

# Accident Report

## *Free Spirit*

Injury from Improper use of a Flare  
Viaduct Basin, Auckland Harbour  
on 6 November 2004

Class A



REPORT NO.: 04 1148

VESSEL NAME: *FREE SPIRIT*

<b>Ship Type:</b>	Recreational Motor Vessel
<b>Built:</b>	1987
<b>Construction Material:</b>	Fibreglass
<b>Length Overall (m):</b>	9.54
<b>Maximum Breadth:</b>	3.57
<b>Gross Tonnage:</b>	4.5 approximately
<b>Accident Investigator:</b>	Ian Howden



## SUMMARY

On the evening of 6 November 2004, numerous vessels were berthed at the transient berth in the viaduct basin in Auckland Harbour.

Earlier in the day, approximately 30 small craft had competed in the “*poker run*”, an event that had been staged in the Harbour. The organizers had booked the transient berth for post event celebrations.

*Free Spirit* and other vessels had berthed without the organizers or viaduct manager’s permission. The crew of *Free Spirit* and crew from other vessels, who were socializing on board, consumed alcohol. At approximately 2145 hours New Zealand Standard Time (NZST), a heavily intoxicated crewman ignited a hand flare in the cockpit of *Free Spirit*. As a result, a female crewmember suffered serious burns and the vessel was damaged.



## NARRATIVE

*Free Spirit* is a recreational enclosed cockpit motor vessel of fibreglass construction built in Auckland in 1987. She has an overall length of 9.54 metres, a breadth of 3.57 metres and approximate gross tonnage of 4.5. She is powered by twin Volvo diesel motors. The vessel is jointly owned. One of the owners seldom uses the vessel. The other owner who was skipper on 6 November, uses the vessel on a regular basis.

*Free Spirit* had four crew on the day of the accident.

The Skipper had recreational boating experience and has owned a number of vessels. He describes himself as a master mariner, but has no commercial qualifications. He holds an Australian recreational motorboat license.

The Skipper's wife, has crewed on the vessel previously.

The injured party was a guest of the Skipper and his wife. She was a visitor from Australia and had limited boating experience. She suffered burns from the flare.

The crewman who fired the flare holds a New Zealand Coastguard Boatmaster qualification. He had crewed on the vessel previously and is an experienced recreational boatman.



# THE INCIDENT

At approximately 1000 hours New Zealand Daylight Time (NZDT) on 6 November 2004, **Free Spirit** departed her berth at Westhaven Marina in Auckland Harbour and proceeded to Waiheke Island. On board were the half Owner/Skipper and his three crew members. At approximately 1800 hours, the vessel returned to the Harbour and berthed at the transient berth in the viaduct basin. Both the Skipper and the crew consumed alcohol at Waiheke and continued doing so on arrival at the basin.

At approximately 2145 hours, a heavily intoxicated crewman on board **Free Spirit** discharged a hand flare in the cockpit of the vessel. He dropped the flare on the cockpit deck. The flare burned the leg of a female crew member and burned a section of a fibreglass locker, deck and squabs. Ineffectual efforts were made to extinguish the flare by the Skipper.

A member of the public boarded the vessel and attempted to smother the flare with a squab. Shortly after, the flare went out. After receiving 111 calls from members of the public, the police, fire brigade appliances and an ambulance arrived at the scene. The ambulance took the burned crew member to hospital where she was treated and discharged (See Figure 1 - Excerpt of NZ Chart 5322 showing position of **Free Spirit** & Photographs 1 & 2 - showing aft of vessel and damaged area).

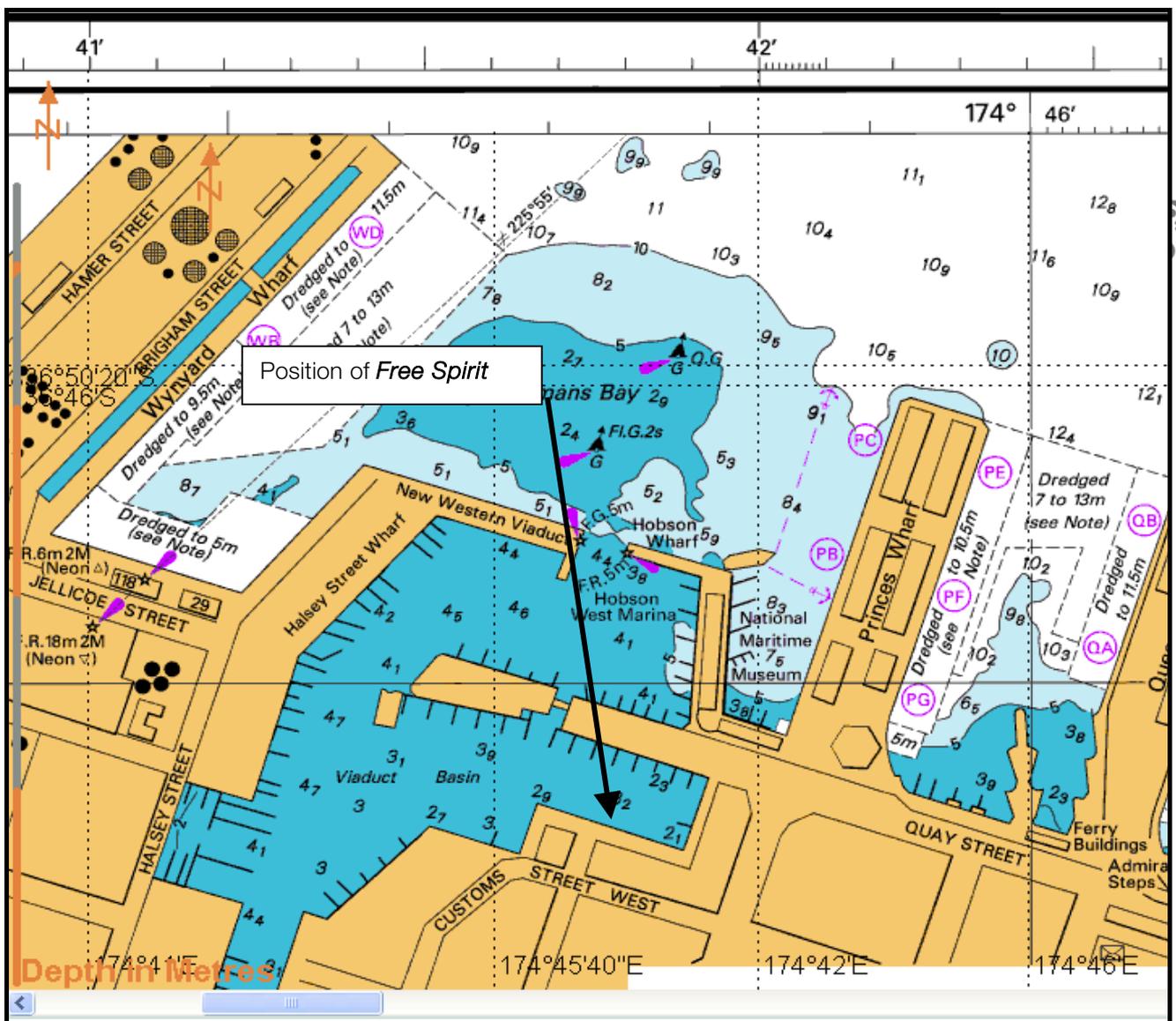


Figure 1 - Excerpt of Chart NZ5322



Photograph 1 – Showing aft of vessel and damaged area



Photograph 2 - Showing aft of vessel and damaged area



## COMMENT & ANALYSIS

Maritime New Zealand commenced this investigation after the Auckland Harbormaster, Police, viaduct basin management and members of the public voiced concerns over the inappropriate firing of a flare in the basin. The Skipper and a crewman were formally interviewed at the Maritime New Zealand office in Auckland. Other witnesses, including the injured crew member, were interviewed by telephone. Maritime New Zealand investigators boarded **Free Spirit**, took photographs of the damaged cockpit and removed an unfired flare from the cockpit area.

During the interview the Skipper lied and was obstructive. He initially refused to name the crewman who fired the flare. He eventually named the crewman concerned and altered much of his evidence.

The Skipper and other witnesses observed the crewman in possession of the flare immediately before it was ignited. When interviewed, the crewman stated he had no recollection of firing the flare due to his inebriated state. He stated that he and the Skipper had been drinking heavily throughout the day and were intoxicated. The crewman accepted responsibility for firing the flare.

The evidence of the member of the public, who attempted to extinguish the flare, was that the crew of **Free Spirit** was unable to deal with the situation and appeared heavily intoxicated.

The injured crewmember recalls being in the cockpit of the vessel when the flare was dropped and being unable to avoid it. She was pulled on to the pier by the Skipper of the adjacent vessel to avoid further injury. She stated that the male crew on **Free Spirit** was involved in "heavy drinking". When interviewed she was being treated for her injury in Australia. She has been advised she may require plastic surgery.

The flare that was found in front of the steering station by the Investigator, was a comet brand red hand flare that had expired in 1989. The manufacturers specify a burning time of 60 seconds. A pull wire ignitor ignites the flare. Under Fire and Explosion data are the words:

- "Special Fire Fighting Procedure: Once ignited the device cannot be extinguished"

There is evidence the flare burnt for approximately 60 seconds and consequently may have expired after the contents had burnt out (See *Photograoh 3 - Flare*).



Photograph 3 - Flare

## The Skipper's Responsibilities:

### Maritime Transport Act 1994

#### S.19 Duties of the Master –

(1) *The Master of a ship shall –*

- (a) *Be responsible for the safe operation of the ship on a voyage, the safety and wellbeing of all passengers and crew and the safety of cargo carried; and*
- (a) *Have final authority to control the ship while in command and for the maintenance of discipline of all persons on board*

## The Crewman's Responsibilities:

### Maritime Transport Act 1994

#### S.65. Dangerous activity involving ships or maritime products –

(1) *Every person commits an offence who –*

- (a) *Operates, maintains, or services; or*
- (b) *Does any other act in respect of –*

*any ship or maritime product in a manner which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs.*

(2) *Every person commits an offence who-*

- (a) *Causes or permits any ship or maritime product to be operated, maintained, or serviced; or*
- (b) *Causes or permits any other act to be done in respect of any ship or maritime product,*

*in a manner, which causes unnecessary danger or risk to any other person or to any property, irrespective of whether or not in fact any injury or damage occurs*

## Maritime Rules Part 23 Operational Procedures

### 23.48 Distress Signals

(1) *A person must not make a distress signal, or cause or permit a distress signal to be made, unless that person is satisfied that –*

- (a) *the ship or seaplane that is on the water (or any person from that ship or seaplane) to which the person belongs is in serious and imminent danger and requires immediate assistance; or*
- (b) *another ship or an aircraft (or any person from that ship or aircraft) is in serious and imminent danger and cannot itself make the signal and requires immediate assistance.*

Skylarking with flares by intoxicated crew is a recipe for disaster. Not only can it cause serious injury, as in this case, but fire. The petrol powered vessel **Venus** was rafted up next to **Free Spirit**. Had the flare ignited that vessel a major conflagration in the basin could have been the result. Flares should only be deployed in serious situations where rescue is required. The tendency for persons to ignite emergency flares and rockets over Guy Fawkes, New Year and other festive occasions is of serious concern to Maritime New Zealand and other authorities. Search and rescue (SAR) services are required to respond to all flare sightings. Valuable resources are wasted when flares are fired in non-emergency situations.



This can compromise the ability of SAR services to utilize all resources to respond when flares are fired in emergency situations.

Despite denials from the Skipper that he drank only a moderate quantity of alcohol on the day, the evidence suggests that he and his crew, including persons from other vessels on board, were intoxicated. The Skipper's evidence as to the quantity and consumption of alcohol on board is in conflict with that of his crew.

In many countries and states, including the United Kingdom and Australia, it is an offence to be in command of a vessel whilst intoxicated and Skippers can be breath tested. Maritime New Zealand has recently completed a paper on Alcohol and Recreational Boating in New Zealand. This was commissioned by the National Pleasure Boating Forum and is due for discussion in December 2004. Research on alcohol in the commercial maritime sector is also being undertaken by Maritime New Zealand.

It is common practice for recreational mariners to keep out of date flares on board vessels. Chemical components used in flares degrade over time and variations in temperature and humidity accelerate this process. Out of date flares can burn at a lower brightness (candela) and the colour can fade. In some cases burn time can be lengthened which can be a fire hazard.



## CONCLUSIONS

The Skipper failed to curtail the amount of alcohol consumed on board his vessel to a safe level. As a result both he and his crew were intoxicated. Under the circumstances the Skipper knew or ought to have known that his crewman was intoxicated. He had a duty to ensure the safe operation of his vessel and maintain discipline to ensure the safety of his vessel and crew. This included limiting his alcohol consumption and controlling the behavior of intoxicated persons. He failed in that duty.



## SAFETY RECOMMENDATIONS

1. It is recommended the Skipper be severely censured for not curtailing the amount of alcohol consumed on *Free Spirit* and for failing to control and maintain discipline on board.
2. It is recommended the crewman be severely censured for improper use of a flare.
3. It is recommended the Business Development and Communications Division of Maritime New Zealand make this report available to the National Pleasure Boating Forum for consideration when advising the public about safety awareness and alcohol use in small craft.
4. It is recommended a summary of this report be included in the Maritime New Zealand Business Development & Communications Division annual recreational accidents publication.

