

3 LEGAL CONSIDERATIONS

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Overview

Maritime search and rescue operations are conducted in New Zealand in compliance with two international conventions to which New Zealand is party.

- The International Convention for the Safety of Life at Sea (SOLAS).
- The International Convention on Maritime Search and Rescue.

The Maritime Transport Act (1994) is now the definitive legislation in relation to maritime safety in New Zealand.

Coastguard’s involvement in SAR requires all its personnel to have a good insight into their own responsibilities. In today’s environment, safety awareness and personal accountability have much greater significance than in the past. This module is intended to help Coastguard SAR personnel learn about their legal responsibilities and to provide an overview of the legalities affecting marine SAR in New Zealand.

“Ignorance of the law excuses no man” (John Selden 1584-1654. Table Talk)

With responsibility comes liability. Many people are unsure how far this extends. The best way to overcome any confusion is to provide adequate training and ensure that Coastguard personnel act within accepted practices and guidelines.

CNZ has arranged insurance cover for penalties and legal defence for charges under a variety of Acts.

General Notes

Coastguard personnel are not exempt from any responsibilities under the laws of New Zealand. We are all private citizens with no 'special powers'.

Speeding on the way to respond to a call out will get you a ticket. Boarding another person's vessel without their permission could be interpreted as trespass. Physically handling that person against their will could get you charged with assault.

The higher the qualification, the higher the level of responsibility. A Skipper is at all times responsible for the vessel, and those on board. The Skipper therefore has greater responsibility than a crew member. There is also a greater 'expectation of skill' when people have been formally trained. Hence for example there is a higher standard of seamanship expected of Coastguard personnel compared to an ordinary (untrained) member of the boating public.

It is important to remember that barring acts of gross negligence, it is extremely unlikely that Coastguard personnel would ever be held liable or criminally charged as a result of their actions.

There is no law that says mistakes cannot be made during SAR operations, but Coastguard personnel must act within their Standard Operating Procedures (SOPs), and what they have been trained to do. For example coming alongside a disabled vessel;

The CRV Skipper assesses the other vessels motion and drift, informs the other vessel's Skipper of his intentions, and approaches in a sensible and controlled manner. When coming alongside however, a slight miscalculation of speed and angle of approach results in damage to the vessels stanchions. This may not be negligent, merely a slight error in what otherwise was an operation carried out within accepted safe and sensible practices.

If the CRV Skipper had charged in without assessing the situation, had not informed the other vessels Skipper of his intentions, and the CRV had approached at speed from up wind subsequently damaging the vessel, the CRV Skipper could quite rightly be held negligent.

Safety

The most important legal consideration for every member of a marine SAR agency is safety awareness. The Maritime Transport Act 1994 states (in Part 3, Section 18) that *“Every person ... who operates any ship; or is responsible for any maritime product; or is otherwise engaged in any maritime activity ... shall comply with the relevant provisions of the Act and any relevant rules.”*

For Coastguard members, the ‘relevant provisions and rules’ of this Act relate mainly to safety. These points could be considered the H&SE (Health & Safety in Employment) requirements on water. Maritime New Zealand (MNZ) is responsible for the administration of the H&SE Act 1992 when it comes to marine safety (for example an accident that occurs on the CRV). The Department of Labour is responsible for safety issues on land (for example an accident at the Units headquarters or boathouse).

All Coastguard personnel have an individual and collective responsibility to:

- **Take all practical steps to identify, minimise, isolate or eliminate any inherent hazards.**
- **Be fully involved in the development of procedures (SOPs / SSM – see below) for the purposes of identifying, minimising, isolating or eliminating these hazards.**
- Ensure that SAR personnel and other members of the public are not exposed to undue risk.
- Take all practicable steps to ensure that no action (or inaction) causes harm to anyone on board the vessel.
- Provide relevant safety information to crew and passengers (a legal requirement).
- Provide a safety briefing including identified hazards / defects and their status at the start of each duty.

Standard Operating Procedures (SOPs)

Every Coastguard Unit, vessel & aircraft will have written SOPs that cover their normal and emergency operations. These SOPs may detail such things as launch, recovery, and refuelling procedures, maintenance checks, equipment carried, and emergency procedures in situations such as abandon ship, fire, collision etc.

Safe Ship Management (SSM)

Safe Ship Management is a system to ensure that the owners and operators of all commercial vessels (Coastguard CRV's included) operate in a safe and structured manner. Every Unit will be a member of a Safe Ship Management Company; these companies are effectively franchised by MNZ to oversee the operation of commercial vessels.

On board every CRV there must be an official log to record details of the vessels operation, (including emergency drills / training carried out) and a Safe Ship Management Manual. This manual contains information on, but is not limited to;

- **Vessel details**
- **Vessel equipment**
- **Vessel SOPs**

Every crew member of a CRV should be fully aware of the contents of the SSM Manual as a reference and training aid regarding the operation of the CRV.

The SSM Manual is effectively a contract between the owners & operators of a vessel and MNZ, as to how the vessel will be run. ***It is not written in stone – it should reflect the actual equipment and procedures used. If equipment or procedures change then the SSM Manual should also reflect those changes.***

The SSM manual is a valuable reference and training aid that helps to maintain a safe and consistent approach to the CRVs operation.

SSM - Unit, Skipper & Crew responsibilities

The responsibilities within SSM can be summarised as such;

Unit Responsibilities

- Provide resources & support for the skipper in matters related to safe operation of vessel.
- Ensure Skipper & crew are complying with SSM Manual, & that its effectiveness is evaluated & reviewed.
- Maintain a register of every accident, incident or mishap (see end of this section).
- Ensure vessel logbook is maintained.
- Maintain vessel in fit for purpose condition.
- Ensure that all personnel involved with the SSM manual have adequate understanding of relevant mandatory rules & regulations.
- Ensure that Skipper & crew hold appropriate qualifications & have the required skill to perform their duties safely.

Skippers Responsibilities

- Responsible for the safe operation of the vessel and well being of all crew & passengers.
- Verify all crew have adequate training to carry out their duties safely.
- Ensure all systems contained in the SSM Manual are implemented, and shall seek to improve these systems.
- Ensure that vessel logbook is maintained.
- Ensure that all accidents & incidents are reported to their Unit, MNZ and their SSM Company as soon as possible.
- Comply with relevant Maritime Rules and local navigation safety bylaws.

Crew Responsibilities

- Participate in training provided by Unit & Skipper.
- **Participate in the SSM of the vessel.**
- **Participate in the process for identifying hazards.**
- Ensure that no action or inaction causes harm to any other person.

Accidents and Investigations

The Skipper of a CRV involved in an Accident, Incident or Serious Harm event must report the event to MNZ as soon as possible. MNZ will decide whether the event warrants a subsequent investigation. The exact definitions of an Accident Incident or Serious Harm Injury are quite comprehensive, but they can be summarised as;

Accidents

Include events such as groundings, collisions, machinery failures and steering loss, or any event involving damage to a vessel that may affect its strength or seaworthiness.

Incidents

Include near misses such as a near collision or a near grounding or any event arising from the vessels operation that did or could have affected safety. Incidents could include such things as a small fire on board, a tow line parting / cleat pulling out, or loss of systems or navigational equipment due to an electrical fault.

Serious Harm Injuries (legally defined as Mishaps)

Include, but are not limited to;

- Death.
- Amputation.
- Fractures.
- Burns.
- Loss of consciousness.
- Any harm that requires hospitalization for a period of 48 hours or more.

Minor injuries such as cuts, sprains, and bruises do not need to be reported, but should be recorded in an accident register in accordance with the SSM system.

The legal requirement to report relevant events to MNZ applies to all vessels. When you assist a private vessel that has been involved in a reportable event you may choose to advise the Skipper of their obligation to report the accident, but it is their responsibility to do so.



Knowledge and Training

As a crew member, you must be honest about your abilities. If you don't feel capable of performing a task, then say so before attempting it. Ensure that you receive adequate training. ***If you are unsure about any part of the Unit or vessel operation, then ask.***

The safety of all crew members is mutually dependent upon their respective levels of competence. If you are unhappy with the performance of another crew member, do something about it. Diplomatically suggest asking for more training, or discuss the problem with your Skipper, Unit Training Officer, or Safety Officer.

Equipment

Keep equipment in operational order - do not use equipment you know is faulty. Take part in equipment maintenance programmes. ***Do not agree to operate equipment unless you are sure you know how to use it — ask to be trained first.***

Preservation of Life Not Property

- The Skipper of a vessel has a duty to assist persons in danger and to respond to distress calls.
- A Skipper can decide not to render assistance if doing so would place their vessel and the persons on board in danger.
- The Skipper of a vessel does not have to render assistance once informed that one or more other vessels are able to render all necessary assistance.

In a rescue situation the Skipper and crew are required to make best endeavours to fulfil the rescue attempt 'in line with training and experience'.

There are situations in which a person who initially indicates distress is unwilling to leave the vessel when assistance is offered. Generally the persuasive powers of the rescue personnel will prevail. Otherwise the appropriate action is to advise the Incident Management Team, and then stand by to monitor the situation. The assistance of Police may be required to remedy the situation.

Protection of Property

Coastguard personnel are not obliged to recover property if the safety of life is not involved. Protection of property is most likely to become an issue when you tow a vessel. Neither Maritime NZ, nor the Police will accept any liability for towage unless it is an actual official Search and Rescue Operation (SAROP).

Liabilities When Rescuing Property

There is often a potential risk of damaging a vessel when endeavouring to assist, and Coastguard can be liable for damage caused by your actions in such circumstances. Fortunately, in most cases victims realise that the benefits of your actions far outweigh any damage to property.

Creating a 'Navigational Hazard' is another possible consequence. For example, if a towed vessel were to sink in a narrow channel, Coastguard could be held liable for the removal of the obstruction.



Repairs

By attempting repairs, Coastguard personnel can reduce the incidence and risks involved with towing a vessel. However they could find themselves liable for any ill conceived repairs or loss of warranty.

- Coastguard personnel should refrain from any but the most basic and obvious repairs.
- Repairs should only be attempted within the crew members experience / competence.
- Any repairs attempted must be with the full knowledge and permission of the vessels Skipper / owner.

Salvage

Coastguard does not charge money or make salvage claims for the recovery or repair of damaged / abandoned vessels and their contents or cargo. **Regardless of circumstances a vessel (including its contents and cargo) that has been abandoned remains the property of its owner(s).**



The Privacy Act

It is an offence to release any information about people that may identify them to others without their prior consent. It is also an offence to release any information about a deceased person without the prior consent of the next of kin.

It is important to remember that what you say on a VHF radio can, and will be heard by people monitoring the channel. However, the onus is on the **listener** to obey the provisions of the Privacy Act. The act treats a radio conversation as a private phone conversation (even though it is a public broadcast).

It is accepted practice in Coastguard that if any 'sensitive' information is communicated during an operation, that it be done using secure means i.e. by cell phone or UHF radio. (See Module SAR Communications)

The Privacy Act will have a bearing on your actions if a member of the media asks you for information about an incident. All media enquiries should be directed to the Unit Media Officer, Incident Management Team, or other Coastguard personnel allocated to liaise with the media. ***You must know your Unit's (or Region's) media policy, and keep to the guidelines.***

Radio Regulations

Under the Shipping (Radio) Regulations 1989 and 1994 every person operating a radio (excepting emergency situations) on a ship licensed in New Zealand must hold an Operator's Qualification for that radio. Therefore, all CRV crew should obtain a Marine VHF Operator's Qualification at the earliest opportunity.