



CLOSE QUARTERS AT TODDY'S PATCH

BY MARTY LOGAN

In this article I review a recent High Court decision involving alleged breaches of the collision provisions set out in the Maritime Rules.* This decision has an interesting factual background, as it highlights the tension in some areas between commercial fishermen and charterboat operators.

Both sectors have been known to express negative views of the other. Charter operators allege that commercial fishermen are overfishing the resource, while commercial fishermen resent the fact that charter operators operate a commercial fishing business but are not bound by fisheries regulations to anywhere near the same extent as commercial fishermen and, in particular, are not required to hold an annual catch entitlement for catches taken from their vessel. These tensions may well have contributed to the situation discussed in this case.

The incident took place some 13.5km off the Akaroa Heads in perfect conditions, and involved a 10.7m commercial vessel and an 8.75m charter vessel. Both were operated by highly experienced skippers.

It is often difficult to see how close-quarter situations can arise in these circumstances on the open sea and in ideal conditions. Here, the answer lay some 75m below the surface, where there was a large rock which attracts schools of groper (and the fishermen who prey on them).

The area is known as Toddy's Patch. Commercial fishermen regularly target groper at Toddy's Patch using dahn lines (lines containing 15 hooks with a grapnel at one end and a buoy at the other).

One morning in January last year, the commercial fishermen were fishing at Toddy's Patch. Later in the morning the charter vessel arrived with eight customers on board to fish in the same area. The decision notes somewhat ominously that "there was a history of bad blood between the skippers of the two vessels".

The charter vessel positioned herself with her engine in neutral, and the anglers started fishing from all points around the deck. The commercial vessel approached and circumnavigated the newcomer from a distance of about 30m at a speed of five knots. The commercial fisherman says he was innocently checking for the best spot to set his lines, while the charter operator thought he was being intimidated.

Once he had circumnavigated the other vessel, the commercial fishermen came to a halt about 5m from her stern, and deployed his dahn line. The skipper of the charter vessel claimed that he had had to move his vessel forward some 5m to prevent a collision, while the commercial fishermen claimed that the other vessel had only moved after he had come to a stop, and there was never any danger of a collision.

The charter operator laid a complaint with Maritime New Zealand, and the skipper of the commercial vessel eventually

faced two charges pursuant to section 3 of the Marine (Offences) Regulations 1998, alleging he had failed to comply with Rule 22.39 of the Maritime Rules.

This rule requires owners and persons responsible for the navigation of vessels to observe the collision rules in part 22. The relevant collision rules were 22.7, which provides that every vessel must use all available means to determine if a risk of collision exists, and rule 22.8, which covered actions which must be taken to avoid a collision. The charges were heard at the District Court, where the judge appeared to have accepted the commercial fisherman's evidence regarding the manoeuvre. The judge dismissed the first charge on the facts because the commercial fisherman had maintained a close watch on the charter vessel throughout his manoeuvre, and in all the circumstances this was appropriate to determine if a risk of collision existed.

The defendant was convicted on the second charge. The judge's reasoning (to use the words of the High Court judge) was somewhat obscure. He appears to have been influenced by the fact that this whole situation took place in a space no bigger than a courtroom, and that the situation had been brought about by the commercial fisherman, who had created an unnecessary close-quarters situation, which could easily have been avoided by waiting for a minute or two until the charter vessel had drifted out of the way.

The judge concluded that the defendant's actions in dropping his dahn line about five metres from the stern of the charter vessel was the deliberate creation of an unnecessary close-quarters situation, when he had every opportunity to observe good seafaring practice by slackening the speed of his vessel, or by taking all way off by stopping or reversing.

The judge considered the risk of collision existed whenever two vessels were in the same proximity and one of them was making way. However, he also appeared to accept that there was no risk of actual collision in this case, and that the only risk was to the fishing gear on the charter vessel.

The conviction was appealed to the High Court and duly overturned. The High Court found that the District Court judge had taken too wide an approach to a collision situation. The issue of whether or not there was a risk of collision would depend on all the circumstances, and may well vary from case to case.

It could not exist solely because the vessels were close together and one was under way. Taken as a whole, the factual findings indicated that the prosecution had failed to prove that a risk of collision existed.

Looking on the bright side, we could take this case as confirmation that vessels from the two sectors can fish in very close proximity without danger to life or vessel. However, whether it can be done in a spirit of cooperation is still an open question. 

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