



# Accident Report

Serious Harm Injury

*San Nikunau*

14 April 2005

Class A





*San Nikunau*

REPORT NO.: 96 414

VESSEL NAME: *SAN NIKUNAU*

<b>Ship Type:</b>	Commercial Fishing
<b>Certified Operating Limit:</b>	International
<b>Port of Registry:</b>	Auckland
<b>Flag:</b>	New Zealand
<b>MSA No.:</b>	129683
<b>Built:</b>	1982
<b>Construction Material:</b>	Steel
<b>Length Overall (m):</b>	74
<b>Gross Tonnage:</b>	1 957
<b>Net Tonnage:</b>	584
<b>Registered Owner:</b>	Sanford Ltd
<b>SSM Company:</b>	SGS-M&I
<b>Accident Investigator:</b>	Ian Howden

# NARRATIVE

At 1500 hours New Zealand Standard time (NZST) on 14 April 2005, the tuna purse seine vessel **San Nikunau** was engaged in fishing operations 47 miles from Kahurangi Point off the west coast of the South Island of New Zealand (See Figure 1 - Position of vessel at time of injury).

The net was being loaded on deck through the power block and stacked by the crew. A section of the net caught in the drum block causing the net to backwind and lift part of the net off the deck before it could be stopped. A Deckhand caught his left distal fingertip in the net severing the top section of the finger.

On receiving medical advice, the company instructed the vessel to steam to Nelson to provide medical treatment for the crewman.

This accident was not reported to Maritime New Zealand as required under the Maritime Transport Act 1994 and the Health & Safety in Employment Act 1992. It was only whilst Maritime New Zealand was imposing conditions on the vessel in Auckland on 28 May 2005, and a Maritime New Zealand Inspector queried an entry in the vessel's log relating to a previous unreported accident, that this accident was brought to the attention of Maritime New Zealand. An investigation commenced immediately.

The Master and First Mate were interviewed in Auckland between 27 May and 2 June 2005. The company's tuna fleet Operations Manager was interviewed at Maritime New Zealand's offices on 13 June 2005. The injured crewman was not available for interview. Documentation for the vessel was obtained. This included log entries, SSM documentation and crew qualifications.

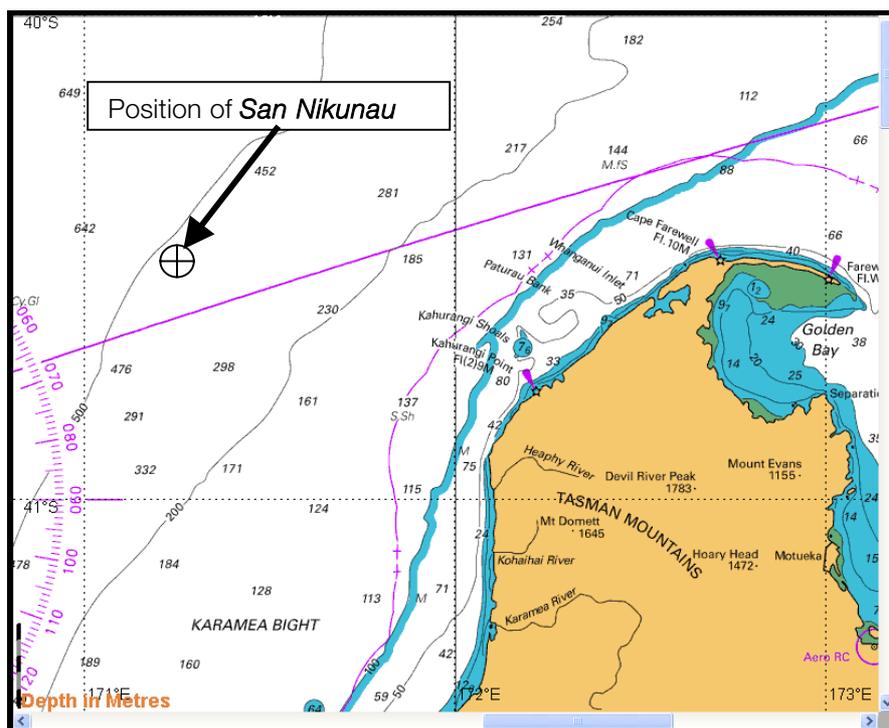


Figure 1

This report:

- Outlines the obligations of the company as an employer under the Health & Safety in Employment Act 1992 to provide a safe working environment for employees.
- Outlines the obligations of the Master for reporting mishaps under the Maritime Transport Act 1994.

- Outlines the obligations of the company for reporting serious harm accidents under the Health & Safety in Employment Act 1992.
- Makes recommendations to improve safety standards for crewmen working on board purse seine vessels.

# COMMENT & ANALYSIS

## Vessel & Crew

**San Nikunau** is a steel New Zealand registered tuna seine vessel, built in 1982. Her home port is Auckland. Her gross tonnage is 1 957. She has a registered length of 74 metres. She was built as a drum trawler and converted to a purse seiner in 1991.

**San Nikunau** has been owned and operated by Sanford Ltd since her purchase in 2001. The total crew complement is 20.

The Master is a Portuguese national who holds a United States Coast Guard License as Master of an Un-inspected Fishing Industry Vessel of not more than 2 000 gross tonnes upon oceans, issued in December 2001. His License was recognised by Maritime New Zealand in January 2003 as being equivalent to a New Zealand Certificate of Competency as Master of a Deep Sea Fishing Vessel. Recognition was limited to service on the company vessels **San Nikunau** and **San Nanumea**.

The Mate holds a Master Deep Sea Fishing Vessel Certificate of Competency. He has also worked on the other company purse seine vessel **San Nanumea** since her purchase in 2001. He has extensive experience in the fishing industry.

The injured crewman is a Filipino national who had worked on the vessel for several years.

**San Nikuanu** holds a Safe Ship Management Certificate, issued on 11 April 2002 and valid to 11 January 2006, allowing unlimited operations.

## Injury

The crewman suffered an amputation of the tip of his finger. There was no bone expressed and the wound was cleaned and dressed.

## Reporting

Sanford Ltd failed to notify Maritime New Zealand of this serious harm injury, despite the fact that the Fleet Operations Manager stated he knew he had an obligation to report a serious harm injury under the Health & Safety in Employment Act. Equally, the Master failed to report a mishap as required under the Maritime Transport Act. The vessel advised the company on the day of the mishap. The Master stated there was a procedure to report accidents to the company and that he was relying on the company in turn to report to Maritime New Zealand. When questioned, the Manager stated his failure to report was an "oversight". Under section 410 of the Maritime Transport Act 1994, there is vicarious liability of a principal where an agent or employee breaches the Act.

## Legislation

### Maritime Transport Act 1994

#### ***S. 31 Obligation to notify all accidents, incidents, etc.***

##### *(1) The master of—*

- (a) Any New Zealand ship; or*
- (b) Any foreign ship in New Zealand waters—*

that is involved in a mishap that results in serious harm to a person, an accident, or an incident, shall notify the mishap, accident, or incident to the Authority (Maritime New Zealand) as soon as practicable.

- (2) If, due to injuries or death or for other good reason, the master of a ship referred to in subsection (1) of this section is unable to give the necessary notice under that subsection, the operator of the ship shall provide the necessary notice.

#### **S.410 Liability of principal for acts of agents**

- (1) Where an offence is committed against this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence.
- (2) Notwithstanding anything in subsection (1) of this section, where any proceedings are brought by virtue of that subsection, it shall be a good defence if the defendant proves, —
- (a) In the case of a natural person (including a partner in a firm), that—
- (i) He or she did not know nor could reasonably be expected to have known that the offence was to be or was being committed; or
- (ii) He or she took all reasonable steps to prevent the commission of the offence:
- (b) In the case of a body corporate, that—
- (i) Neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; or
- (ii) The body corporate took all reasonable steps to prevent the commission of the offence:
- (c) In all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.
- (3) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of the like offence if it is proved—
- (a) That the act that constituted the offence took place with his or her authority, permission, or consent; and
- (b) That he or she knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

## Health & Safety in Employment Act 1992

Part 2 of the Act places an obligation on employers relating to health and safety in employment:

### **S 6 Employers to ensure safety of employees**

*Every employer shall take all practicable steps to ensure the safety of employees while at work; and in particular shall take all practicable steps to—*

- (a) *Provide and maintain for employees a safe working environment; and*
- (b) *Provide and maintain for employees while they are at work facilities for their safety and health; and*

- (c) *Ensure that plant used by any employee at work is so arranged, designed, made, and maintained that it is safe for the employee to use; and*
- (d) *Ensure that while at work employees are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working, or use of things—*
  - (i) *In their place of work; or*
  - (ii) *Near their place of work and under the employer's control; and*
- (e) *Develop procedures for dealing with emergencies that may arise while employees are at work.*

Among other sections that impose duties on employees sections 7, 8, 9 & 10 of the Health and Safety in Employment Act place an obligation on employers to identify hazards and take all practicable steps to eliminate, isolate and minimize hazards to employees.

Part 4 General Provisions: Accidents: places an obligation on employers of mariners to notify Maritime New Zealand of serious harm accidents as soon as possible and within seven days give written notice:

- S. 25 ss (3) If there occurs any serious harm or accident to which this subsection applies, the employer, self-employed person, or principal concerned must,—*
- (a) *as soon as possible after the occurrence becomes known to the employer, self-employed person, or principal, notify the Secretary of the occurrence; and*
  - (b) *within 7 days after the occurrence, or, if the occurrence is not known to the employer, self-employed person, or principal within that period, as soon as possible after it becomes known, give the Secretary written notice, in the prescribed manner, of the circumstances of the occurrence.*

## Comment

Back winding of nets whilst being hauled through power blocks frequently occurs in purse seine operations. A section of the net can be caught on the power block as it revolves and fails to fall free. The caught section completes a 360° rotation and then catches under the section of net that has just entered the aft section of the block. Often this is caused by a rough section of the block catching a strand of net and/or the drum being rotated too quickly. Deckhands stacking the net are suddenly confronted with a net that suddenly and without warning goes upwards. Even when there is an instant response from the operator on the controls the net can reverse some metres before stopping. This is especially the case if the net is being hauled aboard at speed. Amputations caused by fingers caught in nets are very rare. Usually, crew are able to grab the net when fingers or hands are caught and may be hauled of their feet a short distance until the winch is reversed but no injuries occur.

# CONCLUSIONS

*N.B. These are not listed in order of importance*

- The severance of a finger is not an injury that is normally associated with a backwind on a power block in purse seine operations.
- The Skipper and company took appropriate measures to ensure the crewman received proper medical attention.
- The company was in breach of the Health and Safety in Employment Act 1992 by failing to report this serious harm injury to Maritime New Zealand.
- The company is vicariously liable for the failure of the Master to report the accident under the Maritime Transport Act.
- The Master was in breach of the Maritime Transport Act 1994 by failing to report this mishap to Maritime New Zealand.

## SAFETY RECOMMENDATIONS

1. The company ensure all serious harm injuries are reported to Maritime New Zealand as required under the Health & Safety in Employment Act 1992.
2. The hazard to crew from power blocks back winding be entered in the hazard registers of all purse seine vessels operated by the company.
3. The company regularly examine **San Nikunau's** power block to determine if the face of the roller has sections that could catch the net and either repair or replace the roller.
4. The company ensure that the power block operator operates the roller at a speed that enables the net to fall clear of the block and the section of net entering the block.
5. All crew be advised of the danger of injury that can result from a backwind.
6. The company be severely censured for failing to report a serious harm injury to Maritime New Zealand.
7. The company be censured for failing to ensure the Master reported the accident to Maritime New Zealand in accordance with its vicarious obligations under the Maritime Transport Act.
8. The Master be censured for failing to report the mishap to Maritime New Zealand as required under the Maritime Transport Act.