

LITTLE AND LARGE MARITIME ISSUES

As a lawyer specialising in fisheries and maritime law I am sometimes asked whether I get bored dealing with a narrow subject matter. The answer is no. The breadth and variety of issues that arise under these headings are enormous and interesting. The issues can vary in complexity as can the amount at stake. To illustrate this I will review two legal issues which have arisen recently at either end of the financial scale. At one end are the \$250 fines handed out by Fishery officers during the recent crack down on amateur fishers taking under-sized fish or fish in excess of daily catch limits. At the other end of the scale is the multi million-dollar litigation that is currently progressing through the courts as the result of the grounding of the *Jodie F Millennium* in February 2002.

Dealing firstly with the “minnow” the concept of daily catch limits on amateur fishers should be a simple one but in practice has caused headaches for amateur fishers, charter vessel operators and Fishery officers. Amateur fishing is governed by regulations made up of general amateur fishing regulations and area specific regulations. Amongst other things these regulations impose daily catch limits on a number of species. During recent operations Fishery officers inspected vehicles of amateur fishers returning from a trip and found that a number of fishers had more than the daily catch limits in their possession. Some of these fishers had come from a day (or days) out with charter vessel operators and seemed to think there was a vessel limit whereby the daily catch limit could be divided up amongst the number of people on the vessel. It is important to note that it is an offence to take or be in possession of more than the daily catch limit. It is the second provision relating to possession which can cause problems. However it is a defence to the possession charge if you can prove that the fish were not taken in contravention of the regulations. For example the daily catch limit on hapuka in the Auckland area is five and if you are caught in possession of, say, ten hapuka this is, at first instance, an offence. You have a defence if you can prove you only caught five of these in one day and that the remaining five were caught by another fisherman on the same day and given to you. However the onus is on you to actually prove that this occurred rather than simply claiming it occurred. Therefore some effort should be made on charter vessels to keep track of who is catching what fish – these records may come in handy later on in court. The same common sense approach applies if you are on a multi –day fishing trip. You should make some effort to separate the daily catches (preferably by bagging and labelling them separately) so that when you eventually land the fish you can prove to the Fishery officer that daily catch limits have not been exceeded. It is also important to remember that the daily catch limit only apply to those who are actively fishing or diving. Vessel operators and spectators on the vessel are not entitled to daily catch limits.

It should also be borne in mind that while in most cases the Ministry will issue instant fines of only \$250 if the offending is serious the maximum fine can be up to \$10,000. If you are caught with more than three times the daily catch limit then a maximum fine can be \$20,000.

However even these fine limits seem miniscule when considering the amounts at stake in the *Jodie F Millennium* litigation. Those who are following the saga will recall that both the Maritime Safety Authority and Transport Accident Investigation Commission have published their findings on the grounding. A recent High Court decision relating to procedural matters sheds light on the litigation that has followed on from those reports. In summary the owner and ships manager are suing the company formerly known as Port Gisborne Limited, as owner and operator of the port, and the Gisborne District Council, as the statutory authority responsible for the regulation and maintenance of safe navigation in the port. The damages they are claiming relate to salvage, towage, bunkers, repairs, loss of hire under the time charter party, crew reparation expenses, cargo claims and other items totalling USD3,785,736.00, JPY948,909,011 and NZD2,431,504.00. The recent decision dealt with procedural issues as to whether the plaintiffs had given sufficient particulars in their pleadings to identify what damage was allegedly caused by what actions of the Gisborne District council. As a result of the decision the plaintiffs were required to re-plead their claim. This litigation is ongoing and if it proceeds through the courts (as opposed to being settled privately) then it will deal with a number of important issues relating to the liability of those who operate ports or regulate their operations. The litigation will also examine the roles and responsibilities of harbour pilots.