

If you run a fishing business or own, operate, or work on a commercial fishing vessel, you have health and safety duties under the Health and Safety at Work Act 2015 (HSWA).

Your duties differ according to the level of responsibility you have and depend on how much you can influence and control what happens. If you run a fishing business or are the boat's owner, or skipper, you have more influence and control over what happens on the boat than if you are a casual crew member or a trainee.

**This section:**

- explains the four kinds of duty holder under the HSWA:
  - Persons conducting a business or undertaking (PCBUs);
  - Officers;
  - Workers; and
  - other people in the workplace
- describes the responsibilities each duty holder has
- explains how the duty holder responsibilities apply to the roles people have on a fishing boat and where the skipper (master) fits
- explains more detail about some of the duties a business (PCBU) has.

PCBU means a 'person conducting a business or undertaking'. You should not take the word 'person' literally.

Your fishing business is a PCBU. It will often be a company but you are still a PCBU if you are a self-employed person (or sole trader). If you are a self-employed share-fisher you are also a PCBU.

### **Primary duty of care**

A PCBU has a 'primary duty of care' to ensure, so far as reasonably practicable, that the health and safety of workers and other people is not put at risk by the work it does.

HSWA and the regulations also set out some more specific duties that PCBUs must meet under HSWA. Some of these are explained below. More information can be found in *'Health and Safety – a Guide for Mariners'*, or on the Maritime NZ website.

### **Worker engagement and participation**

Operators (PCBUs) must involve their workers in workplace health and safety. PCBUs must:

- Talk with their workers about health and safety matters. This is known as 'worker engagement'.
- Give their workers opportunities to work with them to improve health and safety. This is known as 'worker participation practices'. Opportunities to take part must be meaningful and on-going.

These duties only extend to workers who carry out work for the business or undertaking.

### **Duty to work with other PCBUs to ensure health and safety**

Fishing operators, as PCBUs have a duty to consult, co-operate and co-ordinate with other PCBUs that are working together or in the same workplace. Examples include other businesses doing work on board your vessel (eg contractors) or at a port where there are a number of businesses working at the same time.

While the overall duty is to ensure the health and safety of workers and others so far as is reasonably practicable, HSWA regulations set out some more specific duties PCBUs must meet under HSWA. Some of these are explained below.

## Emergency management

PCBUs must have an up-to-date emergency management plan and conduct regular training for workers on what to do in an emergency. Maritime operators operating under a safety management system should already be meeting this duty.

PCBUs have a duty to consult with workers when developing the emergency plan. This is the time for the master and crew to agree on roles and procedures during an emergency, and understand the risks and how to manage those risks.

## Training and supervision

PCBUs must provide workers (so far as reasonably practicable) with training and supervision to protect them from risks to health and safety. Training includes information or instruction and must be easy to understand.

Workers who don't have enough knowledge and experience to work safely must be adequately supervised by a person who has that knowledge and experience.

You must give workers enough training to safely use the vessel's machinery, handle any hazardous substances on board, and use the personal protective equipment they wear or use.

The type of training or supervision you provide depends on the kind of work you are doing, how risky it is and what control measures are in place to manage those risks.

## First aid

PCBUs must provide first aid equipment for the boat. It must be adequate for the work involved.

You must make sure that enough workers are trained to administer first aid, or that your workers can get to trained people when they need first aid. When you are at sea you will generally have a delay getting outside help, so it's a good idea to have some of the crew trained in first aid.

## The role of the skipper (ship's master)

Although a master has special responsibilities under the MTA, when they work for a maritime operator as an employee, or as a contractor, they are also a 'worker' under HSWA. The operator – not the master – has the primary duties of the PCBU.

The master is responsible for the day-to-day operation of the ship, but the operator is responsible for the operation. In some cases a master may also run the whole maritime operation. In that situation, the master will be an officer. He or she may also be the PCBU, depending on the legal entity that owns the operation.

# 19.2 Officer

You are an 'officer' if you have a significant influence over the management of the business - for example if you are a director of the company or a partner in a partnership that owns the fishing boat.

If you are a chief executive in the business you are also an officer.

## Duties of officers

You have a duty as an officer to exercise 'due diligence' to ensure the business meets its health and safety obligations. You need to meet this duty whether or not you work on the boat.

As an officer you must take reasonable steps to:

- have up-to-date knowledge of health and safety matters
- understand the hazards and risks of the work in your business
- make sure your business has appropriate processes and resources to minimise risks
- make sure your business has appropriate processes for receiving and considering information about incidents, hazards and risks
- make sure your business has processes for complying with HSWA, and applies them.

## 19.3 Worker

You are a worker if you do any work for a business (PCBU) at any level in the operation under any sort of arrangement. You are a worker if you are:

- an employee
- a person working for a contractor or sub-contractor
- a person working for a labour hire company
- a trainee or a person gaining work experience
- a volunteer worker

If you are a sharefisher or 'labour only' contractor, you are a worker as well as being a PCBU.

You are a worker if you are a manager working in the operation; you may also be responsible for making sure that the operation meets its obligations as a PCBU.

If you are an owner-operator working in the operation then your business is a PCBU and you are a worker and an officer.

You are a worker if you are a skipper working for an operation as an employee or as a contractor (even though you have special responsibilities under the Maritime Transport Act).

### Duties of a worker

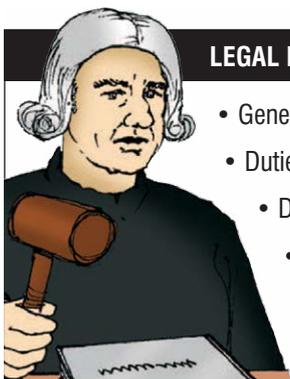
As a worker you have a duty to take reasonable care of your own health and safety and to make sure that when you are working you don't put others at risk.

## 19.4 Other people in the workplace

Other people at workplaces include passengers, visitors, customers and casual volunteers.

Other people at the workplace have a duty to keep themselves safe and not cause others harm. They must follow reasonable health and safety-related instructions made by the maritime operator (i.e. the business or PCBU).

If you visit a boat as part of your work (for example as an MPI observer or Maritime NZ official) you are a still worker as well as being an 'other' person. You have the same duties as a worker or, if you are self employed, you have the duties of a PCBU.



### LEGAL REQUIREMENTS

- General duties under HSWA are found in the following sections of the Act
- Duties of PCBUs section 36 (primary duty of care) and sections 37 – 43
  - Duties of officers – section 44
  - Duties of workers – section 45
  - Duties of others – section 46
- In addition the Regulations made under HSWA set out specific duties.

## Where can I find out more?

### Health and Safety at Work Act

Maritime NZ has guidance on its website about the Health and Safety at Work Act 2015.

The booklet *'Health and Safety – a Guide for Mariners'* explains your obligations under the Health and Safety at Work Act. You can get a copy by emailing Maritime NZ on [enquiries@maritimenz.govt.nz](mailto:enquiries@maritimenz.govt.nz) or from the Maritime NZ website.

Other guidance on the Maritime NZ website explains key concepts in the Act in more detail. Search on 'HSWA resources – Maritime NZ' or go to the Maritime NZ website [www.maritimenz.govt.nz/hswa](http://www.maritimenz.govt.nz/hswa)

More information about the Health and Safety at Work Act and managing health and safety can be found on the WorkSafe NZ website at [www.worksafe.govt.nz](http://www.worksafe.govt.nz)

### Employment status

As PCBU means a 'person conducting a business or undertaking', a self-employed person is still a PCBU. The Inland Revenue Department has advice on its website about how to decide if a person is an employee or self-employed. Go to [www.ird.govt.nz](http://www.ird.govt.nz) and search on 'self-employed or an employee'.

Employment New Zealand also has advice that explains the difference between an employee and a contractor. Go to [www.employment.govt.nz](http://www.employment.govt.nz) and search on 'contractor versus employee'.

## 20.1 Relevant Legislation

Maritime New Zealand is the health and safety 'regulator' under HSWA for work on board ships and for ships as workplaces.

Maritime NZ also administers the Maritime Transport Act 1994 (MTA). Maritime Rules are a type of legislation made under the MTA by the Minister of Transport. The MTA sets out the broad principles of maritime law, and the Rules set out the detailed requirements.

In broad terms, the MTA and the Maritime Rules focus on the safety of the vessel and navigational safety, while HSWA focuses on the health and safety of people on board the vessel. However, you should note that there is a degree of overlap.

## 20.2 Health and Safety at Work Act 2015

The main purpose of HSWA is to provide a framework to make sure workers and workplaces are healthy and safe.

A guiding principle of HSWA is that workers and other people in the workplace should be given the highest level of protection against harm to their health, safety, and welfare from work risks (so far as is reasonably practicable).

Businesses and workers must take reasonably practicable steps to manage health and safety risks. An important principle of HSWA is that the people with the most influence or control in the workplace are best placed to manage health and safety risks.

## 20.3 Maritime Transport Act 1994, Maritime Rules and Safety Management Systems

The Maritime Transport Act sets out high level requirements for the safe operation of ships. This includes the duties of masters' (section 19), the requirement to notify Maritime New Zealand of accidents and incidents (section 31), and various offences, including for operating a ship dangerously (section 65).

Maritime Rules set out more detailed requirements. Key rules include Part 22 (*Collision Prevention* – setting out “the rules of the road” for ships) and Parts 19 and 40D which contain safety management system requirements relevant to fishing vessels.

Maritime safety management systems are designed to make owners and operators responsible for the safe operation of their vessels, protect the marine environment and ensure the safety of the vessel and its crew.

A safety management system shows that an operator is meeting relevant minimum standards. Maritime NZ accepts (but does not approve) an operator's safety management system. This acceptance (known as 'entry control') gives the operator permission to operate under the Maritime Transport Act.

Commercial fishing vessels in New Zealand are required to operate under the following systems:

**Maritime Operator Safety System (MOSS)** (Maritime Rule Part 19) covers fishing vessels more than 6 metres long; or

**Safe Operational Plans** (Maritime Rule Part 40D) cover fishing vessels of 6 metres or less in length.

## 20.4

# HSWA and the Maritime Rules

HSWA does not replace any duties you have under other legislation.

This means you must comply with the MTA and all relevant Maritime Rules, as well as HSWA.

HSWA complements the Maritime Rules. Maritime safety systems and HSWA both address safety. A key difference is that the rules are prescriptive and set minimum standards for 'entry control', whereas the duties under HSWA are on-going and must be met 'so far as is reasonably practicable'.

This means that sometimes, to ensure compliance with the HSWA, a PCBU will need to achieve a higher standard than the Rules, or apply measures that are additional to the requirements of the rules.

'So far as is reasonably practicable' is explained below.

## 20.5

# Reasonably practicable

Many duties under HSWA apply 'so far as is reasonably practicable'. This standard is an objective one – ie what the person would reasonably be expected to know, control, or influence – not what they actually know.

Something is 'practicable' if it is possible or capable of being done. 'Reasonably' doesn't mean that an operator or businesses must do everything humanly possible – but it does mean doing what a reasonable operator or business would do in the same situation.

When a PCBU decides what is reasonably practicable they should take into account:

- how likely the hazard or the risk is to occur
- the degree of harm that could result
- what measures exist to control the risk
- whether ways to eliminate or minimise the risk are available and suitable.

Cost shouldn't be the main factor when considering what is reasonably practicable. A PCBU should only consider cost after assessing the risk and the available ways to eliminate or minimise it. Once these steps are taken, the PCBU should assess whether the cost is grossly disproportionate to the risk.

### Summary points

- The main purpose of HSWA is to make sure workers and workplaces are healthy and safe.
- Businesses and workers must take reasonably practicable steps to manage health and safety risks.
- 'Reasonably' doesn't mean that an operator must do everything humanly possible to manage a hazard or risk. It does mean doing what a reasonable operator would do in the same situation.
- The people with the most influence or control on the boat are best placed to manage health and safety risks.
- Your safety management system under MOSS or your SOP should address the risks your operation faces.

# 21

## Hazards and risks

Under HSWA all duty holders have a duty to eliminate risks to health and safety. If the risks can't be eliminated, they must be minimised.

- A hazard is something that might cause harm.
- A risk is a combination of the chance that the hazard will cause harm, and if it does, how bad that harm will be.

### 21.1

#### Identifying hazards

A hazard is something that can harm. Identify and write down the things on your boat that can injure people or damage their health.

Inspect the boat and its equipment. Things to look for include:

- sharp edges that could cut or puncture
- slippery surfaces or things to trip on that could make a person fall over
- changes in height that a person could fall down from
- machinery that a person could get trapped or caught in, or cut, grazed or crushed by
- the area where a person could get hit by a swinging crane or hauler
- winches and haul gear that a person could get caught in
- motors or cooking equipment that get hot and could burn someone.

Think about the things that have hurt crew or other people in past accidents.

### 21.2

#### Managing risks

Under HSWA a person with a duty is required to eliminate risks to health and safety. If the risks can't be eliminated, they must be minimised.

A risk is a combination of the chance that a hazard will cause harm, and if it does, how bad that harm will be.

Effective risk management works by identifying and applying controls that:

- reduce the number of accidents or things that can damage health; and
- reduce the severity of the accidents or exposures that do happen.

Effective risk management reduces the chance (i.e. likelihood) that a hazard will cause an accident or exposure to harm, and how bad it will be (i.e. consequence).

Not all hazards carry the same level of risk. Risk management helps you to focus on the hazards that matter the most.

To be effective, you should make risk management an active and on-going part of your work practice.

Operators (PCBUs) must involve the crew and let them take part in improving health and safety.

## 21.3 Controlling risk

An action you take to eliminate or minimise risk is called a control measure.

Under HSWA workers should be given the highest level of protection that can be achieved reasonably practicably. This means you should find and use the best possible control to address the risk.

Examples of 'administrative' controls or 'safe operating procedures' include always standing in a safe zone or behind a safety fence when trawl gear is being payed out or hauled in, and marking a safe standing zone around a ships' lifting appliance.

Examples of 'engineering' controls include machine guards and automatic guiding-on gear for winches.

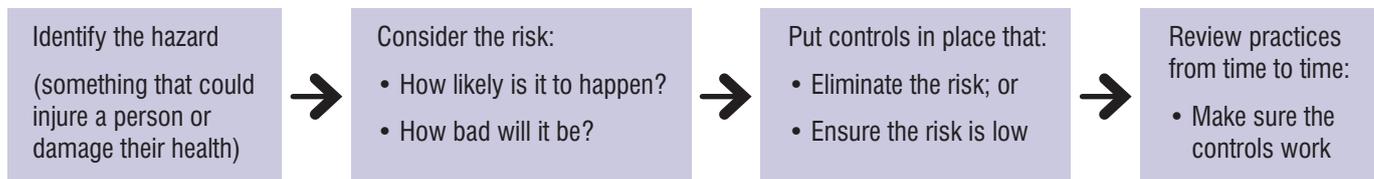
From time to time you should review and revise your control measures, including when:

- the control may not be working
- things in the workplace change or a new hazard is identified.

## 21.4 How to manage and control risk

In its simplest form risk management boils down to four steps:

1. Identify the hazards on your boat that can injure people or damage their health
2. Think about how likely each hazard is to cause harm, and if it does, how bad it will be (risk)
3. Do things (controls) that make the risk go away (eliminate it) or make it lower (minimise it)
4. Reassess the situation from time to time to make sure the controls are effective.



## 21.5 Safety system

The hazards in your operation and the procedures you adopt to manage safety risks should be identified in your Maritime Transport Operator Plan (MTOP) under MOSS or your Safe Operating Plan (SOP).

You should review the hazards in your operation from time to time. When you update your safety procedures you must also update your MTOP or SOP.

Under HSWA the crew (i.e. workers) must be involved in hazard identification.

### Summary points

- Everyone has a duty to eliminate or minimise risks to health and safety
- Develop a routine for identifying hazards on the boat. Make sure everyone is involved
- Pay attention to the hazards that have the highest risk – i.e. the things that matter
- Use the best possible ways to control risks
- Record your safety procedures in your operator safety plan
- Review your controls from time-to-time. Update your plan when you update your procedures.