

Progress on Implementing the Recommendations made by the Ministerial Inquiry into the Use and Operation of FCVs

	Inquiry recommendation (verbatim)	Lead agency	MPI/agency implementation	Progress (see legend at bottom of page)
1	<i>That the Ministry for Primary Industries (MPI) continues its efforts to strengthen monitoring and enforcement of FCVs, including, but not restricted to, the following areas:</i>			
	<i>Placing an observer on all FCVs fishing in the EEZ;</i>	MPI	At least one observer per FCV is now mandatory. Those FCVs assessed as being high risk are required to carry two observers.	1
	<i>Streamlining and improving observer reporting processes on FCVs, including making greater use of technology;</i>	MPI	All observers are briefed and debriefed before and after each trip. Observers collect trip information using tablets, laptops, cameras, electronic motion compensator scales which is collated and reported through trip diary, trip report, and catch effort data. An integrated electronic monitoring and reporting system (IEMRS) is being developed for more accurate, comprehensive and timely catch, vessel, and spatial data which will be easily integrated with other databases. Upskilling of observers is ongoing.	3
	<i>Ensuring that any outsourcing arrangements for its observer programme avoid possible conflicts of interest on the part of contracted firms and that MPI has full control of the programme.</i>	MPI	The Observer Services Unit of MPI has not been outsourced.	1

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2	In progress – not yet implemented but on track for 1 May 2016
3	Ongoing – process implemented; type of process means it's ongoing

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	<i>Ensuring the collection and availability of compliance data broken down by vessel, operator and charter party;</i>	MPI	All foreign owned vessels have their compliance history analysed and a comprehensive compliance risk assessment attributed to the vessel, senior crew, the foreign owner and New Zealand charterer using a variety of intelligence sources. Sixteen such assessments were completed in 2015, with only one vessel given a medium risk assessment and no vessels being given a high risk assessment. Three FCVs left New Zealand's water during the previous 12 month period. With MPI's compliance-dedicated database (FOCUS) coming online in 2015, this has improved the search capability and speed of MPI internal compliance systems.	1
	<i>Considering other ways of securing enforceable guarantees for any deemed value debts incurred.</i>	MPI	The compliance history of FCVs is taken into account when considering granting consent for registration	1
	<i>Considering non-fisheries offences when making FCV registration decisions.</i>	MPI	Risk assessments are being conducted for FCVs. This includes history of compliance around labour law, maritime safety, environmental and food safety practices and any other offences.	1
2	<i>That Maritime New Zealand maintains its strong focus on the enforcement of FCV compliance with New Zealand's maritime safety standards, including, but not restricted to, the following areas:</i>	MNZ		2

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	<i>Maintaining the present high standards of vessel safety inspections of FCVs</i>	MNZ	Maritime New Zealand carries out in port inspections of all FCVs.	2
	<i>Introducing the Maritime Operator Safety System (MOSS) vessel safety system to enable Maritime New Zealand to take more direct responsibility for safety audits of FCVs, clearly identifying a New Zealand party that can be held accountable for any breaches and removing the two year transitional provision for FCVs arriving in New Zealand waters.</i>	MNZ	Vessels in possession of a Safe Ship Management Certificate will be required to enter MOSS and be in possession of a Maritime Transport Operator Certificate. At the next out of water survey vessels will be inspected by a Maritime New Zealand recognised surveyor and issued with a Certificate of Survey. MOSS has removed the two year grace period FCVs were previously allowed to comply with New Zealand survey requirements. Accountability for compliance with New Zealand applicable maritime legislation is now the responsibility of person(s) who must be New Zealand based, and the day-to-day control cannot be exercised by someone based overseas. To this end Maritime New Zealand speaks to these person(s) to establish that they have the necessary authority and are aware that they are accountable under New Zealand law for any breaches.	2
	<i>Taking steps to facilitate the recognition of foreign qualifications for the crews of FCVs.</i>	MNZ	Maritime New Zealand is working with operators to ensure that the New Zealand minimum crewing requirements are met. This includes English language requirements and appropriate crew configuration and qualifications, such as watch-keeping.	2
3	<i>That the Labour Inspectorate and Immigration New Zealand (both of the Ministry for Business, Innovation and Employment (MBIE)) continue their</i>	MBIE		

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	<i>efforts to strengthen monitoring and enforcement arrangements for FCVs, including, but not restricted to, the following areas:</i>			
	<i>Rapid implementation of the improved audit system for FCVs.</i>	MBIE	KPMG has been contracted to undertake independent audits of individual FCVs. These results are shared between agencies concerned with the monitoring of FCVs.	1
	<i>Tightening up the Code of Practice on Foreign Fishing Crew, for example by placing the onus of proof on the New Zealand charter party and requiring FCV crew wages to be paid into a New Zealand bank account.</i>	MBIE	The Code of Practice has been superseded by new immigration instructions which incorporate tougher requirements.	1
	<i>Increasing the frequency and thoroughness of inspections.</i>	MBIE	Immigration New Zealand has instigated audits as stated above. The Labour Inspectorate has become involved in the approval in principle process - the conditional approval for an employer to employ someone from overseas - as well as conducting investigations and audits of individual FCVs.	1
	<i>Replacing the deepsea fishing crew employment register with the standard immigration labour market test</i>	MBIE	Implemented via the Immigration Instructions.	1
	<i>Proactively informing FCV crews of their rights and FCV operators of their responsibilities.</i>		The Labour Inspectorate is currently holding talks with Seafood New Zealand which is also keen to see improvements. One of the recommendations the Inspectorate will be making to industry is for pre-voyage briefings to crew of FCVs in their own language outlining	1

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			New Zealand labour law, maritime safety and minimum employment standards. The various government agencies will input into this workstream.	
	<i>Reducing timeframes for FCV operators to provide information and remedy problems.</i>	MBIE	The timeframe has been reduced to 30 days (with no extensions) to provide information and to remedy any issues (previously the timeframe was 20 days however, operators were then able to obtain extensions in some instances). More information is available on the Immigration New Zealand website: http://www.immigration.govt.nz/employers/employ/temp/default.htm	1
4	<i>That an interagency steering group on FCVs be established to co-ordinate the evaluation of information relating to the operation of FCVs before agency decision making, and that this Steering Group be chaired by a senior MPI official.</i>	MPI/MBIE/ MNZ/MFAT	An inter-agency steering group was established and ran until just after the Bill was passed in August 2014. At the last FCV interagency steering group meeting in April 2014, it was proposed changing the name of the group to the FCV operations and guidance group. It was also proposed and agreed that another group be created, the FCV governance group to provide strategic oversight. The operational group meets monthly and the governance group meet quarterly.	1
5	<i>That a pilot programme of compliance monitoring be developed across MBIE, MPI and Maritime New Zealand. Personnel would be trained to monitor</i>	MBIE/MPI/ MNZ	A work programme of compliance monitoring for these areas is underway and is being coordinated through the FCV operational group. This work will carry on past the 1 May 2016 reflagging deadline. All current observers will be trained in expanded monitoring functions.	2

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	<i>compliance on high risk FCVs in such areas as fisheries rules, vessel safety and labour standards, food safety and seabird and bycatch prevention measures. The costs of this programme should be recovered from vessel operators whose compliance record and risk profile is such that compliance monitoring is required on their vessel(s).</i>		Initial training of around 30 observers was held in November 2015 and it is intended to roll out training to remaining staff. New observers will have training modules on expanded functions added to the existing observer training programme. Changes to the Fisheries (Cost Recovery) Rules 2001 to add the new observer functions to those that are recovered via the annual levy Orders are being progressed outside the First Principles Review of Cost Recovery Arrangements (FPR) being undertaken by MPI.	
6	<i>That MBIE, MPI and Maritime New Zealand continue their work on the option of co-ordinated FCV inspections both in port and at sea along the lines described in this report.</i>	MBIE/MPI/ MNZ	Under the new inspection regime, MPI observers will be the eyes of MBIE and Maritime New Zealand at sea reporting on compliance with labour law and maritime safety functions as well as their current stock assessment, conservation and compliance functions. MBIE and Maritime New Zealand carry out their own separate in-port inspections of FCVs. The work of all these agencies goes into compiling a risk assessment of each FCV. The compliance history of each FCV is then considered when vessels apply to the various agencies for permission to operate in New Zealand.	2
7	<i>That the following amendments be made to the Fisheries Act 1996:</i>	MPI		
	<i>Include an explicit power to suspend or revoke the registration of an FCV at any stage when information is received that, in the Director General's opinion,</i>	MPI		1

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	<i>warrants reconsideration of the initial decision to consent to that vessel's registration</i>		These recommendations were achieved through the implementation of the Fisheries (Foreign charter Vessels and Other Matters) Amendment Act 2014 (the FCV Amendment Act) and the requirement of FCVs to reflag by 1 May 2016, therefore bringing these vessels under the full suite of New Zealand's legislation.	
	<i>Include a provision enabling the Director General to take vessel safety considerations into account in determining whether to grant consent to register an FCV.</i>	MPI		1
	<i>Include provisions increasing the visibility and accountability of the New Zealand-based authorised agent of the FCV owner.</i>	MPI		1
	<i>Review the defence provisions to clarify the obligations of the parties involved in an FCV fishing operation</i>	MPI		1
	<i>Enable either the authorised agent of the FCV owner or the New Zealand permit holder to be served with any documents relating to an FCV's operations.</i>	MPI		1
	<i>Include in either the Fisheries (Commercial Fishing) Regulations 2001 or the Fisheries Act 1996 the key conditions in the Director-General's consent to strengthen them.</i>	MPI		1

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8	<i>That application of the Health and Safety in Employment Act 1992 be extended through Section 103 of the Fisheries Act 1996 to the crew of FCVs in the same way as the Wages Protection Act 1983 and Minimum Wage Act 1983 are currently applied to FCVs.</i>	MPI	This was achieved through the FCV Amendment Act by requiring ships registered under the Fisheries Act to be New Zealand ships from 1 May 2016. For more information on health and safety in the workplace see: http://www.business.govt.nz/worksafe/	1
9	<i>That any consequential amendments required to the Health and Safety in Employment Act 1992 and Maritime Transport Act 1994 be made to reflect the incorporation of the Health and Safety in Employment Act 1992 in the Fisheries Act 1996.</i>	Worksafe NZ	The Health and Safety in Employment Act 1992 is being superceded by the Health and Safety at Work Act 2015, which comes into force on 4 April 2016. The application of the legislation to shipping has been changed under the new Act in section 10(2) so that it applies more broadly to 'a foreign ship on demise charter to a New Zealand-based operator when it is operating in New Zealand.' The new Act effectively turns FCVs into floating 'bits of New Zealand' that are subject to the provisions of the new Act when operating in New Zealand waters. No consequential amendments have been made to the Maritime Transport Act 1996, as this was not required to give effect to this recommendation. The intended effect was achieved through the FCV Amendment Act by requiring ships registered under the Fisheries Act to be New Zealand ships from 1 May 2016.	1
10	<i>That the Maritime Rules be revised to ensure that they apply to FCVs as well as New Zealand ships.</i>	MNZ	Maritime Rules have been revised to comply with this recommendation. Maritime Rule 19 is now in force, which requires FCVs to comply with all survey, safety systems and seafarer qualifications applicable to similar New Zealand ships.	1

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			For any information from Maritime NZ on FCVs, please contact: Arthur Jobard Cell 0275 736 226 Free Phone 0508 22 55 22 Arthur.jobard@maritimenz.govt.nz	
11	<i>That the Government announces its intention to conduct a national interest analysis of the Torremolinos Protocol and International Maritime Organisation Convention STCW-F with a view to ratifying these conventions at the earliest possible date and that an assessment also be made of the merits of ratifying International Labour Organisation Convention C188 – Work in Fishing.</i>	MBIE	<p>The government has commenced the national interest analysis process for the <i>Torremolinos Protocol</i> (superseded by the Cape Town Agreement) and <i>STCW-F</i> (the Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995). It is anticipated that the national interest analysis will be considered by the Foreign Affairs, Defence and Trade Select Committee on 11 February 2016.</p> <p>New Zealand will ratify the <i>Maritime Labour Convention</i> as soon as the Convention is deposited at the International Labour Organisation by ceremony in Geneva. This is due to occur in early 2016. The Maritime Labour Convention establishes a set of minimum standards for countries and ship-owners committed to providing decent working and living conditions for seafarers. The Maritime Labour Convention does not cover fishing vessels. However, the government has committed to a range of measures to ensure the fair treatment of crews on fishing vessels and vessel safety.</p> <p>For more information on the Maritime Labour Convention please visit the Ministry of Transport webpage below. The webpage will be updated once the Convention has been ratified.</p>	2

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			http://www.transport.govt.nz/sea/maritime-labour-convention-2006 <i>The International Labour Organisation Convention C188 – Work in Fishing</i> aims to ensure that fishers have decent conditions of work on board fishing vessels. The Convention is yet to reach the required number of international ratifications to come into force. So far six out of the required 10 States have ratified C188. New Zealand has no current plans to ratify C188 but is monitoring the progress of the Convention. Text of the Work in Fishing Convention can be found at the International Labour Organisation website below: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312333 If you have any questions regarding foreign crewed vessels, the Maritime Labour Convention, or C188 Work in Fishing, please call the MBIE Contact Centre: 0800 20 90 20 during business hours. Business hours are 8.30am - 5.00pm Monday to Thursday, 9.00am - 5.00pm Friday excluding public holidays. If calling from overseas call +64 9 969 2950.	
12	<i>That:</i>			
	<i>The Fisheries Act 1996 be amended to restrict registration to vessels on demise charter;</i>	MPI	These recommendations were achieved through the implementation of the Fisheries (Foreign charter Vessels and Other Matters) Amendment Act 2014 (the FCV Amendment Act) and the requirement	1

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	<i>The New Zealand charter party must be the employer of FCV crew under a New Zealand employment agreement;</i>	MBIE	of FCVs to reflag by 1 May 2016, therefore bringing these vessels under the full suite of New Zealand's legislation.	1
	<i>The Code of Practice be revised to reflect these changes;</i>	MBIE	The Code of Practice no longer exists and was replaced by Immigration Instructions.	1
	<i>There be a transition period of either two years from the date of the government's decision, or until the amended legislation is passed (whichever is the later), to allow industry to adapt to this policy change.</i>	MPI/MBIE/ MNZ	The recommendations were made in 2012, the FCV Amendment act was passed in 2014, and the deadline to reflag is May 2016.	1
13	<i>That the Fisheries Act 1996 be amended to include an empowering provision for the reflagging to New Zealand of some or all FCVs operating in the EEZ should this be deemed necessary in the national interest.</i>	MPI	Achieved through the implementation of the FCV Amendment Act. All vessels are required to reflag to New Zealand by 1 May 2016 – no exceptions are permitted.	1
14	<i>That consideration be given to how the provisions of the Crimes Act 1961 might be applied to the activities of foreign flagged FCVs in New Zealand's EEZ.</i>	MPI	Achieved by requirement for all FCVs to reflag to New Zealand by 1 May 2016.	1
15	<i>That, once decisions are taken on the recommendations in this report, steps be</i>		Agencies have been engaging with industry to ensure operators are aware of the requirements in order to reflag and their obligations	3

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	<i>taken to engage with industry on a detailed implementation plan</i>		under the new legislation. MPI wrote to FCV operators in June 2015 and Maritime New Zealand also wrote in May and again in September 2015 as part of this engagement and to offer assistance if required.	

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