10 days. The council agrees that there may be good reason to reserve an area exclusively for a notified activity and supports the introduction of rule 91.18(1)(b).

MSA response: The MSA would prefer to retain flexibility in respect of temporary events rather than giving a specific maximum period. While the MSA agrees that long term upliftings should be dealt with under the permanent uplifting rule, single event upliftings are better dealt with under this rule.

91.19 Permanent speed upliftings (Now rule 91.20)

Auckland Yachting and Boating Association comment that they would prefer any system that maximised consultation and did not leave decision making to officers knowing little of the local scene.

MSA response: *The MSA agrees with this comment and considers the rule achieves this by only applying to areas where the applicable regional council has not taken responsibility for navigation safety.*

BA Murray supports a structured consistent approach to permanent upliftings of speed limits. He does not support the view that the process should be dealt with entirely at a local level by regional councils.

MSA response: *The policy and framework for devolution of responsibility for navigation safety matters to regional councils was established in the amendments to the Local Government Act 1974 that replaced the Harbours Act 1950. This policy is designed to allow local authorities with local knowledge and presence in their region to identify and implement the speed restriction rules.*

B Hinton considers that regional councils must consult with the Director before granting applications and that the public must have the right to object.

MSA response: *The MSA agrees and considers the rule addresses these concerns.*

Environment Bay of Plenty submits that permanent upliftings should be left to regional councils to deal with. It considers that an additional clause might be appropriate giving the Director a power of approval in respect of particular organisations if it was perceived that upliftings would give one organisation benefits over those of other water users.

MSA response: *The MSA considers that consultation with the Director of Maritime Safety is a minimum requirement for permanent speed upliftings. The approval proposal is considered to be beyond the Minister's rule making power under the Maritime Transport Act.*

Environment Canterbury comments that another provision should be added to 91.19:

“Navigation bylaws may contain provisions uplifting speed limits on specified waters.”

The Council also proposes that provision be made for upliftings that only apply for part of a year and for the removal of upliftings.

MSA response: *The MSA acknowledges regional council power to make bylaws uplifting speed limits. Recognition of the power is found in rule 91.6(5)(b)(iii). Seasonal permanent upliftings are well established under the existing system. These are best implemented as conditions on the grant of the uplifting. The Director's power to grant such applications has been clarified.*

Environment Southland acknowledges improvements in this rule compared to earlier drafts, but questions the need for a permanent uplifting process in bylaw areas. It considers a change to a permanent uplifting is a significant change and should be dealt with through an amendment to a bylaw or a change to the applicable Resource Management plan. Environment Southland suggests that reserved areas, access lanes and speed and separation mechanisms are outdated tools for the management of navigation safety. It suggests that a greater range of tools should be available including allocated areas, speed limits, separation distances, times of year and times of day.

MSA response: *The MSA agrees that a permanent uplifting may best be dealt with through the bylaw process. However, if a council chooses to make an uplifting through this process, for whatever reason, rather than by amendment to its bylaws, this should be the mandatory procedure. The MSA considers consultation with the Director of Maritime Safety is a minimum requirement, whichever process is chosen.*

Environment Southland's suggestions for a greater range of tools are useful. The MSA considers these are compatible with the framework established under Part 91 to be used as conditions imposed in reserved areas by regional councils. The policy aims of Part 91 are:

- to provide basic requirements in areas where no navigation safety bylaws apply; and*
- to establish consistency of bylaw requirements around the country while allowing flexibility to address local issues through local solutions.*

The MSA considers the rule as finalised achieves those objectives.

John Smallridge comments that MSA should appraise any area which is subject to a permanent speed uplifting application (including an area subject to bylaws) to assess whether the public will be adequately protected. He points out that each location must be looked at individually to assess unique conditions and usage in the location.

MSA response: *The MSA agrees that each location needs careful consideration before a speed uplifting should be approved. MSA does not consider it has the local knowledge necessary to make such decisions itself compared to the applicable regional council. Hence a system has been established allowing regional councils to take responsibility for this decision if they so choose.*

Lake Taupo Acting Harbourmaster/Launchwarden submits that permanent upliftings should be overseen and finally approved by the Director of Maritime Safety.

MSA response: *The MSA does not consider it has the local knowledge necessary to make such decisions itself compared to the applicable regional council. Hence a system has been established allowing regional councils to take responsibility for this decision if they so choose.*

Neptune Consultancy disagrees that the uplifting process is out of date and considers leaving the uplifting process solely to local authorities, who may or may not have nautical expertise available, could easily result in a confusing situation nationwide.

MSA response: *The MSA considers the requirement to consult with the Director of Maritime Safety will provide the appropriate nautical expertise where necessary. The MSA intends to continue its role of collating upliftings made around the country, whether by bylaw or the uplifting process described in 91.19. This will be published in an advisory circular to accompany Part 91.*

New Zealand Jet Boat Association submits in respect of rule 91.19(2)(c) that the requirement to provide evidence of consultation and navigation concerns arising from the consultation process is subjective and suggests that applicants be required to evidence steps taken to mitigate, remedy or minimise any concerns.

In respect of rule 91.19(4) the Association submits that it is essential that a right of appeal to the Director be included in this provision. The Association considers the Director is in the best position to make a decision on permanent uplifting of speed limits solely on navigation safety grounds. Regional authorities do not necessarily have the technical expertise to make the decision and may be influenced by issues other than navigation safety. It would also assist in providing consistency around the country.

MSA response: *The MSA agrees with the proposal to require evidence of steps taken to address concerns raised in the consultation process. While the evidence may be subjective, MSA is satisfied that it can adequately verify any evidence with the consulted parties. MSA has been advised that its rule making power does not extend to prescribing an appeal process from a regional council decision. MSA considers the requirement to consult with the Director of Maritime Safety will provide the appropriate nautical expertise where necessary.*

Queenstown Lakes District Harbourmaster totally agrees with the comment that speed upliftings should be dealt with at a local level.

Taranaki Regional Council supports the speed uplifting rule commenting that it has never had the speed uplifted in its area.

Thomas Turnwald JP comments that under the RMA many local authorities charge such high fees and take so long to consider issues it becomes unreasonably expensive and time consuming.

Wellington Regional Council refers to its earlier comments regarding the application of Part 91. It comments that matters such as permanent speed upliftings are rightly a matter for individual councils with bylaws in force. It supports the introduction of this rule but only on the basis that it does not apply in areas covered by regional council bylaws.

MSA response: This rule only applies to regional councils to the extent that it requires consultation with the Director of Maritime Safety over uplifting applications. The other criteria are no more than would normally be expected of council processes. MSA does not consider it is limiting regional council autonomy unduly by retaining this requirement.

91.20 Appointment of Safe Boating Advisor (Now rule 91.21)

Lake Taupo Acting Harbourmaster/Launchwarden and New Zealand Jet Boat Association fully support the Safe Boating Advisor concept proposed in the rule.

New Zealand Trailer Boat Federation suggests that the power to revoke the appointment of Safe Boating Advisor should be on reasonable grounds in writing rather than at will.

MSA response: The MSA agrees that it is best to specifically identify this natural justice criteria for decision making.

Papakura Sea Scouts suggest that the Sea Scout Charge Certificate examiners and boat surveyors would be qualified to be Safe Boating Advisors.

MSA response: The rule is drafted to enable the Director of Maritime Safety to accept equivalents to the Boatmaster certificate.

Anne and John Osborne, Launch Wardens, submit that Safe Boating Advisors must have recent boating experience and people skills. They further suggest that an enforcement role is necessary.

MSA response: The MSA considers that the recent boating experience criterion has been covered in the rule. The assessment of a candidates' interpersonal skills can be dealt with at an administrative level. MSA does not agree with a requirement for honorary persons to have an enforcement role. This should be left to paid staff of councils or government. The rule has however been amended to provide for a power to stop people in order to provide advice.

E A Loose and Janet Watkins support the Safe Boating Advisor concept and suggests yacht clubs could provide suitable persons for the role.

MSA response: The MSA agrees and hopes that a range of persons from boating clubs, coastguards and other similar clubs and organisations will be prepared to undertake this safety awareness and education role.

John F Smallridge submits that Safe Boating Advisors should be paid to cover expenses.

MSA response: The MSA has considered this option, but unfortunately it is not feasible.

Lynton Bates suggests the Regional and MSA honorary advisers should have the same roles and that bylaws and the maritime rule should be compatible.

MSA response: The MSA agrees that the rules and bylaws should be consistent throughout New Zealand. Councils have the power to appoint both paid and honorary enforcement officers. The MSA review of the Launch Warden system took this into account when it recommended that MSA appoint honorary persons whose role is solely education. There is no reason why MSA Safe Boating Advisors cannot work in an educational role in a local authority area if the local council agrees.

Thomas Turnwald JP, Launch Warden, submits that the rule should state that a higher certificate than Boatmaster should be acceptable.

MSA response: MSA agrees and the rule is amended to clarify this.

B A Murray, Launch Warden, suggests the title Safe Boating Advisor will reduce the authority of Launch Wardens in the eyes of the public and that more support from MSA is required if the system is to be effective.

MSA response: The MSA agrees that more support from MSA is needed and have made that commitment once Part 91 takes effect and Safe Boating Advisors can be appointed. MSA believes it makes more sense to utilise honorary staff in an educational role than an enforcement role. This was borne out by a majority of submissions made to the Launch Warden review.

Dave Huxley-Jones, Launch Warden asks what action a SBA can take if dangerous boating behaviour is observed.

MSA response: Initially we expect the Safe Boating Advisors would stop and advise the person their behaviour was not legal and provide advice about how the activity could be continued in a safe manner without breaking the law. If that failed we expect they would do their best to identify the offender, for instance by using car number plates, and report

the behaviour to the local MSA office. Providing that information to the MSA, or harbourmaster if more appropriate, may well be sufficient for an offence notice to be issued or further investigation leading to a prosecution being undertaken. The training of Safe Boating Advisors will include the wide range of legislation applicable to the operation of small craft.

F H Inder, Launch Warden, suggests that Safe Boating Advisors have obvious means by which they can be recognised.

MSA response: The MSA agrees and will address the issue when Part 91 comes into effect.

John Bell, Launch Warden, submits that without powers of enforcement and the authority to issue small fines, there is little chance of compliance.

M G Molineux suggests Safe Boating Advisors should have both an education role and an enforcement role.

MSA response: The report of the Pleasure Boat Safety Advisory Group that reviewed recreational boating safety in New Zealand concluded that most poor behaviour on the water and most fatalities are caused by simple ignorance of safe boating practices and not deliberately reckless behaviour. In the MSA's experience most people, when informed that they are doing something wrong, are happy to modify their behaviour. Because of this, most responses to the MSA review of the Launch Warden system last year considered that Safe Boating Advisors should focus on promoting safety awareness, rather than enforcement.

Acting Harbourmaster, Taupo, fully supports the introduction of Safe Boating Advisors.

LW Rogerson supports the rules as drafted but would prefer continuance of the term Launch Warden.

MSA response: The term Safe Boating Advisor was chosen to reflect the education focus of the role.

91.21 Savings (Now rule 91.22)

Environment Canterbury comments that there is a need to ensure that navigation bylaws can specifically revoke a previous declaration or reservation made under the Water Recreation Regulations. The council suggests that the words "Subject to" may not be adequate and prefer a specific clause stating this.

MSA response: The MSA agrees. The rule is clarified to make clear that access lanes and reserved areas in force prior to Part 91 coming into force will continue for the purposes of Part 91 unless they are amended or revoked by a regional council bylaw.

Environment Southland supports recognition of plans made under the Resource Management Act in this rule. It questions why rule 91.21(3) only applies to inland waters. Environment Southland believes that the rationale of rule 91.21(3) applies to all waters.

MSA response: MSA agrees. The rule is amended accordingly.

22.3 Application

Auckland Yachting and Boating Association repeats comments it made in respect of rule 91.6(5)(d) and suggests the ideal situation would be where sailing boats participating in races were not subject to rule 91.6 at all. The Association also points out that participants do not agree to rules when they are training or coaching.

MSA response: The MSA does not consider it acceptable to exempt sailing boats racing or race training from the speed restriction in 91.6 when they are within 200 metres of shore or within 200 metres of Flag A. If participants in training do not agree to sail to International Sailing Federation rules, then the collision prevention rules apply.

Colin Robinson submits that organisations not affiliated with Yachting NZ that conduct training or racing should be exempt from the requirements of Part 22.

Howick Sea Scouts comments that the exception in rule 22.3 should be expanded to include boats involved in a race administered any other approved national organisation.

Papakura Sea Scouts comments that rule 22.3 might be improved by adding reference to Sea Scouts, Young Mariners, and Sea Cadets after the reference to Yachting New Zealand.

MSA response: The MSA has consulted various organisations and has found no evidence that any other set of rules other than those operated by YNZ and the Collision Avoidance Rule are used. The rule has been amended to refer to compliance with the international sailing federation rules administered in New Zealand and Yachting New Zealand.

Kohimmarima Yacht Club submits that it is unrealistic to expect participants in yacht races to “undertake to comply” with the rules as there is no express undertaking of this kind. The club considers that participation should be considered evidence enough that the exemption applies.

MSA response: *When a yacht enters a race MSA considers that this constitutes an ‘undertaking to comply’ with the rules. The word “undertaken” has been replaced by the more appropriate word “agree”.*

Neptune Consultancy comments that it is not clear from the rule whether participants in a yacht race are required to practise normal collision avoidance.

MSA response: *Presuming “normal collision avoidance” is as prescribed in the collision prevention rules, this rule makes it clear that the collision prevention rules in Part 22 do not apply to participants in a yacht race if they have agreed to comply with the International Sailing Federation Rules.*