Maritime Rule Part 91
Submission from the Wellington Regional Council

Thank you for your invitation to comment on Maritime Rule Part 91. Generally speaking we are comfortable with the *content* of Part 91 as it replicates provisions contained in our own navigation and safety bylaws. However, we are very concerned about the proposal to make regional council navigation and safety bylaws subject to Part 91.

General Comment

Rule 91.3(2) provides that navigation bylaws must not be inconsistent with or repugnant to Part 91, unless a rule provides otherwise. This Council is **opposed** to rule 91.3(2) and considers that Part 91 should only apply if no navigation and safety bylaws are in force.

The WRC cannot understand the reasons for rule 91.3(2). Previously, the Water Recreational Regulations applied outside harbour limits and the Harbour Bylaws applied inside the Harbour limits. We consider that a similar relationship between navigation and safety bylaws and Part 91 should apply.

Central to this issue is the nature of regulations, as opposed to primary legislation. Generally, modern empowering legislation is broadly worded; in the case of s684B of the LGA the empowering provisions allow "room" for regional councils to determine appropriate bylaws for their local communities. In contrast, regulations such as Part 91 are highly prescriptive. Therefore, by making navigation and safety bylaws subject to Part 91, the MSA will dramatically restrict the extent to which regional councils can accommodate local variations in their bylaws. We consider this to be contrary to the intention of the Local Government Act Amendment Act (No. 2) 1999, which empowered local authorities to make navigation and safety bylaws.

Under the LGA, all bylaws are made in accordance with the special order process, involving public notification as well as public submissions on the bylaws. This allows for locally appropriate solutions to navigation and safety issues; such solutions must always be consistent with their enabling statute. This Council therefore considers that Part 91 should not apply if bylaws are in force.

It is therefore recommended that rule 91.3(2) be **deleted and replaced** by:

(2) Part 91 does not apply where a navigation bylaw is in force.

However, if the intention of this rule is to impose a national standard (a "one-size fits all" approach), we agree that the MSA should be responsible for enforcement. The Council would clearly need to review whether it should retain responsibility for those parts of the bylaw that overlap with those contained in Part 91. Our initial view is that there is little incentive for continuing bylaws that are overridden by Part 91. 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.

Commentary on Specific Provisions

We consider Part 91 to be relevant if its purpose is to serve as a template as to "best practice" as well as filling in any "gaps" where no bylaws are in force. Our commentary on specific provisions should therefore be read subject to this perspective.

91.2 Definitions

"Pleasure craft"

The rules continue the definition of "pleasure craft" contained in section 2 of the Maritime Transport Act 1994 (MTA). This Council **notes its dissatisfaction** with the continuation of this definition, which excludes of a vessel that is operated or provided by any trust.

Under this definition, pleasure craft owned by increasingly popular "family trusts" do not appear to be subject to the rules. This gives rise to the anomaly that the law can apply differently between two similar vessels that are used for identical purposes (i.e. for the owner's pleasure). The nature of legal ownership rather than the vessel's use appears to determine whether the law applies. Surely the law should apply equally, particularly as the intention of Part 91 is to provide for navigation and safety.

We acknowledge that the inclusion of a new definition ("recreational craft") is an attempt to address this issue. However, this Council considers that this new definition has the potential to raise more issues that it solves and is no substitute for amendment of the MTA. Furthermore, amendment of this definition under the MTA would also solve the problems that councils encounter under their bylaws (which are also subject to the same MTA definition).

91.4(3)(b) "Personal flotation device"

We **support** the intention to provide clarity as to the appropriate standards for personal flotation devices.

The flexibility of the rule, allowing recognition of other devices that substantially comply with NZ standard 5823:2001, will help to encourage greater use of lifejackets and flotation devices. However, we are concerned that there is no clarity about what types of devices "substantially comply with " or are "equivalent to" the NZ standard.

We therefore **recommend** that the Director issue a list of the most common devices that would comply with these standards. Alternatively, clear guidelines as to what would constitute an "equivalent" standard would be required. These guidelines would also be relevant to establishing the appropriate standards under our bylaws.

We also **note** that there are no provisions requiring a person being towed (e.g. on a water ski, similar object or barefoot) to wear a wetsuit or lifejacket. We consider that

there should, at the very minimum, be a requirement for a spare lifejacket to be available on a boat towing any person.

91.6(1)(b) Speed of vessels

The WRC considers that the rule should allow for activities closer inshore or other areas where there are marker buoys, which may not be at 200 metres. It is therefore recommended that rule 91.6(1)(b) be amended to read:

b) within either 200 metres of the shore or of any structure or on the inshore side of any row of buoys demarcating that distance from the shore or structure;

91.6 Speed of vessels

We **support** the specific exemptions contained in rule 91.6(5). However, we note that rule 91.6(5) is rather broad in its reference to "competitive rowing". We consider that, consistent with the approach taken with regard to yachting (91.6(5)(d)), greater accuracy could be provided by amending rule 91.6(5)(e) to read:

(e) a craft training for or participating in a competitive rowing event administered by a club affiliated to the New Zealand Rowing Association in accordance with its rules and constitution.

We also consider that yachts and rowers should not be allowed to exceed 5 knots within 200 metres of any vessel or raft that is flying flag A. We therefore **recommend** that rules 91.6(5)(d)&(e) be amended:

(d) a vessel solely powered by sail participating in a yacht race or training administered by a club affiliated to Yachting New Zealand in relation to any other vessel solely powered by sail participating in such an activity, with the exception of rule 91.6(1)(c) which will continue to apply.

(e) a craft training for or participating in a competitive rowing event administered by a club affiliated to the New Zealand Rowing Association in accordance with its rules and constitution, with the exception of rule 91.6(1)(c) which will continue to apply.

91.11 & 91.12 Marking of access lanes and reserved areas

We note that these rules require regional councils to adopt certain policies. We support the intention of these rules, which appears to be designed to encourage national consistency. However, we refer to our previous comments above on rule 91.3 and note that rules 91.11-12 should also be voluntary.

However, if these rules are to apply to a regional council's jurisdiction this Council considers that the marking of permanent reserved areas should be nationally consistent. Reserved areas declared (and hence publicly notified) for a temporary event (91.18) should not require demarcation.

It is **recommended** that an additional rule (similar to 91.11) be added:

91.12 Marking of permanent reserved areas

Where a reserved area is defined by bylaws, the applicable regional council must ensure that the reserved area is demarcated:

(1) on shore by a red and blue horizontally stripped pole;

(2) and/or in water by red buoys with vertical blue stripes.

91.14 Damage to navigation aids

We consider that provision should be made to ensure that no person may erect a beacon, buoy or other device that may be mistaken for a navigation aid. It is therefore **recommended** that a new rule 91.14(3) be added:

(3) No person may erect, maintain or display any beacon, buoy or other device, which may be used as, or mistaken for, a recognised navigation aid, without the written permission of the Harbourmaster and the Director of Maritime Safety.

We also consider that there should be a requirement that damage to a navigation aid be reported with a view to expediting any repairs and warning vessels in the immediate area.

91.15 Distance from oil tankers or other vessels showing flag B

We consider that this rule would be difficult to enforce particularly the words "where possible". Furthermore, the reference to "explosives" should be deleted as vessels could show flag B (or a red light by night) for a range of hazardous material (i.e. it would be impossible to know whether the ship was specifically carrying explosives). We also note that commercial ships may come closer to oil tankers or ships showing flag B when berthing; it is a practical reality. This rule should therefore only apply to all "pleasure craft".

It is therefore **recommended** that rule 91.15 be amended to read:

~~Where possible,~~ The master of a ~~vessel~~ pleasure craft must not allow that ~~vessel~~ pleasure craft to approach within 200 metres of an oil tanker or a ship ~~carrying explosives~~ that is showing flag B by day or a red light by night.

91.18 Temporary events

We **support** the introduction of rule 91.18 providing powers for the Director to temporarily uplift speed limits. However, we consider that there should be more clarity about what constitutes a "temporary event". We would suggest a period no greater than ten days. This Council agrees that there may be good reasons for reserving an area exclusively for a notified activity and therefore **supports** the introduction of rule 91.18(1)(b).

91.19 Permanent speed upliftings

We refer to our previous comments regarding the role of Part 91 in relation to navigation bylaws under the Local Government Act. We are of the view that where bylaws apply then Part 91 should not. Matters such as permanent speed upliftings are rightly a matter for individual regional councils where bylaws are in force.

The WRC therefore **recommends** that should the provision be retained they should not apply where navigation and safety bylaws are in force.

Conclusion

This Council is opposed to the proposal to make bylaws subject to Part 91. We consider there to be little incentive for this Council to retain responsibility for bylaws that overlap with Part 91. While we concur that national consistency of bylaws is desirable, we consider Part 91 to be an inappropriate mechanism by to achieve this. We are of the view that the appropriate role of Part 91 is to provide:

a) regional councils with guidelines for their the development own bylaws (i.e. a template of "best practice); and
b) additional coverage where navigation and safety bylaws are not in force.