



# DO FOREIGN VESSELS ESCAPE OSH?

BY ALAN HEWARD, LLB, SENIOR SOLICITOR OCEANLAW

In an appeal decision in the Christchurch High Court in 1997 United Fisheries Limited were found to have been guilty of not taking all practicable steps to ensure persons were not harmed by a hazard which was an ice making machine. It was held that even though the employee had disobeyed a specific order and acted in a foolhardy manner, ultimately proving fatal, that the danger could have been avoided. It was argued that the chamber of the icemaker was not a place of work, however the Court found that even though the employee was acting contrary to instructions, he was still working and that the storage bin was a place of work. It was found that by not placing a grid over the auger that the employer had not taken all practicable steps to avoid harm from this hazard. This also puts owners of New Zealand registered vessels in a position whereby they are required to take all practical steps to protect workers from hazards.

In the Nelson District Court in 2005, Sealord Group Limited, pleaded guilty to offences under the Health and Safety In Employment Act 1992 which requires that employers ensure the safety of employees. This accident happened on a fishing vessel at sea, was also fatal, and involved an auger. For the purposes of this article it is sufficient to comment that these two cases were subject to the Health and Safety

In Employment Act 1992 because, in the first instance, the business was within New Zealand jurisdiction and the second was also covered by New Zealand jurisdiction because the fishing vessel was, by definition, a New Zealand ship registered in New Zealand.

This brings us to the question of foreign charter fishing vessels working in New Zealand, and the responsibilities of the New Zealand fishing permit holder or joint venture partner, under The Health and Safety In Employment Act 1992 whilst the ship is alongside or at sea.

Firstly, the specific application of the The Health and Safety In Employment Act 1992 to this situation is determined by the Act whereby it specifies the application of the Act to ships.

Section 3B of The Health and Safety In Employment Act 1992 determines the Application of the Act to ships.

In section 3B it states that this Act applies to a person:

1 (a)

- (i) employed or engaged under an employment agreement or contract for services governed by New Zealand law to work on board a New Zealand ship or on board a foreign ship carrying coastal cargo while the foreign ship is on demise charter to a New Zealand-based operator; or
- (ii) performing work on a foreign ship while it is carrying out petroleum operations in New Zealand continental waters (as defined in section 222(1) of the Maritime Transport Act 1994); and
- (b) to the person who employs or engages the person described in paragraph (a) and
- (c) to the ship as a place of work.

The Act therefore applies to a person either working on a ship or to the person who employs or engages a person to work on the ship. However it further defines the status of the ship even more narrowly in subsection 1(a).

The ship needs to be either a New Zealand Ship which is defined as having the same meaning as in section 2(1) of the Ship Registration Act 1992 which defines a New Zealand ship as one that is registered under this Act; and includes a ship that is not registered but is required or entitled to be registered. A foreign chartered fishing vessel therefore does not come under this part of section 3B and would not be subject to The Health and Safety In Employment Act 1992.

The section goes on to include other foreign vessels but limits them to foreign ships carrying coastal cargo while the foreign ship is on demise charter to a New Zealand-based operator or while it is carrying out petroleum operations in New Zealand continental waters. Once again, a foreign chartered fishing vessel would fail to be captured under these criteria.

If the vessel is not subject to the Health and Safety In Employment Act 1992 then I cannot imagine the New Zealand permit holder would be either.

It would be interesting to hear Maritime New Zealand's view on this matter.



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OCEANLAW NEW ZEALAND

14 New Street, PO Box 921, Nelson.  
Phone 64 3 548 4136, Fax 64 3 548 4195,  
0800 OCEANLAW email [martylo@oceanlaw.co.nz](mailto:martylo@oceanlaw.co.nz)  
[www.oceanlaw.co.nz](http://www.oceanlaw.co.nz)

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