



Λειτουργία Αχιλλέας



Operation Achilles

Preliminary Investigation Report Dumping/Discarding

s 9(2)(a)

Investigator



Memorandum

Ref: Operation ACHILLES
Preliminary investigation Report

To: s 9(2)(a)

Cc:

From: Investigator s 9(2)(a)

Date: 31 July 2013

Subject: **OPERATION ACHILLES PRELIMINARY INVESTIGATION REPORT
FINDINGS [DUMPING/NON REPORTING QMS FISH]**

1 EXECUTIVE SUMMARY

- 1.1 This report has been compiled as a result of further examination of the electronic monitoring videos from the MPI Observer Project which monitored the capture of Hector's dolphins (HDO) and other mammals of the East Coast of the South Island between November 2012 and March 2013.
- 1.2 The initial examination was undertaken as a result of the capture of 2 Hector's dolphins (HDO) by Commercial Fisher s 9(2)(a) from the Fishing Vessel s 9(2)(b)(ii) on 04 December 2012 of which only one was reported.
- 1.3 Whilst reviewing the footage from s 9(2)(a) vessel it was noted that s 9(2)(a) was seen to discard numerous quota species fish including substantial quantities of elephant fish (ELE) and gurnard (GUR) as well as not reporting other species that were retained.
- 1.4 Following these findings the 5 other vessels involved in this project were also examined which revealed that 4 of the 5 vessels, the s 9(2)(b)(ii), s 9(2)(b)(ii), s 9(2)(b)(ii) and s 9(2)(b)(ii) all openly discarded substantial quantities of quota fish and/or did not report fish when required to under the Fisheries Act.
- 1.5 Early data capturing samples show that between 20 to 100% of some quota fish are being discarded during every haul.
- 1.6 These discards are taking place even though the captain and crew are aware that they are being monitored by camera. The Captain and crew of the s 9(2)(b)(ii) discarded 35% of their ELE whilst a Ministry Observer was on board the vessel.
- 1.7 Despite difficulties that may arise with future planned monitoring trials and assurances that may have been given to fishers re immunity, I believe that the reasons to prosecute these vessels far outweigh the reasons not to prosecute as there are risk issues that could have serious consequences to the Ministry and to the wider community if not considered

2 BACKGROUND

- 2.1 In November 2012 the Ministry for Primary Industries Observer Program with the assistance of Archipelago Marine Research (AMR) a Canadian based Electronics Company installed video monitoring cameras on six set netting Commercial Fishing Vessels operating out of Timaru and Oamaru Ports. This was a pilot program designed to monitor and study the capture of HDO's through the summer set net season. The project was endorsed by the fishing companies § 9(2)(b)(ii) and § 9(2)(b)(ii). It is understood that the six skippers involved eventually agreed to partake in the project and all camera installations were completed with their consent.
- 2.2 In conjunction with the Observer Program, Fishery Observer § 9(2)(a) was employed under contract to AMR to facilitate in the installation of the camera equipment and technical support.
- 2.3 § 9(2)(a) was contracted as he had not only expertise as a 10 year Fishery Observer but also has extensive IT and technical skills in the area of camera's and video recording.
- 2.4 Two colour cameras were placed onboard each vessel. One camera overlooked the aft deck area, while the second a higher quality digital camera was placed looking over the stern to record the catch as it came onboard the vessel. Both cameras did not record audio and the footage at 4 frames per second was recorded to a hard disk onboard the vessel which was changed on a monthly schedule.
- 2.5 Two weeks into the project the first HDO capture was reported. On 04 December 2012 the skipper of the § 9(2)(b)(ii) a § 9(2)(b)(ii) meter set net vessel based in § 9(2)(a), § 9(2)(a) contacted the MPI Project Manager to inform that he had captured an HDO.
- 2.6 The footage from this haul was subsequently examined by § 9(2)(a). It was during this examination that a further HDO was seen to be caught by the vessel during the same haul however it was not bought on board, instead the net was released back into the water for a substantial period allowing the HDO to become free from the net and thereby avoiding the landing/reporting the HDO capture.
- 2.7 As a result of what was observed by § 9(2)(a) this matter was assigned to me as part of the compliance fishery investigative team for investigation.
- 2.8 § 9(2)(a) was interviewed on 30 May 2013 as he had only reported one HDO capture in the required Non Fish Protected Species Catch Return which he submitted to fish serve on 14 May 2013 nearly 4 months after it was required to be furnished.
- 2.9 As a result of this interview a further examination was undertaken of § 9(2)(a) fishing trips in an attempt to clarify and or refute explanations given during this time.
- 2.10 During the examination of these trips it was noted that § 9(2)(a) was seen to discard numerous quota species fish including substantial quantities of ELE and GUR as well as not reporting other species that were retained.

- 2.11 A more extensive examination was then undertaken of the 24 set net hauls made by the § 9(2)(b)(ii) between 7 November 2012 and 7 February 2013.
- 2.12 This examination concluded that § 9(2)(a) consistently and deliberately illegally discarded substantial quantities of quota fish, in particular he regularly discarded all small and damaged ELE, many small gurnard (GUR) and did not report rough skate (RSK) discards.
- 2.13 There were other instances of discarding or failing to report other species including hapuka (HAP) moki(MOK) kahawai(KAH) and king fish(KIN),
- 2.14 Following the results of this examination of the § 9(2)(b)(ii) I decided that it would be prudent to examine video footage of the other 5 vessels involved in this project to identify if there were any similar issues in regards to discarding and non reporting. This was duly carried out and issues were immediately identified with 4 of the 5 remaining vessels.
- 2.15 The 4 vessels § 9(2)(b)(ii), § 9(2)(b)(ii), § 9(2)(b)(ii) and § 9(2)(b)(ii) were each discarding substantial quantities of quota fish and not reporting fish in accordance with the Fisheries Act 1996. The remaining vessel § 9(2)(b)(ii) appeared to conform correctly to its obligations. Although it is likely that the 1 small ELE and a small number of badly damaged fish were discarded.

3 REVIEW METHOD

- 3.1 Phase 1 was the examination of the § 9(2)(b)(ii) which involved a review of the video footage of each of the 24 trips completed by the vessel. This was undertaken by § 9(2)(a) whose experience as an observer allowed him to easily identify fish species combined with his expertise in dealing with the video media. This review of the § 9(2)(b)(ii) took § 9(2)(a) a total of 30 hours to complete.
- 3.2 Phase 2 saw the putting together of a 15 minute video which summarized and highlighted the discarding by the § 9(2)(b)(ii).
- 3.3 Phase 3 involved the initial examination of the five other vessels to ascertain if there was any offending by any of these. This phase was again completed by § 9(2)(a) and took 11 hours in total.
- 3.4 Once the offending had been identified the next task, phase 4 was to attempt to quantify the scale of the offending. It was decided at this time to identify a specific haul for each vessel and to identify exactly the number and species of each fish bought on board and the number and species discarded. Whilst this method would give an accurate assessment for a specific haul it is also acknowledged that this method would not accurately reflect the retention and discard rate for the entire fishing season but would however be a good indicator of what could be expected.
- 3.5 The hauls were selected by § 9(2)(a) who chose each one on the basis of haul retrieval time and quantity of fish landed. Basically, as each review took approximately 2 hours per every 1 hour of retrieval footage, any hauls in excess of 3 hours were automatically rejected due to the length of time that they would take to complete the review.

- 3.6 The second criteria in regards to the quantity of fish landed meant that § 9(2)(a) selected a haul where the Net Catch Effort Return indicated a substantial amount of fish were landed as opposed to poor trips where very low numbers were reported.
- 3.7 The review involved § 9(2)(a) recording the number and type of each species of fish that was landed aboard each vessel. The quality of the footage was such that identifying each fish was accomplished without difficulty the only exception was the § 9(2)(b)(ii) where § 9(2)(a) found it difficult to accurately determine the difference between some school shark (SCH) rig (SPO) and spiny dogfish (SPD). As a result a decision was made to record all of these as a combined mixture of the 3 species. This did not have any effect on the data as none of these species were discarded by the vessel during this haul.
- 3.8 § 9(2)(a) then recorded the fish that were discarded by the fisher. In most cases this was not difficult as generally once the fish was cleared from the net it was discarded over the side almost straight away. A check was also done on fish that were retained to see if they were recorded in the Net Catch Effort Return. In most instances fish that were legally allowed to be discarded like carpet shark (CAR) rough skate (RSK) and spiny dog fish (SPD) were discarded but rarely recorded in the return as required.
- 3.9 The only significant problem that was encountered with recording discards was with the § 9(2)(b)(ii). In this instance it was difficult to accurately determine whether some fish that were being cleared by the crew member on the starboard side of the boat (predominantly ELE) were being discarded over the starboard side or being thrown further up the starboard side of the vessel as the camera did not have a view of this area. In this instance the benefit of the doubt was given and they were recorded as retained however the actions of the skipper who discarded most of the ELE he cleared on the Port side of the vessel combined with amount of ELE recorded in the Catch Effort would suggest that the amount of ELE discarded was likely to be substantially more than the 35% recorded.

4 VESSEL DISCARDS § 9(2)(b)(ii)

- 4.1 The § 9(2)(b)(iii) meter fishing vessel § 9(2)(b)(ii) is a stern trawler and set net vessel based in Timaru. It is skippered by § 9(2)(a) who is also a director of § 9(2)(b)(ii) which is the permit holder for the vessel.
- 4.2 The § 9(2)(b)(ii) was monitored over 24 set net hauls between 7 November 2012 and 7 February 2013.
- 4.3 The vessel first came to our attention following the capture of a deceased HDO on 4 December 2012. As previously mentioned this then became the subject of a full investigation when it was discovered that another dead HDO was captured by the vessel shortly afterwards however § 9(2)(a) was able to release this HDO before it was bought on board by releasing the net back into the water and letting it drift for 57 minutes thereby allowing the HDO to free itself in the current.
- 4.4 It was noted that § 9(2)(a) released the net back into the water for the first HDO that was captured before it was bought on board as well. On this occasion though the net was only allowed to drift for 10 minutes and the HDO was too entangled to drift loose.

- 4.5 When interviewed in May 2013, § 9(2)(a) denied any knowledge of the 2nd HDO explaining that he did not see the animal and that it was pure coincidence that he stopped the net for an nearly an hour during mid-haul just as the HDO reached his vessel.
- 4.6 He explained releasing the first HDO back into the water before it was bought on board was because he had to suddenly, check a ‘pinger¹’ on his net, as he was angry that it was obviously not working.
- 4.7 None of the explanations given during interview were plausible and I have no doubt that § 9(2)(a) attempted to deliberately release both HDO so as to avoid having to report them. A decision on prosecution on these matters will need to be made in due course.
- 4.8 Following the interview a decision was made to review the complete footage of the § 9(2)(b)(ii) for the 24 completed hauls. This was done for two reasons. Firstly to ensure that § 9(2)(a) had not captured any other HDO during this period as the 2nd capture highlighted the fact that any capture could easily be missed by anyone reviewing the tapes as § 9(2)(a) was able to release the net before the HDO was bought into clear view of the stern camera.
- 4.9 The second reason for the review was to negate arguments put forward by § 9(2)(a) who told me that he had stopped the haul mid way through so as to clean the fish that were already caught as they were getting hot in the sun. He stated that he usually had a cover over the fish but that this cover had just been sent away for repair. We also wanted to see whether § 9(2)(a) had stopped a haul at any other time during this period. As it transpired no cover was ever seen and § 9(2)(a) did not stop a haul for any similar reason during the entire time the vessel was monitored.
- 4.10 It was during the review process carried out by § 9(2)(a) that he discovered to his alarm that § 9(2)(a) and his crewman, § 9(2)(a), were actively engaged in discarding large quantities of quota fish. Almost all of this activity was clearly identifiable on camera which was a surprise as the § 9(2)(a) were clearly aware of the presence of the cameras and of the area that the cameras were able to view as this area can be seen from the onboard monitor aboard the vessel.
- 4.11 Following this discovery § 9(2)(a) was then tasked to review all of the § 9(2)(b)(ii) footage in order to try to ascertain the extent of the discarding and to compile a video summarizing this. This phase was not intended to be an in-depth look to accurately measure the quantities of what was being discarded but simply as a guide to measure the extent so as to give us an indication of what was occurring. The main restraint being the amount of man hours that any in-depth review would require.
- 4.12 The following are some of the findings from this initial review
1. Evidence of substantial ELE discards mainly small or damaged fish. (High Grading)

¹ An active audio device attached to a net: Alarms and pingers that emit signal pulses within the audible range of marine mammals are referred to as active acoustic devices and warn approaching mammals to the presence of the devices, and the nets to which they are attached.

2. Evidence of many small gurnard (GUR) and retention of large GUR again indicating high grading.
3. Discarding of most rough skate (RSK) these are subsequently not shown in the catch return as a schedule 6 discard.
4. During haul 22: retention of hapuka (HAP) which is not recorded in the catch effort return.
5. Haul 15: retention and filleting of HAP, RSK, GUR and flounder (FLA) which are not reported in the catch effort return.
6. Haul 19: Discarding of kahawai (KAH) which is not recorded in the return.
7. Hauls 14 & 16: Kingfish discarded, one clearly over size limit, none of which are recorded in the catch return.
8. Haul 5: A short haul where only a small number of fish are caught, this haul is not recorded at all in any return as required.
9. Haul 21: A 2 hour haul where a few SCH/SPO and ELE are landed and a substantial quantity of moki(MOK) are discarded. This haul is not recorded in any return.

Photo 1: Elephant fish discard from FV s 9(2)(b)(ii)



Photo 2: Kingfish discard FV s 9(2)(b)(ii)



4.13 Phase 4 of the review involved the selection and data collection from one haul of the s 9(2)(b)(ii) to gauge the likely scale of the offending. A 2 hour 16 minute haul was chosen and the fish that were landed and discarded were counted.

4.14 The trip commenced at 04:25 hours on 6 December 2012 below is the corresponding Net Catch Effort Return 4039894 for the trip.

COMMERCIAL IN CONFIDENCE

Netting Catch Effort Landing Return NCE 4039894

1. Complete separate returns for each fishing trip.
 2. Complete a separate column of catch and effort information for each set. One set may include setting a net, immediately steaming to other places within 2 nautical miles, and setting more nets. If you move more than 2 nautical miles from the first net, you must start a new column.

Fishing method	SN						
Target species	SPO						
Date at start of set (day-month-year)	06/12/12						
Time at start of set (24-hr clock)	04:25						
Latitude at start of set (degrees-minutes)	44°20'S						
Longitude at start of set (degrees-minutes-seconds)	171°32'E						
Fishing duration (start of set to end of haul)	hrs	mins	secs				
Number and Total length of nets set	03	nets	2000 m				
Mesh size (mm)	165 mm						
Net height (number of meshes)	15 meshes						
Non-fish / protected species catch?	Yes	No X					
Write the species code and estimated greenweight of each quota and non-quota species caught during each set.	SPO	350	.0kg				
	SCH	120	.0kg				
	ELE	120	.0kg				
	GUR	5	.0kg				
	CAR	30	.0kg				
	SPD	20	.0kg				
More than 8 species? List the 8 species that you caught most of (by greenweight)							
Weight of all other species caught this set	All other species .0kg						

3. Enter first day of trip 06/12/12 landing date 06/12/12 and point of landing s 9(2)(b)(ii) NCE 4039894

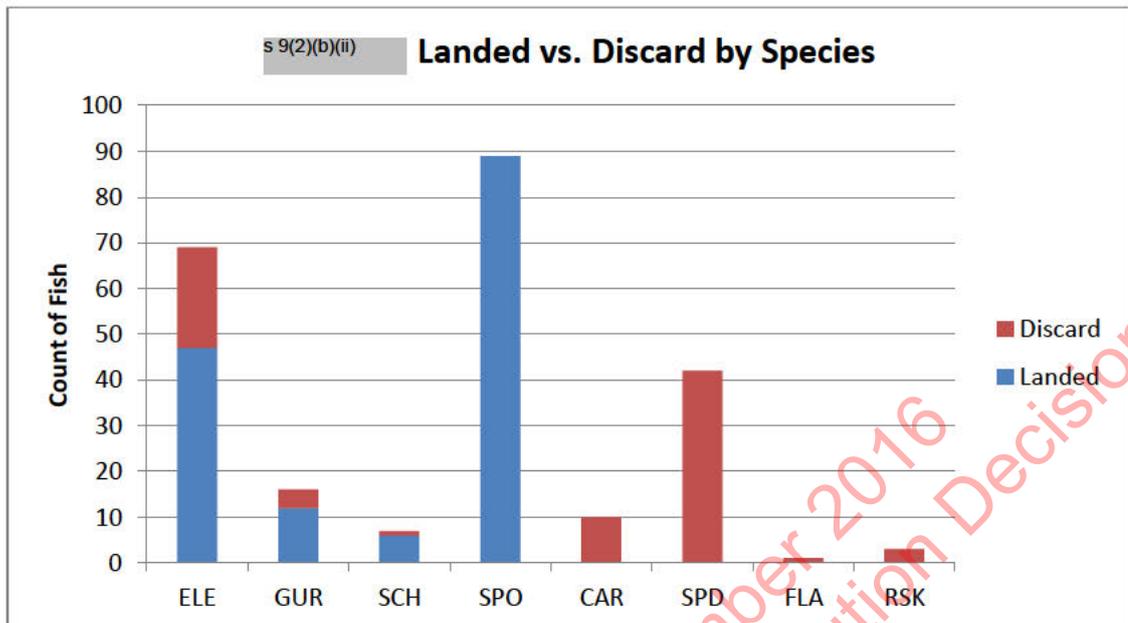
4. Catch landing data - Include all species taken during this trip. Also include all species held from previous trips that are now being landed to an LFR.

Species code	Area	Landed state	Number of containers from latest trip	Number of containers from other trips	Container type	Container content weight	Destination type	Licensed Fish Receiver client number	Greenweight (kg)	Tax invoice number when advised by LFR
SPO	03	DRE	7		BIN	30.0kg	L	8462926	307.0kg	42753
SCH	03	DRE	2		BIN	30.0kg	L		103.0kg	42753
ELE	03	GUT	6		BIN	30.0kg	L		203.0kg	42753
GUR	03	GRE	1		BIN	5.0kg	L		8.0kg	42753
SPO	03	SHE	1		BIN	15.0kg	L		.0kg	
CAR	03	GRE				30.0kg	D	6225	30.0kg	
SPD	03	GRE				20.0kg	M	6225	20.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	

5. Permit holder details
 Name of permit holder: s 9(2)(b)(ii)
 Client number of permit holder: s 9(2)(a)
 Name of vessel: s 9(2)(b)(ii)
 Registration number of vessel: s 9(2)(b)(ii)
 Date signed: 06/12/2012
 Send completed returns to PO Box 297, Wellington (NZ).

4.15 The following was noted for this trip:

1. 30% of all ELE was discarded. This included all small and damaged ELE. It was noted in other trips that this vessel also discarded large intact ELE if there were not many caught during that haul.
2. All RSK were discarded and not reported in the catch effort return.
3. 25% of the GUR caught were discarded, only large fish were kept.
4. 1 large school shark was discarded whilst small ones were kept.
5. 1 flounder was kept but not reported in the catch effort.



5 § 9(2)(b)(ii)

- 5.1 The § 9(2)(b)(ii) is an § 9(2)(b)(iii) meter trawler/set net vessel built in § 9(2)(b)(iii) based out of the port of Timaru. The skipper and permit holder is § 9(2)(a), during this period he was accompanied by § 9(2)(a) who has since taken over the running of this vessel as § 9(2)(a) retired in April 2013.
- 5.2 The § 9(2)(b)(ii) was monitored over 36 set net hauls between 7 November 2012 and 16 February 2013.
- 5.3 The sample haul monitored for this vessel occurred 25 January 2013 with a haul time duration of 1 hour 53 minutes. Of note was the skipper deliberately turned off the cameras before the haul was completed with a number of ELE still visible in the net. It is not known why the cameras were turned off. This was not the first time that the skipper had turned off the cameras on the vessel. During another haul on 28 January 2013 the skipper turns the cameras off for 55 minutes after they view something substantial in the net, this was very suspicious and likely to be an attempt to hide a protected species by-catch.
- 5.4 The following was noted for the haul corresponding to Net Catch Effort Return § 9(2)(b)(ii) :
1. The vessel discarded approximately 40% (39.6%) of all its ELE which included small and damaged ELE as well as some large. This vessel would appear to be high grading this species.
 2. Of the 4 GUR caught, 1 was discarded while the other 3 were not recorded.
 3. The vessel high grades rig (SPO).
 4. All CAR and SPD were discarded and not recorded in the Catch Effort Return.



COMMERCIAL IN CONFIDENCE

Netting Catch Effort Landing Return

NCE 4051110

1. Complete separate returns for each fishing trip.
2. Complete a separate column of catch and effort information for each set. One set may include setting a net, immediately steaming to other places within 2 nautical miles, and setting more nets. If you move more than 2 nautical miles from the first net, you must start a new column.

Fishing method	Target species	Date: at start of set (dd/mm/yy)	Time: at start of set (24-hr clock)	Latitude: at start of set (degrees minutes)	Longitude: at start of set (degrees minutes E/W)	Fishing duration (start of set to end of haul)	Number and total length of nets set	Mesh size (mm)	Net height (number of meshes)	Non-fish / protected species catch?	Write the species code and estimated greenweight of each species caught during each set	For example, if you catch 200g of NG, write: SPO 200.0kg	More than 9 species? List the 9 species that you caught most of (by greenweight).	Weight of all other species caught this set
3N	SPO	25/1/13	06:00	44°30'S	171°55'E	5 hrs 00 mins	8 nets 1800m	15 mm	15 meshes	Yes No X	ELE 550.0kg SPO 25.0kg			All other species .0kg

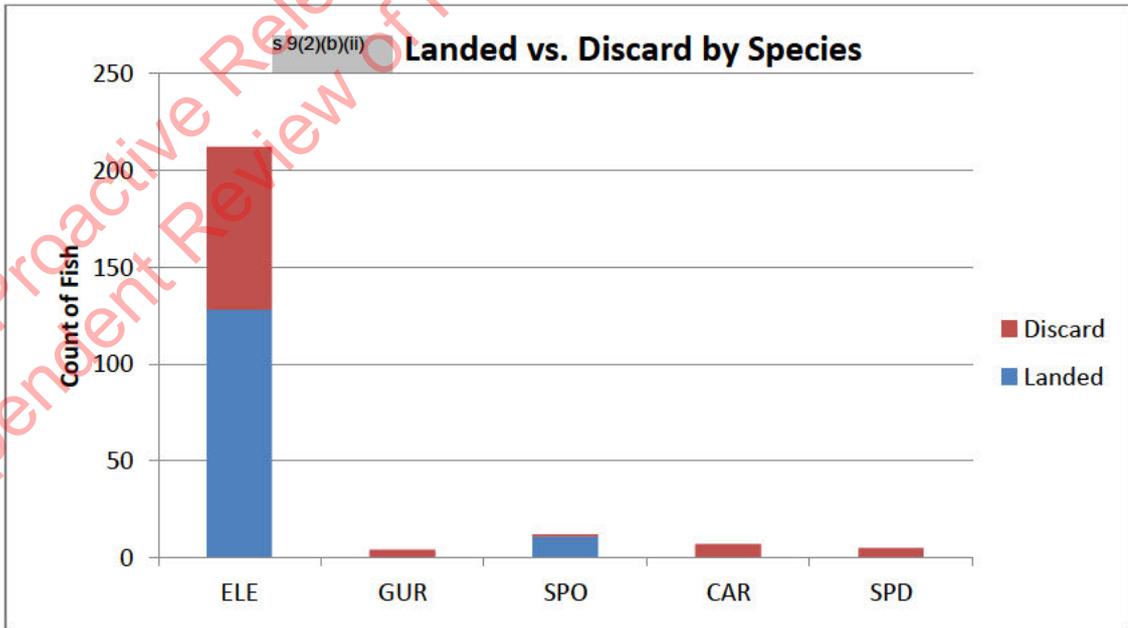
Use additional pages if you run out of space to record fishing from this trip.

3. Enter first day of trip 25/1/13 landing date 25/1/13 and point of landing § 9(2)(b)(ii) NCE 4051110
4. Catch landing data → Include all species taken during this trip. Also include all species held from previous trips that are now being landed to an LFR.

Fishstock Species code - Area	Landed state	Number of containers from latest trip	Number of containers from other trips	Container type	Container content weight	Destination type	Licensed Fish Receiver client number	Greenweight (kg)	Tax invoice number when advised by LFR
ELB03 CUT	CUT	15		B2	30.0kg	←	846297E	474.0kg	42995
SPO	DRF	1		↓	25.0kg	↓			

5. Permit holder and vessel details
- Name of permit holder § 9(2)(a) Name of vessel § 9(2)(b)(ii)
 Client number of permit holder § 9(2)(a) Registration number of vessel § 9(2)(b)(ii)
 This return is page number 1 for this trip. Is this return the last page for this trip? Yes No

I declare that the information I have given on this return is satisfactory notes supplied with this return.
 Signature of permit holder or authorised person § 9(2)(a)
 Date signed 25/1/2013
 Send completed returns to PO Box 297, Wellington (NZ).



s 9(2)(b)(ii)

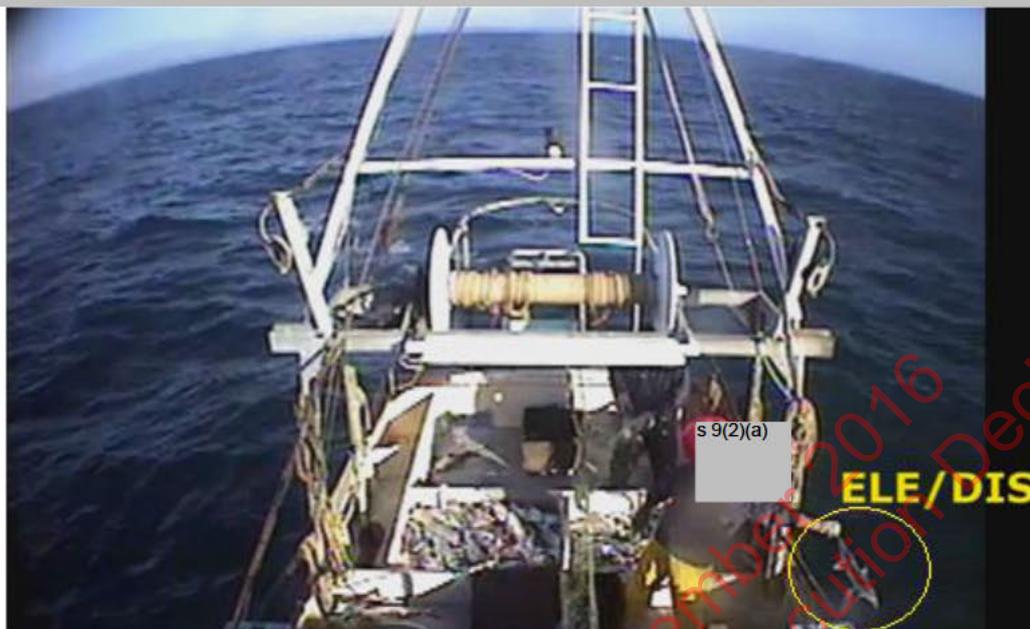


Photo 3: Elephant fish discard FV s 9(2)(b)(ii)

6 s 9(2)(b)(ii)

6.1 The s 9(2)(b)(ii) is s 9(2) meter fishing vessel built in s 9(2)(b) and owned by s 9(2)(a) who is also the permit holder for the vessel. The vessel fishes into s 9(2)(b)(ii) in s 9(2)(b)(ii) and is skippered by s 9(2)(a).

6.2 The vessel made 38 set net trips between 17 October 2012 and 30 May 2013. The selected haul occurred on 29 January 2013 of 2 hours 20 minutes duration.

6.3 The following was noted from this haul Net Catch Effort Return number s 9(2)(b)(ii) :

1. 63 of the 216 ELE landed (29%) were discarded by this vessel.
2. 3 of the 12 GUR caught (25%) were discarded by this vessel, on this occasion all of these fish were small.
3. SPD were discarded but not reported correctly as schedule 6 discards in the Net Catch Effort Return.

COMMERCIAL IN CONFIDENCE

Netting Catch Effort Landing Return

- Complete separate returns for each fishing trip.
- Complete a separate column of catch and effort information for each set. One set may include setting a net, immediately steaming to other places within 2 nautical miles, and setting more nets. If you move more than 2 nautical miles from the first net, you must start a new column.

Fishing method	SU						
Target species	ELE						
Date at start of set (YYYY)	29/01/13						
Time at start of set (24 hr clock)	04:30						
Latitude at start of set (degrees minutes)	45°33'S						
Longitude at start of set (degrees minutes)	170°58'E						
Fishing duration (hours)	06.00						
Number and total length of sets set	1 net 1000'						
Mesh size (mm)	160						
Net height (number of meshes)	25 meshes						
Non-quotable / protected species caught?	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>						
Write the species code and estimated greenweight of each quota and non-quota species caught during each set	ELE 370.0kg MOK 60.0kg GUR 3.0kg SCH 1.0kg SPO 1.0kg LSO 1.0kg						
More than 8 species? List the 8 species that you caught most of (by greenweight)							
Weight of all other species caught (by set)	All other species 0.0kg						

3. Enter first day of trip 29/01/13 landing date 29/01/13 and point of landing S 9(2)(b)(ii) **NCE 4048311**

Fishstock	Landed state	Number of fish	Container type	Container content weight	Destination type	Licensed Fish Receiver client number	Greenweight (kg)	Tax invoice number when advised by LFR
ELE	3 GUR	13	1	30.0kg	1	8422125	359.7	A1081602
MOK	3 GUR	1	1	30.0kg	1		45.5	
GUR	3 GUR	1	1	3.0kg	1		8	
SCH	3 DEE	1	1	1.0kg	1		5	
SPO	3 DEE	1	1	1.0kg	1		5	
LSO	3 GUR	1	1	1.0kg	1		1	

5. Permit holder and vessel details

Name of permit holder: S 9(2)(a) Name of vessel: S 9(2)(b)(ii)

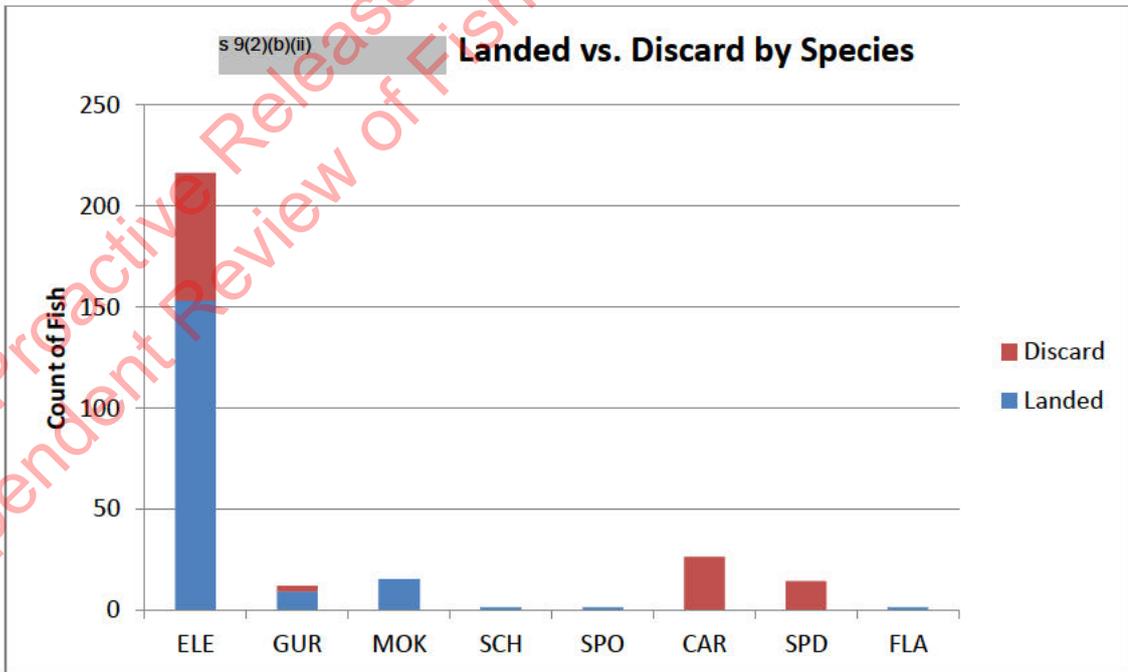
Client number of permit holder: S 9(2)(a) Registration number of vessel: S 9(2)(b)(ii)

This return is page number 1 for this trip. Is this return the last page for this trip? Yes No

I declare that the information I have given on this return is explanatory notes supplied with this return.

Signature of permit holder or authorized person: S 9(2)(a) Date signed: 29/01/2013

Send completed returns to PO Box 297, Wellington (NZ)





7 § 9(2)(b)(ii)

7.1 The § 9(2)(b)(ii) is § 9(2)(b)(iii) meter fishing vessel built in § 9(2)(b)(ii) and owned by § 9(2)(b)(ii) the sole director of which is § 9(2)(a) from § 9(2)(a). § 9(2)(b)(ii) is also the permit holder for the vessel. The vessel fishes predominately into § 9(2)(b)(ii) Timaru and is skippered by § 9(2)(a).

7.2 The § 9(2)(b)(ii) was very reluctant to enter into the electronic monitoring survey. Even after the cameras were installed the vessel would not turn the cameras on. The trip that was captured for our survey was only made possible because there was a Ministry Fishery Observer on board.

7.3 The vessel made 13 trips between 22 November 2012 and 5 April 2013. Each trip was over multiple days with the vessel recording between 2 to 5 hauls per trip.

7.4 The following was noted for this haul Net Catch Effort Return number § 9(2)(b)(ii) :

1. Even in the presence of a Ministry Observer the vessel openly discarded large quantities of fish. The 315 ELE recorded as retained is most probably over reported as a number of fish that were thrown onto the starboard side of the vessel were counted as retained. This was because due to the camera angle we could not be certain they were discarded. However a review of this tape combined with the low kilogram weight of 600 kilograms of ELE recorded in the Catch Effort would strongly indicate that this number is high. An accepted figure of approximately 3 kilograms per ELE (GUT state) would put the expected return figure at approximately 900+ kilograms. Even when using the conservative figure a total of 35.4% of ELE were discarded.

2. The § 9(2)(b)(ii) did not record RSK or the 1 GUR that was landed.
3. 4 small rig (SPO) were discarded.
4. While SPD/FIN and CAR/FIN were reported the green weight was not reported for the SPD.

COMMERCIAL IN CONFIDENCE
 Netting Catch Effort Landing Return NCE 4046876

1. Complete separate returns for each fishing trip.
 2. Complete a separate column of catch and effort information for each set. One set may include setting a net, immediately steaming to other places within 2 nautical miles, and setting more nets. If you move more than 2 nautical miles from the first net, you must start a new column.

Fishing method	SN	SJ	SN	SN	SN
Target species	SPO	SPO	SPO	SPO	SPO
Date: at start of set (day/month)	11/1/13	12/1/13	13/1/13	14/1/13	14/1/13
Time: at start of set (24-hr clock)	4:00	4:00	4:00	4:00	4:00
Latitude: at start of set (degrees/minutes)	44°08'S	45°55'S	43°57'S	44°02'S	44°00'S
Longitude: at start of set (degrees/minutes/E/W)	172°07'EW	172°24'EW	172°18'EW	172°32'EW	172°05'EW
Fishing duration (start of set to end of haul)	9 hrs 30 mins	12 hrs 00 mins	7 hrs 30 mins	12 hrs 30 mins	9 hrs 30 mins
Number and total length of nets set	15 nets 2600 m	13 nets 2600 m	13 nets 2600 m	13 nets 2600 m	13 nets 2600 m
Mesh size (mm)	165 mm	165 mm	165 mm	165 mm	165 mm
Net height (number of meshes)	15 meshes	15 meshes	15 meshes	15 meshes	15 meshes
Non-fish protected species caught?	Yes No	Yes No	Yes No	Yes No	Yes No
Write the species code and estimated greenweight of each quota and non-quota species caught during each set. For example, if you catch 200kg of sp, write: [SPO] 200.0kg	SPO 300.0kg SCH 400.0kg ELE 20.0kg HPB 12.0kg	SPO 500.0kg SCH 1600.0kg ELE 700.0kg FLA 2.0kg	SPO 70.0kg SCH 20.0kg HPB 40.0kg	SPO 200.0kg SCH 1100.0kg ELE 600.0kg SEV 5.0kg	SPO 700.0kg SCH 1300.0kg ELE 20.0kg LIN 15.0kg HPB 15.0kg
More than 8 species? List the 8 species that you caught most of (by greenweight)					
Weight of all other species caught this set	All other species .0kg	All other species .0kg	All other species .0kg	All other species .0kg	All other species .0kg

3. Enter first day of trip 11/1/13 landing date 16/1/13 and point of landing § 9(2)(b)(ii) NCE 4046876

4. Catch landing data - Include all species taken during this trip. Also include all species held from previous trips that are now being landed to an LFR

Fishstock Species code - Area	Landed state	Number of containers from latest trip	Number of containers from other trips	Container type	Container content weight	Destination type	Licensed Fish Receiver client number	Greenweight (kg)	Tax invoice number when advised by LFR
SCH 3 DRE	3	6		BIN	400.0kg	L	8462926	4245.0kg	43074
SPO 3 DRE	3	4		BIN	400.0kg	L	8462926	2189.0kg	43074
ELE 3 HST	3	12		BIN	500.0kg	L	8462926	849.0kg	43074
HPB 3 HST	3	2		BOX	30.0kg	L	8462926	67.0kg	43074
SPD 3 FIN	3	1		BOX	15.0kg	L	8462926	10.0kg	43074
SPD 3 FIN	3	12		BOX	20.0kg	L	8462926	480.0kg	43074A
ELE 3 GUT	3	1		BOX	8.0kg	L	8462926	3.0kg	43074
ELE 3 GUT	3	30		BOX	30.0kg	L	8462926	922.0kg	43074
SPD 3 FIN	3	3		BOX	20.0kg	L	8462926	120.0kg	43074A
SEV 3 DRE	3	1		BOX	11.0kg	L	8462926	10.0kg	43074
WAR 3 GRE	3	1		BOX	10.0kg	L	8462926	5.0kg	43074
					.0kg			.0kg	
					.0kg			.0kg	
					.0kg			.0kg	
					.0kg			.0kg	
					.0kg			.0kg	

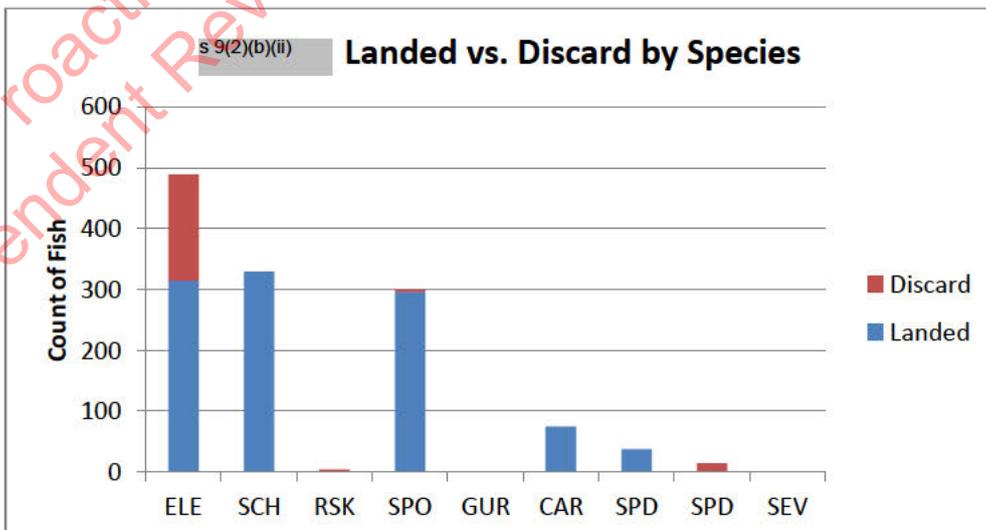
5. Permit holder and vessel details

Name of permit holder: § 9(2)(a) Name of vessel: § 9(2)(b)(ii) I declare that the information I have given on this return is true and correct to the best of my knowledge and belief. § 9(2)(a)

Client number of permit holder: § 9(2)(a) Registration number of vessel: § 9(2)(b)(ii) Signature of permit holder or authorized person: § 9(2)(a)

This return is page number 1 for this trip. Is this return the last page for this trip? Yes No

Date signed: 16/1/2013 Send completed returns to PO Box 297, Wellington (NZ).



s 9(2)(b)(ii)

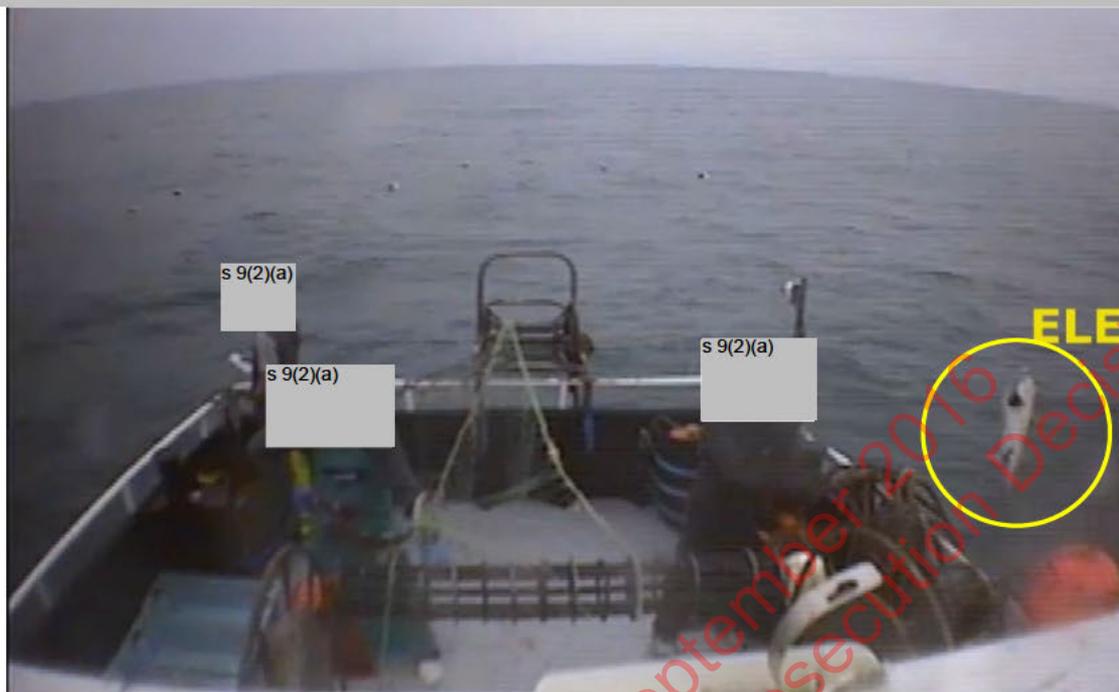


Photo 5 Elephant Fish Discard FV s 9(2)(b)(ii)

8 s 9(2)(b)(ii)

- 8.1 The s 9(2)(b)(ii) is an s 9(2)(b)(i)(h)(iii) meter fishing vessel built in s 9(2)(b)(ii) and owned and by s 9(2)(a) from s 9(2)(a) and skippered by s 9(2)(a). s 9(2)(a) is also the permit holder for the vessel. The vessel fishes into s 9(2)(b)(ii) in Timaru.
- 8.2 The s 9(2)(b)(ii) made 91 set netting trips between 27 October 2012 and 22 February 2013.
- 8.3 On 15 November 2012 the vessel lands 2 large salmon neither of which were recorded in the Catch Effort Return.
- 8.4 On 11 January 2013 s 9(2)(a) is seen to place a full bin of GUR onto the starboard side of the vessel and cover it with a tarpaulin. When the vessel arrives at port it unloads from the port side 23 bins of ELE, SPO and SPD. The GUR is retained on the boat. Nor GUR is recorded in the Catch Effort Return for this haul.
- 8.5 The following was noted from set net trip that occurred on 5 December 2012 Net Catch Effort Return s 9(2)(b)(ii) a 3 hour haul:
1. The s 9(2)(b)(ii) processed fish landed off camera. Damaged and small fish were retained on deck either processed off camera or discarded. It is highly likely that these fish were discarded as s 9(2)(b)(ii) invoice for this landing only recorded purchasing large ELE. They also do not accept damaged ELE. On this occasion 21% of the 153 ELE landed were discarded.
 2. All RSK were not recorded and likely discarded.

3. One flounder (FLA) was landed but not recorded on the Catch Effort Return.
4. Approximately 5 to 10 GUR are placed into a white plastic paint bucket prior to unload. This is suspicious behavior. The vessel lands 2 bins (57.5 kilograms) of GUR into § 9(2)(b)(ii) from this trip. There would be no apparent reason to remove these GUR from the fish bins and place them into a bucket other than to not have them included in the fish unload. It is more likely that these fish were destined for another source other than the Licensed Fish Receiver (LFR).



COMMERCIAL IN CONFIDENCE

Netting Catch Effort Landing Return

NCE 4046632

1. Complete separate returns for each fishing trip.
2. Complete a separate column of catch and effort information for each set. One set may include setting a net, immediately steaming to other places within 2 nautical miles, and setting more nets. If you move more than 2 nautical miles from the first net, you must start a new column.

Fishing method Target species Date, at start of set (day:month) Time, at start of set (24 hr clock) Latitude, at start of set (degrees, minutes, seconds) Longitude, at start of set (degrees, minutes, seconds) Fishing duration (start of set to end of haul) Number and total length of nets set Mesh size (mm) Net height (number of meshes) Non-fish / protected species catch?	SN SPO 05/12/12 04:20 44° 35' S 171° 18' 25" W 6 hrs 40 mins 9 nets 2250 m 185 mm 10 meshes YES NO <input checked="" type="checkbox"/>	/ / : : ' ' S ' ' W hrs mins m nets mesh m mm meshes YES NO	/ / : : ' ' S ' ' W hrs mins m nets mesh m mm meshes YES NO	/ / : : ' ' S ' ' W hrs mins m nets mesh m mm meshes YES NO	/ / : : ' ' S ' ' W hrs mins m nets mesh m mm meshes YES NO
Write the species code and estimated greenweight of each quota and non-quota species caught during each set. For example, if you catch 200kg of trip, write: [SPO] 200 .0kg More than 0 species? List the 0 species that you caught most of (by greenweight). Weight of all other species caught this set	ELE 500 .0kg SPO 200 .0kg S2H 40 .0kg SPD 60 .0kg 34R 50 .0kg SPO 200 .0kg All other species .0kg	.0kg	.0kg	.0kg	.0kg

Use additional pages if you run out of space to record fishing from this trip.

3. Enter first day of trip 05/12/12 landing date 05/12/12 and point of landing § 9(2)(b)(ii) NCE 4046632

Fishstock Species code	Area	Landed state	Number of containers from latest trip	Number of containers from other trips	Container type	Container content weight	Destination type	Licensed Fish Receiver client number	Greenweight (kg)	Tax invoice number when advised by LFR
ELE	03	OUT	12		BIN	30 .0kg	1	8422125	421.85 .0kg	AD80780
SPO	03	DRE	4			.0kg			191.43 .0kg	
SPD	03	BRE	2			.0kg			60.5 .0kg	
GUR	03	BRE	2			.0kg			57.5 .0kg	
SCH	03	DRE	1			.0kg			52.66 .0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	
						.0kg			.0kg	

5. Permit holder and vessel details

Name of permit holder: § 9(2)(a) Name of vessel: § 9(2)(b)(ii)

Client number of permit holder: § 9(2)(a) Registration number of vessel: § 9(2)(b)(ii)

This return is page number 11 for this trip. Is this return the last page for this trip? Yes No

I declare that the information I have given on this return is accurate, complete, and true. I have read and understood the signature of permit holder or authorised person: § 9(2)(a)

Date signed: 05/12/2012

Send completed returns to PO Box 297, Wellington (NZ).

Independent Review of Fisheries Prosecution Decisions

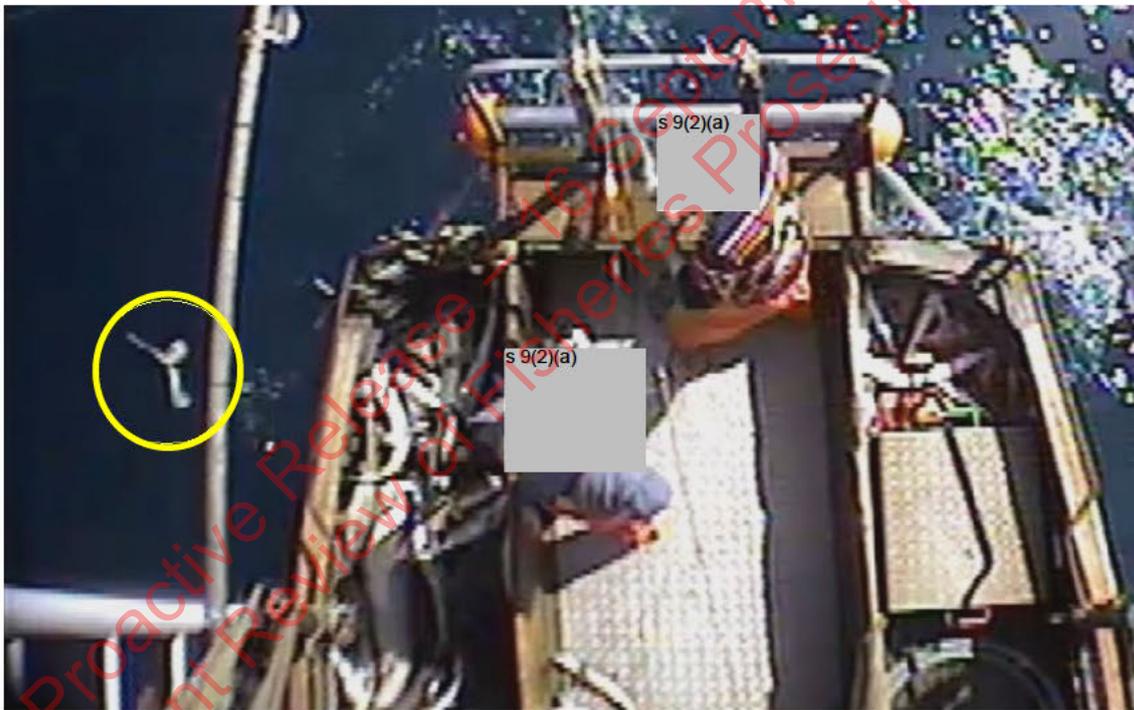
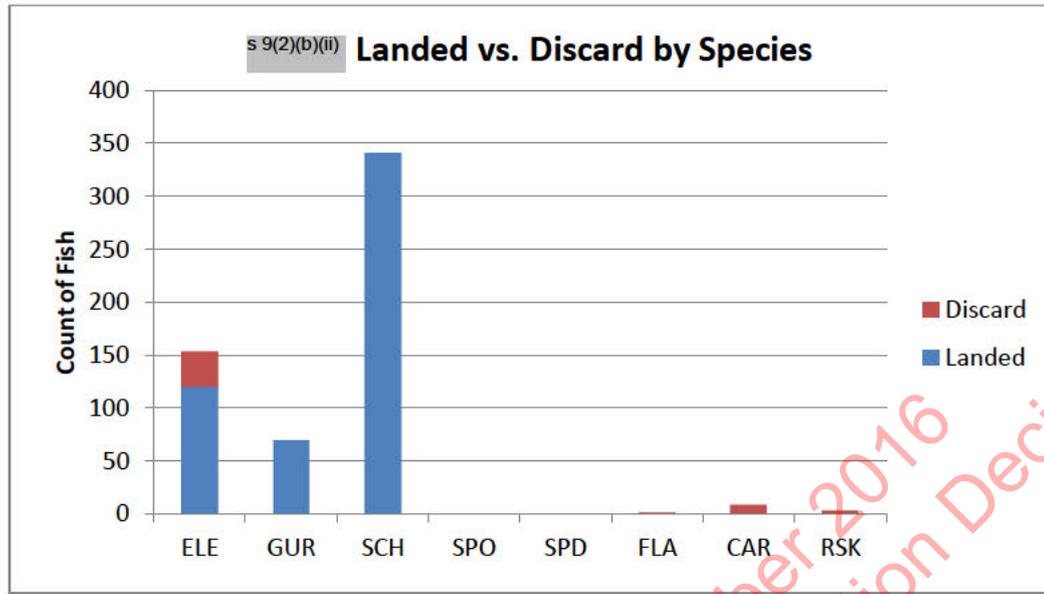


Photo 6 Elephant Fish discard FV § 9(2)(b)(ii)

9 § 9(2)(b)(ii)

9.1 The § 9(2)(b)(ii) is an § 9(2)(b)(i)(viii) meter fishing vessel built in § 9(2)(b)(iii) and owned and skippered by § 9(2)(a) from § 9(2)(a). § 9(2)(a) is also the permit holder for the vessel. The vessel fishes into § 9(2)(b)(ii) in Timaru.

9.2 The § 9(2)(b)(ii) made 44 set netting trips between 29 October 2012 and 31 January 2013.

9.3 The § 9(2)(b)(ii) appears to be the most compliant of the 6 fishers that were looked at. He was still seen to discard 9 out of the 226 ELE landed (3.9%). These fish were badly decomposed/liced (head or head and spine only). § 9(2)(b)(ii) do not accept these fish in this state.

- 9.4 All other fish were kept except for 4 CAR which were not recorded in the Catch Effort.

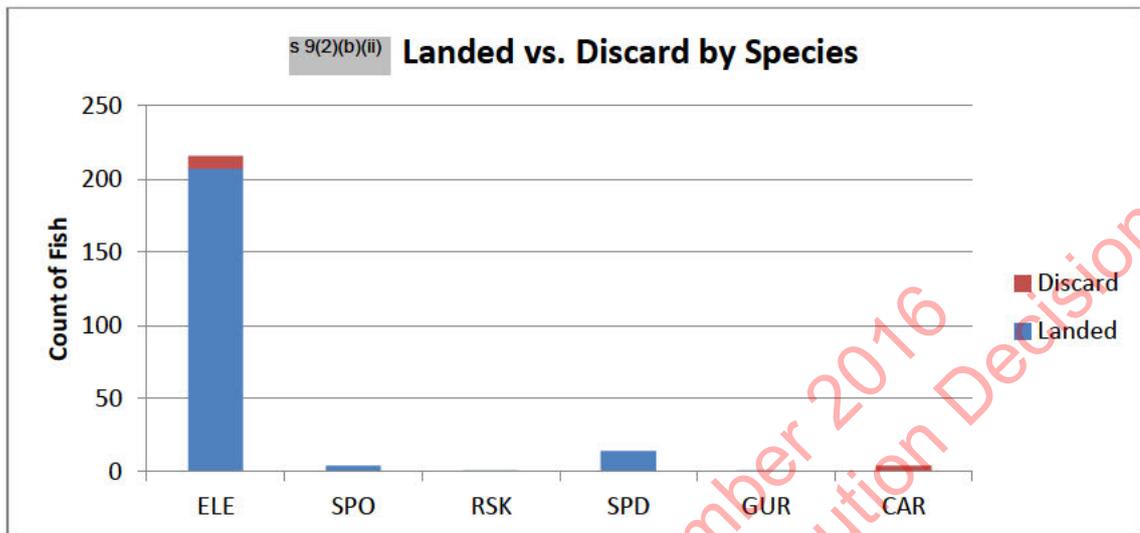
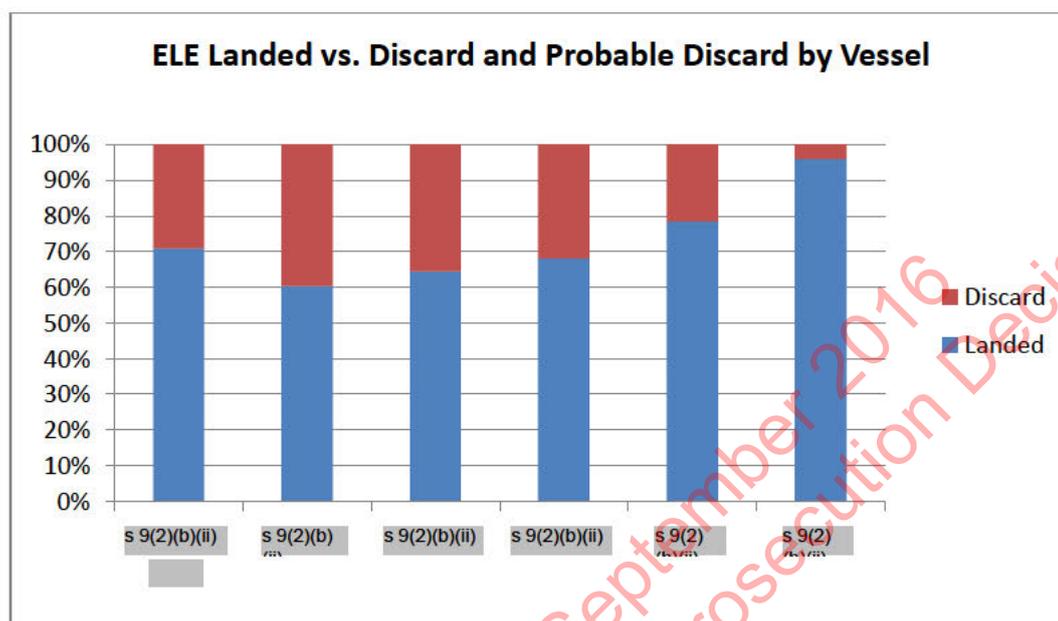


Photo 7: Carpet Shark (CAR) Discarded, all other fish retained FV § 9(2)(b)(ii)

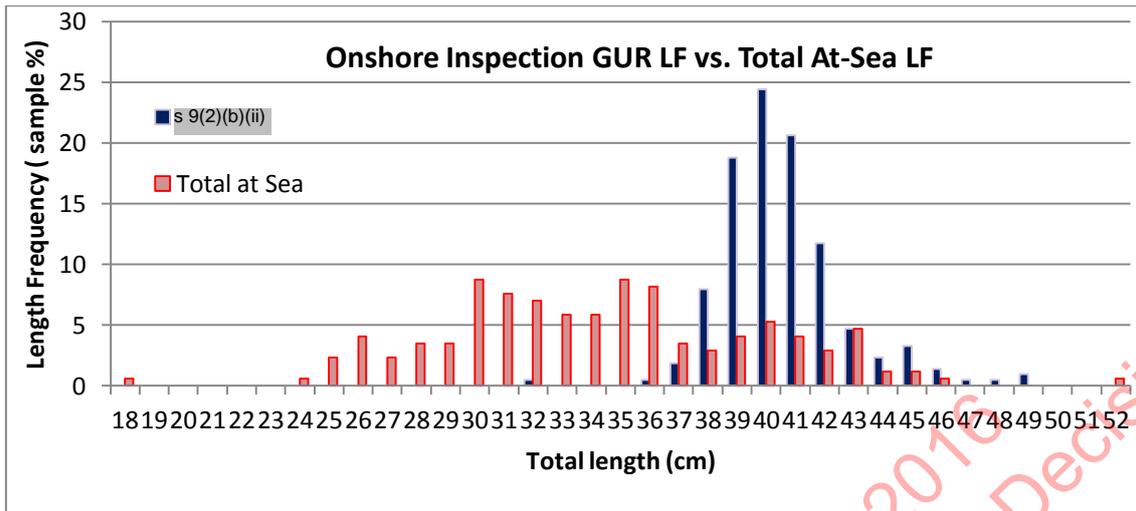
10 SUMMARY

- 10.1 With the exception of the § 9(2)(b)(ii) the five other vessels openly discarded substantial quantities of quota fish and failed to record fish as required under the Fisheries Act. Throughout the example hauls that we looked at, these 5 vessels discarded in excess of 30% of all ELE and all small GUR. While this is only a preliminary figure taken from a 'snap shot' of this year's set net season it is enough to give a strong indication as to the extent of the dumping/non reporting that is occurring in this fishery.

- 10.2 While this behavior is alarming it is also not surprising as previous research and observations have indicated that the dumping/non reporting has been occurring in this fishery for many years.



- 10.3 In May 2012 Fishery Investigator s 9(2)(a) completed his findings into Operation HIPPOCAMP, the aim being to gather information on catch mix and fish size to determine the extent of dumping and high grading in the South Eastern trawl and set net fishery. This was achieved by gathering information onboard inshore vessels as catch was bought on board and then comparing this data to data from landed catch records at either the wharf or Licensed Fish Receiver premises.
- 10.4 The 2 species targeted for this operation were GUR and ELE with the vessels being based out of Lyttelton but fishing FMA ELE 3 the same as the 6 Timaru based vessels however the Lyttelton based boats were trawling and not set netting.
- 10.5 The results for GUR clearly showed that there was a large discrepancy in the controlled at sea sampling than what was recorded at landing. Whilst the samples fitted the profile for medium and larger length GUR the smaller fish were missing from the landed GUR.
- 10.6 What was more interesting was that this size profile appeared relevant to the prices paid by the fishing company each vessel landed to. In this instance s 9(2)(b)(ii) only paid for fish over 32cms in size whilst s 9(2)(b)(ii) accepted fish above 28cms. As a result vessels such as the s 9(2)(b)(ii) (a s 9(2)(b)(ii) vessel) only landed GUR above 36cms in length. When this data is compared to what we would have expected to be landed according to the 'at sea length profile' then it would follow that the s 9(2)(b)(ii) had discarded over two thirds of their GUR by number.



- 10.7 The remainder of the landings by the other vessels suggested that this figure is closer to approximately 33% of GUR discarded. Whilst I believe that the number of GUR involved in the sampling that we have used in our Timaru based vessels is not enough to get an accurate picture the same pattern of not landing any small GUR at all is indicative of similar offending.
- 10.8 The results for ELE from Operation HIPPOCAMP were also alarming and compared similarly with our findings. Whilst the 'on sea' sampling of ELE was hampered with low numbers (only 83 fish were measured from 6 vessels) the data was enough to indicate a very similar story to ours. Of note was when the first vessel, the s 9(2)(b)(ii) was boarded at sea the Fishery Officers found a fish bin container with small ELE on board that the skipper admitted to being destined for discard.
- 10.9 The results showed that while the 'at sea' sampling profile indicated that a substantial proportion of ELE landed should be below 50cms in length the landed data told another story and almost no fish under 50cms was landed during this time.
- 10.10 Again this data has direct relevance to current port prices and would appear to be the main influence directing the non landing of small ELE. The current price offered by both s 9(2)(b)(ii) and s 9(2)(b)(ii) is the same now in July 2013 as it was in May 2012. Both s 9(2)(b)(ii) and s 9(2)(b)(ii) are paying \$2.65 for large ELE >50cms and \$1.70 for small ELE. The current deemed value price is \$1.67 so there is no incentive at all to land any small ELE.
- 10.11 While it would be easy to draw the conclusion that is for financial gain as to why such significant amounts of ELE and other species are being dumped this does not explain the reasoning why RSK and SPD are not recorded.
- 10.12 FMA ELE3 has for the past number of years been 100% caught or over caught since at least 1999. (103% as of July 2013) With the exception of the s 9(2)(b)(ii) (s 9(2)(b)(ii)) all of the other vessels have exceeded their ELE3 ACE and have had to pay substantial deemed value fees for the past few years, below are the current (July 2013) deemed value fees owing from each vessel:

s 9(2)(b)(ii)

- 10.13 The § 9(2)(b)(ii) has a 20,114 kg ELE3 ACE holding of which 18,323 has been caught, which doesn't explain why this vessel had the highest ELE dumping percentage (40%) for our sample haul. It would appear that it is not just the lack of ACE driving this vessel's offending but it is trying to maximize what ACE it does have by high grading to obtain a maximum return for every ELE caught.
- 10.14 The seriousness of this offending cannot be minimized by simply deciding as to whether it is a sustainability issue or not. Clearly the 1000 tonne TACC ELE3 fishery is not in jeopardy as despite the substantial dumping and under-reporting the fishery still appears healthy. The fact that these figures are likely to have been set by the figures obtained from Catch Effort Returns over many years that are clearly incorrect and misleading is cause for serious concern.
- 10.15 The callous disregarding of simple reporting requirements such as the non-reporting of rough skate RSK or spiny dog fish SPD, which has no bearing on quota or a financial disincentive for the fisher show that it is not just a financial incentive that motivates offending but also the lack of any punitive action against the fisher if the regulations are not adhered with. This results primarily from the fact that this type of offending is almost impossible to detect to an evidential standard sufficient for prosecution using traditional investigative techniques.

RISK: Commercial Political and Legal

- 10.16 There are many reasons why I believe that positive action must be taken in regards to the findings of this report. It is more than sustainability. It is more than the fact that we are relying on misleading and incorrect data to sustain our fisheries. The most pressing reason for urgent action is that we have compelling visual evidence of serious offending recorded on a media that could become available (for whatever reason) to outside persons and organizations. Some of these people and organizations could have strong vested interests in this information and make this material quickly available to the public via internet related media i.e. 'you-tube' etc.
- 10.17 The resulting damage that could be caused not just to MPI but to the New Zealand Fishing Industry and economy as a whole could be extensive. The site of large, perfectly good fish being systematically discarded in such large quantities could have a huge negative effect as it could easily stir up an emotive back lash from not only the New Zealand public but from international quarters as well. These images could quickly negate the 'green sustainable' image that we as a country portray. This combined with the fact that we have known about these dumping/discarding issues for many years and would appear to have done little to combat it would be very difficult to explain and unpleasant at best.
- 10.18 A worst case scenario could see a large international company e.g. 'McDonalds', refusing to buy our 'non-green image' fish or having imports cancelled as a result of these pressures. Remember too that this is only regarding the dumping/unsustainable issue there is also the matter regarding the deliberate non reporting of Hector's dolphins that could have a similar if not more dramatic flow on negative effect.
- 10.19 It would be my recommendation in the first instance that the 5 offending vessels are investigated further with the intention of prosecution. It is my understanding after speaking with § 9(2)(a) who installed the cameras and who spoke at length with the fisherman that no assurance was given to them by him, or from anyone else that he was aware that there would be any immunity or exemption given from prosecution.

- 10.20 As I understand it the Ministry has previously ignored offending (dumping) that has been observed and recorded by Ministry of Fishery Observers because an assurance had been given to the vessels concerned prior to the observers boarding the vessel that all such offending that was seen would be disregarded and no prosecution action taken. It is understood that this agreement was reached as a condition in order to allow the Observers on board the vessel in the first instance.
- 10.21 I am also aware that it is the intention of the MPI Fishery Management group to run a trial program with the main objective being to obtain better information on the amount, type and composition on fish discards. Part of this proposal would include the issuing of 'special permits' to allow dumping/discarding from certain vessels. I understand that the same 6 vessels that are the subject of this report will be used. I think that this would be an unwise move until such time as a decision has been made as to what if any legal action will be taken against these vessels. There are other legal issues that I feel should be considered to as I believe they could have serious implications to the Ministry.
- 10.22 From a legal standpoint I believe that consideration should be given to a number of issues. Firstly, does the Ministry have a legal mandate to allow it to contract out of the prosecution of offences? Is this an action that only the Solicitor General can take? The fact that we have previously given assurances against prosecution and may have done so again may not be the correct course and I believe should be further considered. Could the Ministry potentially be seen to be perverting the course of justice?
- 10.23 As to whether this matter achieves the required levels as to the crown prosecution guidelines regarding public interest and evidential sufficiency then I believe that they have been met, in regards to the latter, overwhelmingly.
- 10.24 Matters that should be considered for the public interest test include
1. seriousness of the offending
 2. economic and ecological harm
 3. deliberate ongoing and systematic course of action
 4. difficult to detect this type of using standard investigative techniques
- 10.25 We should also not forget that we have recently prosecuted a number of Korean FV's for similar offending. Consideration should therefore be given as to the possible repercussions and criticism that could be faced if we were not to prosecute these vessels for very similar offending. We place at risk our credibility here and internationally and face justifiable criticism from industry and the judiciary.
- 10.26 Whatever the decision we have never had such compelling evidence to prove what we have known for a long time. It is imperative in my opinion that we act positively and timely to mitigate the risk that may result due to a lack (or perceived lack) of action on our part.
- 10.27 The electronic monitoring program (ECM) has already proven, even during the trial period that it could have enormous benefit for the New Zealand fishing industry. It is an exciting tool not only from a scientific data gathering perspective but as an important compliance tool.

- 10.28 While it is understood that we must fully test the effectiveness of the ECM system as there are many issues that need to be thought through. It is hoped that these can be solved expediently. While not fully conversant with the Canadian Fishery Model I understand that a very similar system works well there. A system that is fully industry funded.
- 10.29 Ideally while all the finer points are being thought through it would be of great benefit to compliance if consideration could be given to having ECM equipment installed as part of permit requirements especially for known offenders or at risk fisheries.
- 10.30 For your consideration and direction.

s 9(2)(a)

Investigator

Proactive Release – 16 September 2016
Independent Review of Fisheries Prosecution Decisions