

# How we make decisions to preserve and to release preserved sites (OP 08)

## Operational Policy

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The Health and Safety at Work Act 2015 (HSWA) and the Maritime Transport Act 1994 (MTA) require people to notify us about certain events. The site of a notifiable event site is required to be preserved under HSWA, and we may require a site to be preserved under the MTA. Sites are preserved so that we can determine what is happening, happened or could have happened, and what actions (if any) we need to take.

This policy sets out how we make decisions about when we require a site to be preserved and when we will release a site.

## **This policy applies to sites preserved under HSWA and the MTA.**

This policy applies to sites preserved under HSWA in relation to events;

- on New Zealand vessels;
- on foreign vessels on demise charter to a New Zealand based operator when it is operating in New Zealand;
- a foreign vessel operating between New Zealand and a workplace in connection with an activity that is regulated under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 or the Crown Minerals Act 1991; and
- at designated ports.

This policy applies to sites preserved under the MTA in relation to events:

- on New Zealand flagged commercial and recreational vessels;
- on foreign vessels operating within New Zealand waters; or
- involving a harmful substance or ballast water discharge, or a pollution incident.

## **What do we mean by “preserving a site”?**

Preserving (or “holding”) a site means that the person conducting a business or undertaking (PCBU) or the person in charge of a site (e.g. a vessel operator or master) must take all reasonable steps to ensure that the site of an event is not disturbed until we release the site. This means we expect any work on the preserved site will stop, and the site will not be disturbed. This includes that:

- the work set-up must not be changed;
- any plant, vehicles, structures, substances or other things involved in the event must stay in place and not be moved; and
- the site should not be cleaned.

The requirement to preserve a site does not prevent any action:

- to assist an injured person or to remove a deceased person;
- that is essential to make the site safe or to minimise the risk of a further notifiable event; or
- that is done by or at the direction of a constable acting in execution of their duties; or
- for which we have given permission.

If the site is on a workplace, work can continue in other parts of the workplace if it will not have an effect on the particular site being preserved.

## Why do sites need to be preserved

Sites are preserved so that:

- decisions can be made about which agencies need to respond or have an interest in the event or potential hazard. For example, Fire and Emergency New Zealand, WorkSafe, or the Transport Accident Investigation Commission (TAIC);
- a decision can be made on whether we are likely to undertake an investigation;
- evidence and information to inform a potential investigation can be collected before it is disturbed or lost.

## What triggers the preservation of a site

### When a notifiable event under HSWA occurs

Under HSWA, if a notifiable event occurs, then the PCBU in charge of the site has an automatic duty to preserve the site where the event took place. The site must be held until we release it.

### When we issue a Non-disturbance notice under HSWA

We may issue a Non-disturbance notice:

- to formalise the period that a site being automatically preserved in accordance with a notifiable HSWA event must be held for;
- if a PCBU has not preserved a site, as required under HSWA, and we determine that site needs to be preserved;
- when an event has occurred that is not required to be notified but we consider information is needed to inform a potential investigation
- when an notifiable event could have occurred;
- to allow us to exercise our legal powers and gather further information; or
- if a site has been automatically preserved by a PCBU, when there was no duty to preserve it, but we consider information is needed to inform a potential investigation.

### We may require a site to not be disturbed when exercising our powers of entry and inspection under HSWA

When exercising our powers to enter a workplace, we may require a site to not be disturbed, without issuing a notice, to complete an examination, test or inquiry or inspection. We will formalise this requirement with a Non-Disturbance notice, if necessary, within 24 hours.



## When we require a site to be preserved under the MTA

We may prohibit or restrict access to the site of any incident, accident, mishap, harmful substance or ballast water discharge or pollution incident:

- that is notified to us under the MTA;
- which should have been notified to us under the MTA but was not; or
- if we become aware of a non-notifiable event that we intend to investigate.

## How we decide whether to release a site

All decisions on whether to release a site that is being preserved are made on a case-by-case basis. In deciding whether to release a site, we consider whether:

- the severity of the harm (or potential harm) is high, moderate or low;
- we are going to carry out an investigation;
- we are going to attend the site or not; and/or
- the need for the site to be held has been fulfilled.

## We aim to make a decision on releasing a site being preserved under HSWA within four hours

We aim to make a decision on whether or not we will release a site where an event has caused (or may cause) high or moderate harm within four hours of being notified that the site is being automatically preserved under HSWA.

## When we are likely to require a site to be preserved under HSWA and the MTA

We are likely to require a site to be preserved where an event has caused (or may cause) high or moderate harm if:

- there is a need to have a suitably competent person attend the site to assist with collecting a sample or evidence or provide other technical assistance; or
- it is not practical for us to seize and remove an item for testing or examination offsite.

## What happens when we require a site to continue being preserved under HSWA

When we have been notified a site is being preserved due to an automatic duty under HSWA and we require it to continue to be held (instead of releasing it quickly), we:

- will advise the PCBU;
- will make every effort to release the site in a timely manner; and
- may issue a HSWA Non-disturbance notice which requires the site to be held for a period of up to seven days. We may also issue further Non-disturbance notices, for up to seven days each, if we consider it necessary.

## When are we generally likely to release a site being preserved under HSWA or the MTA

We are likely to release a site when:

- the evidence relating to the event has been collected;



- evidence can't be collected due to the nature of the site. For example, if the incident involves a vessel that has sunk, or, if due to other circumstances such as the weather, no evidence is available;
- we are not likely to investigate the event; or
- another agency is the appropriate authority to consider any necessary action and has assumed control of the site.

If we are notified by a PCBU that a scene is automatically being preserved in relation to an event that we do not consider is actually a notifiable event, we will:

- release the site as soon as possible after a notification is received, or
- if, in some exceptional situations, we decide that we want to investigate, we will issue a HSWA Non-disturbance notice.

## How we work with other agencies

Multiple agencies can require a site to be preserved at the same time, for purposes of investigating under their own legislation. In these circumstances, we will require a site to be preserved or released from our hold as set out in this policy, even if another agency has required that site to be held under their legislation.

We will keep any other agency with an interest in the same site informed about our decisions to preserve or release a site. If we decide to release a site that we have required to be preserved, it will not affect a hold that another agency has placed on that site (and vice-versa).

## Legislative basis for this policy

The legislative basis for requiring a scene to be preserved is set out in HSWA and the MTA. The following sections of those Acts support this policy.

### HSWA:

- Section 23 - Notifiable injuries or illnesses.
- Section 24 - Notifiable incidents.
- Section 25 - Notifiable events.
- Section 55 - Duty to preserve a site where a notifiable event has occurred.
- Sections 108-111 - Non-disturbance notices.
- Sections 112-118 - General provisions relating to notices
- Section 168 – Powers of entry and inspection.

### MTA:

- Section 31 – Obligation to notify events.
- Section 57 - Investigation of accidents, incidents and mishaps by Director.
- Section 58 - Powers of investigation of Director.
- Section 59 - Additional powers of investigation.
- Section 226 - Harmful substances not to be discharged into sea or seabed of exclusive economic zone or continental shelf
- Section 226A - Harmful substances not to be discharged into sea or seabed beyond New Zealand continental waters from New Zealand ships
- Section 227 - Duty to report discharge or escape of harmful substances.



- Section 228 - Notice of pollution incidents.
- Section 235 - Powers of investigation of Director.
- Section 235A - Additional powers of Director.
- Section 246B – Discharge from ships
- Section 246E – Director's powers

## Key terms

This section sets out any abbreviations and provides definitions for terms used in this policy.

- Categories of Harm -** **High harm / potential harm:** High harm includes, among other things, death, serious injury, serious damage to a vessel, or serious harm to the environment such as a Tier 3 oil spill.
- Medium harm / potential harm:** Medium harm includes, among other things, injuries requiring medical attention, a localised or near shore pollution event, or moderate damage where part of a port's operation is compromised.
- Low harm / potential harm:** Low harm includes, among other things, incidents that are contained and managed with no or minor harm to people, property, security or the marine environment, and have a low potential for harm to occur.
- Evidence** means the available body of facts, information, signs and/or indications (whether physical or non-physical in nature) that tend to prove or disprove anything that is of consequence to a decision required of us.
- In New Zealand** (refer HSWA s16) for the purposes of this policy means the land and waters enclosed by the outer limits of the territorial sea of New Zealand, and includes the Ross Dependency.
- Investigation** means to carry out formal structured inquiry and detailed examination in order to discover and confirm facts and/or information.
- Designated Port** means a port operated by a port company within the meaning of the Port Companies Act 1988 and includes the following ports:
- Northport
  - Ports of Auckland
  - Port of Tauranga
  - Eastland Port
  - Port Taranaki
  - Port of Napier
  - CentrePort Wellington
  - Port Marlborough
  - Port Nelson
  - Lyttelton Port
  - PrimePort Timaru
  - Port Otago
  - South Port



- Ports used in connection with the Cook Strait inter-island ferries.
- The definition also includes:
  - any area within the securely fenced boundaries of a port, whether or not that area is operated by a port company; and
  - the buildings, installations, other structures or equipment on or adjacent to the port and used in connection with the port's operation or administration.

**New Zealand port** for the purposes of this policy means any port in New Zealand within the meaning of the Maritime Transport Act 1994, and includes:

- any area within the securely fenced boundaries of a port, whether or not that area is operated by a port company; and
- the buildings, installations, other structures, or equipment on or adjacent to the port and used in connection with the port's operation or administration.

**Non-disturbance notice** means a notice issued by an inspector under HSWA s108 or 111, which requires a site to be preserved or not disturbed in order to facilitate the exercise of the inspector's compliance powers. The notice may be issued following a notifiable event, or under other reasonable circumstances where the inspector deems it necessary.

**Non-notifiable event** means an event, incident, mishap or similar that does not meet the threshold of a notifiable event as per HSWA or the MTA. In circumstances where we consider it is warranted, we may investigate a non-notifiable event.

**Notifiable event:** Under HSWA ss23-25, a notifiable event means any of the following:

- the death of a person,
- a notifiable injury or illness as per s23 related to:
  - serious injuries or illnesses that require the person to have immediate treatment other than first aid;
  - an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment;
  - an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance;
  - any serious infection (including occupational zoonoses) to which the carrying out of work is a significant contributing factor, including any infection that is attributable to carrying out work;
  - any other injury or illness declared by regulations to be a notifiable injury or illness for the purposes of this section.
- a notifiable incident (as per s24 relates to an unplanned or uncontrolled incident that exposes a person to a serious risk to their health and safety).

Under MTA s31, a notifiable event means:



- a mishap that results in serious harm to a person, an accident, or an incident.

**PCBU** (refer HSWA s17) stands for Person Conducting a Business or Undertaking, and means a business entity/organisation such as a company, but may also be an individual person (if a sole trader or self-employed).

**Pollution incident** means when any substance is released into the air or water that could harm people or the environment.

**Reasonable steps to preserve the site of an event** means that the PCBU or person responsible needs to take what actions a reasonable person exercising sound judgement would consider reasonable in the circumstances in order to preserve that site. Exactly what steps are reasonable will be dependent on the particular circumstances; but could involve such measures as stopping work at the site, setting up a cordon around the scene and not allowing anyone to enter it, doing what they can to ensure that any potential evidence is not lost or destroyed, and other such activities.

**Site or Scene** for the purpose of this policy, means the immediate and any relevant surrounding area where the relevant event or incident took place (or is at risk of taking place).

## Disclaimer

This policy provides information on site preservation by Maritime NZ under relevant legislation (including the Maritime Transport Act 1994 and the Health and Safety at Work Act 2015). This policy is not a substitute for the legislation. Further, this might not be the most current version of the policy so please check our website to ensure that you are referring to the current version of the policy.

