



## TSB Recommendation M17-04

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

The Transportation Safety Board of Canada recommends that the 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.

Marine transportation safety investigation report	<a href="#">M16A0140</a>
Date the recommendation was issued	26 July 2017
Date of the latest response	June 2024
Date of the latest assessment	July 2024
<a href="#">Rating</a> of the latest response	Fully Satisfactory
<a href="#">File status</a>	Closed

#### Summary of the occurrence

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.

## Rationale for the recommendation

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.

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## Previous responses and assessments

### October 2017: response from the Province of New Brunswick

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 deck structure 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.

### **January 2018: TSB assessment of the response (Satisfactory in Part)**

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 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**.

### **September 2018: response from the Province of New Brunswick**

On 12 September 2018, the Province of New Brunswick replied to a letter that the TSB issued on 31 July 2018 regarding marine safety advisory M18A0077, which drew attention to the risks that fish harvesters expose themselves to when failing to wear personal flotation devices (PFDs). In their response, the Province of New Brunswick acknowledged that amendments to the regulations were likely necessary.

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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.

The Province of New Brunswick also provided the following update on their plan to adopt a two-pronged approach in response to recommendation M17-04. Regarding the first component, which focusses on an education, awareness, and training campaign and the implementation of a working group on fishing safety in order to increase the use of PFDs and decrease the number of fatalities due to people falling overboard, the following steps have been completed or are in progress:

- A communications plan titled “Révolution” has been developed to promote and increase awareness and ultimately the use of PFDs.
- Three information resources on PFDs have been posted on the WorkSafeNB website: <https://www.worksafenb.ca/safety-topics/fishing/>.
- A training session on the functions, maintenance, and use of PFDs for personnel was held, with invitations sent out to fishing associations in the Saint John region. The Fundy North Association participated in this information session.
- A promotional campaign was also created, which includes keyrings in the shape of a life jacket and waterproof cellphone pouches with lanyards for people who work near water.
- There is a promotion currently in progress that includes playing cards displaying the WorkSafeNB logo for fishers who play cards while waiting for new tasks.
- A calendar called “Jours de sécurité” is currently being developed.

Next steps:

- The preparation of posters - two or three versions of the posters must be designed since the associations do not all agree with each other and some of the photos with local fishers cannot be used in certain regions. A final decision must be made regarding the images that will be used as well as the number of posters required.
- Waterproof vinyl banners need to be developed (like the posters) for the wharves – a final decision must be made regarding where these banners are to be placed.
- Trade fairs or community awareness opportunities must be identified.
- A leader needs to be assigned to conduct community awareness efforts and to begin the wharf visits.

As for the second component, in terms of consultation with industry in order to examine the amendments that could be made to the *Occupational Health and Safety Act* in order to include vessels in the definition of “place of employment” and to require people aboard fishing vessels to wear PFDs, the following steps have been completed or are in progress:

- An information/consultation document on the impact of extending coverage was written, incorporating a jurisdictional overview. An actuarial analysis of the impact on contribution rates and funding options was requested.
- A jurisdictional overview of the definition of “place of employment” has been completed.
- The development of a compliance plan for the implementation of the provisions in the Occupational Health and Safety Act (once adopted) is in progress.

- WorkSafeNB has met with many industry stakeholders interested in the creation of a steering committee on safety for the fishing industry.
- Industry consultations have been suspended until after the election.

#### **November 2018: TSB assessment of the response (Satisfactory Intent)**

Most of the actions set out in the Province of New Brunswick's two-pronged approach are either in progress or have been completed. Once fully implemented, awareness of the importance of wearing a PFD should increase, which may correspondingly increase usage and reduce the loss of life associated with going overboard.

The Province of New Brunswick has also indicated that progress has been made on moving forward with industry consultations over possible amendments to the *Occupational Health and Safety Act*. These amendments focus on including fishing vessels in the definition of place of employment and the requirement for persons to wear PFDs on board fishing vessels. However, the Province of New Brunswick also notes that the industry consultations have been suspended temporarily until after the election. The Board is pleased to see that progress has been made over the past year and encourages the Province of New Brunswick to resume industry consultations on including vessels in the definition of "place of employment" as soon as possible.

Therefore, the Board considers the response to the recommendation to show **Satisfactory Intent**.

#### **December 2020: response from New Brunswick (WorkSafeNB)**

The Province of New Brunswick implemented a two-pronged approach to address workplace safety on fishing vessels. The first phase of this approach included WorkSafeNB's launching of an education, awareness and training campaign with the cooperation of industry. This campaign used initiatives such as wharf visits, family pledges, advertising and design testing to increase awareness of wearing personal flotation devices (PFD).

The second phase included consultations with industry, led by WorkSafeNB. These consultations were done 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.

These consultations concluded December 2019 and WorkSafeNB submitted its recommendations to the Department in September 2020. The Department is currently developing a legislative proposal providing WorkSafeNB the authority to conduct safety inspections on fishing vessels and to ensure compliance of PFD use for commercial fishing.

### March 2021: TSB assessment of the response (Satisfactory Intent)

The Board acknowledges the ongoing efforts from the Province of New Brunswick and WorkSafeNB in developing an education, awareness, and training campaign which included highlighting the importance of wearing personal flotation devices (PFD). The Board also notes the recommendations that were submitted to the Department of Post-Secondary Education, Training and Labour in September 2020, which resulted from WorkSafeNB's industry consultations. Once implemented, the amendments to the province's *Occupational Health and Safety Act*, which include adding fishing vessels to the definition of "place of employment" and requiring the use of PFDs aboard fishing vessels, should significantly reduce workplace health and safety risks for commercial fishers.

Therefore, the response to Recommendation M17-04 is considered to be **Satisfactory Intent**.

### December 2021: response from New Brunswick (WorkSafeNB)

Thank you for your letter of October 6, 2021 regarding the reassessment of responses dealing with residual risks that may be associated with recommendations M99-02 and M17-04.

As indicated previously, the Province of New Brunswick has implemented a two-pronged approach to address workplace safety on fishing vessels. This approach was initiated by WorkSafeNB's launching an Education, Awareness and Training Campaign with the cooperation of industry.

Consultations with industry were then conducted by WorkSafeNB 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. Following the conclusion of the consultation on December 31, 2019, WorkSafeNB submitted recommendations related to these to the Department.

The Department is now working closely with WorkSafeNB on possible amendments to the legislation related to these recommendations. In so doing, consideration is being given to stakeholder concerns around possible overlap between possible provincial amendments and federal amendments dealing with Canada's *Marine Personnel Regulations* and *Fishing Vessel Safety Regulations* which recently came into force.

Thank you for your continued attention to this matter. I assure you that the Department of Post-Secondary Education, Training and Labour is cognizant of the impact of accidents on the well-being of fishers and their families. The health and safety of all the citizens of New Brunswick is the priority of this government.

### March 2022: TSB assessment of the response (Satisfactory Intent)

The Board acknowledges the ongoing efforts from the Province of New Brunswick and WorkSafeNB in developing an education, awareness, and training campaign that includes highlighting the importance of wearing personal flotation devices (PFD). The Board also notes the possible amendments to the province's *Occupational Health and Safety Act*, which would include adding fishing vessels to the definition of "place of employment" and require the use of PFDs aboard fishing vessels.

The Board considers the response to Recommendation M17-04 to show **Satisfactory Intent**.

### December 2022: response from New Brunswick (WorkSafeNB)

The Province of New Brunswick is pleased to report that after completing its two-pronged approach to address workplace safety on fishing vessels, a Bill entitled *An Act Respecting the Health and Safety of Fishers* was introduced at the Legislature on November 1, 2022.<sup>2</sup>

This Bill proposes to amend 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.

In follow-up communication from the province, dated 16 December 2022, it was noted that the Bill had received Royal Assent on 16 December 2022.

In response to a request by the TSB for further information, the province sent the following 08 February 2023: With the inclusion of fishing vessels as a place of employment in OHS legislation, WorkSafeNB has the legislative authority to enforce all requirements dealing with occupational health and safety, including PFD use on all fishing vessels, including decked vessels.

Implementation of the new legislation includes an internal working group identifying the awareness and educational needs of the industry, outreach and consultation with associations and industry representatives, education and training of staff about the fishing industry and the development of enforcement strategies, including recommendations, compliance orders, administrative penalties, investigations and prosecutions.

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<sup>2</sup> All responses are those of the stakeholders to the TSB in written communications and are reproduced in full. The TSB corrects typographical errors and accessibility issues in the material it reproduces without indication but uses brackets [ ] to show other changes or to show that part of the response was omitted because it was not pertinent.



Having worked with the industry on raising awareness and mitigation of safety risks while the jurisdiction issue was being resolved, we will continue to build upon that collaborative work when the provisions are in force and anticipate an ongoing good relationship. We are proud of the progress being made on this issues as our goal is to ensure every New Brunswick worker goes home to their friends and family at the end of the work day, regardless if their workplace is an office, a construction site, or on the water.

### **March 2023: TSB assessment of the response (Satisfactory Intent)**

The Board acknowledges that the Province of New Brunswick has completed its amendment to the province's *Occupational Health and Safety Act* to include fishing vessels as a place of employment. This legislation, *An Act Respecting the Health and Safety of Fishers*, also includes amendments to *New Brunswick Regulation 91-191*; both aspects of the legislation will come into force on 01 June 2024. The amendments include a requirement for persons to wear PFDs when working on board a fishing vessel without a deck or deck structure. The TSB will monitor the development of the associated enforcement program to evaluate how the regulations will be applied for fish harvesters who are working on all fishing vessels, including those with a deck or deck structure.

Once the requirement to wear a PFD on all fishing vessels is in force, the risk identified in this recommendation will be substantially mitigated. Therefore, the Board considers the response to Recommendation M17-04 to show **Satisfactory Intent**.

### **Latest response and assessment**

#### **June 2024: response from New Brunswick (WorkSafeNB)**

The Board has been monitoring the development of the enforcement program in New Brunswick. Following the coming into force of the amendments in June 2024, WorkSafeNB provided the following update:

Resources have been developed and will continue to evolve.

- Safety Topic Fishing at [www.worksafenb.ca/safety-topics/fishing](http://www.worksafenb.ca/safety-topics/fishing) includes:
  - Frequently Asked Questions
  - PFD Fact Sheets (Selection, PFDs and Life Jackets, PFD Care & Maintenance)
  - Safety Checklists
  - Emergency Drill Records
  - Etc. (visit Website for full resources)
- OHS Guide - [ohsguide.worksafenb.ca/topic/watersafety.html](http://ohsguide.worksafenb.ca/topic/watersafety.html)

Compliance Plan – phased approach. Phase one (current and until December 31, 2025) is an emphasis on education and awareness through visits to individual vessels, overboard rescue drill sessions at wharves, working with associations to offer information sessions, and distribution of communications materials. Officers will be seeking voluntary compliance with

the new requirements. However, if they encounter resistance, they have discretion to issue compliance orders. In the event of a serious incident where WorkSafeNB conducts an investigation, orders will be written for non-compliance with the *Occupational Health and Safety Act* and regulations.

Phase two (starting January 1, 2026). Full enforcement phase for the commercial fishing industry begins. Visits will be organized by fishing seasons and prioritized pre- and post-season visits. Inspections will initially focus on items in the checklist shared with the industry through phase one and be expanded to other requirements in the regulations over time. The current checklist includes assessing the requirements relative to:

- Personal protective equipment – hearing protection, protective clothing, PFDs or lifejackets
- Fall protection equipment available and used where hazards exist
- Fire protection measures – fire extinguishers, storage of flammable and combustible materials
- Hauling/hoisting apparatus – use, maintenance, inspections
- Mechanical safety – guarding of pinch points, shielding of hot surfaces
- Working/walking surfaces – suitable footwear, de-icing procedures, housekeeping of clutter and loose materials
- Chemical safety
- Access and egress to spaces, air quality and ventilation

Throughout both phases, employers in the industry will be offered and have access to the free consulting services available from WorkSafeNB to assist them with compliance with the requirements.

#### **July 2024: TSB assessment of the response (Fully Satisfactory)**

The Province of New Brunswick's legislation, *An Act Respecting the Health and Safety of Fishers*, which also included amendments to *New Brunswick Regulation 91-191*, came into force on 01 June 2024. The enforcement program for compliance with this legislation has been divided into a phased approach with phase one focusing on education and awareness, and phase two focusing on enforcement. The Province will provide free consulting services through WorkSafeNB throughout this phased approach to ensure fishing vessel owners are aware of the new requirements.

The Board believes the regulatory requirement for fishing vessel crew to wear PFDs, paired with the supportive role of WorkSafeNB, which will provide education and awareness as well as enforcement, will substantially mitigate the risk identified in this recommendation. Therefore, the Board considers the response to Recommendation M17-04 to be **Fully Satisfactory**.

**File status**

This deficiency file is **Closed**.