

# The Lucy Lawless law?



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Not all that long ago, our very own Lucy Lawless boarded a Shell Todd Oil vessel the *Noble Discoverer* while she was alongside in Port Taranaki. Lucy climbed her way to the top of a 58m piece of superstructure and stayed there for 77 hours. Initially, she and her companions were charged with burglary but that charge was reportedly amended to being unlawfully on a ship. They were later sentenced to community service and a small sum of reparation.

Because the vessel was alongside in Taranaki, there was no issue of jurisdiction and therefore criminal sanction over the actions of the protesters, but what if this had happened out at sea? As is evident in the well publicised activities of international environmental activist organisation, Sea Shepherd Conservation Society, the resources that protesters such as Sea Shepherd have at their disposal have increased significantly over the last few decades. It is now entirely feasible that a protest could be staged at a rig site or at sea against a vessel that is engaged in assisting a mining operation.

Regardless of your personal position on mining and mineral extraction, there is real concern that protestors are putting themselves and those around them in serious danger when they voice their concerns at drilling sites, or within the area in which a vessel is operating.

Some readers may recall that last year one of our columns focused on the legal distinction between the territorial sea and the Exclusive Economic Zone and explained that domestic laws of New Zealand apply in the area up to the 12nm limit, but generally not beyond into the EEZ. Accordingly, until recently there was no clear jurisdiction to sanction any protestors who interfere with the operations of a mining structure while at sea beyond the 12nm territorial sea limit.

The recent amendments to the Crown Minerals Act 1991, which came into force on May 24, 2013, were not only designed to support the Government's policy of encouraging mineral and petroleum exploration, development and extraction, but also created new offence provisions which extend beyond the 12nm limit. The amendments also imposed new health, safety and environmental standards upon operators.

The relevant provisions creating the offences of interference in the Act are Sections 100, 101A, 101B and 101C. The offences specify that:

**1 A person commits an offence if the person intentionally engages in conduct that results in –**

- a) damage to, or interference with, any structure or ship that is in an offshore area and that is, or is to be used in mining operations or for the processing, storing, preparing for transporting, or transporting of minerals; or
- b) damage to, or interference with, any equipment on, or

*attached to, such a structure or ship; or*  
 c) *interference with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with such a structure or ship.*

**2 A person commits an offence if –**

- a) *the person is the master of a ship that, without reasonable excuse, enters a specified non-interference zone for a permitted prospecting, exploration, or mining activity; or*
- b) *the person leaves a ship and, without reasonable excuse, enters a specified non-interference zone for a permitted prospecting, exploration, or mining activity.*

Maximum penalties under the Act are significant, signalling that these provisions are intended to provide a deterrent for protesting individuals and organisations. These include a maximum fine of \$50,000 or imprisonment for a period of not more than twelve months for an individual, or a maximum fine of \$100,000 for a body corporate.


While the Act provides that proceedings cannot be brought in respect of a contravention of this Act on board, or by a person leaving, a foreign ship without the consent of the Attorney General, this is one of the rare examples of New Zealand criminal law having extended jurisdiction into the EEZ.

The Act also provides for non-interference, or exclusion

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zones, to be established around a structure or ship. Although not explicit, the wording of the Act implies that the exclusion zone relating to the vessels is a moving exclusion zone, which could produce challenges for innocent mariners.

The Act does not appear to clarify whether the exclusion zone operates at all times, or whether it is only valid while the vessel is actually engaged in the specific activity. This raises some questions – for example a rig supply vessel may have the benefit of an exclusion zone while it is unloading to a rig, but does that exclusion continue around the vessel while it is steaming ashore?

The exclusion zone relates to the installation or the vessel and is not specific to a geographic location. This goes further than the protection to rigs afforded by the United Nations Convention on the Law of the Sea which provides for an exclusion zone around a rig, but not a vessel. How will the exclusion zone operate alongside general rules of the road, as set out in the International Regulations for Preventing Collisions at Sea? It certainly seems, at least at this stage, there are more questions from these provisions than answers. 

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