



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



New Zealand Branch Report

Activities

The NZ Branch of MLAANZ is planning a busy last quarter of 2023 with a subcommittee reporting on collision regulations, organisation of a webinar and two functions (one at Auckland University and the second a Christmas function).

Collision Regulation Review by Maritime New Zealand – MLAANZ New Zealand Branch Appoints Subcommittee to Prepare Submission to Government

Maritime New Zealand (MNZ) recently stated that all vessels (recreational and commercial) must maintain a continuous anchor watch (lookout by sight and hearing) under Maritime Rule Part 22.5.

MNZ has recently shared the interpretation as: “At all times – during the day, during the night, when travelling to and from fishing grounds, fishing, **while at anchor**, or drifting.”

Maritime Rule 22.5 you must keep a lookout at all times. ‘At all times’ means during the day, during the night, when travelling to and from fishing grounds, fishing, while at anchor, or drifting

And

*Under Maritime Rule 22.5, the person on watch must use all available means to keep a lookout. This means using sight, hearing, **and** the navigational equipment.*

The guidance while given to the fishing industry is equally applicable to all vessels (including recreational).

So applying this interpretation, a vessel safely anchored in a sheltered bay could not be at anchor without someone awake and on watch.

This would appear to create challenges for recreational, charter boats and would create an extremely-onerous obligation to vessels under solo navigation.

This position by MNZ appears a response to MNZ seeking feedback from skippers, crew and the wider fishing industry on draft watch keeping guidance. Two guidance documents were released in the second half of 2022 for consultation, being guidance for skippers and owner-operators and guidance for crew going on watch. The guidance did not contain any new rules; rather a reminder for both skippers and crews of the current legislation and their responsibilities to ensure that every fishing trip is safe. Those submissions closed in October 2022.

In the past month fishing industry representatives have meet with MNZ officials to discuss their concerns and we await a report on the outcome of that meeting.

The New Zealand Branch Committee recently appointed a subcommittee to review and provide feedback to MNZ. The subcommittee is made up of committee members with experience covering the fishing industry, insurers, government (MNZ) and coastal and international shipping interests.

We will report back in the next edition of *Semaphore* on the subcommittee’s progress.

Webinar

Our next webinar is on 8 November at 3pm, when Vangelis Vitalis (New Zealand Deputy Secretary, of the Trade and Economic Group at New Zealand's Ministry of Foreign Affairs and Trade) will be presenting. Vangelis will discuss the geopolitics, regional economics and trade architecture (free trade agreements and Asia-Pacific Economic Co-operation), in the context of international, trade and environment trends, and how the social licence for trade in many OECD countries hinges on environment and climate change issues and how they are being addressed.

Auckland University/MLAANZ Function

Colin Hunter organised a function at the University of Auckland on 12 September 2023 with speakers from the marine industry, including lawyers, insurers and MNZ, to talk to students about what they do and provide an opportunity for students to network with industry participants. A big thanks to Hesketh Henry which provided pizza and soft drinks for those attending.

Christmas Drinks and Seminar

Vanessa Ma is leading a team organising Christmas drinks to be held at the Auckland offices of Duncan Cotterill, so keep an eye out for the save the date.

Legal Updates in New Zealand

The Transport Accident Investigation Commission (TAIC) has recently published two reports into fatal boat capsizes that claimed ten lives. These contain a number of recommendations to MNZ, which it has responded to.

Kaikoura Whale Strike – Five Passengers Die

TAIC has published a preliminary report into the capsizing of the charter fishing vessel i.Catcher off the coast of Goose Bay near Kaikōura on 10 September 2022. Initial inquiries suggest that the capsizing was caused by contact with a whale.

Five of the ten passengers onboard died. The passengers who died were in the air pocket inside the boat. TAIC concluded that flaws in the vessel's fuel system almost certainly allowed fuel to leak into the air pocket. This very likely reduced the survivability of the accident.

TAIC says that MNZ's survey system does not adequately assure the integrity and safety of fuel systems because the Maritime Rules don't require surveyors to inspect vessels' entire fuel systems. TAIC has recommended that MNZ:

- use an appropriate mechanism that ensures the integrity and safety of fuel systems are being maintained and monitored through the survey system
- alert all recognised surveyors to the importance of conducting and documenting inspections of a vessel's complete fuel system during surveys and to check vessels they are surveying have undergone a recent complete inspection of the fuel system
- alert all industry stakeholders to the importance of inspecting a vessel's complete fuel system to assure its integrity and safety.

MNZ says that it is acting on the recommendations, including working on guidance for the industry and engaging with stakeholders. Its own investigation into the accident is ongoing. TAIC is also continuing with its investigation and will issue a final report once it is completed.

Charter Fishing Vessel Hit by Large Wave – Five Die

TAIC has additionally released a report into the capsizing of the charter fishing vessel *Enchanter* near Murimotu Island off North Cape on 20 March 2022, which killed five of the ten people onboard. The vessel was hit by a large steep wave on its port side, rolling it onto its side. The superstructure comprising the main saloon and flybridge separated from the hull and the boat capsized.

TAIC said that the *Enchanter* should have easily coped with the sea conditions off North Cape at the time. But it may have strayed into shallower water off Murimotu Island that is prone to occasional larger waves peaking as they enter the shallower water. The force of the water exceeded the design parameters of the superstructure, causing it to separate from the hull.

The suddenness of the capsizing meant that nobody onboard was wearing or had access to life jackets. The liferafts likely did not automatically deploy. The lifebuoys did not have effective retroreflective tape and only two of the four had a strobe light attached. All of this would have made it difficult to detect people in the water at night.

There was a significant delay in the search for the five missing people while fuel for the rescue helicopters was sourced. Three of the missing people were alive in the water when last seen by the survivors, but were dead when found by searchers.

TAIC has made recommendations to the Ministry of Transport about better co-ordination of search and rescue operations as well as supplying and, if necessary storing fuel, for extended search and rescue operations in remote areas.

TAIC has recommended that MNZ:

- implement a system for notifying surveyors of relevant changes to Maritime Rules and clarifying, where needed, their intent and application
- ensure that it has an adequate system for monitoring the performance of marine surveyors
- ensure that there are appropriate rules or guidance about the risk of having all life jackets stowed in one place that might not be accessible in an incident
- introduce a requirement for commercial vessels to be fitted with an automatic identification system (AIS) or equivalent when carrying passengers outside inshore limits.

MNZ has partially accepted the recommendations regarding surveyors, saying that it already engages with and notifies them of rule changes and provides clarification about the intent of rules. It states that it consulted on how to increase its capacity to support surveyors and will consider TAIC's recommendations as part of this work.

MNZ is considering the recommendation about AIS, saying that exploring this was already on its regulatory reform programme. It will also look at the stowage of life jackets.

The Rescue Co-ordination Centre has undertaken an internal review into its co-ordination of the response and made several changes to its procedures.

MNZ Proposes Changes to Maritime Levies and Oil Pollution Levies

MNZ says it is essential New Zealand has the right funding in place so MNZ can continue to deliver core functions and achieve outcomes of safe, secure, clean and sustainable Aotearoa waterways.

The proposed funding review is focused on the Maritime Levies and Oil Pollution Levies, and covers the period 2024-2030. It is a rescheduled midpoint review, that the Government agreed to delay due to COVID-19 impacts.

MNZ is proposing increases to the Maritime Levies and Oil Pollution Levies to ensure sufficient and sustainable funding. In total there are eight proposals, focused on:

- ensuring MNZ can deliver regulatory functions effectively and minimise risks
- meeting Government commitments since the last full funding review
- ensuring MNZ can maintain its marine pollution capabilities.

This comes against a background that the Government expects the additional funding it provided to MNZ during the COVID-19 pandemic will be met through Maritime Levies and Oil Pollution Levies from 1 July 2024.

Submissions have now closed and I will report on the submissions and proposal arising from the submissions in the next edition of *Semaphore*.

Nga mihi

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