



## ASSESSMENT OF THE RESPONSE TO TSB RECOMMENDATION M17-04

### **Wearing of suitable PFDs at all times while on the deck of a fishing vessel**

#### **Background**

On 16 June 2016, at approximately 0445 Atlantic Daylight Time, the small fishing vessel C19496NB was lobster fishing with 3 people on board approximately 0.5 nautical miles from Miller Brook Wharf, Salmon Beach, New Brunswick, when one of the trap lines became entangled. The heavy strain on the line reduced the vessel's aft freeboard on its starboard side. In combination with the quartering seas that struck the same area of the vessel, this led to the vessel rapidly taking on water and capsizing. The 3 crew members were recovered by the fishing vessel *Marie Eliser 1*. One crew member received medical assistance for hypothermia, while the other 2 were pronounced dead by paramedics.

The Board concluded its investigation and released report M16A0140 on 26 July 2017.

#### **TSB Recommendation M17-04 (July 2017)**

Fishermen often operate in harsh physical and environmental conditions. They harvest, load, transfer, and store their catch while the vessel is in various sea conditions, and the risk of going overboard is high. If a fisherman ends up in the water, the consequences can be fatal: among other things, cold shock, hypothermia, and exhaustion can quickly lead to death, especially without the assistance of a personal flotation device (PFD).

The TSB has determined that, in Canada, from 2006 to 2016, an average of 9 deaths per year occurred in the commercial fishing industry. Over the same period there were approximately 46 000 commercial fishermen employed per year. The TSB's *Safety Issues Investigation into Fishing Safety in Canada* identified drowning, after a fisherman falls overboard or enters the water due to a vessel capsizing, foundering, flooding, or sinking, as the primary cause of death in Canada's fishing industry.

In this occurrence, the crew members were not wearing PFDs or lifejackets when the vessel capsized, and PFDs were not carried on board. Because the capsizing occurred quickly, there was no time for the crew members to access and don the lifejackets stowed on board. The sea temperature of 12.3 °C would have caused a cold shock effect and hypothermia in a relatively short period of time. However, had PFDs or lifejackets been worn, the crew members would have been provided with flotation and an increased chance of survival.

There are several education and awareness programs and initiatives within the fishing community that attempt to change behaviours and promote the use of PFDs. In British Columbia, Fish Safe's "Real Fishermen" campaign uses promotional materials featuring

fishermen wearing PFDs. In Nova Scotia, the Fisheries Safety Association of Nova Scotia has consulted with fishermen and suppliers to develop and implement initiatives such as wharf visits, family pledges, an elementary school poster contest, advertising, and design testing to increase awareness of the importance of wearing PFDs. In addition, the Safe at Sea Alliance of Nova Scotia has collaborated with industry and government representatives to develop a plan for the province's fishing industry. The plan includes several recommendations to improve safety through education, awareness, and enforcement. One such recommendation is the development of an enhanced program that includes safety drills and demonstrates PFDs in action. Despite these initiatives, there has not been a significant change in the behaviour of fishermen and many continue to be resistant to wearing a PFD.

Apart from the Quebec Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), neither Transport Canada (TC) nor any other provincial workplace safety regulator has requirements to ensure that fishermen wear PFDs at all times. Despite risk-based regulations and industry initiatives to change behaviours and create awareness about the importance of wearing PFDs, as well as design improvements by PFD manufacturers to address fishermen's concerns about comfort and constant wear, many fishermen continue to work on deck without wearing a PFD.

Because they are lightweight and wearable, fishermen can wear PFDs at all times on a vessel to ensure that they are wearing them if they go overboard, which can often happen very suddenly. If fishermen do not wear PFDs or lifejackets while working on deck, despite the industry awareness initiatives promoting their use, there is an increased risk that fishermen will not survive in the event that they fall overboard.

In this occurrence, the lobster fishing vessel C19496NB capsized off Salmon Beach, New Brunswick; none of the vessel's 3 crew members were wearing PFDs, and 2 of the 3 crew members perished in the sea. The New Brunswick commercial fishing industry is not included under the province's *Occupational Health and Safety Act*, nor is it included in the WorkSafeNB safety program. The New Brunswick *Occupational Health and Safety Act* does not require commercial fishermen or fish harvesters to wear PFDs during fishing operations.

The TSB considers that the implementation of explicit requirements for fishermen to wear PFDs would significantly reduce the loss of life associated with going overboard, and has already made similar recommendations to TC and WorkSafeBC.

Therefore, the Board recommended that:

The government of New Brunswick and WorkSafeNB require persons to wear suitable personal flotation devices at all times when on the deck of a commercial fishing vessel or on board a commercial fishing vessel without a deck or deck structure and that WorkSafeNB ensure that programs are developed to confirm compliance.

**TSB Recommendation M17-04**

### **The Province of New Brunswick's response to Recommendation M17-04 (October 2017)**

The following is pursuant to subsection 24(6) of the *Canadian Transportation Accident Investigation and Safety Board Act* in response to the above-noted report received July 25, 2017. In

particular, the following outlines New Brunswick's proposal to address the recommendation which was outlined therein:

The government of New Brunswick and WorkSafeNB require persons to wear suitable personal flotation devices at all times when on the deck of a commercial fishing vessel or on board a commercial fishing vessel without a deck or deckstructure and that WorkSafeNB ensure that programs are developed to confirm compliance.

The Province of New Brunswick will implement a two-pronged approach, which will begin with WorkSafeNB launching an Education, Awareness and Training Campaign with the cooperation of industry. A fishing safety working group will be established in consultation with fishers and suppliers, using initiatives such as wharf visits, family pledges, an elementary school poster contest, advertising and design testing to increase awareness of the importance of wearing personal flotation devices (PFDs).

Through the formation of an alliance and the collaboration of industry and government representatives, a plan would be developed for the Province's fishing industry.

The second phase of this approach will include Government consultations with industry in consideration of possible amendments to the Occupational Health and Safety Act to include fishing vessels in the definition of place of employment and the requirement for persons to wear PFDs on fishing vessels.

### **TSB assessment of the Province of New Brunswick's response to Recommendation M17-04 (January 2018)**

The Province of New Brunswick is planning a two-pronged approach. First, the Province of New Brunswick and WorkSafeNB will implement an education, awareness and training campaign and establish a fishing safety working group. When these actions are implemented, the awareness of the importance of wearing a PFD should be raised. This may increase usage, and reduce the loss of life associated with going overboard.

Secondly, the Province of New Brunswick has indicated that it will undertake consultations with industry in consideration of possible amendments to the *Occupational Health and Safety Act* to include fishing vessels in the definition of place of employment and the requirement for persons to wear PFDs onboard fishing vessels. However, no specific timeline has been provided for these consultations.

The Province's response appears to combine its plans with respect to TSB Recommendation M99-02<sup>1</sup> with its plans in response to TSB Recommendation M17-04. Although making such a linkage is good, the Province has yet to deliver concrete results on its commitments in response to TSB Recommendation M99-02. Given the absence of detailed plans to consult on possible amendments to the *Occupational Health and Safety Act*, and the lack of progress by the Province on TSB Recommendation M99-02 after 17 years, the Board is concerned that making PFDs

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<sup>1</sup> The provinces review their workplace legislation with a view to presenting it in a manner that will be readily understood by those to whom it applies, to help ensure that the enforcement mechanism and the regulatory regime complement each other.

mandatory will not occur within a reasonable timeframe. Meanwhile, the risk of fishermen dying at sea will remain high.

Therefore, the response to the recommendation is considered to be **Satisfactory in part**.

**Next TSB action (January 2018)**

The TSB will monitor the progress of the Province of New Brunswick and WorkSafeNB proposed actions.

This deficiency file is **Active**.