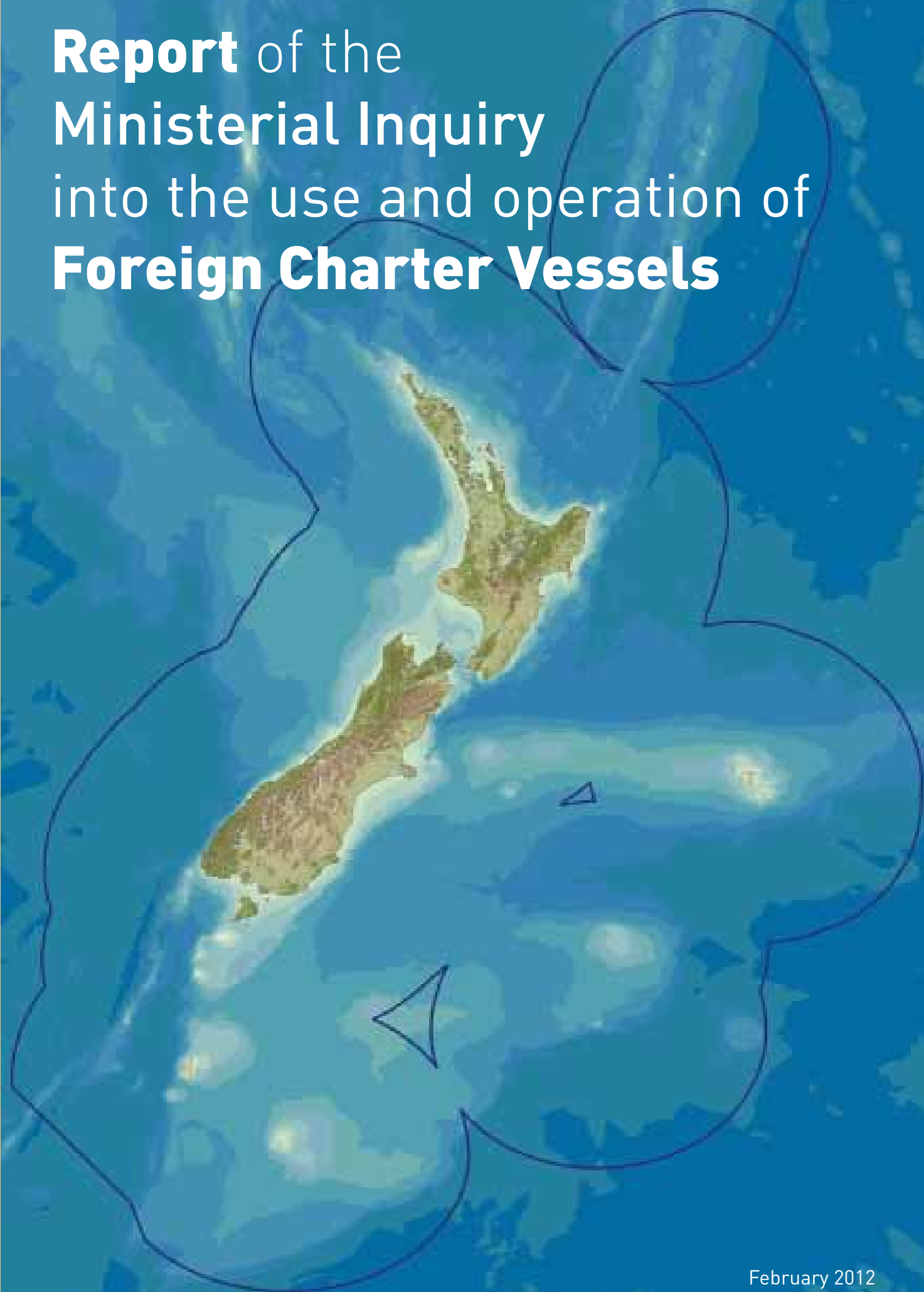


# **Report** of the **Ministerial Inquiry** into the use and operation of **Foreign Charter Vessels**



February 2012

### **Disclaimer**

This publication represents the collective view of the Ministerial Inquiry into Foreign Charter Vessels; it is not government policy. Any view or opinion expressed does not necessarily represent the individual views of any of the Ministerial Inquiry into Foreign Charter Vessels Panel members. While every effort has been made to ensure the information in this publication is correct, the Ministerial Inquiry into Foreign Charter Vessels does not accept any responsibility for or liability for error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information or any reliance placed on it.

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Publications Logistics Officer  
Ministry of Agriculture and Forestry  
PO Box 2526  
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Email: [brand@maf.govt.nz](mailto:brand@maf.govt.nz)

**Cover image:** New Zealand's Exclusive Economic Zone (EEZ) outer boundary.

February 2012

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# Foreword

New Zealand has built a proud international reputation for high-quality, safe and sustainably produced food. This is a major competitive advantage in a world where food production is coming under increasing consumer scrutiny.

New Zealand's fishing industry contributes around \$1.5b to our economy each year, and there are further opportunities for growth. Our sustainable fishing regime – the Quota Management System – has been rated as first equal out of all marine regions around the world. New Zealand's food safety regime is internationally well-regarded.

New Zealand has always played a leadership role in the field of human rights and takes seriously its responsibility to protect vulnerable people and to ensure safe workplaces and fair employment practices.

Over recent times there have been allegations of mistreatment and underpayment of foreign crews on certain Foreign Charter Vessels that fish in the EEZ under charter to New Zealand companies. These allegations have received both national and global attention and have the potential to undermine New Zealand's international reputation. The New Zealand Government has responded by establishing a Ministerial Inquiry to investigate these allegations, and to recommend any changes that may be needed to the way we fish in our waters.

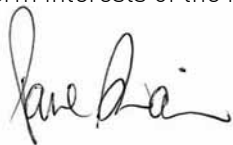
The Inquiry Panel has spent many hours discussing and debating the present situation with a range of industry representatives, government officials, groups and individuals. The Panel has heard disturbing testimony about the mistreatment and underpayment of FCV crew by certain foreign owners and operators.

We note that the problems with FCVs are not new and that governments over the years have put considerable effort into addressing them by introducing additional legislative and regulatory controls as well as an industry-wide code of practice. However, these approaches have lacked jurisdictional certainty, have not been fully supported by all in the industry and have not been backed by effective enforcement.

While the problems are not as widespread as some have suggested, it is the Panel's view that further piecemeal changes to improve the situation will not be sufficient. Major changes are required. Our starting point has been that exploitative employment practices have no place in New Zealand waters, and that fishing crews must have adequate protection from mistreatment and underpayment.

The Panel recommends therefore that all those who fish in New Zealand waters should be subject to the same minimum standards and rules regarding vessel safety, workplace conditions and fisheries regulations. This way, the high standards set by New Zealand will be applied to all.

In our view, these changes need to be made to protect New Zealand's reputation and promote the long-term interests of the industry.



Paul Swain  
Chair



Sarah McGrath  
Member



Neil Walter  
Member

Wellington

# Introduction

## The Inquiry

- 1 Widespread concern about the use of foreign charter vessels (**FCVs**)<sup>1</sup> to fish in New Zealand's Exclusive Economic Zone (**EEZ**)<sup>2</sup> led to the Minister of Fisheries and Aquaculture and the Minister of Labour convening a Ministerial Inquiry in August 2011. Among the issues of concern were allegations of trafficking and mistreatment of crews, complaints of underpayment of crew and other breaches of employment rules, questions about vessel safety standards and reported breaches of fisheries and environmental regulations. The Inquiry's Terms of Reference appear in Annex A.
- 2 The principal objective of the Inquiry is to ensure that the operation of foreign owned and flagged vessels chartered by New Zealand fishing companies supports the following government objectives:
  - protect New Zealand's international reputation and trade access;
  - maximise the economic return to New Zealand from our fisheries resources; and
  - ensure acceptable and equitable New Zealand labour standards (including safe working environments) are applied on all fishing vessels operating in New Zealand's fisheries waters.
- 3 The Panel was tasked with making recommendations relating to policy and legislative amendments and improvements to operational practices if it found that any of these objectives were being undermined.
- 4 The Quota Management System (**QMS**) was specifically excluded from the Panel's Terms of Reference. The Terms of Reference also specified that it was not the purpose of the Inquiry to investigate particular situations or incidents involving FCVs.

## Inquiry Process

- 5 The Inquiry took place over the period from August 2011 to February 2012. Seventy two submissions were received, and public hearings were held in Auckland, Christchurch, Nelson and Wellington. The public submissions are available on the Ministry of Agriculture and Forestry's (**MAF's**) website. A list of submitters, including those who participated in the public hearings, appears in Annex B.
- 6 The Panel visited a number of domestic and foreign charter fishing vessels and reviewed numerous documents and reports relating to the fishing industry. It met with a wide range of industry representatives as well as other people and organisations with an interest in the Inquiry. An interview was held with some FCV crew members. Regular meetings were held throughout the Inquiry with officials from government agencies with an interest in the activities of FCVs.

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1 Foreign charter vessels are foreign owned vessels that are chartered by a New Zealand company to fish in New Zealand's EEZ.

2 The Exclusive Economic Zone is the area between 12 and 200 nautical miles from shore. Coastal States have sovereign rights to resources within the EEZ, but limited civil and criminal jurisdiction.

## Structure of the Report

- **Foreword**
- **Introduction**
- **Executive Summary**
- **List of Recommendations**
- **Chapter One: Background** – general information about the New Zealand fishing industry, the legal frameworks that govern commercial fishing in New Zealand’s EEZ and the role played by FCVs.
- **Chapter Two: International Reputation** – the impact of FCV issues on New Zealand’s international standing and the reputation of New Zealand’s seafood industry.
- **Chapter Three: Economic Return to New Zealand** – reasons that companies charter FCVs and discussion of ways to maximise the future economic return to New Zealand.
- **Chapter Four: Trade Access** – the impact of FCV issues on New Zealand’s access to overseas markets.
- **Chapter Five: Management of Fisheries** – an overview of New Zealand’s fisheries management system, including measures to protect the marine environment.
- **Chapter Six: Vessel Safety** – an overview of the maritime safety regime as it applies to FCVs.
- **Chapter Seven: Employment and Labour Conditions** – employment standards and workplace conditions on FCVs.
- **Chapter Eight: Conclusions and Recommendations** – recommendations to resolve the issues relating to FCVs.
- **Annexes:** Additional information relevant to the Report.

## Acknowledgements

- 7 The Panel wishes to record its thanks to all those who participated in the Inquiry. It received a good level of co-operation from government agencies involved in the management of fishing activities in New Zealand's EEZ. A number of government and non-governmental bodies with an interest in specific aspects of the Inquiry provided the Panel with useful information.
- 8 Members of the fishing industry gave freely of their time and views, as did various firms and groups with business links to companies chartering FCVs. A wide range of people, organisations and groups with a broader interest in the Inquiry, including a number of organisations that had provided assistance to crew members of FCVs, went to considerable lengths to ensure the Panel was fully informed on the various matters related to FCVs.
- 9 It is worth noting that the Inquiry took place at a time of considerable change and challenge in New Zealand's fishing industry. In addition to mounting industry and public concern about the activities of certain FCVs, factors such as a volatile trading environment, rising fuel costs, market access difficulties, a strong New Zealand dollar, a heightened focus on environmental issues and increasing compliance costs pose challenges to the fishing industry. Government agencies were also heavily preoccupied at the time of the Inquiry with such factors as the merger of the Ministry of Fisheries with MAF, the grounding of the vessel *Rena* and other inquiries being conducted into health and safety issues.
- 10 The Panel received excellent support throughout the Inquiry from Project Manager Andrew Hill and his Secretariat team of Tiffany Bock, Fleur Matthews, Stacey O'Dowd, Jenny Wood and Andrei Zubkov.

# Executive summary

- 11 The debate over the use of foreign flagged fishing vessels in New Zealand's EEZ has been running ever since foreign vessels were licensed to operate in the EEZ. Initially, this was perceived as a transitional measure while New Zealand developed its own capacity to fish the EEZ. Today, the 27 foreign vessels chartered by New Zealand companies are a significant part of the EEZ fishing fleet,<sup>3</sup> accounting for over half of the EEZ fish catch volume landed in New Zealand.
- 12 FCVs have brought significant economic benefits to a number of New Zealand fishing companies. FCVs give additional operational flexibility to industry and help to develop wider business links with foreign owners and their companies. It is argued that some of the resources of our EEZ would have remained untapped if it were not for the specialist equipment and lower operational costs of FCVs. A number of New Zealand companies have benefited from preferential access to flag State markets. Stevedoring, engineering and other firms in port towns derive considerable business from FCVs. Many quota owners, including iwi, are able to collectivise and sell their Annual Catch Entitlement through companies using FCVs. The FCVs provide important work opportunities for crews from developing countries such as Indonesia and the Philippines.
- 13 The use of FCVs does, however, have its drawbacks. It is argued by some that FCVs are operating at an unfair competitive advantage over domestic vessels. It is further claimed that the use of FCVs has undermined investment in the domestic fleet, artificially inflated quota values and reduced employment opportunities for New Zealanders. There have been reports of serious breaches of employment rules and workplace standards as well as non compliance with New Zealand's safety standards and fisheries legislation.
- 14 The way in which some foreign flagged FCVs have been operating has, in the Panel's view, the potential to damage New Zealand's international standing and harm the fishing industry's reputation. Criticisms have been directed not just at the foreign owners and operators of the vessels in question but also at the New Zealand charter parties concerned for failing to ensure that their obligations under the Code of Practice on Foreign Fishing Crew are met. Criticisms have also been made of weaknesses in the government's monitoring and enforcement regime.
- 15 The Panel has concluded that urgent corrective action is required in the way New Zealand regulates the activities of FCVs in its EEZ. The package of recommendations outlined below is intended to provide government agencies and the industry with the means to ensure that in future all vessels operating in the EEZ adhere to New Zealand standards and rules.
- 16 The first set of recommendations deals with changes that can be implemented within the existing legislative framework. These relate mainly to practical improvements in the monitoring and enforcement of the rules established for FCVs. They cover actions to be taken by Ministry of Agriculture and Forestry, Maritime New Zealand and the Department of Labour. It is important that the rules are properly enforced and that decisive action is taken against owners and operators who refuse to adhere to them. These changes can be implemented relatively quickly and, in many cases, are already underway.

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<sup>3</sup> For the purposes of this Report, the EEZ fishing fleet is defined as all fishing vessels greater than 30 metres in registered length.

- 17 The second set of recommendations involves improvements in the sharing of information, co-ordination of decision making and co-operation in enforcement among key government agencies. The Panel has concluded that the present arrangements are disjointed and that a stronger collaborative focus is required on the activities of FCVs. We are encouraged that, since the commencement of the Inquiry, government agencies have taken a number of steps to strengthen their co-ordination mechanisms and operate in a more cohesive manner.
- 18 The third set of recommendations relates to amendments to the existing legislation and Code of Practice covering FCVs. The recommended amendments will remove some of the current impediments to the enforcement of New Zealand's rules and enable agencies to take decisive action when rules are breached. A key recommendation here is extending the application of the Health and Safety in Employment Act 1992 through the Fisheries Act 1996 to provide protection to crew on board FCVs.
- 19 The fourth set of recommendations is that New Zealand should announce its intention, subject to a national interest analysis, to ratify two key International Maritime Organisation conventions (Torremolinos Protocol and SCTW-F). It is also recommended that the merits of ratifying the International Labour Organisation (C188 – Work in Fishing) convention be considered. These conventions relate to safety, health and employment conditions for the crew of fishing vessels. The conventions will not only assist government agencies to apply international standards to FCVs in New Zealand waters, but send a clear signal to the international community as to the Government's determination to resolve the current issues.
- 20 The fifth set of recommendations involves a major policy change. We have recommended that legislation be amended to require all FCVs to be placed on a demise charter and their crew to be employed under a New Zealand employment agreement. This would establish the accountability of New Zealand charter parties for the treatment of crew.
- 21 Such a significant policy change may well have an impact on the economics of fishing, including the value of quota and Annual Catchment Entitlement. For these reasons, we have recommended that the Government allow a transition period to enable the fishing industry to adapt to these changes. This will also allow time to enact the necessary legislative amendments.
- 22 The Panel is not recommending that all FCVs be reflagged to New Zealand. We, however, do recommend that a mechanism enabling the government to require FCVs to reflag to New Zealand be included in the legislative changes proposed elsewhere in this Report, should this become necessary at some point in the future to protect New Zealand's reputation or trade interests. We also recommend that consideration be given to how the provisions of the Crimes Act 1961 might be applied to foreign flagged charter vessels in New Zealand's EEZ.
- 23 Finally, the Panel outlines its views on the implementation of its recommendations. We consider it important that the fishing industry, including worker representation, be involved in the development of detailed implementation plans. It is also recommended that the government, industry and the workforce work together to establish a new strategic plan for New Zealand's fishing industry in order to provide a clear and shared sense of direction for the future.

- 24 Our recommendations will, if adopted, have wide-ranging and significant implications for the way New Zealand's fishing industry is run. We have not reached these decisions lightly. Our conclusion follows extensive discussions and debate with major players in the industry as well as a wide range of interested parties and officials.
- 25 We submit these recommendations to Ministers for their consideration.

# List of Recommendations

## Practical improvements by agencies

### Recommendation 1

That the Ministry of Agriculture and Forestry continues its efforts to strengthen monitoring and enforcement of FCVs, including, but not restricted to, the following areas:

- placing an observer on all FCVs fishing in the EEZ;
- streamlining and improving observer reporting processes on FCVs, including making greater use of technology;
- ensuring that any outsourcing arrangements for its observer programme avoid possible conflicts of interest on the part of contracted firms and that the Ministry of Agriculture and Forestry has full control of the programme;
- ensuring the collection and availability of compliance data broken down by vessel, operator and charter party;
- considering additional ways of securing enforceable guarantees for any deemed value debts incurred; and
- considering non-fisheries offences when making FCV registration decisions.

### Recommendation 2

That Maritime New Zealand maintains its stronger focus on the enforcement of FCV compliance with New Zealand's maritime safety standards, including, but not restricted to, the following areas:

- maintaining the present higher standards of vessel safety inspections of FCVs;
- introducing the Maritime Operator Safety System 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; and
- taking steps to facilitate the recognition of foreign qualifications for the crews of FCVs.

### Recommendation 3

That the Department of Labour continues its efforts to strengthen its monitoring and enforcement arrangements for FCVs, including, but not restricted to, the following areas:

- rapid implementation of the improved audit system for FCVs;
- 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;
- increasing the frequency and thoroughness of inspections;
- introducing a 'fit and proper person' requirement into the Approval In Principle process;
- replacing the Deepsea Fishing Crew Employment Register with the standard immigration labour market test;
- proactively informing FCV crews of their rights and FCV operators of their responsibilities; and
- reducing timeframes for FCV operators to provide information and remedy problems.

## Closer interagency co-operation

### Recommendation 4

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 Ministry of Agriculture and Forestry official.

### Recommendation 5

That a pilot programme of compliance monitoring be developed across the Department of Labour, Ministry of Agriculture and Forestry and Maritime New Zealand. Personnel would be trained to monitor 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).

### Recommendation 6

That the Department of Labour, Ministry of Agriculture and Forestry 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.

## Legislative amendments

### Recommendation 7

That the following amendments be made to the Fisheries Act 1996:

- 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, warrants reconsideration of the initial decision to consent to that vessel's registration;
- include a provision enabling the Director General to take vessel safety considerations into account in determining whether to grant consent to register an FCV;
- include provisions increasing the visibility and accountability of the New Zealand-based authorised agent of the FCV owner;
- review the defence provisions to clarify the obligations of the parties involved in an FCV fishing operation;
- 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; and
- 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.

### Recommendation 8

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).

## Recommendation 9

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.

## Recommendation 10

That the Maritime Rules be revised to ensure that they apply to FCVs as well as New Zealand ships.

## International conventions

### Recommendation 11

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.

## Policy changes

### Recommendation 12

That:

- the Fisheries Act 1996 be amended to restrict registration to vessels on demise charter;
- the New Zealand charter party must be the employer of FCV crew under a New Zealand employment agreement;
- the Code of Practice be revised to reflect these changes; and
- 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.

### Recommendation 13

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.

### Recommendation 14

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.

## Implementation of recommendations

### Recommendation 15

That, once decisions are taken on the recommendations in this Report, steps be taken to engage with industry on a detailed implementation plan.

# Background

# 1

- 26 This chapter discusses the development of commercial fishing in New Zealand's EEZ, the legal and compliance frameworks that apply to FCVs and the operation of FCVs in New Zealand's EEZ.

## Development of commercial fishing in New Zealand's EEZ

- 27 Fishing of New Zealand's inshore waters for domestic consumption has taken place since very early days. The relative isolation of New Zealand from the large industrialised fishing nations of the northern hemisphere delayed the development of commercial fishing in the deep water surrounding New Zealand until the early 1960s.
- 28 In the late 1970s, New Zealand passed the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977,<sup>4</sup> which extended New Zealand's jurisdiction over its fisheries out to the 200-nautical mile limit of the EEZ. That Act defined New Zealand's territorial sea as extending from shore to 12 nautical miles (previously, it was limited to 3 miles) and defined the EEZ as extending from the outer limit of the territorial sea to 200 nautical miles. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) confirmed New Zealand's full sovereignty over the former and its more limited sovereign rights (primarily the right to exploit and manage fisheries and other natural resources and to protect the marine environment) over the latter.
- 29 By the late 1970s, New Zealand still had only limited capacity to fish in the EEZ. Catch that domestic vessels<sup>5</sup> could not harvest was allocated to foreign countries under government-to-government licence agreements. Under those agreements, vessels from Japan, Korea and the then USSR were permitted to fish in New Zealand and return their catch to foreign ports for processing. These vessels were catching in excess of 200,000 tonnes of fish each year from the EEZ.
- 30 At the time, foreign licence agreements were considered to be a temporary measure while domestic fishing capacity was built up. To help expand the domestic fishing industry, New Zealand operators were encouraged to engage in joint ventures with overseas fishing companies. The nature of these joint ventures ranged from foreign parties investing capital in New Zealand to the provision of additional fishing capacity in the form of foreign owned and flagged vessels chartered by New Zealand fishing companies. All joint venture arrangements required government approval and were subject to an assessment of the benefits they would deliver to the New Zealand economy.

## Introduction of the Quota Management System (QMS)

- 31 In 1983, the Deepwater Allocation System (**DAS**), a precursor to the QMS, was introduced to control the harvest of seven deepwater species.<sup>6</sup> Quota was allocated to fishing companies that could demonstrate that they had the capacity to operate in these fisheries and could process the catch. The government allowed these companies to use foreign owned and flagged vessels to harvest their catch entitlement.

<sup>4</sup> The contiguous zone is the area seaward measured from the outer edge of the territorial sea a further 12 nautical miles to a total of 24 nautical miles from the shore. The contiguous zone has no fishery-related significance.

<sup>5</sup> Vessels that are New Zealand owned and registered under the Ship Registration Act 1992.

<sup>6</sup> Barracouta, hake, hoki, ling, orange roughy, oreo dory and silver warehou.

- 32 The QMS was introduced in 1986. Under this system, fishing companies and other individuals were able to own a share of each fish stock<sup>7</sup> managed under the QMS. This quota entitled the owner to a fixed quantum of catch from a fish stock. This quota entitled the owner to a fixed quantum of catch from a fish stock. The initial allocation of quota was based on fishers' catch history and quota shares were granted in perpetuity.
- 33 In 1990, the QMS was amended so that quota shares entitled the holder to a proportion of the annual catch levels set by the Minister of Fisheries for each fish stock (according to its assessment of the state of the stock) rather than a fixed quantum. Further amendments that came into force in 2001 introduced the concept of Annual Catch Entitlement (**ACE**) as a tradable catching right generated each year from quota.

## Treaty of Waitangi issues relating to introduction of the QMS

- 34 The initial allocation model for the QMS did not recognise any Treaty rights for iwi. Iwi challenged the legality of the QMS, and, in 1989, the Crown and representatives of Māori reached an interim settlement of Māori claims to fisheries. This Settlement provided for the allocation of quota (or the cash equivalent) covering 10 percent of the total quota for each fish stock in the QMS. Further detail on the allocation of quota to Māori appears in Annex C.
- 35 In 1992, the Waitangi Tribunal reported on a claim by Ngai Tahu that Māori had a right to participate in the use of all New Zealand's fisheries resources subject to the QMS. The Tribunal found that such a development right existed and the government and Māori returned to negotiations. A full and final settlement was agreed that provided for:
- the purchase of a share in Sealord Products Limited;
  - 20 percent of any quota for fish stocks brought into the QMS after the Settlement date; and
  - the establishment of the Treaty of Waitangi Fisheries Commission to hold assets on behalf of iwi and to allocate those assets for the benefit of all Māori.
- 36 Quota received from the Crown as part of the Settlement had limitations placed on its tradability: it could be sold only to other iwi or to the Treaty of Waitangi Fisheries Commission, now known as Te Ohu Kaimoana. On the other hand, ACE derived from the Settlement quota could be sold on the open market.

## The New Zealand fisheries management regime today

### Quota

- 37 Quota is the property right to commercially fish a fish stock represented as quota shares that can be bought and sold. Quota shareholdings are guaranteed by the Crown and may have mortgages and other securities registered against them.
- 38 New Zealand currently has 100 species (or species groupings) subject to the QMS. A fish species can consist of a number of geographically isolated and biologically distinct populations. Each fish species in the QMS is therefore subdivided into geographically separate populations or fish stocks, defined by Quota Management Areas (**QMAs**). Sustainable catch limits are set for each fish stock managed under the QMS.

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<sup>7</sup> Fish species found in the New Zealand EEZ are typically made up of a number of biologically and geographically distinct stocks that have little or no interbreeding with other stocks of the same species. Fish stocks are geographical units used for fisheries assessment and management purposes that typically enclose the area covered by one or more biologically distinct stocks.

- 39 At present, there are 38 EEZ species<sup>8</sup> managed under the QMS. Of these, 13 main species are targeted by the industry (a full list of EEZ species included in the QMS appears in Annex D).
- 40 While quota can generally be freely traded, there are some caveats to quota ownership. Quota owners are prohibited from holding more than a specified proportion (typically 35-45 percent) of quota shares for a fish stock unless given special Ministerial approval. Also, an overseas person wishing to invest in quota needs the consent of both the Minister for Primary Industries<sup>9</sup> and the Minister of Finance under the overseas investment provisions of the Fisheries Act. Eleven applications for foreign ownership of quota have been approved since 2000 (further details appear in Annex E).

### Total Allowable Catch

- 41 The Minister for Primary Industries is responsible for setting sustainable annual catch limits – referred to as the Total Allowable Catch (**TAC**) – for all QMS fish stocks. TAC levels are reviewed annually and remain in place until amended. From the TAC, an allowance is made to provide for recreational and customary fishing (where applicable) and for all other fishing-related mortality of that stock. The remainder is made available to the commercial sector as the Total Allowable Commercial Catch (**TACC**).
- 42 The intention of the Fisheries Act is to limit the commercial catch of quota species to the TACC level set for each stock. All catch of QMS species is required to be landed<sup>10</sup> except in limited circumstances when discarding is allowed.<sup>11</sup> All catch must also be reported to ensure that fisheries management decisions, including the setting of sustainable catch limits, can be based on accurate information.
- 43 Figure 1 shows the TACC and actual catch for the major EEZ fisheries<sup>12</sup> combined for the last five completed fishing years. For each of these years, actual catch was less than the combined TACC.

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8 Species that are harvested within the New Zealand EEZ. Note that this is an umbrella term used throughout the report to define the fish species targeted by the offshore (or EEZ) fishing fleet that includes FCVs. EEZ species include both deepwater and pelagic species (species found in surface waters).

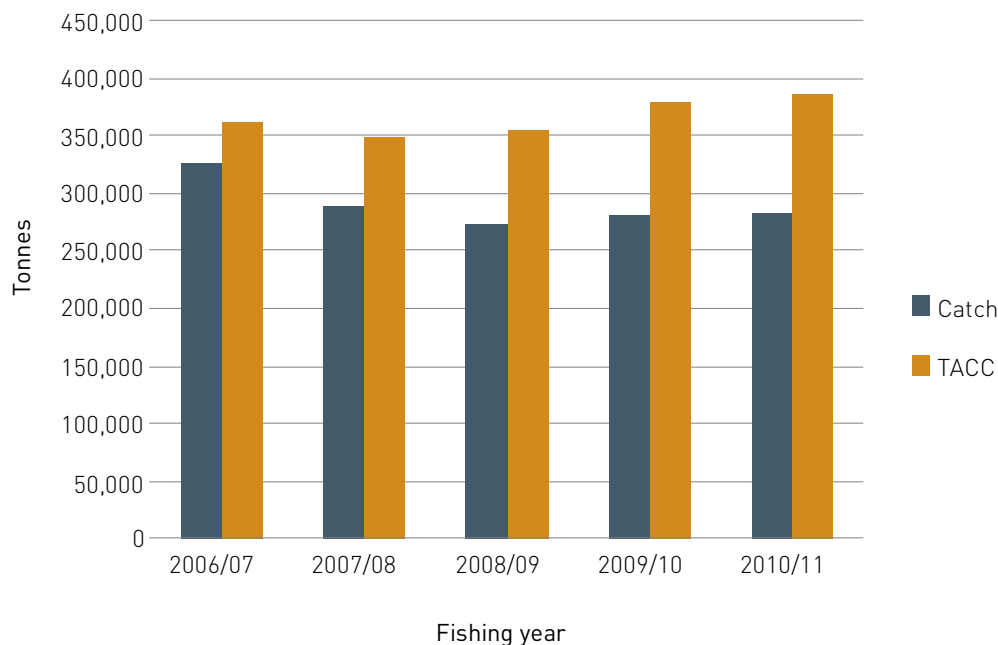
9 Note that before the 2011 election, this was the Minister of Fisheries and Aquaculture. Before 2010, this was the Minister of Fisheries.

10 Landing is required under the Fisheries Act and is defined as the removal or discharge of fish from a vessel. This typically occurs when fish is unloaded at a dock.

11 Discarding of QMS species is only allowed for species listed in the 6th Schedule of the Fisheries Act or if the discarding is authorised by a fisheries observer. Such discards are still considered to have been taken and must be covered by ACE or incur a deemed value payment.

12 These fisheries are hake, hoki, orange roughy, oreo dory, silver warehou, southern blue whiting, squid (excluding squid jig) and white warehou, in all quota management areas except 10 where trawling is prohibited; ling in quota management areas LIN 3-7; barracouta in quota management areas BAR 4, 5 and 7; and jack mackerel in quota management areas JMA 3 and 7. Quota management areas have been excluded from these figures on the basis that they are targeted by the inshore fleet which does not include FCVs.

Figure 1: TACC vs. Catch from major EEZ species for the 2006–07 to the 2010–11 fishing years



Source: *The Blue Book*, FishServe. <http://www.fishserve.co.nz/services/bluebook/>

- 44 New Zealand’s insistence on setting and enforcing sustainable TAC levels under the QMS has produced a fisheries management regime widely regarded as a world leader. New Zealand recently became one of only two countries to achieve a top ranking in a review of fisheries management systems around the world<sup>13</sup> and in a second study was ranked first among the 53 major fishing nations for its management of marine resources.<sup>14</sup>

### Annual Catch Entitlement

- 45 ACE is the catching or harvesting right generated each year from quota. Each individual quota holder is allocated ACE based on the proportion of quota shares they hold for the fish stock concerned. Once the TACC for a given year is set, the kilogram equivalent of each quota share is calculated and allocated to the quota owner on the first day of each fishing year as ACE. ACE may be traded on the open market but can be sold only to a New Zealand person or company. It is important to note that, apart from a possible carryover entitlement of 10 percent,<sup>15</sup> ACE is valid only for the fishing year in which it was created.
- 46 ACE may be traded at any stage during the fishing year and no aggregation limits apply to ACE holdings.

### Deemed values

- 47 The Fisheries Act requires that all commercial fishers must, by the end of each fishing year,

13 Boris Worm, Ray Hilborn, et al. 2009. Rebuilding Global Fisheries. *Science* Vol. 325 (5940): 578–585.

14 Jacqueline Alder, Sarika Cullis-Suzuki, et al. May 2010. Aggregate performance in managing marine ecosystems of 53 maritime countries. *Marine Policy* Vol. 34 Issue 3: 468–476.

15 Under certain circumstances set out in section 67A of the Fisheries Act, up to 10 percent of a fishers ACE holding in a fishing year may be carried forward into the next fishing year.

own enough ACE to fully cover (or 'balance') their catch of QMS species. 'Deemed value' payments must be made for any QMS catch that is not covered by ACE. Deemed values are set by the Minister for Primary Industries for each of the fish stocks in the QMS, taking into account the need to provide incentives for commercial fishers to acquire or maintain sufficient ACE to cover the fishing year but not setting them so high as to encourage the illegal discarding of catch.

### Reporting

- 48 All commercial fishers are required to report their fishing activities and catch on a form (referred to as a 'Catch Effort Return') that must be completed and supplied to MAF within a prescribed timeframe. This information is used by MAF scientists and fisheries managers to make fisheries management decisions, including recommended changes to the TAC for a fish stock.
- 49 Permit holders are also required to supply a Monthly Harvest Return (**MHR**). The MHR lists, by fish stock, all fish taken in the month reported. This information is used to monitor catch against ACE holdings and is cross-checked with other reports to verify the accuracy of information supplied on Catch Effort Returns.
- 50 To ensure that the QMS operates effectively, commercial fishers are required to sell their catch<sup>16</sup> to licensed fish receivers, who are required to submit detailed monthly records of all fish received. The information from these reports is also used by MAF to cross-check the information provided by permit holders.

### Commercial fishing permit

- 51 Any person who intends to catch fish for the purpose of sale requires a commercial fishing permit issued under the Fisheries Act. Permits are issued for a period of between one and five years upon payment of an application fee. It is up to the applicant to choose the duration of the permit.
- 52 There are few restrictions on who may be a permit holder and there are no specific provisions excluding overseas persons from holding a fishing permit. Permits are issued under delegated authority from MAF by FishServe, a wholly owned subsidiary of the Seafood Industry Council (**SeaFIC**).<sup>17</sup>

### Registration

- 53 The Fisheries Act requires that before any vessel can be used for commercial fishing in New Zealand fisheries waters, whether it is New Zealand or foreign flagged, it must be registered as a New Zealand fishing vessel. The consequences of registration of an FCV are that the vessel is deemed to be a 'New Zealand fishing vessel' subject to the same fisheries laws as all New Zealand flagged fishing vessels.
- 54 Before a foreign owned vessel can be registered, the Director-General (**DG**) of MAF must formally consent to its registration. When considering the application for consent, the DG takes into account a number of factors, including the offending history of the vessel and those involved in its operation and the nature of the charter agreement.

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<sup>16</sup> There are limited exceptions to this requirement as set out in section 110 of the Fisheries Act.

<sup>17</sup> SeaFIC is a company owned by the industry. Its main areas of focus are in shaping policies and the industry's regulatory framework, lobbying for surety of access to fisheries, reducing tariffs, working co-operatively on fisheries management and environmental issues, and providing an avenue for funding for scientific research and value-added innovation.

- 55 In granting consent, the DG has discretion to apply conditions as he/she sees fit.<sup>18</sup> Conditions that have been applied include requirements to have increased observer coverage and to inform MAF of changes to port schedules, ownership of vessel and senior crew.
- 56 The Fisheries Act also prescribes various conditions that apply to the registration of all FCVs. These conditions include the obligation to comply with the provisions of the Minimum Wage Act 1983 and the Wages Protection Act 1983.

## Legal and compliance frameworks

### The International legal framework

- 57 The rights and duties of flag States and coastal States within whose waters a vessel operates are set out in UNCLOS. UNCLOS represents an attempt to strike a balance between the traditional rights of flag States under the concept of 'freedom of the high seas' and the notion that a coastal State should be entitled to exercise a degree of control over the waters off its coast.
- 58 There are limits on a coastal State's authority over the activities of foreign flagged vessels in its EEZ. The basic UNCLOS principle governing the activities of vessels in an EEZ is that the flag State has primary jurisdiction over all technical, administrative and social matters relating to its vessels.
- 59 A coastal State's authority over foreign flagged vessels in its EEZ stems from its 'sovereign rights' with respect to the resources of the seabed and water column, including the right to control and regulate fishing activity. These rights are not absolute and are carefully balanced against the high-sea freedoms traditionally enjoyed by flag States. A key duty of coastal States is to establish conservation and management measures to ensure that fisheries are not over-exploited. Coastal States also have responsibility for the protection and preservation of the marine environment in their EEZ.

### Fisheries Management

- 60 The legislative framework for managing New Zealand fisheries is set out in the Fisheries Act and regulations made pursuant to it. The purpose of the Fisheries Act is to provide for the utilisation of fisheries resources in a sustainable manner. It applies to all commercial, recreational and customary fishing in New Zealand's marine environment. MAF is responsible for enforcing all fisheries legislation, including the provisions of the Act relating to the protection of New Zealand's marine environment.
- 61 Under the Fisheries Act, FCVs fishing in New Zealand waters are considered to be 'New Zealand fishing vessels' and, as such, must comply with all relevant provisions of the Fisheries Act and regulations. Under UNCLOS, there are no jurisdictional issues regarding the application of New Zealand fisheries laws and regulations to FCVs operating in New Zealand's EEZ. The situation is, however, less clear in respect of safety standards and labour conditions.

### Maritime safety

- 62 While New Zealand, as the coastal State, has certain rights under UNCLOS in relation to the management of the natural resources of its EEZ, the flag State has responsibility for the health,

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<sup>18</sup> Section 103(4) of the Fisheries Act 1996.

safety and qualifications of crew on board its fishing vessels and for the safety standards of the vessel's construction and operation.

- 63 There are currently no international conventions or standards in force that apply to the design and construction, seafarer certification or equipment standards for fishing vessels. Fishing vessels and crews are expressly excluded from the two major International Maritime Organisation (**IMO**)<sup>19</sup> conventions to which New Zealand is party: the International Convention for the Safety of Life at Sea (**SOLAS**); and the Convention on Standards of Training, Certification and Watchkeeping (**SCTW**).
- 64 Two IMO conventions dealing with fishing vessels have been developed: the 1993 Torremolinos Protocol for the Safety of Fishing Vessels (**Torremolinos Protocol**) and the 1995 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (**STCW-F Convention**). STCW-F will come into force in October 2012, and it is anticipated that the Torremolinos Protocol will come into force in October 2015. New Zealand is not yet a signatory to either convention.
- 65 Maritime New Zealand (**MNZ**) is a Crown entity with responsibilities under the Maritime Transport Act 1994, the Maritime Rules and Marine Protection Rules (the Rules) and the Ship Registration Act 1992. MNZ was established in 1993<sup>20</sup> and is governed by an independent Board appointed by the Governor General on the recommendation of the Minister of Transport.
- 66 MNZ is the regulatory authority responsible for ensuring the safety of fishing vessels and enforcing marine pollution standards. Under the Rules, all New Zealand flagged commercial fishing vessels are required to be in the oversight of a Safe Ship Management (SSM) organisation.<sup>21</sup> The actual assessment and approval of vessels as meeting New Zealand's requirements has been transferred to approved SSM organisations, with MNZ retaining an audit function to ensure that SSM companies apply appropriate inspection and approval processes.
- 67 Foreign flagged vessels are not required to enter into the SSM regime until they have completed two years of continuous operation in New Zealand. There are potential jurisdictional questions around the application of New Zealand's maritime safety regime to foreign flagged FCVs. These are discussed in detail in *Chapter Six: Vessel Safety*. At present, there is no legal requirement for operators of FCVs to report incidents and mishaps in the EEZ. MNZ has no authority to investigate accidents or incidents involving FCVs in New Zealand's EEZ, unless requested to do so by the flag State.
- 68 MNZ is responsible for ensuring that officers and crew working on New Zealand flagged fishing vessels have the necessary qualifications as specified in the Rules. The qualifications required of officers and crew working on foreign flagged FCVs are set by the flag State.

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19 The International Maritime Organisation (IMO) is the United Nations' specialised agency responsible for the safety and security of shipping and the prevention of marine pollution by ships. One hundred and sixty nine States are members of the IMO, including New Zealand and the flag States of all FCVs currently operating in the New Zealand EEZ.

20 The Maritime Safety Authority (MSA) was established as a Crown Entity in 1993. It was renamed Maritime New Zealand in 2005 to better reflect the widening of the organisation's responsibilities to include maritime safety, security and protection of the marine environment from pollution.

21 Following a recently review of its safety systems that identified, amongst other things, issues with the devolution of the assessment and approval of vessels as safe, MNZ is now planning to move to a new regime known as the Maritime Operator Safety System (MOSS). Further details are included in Chapter Six: Vessel Safety.

## Employment conditions

- 69 The International Labour Organisation (**ILO**) is the United Nations' specialised agency responsible for the promotion of social justice and internationally recognised labour rights. While the ILO has, in recent years, negotiated and adopted conventions and recommendations that set standards for migrant workers and workers on fishing boats, New Zealand is not party to these conventions.

### Code of Practice on Foreign Fishing Crew (the Code of Practice)

- 70 The rights of foreign flagged FCV crews are set out in an industry code of practice. In the absence of specific legal provisions, the Code of Practice was introduced to impose a broad range of employment requirements on the use of foreign labour on foreign flagged FCVs operating within the EEZ. Key points of the Code of Practice appear in Annex F.
- 71 The Code of Practice was agreed after negotiations involving the industry, the government and the New Zealand Fishing Industry Guild.<sup>22</sup> The Code of Practice includes minimum working and living conditions for FCV crews (including regular reporting and provisions for onboard inspections during port visits), minimum remuneration requirements and the right of foreign crew to access employment dispute resolution mechanisms under the Employment Relations Act 2000.

### Minimum wages

- 72 The Fisheries Act extends the application of the Minimum Wage Act and Wage Protection Act to FCV crew.<sup>23</sup> The Fisheries Act also allows Labour Inspectors to exercise their powers under these Acts. It is the responsibility of the Department of Labour (**DoL**) to ensure that FCVs operating in the EEZ comply with these Acts.

### Work visas for FCV crew

- 73 Under the Immigration Act 2009, New Zealand work visas for foreign crew on FCVs are approved using a two stage process. The New Zealand-based company that is party to the charter agreement for a particular FCV (referred to as the New Zealand charter party) must generally obtain an Approval in Principle (**AIP**) to employ foreign crew on an FCV, and the particular crew members must apply for, and be granted, an appropriate work visa. The following three conditions must be met (in addition to generic requirements of health, character and *bona fides*):
- immigration authorities are satisfied that the New Zealand charter party has made a genuine attempt to recruit New Zealanders;
  - immigration authorities are satisfied that the terms and conditions of the Code of Practice will be adhered to; and
  - the New Zealand charter party provides a guarantee of payment of minimum levels of crew remuneration in the event of default by the foreign employer.

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<sup>22</sup> The New Zealand Fishing Industry Guild is a fully registered union under the Employment Relations Act 2000 and represent commercial fishermen throughout New Zealand.

<sup>23</sup> Section 103(5) of the Fisheries Act.

## Health and safety of crew

- 74 As indicated above, two IMO conventions have been developed that set safety standards for the protection of crews of fishing vessels: the Torremolinos Protocol and the STCW-F Convention. As yet these conventions have not entered into force.
- 75 The health, safety and wellbeing of all those on board foreign flagged vessels in the EEZ remain the responsibility of the flag State. While coastal States have jurisdiction over artificial islands or installations (such as oil rigs) in their EEZ, they have no general jurisdiction over foreign flagged vessels. New Zealand's Health and Safety in Employment Act (**HSE Act**) does not currently apply to FCVs.

## Criminal activity

- 76 UNCLOS does not give coastal States general jurisdiction over criminal activity on foreign flagged vessels in their EEZ. New Zealand's criminal law extends beyond New Zealand territory and into the EEZ only in certain circumstances. Extra-territorial jurisdiction may be exercised in limited circumstances for international crimes and for general criminal offending in the case of vessels operating out of New Zealand ports where the flag State consents to prosecution. In either case, prosecutions require the consent of New Zealand's Attorney General.

## Food safety

- 77 MAF is responsible for the regulatory regime established to ensure that food is safe for human consumption. The Animal Products Act 1999 sets out New Zealand's legal requirements for ensuring food safety and the suitability of animal products, including seafood. MAF is responsible for setting and administering all food safety standards under this Act and has entered into a number of intergovernmental agreements on the recognition of food safety standards.
- 78 Risk Management Programmes (**RMP**) are required for all factory vessels (fishing vessels that fillet on board or carry out further processing). The same requirements and criteria are applied whether the vessel is New Zealand flagged or foreign flagged. Before a vessel is allowed to fish, an onsite evaluation by an independent MAF approved evaluator and a MAF assessment of the programme is required. Limited processing vessels<sup>24</sup> operate under a Regulated Control Scheme (**RCS**). Verification of compliance with RMP and RCS requirements is undertaken in port on a performance-based frequency.

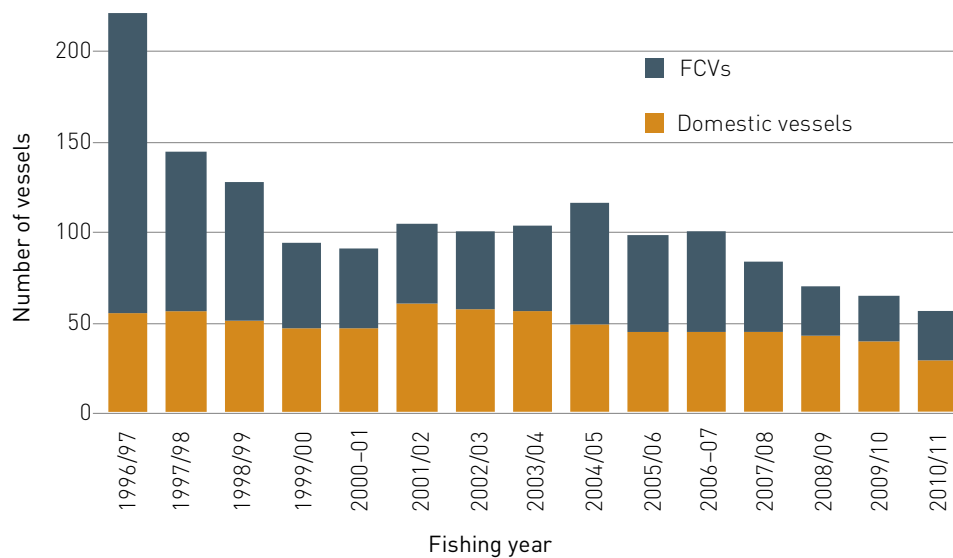
## Use of FCVs in New Zealand's EEZ fisheries

- 79 FCVs are vessels that are owned by a foreign person and fish in New Zealand waters under contract or charter to a New Zealand company. These vessels are restricted to operating in the EEZ. The fishing fleet operating in New Zealand's EEZ is a mix of domestically owned and operated fishing vessels and FCVs. FCVs have operated in New Zealand since the earliest days of its EEZ fishing activity. The overall number of fishing vessels and the number of FCVs operating in the EEZ has fluctuated over time (see Figure 2).

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<sup>24</sup> A registered Limited Processing Fishing Vessel's operation is restricted to limited processing (the washing, scaling, gutting, deheading, tubing, tailing, chilling, freezing, storage, packing, or transport of fish material or fish product for human consumption).

Figure 2: Number of FCVs and domestic vessels operating in New Zealand's EEZ by fishing year

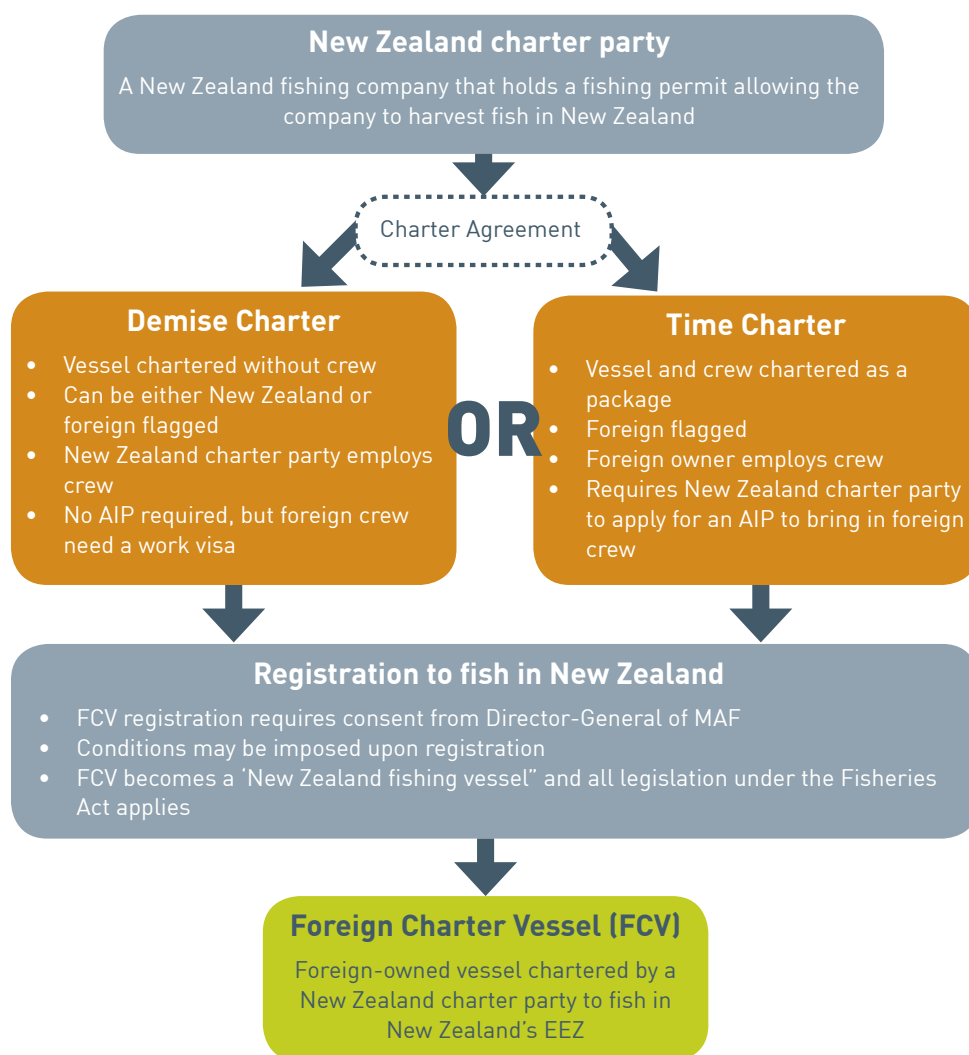


Source: MAF database.

- 80 New Zealand companies charter FCVs from foreign vessel owners under either a demise or a time charter arrangement (details of the companies and FCVs involved appears in Annex G).
- 81 Under a demise<sup>25</sup> charter (also referred to as a 'bareboat charter'), only the vessel (including plant and fishing gear) is chartered. The company chartering the vessel (referred to as the New Zealand charter party) assumes control and possession of the vessel for the duration of the charter period, including the right to employ officers and crew to operate the vessel.
- 82 A time charter is where both the vessel and crew are chartered as a package. Under this arrangement, control and possession of the vessel are retained by the vessel owner. Of the 27 FCVs operating in the EEZ in the 2010/11 fishing year, 26 operated under a time charter and one under a demise charter.

<sup>25</sup> Section 2 of the Ship Registration Act 1992.

Figure 3: Key steps and parties involved in enabling an FCV to operate in New Zealand's EEZ



Source: Panel Secretariat.

83 All commercial vessels, including fishing vessels, are required to fly the flag of the country in which they are registered.<sup>26</sup> Vessels may fly only one flag at a time but are free to change flags as long as there is a genuine link<sup>27</sup> between the vessel and the flag State and the vessel satisfies any conditions set by the flag State. Decisions on which flag State a vessel operates are made for a variety of reasons including the State in which the vessel is owned and the State in which the vessel operates. In some cases a vessel may be reflagged to a State with lower regulatory requirements and/or a less vigorous enforcement regime to reduce operating costs. These States are referred to as 'flags of convenience'.

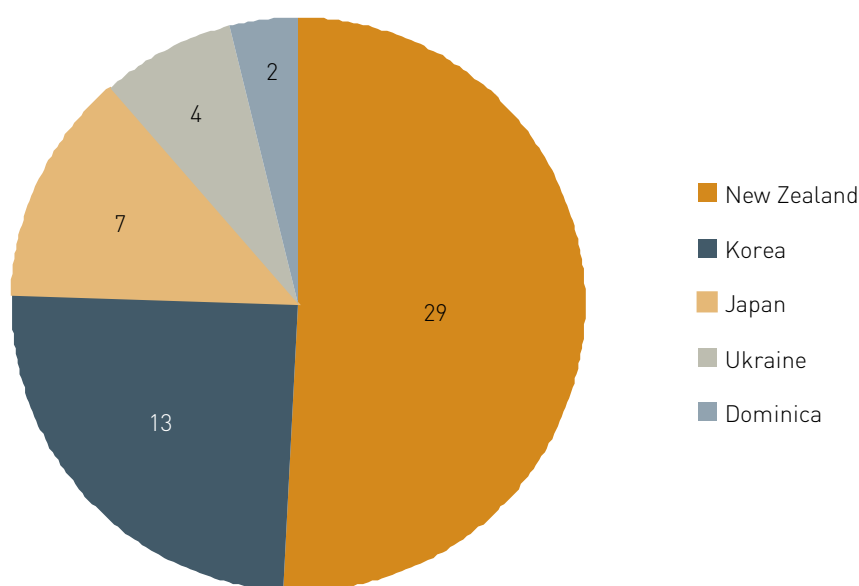
84 Under New Zealand's Ship Registration Act, only fishing vessels chartered on a demise basis

<sup>26</sup> All vessels are required to be registered in their flag State. Note that in the New Zealand context this refers to registration under the Ship Registration Act 1992 and not the registration under the Fisheries Act.

<sup>27</sup> Note that the term 'genuine link' is not defined internationally.

may be flagged to New Zealand. (The one vessel currently operating in New Zealand under a demise charter is flagged to New Zealand). Of the time chartered vessels currently operating in New Zealand's EEZ, 13 are flagged to the Republic of Korea, seven to Japan, four to the Ukraine and two to Dominica (see Figure 4).

Figure 4: The number of fishing vessels operating in New Zealand's EEZ in the 2010/11 fishing year by flag State



Source: MAF Database.

- 85 The majority of FCVs operate year-round in New Zealand's EEZ. In the 2010/11 fishing year, there were 56 vessels operating in New Zealand's deepwater and pelagic<sup>28</sup> EEZ fisheries. Twenty seven of these vessels were FCVs and 29 were domestic vessels. Six of the FCVs were seasonal vessels fishing in the EEZ for only part of the fishing year. These vessels operated in fisheries such as the squid jig and tuna longline fisheries that require specialist gear or particular vessel capabilities. The FCVs that remain in the EEZ year round are all trawl vessels, apart from one that pots for hagfish. Further details of the fleet operating in New Zealand's EEZ in 2010/11 appear in Annex G.
- 86 The use of a number of foreign flagged vessels to fish privately owned quota under contract to a domestic permit holder within the EEZ is unique to New Zealand. This reflects the size of the New Zealand EEZ (the fourth largest in the world), the comparatively limited capacity of the domestic fishing industry and the use of an individual transferable quota system (the QMS).
- 87 Fishing in the EEZ of most other developed countries such as the United States of America (US), Canada and Australia is carried out almost exclusively by domestically flagged vessels. Some developing countries with small domestic fishing fleets allow access to foreign flagged vessels. Countries such as Namibia and many Pacific nations, for example, have entered into government-to-government licensing agreements that give foreign flagged vessels access to their fisheries. Catch taken under these agreements is typically retained by the vessel, with the coastal State receiving payment for the use of the resource.

<sup>28</sup> Pelagic species are those that are found in the top third of the water column.

88 New Zealand's fishing quotas are fully allocated, and the Crown is not in the business of owning quota.<sup>29</sup> As a consequence, New Zealand has no fisheries surplus available for government-to-government licensing agreements.

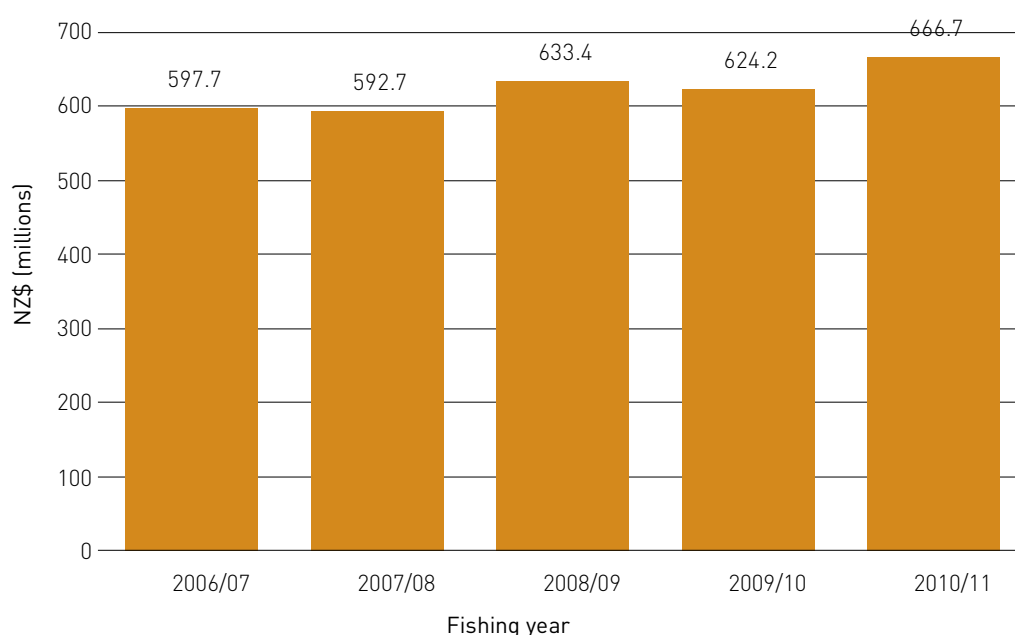
## Species targeted by FCVs

89 The main EEZ species covered by the QMS include deepwater species (orange roughy), middle-depth species (southern blue whiting) and highly migratory pelagic species (southern bluefin tuna) (a full list of EEZ QMS species appears in Annex D). The majority of species targeted by the FCV fleet are high volume, low value stocks such as squid, barracouta and southern blue whiting. Japanese FCVs that fish in the EEZ for only a few months each year operate in seasonal fisheries, primarily the squid jig and the tuna long-line fisheries.

## Export value of catch taken by FCVs

90 The export value of New Zealand's EEZ fishery has increased in recent years and currently exceeds \$650 million, as shown in Figure 5 below.

Figure 5: Export value of major EEZ species for the 2006/07 – 2010/11 fishing years

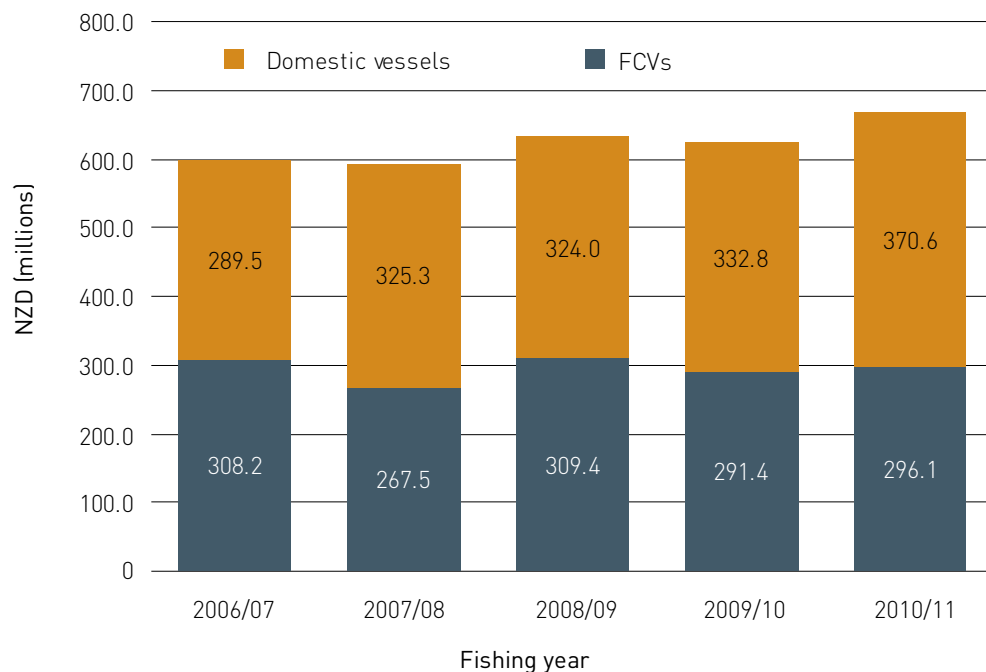


Source: Seafood Industry Council Export Statistics.

91 Estimated export value by vessel type and the proportions of catch taken by FCVs are shown in Figure 6 and Figure 7 below. These figures show that the export value of product taken by FCVs has remained relatively stable over the past five years and that the growth in export value over this period has come primarily from domestic vessels.

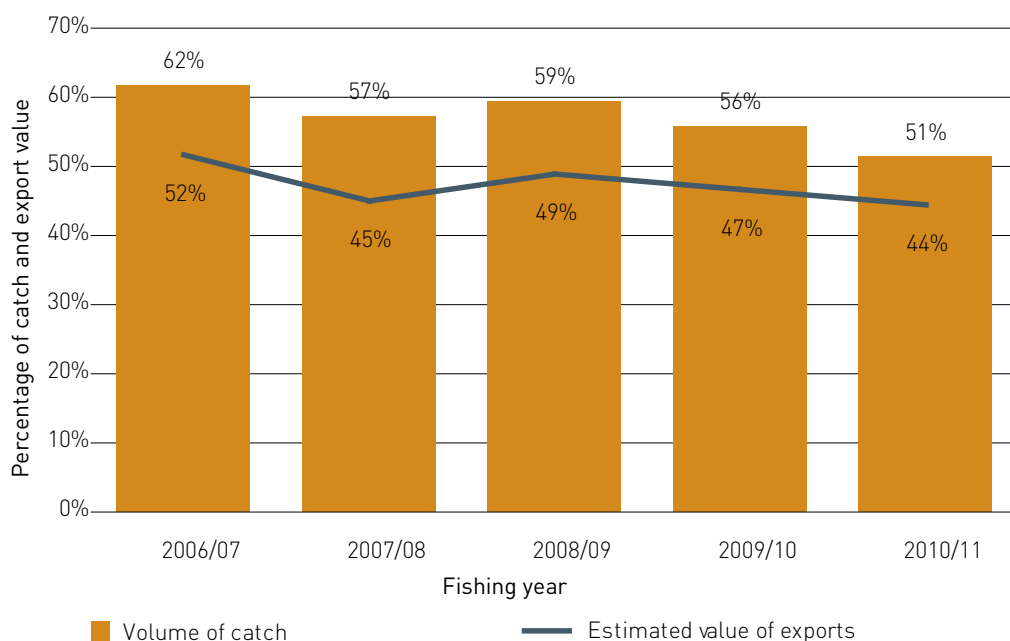
<sup>29</sup> The Crown does hold some quota relating primarily to that in areas where conservation measures apply, and small amounts of other species for various reasons, including quota that has been returned to the Crown when some quota owners have left the industry.

Figure 6: Estimated export value by vessel type for the 2006/07 – 2010/11 fishing years



Source: Seafood Industry Council Export Statistics.

Figure 7: FCVs proportion of the major EEZ species catch by volume and export value for the 2006/07 – 2010/11 fishing years



Source: Seafood Industry Council Export Statistics .

# International Reputation

## 2

- 92 This chapter discusses the risks posed to New Zealand's international reputation and the seafood industry's 'brand' as a result of the widely reported allegations concerning the activities of certain FCVs.

## Current situation

### New Zealand's international reputation

- 93 New Zealand's international standing is important, both for its international relations generally and because the economy depends heavily on trade with other countries. New Zealand takes its responsibilities to the international community seriously and puts considerable effort into living up to its international obligations.
- 94 In the field of human rights, New Zealand played a significant role in developing the Universal Declaration of Human Rights in 1948 and is party to all major international human rights instruments. New Zealand's Human Rights Act 1993 is based on the principles of the Universal Declaration of Human Rights and includes the right to security and the right not to be subjected to degrading treatment or punishment. Under successive governments, and over many years, New Zealand has built a strong international reputation through its active involvement in human rights issues.
- 95 Similarly, New Zealand has traditionally been an active and respected advocate for the rights of workers to a safe working environment and decent employment conditions. Articles in the Universal Declaration of Human Rights of relevance to recent complaints about FCVs are the rights to just and favourable conditions of work, just and favourable remuneration and reasonable working hours. These rights are echoed in various ILO conventions. New Zealand is a signatory to virtually all major ILO conventions relating to labour standards.
- 96 The completion of UNCLOS negotiations in 1982 confirmed New Zealand's claim to full sovereignty to a territorial sea extending 12 miles out from the coastline and gave limited sovereign rights over an EEZ extending out 200 nautical miles. New Zealand has a strong interest in continuing to support UNCLOS in its present form. Although UNCLOS has solid international backing, no international treaty is immutable. It is important that New Zealand maintain its reputation for the responsible and sustainable management of the resources of the EEZ and that its policies remain consistent with the approach taken during the UNCLOS negotiations.
- 97 New Zealand, Korea and Japan are members of the Organisation for Economic Co-operation and Development (**OECD**) and are signatories to the OECD's Guidelines for Multinational Enterprises, which state, among other things, that business enterprises should work within the framework of internationally recognised human rights and labour standards.

### New Zealand's expectations of FCVs

- 98 The Panel considers that the New Zealand public is entitled to assume that all crew on fishing vessels operating in the EEZ, regardless of nationality, will have safe working conditions, suitable crew accommodation, adequate clean water and food, fair levels of pay and protection from abuse. All parties, including industry, have a responsibility to ensure that any foreign flagged vessels permitted to fish in New Zealand's EEZ abide by all relevant New Zealand laws and standards.

## Submitters' views

- 99 A number of submitters expressed concern at the recent mistreatment of crews on certain FCVs operating in New Zealand's EEZ. There was widespread agreement that recent allegations of breaches of safety and labour standards puts both New Zealand's international standing and the reputation of the New Zealand fishing industry at risk.
- 100 Some submitters felt that the seriousness of the incidents had been exaggerated by the media and by those who had been lobbying against the use of FCVs in New Zealand's EEZ. Other submitters, however, were persuaded that the problems had been sufficiently well documented to establish that breaches of the relevant laws and standards had taken place in the areas of safety and crew treatment. It was noted that these problems seemed to be confined to a small number of Korean FCVs, and that FCVs currently operating under Ukrainian, Japanese and Dominican flags did not appear to have the same issues.
- 101 Strong concern was expressed to the Panel at what appeared to be a blatant disregard on the part of a small number of foreign owners and operators of FCVs for the health and safety of their crew members. Specific complaints, based in large part on statements made by disaffected crew members, included poor vessel safety standards, substandard workplace conditions, reports of abuse and mistreatment by officers and persistent underpayment of wages. The Panel received a number of submissions documenting such problems. Some groups categorised the reported incidents as a breach of human rights.
- 102 Evidence was produced that reports of the alleged incidents had appeared in a number of overseas newspapers and other publications, as well as in the New Zealand media, and that the authorities of various countries were taking a close interest in how the FCV issues were dealt with.
- 103 Most submitters regarded the foreign owners and operators of the FCVs in question as the prime culprits. Concern was also expressed at the failure of the New Zealand charter parties concerned to meet their responsibilities under the Code of Practice and at the apparent inability of government agencies to take decisive action against offending FCVs.
- 104 Many submitters expressed concern that what they saw as a privilege given to those vessels to fish in New Zealand's waters was being abused in this way. A commonly expressed sentiment was that if foreign vessels were to be allowed to fish in New Zealand's waters, they should be made to play by New Zealand's rules and to comply with all relevant New Zealand standards.
- 105 Some submitters considered that the problems were capable of being dealt with under the existing legislative framework, emphasising that the problem was confined to a few vessels and that all FCVs should not be penalised for the misbehaviour of a few. Many submitters called for stronger monitoring and enforcement action by government agencies.
- 106 Some submissions suggested that the root of the problem was that under the provisions of UNCLOS, New Zealand had only limited jurisdiction over foreign flagged FCVs in its EEZ. Initial submissions from three key government agencies (MAF, MNZ and DoL) described the difficulties of applying New Zealand standards to foreign flagged vessels under the current international legal framework and suggested that consideration be given to requiring that all FCVs be flagged to New Zealand.
- 107 One suggestion put to the Panel was that the New Zealand fishing companies involved with FCVs should adopt the set of guidelines on business and human rights known as the 'Ruggie Principles'.

These principles, adopted by the United Nations in 2011, establish standards for government regulation and business practices aimed at protecting human rights and providing redress when infringements occur. We were told that New Zealand's Human Rights Commission is currently in discussion with the Human Rights Commissions of Korea and Indonesia and the Association of Southeast Asian Nations' (**ASEANs**) Intergovernmental Human Rights Commission about reports of the mistreatment of Indonesian crew members on Korean flagged FCVs in New Zealand's EEZ.

- 108 It was also suggested by a number of submitters that New Zealand should become a signatory to the relevant IMO and ILO conventions establishing international standards for vessel safety, crew qualifications and employment conditions on fishing vessels.
- 109 Many fishing companies and others expressed concern at the impact of these problems on the reputation of New Zealand's seafood industry. It was noted that consumers in key markets were paying increasing attention to factors such as sustainability and ethical practices when deciding what food they should buy, and that damage was being done to the New Zealand seafood brand.

## Issues identified

### Damage to New Zealand's international reputation

- 110 During 2011 there were complaints and allegations about such issues as vessel safety, living and working conditions, physical and sexual abuse by officers, underpayment and manipulation of time sheets. Although the Panel has not investigated specific claims, it has discussed the complaints in detail with some FCV crew members and government officials, considered a large amount of documentation and anecdotal evidence and been kept informed of the progress made with investigations by government agencies.
- 111 There is no doubt that these allegations of exploitative labour practices and sub-standard working conditions have been damaging to New Zealand's reputation as a progressive and fair-minded nation. Reports have appeared in *The New York Times*, *Le Monde*, *China Daily*, *Jakarta Globe* and *The Guardian* newspapers, publications including *Bloomberg Business week*, as well as in a number of New Zealand newspapers and industry publications. The allegations have also been picked up by a range of international online media agencies.
- 112 Most of the incidents reported that are causing damage to New Zealand's reputation appear to have occurred on Korean flagged vessels. The names of certain Korean vessels and owners came up repeatedly in this context. The alleged abuse is against predominantly Indonesian crew members. Very few complaints were received by the Panel about FCVs flagged to other States, although some of these have been the subject of complaints in the past.
- 113 All five FCVs currently under investigation by government agencies for breaches of employment law or safety standards are flagged to Korea. DoL has five outstanding audits to complete by the end of February 2012. MAF has withdrawn its consent to register one vessel in February 2012. MNZ has recently placed one vessel in detention and placed a second vessel under an Imposition of Conditions (**IOC**) order.

114 There have been allegations in both the domestic and international media of human trafficking on FCVs in New Zealand waters.<sup>30</sup> The US State Department produces an annual *Trafficking in Persons* Report that assesses 184 countries, including New Zealand, on measures taken to combat human trafficking. The US has identified fishing as a problem area. New Zealand's handling of recent FCV allegations, including this Inquiry, has been closely followed by the US State Department. The US Ambassador for Trafficking in Persons visited New Zealand recently for discussions with officials and the industry. A further *Trafficking in Persons* Report is scheduled to be issued by the US State Department later this year.

## Risks to New Zealand's seafood industry

115 Repeated complaints about the activities of FCVs in such areas as vessel safety and workplace conditions put New Zealand's fishing industry's reputation and continued access to markets at risk. A number of fishing companies noted that retailers in markets such as the United Kingdom (UK) are paying close attention to consumer concerns about the sustainability of, and ethical considerations around, the food they buy. A recent UK Government report found that ethical standards as well as sustainability issues are now closely linked to consumers' purchasing decisions.<sup>31</sup>

## Enforcing New Zealand laws and standards on board FCVs

- 116 International law grants primary jurisdiction for employment and vessel safety to the flag State. New Zealand's limited jurisdiction over FCVs operating in the EEZ makes it difficult for agencies to enforce laws and regulations. This risks creating a perception that New Zealand is failing to take appropriate action.
- 117 Successive New Zealand governments have attempted to enforce appropriate laws and standards on FCVs. The Fisheries Act has been used to set minimum wage rates and apply New Zealand's wage protection legislation to FCV crews. Immigration procedures, in conjunction with the Code of Practice, set labour conditions and workplace standards for FCVs.
- 118 Finding hard evidence is often difficult in the case of fishing vessels operating in the EEZ. Foreign owners' use of manning agents<sup>32</sup> based in other countries also makes enforcement difficult. Some New Zealand charter parties have sheltered behind the defence of having taken 'all reasonable steps' when accused of failing to meet their obligations under the Code of Practice.
- 119 New Zealand does not have general criminal jurisdiction over FCVs (except for marine pollution offences under the Maritime Transport Act). Leaving aside international crimes such as torture, the Crimes Act enables New Zealand to exercise general criminal jurisdiction over FCVs operating in its EEZ in only very limited circumstances.<sup>33</sup>

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30 The United Nations definition of trafficking is: "Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".

31 Department for Environment, Food and Rural Affairs (UK) 2011. *Attitudes and Behaviours around Sustainable Food Purchasing*.

32 A manning agent is responsible for arranging crew to work on an FCV. Manning agents are based outside of New Zealand.

33 Section 8 of the Crimes Act: The offender must arrive in New Zealand on that ship or aircraft in the course or at the end of a journey during which the act was done or omitted, and the Attorney General must consent before such jurisdiction is exercised, and the Attorney General must be satisfied that the government of the country to which the ship belongs has consented to the institution of the proceedings.

## Comment

120 It is clear to the Panel that a small number of operators of foreign flagged FCVs have been mistreating their crews and acting in disregard of New Zealand's laws. These activities have put at risk New Zealand's standing in the international community and the reputation of the seafood industry. Reports of crew mistreatment on certain FCVs in recent months have received prominent treatment in newspapers, magazines and online media around the world. Although government has gone to considerable lengths in recent years to enforce New Zealand standards on board FCVs, it is clear that additional measures now need to be put in place to prevent the exploitation of foreign workers on FCVs, to safeguard New Zealand's international reputation and to protect the long-term interests of the fishing industry and 'Brand New Zealand'.



# Economic Return to New Zealand

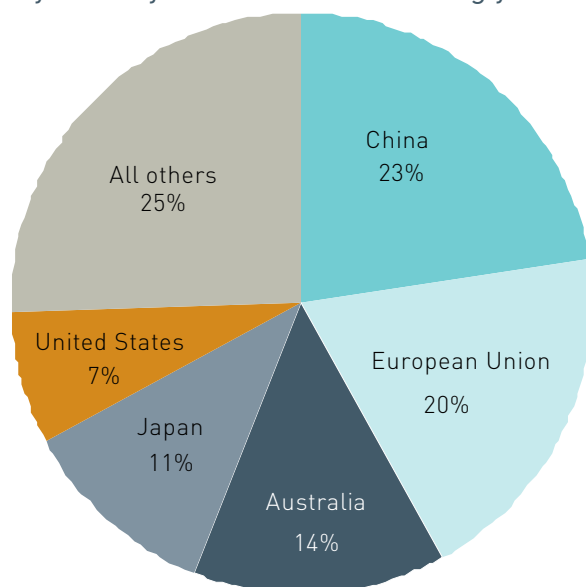
- 121 This chapter discusses the economics of New Zealand's EEZ fishing industry.
- 122 It is difficult to accurately assess the contribution that FCVs make to New Zealand's economy. The fishing industry largely comprises private companies that keep their financial information confidential. For these reasons, export revenue has been used in this Report as the most reliable economic indicator for the EEZ fishing industry. Information contained in this chapter has been sourced primarily from submitters, government officials and published information, where available.

## Current situation

- 123 Economic activity in the EEZ fishing industry is generated in a number of different ways including payments relating to the sale and purchase of ACE, payments to crew, payments to suppliers (such as stevedoring firms, cool stores, processors and fuel suppliers) and revenue generated from selling fish caught in the EEZ. Much of this activity is, however, difficult to quantify.
- 124 MAF estimates that almost 100 percent of New Zealand's EEZ catch is exported, with very little product entering the domestic market. The calculation of export revenue included in this Report is based on products derived from the following species caught mainly in the EEZ: barracouta, blue mackerel, hake, hoki, jack mackerel, ling, orange roughy, oreo dory, scampi, southern blue whiting, squid, tuna (includes albacore, bigeye, Pacific bluefin, skipjack, southern bluefin and yellowfin tuna) and warehou (includes white, silver, blue and common warehou).
- 125 New Zealand is a relatively small player in the world fishing economy, accounting for just 0.5 percent by volume of world fisheries production (excluding aquaculture) in 2008. This places New Zealand 33rd among the world's fishing nations<sup>34</sup>. However, fisheries play an important role in the New Zealand economy. Fishery exports (excluding aquaculture) are New Zealand's fourth largest export earner,<sup>35</sup> comprising 3 percent of New Zealand's total exports.
- 126 Since June 2009, export earnings and export volumes have been increasing. The rebound of the hoki fishery has driven the increase in export volume in the past two years, while stronger food commodity prices have helped increase prices for New Zealand's fisheries exports (excluding aquaculture) more generally.
- 127 The largest export markets for New Zealand's EEZ fish exports are China, the EU and Australia (see Figure 8). The continuing strength of the Australian and Chinese economies has assisted demand for New Zealand seafood in these markets and cushioned the industry from the full impact of the global financial crisis. However, it is predicted that the Chinese and Australian economies may be slowing over the medium term, and demand elsewhere continues to be depressed, especially in the EU and the US.

<sup>34</sup> Fisheries and Aquaculture Department, Food and Agriculture Organization 2008. *State of World Fisheries and Aquaculture*.  
<sup>35</sup> After dairy (30 percent), sheep (including wool) and beef (15 percent), and forestry (10 percent).

Figure 8: Exports by country for the 2010/11 fishing year



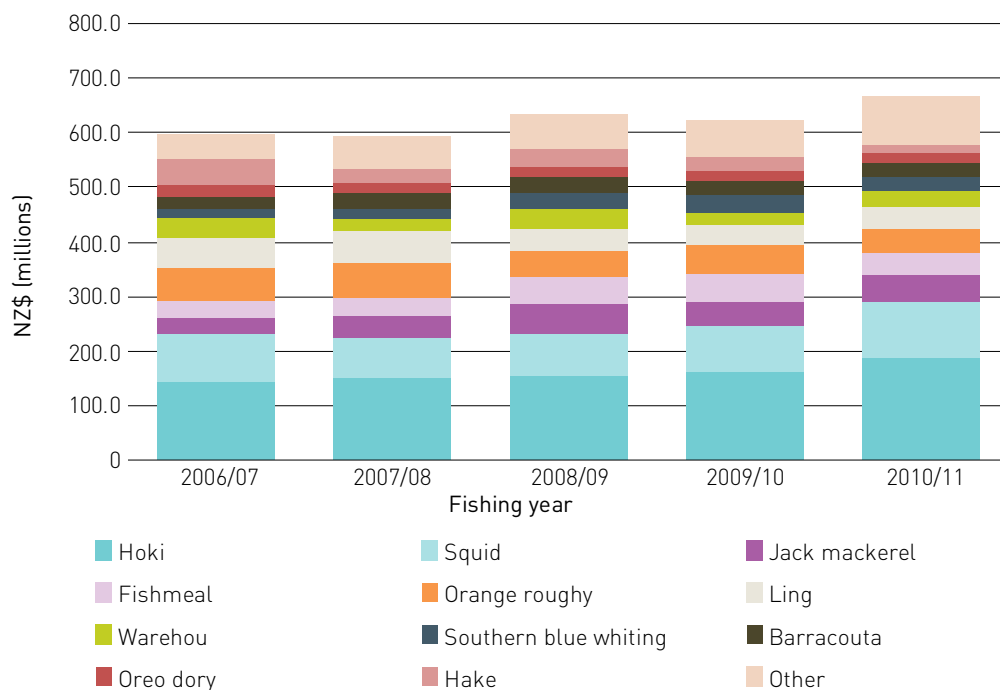
Source: Seafood Industry Council, Export Statistics, October 2011.

## EEZ fishing fleet

- 128 New Zealand's EEZ is fished by 17 companies but is dominated by the three largest players in the industry (Sanford, Sealord and Talley's). Fishing companies use a variety of business models, with each model creating different drivers and company structures. It is apparent that differing views on the use of FCVs in New Zealand's EEZ have caused a rift in the fishing industry.
- 129 The overall catch of the EEZ fishing fleet makes up roughly three-quarters of the total catch volume for QMS species. In 2011, the EEZ fleet comprised 56 vessels, 26 of which were FCVs on time charter and one FCV on demise charter. For the fishing year ended September 2011, FCVs caught 51 percent of the total EEZ fish landed in New Zealand by volume and contributed an estimated 44 percent to the value of New Zealand's EEZ exports.<sup>36</sup> FCVs are used by most companies involved in EEZ fishing, either directly or through the sale of ACE.
- 130 Figure 9 shows the contribution of key EEZ species to New Zealand's overall export revenue for the last five fishing years.
- 131 In a typical year, FCVs participate in a range of different fisheries, many of which are in specified fisheries management areas and have clearly defined seasons. A vessel's catch plan is often repeated over several years, but can change if, for example, a particular fishery performs poorly.
- 132 FCVs tend to catch the higher volume lower value EEZ species as illustrated below. Figure 10 below shows the percentage catch by FCVs and domestic vessels for the 11 main EEZ species.

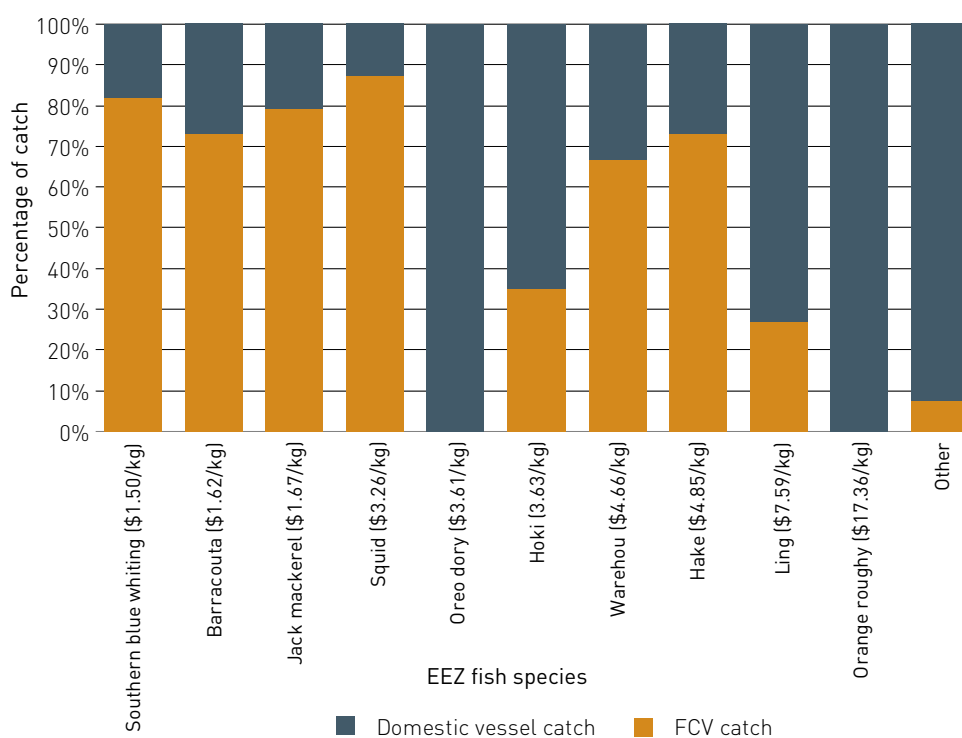
<sup>36</sup> Seafood Industry Council, *Export Statistics*, October 2011 and MAF catch database.

Figure 9: Export value by major EEZ species for the 2006/07 – 2010/11 fishing years



Source: Seafood Industry Council, Export Statistics.

Figure 10: Percentage catch by FCVs and New Zealand flagged vessels for the 2010/11 fishing year



Source: Seafood Industry Council, Export Statistics October 2011 and MAF catch database.

- 133 The value of fish species in Figure 9 are based on the average processed price.<sup>37</sup> New Zealand vessels that catch hoki obtain a much higher price, as it is filleted and snap frozen at sea (headed and gutted compared to filleted). FCVs do not target oreo dory, despite its lower value, as it is caught in conjunction with orange roughy. Orange roughy is a high-value fishery targeted by domestic vessels.

## International factors impacting on fishing in New Zealand's EEZ

- 134 New Zealand fishing companies market their catch internationally, competing with countries that, in many cases, pay much lower wage rates and receive government subsidies for capital investment and/or operating costs such as fuel costs. For example, deep-sea fishers in Indonesia are paid approximately NZ\$125 – \$140 per month.<sup>38</sup> New Zealand immigration rules require that crew are paid the New Zealand minimum wage plus \$2 for every hour worked. Based on the minimum of 42 hours worked per week, as specified in the Code of Practice, the minimum monthly remuneration for each FCV crew member should be in the region of NZ\$2,700 per month, before deductions.
- 135 A University of British Columbia study published in 2009 estimated that global fisheries subsidies for 2003 were US\$25–\$29 billion.<sup>39</sup> The study found that fuel subsidies made up approximately 23 percent of world subsidies to the fishing industry, with a further 11 percent going to boat construction and renovation. It also found that, among the major fishing nations, Japan had the highest level of subsidies at US\$4.6 billion, next to China with about US\$4.1 billion, followed by the EU, the US and the Russian Federation. These subsidy levels compare with the reported US\$47,000 of 'good subsidies' provided by New Zealand.<sup>40</sup>
- 136 The fact that New Zealand is a large distance from many of its key markets (such as the EU and China) means significantly higher transportation to market costs, especially for higher-value fresh products.
- 137 Internationally, the aquaculture industry has been steadily increasing in recent times, and is projected to continue to grow apace.<sup>41</sup> Aquaculture outside New Zealand competes directly with the high volume, low value EEZ species that many FCVs catch. The international price for low value EEZ species may accordingly come under pressure in the future.

## Key financial drivers of the EEZ fishing industry

- 138 The key financial drivers of the EEZ fishing industry are revenue, the cost of obtaining sufficient ACE to cover catch, crew wages and fuel costs.

### Revenue

- 139 The key drivers of revenue are the volume of fish caught, the species of fish caught, whether the fish is processed onshore or offshore and the international market price of fish (which is typically priced in US dollars and is therefore exchange rate sensitive). New Zealand companies are largely 'price takers' (as opposed to 'price makers') in international seafood markets.

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37 Seafood Industry Council, *Export Statistics* and MAF catch database.

38 Estimated from statistics from ILO LABORSTA ([http://laborsta.ilo.org/data\\_topic\\_E.html](http://laborsta.ilo.org/data_topic_E.html))

39 U Rashid Sumaila, Ahmed S Khan, Andrew J Dyck, Reg Watson, Gordon Munro, Peter Tydemers and Daniel Pauly. 2009. *A bottom-up re-estimation of global fisheries subsidies*. University of British Columbia.

40 'Good subsidies' are considered by the authors of the University of British Columbia report to include fisheries management, research and the creation of marine protected areas.

41 OECD and FAO. 2011. *OECD-FAO Agricultural Outlook 2011-2020*. OECD Publishing and FAO.

### Cost of ACE

- 140 ACE is generated from quota shares. For companies that do not own quota, ACE must be purchased from a quota owner. Owners of quota may sell their ACE or fish it themselves. The sale of ACE can be either directly through contractual arrangements or through a quota broker. Long-standing contractual arrangements for ACE parcels are common within the industry. Some companies rely heavily on packages of ACE supplied by third parties to make up their fishing plans.
- 141 ACE is widely traded between fishing companies (both quota owning and non-quota owning companies) throughout the year as companies purchase ACE to balance their catch.
- 142 The price of ACE is affected by the:
- TACC for a species;
  - deemed values;
  - costs of catching the fish, which depend on fuel costs, wages and the abundance of fish in a particular year; and
  - price received for the fish, which is determined by the international market price and the New Zealand exchange rate.
- 143 Simplistically, the maximum price that a purchaser of ACE is prepared to pay is the amount remaining after all the costs of fishing and a return on assets are accounted for. ACE has a value only if fishing companies are able to catch fish profitably. If no company can make a profit from fishing a particular stock, the ACE has no value and the fish will not be caught. Lower cost operators can afford to pay a higher price for ACE.

### Crew wages

- 144 Crew remuneration on domestic vessels is typically based on a percentage of catch calculation, increasing with seniority. Remuneration on most FCVs appears to be based on a similar model, with a check at the end of the contract to ensure that the Code of Practice minimum requirements of the statutory hourly wage plus \$2 are met. A minimum of 42 hours per week is required to be paid, but payment must take into account actual hours worked. Some FCV crew are paid based on the hourly rate for every hour worked rather than catch.

### Costs of quota ownership

- 145 Quota holders incur expenses regardless of whether they catch their ACE or not. MAF, the Deepwater Group<sup>42</sup> and SeaFIC all undertake activities to help manage New Zealand's EEZ fisheries, and the costs of some of these activities are recovered from industry. The activities include collection and analysis of scientific information, MAF's observer programme, registry services and compliance activities. The total amount cost-recovered from industry is around \$28 million per year. On average, 86 percent of this goes to MAF, 8 percent to the Deepwater Group and 6 percent to SeaFIC.

## Employment in the fishing industry

- 146 Employment generated by the fishing industry is important, particularly for local economies. A study in 2008 estimated that as of 2006, 11,500 people were employed in fishing and processing

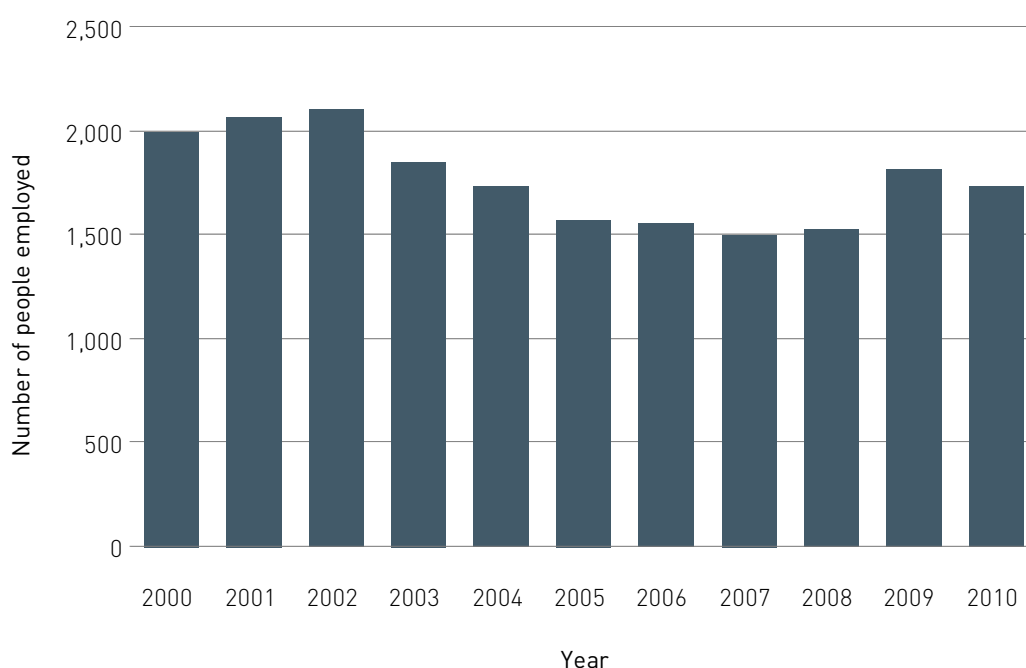
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<sup>42</sup> SeaFIC and the Deepwater Group are industry representative organisations. They are further defined in the Glossary.

activities.<sup>43</sup> Of these, 37 percent were involved in catch activity and 63 percent in wholesale and processing activity. These figures include employment in inshore as well as EEZ fisheries.

- 147 By region, Nelson has the greatest share of employees in the seafood sector (23 percent) followed by Canterbury with 17 percent. Nelson has the largest figures for employment in both catch activity (26 percent) and wholesale and processing activity (22 percent). For catch activity, Marlborough and Canterbury are the next largest employers, both with nine percent shares. For wholesale and processing activity Canterbury has the same share as Nelson (22 percent), followed by Auckland (10 percent).<sup>44</sup> Figure 10 below shows that employment in harvesting<sup>45</sup> has decreased since 2000.

Figure 11: Employment in the EEZ harvest sector 2000 – 2010



Source: Estimated from Statistics New Zealand, Business Demographic Statistics and the Linked Employer-Employee Database.

- 148 Additionally, employment in total processing from all fisheries sectors has decreased from 7,000 in 2000 to 5,690 in 2010. This employment data is based on estimates derived from Statistics New Zealand data. It is not possible to separate EEZ fisheries processing from other types of seafood processing.
- 149 With regard to foreign crew, DoL estimates that approximately 1,200 to 1,500 FCV crew and officers were issued with work visas in the year ended March 2011.

43 Dr. Douglas Fairgray, Garry McDonald, Fiona Cooke, October 2008. *The Economic Impacts of the Seafood Sector in New Zealand*. Market Economics.

44 *Ibid.*

45 Harvesting, in this instance, is defined as the catching or processing of fish on board a vessel.

## Submitters' views

- 150 A large number of submissions focused on the question of whether using FCVs represented the best way of maximising the economic return to New Zealand from its EEZ fisheries. Opinions were sharply divided between those who saw the current arrangements as ensuring the fullest and most profitable use of the resource and those who considered that the industry needed to be 'New Zealandised' in order to produce a better national return.

### The place for FCVs in New Zealand's EEZ

- 151 Fishing companies had strongly opposing views on the place of FCVs in New Zealand's EEZ fishing industry. A number of companies that use FCVs asserted it was a legitimate and entirely appropriate way in which to utilise the resources of the EEZ. They argued that New Zealand was simply not in a position to invest further in a domestic EEZ fleet and that using FCVs still represented the most efficient and flexible method of maximising economic return from ACE. The point was made that it was important for companies to be able to adjust their catch capacity without incurring significant capital costs, particularly given that charges were levied on all quota holdings, whether or not they were used.
- 152 It was suggested that the removal of FCVs from New Zealand's EEZ would immediately reduce the catch taken in the EEZ (especially of lower value species) and produce lower economic returns as well as reduced employment levels (for example, in onshore processing). One company stated that using FCVs allowed it to catch lower value species worth approximately \$55 million which would otherwise be uneconomic to catch. Another company stated that it used FCVs to catch barracouta, jack mackerel, squid and southern blue whiting because New Zealand owned factory vessels would not or could not commit to that mix of species for a year round fish plan as it would not provide a sufficient return on investment.
- 153 On the other hand, some fishing companies and a number of other submitters argued that FCVs had initially been allowed into New Zealand's EEZ as a temporary measure only, and that, in order to gain full benefit from its EEZ, New Zealand needed to progressively replace FCVs with New Zealand owned and operated vessels. They referred to the current problems posed by some FCVs as confirmation that one set of rules was urgently needed for all vessels in New Zealand's waters. Some submitters considered that all FCVs should be banned. There was also the argument that, if it was uneconomic to catch fish in the EEZ under New Zealand laws and regulations, the resource should remain unutilised.
- 154 The importance of wider business links with international companies that had developed from the use of FCVs was emphasised by some major companies.

### Effects of FCVs on New Zealand employment in the fishing industry

- 155 The Panel received mixed and somewhat contradictory views from the fishing industry about the number of New Zealanders available to work on EEZ fishing vessels. One company claimed that there are a hundred applicants every week wanting to work on its fishing vessels. Another company said that out of the same hundred applicants, there are likely to be only four who are actually suitable for work on EEZ fishing vessels, often citing drug and alcohol testing requirements. Others said that there are no suitable New Zealand applicants at all.
- 156 A number of submitters argued that employment of New Zealanders in the EEZ fisheries fleet

should be a priority and that the presence of FCVs ran counter to this objective. Several submitters noted the record levels of unemployment in New Zealand, particularly among youth and Māori and Pacific workers, arguing that the use of FCVs was taking jobs away from New Zealanders who were willing and able to work both on board vessels and in on-shore processing plants. It was argued that more should be done to increase employment opportunities for New Zealanders in the on-shore processing of fish caught in the EEZ, with some submitters noting that employment levels had been falling steadily in recent years as increased use was made of offshore processing plants.

- 157 Submitters also claimed that New Zealanders would be interested in working in the EEZ fishing industry if the workplace conditions and rates of pay were in line with New Zealand standards.
- 158 A number of submitters argued that moves to increase the employment of New Zealanders in the fishing industry would distribute the direct economic benefits from the fishing industry to more New Zealanders as increased taxation revenue and Accident Compensation Corporation (**ACC**) levies (not payable by foreign crews in the EEZ) would accrue to the Government.
- 159 One suggestion put to the Panel was that there should be a requirement that all FCVs have a certain percentage of New Zealand crew on board. The actual percentage varied from submission to submission, but a common number cited was 50 percent. It was argued that this would increase employment within the industry and would allow skills transfer between New Zealand and foreign crew. Most of these submitters suggested that the level of New Zealand crew should be increased over time, as there would not be sufficient skilled and qualified New Zealanders to crew the existing vessels.<sup>46</sup>
- 160 Additionally, some submitters expressed a view that to address this apparent shortage in skilled EEZ fishers, the fishing industry should develop a training structure for young workers.
- 161 Companies that use foreign flagged FCVs submitted that there is, in fact, a skilled labour shortage that partly necessitates the use of foreign crews. They asserted that experience had shown that few New Zealanders were available to work in EEZ fisheries.
- 162 The Deepsea Fishing Crew Employment Register currently used by DoL as a check against applications for foreign crews was generally considered to be ineffective. One submitter suggested that labour market testing could be improved by combining the intention of the Deepsea Fishing Crew Employment Register with the labour market test,<sup>47</sup> on the basis that Work and Income New Zealand would be able to add clients with fishing experience directly to the Register.

## Other suggestions to improve economic returns from the fishing industry

- 163 A number of other suggestions were made as to how the EEZ fishing industry might improve the overall economic return to New Zealand, for example, by improving the New Zealand seafood 'brand', collaborating more closely as an industry, better engaging with unions and adding more value to product in New Zealand.
- 164 It was also argued that putting New Zealand companies squarely in charge of all vessels would help ensure the integrity of the 'Brand New Zealand' and the food safety certification process.

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<sup>46</sup> Information about the training requirements and qualifications for New Zealand crew and New Zealand's maritime training capacity appears in Annex F.

<sup>47</sup> A labour market test is used by DoL to test whether there are suitable New Zealanders available to do a job that has been offered to a foreign worker.

## Key financial impacts of using FCVs

- 165 Some submitters argued that FCVs had, in effect, been given a significant competitive advantage by not having to meet the same standards and costs as New Zealand vessels, and that foreign owners were, as a result, deriving benefits from the exploitation of the EEZ that rightly belonged to New Zealanders.

### Wages

- 166 One argument made to the Panel was that New Zealand puts itself at a competitive disadvantage by insisting that international crew on FCVs be paid significantly more than internationally competitive rates. Additionally, it was argued that an increasing trend globally is for industries to outsource labour to where the cost of labour is significantly cheaper and that it did not make sense for New Zealand to deny itself the opportunity to benefit from lower international rates of pay.
- 167 It was also argued that companies paying domestic crew are placed at a significant disadvantage because they crew their vessels with New Zealanders and pay the market rate for New Zealand crew.

### Value of quota and ACE

- 168 A number of submitters commented on the impact of FCVs on the value of quota and the price of ACE.
- 169 There was a view that the use of FCVs provided a competitive ACE market, allowing quota owners to maximise the revenue generated through the sale of ACE. Many quota owners argued that they should have the right to sell ACE for the use of both foreign owned and domestic vessels on the grounds that this helped to maintain the value of their quota rights. Those holding small parcels of quota in particular commented it was unrealistic to think that they could ever raise the capital or develop the company structures to own or operate their own vessels.
- 170 One submitter argued that all EEZ quota owners in New Zealand derived substantial benefits from the operation of FCVs, either directly through using FCVs or through the sale of ACE to FCV operators. A number of submitters expressed concern that, if FCVs were to be removed from the New Zealand ACE market, the reduction in competition would result in significantly lower ACE prices and a consequential reduction in the value of quota.
- 171 Conversely, the argument was made that the increased competition for ACE driven by the presence of FCVs had altered the economics of fishing some species to the detriment of the domestic fleet and that steps should be taken to correct this situation. The long term consequences for the industry, and for ACE prices, of allowing FCVs to exploit foreign crews were also noted. It was argued that, if some operators were not meeting their legal requirements under the Minimum Wage Act and the Code of Practice, the price of ACE was being artificially inflated and that this impacted adversely on the economics of fishing in the EEZ. This was seen as discouraging local capital investment in the industry by making it harder for a New Zealand flagged operation with higher wage costs to purchase ACE.
- 172 Some submitters made the point that part of the original rationale for granting quota rights in perpetuity had been that the owners of quota would have a vested interest in ensuring the sustainability of the fish stocks, but that some of the companies operating FCVs did not actually

own quota and therefore had less incentive to ensure the sustainability of their operations. Opinions were somewhat divided on the question of whether quota owners should take a closer interest in the activities of the end users of their ACE.

### Access to foreign markets

- 173 The fact that some New Zealand companies currently benefit from preferential access to the Korean and Japanese markets by virtue of their use of FCVs flagged to those States was referred to by a number of submitters. Some saw this as a positive benefit arising from the use of FCVs from those countries, while others saw it as adding to the unfair advantage enjoyed by FCVs over New Zealand owned and operated vessels.

### Treaty Settlement quota issues

- 174 A number of iwi representatives noted that Settlement quota rights and value were already restricted by the requirement that quota could be sold only to iwi or Te Ohu Kaimoana. The Panel was told that further restrictions on how quota could be used would reduce its value and result in reductions in the social and other services funded by the sale of ACE. Opinions were split on whether greater use could or should be made of Settlement quota to generate employment for Māori in the fishing industry.
- 175 Other submitters noted that iwi have limited options to fish their quota themselves, given the difficulties of accessing sufficient capital to purchase a vessel. Some submitters referred to this difficulty, indicating that they simply did not have the funds to make a capital investment of the scale required for a vessel.

### Māori employment in the fishing industry

- 176 Some submitters argued that Māori quota holders should employ Māori to catch their quota and process the catch. One of the purposes of the Maori Fisheries Act was to provide for the development of the collective and individual interests of iwi in fisheries, fishing and fisheries-related activities in a manner that is ultimately for the benefit of all Māori. Submitters suggested that the use of FCVs was effectively undermining this purpose.
- 177 Another submitter commented that iwi had strong aspirations to create new employment opportunities throughout the fisheries value chain, not just on vessels. However, time was needed to build capital and experience before making significant investment decisions. An iwi submission observed that, although Māori were not employed on board FCVs, the revenue earned from the sale of ACE directly increased employment opportunities for their people as well as funding scholarships and grants and supporting social and health outcomes.

### Impacts of FCVs on investment in domestic fishing capacity

- 178 Some submitters considered that allowing FCVs to operate in New Zealand's EEZ was discouraging investment in the domestic fishing industry, particularly for vessels.
- 179 There were contrasting opinions on the availability of fishing vessels for purchase and use in New Zealand. Some submitters asserted that there was a global surplus of appropriate fishing vessels while others argued that the decline of the shipbuilding industry in recent years had produced a shortage of vessels suited to New Zealand conditions.

- 180 It was suggested to us that the large percentage catch of EEZ species by FCVs (51 percent for the fishing year ended September 2011) demonstrates that New Zealand's industry, as a whole, does not have the capacity to fish the entire ACE for these fish stocks without FCVs. It was further argued that the reduction in domestic capacity over the last few years suggests that several industry participants no longer consider purchase of boats to directly catch some of this quota to be a sound business proposition.

## FCVs contribute to the New Zealand economy

- 181 A number of contractors and small firms (for example, engineering, provedoring and fuel supplies), which rely heavily on the business generated by FCVs spoke strongly in support of continuing to allow FCVs to operate in New Zealand's EEZ. These submitters suggested that the gap left by the removal of FCVs would never be filled by New Zealand vessels and that the impact on their business would be disastrous. Some port companies made the same point, arguing that regional economies would suffer if the number of FCVs were reduced. One company estimated that it had spent \$16.3 million on servicing and supplying its FCVs in the regional economies of Timaru, Lyttelton, Bluff and Dunedin during 2009/10. Likewise, another submitter stated that virtually all servicing, maintenance, dry docking, provisioning, fuel and lubes purchases and other consumables for its FCVs were sourced from New Zealand businesses.
- 182 We were told by one firm that its on-shore processing relies heavily on product caught by FCVs. It was suggested to us that if FCV operations were to cease, full-time onshore processing at Christchurch would discontinue with the loss of some 200 jobs.
- 183 Some submitters commented that offshore processing reduced the opportunity for New Zealand to add value to a primary resource, reduced job opportunities, minimised the country's investment in skills, technology and capacity and reduced the fishing industry's overall contribution to New Zealand's gross domestic product.

## Industry Strategy

- 184 A number of submitters suggested that a fishing industry development project be established that focuses on economic return, employment opportunities, value-added practices, training, increased co-operation between fishing companies in maximising the value of exports and investment options.
- 185 The Panel received a number of submissions, mainly from unions, promoting the concept of a strategy for the fishing industry, aimed at growing the industry so that economic returns to the New Zealand economy and more skilled jobs for New Zealanders could be increased. Those submitters emphasised the importance of having the workforce represented in any industry strategy that may be developed.

## Issues identified

### The contribution of FCVs to the New Zealand economy

#### FCVs make it easier for companies to enter the industry

- 186 EEZ fishing requires significant investment because large vessels and specialised equipment are needed. New Zealand's EEZ fishing industry is dominated by a small number of large companies

that can achieve economies of scale by fishing large quota parcels with multiple vessels. This is in contrast with the in-shore fleet, which has many small businesses catching fish on behalf of quota owners. The in-shore fleet has relatively low barriers to entry because small vessels are relatively inexpensive and do not require specialist equipment.<sup>48</sup>

- 187 The QMS provides flexibility for quota owners to make commercial decisions on the most profitable methods of harvesting their rights. This means that quota owners can decide whether to catch the fish themselves or sell their ACE. Having access to FCVs, either through a charter arrangement or by selling ACE to a New Zealand company chartering an FCV, gives quota owners a range of options for maximising profits from the use of their quota. It also allows companies that do not own quota to purchase ACE and fish using FCVs.
- 188 Some smaller businesses decide to use FCVs as they do not have the funds to make the capital investment needed to purchase a vessel. The only options for quota holders with small quota parcels are to sell their ACE or partner with larger commercial interests. It is worth noting that, at present, smaller businesses have chosen to operate FCVs under time charters and the option to demise charter is not generally taken.

#### FCVs allow companies to be flexible

- 189 Using FCVs gives companies operational flexibility, including the ability to increase or reduce catching capacity without significant capital investment or incurring the costs associated with decommissioning excess capacity. If TACCs are reduced, FCVs offer companies the possibility of restructuring without the loss of New Zealand jobs and assets.
- 190 In addition, some EEZ fisheries require specialist equipment and have only a relatively short season when it is profitable to catch a particular species of fish. In these situations, FCVs allow companies access to these fisheries without requiring them to purchase a vessel that cannot be used for the remainder of the year or in other fisheries.
- 191 Some of the larger fishing companies use FCVs primarily to catch high volume, low value species. However, they can also be used to balance out catch plans for vessels across a company's fleet. This gives companies greater flexibility if, for example, a domestic vessel requires unscheduled maintenance or the TACC for a species is reduced.

#### FCVs contribute to wider business relationships

- 192 The use of FCVs by New Zealand companies can form part of wider business relationships. These business relationships can extend to numerous points on the post-harvest supply chain from storage, processing and market access to marketing.
- 193 Some of the foreign companies that charter FCVs to New Zealand companies have large global distribution networks. The use of FCVs may provide access to these networks for New Zealand companies which may be used for catch taken by domestic vessels as well as FCVs. For example, Sealord is 50 percent owned by Māori and 50 percent owned by Nippon Suisan Kaisha Ltd (Nissui) of Japan. Being co-owned by Nissui provides access to Nissui's global network of subsidiary companies, affiliates and partners.
- 194 Business arrangements associated with the use of FCVs have also facilitated investment by

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<sup>48</sup> Kelly Lock and Stefan Leslie, 2007. *New Zealand's Quota Management System: A History of the First 20 Years*. Motu Economic and Public Policy Research.

New Zealand seafood companies in offshore processing ventures in Asia. For example, Sanford Limited and Dong Won Fisheries Co Ltd of Korea each own a 50 percent share in the Weihai Dong Won Food Co Ltd located in China.<sup>49</sup> Weihai Dong Won Food Co is an added value seafood plant that processes fish sourced from New Zealand and other countries into added value products. These products are then exported to other parts of Asia, the EU, America, Australia and New Zealand. Sanford and Dong Won Fisheries Co Ltd also jointly own San Won Ltd that operates a large cold store facility in Timaru.

- 195 The example above relating to Sanford Ltd is not unique. Other large New Zealand seafood companies have developed processing interests offshore, particularly in China, through subcontracting or joint venture arrangements.

#### FCVs allow low value fish species to be harvested economically

- 196 Information made available to the Panel supports the view that FCVs appear to allow low value fish to be harvested economically. It has not been possible to ascertain whether the less economically attractive stock would continue to be fished if the outcome of this Report was a significant change in the underlying structure of EEZ fisheries.

### The use of FCVs has an impact on the financial dynamics of the industry

- 197 The key financial impact arguments that arise from the use of FCVs in New Zealand's EEZ fisheries can be grouped into the three categories set out below.

#### Discrepancy between wages paid to crew on domestic vessels and FCVs

- 198 From the information that has been provided to us, it is clear that crew on domestic vessels are paid significantly more than crew on FCVs.
- 199 However, it is an increasing global trend for service-based industries to be outsourced to where the cost of labour is significantly cheaper. This is particularly the case for highly mobile workforces such as fishing crew. Some see this as unfair competition, others see it as a legitimate use of more competitive international wage rates.

#### Presence of FCVs in the EEZ fleet appears to increase the value of ACE

- 200 Due to the reporting requirements on ACE trading, it has not been possible to quantify the impact of FCVs on the price of ACE. However, the argument that a larger fleet provides competition in the ACE market to the benefit of quota holders has been commented on by a number of industry players on both sides of the argument.
- 201 It seems that iwi, in particular (typically not holding a package of ACE sufficient to comprise an economic catch plan), benefit from the ability to sell their ACE holdings to third parties which utilise FCVs.
- 202 Any decrease in TACC limits may also increase competition in the ACE market as vessels compete to purchase ACE to make up an economically viable catch plan. FCVs with lower wage costs and perhaps lower maintenance and compliance costs can afford to pay more for ACE, hence the argument that FCVs have artificially increased the value of ACE to the detriment of domestic vessels.

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<sup>49</sup> See <http://www.sanford.co.nz/>

### Presence of FCVs is having a mixed impact on access to certain export markets

- 203 The use of FCVs by New Zealand companies can directly provide for better access to foreign markets. Fish caught on FCVs and exported to Korea and Japan receives tariff-free entry into their flag State markets, as it is considered to be product of Korea or Japan under flag State principles. For example, the tariff on squid entering Korea is 22 percent. A New Zealand vessel that catches 1,000 tonnes of squid and exports it to Korea would incur a tariff of NZ\$369,600 that catch from a Korean flagged vessel would avoid. The Korean flagged vessel does not have to pay the tariff as the squid is considered a product of Korea, notwithstanding that it was caught in New Zealand's EEZ.
- 204 We note that the use of FCVs is causing some market access difficulties in key markets such as the EU. This issue is discussed further in *Chapter Four: Trade Access*.

### How FCVs contribute directly to local economies

- 205 FCVs are in New Zealand's EEZ to catch fish on behalf of New Zealand quota owners. This differs from arrangements in other countries where foreign flagged vessels fish under licence arrangements between the coastal State government and a foreign government.
- 206 Depending on the commercial arrangements agreed with the FCV owner, a proportion of the profit from the fish caught by FCVs can be retained in New Zealand by New Zealand entities such as quota owners and the New Zealand charter parties. This occurs either directly through profit sharing arrangements or from the sale of ACE.
- 207 Benefits that accrue to the local economy from servicing the FCV fleet include the provision of supplies, repairs and maintenance, packaging and cool store facilities. Most of the FCVs in New Zealand have been here since the 1990s. A proportion of the repairs and maintenance of these vessels is done in New Zealand (often benefitting local economies such as Timaru, Lyttelton and Nelson), and supplies are sourced from local businesses. We note that these contributions to local economies remain only to the extent that the size of the EEZ fleet remains constant and operates out of the same ports. These local economies would be disadvantaged if FCVs left New Zealand's EEZ and were not replaced by other vessels.

### Treaty Settlement quota issues

- 208 As previously mentioned, Settlement quota shares cannot be freely sold as other quota shares can: the Maori Fisheries Act prevents the sale of Settlement quota outside iwi and Te Ohu Kaimoana. On the other hand, ACE derived from Settlement quota can be freely traded on the open market.
- 209 In addition, iwi have only progressively become owners of Settlement quota since 2005, so there has been limited time for them to develop a long-term business model that would maximise the return on their quota asset. The individual quota shares tend to be relatively small, which means that, in many cases, it is not economic for individual iwi to fish their own quota.
- 210 Iwi use different models to maximise the return from their quota asset, including:
- joint venture arrangements with foreign companies;
  - long-term arrangements with domestic fishing companies;
  - selling ACE through quota brokers or directly to fishing operators; and
  - aggregating (or collectivising) their ACE with other iwi.

## Effects of FCVs on domestic investment in the fishing industry

- 211 It is not possible for the Panel to predict the future size of the FCV fleet with any certainty. The Panel heard sharply contrasting opinions from industry on the availability of appropriate fishing vessels for purchase and use in New Zealand.
- 212 It is also not clear whether the option to use FCVs has reduced investment in a domestic fleet. Figure 2 in *Chapter One: Background* shows that the EEZ fleet has fluctuated over time and that there has been an overall decrease in the number of vessels in the fleet.
- 213 The Panel does not consider that banning FCVs would necessarily result in an increase in the domestic fleet to compensate. New Zealand companies currently utilising FCVs are unlikely to be able to afford the capital investment required to purchase a vessel. Further, information provided to the Panel supports the view that some of the lower value, high volume species are simply uneconomic to catch on a domestic vessel. This also applies to specialist seasonal fishing vessels that operate in New Zealand for only a part of the fishing year.

## Effects of FCVs on New Zealand employment in the fishing industry

- 214 The Panel heard sharply contrasting opinions from operators on the availability and willingness of New Zealanders to work in the EEZ fishing industry. It remains unclear to us just how many New Zealanders might be available to work on vessels in the EEZ. There appear to be few New Zealanders who would be interested to work on FCVs under current circumstances.

### New Zealanders on fishing vessels

- 215 Using estimates derived from Statistics New Zealand data<sup>50</sup>, there are about 1,700 New Zealanders working on domestic EEZ fishing vessels. DoL has approved 1,200 – 1,500 work visas for foreign fishing crew in the year ended March 2011.
- 216 To receive an AIP, the New Zealand charter party must provide evidence that there are no suitable and available New Zealand applications on the Deepsea Fishing Crew Employment Register. However, the Register is not seen as providing a true reflection of the number of New Zealanders willing or able to work on fishing vessels. For a number of reasons, foreign flagged FCVs are not an attractive workplace for New Zealanders. New Zealanders are unlikely to apply to work on foreign flagged FCVs as the employment conditions are effectively foreign.
- 217 The Panel is not convinced that this reflects on the availability of New Zealand EEZ fishers but rather the quality of the Register itself. DoL notes that using the Register for the labour market test of the AIP process has proven itself redundant.
- 218 Strengthening the labour market testing process would mean that, if New Zealanders were available to work on EEZ fishing vessels, foreign crew would not be granted work visas. If the employment conditions and arrangements on foreign-flagged FCVs were improved, it may be that more New Zealanders would be interested to work on them. This would be ascertained through New Zealand labour market testing.
- 219 In the case of visa applications for lower skilled foreign crew to work on domestic vessels, the employer must show evidence of advertising the position available. It was argued that this requirement should be extended to apply to all lower skilled foreign crew in New Zealand's EEZ.

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50 Estimated from Statistics New Zealand, Business Demographic Statistics and the Linked Employer-Employee Database.

### On-shore or offshore processing

- 220 A recent report commissioned by the Ministry of Economic Development suggested that New Zealand's economic growth is best achieved by moving from an export market based largely on commodities with limited growth potential to one with a developed market in higher value foods and food derived products.<sup>51</sup>
- 221 It is difficult to know how much of New Zealand's total EEZ exports are subject to further processing offshore. These products tend to be exported to China as frozen headed and gutted fish or frozen whole fish. Once in China they are thawed, processed and re-frozen. This process results in a lower value product than if the fish were fully processed before freezing.
- 222 Offshore processing is cheaper than processing the product in New Zealand because of lower labour costs in other countries. The general trend throughout primary industry is to export raw materials for further processing offshore. In the food sector, only 16 percent of New Zealand's overall food exports are now processed foods.<sup>52</sup>
- 223 In discussed, most New Zealand fishing companies have business relationships with offshore parties who are involved in processing and re-exporting to other countries.
- 224 New Zealand has on-shore processing capacity for EEZ species at Nelson, Timaru, Christchurch and Auckland. However, the amount of product that is processed in New Zealand has been falling, and some processing plants have closed over the past decade.
- 225 Although greater onshore processing may result in a greater overall economic return to New Zealand through increased employment opportunities, it may also mean lower overall profits for fishing companies. The Panel suggests that further detailed analysis of the benefits of greater on-shore processing would be needed before any firm conclusions are drawn.

### Industry Strategy

- 226 Senior industry leaders have, in the past, called for the industry to work more collaboratively to maximise its returns. Motu Economic and Public Policy Research identified that the current management of EEZ fisheries can be characterised by the lack of a shared overall strategic plan, its poor integration and collaboration, and the limited ability of quota holders to influence or control the services implemented for EEZ stocks or the costs associated with those services.<sup>53</sup> This results in an environment that is not conducive to collaboration or agreement.
- 227 It has become clear to the Panel that a renewed industry strategy is key to increasing the economic return of fishing to New Zealand.
- 228 The Government's *Fisheries 2030* strategy was released in 2009. Fisheries 2030 seeks to achieve improved economic benefit through smarter use of fisheries resources and provides for increased non-commercial benefits, such as recreational fishing, while protecting the health of the fishery and marine environment.
- 229 One of the actions identified for the first five years of the Fisheries 2030 strategy is 'building sector leadership and capacity'. Developing a strategy specific to the EEZ fishing industry would be consistent with this action in *Fisheries 2030*.

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51 Coriolis Research. 2010. *Moving to the centre: the future of the New Zealand food industry*.

52 Coriolis Research. 2011. *Investors Guide to New Zealand Food & Beverage Industry*.

53 Kelly Lock and Stefan Leslie, 2007. *New Zealand's Quota Management System: A History of the First 20 Years*. Motu Economic and Public Policy Research.

- 230 Providing government support to industry to develop an industry strategy would be well-aligned with MAF's recently developed 'Organisational Strategy', which has the goal of 'maximising export opportunities and improving sector productivity by enabling and partnering with stakeholders'.
- 231 Current research in the fishing industry includes a Primary Growth Partnership project on Precision Seafood Harvesting. This project aims to develop and commercialise new trawl technology to minimise damage to fish from harvesting and enable selective catch to supply high-quality, environmentally sustainable products (for example, chilled, fresh, live, appropriately-sized species) to international markets at a premium price. The technology is expected to improve revenue by an estimated \$100 million annually (or 20 percent) by 2029.<sup>54</sup>
- 232 The Panel has recently been advised that the deep water sector of the industry is itself promoting the need for an industry strategy. We are advised that one of the goals of such a strategy could be to unite the seafood industry with a future growth-driven focus and the vision of New Zealand being recognised as the best seafood industry in the world. We also understand that the strategy would encompass all aspects of the seafood industry, including the fishing sector.
- 233 The Panel sees merit in the industry taking a leadership role in promoting the positive features of the industry to the international consumer and enhancing New Zealand's reputation as a producer of high-quality, sustainably harvested fish products that have been harvested under the strictest of international standards.
- 234 The Panel is encouraged by the broad approach being promoted in the strategy, including the focus on research and development, international and domestic policy, seafood health standards, training co-ordination and trade issues. We consider the Government should support such an initiative and provide what assistance it can, in consultation with the industry, to ensure the strategy is a success. It will be important to involve the workforce in this exercise.
- 235 Based on submissions received, the strategy could include consideration of:
- driving innovation and improving the efficiency of fishing; and
  - promoting the industry as an employment opportunity, including enhanced training opportunities.

### Innovation

- 236 The University of Auckland has undertaken exploratory research on the Icelandic fishing industry and has formed the view that there is an opportunity for New Zealand seafood companies to shift from exporting bulk, unprocessed or semi-processed commodities to exporting higher value products approach.<sup>55</sup>
- 237 There is significant research and development in the fishing industry, carried out by the industry and government agencies. We consider this focus on research and development could be expanded to encompass international fishing trends and policies.

### Promotion of the industry as an employment opportunity

- 238 As has been stated, the Panel heard differing view on the availability of New Zealanders to work on fishing vessels. There was, however, general agreement that industry promotion and workforce training could be improved.

<sup>54</sup> Ministry of Agriculture and Forestry, February 2011. *Primary Growth Partnership project on Precision Seafood Harvesting Media Backgrounder*.

<sup>55</sup> Personal communication, Dr. Christina Stringer, Senior Lecturer, University of Auckland.

- 239 It became apparent during the Inquiry that the fishing industry is not being actively promoted as a viable career option. Commercial fishing should be an attractive opportunity for those who are seeking skills that are internationally recognised and sought after. The industry could be more proactive in promoting itself to potential employees such as school leavers. An 'Industry Promotion' pilot could be considered in either Nelson or Timaru.

### Training

- 240 Training for the fishing industry workforce will be a key component of any industry strategy. Information on the maritime qualifications and approved providers, as well as a brief description of the types of courses provided by the Timaru and Westport training schools, appear in Annex H.
- 241 In relation to processing fish onboard, Seafood ITO (a subsidiary of SeaFIC) is the Industry Training Organisation (**ITO**) for New Zealand's seafood industry. Most of the training takes place on the job, as Seafood ITO trainees are usually employed within the industry and learn while they are earning wages or a salary.

### Other proposals

- 242 Other suggestions from submitters ranged from providing tax incentives for investment in the domestic fleet to establishing an industry marketing board. These suggestions raise broader policy issues. Identifying the options for raising capital in such a capital intensive industry and greater collaboration in marketing New Zealand seafood internationally, could be considered as part of any strategy that is developed by the industry.

### Comment

- 243 The information provided to the Panel during this Inquiry suggests that there is a role for FCVs in the EEZ fleet.
- 244 The ability to use FCVs, whether under time or demise charter arrangements, allows quota owners to make commercial decisions on the most profitable methods of harvesting their quota. This means that, for high-value fisheries, it may be profitable to invest capital in purchasing a vessel, but this is less likely to be the case for lower value species or seasonal fisheries where a chartering arrangement is likely to be more attractive.
- 245 The fishing industry is risky and, in the EEZ, requires large amounts of investment (whether purchasing or leasing a vessel). The operating costs, such as fuel costs, of a vessel are also very high. The ability to charter a vessel rather than purchase it means that companies can add or remove fishing capacity more easily and with lower risk.
- 246 Any change to the current structure of the EEZ fleet is likely to have a number of economic impacts. For example, it is likely that any decrease in the number of vessels requiring ACE to fish in the EEZ will have an adverse impact on the revenue generated by quota owners through sale of ACE. On the other hand, less competition for ACE will reduce harvesting costs and therefore increase the profitability of those remaining in the EEZ fisheries. Based on the scarcity of financial information available, it is difficult to conclude with any certainty, which decision would have the most beneficial impact on New Zealand's economy.
- 247 It is inevitable that any recommendations implemented as a result of this Inquiry will have consequences for quota owners, industry and suppliers to the industry. Discussions with industry

participants suggest that they will continue to make commercial decisions to ensure that their financial return from their investment in the industry is maximised. It seems to the Panel that there is an economic risk in allowing the status quo to continue and that the industry's access to valuable markets may be significantly impacted if New Zealand is not seen to be dealing with the issues in a decisive manner.

- 248 The Panel acknowledges that the use of FCVs is an important part of the fishing industry and considers that, provided the concerns that have been raised in this Report can be addressed, FCVs should continue to make a valuable contribution to the industry and New Zealand's economy.
- 249 The Panel also considers the replacement of the Deepsea Fishing Crew Employment Register with the standard immigration labour market test may result in New Zealanders seeking employment on FCVs. However, factors such as language difficulties and cross-cultural challenges will always be part of any decisions by New Zealanders to work on FCVs.
- 250 While the Panel's brief did not specifically include issues such as an industry strategy, we consider such a strategy an important aspect of one of the Government's objectives to 'maximise the economic return to New Zealand from our fisheries resources' as outlined in the Inquiry's Terms of Reference.
- 251 We endorse current moves within the fishing industry to develop a wide ranging strategy, and we encourage industry leaders to engage with Government and workforce representatives in its plans.



# Trade Access

## 4

252 This chapter discusses trade access issues associated with the use of FCVs, particularly market State measures and free trade negotiations.

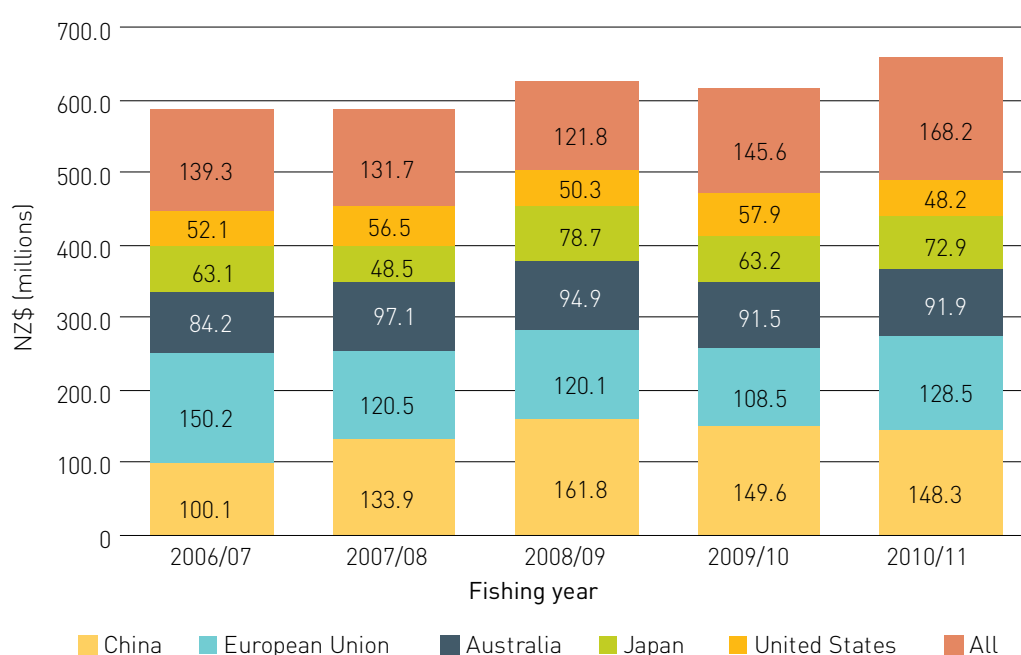
### Current situation

253 New Zealand's QMS is internationally regarded as one of the world's best fisheries management systems.<sup>56</sup> This helps secure the industry's access to high-value markets offshore.

254 Fisheries (excluding aquaculture) are New Zealand's fourth largest export earner. The value of EEZ species exported in the year ended October 2011, was NZ\$658 million. Exports of EEZ species make up 47 percent of the value of total seafood exports.<sup>57</sup>

255 Figure 12 shows the value of EEZ species exports to New Zealand's top five export markets in the fishing year ended October 2011.<sup>58</sup> Figure 12 shows that the Chinese market has increased by 50 percent over the past five years and has now overtaken the EU as the largest export market for EEZ species.

Figure 12: Export value by country for the 2006/07 – 2010/11 fishing years



Source: Seafood Industry Council Export Statistics.

256 Illegal, unreported and unregulated (IUU)<sup>59</sup> fishing is a growing problem worldwide, and steps are being taken by market States to deal with this issue. The EU and the US have imposed binding measures as a response to IUU fishing, as discussed below. Regulation of IUU fishing is also

56 Boris Worm, Ray Hilborn, et al. 2009. Rebuilding Global Fisheries. *Science* Vol. 325 (5940): 578–585 and Jacqueline Alder, Sarika Cullis-Suzuki, et al. May 2010. Aggregate performance in managing marine ecosystems of 53 maritime countries. *Marine Policy* Vol. 34 Issue 3: 468–476.

57 Seafood Industry Council, *Export Statistics*, October 2011.

58 *Ibid.*

59 Illegal, Unreported and Unregulated fishing activity. Illegal fishing is when vessels operate in violation of the laws of a fishery. Unreported fishing is fishing that has not been reported, or misreported to the relevant national authority. Unregulated fishing is when vessels fish without a nationality, or when flying the flag of a country not party to the regional organisation governing that fishing area or species.

related to sustainability, which is a market driver in some of New Zealand's export markets.

- 257 New Zealand has traditionally taken a coastal State approach to both catch certification and origin of product in the EEZ. Other countries may take a flag State approach, where the flag State certifies catch and the flag of the vessel determines the origin of the product. Depending on the circumstances, these differences in approach may have implications for tariffs and market access for New Zealand fisheries product.
- 258 FCVs that land product in New Zealand and require an export certificate must meet the relevant food safety standards. An export certificate is evidence that a food product has been produced under a system that meets all applicable New Zealand standards and any other additional standards agreed with the importing country.

## Submitters' views

- 259 Agencies advised that access to the EU market was an issue because of the EU requirement for flag State catch certification. The possible impacts of the use of FCVs on New Zealand's approach to food safety certification and the negotiations now under way on the Trans-Pacific Partnership free trade agreement were also raised by officials.
- 260 Some fishing companies expressed concern that the publicity around FCVs in recent months was generating consumer resistance to New Zealand's seafood exports in markets such as the UK. As discussed in *Chapter Three: Economic Return to New Zealand*, some submitters saw preferential access as a positive benefit arising from the use of FCVs from those countries, while others criticised it as adding to the unfair advantages enjoyed by FCVs over New Zealand owned and operated vessels.

## Issues identified

### European Union flag State catch certification

- 261 Under UNCLOS, States are required to effectively exercise their control over vessels flying their flag. Inadequate flag State control over vessels is a major obstacle to effective oceans governance, and a contributing factor to IUU fishing.
- 262 The EU adopted a Regulation in 2008<sup>60</sup> to prevent, deter and eliminate IUU fishing. One of the requirements of the Regulation is that, from 1 January 2010, imported fishery products must be accompanied by a catch certificate issued by the flag State of the vessel as evidence that the fish were legally caught.
- 263 The Regulation contains a provision for countries to reach agreement with the EU on country-specific implementation of the Regulation. In 2009, New Zealand and the EU agreed on a simplified consignment-based catch certificate for catches by vessels registered to fish in New Zealand.
- 264 The simplified form of the certificate was formalised through an Agreed Record of Conclusions (**Agreed Record**) signed in November 2009. It was negotiated with the European Commission at that time with the understanding that FCVs registered under New Zealand's Fisheries Act were covered by this simplified form of the catch certificate.

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<sup>60</sup> Council Regulation (EC) No 1005/2008 of 29 September 2008.

- 265 In 2010, differing views emerged on the interpretation of the Agreed Record and, in 2011, a number of consignments of New Zealand-origin fish were held up at EU ports. Officials from MAF and Ministry of Foreign Affairs and Trade worked with their EU counterparts to resolve this issue.
- 266 Under the EU's Regulation, the flag State must issue catch certificates for fish caught by their vessels. Currently, only Korea and Japan are in a position to certify product caught by FCVs operating in New Zealand's EEZ. The Ukraine and Dominica have not yet met the requirements of the applicable EU Regulation, although we are aware that the Ukraine has made an application to the EU.
- 267 Flag States' catch certificates must remain credible to maintain access to the EU. The EU is one of New Zealand's main trading partners and is a high-value market for industry. It is estimated that, in 2010, \$58 million of product caught by FCVs was exported to the EU.<sup>61</sup> The actual value is likely to be higher, as some New Zealand product is also processed in China before being exported to the EU.

## Global trend towards market State measures

### Catch certification

- 268 Market State measures (such as the EU's flag State catch certification requirement) in relation to fisheries products is a trend that is expected to spread globally. Japan and North America are likely to put in place market State measures in the future, and these may include flag State certification. The EU is promoting its certification regime, based on flag State certification of product, in a number of Regional Fisheries Management Organisations such as the Western and Central Pacific Fisheries Commission.
- 269 Flag State certification requirements are also starting to be adopted by the private sector overseas. MAF is aware of some buyers in the US and Thailand requiring EU certification to maintain flexibility around onward selling of fish and to allow for auditing.
- 270 The United Nations Food and Agriculture Organisation (**FAO**) is taking steps to develop global standards on flag State performance. The Sub-Committee on Fish Trade of the FAO Committee on Fisheries meets annually to discuss fish trade issues. Catch certification and the development of best practice guidelines on traceability are on the agenda for the next Committee meeting in February 2012.

### Other market measures

- 271 Other markets have introduced measures to ensure legality and sustainability of product. For example, California enacted a law that requires retail sellers and manufacturers doing business in California to publicly disclose their efforts to eradicate slavery and human trafficking from their direct supply chain. The US Tariff Act also contains provisions allowing the US to prohibit imports deemed to be the product of 'forced labour'. To date, no such incidents have been found to have taken place in New Zealand's EEZ. It is important New Zealand has robust processes in place to satisfy the US for continued market access.

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<sup>61</sup> MAF catch database and Seafood Industry Council, *Export Statistics* October 2011.

## Food safety and FCVs

- 272 FCVs must comply with the same food safety requirements as domestic vessels. Vessels are verified by MAF to ensure compliance with food safety requirements. Corrective Action Requests (**CARs**) are issued for any major non-compliance noted during verification processes. MAF tracks CARs until the non-compliance is addressed and the CAR closed.
- 273 It appears that FCVs have a slightly higher rate of non-compliance than domestic vessels. From January 2010 to January 2012, eight CARs were issued to FCVs and seven to domestic vessels.

### Food safety agreement with the EU

- 274 New Zealand has negotiated a food safety agreement with the EU that establishes the equivalence of New Zealand's food safety regime. The Agreement requires food processing establishments, including freezer and processing fishing vessels, to be listed with the EU for sanitary purposes. The Agreement recognises the systems New Zealand had in place in 1996, including those applied to FCVs as part of New Zealand's EEZ fishing fleet. New Zealand's sanitary fishery regime is subject to audit by the EU.
- 275 EU sanitary law requires a joint application for listing of the vessels by the flag State and the country undertaking the inspections. Joint applications for FCVs operating in New Zealand's EEZ have not, however, been deemed necessary because of the level of New Zealand control over the vessels and products.

## FCV issues and free trade negotiations

### Trans-Pacific Partnership

- 276 Negotiations are currently underway to create a Trans-Pacific Partnership (**TPP**) regional free trade agreement involving the US, New Zealand, Australia, Brunei Darussalam, Chile, Malaysia, Peru, Singapore and Viet Nam. These negotiations will include provisions on labour standards.
- 277 The US authorities are taking a close interest in current FCV issues as reported in the media and industry publications. In previous free trade agreements, the US has required the effective enforcement of labour laws covering, for example, the elimination of all forms of forced or compulsory labour, effective recognition of the right to collective bargaining and acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

### New Zealand/Korea Free Trade Agreement

- 278 Negotiations towards a Free Trade Agreement with Korea are underway. Fisheries are an important area for the Free Trade Agreement and one where significant differences remain between New Zealand and Korea.

## Comment

- 279 Given that the export of EEZ species contributed over \$650 million to New Zealand's export earnings in 2011, continued access to New Zealand's key markets (China, the EU, Australia, Japan and the US) is important. The use of FCVs in New Zealand's EEZ is already an issue in respect of the fishing industry's access to the important EU market.
- 280 New Zealand's view has always been that catch certification of the fish taken from its EEZ should be the responsibility of New Zealand as the coastal State and that the waters from which the fish was harvested should determine its origin.
- 281 As identified, there is a global trend towards market State measures for fish product, including flag State catch certification. To ensure continued access to overseas markets that require flag State certification, fishing companies will need to have confidence in the flag State of the vessel they charter. If problems do arise, it may become a commercial decision whether to find alternative markets or to reflag to New Zealand.
- 282 If the requirement for flag State certification of product in the EU becomes more prevalent globally, the decision on whether New Zealand wishes to cede control of the certification of product caught in its EEZ to flag States will become more important. Difficulties have arisen in this area and are being addressed by officials. This issue may become more prominent in the future and if it does, the credibility of the documentation provided by certifying flag States' will be an even more important factor in ensuring continued market access.
- 283 Fisheries issues are likely to feature prominently in current trade negotiations. The effective enforcement of labour standards and employment conditions will come under scrutiny in the TPP negotiations now underway. These negotiations will have significant implications for New Zealand's future access to key overseas markets. Fisheries questions are also likely to feature in the free trade negotiations being conducted between New Zealand and Korea.



# Management of Fisheries

# 5

284 This chapter discusses the enforcement of the Fisheries Act with respect to the management of fisheries. It is important to note that all aspects of New Zealand's fisheries regime apply equally to both domestic vessels and FCVs.

## Current situation

285 MAF is the agency responsible for enforcing New Zealand's fisheries legislation and regulations.

## Registration

### Certificate of Registration

286 Section 103 of the Fisheries Act requires that before any vessel can be used for commercial fishing in New Zealand fisheries waters, whether it is New Zealand or foreign owned or operated, it must have a current Certificate of Registration. The Certificate of Registration indicates that the vessel has been registered as a 'New Zealand fishing vessel' and is subject to all fisheries laws including monitoring and reporting obligations as well as the requirement to land all fish to a licensed fish receiver in New Zealand. This is not the same as becoming a New Zealand flagged vessel, which requires a different process under the Ship Registration Act.

287 The application to register a fishing vessel is made by the operator of that vessel to FishServe, which issues the Certificate of Registration once all supporting information for the application has been provided. For FCVs, the Certificate of Registration cannot be issued without the consent of the DG of MAF.

288 The Certificate of Registration includes general and specific conditions applying to FCVs including those in the Fisheries (Commercial Fishing) Regulations 2001,<sup>62</sup> and conditions under the Fisheries Act<sup>63</sup> which includes the requirement to comply with the Minimum Wage Act and the Wages Protection Act.

289 Section 107 of the Fisheries Act provides for the cancellation of registration for any vessel in the event that the vessel is forfeit to the Crown or if the DG is notified by the Secretary of Labour of a breach of any statutory provision of the Minimum Wage Act or the Wages Protection Act. There is no provision explicitly allowing for the suspension or cancellation of the registration based on breaches of the conditions of registration or of conditions set by the DG.

### Consent to Registration

290 Under section 103(4) of the Fisheries Act, a foreign owned or operated vessel must obtain the specific consent of the DG of MAF. Section 103(6) of the Fisheries Act specifies matters that the DG shall consider when making a decision on consent. Consent is given through a Certificate of Consent which is sent to FishServe and accompanies the Certificate of Registration issued to the FCV.

291 An operator of an FCV applying for the DG's consent must designate an authorised agent for the foreign charter party/foreign owner who must be a New Zealand resident and remain in New Zealand during the period of registration.

<sup>62</sup> Regulations 5 to 15 and 17 to 23 of the Fisheries (Commercial Fishing) Regulations.

<sup>63</sup> Section 103(1)(c) states that the applicant will comply with all conditions of registration (if any) and any conditions of the consent of the DG. Section 103(5) includes seven provisions relating to Labour Inspector rights, and rights of the Employment Tribunal and Employment Court.

- 292 The vessel must also have completed an MNZ inspection (described in *Chapter Six: Vessel Safety*) in the previous six months, have been inspected by a MAF Fishery Officer to ensure compliance with the Observer Standard<sup>64</sup> and have a completed annual catch plan. MAF also completes an assessment covering the compliance and fisheries management history of all parties associated with the fishing operation. This establishes the risk rating assigned to the vessel.
- 293 The DG may place specific conditions on the Certificate of Consent for a vessel. Conditions can include increased observer coverage, the requirement to report any changes in ownership of the vessel or senior crew members and the requirement to meet all Maritime Rules during the period of registration.
- 294 The conditions are intended to address any fisheries management risks posed by the operation of the vessel. Observer coverage can range from standard (non-vessel specific) coverage for a particular fishery to having two observers required on every trip of a vessel given a higher risk rating.

## Observer Programme

- 295 Many fisheries management regimes around the world employ independent observers to collect information on the operation of fishing vessels for both compliance and scientific purposes. The presence of an observer on board a vessel is thought to improve compliance rates, even if the primary focus of the observer is scientific work.
- 296 MAF's observer programme is aimed primarily at collecting the biological samples and catch effort information needed to provide a scientific basis for fisheries management decisions. Observers are from time to time deployed on all commercial fishing vessels. They do not have any enforcement powers, although the information they collect is used for compliance purposes and observers may be called upon to testify in prosecutions.
- 297 Costs associated with regularly scheduled observer coverage are recovered from the industry as a whole. For FCVs requiring increased observer coverage, costs are recovered from the specific vessel operator.
- 298 The primary task of a MAF observer is to collect catch and fishing effort data for the management of fisheries. The observer's logbook is kept separately from that of the vessel. MAF observers also record data on bycatch, including seabirds and marine mammals.
- 299 MAF observers are not mandated or trained to monitor such matters as vessel safety and labour standards, although they are encouraged to report any witnessed problems in these areas. If observers note instances of crew mistreatment or crew wage disputes, their reports are forwarded to DoL for action. Since June 2008, two cases of crew abuse and five matters of underpayment of wages on FCVs have been reported by observers.
- 300 An observer scheduled to be deployed on a fishing trip is first briefed on any specific requirements for that trip. On board the vessel, the observer is responsible for the collection of biological samples, the maintenance of independent records of all catch and effort data, recording

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<sup>64</sup> The Observer Standard sets out standards with regard to food, accommodation, access to cooking and toilet facilities and amenities that vessels must provide in order to ensure a safe working environment for MAF observers. Meeting the standard is a requirement for registration of an FCV.

interactions<sup>65</sup> with seabirds and marine mammals and keeping a trip diary covering any compliance issues witnessed. Observers also record any authorised discards, monitor the vessel's compliance with fishing regulations and undertake fish product weight and conversion factor testing.

- 301 Upon return to port, the observer is debriefed by MAF fisheries management and compliance staff. This provides both of those groups with first-hand feedback about fishing operations and conditions on board the vessel.
- 302 In the 2010/11 fishing year, observers were deployed on approximately 115 trips on EEZ fishing vessels, around 60 of which were FCVs. This means that roughly 30 percent of FCV operations were covered by observers.
- 303 Observer coverage has varied over recent years. Vessel coverage in the deepwater trawl fleet for the last three fishing years is summarised in Table 1 below.

**Table 1: Summary of observer coverage on the deepwater fleet for the 2008/09 – 2010/11 fishing years**

Vessel type	Observer statistics	2008/09	2009/10	2010/11
<b>FCVs</b>	Total number of FCVs	20	20	19
	Number observed	20	20	19
	Number observed more than once	17	15	16
<b>Domestic vessels</b>	Total number of domestic vessels	30	28	29
	Number observed	21	19	22
	Number observed more than once	10	10	13

Source: MAF Observer Programme.

- 304 MAF is currently implementing a plan to increase observer coverage in deepwater fisheries. The aim is to have an observer on all vessels fishing in the EEZ.
- 305 Steps are being taken by MAF to improve the efficiency of the observer programme including investigating ways to streamline data collection processes, making better use of technology and the possibility of outsourcing parts of the observer programme. We comment further on this in *Chapter Eight: Conclusions and Recommendations*.

## Compliance

- 306 MAF's current compliance approach is centred on education, monitoring, surveillance, audit, analysis and enforcement, with a strong emphasis on informing and assisting the industry to comply. This approach, commonly known as the VADE model, is considered to be producing good results.
- 307 The fisheries compliance regime applies to both domestic and foreign flagged vessels. Compliance monitoring activities are targeted at different fisheries based on risk assessments

<sup>65</sup> Interactions include all animals live or dead that are brought on deck or seabirds that are observed killed by fishing activity. It excludes any animals that were decomposing (not killed in fishing interaction), and those that land on deck or collide with the vessel superstructure.

completed for each fishery. This risk assessment supplements the vessel specific assessment during the registration process.

- 308 The effectiveness of the compliance regime has been independently verified. As previously mentioned, the New Zealand hoki fishery was recently certified as being a sustainable fishery by the Marine Stewardship Council. This certification includes an assessment of the fisheries compliance regime in New Zealand. The independent assessment team described New Zealand's compliance regime as both comprehensive and effective based on the combined use of satellite monitoring, fisheries observers and the various reporting and recordkeeping requirements.

### Monitoring

- 309 Monitoring and inspection activities include at-sea and in-port vessel inspections, vessel monitoring, analysis of catch composition and fishing patterns and analysis of observer reports and debriefs. MAF is currently able to allocate a small proportion of observer time to address suspected compliance breaches.
- 310 Vessel inspections may include a check of catch documentation, an assessment of catch on board compared to recorded catch, adherence to processing standards, assessment of bycatch levels, checks of gear and random carton inspections. MAF at-sea inspections are completed by fishery officers deployed on naval patrol vessels who board fishing vessels to carry out the inspections. Fishery Officers are mandated compliance officers.
- 311 MAF's Vessel Monitoring System is required for all fishing vessels over 28 metres. Latitude and longitude details are sent automatically via satellite to MAF at regular intervals. Regular checks are made on the vessel's position and its likely activities. Vessels are required to report certain activities to the Fisheries Communication Centre. Where anomalies occur, MAF's local field office is asked to follow up with the fishing company or conduct an investigation when the vessel returns to port.
- 312 MAF has, for some years, been collecting data on the mix of species caught in various fishing areas. Patterns are usually consistent and can be used to assess the integrity of catch reporting. MAF observers help to compile baseline data to which catch records are compared to identify suspicious behaviour.

### Enforcement

- 313 Interpreting information regarding breaches of fisheries legislation and regulations requires careful interpretation of the data. MAF's monitoring and analysis of compliance targets fisheries that have been identified as having increased risks of non-compliant behaviour. In some cases, domestic vessels are more numerous in these fisheries. In other cases, more FCVs are involved.
- 314 Penalties for non-compliance with the Fisheries Act can range from a briefing on how to rectify the issue to severe penalties including jail, substantial fines and vessel forfeiture.
- 315 Although over 400 fisheries offences are reported to have occurred in New Zealand's EEZ in the past four years, no breakdown of these figures by domestic and foreign flagged vessels is available. Of the twenty significant<sup>66</sup> investigations (leading to vessel forfeiture) conducted into EEZ vessel activity since 2006, ten involved Korean flagged vessels, four were flagged to the Ukraine, three to New Zealand, one to Russia, one to Japan and one to Malta.<sup>67</sup>

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<sup>66</sup> 'Significant' refers to a situation where prosecution is warranted.

<sup>67</sup> Some vessels involved in these prosecutions have left New Zealand since the time of the prosecutions.

## Deemed values

- 316 The deemed values mechanism is a key tool to ensure that commercial fishers' catch of species covered by the QMS is balanced with ACE so that catch of a stock does not exceed the relevant TACC. Deemed value liabilities are the responsibility of the New Zealand fishing permit holder,<sup>68</sup> and not of the foreign owner.
- 317 Each year a proportion of the deemed values owed to the Crown remains unpaid. In 2007 and 2008, there were instances where companies that chartered FCVs had accumulated significant deemed value debt (\$2.3 - \$3.2 million) and then defaulted on that debt. The vessels in question were chartered from Korea and the Ukraine.
- 318 As a result of a review of FCV issues undertaken in 2008, vessel operators are now required to provide a comprehensive package of information when seeking to register an FCV, including a realistic catch plan for the vessel and evidence of proposed ACE sourcing arrangements for the major species in the catch plan to decrease the risk of default on deemed value payments.

## Environmental performance

- 319 Fishing activity in the EEZ can have adverse impacts on the aquatic environment, most notably on a range of seabird and marine mammal species. The Fisheries Act requires that, when environmental impacts are adverse, the effect should be avoided, remedied or mitigated.
- 320 The number of interactions with seabirds and marine mammals varies according to such factors as the fish species targeted, the type of vessel, the time of year and the fishing methods employed. Regulatory measures to manage these effects include the mandatory use of bird scaring devices on trawl vessels and restrictions on fishing in marine mammal sanctuary areas. Non-regulatory measures include vessel-specific management plans for minimising interactions with seabirds, an operational procedure to avoid marine mammal interactions, the use of Sea Lion Exclusion Devices in certain areas and notification requirements when a certain number of interactions are recorded.
- 321 Compliance with both regulatory and non-regulatory measures is monitored by MAF observers on board vessels. Vessel performance with regard to seabird and marine mammal measures is analysed regularly by MAF. In the 2010/11 fishing year, there were 19 instances of vessel operators not adhering to their vessel-specific management plans (a non-regulatory measure). Of these, 13 were on foreign flagged vessels. Many of the breaches were minor in nature and were quickly remedied.
- 322 Data on environmental interactions is not broken down by the flag State of the vessel. It was suggested to the Panel that FCVs perform worse than domestic vessels in terms of numbers of interactions. One explanation for this may be that limited processing vessels, including most FCVs, are not equipped with fishmeal plants and, as a result, may discharge more fish waste and attract more seabirds than other types of vessel.

## Submitters' views

- 323 In the course of the public hearings, several critical comments were made to the Panel about reported breaches of fisheries legislation by some FCVs.

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<sup>68</sup> The New Zealand permit holder is usually the New Zealand charter party, but may be a foreign operator or other involved party.

- 324 Submitters tended to put responsibility for the breaches of fisheries legislation by some FCVs on foreign owners. There was also some criticism of:
- quota owners for not taking a closer interest in the way their ACE rights were used by FCVs;
  - ACE dealers who had little or no vested interest in the long-term sustainability of the fisheries as they do not have long-term investment in the resource; and
  - government agencies for their failure to take more decisive action against offenders.
- 325 A few submitters made the point that the behaviour of FCVs had improved in recent years as a result of the legislative and regulatory measures put in place by the government. Some submitters suggested that the record of FCVs in respect of fisheries legislation was no worse than that of New Zealand vessels. They saw the recent reported breaches of fisheries legislation as relating only to the 'bad apples' and felt that they could, and should, have been dealt with by MAF under the existing compliance framework.
- 326 It was drawn to the Panel's attention that a number of foreign-flagged vessels are at present under investigation. The Panel also heard that the number of charges actually laid against FCVs was just the 'tip of the iceberg' and that some FCVs were in fact persistent and systematic offenders against fisheries rules. These allegations featured in the testimony the Panel received from FCV crew members who had jumped ship in New Zealand in protest at their work conditions.
- 327 Some submissions were critical about the performance of FCVs in relation to bycatch and seabird catch, expressing the view that FCVs catch more seabirds than New Zealand flagged vessels during fishing operations.
- 328 It was acknowledged that, so far as compliance by FCVs with fisheries legislation was concerned, there were no jurisdictional issues such as those that complicate the situation in areas such as labour standards and vessel safety.
- 329 Among the various suggestions made for dealing with breaches of fisheries and marine protection rules were that the observer coverage on FCVs be increased and more use be made of the powers given to MAF under the Fisheries Act to control FCV activities. A number of submitters made a plea for stronger action (including prosecutions and exclusion from New Zealand's waters) to be taken against FCVs that did not obey the rules.
- 330 One suggestion from a major company involved holding quota owners to account for the use made of their ACE by FCVs. This company suggested that the quota for a fish stock represented a single common economic property and that the actions of a few FCVs were putting the economic value of all quota at risk. The company argued for a mechanism that would enable and require quota owners to ensure proper standards of conduct by the users of their ACE – for example, by setting guidelines for the use of quota and giving quota owners collectively some say in the issuing of fishing approvals to FCVs.
- 331 Another proposal from a major company was to use the discretionary powers in the Fisheries Act to create three tiers of companies using FCVs. High standards, including a strengthened Code of Practice, would be set for a top tier of quota owning companies operating multiple vessels in the EEZ. Those companies would be licensed to export their own product. A second group of companies without their own quota but which had a guarantee of sufficient ACE for their catch plans and complied with predetermined operating standards would be required to export via a top tier company or other New Zealand company operating vessels in the EEZ. Companies that did not qualify for Tier 1 or Tier 2 status would not only be required to channel their exports through a

Tier 1 company or other New Zealand company operating vessels in the EEZ but would be placed under a stringent monitoring and inspection regime.

## Issues identified

- 332 The Fisheries Act does not currently include specific provision for the DG to suspend or revoke an FCV's registration in the event of issues arising with a particular vessel during the period of registration. In 2008, MAF reviewed the legislation governing registration of FCVs and concluded that such a provision should be included. No amendments have yet been made and, until December 2011, no FCV registration had ever been suspended or revoked for reasons of non-compliance with the Fisheries Act or a breach of consent conditions. In January 2012, however, the consent to the registration of a foreign-flagged vessel was suspended based on the revocation of the vessel's SSM Certificate.
- 333 The lack of a specific provision in the Fisheries Act allowing for the revocation or suspension of an FCV's registration creates difficulties for MAF when vessels are found to have breached the Fisheries Act or any conditions on their Registration. Without specific provision, revoking or suspending registration requires complicated work and often longer periods of time to legally complete the desired action.
- 334 There are other areas of the Fisheries Act that could usefully be strengthened to enhance MAF's ability to take enforcement action when fisheries laws are breached by an FCV. These include clarifying the responsibilities of the New Zealand charter party, providing for the serving of documents and strengthening the consent conditions.
- 335 In February 2012, for the first time, an application for the registration of a foreign-owned vessel was denied consent by the DG. Consent was not given because after considering the compliance history of the applicant, MAF did not have confidence in the ability of the vessel and its operators to conduct fishing operations responsibly and within the applicable legislative and regulatory frameworks.

## Comment

- 336 New Zealand has full jurisdiction over the operations of foreign-flagged FCVs in the EEZ in terms of fisheries legislation. The arrangements for monitoring and enforcing fisheries laws on board FCVs are the same as those applied to domestic vessels. There are well developed programmes and processes in place for monitoring and regulating the performance of FCVs in the areas of fisheries rules, food safety standards and measures to manage seabird and marine mammal interactions.
- 337 The Panel is attracted to the idea of quota owners being required to take a greater interest in, and being more accountable for, the way in which their fishing rights are used by FCVs. We consider that they do have a general duty of care and a moral responsibility to ensure that the purchasers of their ACE do not engage in unethical or exploitative practices. However, we see this as primarily a matter for the fishing industry to regulate. It would certainly help if quota owners were able to agree on a set of standards to be met by ACE purchasers and if the industry itself were to monitor the performance of FCV operators. We do not, however, believe that the chain of responsibility can be extended to quota owners through legislation.

- 338 The Panel considered the proposal for establishing separate categories of vessels fishing in the EEZ, and while acknowledging that some elements of the proposal could help reinforce the other measures proposed in this Report, we have concluded that there would be problems in seeking to create differing rights and obligations for different types of operators in the EEZ.
- 339 MAF's approval process for the registration of FCVs is currently run in isolation from other agencies' approval processes. Based on evidence presented during this Inquiry, it is apparent that where there is an issue with one aspect of a vessel's operation, there are likely to be others. Therefore, better communication among agencies and greater co-ordination of decision making and monitoring activities should help all agencies better manage the operation of FCVs.
- 340 Key border agencies currently use the Integrated Targeting and Operations Centre (ITOC) to share risk information and intelligence. ITOC is a facility based in the Auckland Customhouse staffed by Customs, Immigration New Zealand, MAF and MNZ. The Panel considers there is potential for ITOC to improve agency co-ordination in relation to FCVs.
- 341 The Panel also considers that the Government's ability to take action against those who fail to live up to their obligations in respect of fisheries rules as well as vessel safety and employment conditions should be strengthened.

# Vessel Safety

# 6

342 This chapter discusses maritime safety as it applies to fishing vessels in New Zealand's EEZ. This includes vessel and equipment safety, marine protection and the avoidance of pollution, operational procedures and the qualifications of officers and crew.

## Current situation

- 343 Maritime New Zealand (MNZ) is the agency responsible for vessel safety. MNZ is a Crown Entity that was established in 1993 (initially under the name Maritime Safety Authority) with legislative functions under the Maritime Transport Act, Maritime Rules and Maritime Protection Rules, and the Ship Registration Act. MNZ also has designated responsibility for New Zealand's international obligations as a flag State (in relation to New Zealand flagged vessels) and as a port State (in relation to foreign flagged vessels).
- 344 Fishing is a dangerous occupation and accidents happen throughout the industry. Safety standards of FCVs have come under close scrutiny in recent years following a number of incidents, including the sinking of the *Oyang 70* in New Zealand's EEZ in 2010, with the loss of six lives, and a fatal accident on board another FCV during unloading operations at Bluff in 2009.

## International law

- 345 UNCLOS seeks to balance the respective rights and responsibilities of coastal States and flag States in relation to the EEZ. New Zealand, as the coastal State, has certain rights in relation to the management of the natural resources of its EEZ. The flag State has responsibility for the health, safety and qualifications of crew on board its fishing vessels as well as the safety standards of the vessel's construction and operation.
- 346 There are currently no international conventions or standards in force which apply to fishing vessels or crews. Fishing vessels and crews are expressly excluded from the two major International Maritime Organisation (IMO) conventions to which New Zealand is party: the International Convention for the Safety of Life at Sea (SOLAS); and the Convention on the Standards of Training, Certification and Watchkeeping (STCW).
- 347 Two IMO conventions dealing with fishing vessels have been developed: the 1993 Torremolinos Protocol for the Safety of Fishing Vessels (the Torremolinos Protocol); and the 1995 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (the STCW-F Convention). New Zealand is not a signatory to either of these conventions and neither has yet entered into force.
- 348 The Torremolinos Protocol covers construction, stability, machinery, fire protection, protection of crew, lifesaving equipment, emergency procedures, radio communication, navigation equipment and vessel certification for fishing vessels. The Protocol generally applies to fishing vessels over 24 metres, although some provisions are restricted to fishing vessels of more than 45 metres. If a proposed amendment to the Protocol to ease the rules regarding ratification is adopted, it is anticipated that the Torremolinos Protocol will enter into force in late 2015.
- 349 By ratifying this convention, New Zealand would be in a better position to apply its vessel safety standards to FCVs. This convention not only sets international standards for vessel safety, it allows New Zealand to enforce the requirements of the Protocol on vessels flagged to States that have not ratified the Protocol.

- 350 The STCW-F Convention sets training and certification standards for skippers and watchkeepers on fishing vessels of more than 24 metres. The Convention requires basic (pre-sea) safety training for all fishing vessel personnel. It represents a first attempt to make standards of safety for crews of fishing vessels mandatory internationally. As the required number of States has ratified the STCW-F Convention, it will enter into force in October 2012.
- 351 As with the Torremolinos Protocol, the STCW-F Convention provides that its requirements may be enforced on vessels flagged to non-Party States if operating in New Zealand waters and coming into port.
- 352 New Zealand has been a participant in the development of these two conventions and has incorporated some core elements into its maritime safety legislation. Although a national interest analysis of the merits of ratifying the conventions would be necessary, it is our understanding that New Zealand could become a signatory to these two conventions without having to adjust its legislation in any significant way.

## Domestic law

- 353 New Zealand's maritime safety regime outlined below is applied to FCVs, notwithstanding that UNCLOS places the primary responsibility for vessel safety and crew qualifications with the flag State. This has raised some questions about the scope of New Zealand's enforcement jurisdiction over foreign flagged FCVs. The tougher inspections of FCVs carried out by MNZ since June 2011 have also attracted the attention of some foreign operators.
- 354 As currently drafted, some of the Maritime Rules and Marine Protection Rules apply only to New Zealand flagged ships. For example, Rule 31C relates to manning only on New Zealand flagged fishing vessels.
- 355 Moreover, the HSE Act, which MNZ administers in respect of New Zealand ships, does not apply to foreign flagged FCVs, as discussed in *Chapter Seven: Employment and Labour Standards*.

## Current regime: Safe Ship Management System

- 356 MNZ enforces the Maritime Rules and Maritime Protection Rules through its Safe Ship Management System (SSM). The SSM system was designed to ensure that all aspects of the operation of New Zealand vessels were fit for purpose and of a sufficiently high standard. SSM has always applied to FCVs. Monitoring of FCV safety standards was, however, increased in response to concerns raised in 2008 and again in 2010.

## Vessel safety

- 357 After two years of continuous operation FCVs must enter the SSM system. This involves an analysis of the vessel's safety certificates and a survey of the vessel to confirm that it is 'fit for purpose'. Detailed information about the SSM system appears in Annex I.

## Crew qualifications

- 358 Although the flag State sets the crewing qualifications and certification requirements, MNZ checks the qualifications of crew on board FCVs as part of the initial and ongoing inspections. MNZ verifies that the flag State has issued appropriate qualifications and that the qualifications are valid, and confirms that the qualified crew listed on documentation are on board. If the certification issued by the flag State is not valid, (for example, if it is out of date or a coastal qualification is held

rather than an unlimited one),<sup>69</sup> MNZ can detain the vessel or impose conditions on its operation.

- 359 New Zealand has a process for recognising foreign crewing qualifications as being equivalent to New Zealand qualifications on a case by case basis. This process is cost recovered from the applicant and relies on appropriate information being provided. MNZ has not undertaken a thorough analysis of the qualification regimes of flag States with vessels currently fishing in the EEZ. Further work by MNZ would be needed to assess these regimes and establish equivalence with New Zealand's standards.

### Marine pollution

- 360 A physical check is made during the regular inspections of any risk of marine pollution posed by FCVs. The current focus of physical checks is on pollution prevention equipment (for example, the oily water separator and bilge holding tanks) with inspectors requiring the equipment to be demonstrated rather than just sighting a current International Oil Pollution Prevention Certificate.

### Compliance with maritime safety rules

- 361 If a routine inspection raises concerns, or if a particular operator or class of operators is causing concern, a follow up inspection may be undertaken against all Maritime Rules and Marine Protection Rules.
- 362 Since June 2011, MNZ has undertaken more stringent inspections of both FCVs and domestic vessels. MNZ is also making greater use of its power to undertake special audits of operators and others involved in the maritime system.
- 363 If a vessel does not comply with the requirements, MNZ may:
- suspend the vessel's SSM certificate (which can lead to a suspension of its registration under the Fisheries Act);
  - impose specific conditions on the vessel's operation (known as Imposition of Conditions (**IOC**)); or
  - detain the vessel, preventing it from operating until identified deficiencies are rectified.
- 364 Since 2006, of the 15 detentions and IOCs imposed on fishing vessels, nine have been issued to Korean FCVs, one to a Japanese vessel, one to a Dominican vessel and the remainder to domestic vessels. Between 2006 and June 2011, only one FCV was detained. Since June 2011, six FCVs, four of which have been Korean flagged and one each from Japan and Dominica, have been detained.
- 365 As at 10 January 2012, one vessel remained in detention and one was under an IOC. The remaining four FCVs made the investment necessary to meet MNZ's requirements.
- 366 Since 2006, New Zealand vessels inspected by MNZ have averaged four deficiencies per inspection, compared with three deficiencies per inspection for Dominican flagged vessels, four for Ukrainian vessels, four for Japanese vessels and seven for Korean flagged vessels.

### Concerns with SSM

- 367 MNZ has reviewed the SSM regime and has identified a range of issues that compromise its effectiveness. These issues include the multiple roles performed by SSM companies and the potential conflict between providing commercial services and providing regulatory functions. There

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<sup>69</sup> An unlimited certificate allows a captain to operate any vessel worldwide as opposed to a coastal certificate, which only allows operation within coastal waters of the issuing nation.

is also a concern that, due to the outsourcing of functions, MNZ as the regulatory body has lost touch with the industry.

## Proposed regime: Maritime Operator Safety System

- 368 A new safety system that focuses on operator behaviour is currently being developed by MNZ in response to the concerns identified with the effectiveness of SSM. MNZ is proposing a Maritime Operator Safety System (**MOSS**) for which it will be seeking the Minister of Transport's approval to implement by mid-2013. Under MOSS, MNZ will take direct responsibility for regulatory control of the maritime industry by certifying and auditing all operators itself rather than relying on SSM companies.
- 369 A key feature of MOSS is stronger controls than SSM. Operators will need to demonstrate that they have appropriate safety management systems in place and intend to adhere to them. Although independent surveyors will be retained, they will be subject to closer quality control and oversight from MNZ and will not have a regulatory function. It is intended that MOSS will be applied to both New Zealand and foreign flagged fishing vessels.
- 370 MOSS is expected to:
- strengthen the maritime safety management system;
  - avoid potential conflict between commercial and regulatory roles;
  - simplify the rules and provide for more decisive interventions by MNZ;
  - clarify industry's accountability for maritime safety by holding operators responsible;
  - provide better guidance for operators; and
  - deliver an improved safety culture and better safety performance across New Zealand's maritime industry.

## Qualifications and Operational Limits Framework

- 371 MNZ has recently initiated a review of the training and qualifications required for crew holding New Zealand qualifications and certificates. Once introduced, the new Qualifications and Operational Limits Framework (**QOL**) will align all fishing vessel qualifications to STCW-F standards. QOL will help to ensure that people working on New Zealand flagged vessels are appropriately trained, skilled and qualified. Under current legislative settings, QOL will not apply to FCVs.

## Submitters' views

- 372 Recent incidents involving Korean flagged vessels in New Zealand's EEZ and search and rescue zone (some of which resulted in the deaths of crew members) were highlighted by a range of submitters. There were questions about the ability of MNZ to apply New Zealand standards to foreign flagged vessels under the various provisions of UNCLOS. These questions applied both to vessel safety standards and to the qualifications and training of crews.
- 373 A number of submissions dealt in detail with the complaints and allegations of crew members who had walked off FCVs in 2011. It was noted that these complaints were being investigated by DoL and MNZ.
- 374 As with questions of employment and labour standards on FCVs, opinions among submitters were split on just how serious and widespread the problems were and whether they could be

satisfactorily dealt with under the existing legislative framework or required a change of policy and legislative amendments to bring all vessels operating in the EEZ more squarely under New Zealand rules.

- 375 A comprehensive submission was made to the Panel by MNZ on the range of safety issues relating to FCVs in New Zealand's EEZ.

## Issues identified

### Foreign flagged FCVs have not been held to New Zealand's Maritime Rules

- 376 Foreign flagged FCVs are not currently required to enter the SSM system until two years of continuous operation in New Zealand waters. Under the proposed MOSS system, FCVs will be required to comply from the time of their arrival in New Zealand's EEZ. In 2011, it became clear that New Zealand's Maritime Rules and safety standards had not been fully met by some FCVs, most notably with regard to physical vessel safety. This is partly because of perceived weaknesses in the SSM system and partly because of the restrictive wording of some provisions in the Maritime Rules.

#### Vessel safety

- 377 SSM organisations have accepted certification from the relevant foreign classification societies as evidence that the vessel meets a level of safety equivalent to that required by New Zealand. It has been discovered that some classification societies do not fully survey the vessel before issuing a certificate, and there are questions about the reliability of some of the documentation issued to FCVs.
- 378 It appears that resourcing constraints have also limited MNZ's ability to deal effectively with safety issues concerning FCVs. For example, while MNZ generally aims to inspect each FCV every six months, at times, the period between inspections has extended up to and beyond 12 months due to a lack of resources.

#### Qualifications

- 379 MNZ cannot currently enforce any requirements with regard to qualifications of crew on board FCVs. This is due to the wording of the relevant rule (Rule 31C) which specifically states that it applies only to 'New Zealand ships', which means vessels flagged to New Zealand.
- 380 It was also noted that recognition of qualifications requires a detailed analysis of foreign qualifications and an assessment of their equivalence to New Zealand qualifications. Information about the recognition process appears in Annex J.

### Uncertainties with New Zealand's jurisdiction

- 381 MNZ takes the view that New Zealand's sovereign rights (as set out in UNCLOS) extend to the power to regulate vessel safety on FCVs because FCVs are involved in a commercial activity rather than merely navigating through the EEZ. Some FCV operators have questioned this.
- 382 Under UNCLOS, the flag State is responsible for the manning of ships and the training of crews, taking into account the applicable international instruments. This means that requiring crew members on FCVs to hold equivalent qualifications raises some jurisdictional issues. Without

STCW-F ratification, there are no international standards regarding training for crew on fishing vessels.

- 383 Authority to investigate accidents involving FCVs in New Zealand's EEZ remains with the flag State. If an accident occurs within the EEZ, the Transport Accident Investigation Commission (**TAIC**) is not in a position to investigate the accident unless requested by the flag State. A New Zealand coroner may request an investigation by the New Zealand Police in the event of a fatality.
- 384 FCV masters are only required to report major incidents or mishaps within the Territorial Sea. MNZ does not have the ability to monitor or investigate any incidents that happen in the EEZ.

### Difficulties with enforcement and determining accountability

- 385 There are currently problems in determining who can be held accountable for FCV breaches of Maritime Rules and other safety regulations. Under the SSM system, the vessel owner is generally responsible for ensuring safety and wellbeing in the operation of the vessel. The vessel owner of an FCV is usually in a foreign country, and the Maritime Rules are not clear on who can be held accountable in New Zealand. Although FCVs have a designated agent in New Zealand who is responsible for any breaches of the Fisheries Act, this person is not specified for the purposes of maritime safety – or, for that matter, labour standards.
- 386 MNZ has also found that, in the case of a foreign flagged vessel, it can be difficult to lay charges within the current six month time limit provided for in the Maritime Transport Act as building a case often takes more than six months. We note that the Maritime Transport Amendment Bill includes a provision redefining the six month period within which prosecutions can be taken. The Panel supports this provision.

### Comment

- 387 An underlying problem in respect of vessel safety is that UNCLOS gives flag States prime responsibility for the safety of vessels and the health and safety of their crews. The wording of the legislation that MNZ currently works under also creates difficulties.
- 388 At a practical level, there have been problems in the way the SSM system has been applied to FCVs. The new system (MOSS) under development by MNZ will bring greater certainty to the audit and inspection systems. Recent months have already seen MNZ take a tougher approach to the inspection and certification of FCVs.
- 389 It is not clear how the issue of qualifications of FCV crews should be addressed, as accessing the information necessary to verify foreign qualifications remains a significant challenge. This will need to be resolved to ensure that crew working on FCVs in the EEZ are appropriately qualified.
- 390 It is apparent that where there are issues with vessel safety, there are often issues relating to labour standards and fisheries compliance. Until recently, this information has not been shared among the agencies concerned. This highlights the need for strengthening of interagency co-operation on the regulation of FCVs.

# Employment and Labour Conditions

391 This chapter outlines the current labour regulations that apply to the crew of foreign flagged vessels and discusses current issues concerning FCVs.

## Current situation

392 The current foreign flagged FCV model typically uses fishing vessels that are on time charter to New Zealand based fishing companies. Under a time charter, the employer of the crew remains either the foreign charter party or another foreign-based employer rather than the New Zealand charter party.

393 Despite the crew of foreign flagged FCVs having a foreign employer and employment agreement, they have some entitlements under New Zealand legislation. Section 103 of the Fisheries Act explicitly extends the coverage of the Minimum Wage Act and the Wages Protection Act to FCV crew and empowers Labour Inspectors, the Employment Relations Authority and the Employment Court to enforce these Acts where necessary. The Minimum Wage Act requires that all employees are paid at least the minimum wage, and the Wages Protection Act prohibits employers from making unauthorised deductions from wages.

394 As part of the immigration AIP process, the New Zealand charter party must be a signatory to the Code of Practice. The Code of Practice specifies additional minimum entitlements such as the requirement to have a written employment agreement that encompasses those matters specified for an equivalent New Zealand agreement, an increment to the minimum wage of \$2 per hour and a minimum 42-hour working week for crew of foreign flagged FCVs. It also stipulates the provision of a formal enforceable guarantee from a New Zealand guarantor (generally the New Zealand charter party, although this is not a requirement) in the event that minimum remuneration requirements are not met by the foreign employer. More information on the Code of Practice appears in Annex F.

## International Conventions

395 While there are currently no ILO conventions in force specific to fishing, C188 – Work in Fishing, has been drafted to ensure that people employed in the fishing industry have decent conditions of work on board fishing vessels. It imposes obligations on States to establish minimum conditions of service, accommodation and food, occupational safety and health, medical care and social security for commercial fishers who work on vessels flagged to their State.

396 C188 applies to all fishers and all fishing vessels engaged in commercial fishing operations. The obligations to ensure the standards set out in C188 are afforded to fishers generally fall on the flag State. With regard to domestic vessels, the provisions in C188 are broadly consistent with New Zealand's current approach to labour standards. It is, however, more prescriptive than New Zealand tends to be in its approach to labour law issues and, in some areas, imposes additional reporting requirements to those currently existing in New Zealand.

397 New Zealand is not yet a signatory to C188. This Convention will only come into force 12 months after ten countries (eight of them coastal States) have ratified the Convention. At present only two countries have ratified the Convention.

## New Zealand employment relations framework

398 New Zealand has a flexible employment relations framework and is consistently ranked in the top three in the world for ease of doing business.<sup>70</sup> It also scores well in terms of flexibility of employment.<sup>71</sup> At the heart of the employment relations framework are the principles of freedom of association and good faith. Employees are free to choose whether to negotiate the terms and conditions of employment with employers individually or collectively. As it stands, the employment relations framework provides minimum entitlements and protections in such areas as annual holidays, remuneration, health and safety.

## Employment relations framework as it applies to foreign flagged FCVs

399 The employment arrangements for crew of foreign flagged FCVs are different from those that apply to other migrant workers. Although FCV crew require New Zealand work visas to work within New Zealand's EEZ, they are effectively employed under foreign labour law and by a foreign employer. This is in contrast to other temporary migrants, who have a New Zealand employment agreement with a New Zealand employer.

400 Additionally, the employment terms and conditions of the crew of foreign flagged FCVs must conform to the principles and requirements of the Code of Practice. The principles and requirements are broadly reflective of the requirements under New Zealand employment law, such as the requirement to have a written employment agreement specifying the particulars of the employer and employee, the nature of work required, the expected hours of work and dispute resolution procedures. The employer of the FCV crew is, however, a foreign party and not the New Zealand charter party.

## Immigration policy in relation to foreign flagged FCV crews

401 Crew of foreign flagged FCVs must be issued with work visas under the Crew of Foreign Fishing Vessels temporary work instructions. Under this policy, the New Zealand charter party applies to DoL for an AIP for a specified number of workers to crew the vessel over a particular period (often one or two years). In addition, each individual crew member must apply for a work visa and satisfy additional requirements such as health and character. This process provides the opportunity to inspect employment agreements in respect of particular individuals and to decline visas for further foreign crew if there are outstanding issues with the employer (for example, unresolved non-compliance with the Code of Practice for previous crew).

## Availability of New Zealand workers

402 The New Zealand charter party must provide evidence that there are no suitable and available New Zealand applicants on the Deepsea Fishing Crew Employment Register. This is the only market test that the New Zealand charter party must meet. The Register is operated independently by a Nelson based fisheries services company, and is funded by the fishing industry. Expressions of interest from suitably qualified people are sought in major newspapers twice yearly.<sup>72</sup>

403 The New Zealand charter party may provide additional information to support the case for

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<sup>70</sup> World Bank Group. 2012 *Doing Business 2012*, World Bank Group.

<sup>71</sup> World Bank Group. 2009 *Doing Business 2010*, World Bank Group.

<sup>72</sup> The Deepsea Fishing Crew Employment Register's minimum requirement is two years' deep sea experience.

recruiting overseas crew, such as evidence that Work and Income New Zealand was unable to provide suitably qualified and experienced New Zealanders or evidence from others in the fishing industry about the current state of the labour market.

### Mandatory minimum terms and conditions have been and will be adhered to

- 404 The New Zealand charter party must be a signatory to the Code of Practice and must provide evidence that the terms and conditions of the employment agreements offered to the crew conform to immigration policy. If requested, it must also provide evidence that they have been compliant with the Code of Practice in the past.

### Code of Practice on Foreign Fishing Crew

- 405 The majority of the rights and entitlements currently provided to crew of foreign flagged FCVs are through the Code of Practice. The Code of Practice is necessary because New Zealand does not have jurisdiction to enforce full employment legislative requirements on foreign flagged FCVs within the EEZ. DoL uses immigration policy as a lever to require compliance with the terms and conditions of the Code of Practice.
- 406 As mentioned earlier, the Code of Practice applies to foreign flagged FCVs only (not foreign fishing crew working on domestic vessels). The Code of Practice and FCV immigration policy have the following minimum remuneration requirements:
- minimum wage plus \$2 per hour for actual hours worked but in no case less than 42 hours per week over the course of the charter;<sup>73</sup>
  - deductions may not take hourly rates below the minimum wage for all hours worked; and
  - genuine and verified personal expenses will not be treated as deductions.
- 407 The Code of Practice requires that:
- crew employment agreements generally reflect requirements in the Employment Relations Act and provide for employment disputes to be settled in New Zealand employment institutions; and
  - crews have minimum working and living conditions covering areas such as clothing, hygiene, meals and the provision of amenities.
- 408 The Code of Practice also provides for a safe work environment, including an MNZ safety checklist and that an employee can complain to DoL or the New Zealand Police.
- 409 The Code of Practice provides that the New Zealand charter party (or suitable guarantor) must provide a guarantee of payment of minimum levels of crew remuneration in the event of default by the employer and repayment of any accommodation, maintenance and repatriation or deportation expenses if required.

## Health and Safety in Employment Act 1992

- 410 The HSE Act provides a regulatory framework that promotes the prevention of harm for all persons at work. Workplace health and safety on foreign flagged FCVs operating in the EEZ are not, however, covered by the HSE Act. The HSE Act as currently worded applies to non-New Zealand ships only where crew have an employment agreement or contract governed by

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<sup>73</sup> The requirement to pay the minimum wage and an additional \$2 an hour was an attempt to ensure that crew receive much the same terms and conditions as New Zealanders doing comparable work, and to ensure that the use of FCVs would not provide a competitive advantage over New Zealand crew due to lower labour costs.

New Zealand law and the ship is engaged in coastal trade on demise charter to a New Zealand operator. For a foreign flagged FCV under demise charter to be considered a New Zealand ship for the purposes of the HSE Act, amendments would be required to both the Fisheries Act and HSE Act.

## Accident Compensation Act 2001

- 411 FCV crew have limited coverage under the Accident Compensation Act because they are not New Zealand tax residents. The New Zealand charter party does not pay ACC Work Account levies for the ship's crew as the crew's wages are not subject to New Zealand tax.
- 412 Two circumstances apply in relation to injuries of crew on foreign flagged FCVs operating in New Zealand waters. If the crew member arrives in New Zealand on a foreign owned ship and is still in New Zealand waters when the injury occurs, he or she is unlikely to be covered by ACC. A crew member who flies to New Zealand in order to transfer to the ship, may be covered by ACC but will not receive weekly compensation. Similar arrangements apply to other visitors to New Zealand who are not tax residents.

## Submitters' views

- 413 Allegations about the mistreatment of crew on board some foreign flagged FCVs dominated the submissions. In some cases, it was alleged that the behaviour of the operators of some Korean FCVs amounted to exploitation. There were accusations of human rights abuses and underpayment. There were questions raised about what more New Zealand could do under the existing legislation to prevent such abuses. It was acknowledged by some submitters that New Zealand's lack of formal jurisdiction over foreign flagged FCVs was a major problem in this respect. Although some questions were raised about payment levels across the FCV fleet, the Panel received no complaints about the mistreatment of crew on vessels currently flagged to the Ukraine, Dominica or Japan.
- 414 The problems identified by submitters ranged from poor vessel safety to persistent underpayment of crew (through a combination of fraudulent time sheets, exploitative manning agent practices and the withholding of payments), mistreatment of crew, breaches of the Code of Practice, physical and verbal abuse and substandard workplace and living conditions.
- 415 Opinions were divided as to whether recent reports alleging the mistreatment of crew had exaggerated the problems. Groups and individuals involved in trying to help the crews that had walked off FCVs in recent months were clearly persuaded of the seriousness of the situation and made a strong plea for urgent action to resolve the problems. The Panel received a number of submissions containing detailed accounts of the allegations made against the FCVs concerned, including testimony from crew members.
- 416 It was noted by some submitters that the requirements and standards placed on foreign flagged FCVs under the Fisheries Act and the Immigration Act should, in theory, prevent the exploitation of crew. Moreover, the Code of Practice requires New Zealand charter parties to ensure that crew are properly treated. Given the intrinsic difficulty faced by DoL in monitoring and enforcing the rules, many submitters turned their attention to additional ways of ensuring that FCV crews were given adequate protection.

- 417 It was pointed out by some submitters that the HSE Act did not apply to FCVs and that the Code of Practice had not been particularly effective in raising health and safety standards on some FCVs.
- 418 Some submitters wanted to see all foreign flagged FCVs banned from operating in New Zealand's EEZ. Others accepted the case for some FCVs to remain (provided that they observed the rules), but wanted them flagged to New Zealand so that they would come directly under New Zealand's laws and compliance framework. Others took the view that the problems were not widespread among the FCV fleet and that stronger enforcement action by the government agencies concerned should be sufficient. A number of submitters argued for New Zealand to ratify the relevant ILO conventions setting international standards for workplace conditions of crews on fishing vessels.

## Issues identified

- 419 Allegations of poor work conditions on board foreign flagged FCVs ranged from poor crew accommodation, hygiene facilities, and food quality to the more serious questions of unsafe working environments, underpayment and abuse. At present the HSE Act cannot be applied on board foreign flagged vessels as the crew do not have New Zealand employment agreements and the flag State has primary jurisdiction for health and safety.

## Allegations of human rights abuses and underpayment

- 420 The Panel heard allegations of human rights abuses of the crew on board foreign flagged FCVs both from submitters and from the former crew of an FCV. Although complaints to the New Zealand Police on such matters as human rights abuses of crew on board foreign flagged FCVs have been made in the past, no prosecutions or investigations have resulted. We are advised that the New Zealand Police position is that the principal issues are employment related and are more appropriately dealt with by DoL through civil remedies such as the Employment Court. The difficulty is compounded by the fact that New Zealand has limited criminal jurisdiction over foreign flagged vessels. However, it has proved difficult to deal with complaints of human rights abuses under the Code of Practice.
- 421 The Panel is concerned about the allegations of human rights abuses and crew mistreatment and has heard testimony that backs up many of these allegations. However, the problem does not appear to be as widespread as has been reported.
- 422 The employment relationships of crew are not transparent and often involve multiple parties and employment agreements. In practice, it is difficult for Labour Inspectors to identify an employer against whom to enforce the Minimum Wage Act and the Wages Protection Act. Overseas employers are essentially out of New Zealand's jurisdiction. DoL has successfully taken actions on behalf of some crew against their employers for payment of unpaid wages.

## Problems with enforcing the Code of Practice

- 423 FCVs are audited against Code of Practice requirements by immigration officers, with assistance from Labour Inspectors. Allegations of crew underpayment are, however, difficult to verify because:
- in many cases crew are prepared to accept payment below New Zealand minimum standards and will not put their employment at risk by complaining;
  - manning agents offshore take a portion of wages for arranging the job and it is very difficult to

- ‘follow the money’ and determine how much is paid to crew; and
- even if offshore payments could be traced, hours worked on board vessels are not always properly recorded and are difficult to verify.

- 424 DoL has found several instances of crew hours being recorded inaccurately and of underpayment of wages. In these cases, DoL ordered that money be repaid to affected crew and that the companies involved take steps to remedy such situations in the future. In most cases, the New Zealand charter party remedied the situation and gave assurances that this would not happen again. Sanctions for non-compliance include cancellation or non-renewal of the AIP and crew work visas.
- 425 DoL has acknowledged that its audit and inspection processes require improvement. In the past, audits have largely been a paper-based exercise, with documentation provided by the vessel operator being taken at face value. An additional weakness of the audit model has been that immigration officers have had little or no training or experience in audit work of this kind.
- 426 DoL recently introduced changes to make the audit programme more robust. From February 2012, external and specialist providers will undertake the audit process. This will ensure the independence of the audit function and that auditing standards are met. DoL envisages that FCV operators will meet the full costs of the new audit process.
- 427 Another weakness in the present system is that the onus of proof of non-compliance with of the Code of Practice currently rests with DoL. Under these arrangements it has proved time consuming and difficult for DoL to meet the evidentiary requirements necessary to take enforcement action. The Panel was told that some New Zealand charter parties have not co-operated in investigations. There would be advantage in placing the onus of proof of compliance with the Code of Practice on the New Zealand charter party.
- 428 There is a risk of the New Zealand charter party going into voluntary administration in order to avoid its financial responsibilities under the Code of Practice. This risk would be lessened if a fit and proper person test was established and companies were required to demonstrate their financial capacity to meet their obligations under the Code of Practice.

### Issues of underpayment

- 429 The Panel has been told that crew of foreign flagged FCVs are generally paid as contract fishers (as are the crew on some domestic vessels) and receive a percentage of the value of the catch. The hourly rate of the minimum wage plus \$2 per hour is used as a cross check by New Zealand charter parties to ensure minimum remuneration requirements are met.
- 430 It was claimed that some foreign flagged FCV operators do not pay their crews the minimum rate of pay under the Code of Practice. The Panel has also been told that in the case of some Indonesian crew, an indeterminate amount is kept by the manning agent. Although in some instances the New Zealand charter party may pay the foreign charter company the correct amount, there is no way to verify that the money actually reaches the crew member.
- 431 The variances in the amount allegedly paid to crew illustrate one of the weaknesses of the current AIP process. At present, the New Zealand charter party must ensure that workers are paid in accordance with the Code of Practice. The New Zealand charter party is not, however, the employer of the crew and cannot ensure that the crew actually receive the entitled amount.
- 432 The Panel has also been made aware of a number of complaints that the hours worked by the

foreign flagged FCV crew do not equate to the hours that are recorded. This can include the fishing crew being only paid for the minimum of 42 hours per week (as required by the Code of Practice) regardless of the actual hours worked, crew signing false timesheets or two sets of records being kept.

- 433 Since 2005, DoL has carried out six investigations by Labour Inspectors into allegations of underpayment. The results of some investigations were inconclusive. In most cases, however, the issues were resolved without formal enforcement action.

### Offshore manning agents

- 434 Many of the remuneration problems involving the crew of foreign flagged FCVs seem to trace back to the practice of manning agents. A number of submitters alleged that offshore manning agents take a significant cut of wages.
- 435 Crew dealings with manning agents are unclear as they happen offshore and are beyond New Zealand's jurisdiction. According to submitters, manning agents may be involved in practices such as: charging a fee for a worker before finding work, charging a commission on a worker's wages, levying a fine on workers who do not complete their contract (such as by deserting ship) and withholding a portion of the worker's pay until they complete the contract.
- 436 The Panel received reports of instances where manning agents engaged in exploitative practices such as keeping money for themselves instead of remitting it to the crew's family.
- 437 While New Zealand considers that foreign flagged FCV crew should receive their full lawful entitlements, this is not fully within its control. In addition to the problem of foreign based manning agents, individual crew members may agree to enter into arrangements whereby their wages are subject to deductions by third parties. However, it would help ensure that crew members received their full entitlement if their wages were paid into an individual New Zealand bank account.

### Lack of a co-ordinated approach to monitoring and enforcement

- 438 At present, information sharing between agencies is limited and enforcement action can be disjointed. There is no sense of a co-ordinated approach to monitoring and enforcement. Government agencies have many points of interaction with FCVs such as fishing vessel registration, AIP and crew visa approval, maritime safety inspections and MAF observers. However, information about a vessel's risk profile is not generally shared among the relevant government agencies.

### Limits on New Zealand's jurisdiction

- 439 New Zealand has sought to apply its standards on board foreign flagged FCVs by extending the application of the Minimum Wage Act, Wages Protection Act and through the Code of Practice. However, the crew of a foreign flagged FCVs are in practice employed in a workplace which is largely regulated by foreign employment law.

## Comment

- 440 Ensuring fair and equitable labour standards and workplace conditions on FCVs in New Zealand's EEZ has taken on particular importance in the past few months. There have been numerous allegations and reports of crew underpayment and mistreatment on certain FCVs. Virtually all the complaints made to the Panel concerned one flag State.
- 441 It is clear to the Panel that there have been serious breaches of the Code of Practice. It is equally clear that the response of both the industry and government agencies has been inadequate.
- 442 While there is an intrinsic difficulty in enforcing compliance on FCVs when they are operating at sea, the deficiencies in the current regime must be addressed to ensure that these exploitative practices do not continue and to send a clear message that they will not be tolerated in New Zealand waters.
- 443 We consider that further measures are necessary to ensure that operators, owners and charterers of FCVs play by the rules. The Panel has considered the fact that FCV crew need visas to work in the EEZ which implies that the EEZ is considered as part of New Zealand territory for employment purposes. The Panel considers that the full framework of New Zealand's employment law ought to apply. This means placing all FCV crew under a New Zealand employment agreement with the ability to hold a New Zealand employer accountable for crew employment matters.
- 444 The Panel acknowledges the difficulties of ensuring that crew receive the remuneration they are entitled to, particularly where funds are remitted offshore. This makes it all the more important that foreign flagged FCV crew receive their full entitlements in New Zealand.
- 445 As mentioned previously, the Panel considers that agencies need to work more closely together in regulating the activities of FCVs including in respect of labour and employment issues.

# Conclusions and recommendations

- 446 This Inquiry is tasked with making recommendations to the Minister of Labour and the Minister for Primary Industries on:
- the role of FCVs in harvesting New Zealand's fisheries resources;
  - an appropriate government policy framework and institutional design for the operation of fishing vessels in New Zealand's EEZ;
  - the legal framework that should underpin this regime;
  - options for monitoring and enforcing the rules;
  - the implementation of any recommended changes in policy; and
  - improvements to existing policy settings.
- 447 The Panel has concluded that, while FCVs make a useful contribution to New Zealand's economy, this should not be at the expense of New Zealand's international reputation.
- 448 New Zealand charter parties and the foreign owners of FCVs must ensure safe workplaces and fair and equitable employment practices on their vessels. The image of the seafood industry specifically, and New Zealand's reputation for safe and sustainable food production generally, need to be protected. FCVs should be required to meet the same minimum standards, and adhere to the same rules, as domestic vessels.
- 449 Recent reports have highlighted a number of weaknesses in the current regime governing the use of FCVs in New Zealand's EEZ. If FCVs are to continue operating in New Zealand's waters, and the Panel believes that they have a contribution to make, the present arrangements must change.
- 450 While most of the criticisms heard by the Panel relate to just a small number of FCVs from one flag State, there have been instances in the past of other flag States' vessels disregarding the rules. Numerous attempts have been made to resolve the issues, both through legislation and through the introduction of the Code of Practice. Despite this, certain foreign owners and New Zealand charter parties are not meeting their obligations under the Code of Practice.
- 451 Weaknesses have become apparent in terms of the ability of government agencies to monitor and enforce the relevant laws and regulations. Partly, this is due to the intrinsic difficulty of controlling the activities of fishing vessels operating a long way from shore. Jurisdictional confusion is an added complication. Under UNCLOS, with the exception of fishing related activities, it is the flag State rather than the coastal State that has primary jurisdiction over the operations of FCVs in the EEZ. In some areas, the legislation that the agencies work under has not been particularly helpful.
- 452 Despite these jurisdictional and practical problems, it seems to the Panel that New Zealand's government agencies can do more to ensure compliance with New Zealand rules and standards. This will require each agency to give greater priority to the regulation of FCVs within its area of responsibility. Closer co-ordination among the key agencies is also necessary. In the Panel's view, a major weakness until now has been that the agencies have been operating in isolation, with little in the way of information sharing or co-ordinated decision making on FCV issues.

- 453 In weighing up various options for improvement, the Panel has been handicapped by a shortage of hard financial information on the fishing industry. This is a highly competitive industry, and fishing companies tend to keep commercial information confidential. It is not possible for the Panel to predict with any certainty the reactions of the industry in general, and FCV owners and operators in particular, to the stricter monitoring and enforcement arrangements and the changes in the government's regulatory framework recommended in this Report.
- 454 The Panel heard widely divergent views on such questions as the availability of alternative fishing vessels and suitable New Zealand crews to fill any gap left by any reduction in the size of the FCV fleet. The impact of the changes we have recommended on the price of ACE and the value of quotas is similarly difficult to predict as are the implications of allowing the current regime to continue. These uncertainties will need to be kept in mind as the recommendations for change are assessed.
- 455 Conclusions and recommendations are discussed below under the following headings:
- Practical improvements by agencies;
  - Closer interagency co-operation;
  - Legislative amendments;
  - International conventions;
  - Policy changes; and
  - Implementation of recommendations.

## Practical improvements by agencies

- 456 A number of practical improvements could be made relatively quickly within the existing legislative framework to help resolve the current range of FCV issues.

### Fisheries management

- 457 MAF has, for some time, been considering placing an observer on every fishing trip undertaken by both FCVs and domestic vessels fishing in the EEZ. The Panel supports this initiative.
- 458 At present, it is estimated that MAF observers cover only 30 percent of FCV voyages. The main benefits of this move would lie in the collection of additional scientific and biological data to support the QMS. There should, however, be some benefits in terms of additional capacity to monitor compliance with fisheries rules, including bycatch of seabirds and marine mammals.
- 459 The Panel also sees some scope for releasing more observer time to monitor compliance issues by streamlining data collection processes and making better use of technology. This will become increasingly important if observers take a greater role in monitoring vessel and crew behaviour with respect to safety and labour standards. The Panel understands that MAF is currently investigating the use of cameras to monitor marine mammal and seabird interactions and the use of electronic at-sea data recording equipment.
- 460 The Panel was informed that MAF is looking at the possibility of outsourcing its observer programme to improve its effectiveness and reduce compliance costs on the industry. We understand that MAF would continue to employ the observers, determine vessels' risk profiles and decide when and where to deploy observers. While conscious of the potential for a carefully designed outsourcing arrangement to provide better value for money, we would stress the

importance of adequate safeguards against possible conflicts of interest on the part of contracting firms and of ensuring that the programme remains squarely under MAF's control.

- 461 The stronger focus on the compliance record of the FCV fleet will require MAF to provide data broken down by vessel, operator and flag State to the interagency steering group proposed under 'Closer interagency co-operation' below.
- 462 There have been cases of FCV operators and charter parties going into liquidation in order to avoid payment of large deemed value debts running to millions of dollars. The Panel considers that enforceable guarantees should be required from the New Zealand agents or charter parties, and that the financial health of all parties should be considered before an FCV is registered under the Fisheries Act.
- 463 Finally, although the Fisheries Act as it is currently worded places some constraints on MAF's ability to consider non fisheries offences when determining applications for consent to register, we believe that it is desirable that MAF actively considers instances of non-compliance with other relevant legislation when making FCV registration decisions.

## Recommendation 1

That the Ministry of Agriculture and Forestry continues its efforts to strengthen monitoring and enforcement of FCVs, including, but not restricted to, the following areas:

- placing an observer on all FCVs fishing in the EEZ;
- streamlining and improving observer reporting processes on FCVs, including making greater use of technology;
- ensuring that any outsourcing arrangements for its observer programme avoid possible conflicts of interest on the part of contracted firms and that the Ministry of Agriculture and Forestry has full control of the programme;
- ensuring the collection and availability of compliance data broken down by vessel, operator and charter party;
- considering additional ways of securing enforceable guarantees for any deemed value debts incurred; and
- considering non-fisheries offences when making FCV registration decisions.

## Vessel safety (MNZ)

- 464 MNZ has recently tightened up its scrutiny of FCV vessel safety standards. Since June 2011, nine FCVs have been detained in port or had IOC notices served on them, compared with just two cases in the previous five years.
- 465 MNZ is proposing to take direct responsibility for safety audits of both FCV and domestic vessels. This is because of difficulties with SSM companies reconciling their SSM regulatory duties and their commercial relationships with FCV companies.
- 466 The two year transition period that has, until now, been granted to FCVs before they must meet all SSM rules and standards is proposed to be withdrawn with the introduction of MOSS. MOSS should help to mitigate the problems that have been experienced with flag State certification procedures.
- 467 Recognition of the qualifications of foreign crew on FCVs has been a problem in the past and it may well be that this issue should be given higher priority. As with the issues of reliability of

documentation, language problems and cross-cultural differences on FCVs, it does not lend itself to a rapid or easy solution.

## Recommendation 2

That Maritime New Zealand maintains its stronger focus on the enforcement of FCV compliance with New Zealand's maritime safety standards, including, but not restricted to, the following areas:

- maintaining the present higher standards of vessel safety inspections of FCVs;
- introducing the Maritime Operator Safety System 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; and
- taking steps to facilitate the recognition of foreign qualifications for the crews of FCVs.

## Labour standards

- 468 DoL has a number of actions underway to improve its ability to hold FCVs to the requirements set out in the Minimum Wage Act and Wages Protection Act and in the Code of Practice.
- 469 Following a recent independent review of its audit processes, DoL has taken steps to improve the effectiveness of its audit programme for FCVs. These include making more use of independent auditors and ensuring that the auditors have appropriate professional training. The Panel supports these measures and agrees that the costs of new audit processes should be recovered from FCV operators.
- 470 DoL is considering revising the Code of Practice to improve the current AIP process and to strengthen the accountability of the New Zealand charter party. This is important. Specific options for providing FCV crews with greater protection are:
- placing the onus of proof, and more stringent evidentiary obligations, on the New Zealand charter party to prove that it is in compliance with the Code of Practice;
  - requiring FCV crew to have a New Zealand bank account into which all payments are made to ensure that they actually receive their minimum remuneration; and
  - amending some of the wording of the Code of Practice to clarify the expectations placed on the New Zealand charter party, such as changing 'adequate' or 'suitable' qualifiers to specific standards that the New Zealand charter party must ensure are met.
- 471 Increasing the frequency and thoroughness of inspections and audits by DoL and requiring the New Zealand charter party to pass an explicit 'fit and proper person' test before granting an AIP are recommended, as is a more proactive approach by Labour Inspectors to educate and inform FCV crew and operators of their rights and responsibilities when they first enter a New Zealand port.
- 472 Immigration requirements for FCVs could be improved by tightening up permissible timeframes for the provision of information to DoL and for remedying any identified breaches. The penalty for non-compliance would be the suspension of the AIP. Further, the Deepsea Fishing Crew Employment Register is not an effective labour market test for immigration.

### Recommendation 3

That the Department of Labour continues its efforts to strengthen its monitoring and enforcement arrangements for FCVs, including, but not restricted to, the following areas:

- rapid implementation of the improved audit system for FCVs;
- 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;
- increasing the frequency and thoroughness of inspections;
- introducing a 'fit and proper person' requirement into the Approval In Principle process;
- replacing the Deepsea Fishing Crew Employment Register with the standard immigration labour market test;
- proactively informing FCV crews of their rights and FCV operators of their responsibilities; and
- reducing timeframes for FCV operators to provide information and remedy problems.

### Closer interagency co-operation

- 473 Officials have agreed that there is a need to put a stronger focus on the activities of FCVs. Work is already under way to improve levels of co-operation and co-ordination among government agencies in such areas as registration, compliance and monitoring.
- 474 We support these initiatives and recommend that an interagency Steering Group be established to oversee this work. The Panel considers that a senior MAF official, preferably at Deputy Director General level, be appointed Chair of this Steering Group. The Chair's duties would include ensuring that action on FCVs is properly co-ordinated and keeping Ministers informed of any problems involving these vessels.
- 475 We also consider that, in future, all FCV applications for consent to be registered as a New Zealand fishing vessel under the Fisheries Act should be considered by this MAF official. This would ensure that all relevant information is taken into account when considering the risks posed by applicants and in setting conditions for the registration of the vessels concerned.
- 476 Information sharing across agencies would allow for more robust decision making in assessing all aspects of the approval process for FCVs to operate or continue to operate in the EEZ, including issuing AIPs to New Zealand charter parties and work visas to foreign crew.
- 477 There might also be benefits in information sharing once a vessel begins to operate in New Zealand. Establishing a process that supports centralised information sharing linked to recognised events would be the most effective means of achieving this. Information could, for example, be shared across the following areas:
- adverse event: when an event triggers a review of the risk profile of a vessel (for example, an observer reports non-compliance);
  - routine event: when information is needed to inform an event (for example, before a DoL audit, the Labour Inspector would receive the most recent observer trip report for the vessel); and
  - re-assessment event: when a vessel leaves a fishery, or there is a significant change to the crew, owners, charter party or operator of a vessel.
- 478 Agencies are now determining what information should be shared and how to best co-ordinate decision making on the approvals required for FCVs to operate in New Zealand waters.

- 479 The Panel also agrees that a combined risk-based approach would be useful in respect of monitoring and inspection activities. This would ensure a more efficient application of resources and support better decision making. It would be beneficial to establish an initial risk profile for each FCV based on combined information on issues associated with the New Zealand charter party, the owner and operator of the vessel and the vessel's captain and senior crew.
- 480 The overall compliance record of a vessel and all parties associated with it would determine its risk profile. This in turn, would determine the monitoring and inspection regimes applied to that vessel. Work is being carried out by agencies to determine what mechanisms and governance arrangements are needed to implement this proposal.
- 481 There is a consensus view among agencies that an interagency Memorandum of Understanding (**MOU**) should be developed to put a structure and processes in place for better information sharing and decision making on FCVs. Agencies consider that finalising and implementing such an MOU could be achieved quickly.
- 482 Agencies have suggested that more use could be made of the Integrated Targeting and Operations Centre (ITOC) to store joint agency risk assessments and facilitate information sharing on FCVs. The co-location of these agencies and their information systems within ITOC provides an opportunity to improve the management of risks around all fishing vessels, including FCVs, operating in the EEZ. Agencies agree that co-locating these functions would facilitate the flow of information among agencies and provide better co-ordination of regulatory activity.
- 483 Further analysis by agencies would be required to determine cost implications, including how increased agency co-ordination should be funded and managed, whether there are any information management systems that need to be developed or adapted, agency resourcing requirements and whether any legislative change is required.
- 484 One suggestion put to the Panel was to increase the capacity for at-sea compliance monitoring on FCVs assessed to be at risk of non-compliance. Such additional capacity would provide for monitoring of safety equipment and systems, fisheries and food safety compliance, and labour standards and workplace conditions. It is not envisaged that those undertaking compliance monitoring would have enforcement powers. Vessels could, therefore, be required to satisfy monitoring requirements as a condition of registration within the existing legislative framework. The Panel believes that the costs of additional compliance monitoring should be recovered from FCVs whose higher risk profile requires it. Agencies are now considering whether any legislative changes would be required to provide for such costs to be met by the operators concerned.
- 485 While it would take time to build this capacity, we consider that there could be some early wins from increasing compliance monitoring on high-risk FCVs. The Panel is aware that there are a number of issues that remain to be worked through with agencies and industry. These include the availability and training of monitoring personnel and the provision of appropriate accommodation on board the vessels. The Panel recommends that the proposed FCV Steering Group be tasked with resolving these issues.
- 486 There would also be advantages in co-ordinating agency activities regarding vessel inspections. Synchronising in-port inspections would be likely to reduce the costs to industry and could be the first step in moving towards a joint or shared inspection process. We understand that this option has already received some attention from agencies and that MNZ has undertaken some work for DoL and MAF during its vessel inspections.

- 487 There also appears to be benefits in having maritime safety, health and safety and possibly food safety inspectors undertaking at-sea inspections. Employment practices might, however, be better monitored by the placement of compliance monitors on high-risk vessels.
- 488 An extension of at-sea inspections vessels might raise legal concerns, as New Zealand does not have general jurisdiction over FCVs in the EEZ. MAF's enforcement activity is closely tied to fisheries resource management. Ship safety and labour issues currently fall under a mix of the jurisdiction of the flag State and New Zealand (depending upon the issues) so inspections would need to be confined to observing and reporting rather than enforcement.
- 489 A system of co-ordinated vessel inspections, either in-port or at-sea, will require agencies to collaborate to sequence and synchronise their individual processes. DoL, MAF and MNZ are already part of the wider National Maritime Co-ordination Centre, which may assist with the co-ordination of at-sea inspections.
- 490 Naval patrol vessels are utilised by a number of government agencies, such as MAF, MNZ and the New Zealand Police. However, only MAF currently undertakes boarding and inspections in the EEZ. All government agencies with an interest in maritime surveillance and monitoring have an opportunity to access New Zealand Defence Force assets via the National Maritime Co-ordination Centre.

#### Recommendation 4

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 Ministry of Agriculture and Forestry official.

#### Recommendation 5

That a pilot programme of compliance monitoring be developed across Department of Labour, Ministry of Agriculture and Forestry and Maritime New Zealand. Personnel would be trained to monitor 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).

#### Recommendation 6

That the Department of Labour, Ministry of Agriculture and Forestry 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.

## Legislative amendments

- 491 There are a number of areas where legislative amendments would assist the government agencies to carry out their monitoring and enforcement activities on FCVs.
- 492 Amendments to the Fisheries Act are required to better support MAF's ability to regulate the operation of FCVs and allow for stronger enforcement for any breaches.

### Recommendation 7

That the following amendments be made to the Fisheries Act 1996:

- 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, warrants reconsideration of the initial decision to consent to that vessel's registration;
- include a provision enabling the Director General to take vessel safety considerations into account in determining whether to grant consent to register an FCV;
- include provisions increasing the visibility and accountability of the New Zealand-based authorised agent of the FCV owner;
- review the defence provisions to clarify the obligations of the parties involved in an FCV fishing operation;
- 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; and
- 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.

- 493 Amendments to the HSE Act would enable appropriate health and safety standards to be applied on board FCVs and help to resolve some of the issues identified earlier in the Report.
- 494 Applying the HSE Act to FCVs would:
- require the identification and management of hazards on FCVs;
  - impose duties on a range of parties to manage health and safety issues on FCVs;
  - require that all practicable steps are taken to ensure health and safety on FCVs;
  - require FCVs to report all incidents and accidents;
  - allow for inspection regarding health and safety issues on FCVs; and
  - allow enforcement action to be taken, including prosecutions, in respect of health and safety issues on FCVs.

### Recommendation 8

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).

### Recommendation 9

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.

495 Various amendments are required to the Maritime Rules in order to strengthen the current vessel safety regime.

## Recommendation 10

That the Maritime Rules be revised to ensure that they apply to FCVs as well as New Zealand ships.

## International conventions

- 496 The Panel has considered the question of whether New Zealand should ratify the ILO convention (C188 – Work in Fishing) which sets standards for conditions of work on fishing vessels and the two IMO conventions (Torremolinos Protocol and STCW-F) which set standards for the safety and qualifications of crew on fishing vessels.
- 497 Our understanding is that, while ratifying C188 would not overcome the problem of dual jurisdiction, it would send a positive signal to the international community and could be of some help to MNZ in regulating the activities of FCVs in the EEZ.
- 498 There was strong support expressed during the Inquiry for New Zealand to become a signatory to the two IMO conventions: the Torremolinos Protocol and STCW-F. The provisions of these two conventions are described in *Chapter Six: Vessel Safety*.
- 499 The Panel considers that an announcement of New Zealand's intention to conduct a national interest analysis of these conventions, with a view to becoming a signatory would send a positive signal to the international community. MNZ would also be able to enforce international vessel safety standards on FCVs once the conventions enter into force and the ratification process is completed. The fact that New Zealand's Maritime Rules were originally written in line with the standards of the Torremolinos Protocol should help.
- 500 The STCW-F convention, which is scheduled to come into force in 2012, addresses training and certification standards for skippers and watch keepers on fishing vessels. Ratification by New Zealand would help MNZ to apply international standards for crew training and certification to all fishing vessels operating in the EEZ. It is understood that there is currently no process in place which allows MNZ to assess foreign crew qualifications as would be necessary following the ratification of STCW-F and the amendment of Maritime Rule 31C. This problem will need to be addressed by MNZ.

## Recommendation 11

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.

## Policy changes

- 501 Although the practical measures, legislative changes and ratifications outlined above will go a long way towards addressing the problems that led to this Inquiry, there is no guarantee that all the standards expected of vessels fishing in New Zealand's EEZ will be met in full. Two changes are accordingly proposed to the regulatory regime governing the activities of FCVs.

### Demise chartering

- 502 Allowing only demise charters to be registered under the Fisheries Act may enable New Zealand to apply its employment standards and labour laws to FCV crews, as they would have a New Zealand employer and be covered by a New Zealand employment agreement.
- 503 Demise chartering would resolve the issues identified in *Chapter Seven: Employment and Labour Conditions* by making a New Zealand party responsible for employment conditions and labour standards on FCVs. New Zealand could insist on appropriate workplace conditions and take action against any exploitative labour practices. This would provide greater protection to foreign crews and help protect New Zealand's international reputation.
- 504 Companies that use FCVs support the continuation of time charters and may be reluctant to shift to demise chartering arrangements. We were told that maintenance and insurance costs, including the risk of vessel or equipment failure on old fishing vessels, were seen by New Zealand companies as major issues.
- 505 If the crew of foreign flagged vessels were required to be employed under a New Zealand employment agreement, additional costs would be incurred by the employer for such things as annual and public holidays and sick leave. These costs are already met by New Zealand employers.
- 506 The costs of record keeping as required under the Holidays Act 2003 (holiday and leave records) and the Employment Relations Act 2000 (wages and time record) cannot be quantified. The New Zealand charter party is, however, already required to keep such records under the Code of Practice and as an authorised agent under the Fisheries Act.
- 507 The New Zealand charter party would face some additional compliance costs such as for the drafting of employment agreements and using New Zealand bank accounts to pay wages. The Code of Practice will also need further revision as crew would come under a New Zealand employment agreement.
- 508 We were told that foreign owners may be unwilling to move their FCVs to a demise charter basis. The Panel is not in a position to assess the accuracy of this assertion. On the other hand, retaining the status quo would see a continuation of issues that could damage the reputation of New Zealand generally and the fishing industry in particular.
- 509 The Panel considers that there is likely to be scope for charter parties to contract out much of the administrative work involved in crewing demise chartered FCVs, including arrangements with reputable manning agents, while retaining formal responsibility as employer. The issue of maintenance and the division of responsibility for other costs, such as insurance, could be a matter for negotiation between the parties.

## Recommendation 12

That:

- the Fisheries Act 1996 be amended to restrict registration to vessels on demise charter;
- the New Zealand charter party must be the employer of FCV crew under a New Zealand employment agreement;
- the Code of Practice be revised to reflect these changes; and
- 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.

## Reflagging

- 510 Requiring that all FCVs be reflagged to New Zealand in order to fish in New Zealand's EEZ would resolve all the uncertainties relating to the issue of flag and coastal State jurisdiction. As flag State, New Zealand would be in a position to enforce all New Zealand vessel safety and employment standards in full measure, and the provisions of the Crimes Act would apply. Reflagging all FCVs to New Zealand would mean the same standards and rules apply to both New Zealand and foreign fishing vessels. It would also resolve any trade access difficulties relating to flag State certification.
- 511 Reflagging does, however, carry a greater range of risks and uncertainties than moving to the demise charter option. It is difficult to predict what the reaction of foreign owners would be or how soon the New Zealand fleet might be in a position to fill the gaps left by any departing FCVs whose owners decided not to reflag. Many companies would regard a requirement to reflag to New Zealand as a disproportionate response to the problems and would clearly prefer that any decision to reflag be made by them on commercial grounds.
- 512 A number of firms and regional economies that depend heavily on the business generated by the FCV fleet could be adversely affected by the requirement to reflag. Reflagging could also reduce the value of quota and the price of ACE if it resulted in a significant downsizing of the FCV fleet.
- 513 Further work by agencies would need to be done on how New Zealand would handle its responsibilities as flag State when FCVs leave New Zealand waters under a New Zealand flag.
- 514 As a prerequisite to reflagging, MNZ would need to assess the equivalence of foreign qualification regimes to enable foreign crew to continue to work on FCVs.
- 515 DoL and MNZ see reflagging as the cleanest and most comprehensive way of addressing the issue of flag and coastal State jurisdiction. MFAT and MAF support this view.
- 516 On the other hand, these agencies acknowledge the uncertainties and risks reflagging would pose for the future of the FCV fleet and the fishing industry generally. Both MNZ and DoL are of the view that the suite of measures recommended above, including the proposed move to demise charters, should enable them to adequately regulate the activities of FCVs in the future. We understand that MAF is comfortable with this approach.
- 517 On balance, the Panel does not recommend reflagging FCVs to New Zealand. However, we consider that the Fisheries Act should be amended to include an empowering provision for reflagging should this become necessary at some point in the future to protect New Zealand's reputation or trade interests.

## Recommendation 13

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.

518 One of the gaps in the proposed regime is that the Crimes Act does not apply to foreign flagged FCVs in the New Zealand EEZ except in very limited circumstances.<sup>74</sup> The Panel sees the ability to apply the Crimes Act as important and considers that officials should investigate how this might be achieved within the existing legal framework.

## Recommendation 14

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.

## Implementation of recommendations

519 Our Terms of Reference require us to advise the Government on the implementation of any recommended changes in policy. The package of changes outlined above, if approved by the Government, will involve major changes for the fishing industry. It will also involve significant change in the way agencies operate.

520 The proposals in this Report need to be considered alongside other developments currently affecting the fishing industry. While our proposals deal specifically with the question of the place of FCVs in New Zealand's EEZ, they should not be dealt with in isolation from, for example, external trade issues, global trends in fishing, New Zealand's overall economic development strategy, research and development funding, productivity and innovation targets, environmental concerns and training and employment goals.

521 The fact that the deep water sector of the industry is promoting a strategy for achieving long-term, sustainable growth is encouraging. We believe that the government should work closely with industry on this exercise and that all interested parties, including workforce representatives, should be involved.

522 If the recommendations in this Report are implemented, there will be increased costs imposed on government agencies as well as industry. We have not been in a position to determine the full impact of these costs, which would need further investigation as part of the Government's consideration of these recommendations. We note, however, that any additional costs need to be balanced against the potential loss of export earnings if international reputation and trade access issues are not addressed.

## Recommendation 15

That, once decisions are taken on the recommendations in this Report, steps be taken to engage with industry on a detailed implementation plan.

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<sup>74</sup> Section 8 of the Crimes Act.

# Annex A

## Terms of Reference of the Ministerial Inquiry into use and operation of FCVS

### Preamble

This is a Ministerial Inquiry, convened jointly by the Minister of Fisheries and Aquaculture and the Minister of Labour.

The principal objective of the Inquiry is to ensure that the operation of foreign owned and flagged vessels chartered by New Zealand fishing companies supports the following government objectives:

- Protect New Zealand's international reputation and trade access.
- Maximise the economic return to New Zealand from our fisheries resources.
- Ensure acceptable and equitable New Zealand labour standards (including safe working environments) are applied on all fishing vessels operating in New Zealand's fisheries waters within the exclusive economic zone.

If it is demonstrated that these objectives are being undermined then the Inquiry is also tasked with making recommendations relating to policy and legislative amendments and improvements to operational practices.

While the Inquiry will be informed by individual examples and situations, it is not the purpose of this Inquiry to investigate any particular situation or incident. If the Inquiry obtains specific information it believes should be investigated by a relevant authority it will be forwarded to the relevant authority for its consideration. Inclusion of this information in the Report to the Minister of Fisheries and Aquaculture and the Minister of Labour will be at the discretion of the Inquiry panel.

It is also not the role of the Inquiry to consider the design and structure of New Zealand's quota management system or the allocation of quota under that system.

### Purpose

To inquire into the use and operation of foreign charter vessels in New Zealand's fisheries waters within the Exclusive Economic Zone.

Specifically, the Inquiry is to consider:

- the application of New Zealand's legislative regime to the use and operation of fishing vessels, and in particular foreign charter vessels (FCVs), with respect to labour, immigration, maritime safety and fisheries management and the compliance with that regime by such vessels and their operators;
- any international reputation risks associated with the use of FCVs;
- any trade access risks associated with the use of FCVs;
- whether the economic factors supporting the use of FCVs deliver the greatest overall benefit to New Zealand's economy and to quota owners;
- whether acceptable and equitable labour standards (including safe working environments) are,

or can be, applied on all fishing vessels operating in New Zealand's fisheries waters within the Exclusive Economic Zone; and

- any other matters that the Inquiry considers relevant.

And to make recommendations on:

- what is the role for FCVs in harvesting New Zealand's fisheries resources;
- an appropriate policy framework and institutional design, in line with government objectives, for the operation of fishing vessels in New Zealand's fisheries waters in the Exclusive Economic Zone;
- the appropriate legal framework that should underpin this regime;
- options for, and the practicability of, monitoring and enforcing adherence to the recommended legislative and policy settings;
- implementing and operationalising recommended changes to policy settings; and
- opportunities to improve delivery of existing policy settings, where appropriate.

## Process

The Inquiry will proceed as it thinks fit to obtain relevant information, including expert services, to assist it to examine issues covered by the Inquiry. The Inquiry is not bound by any rules of evidence or by any particular procedure but will conduct its assessment in a fair manner. The Inquiry will invite public submissions and may choose to hear selected submitters. The Inquiry may hold hearings in private for sensitive matters or otherwise as the Inquiry considers appropriate.

The Inquiry will be supported by a Secretariat resourced from within the Ministry of Agriculture and Forestry and the Department of Labour. Resources from other agencies may be provided if necessary.

The Inquiry will regularly update the Minister of Fisheries and Aquaculture and the Minister of Labour on progress with the Inquiry.

## Reporting

The Inquiry shall report to the Minister of Fisheries and Aquaculture and the Minister of Labour by Friday 24 February 2012.

# List of submitters

The following parties made a written submission and participated at one of the public hearings:

Albany Baptist Church  
 Kate Alexander & John-Luke Day, Anglican Diocese of Christchurch  
 AP Smith Fishing Consultancy Ltd  
 Arendale Ltd  
 Auckland International Seafarers Centre Inc  
 Aurora Fisheries Ltd  
 Richard Lea Clough  
 Dawson & Associates  
 Filmco  
 Fisheries Audit Services (NZ) Ltd  
 Christine Hutana  
 Indonesian Human Rights Committee  
 Keith Ingram  
 Maritime Union of New Zealand  
 Metiria Turei and Gareth Hughes, Green Party  
 New Zealand Council of Trade Unions  
 New Zealand Council of Trade Unions: Te Runanga o Nga Kaimahi Māori o Aotearoa  
 New Zealand Fishing Industry Guild Inc.  
 New Zealand Japan Tuna Company Ltd  
 Ngapuhi Asset Holding Company Ltd  
 Victor Norman  
 Northland Deepwater Limited Partnership  
 Rahui Katene, Māori Party  
 Seafood Industry Council & Deepwater Group  
 Sealord Group Ltd  
 Service and Food Workers Union  
 Talley's Group Ltd  
 Te Ohu Kaimoana  
 Te Runanga o Nga Kaimahi Māori o te Service and Food Workers Union  
 Timaru Squid Company Ltd  
 Jolyon White, Anglican Diocese of Christchurch  
 AJ Woods

The following parties made written submissions to the Panel:

Aotearoa Fisheries Ltd  
 ATEC Ltd  
 Carter Holt Harvey  
 Charta Packaging Ltd  
 Coolpak Coolstores Ltd  
 Daren Coulston  
 Department of Labour  
 Fisheries Consultancy (NZ) Ltd  
 Hilton Haulage Ltd  
 Human Rights Commission  
 Independent Fisheries Ltd  
 Iwi Collective Partnership Ltd  
 JX2 Contracting Ltd

Kahungunu Asset Holding Company  
Bill Lewis, International Transport Federation Contact  
Lyttelton Engineering  
Lyttelton Port of Christchurch  
Maritime New Zealand  
Ministry of Agriculture and Forestry  
Ngati Kahungunu Iwi  
New Zealand Federation of Commercial Fisherman Inc  
New Zealand Sport Fishing Council  
Parr & Co Ltd  
Lim Peng  
Port Otago Ltd  
Royal Forest and Bird Protection Society of New Zealand Inc  
Safe Sea Systems Ltd  
Sanford Ltd  
SGS Ltd  
Southern Storm Fishing (2007) Ltd  
South Port New Zealand Ltd  
Stark Bros Ltd  
Sullivan & Spillane Electrical Ltd  
United Fisheries Ltd  
University of Auckland

There were five confidential submissions received.

A joint submission representing the following industry parties was also received:

Aurora Fisheries Ltd  
Independent Fisheries Ltd  
KPF Investments Ltd  
Maruha (NZ) Corporation Ltd  
Northland Deepwater Partnership  
Sanford Ltd  
Sealord Group Ltd  
Seaford Ltd  
Southeast Resources (2001) Ltd  
Southern Storm Fishing 2007 Ltd  
Te Ohu Kai Moana Trustee Ltd  
Timaru Squid Company Ltd  
United Fisheries Ltd  
Vela Fishing Ltd  
Vela Quota No 1 Ltd  
Vela Quota No 3 Ltd

In addition, meetings were also held with:

His Excellency Antonius Agus Srijono, Ambassador of the Republic of Indonesia  
Hon Dr. Nick Smith  
Hon Shane Jones  
John Reid

# Annex C

## Treaty Settlement Quota

### Māori quota

#### Treaty of Waitangi claims

- 1 When the QMS was introduced, it was not seen by the Crown to have any effect on customary rights. In 1987, an injunction was put in place preventing the introduction of additional species into the QMS until Māori claims could be addressed. Subsequent negotiations between Māori and the Crown led to an interim settlement set out in the Maori Fisheries Act 1989. This established the Māori Fisheries Commission to administer Māori fishing rights and facilitate entry into, and development of, the fishing industry by Māori. Under the Māori Fisheries Act, the Commission received \$10 million and 10 percent of existing quota from the government.
- 2 In 1992, the Waitangi Tribunal produced a report on a claim filed by Ngai Tahu. The Report supported the iwi's claim to a development right in New Zealand fisheries

#### Deed of settlement

- 3 While the negotiations were taking place, New Zealand's largest seafood firm, Sealord Products Ltd, was offered for sale. This presented an opportunity to obtain the quota required to address Māori fishing claims. Negotiations took place between Māori and the Crown resulting in a Deed of Settlement. The Settlement became the basis of the Treaty of Waitangi Settlement Act 1992, and provided a full settlement of all Māori commercial fisheries claims in accordance with the Treaty of Waitangi. Under this Settlement, Māori were given \$150 million to purchase 50 percent of Sealord Products Ltd. In addition to the quota received under the Māori Fisheries Act 2004, Māori also receive 20 percent of all new QMS species upon introduction to the QMS.

#### Allocating quota to Māori

- 4 After the Settlement Act was enacted, assets had to be allocated among Māori. At this point, the Māori Fisheries Commission was restructured and the Treaty of Waitangi Fisheries Commission or Te Ohu Kaimoana (**TOKM**) as it is now known, was formed. TOKM was given ownership of both the pre-Settlement assets and the post-Settlement assets. TOKM was required to manage these assets on behalf of all Māori and facilitate the allocation of these assets to iwi. Development of an agreed allocation model took 12 years and involved extensive consultation with individual Māori, iwi and other interested parties.

#### The Māori Fisheries Act 2004

- 5 The Māori Fisheries Act established TOKM and Aotearoa Fisheries Limited (**AFL**). These organisations manage assets that were not allocated to iwi and promote Māori involvement in fishing. TOKM governs the allocation and management of assets. AFL controls the commercial side of the assets and provides an income stream for Māori by fishing the quota held in central ownership by TOKM.

- 6 Under the Māori Fisheries Act 2004, a process was put in place to allocate Settlement assets including quota, money, and income shares. Deepwater quota<sup>75</sup> is allocated to iwi based 75 percent on an iwi's population and 25 percent on its share of the coastline within the relevant Quota Management Area. An exception to this is in the Chatham Island zone, where deepwater quota is allocated based 50 percent on population and 50 percent on coastline. The allocation of income shares is managed by TOKM.

## Settlement quota

- 7 Certain restrictions apply to Settlement quota. Under the Maori Fisheries Act, quota must not be transferred unless authorised by TOKM or by order of the Court or through forfeiture to the Crown under the Fisheries Act. Under the Maori Fisheries Act, a mandated iwi organisation cannot sell its Settlement quota to anyone other than another mandated iwi organisation or an entity within TOKM Group. Further, a mandated iwi organisation cannot sell any Settlement quota within two years of acquiring it from TOKM.

## Annual Catch Entitlement

- 8 Mandated iwi organisations that hold Settlement quota are free to sell the ACE generated from that quota. Annual Catch Entitlement (ACE) derived from Settlement quota is not subject to restrictions on disposal in the same way as the underlying quota.
- 9 Many iwi that have been allocated Settlement quota hold small parcels of ACE for a range of fish stocks. Table 2 sets out the recipients of ACE generated from Settlement quota.

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<sup>75</sup> Under the Maori Fisheries Act, deepwater and inshore quota are allocated through different methods. Deepwater quota are defined as fish stocks where at least 75 percent of the catch is caught at 300 metres or deeper and inshore quota is caught above 300 metres [Section 8 - 9 Maori Fisheries Act].

Table 2: Recipients of ACE generated from Settlement quota since 2004/05.

Entity name	Total ACE received (%)
Ngai Tahu Seafood Products Ltd	17
Northland Deepwater Ltd Partnership	13
OPC Fish and Lobster (2007) Ltd	11
Aotearoa Fisheries Ltd	8
Tainui Group Holdings Ltd	6
Donal Boyle	5
ICP ACE Holdings Ltd Partnership	5
Esplanade No 3 Ltd	3
Gary Bevin	3
Pipelines Consultants Ltd	3
Southern Storm Fishing (2007 Ltd)	2
Maruha (NZ) Corporation Ltd	2
Raukura Moana Fisheries Ltd	2
Amaltal Fishing Co Ltd	2
Te Tai A Kupe Ltd	2
Motuhara Fisheries Ltd	1
Sanford Ltd	1
The Fishing Company Ltd	1
Sealord Group Ltd	1
Ngati Awa Fisheries Ltd	1
Ngati Koata Trust	1
Te Hoiere Holding Company Ltd	1
Other (approx 160 entities)	9
<b>Total</b>	<b>100</b>

Source: MAF Database.

# EEZ species managed under the QMS

A fish species can consist of a number of geographically isolated and biologically distinct populations. Each fish species in the QMS is therefore subdivided into geographically separate populations or fish stocks, defined by Quota Management Areas.

## Deepwater species

Common name	QMS stock
Alfonsino	All
Barracouta	BAR 4, 5, 7
Cardinalfish	All
Deepwater crabs (red crab, king crab, giant spider crab)	All
English mackerel	EMA 3, 7
Frostfish	FRO 3-9
Gemfish	SKI3, 7
Ghost shark, dark	GSH 4-6
Ghost shark, pale	All
Hake	All
Hoki	All
Jack mackerel	JMA 3, 7
Ling	LIN 3-7
Lookdown dory	All
Orange roughy	All
Oreos	All
Patagonian toothfish	All
Prawnkiller	All
Redbait	All
Ribaldo	RIB 3-8
Rubyfish	All
Scampi	All
Sea perch	SPE 3-7
Silver warehou	All
Southern blue whiting	All
Spiny dogfish	SPD 4, 5
Squid	All
White warehou	All

## Highly Migratory Species

Common name	QMS Stock
Bigeye tuna	All
Blue shark	All
Mako shark	All
Moonfish	All
Porbeagle shark	All
Ray's beam	All
Southern bluefin tuna	All
Swordfish	All
Yellowfin tuna	All

Source: MAF Fisheries Management.

# Annex

## Overseas Ownership of Quota

- 1 The Fisheries Act contains overseas investment provisions. The purpose of these provisions is to '*acknowledge that it is a privilege for overseas persons to own or control interests in fishing quota*'. The procedure for obtaining consent is set out in subpart 2 of Part 2 of the Overseas Investment Act 2005.
- 2 In order to meet the criteria for overseas ownership of fishing quota, an applicant must:
  - be a body corporate;
  - have relevant business experience and acumen;
  - have demonstrated financial commitment;
  - be of good character<sup>76</sup>.
- 3 In addition, the Ministers of Finance and Primary Growth Industries must be satisfied that the granting of the consent is in the national interest. In determining whether the granting of consent is 'in the national interest', the Ministers must consider such factors as:
  - creation of new jobs or retention of existing jobs that might otherwise be lost;
  - introduction of new technology or business skills;
  - increased export receipts;
  - added market competition, increased efficiency or productivity or enhanced domestic services;
  - additional investment in significant development;
  - increased processing of fish in New Zealand.

Table 3: Applications for overseas persons to own fishing quota

Applicant Name	Note on activity	Applicant Country	Decision	Year
Te Ika Paewai	On behalf of and in anticipation of a new shareholder	New Zealand	Approved	2000
Te Ika Paewai	On behalf of and in anticipation of a new shareholder	Various	Approved	2000
Maruha Corporation	Maruha Corporation permission to acquire quota owned by Ceebay or shares in Ceebay	Japan	Approved	2000
Ceebay Holdings Limited	Ceebay Holdings, permission to continue holding quota	Japan	Approved	2000
Ceebay Holdings Limited	Ceebay Holdings, permission to continue holding quota	New Zealand	Approved	2000
Maruha (NZ) Corporation Ltd	Maruha Corporation permission to lease quota from iwi	Japan	Approved	2001
Sealord Group Limited	Sealord leasing quota pursuant to Quota Use Deed (Nissui/TOKM)	Japan	Approved	2001

<sup>76</sup> See factors set out in Section 57L of the Fisheries Act.

Applicant Name	Note on activity	Applicant Country	Decision	Year
Sealord Group Limited	Sealord leasing quota pursuant to Quota Use Deed (Nissui/TOKM)	New Zealand	Approved	2001
Sealord Group Limited	Sealord to continue to hold quota once Nippon Suisan Kaisha acquires 50% of Kura	Japan	Approved	2001
Sealord Group Limited	Sealord to continue to hold quota once Nippon Suisan Kaisha acquires 50% of Kura	New Zealand	Approved	2001
Maruha (NZ) Corporation Ltd	Maruha (N.Z.) Corporation Limited permission to acquire 5,000 tonnes various species	Japan	Approved	2006
Te Ika Paewai	If Irvin & Johnson Ltd becomes a 50% owner and then acquires Basuto	New Zealand	Declined	2000
Te Ika Paewai	If Irvin & Johnson Ltd becomes a 50% owner and then acquires Basuto	South Africa	Declined	2000
Te Ika Paewai Limited	If Nippon Suisan Kaisha Limited becomes a 50% owner and then acquires Basuto	Japan	Declined	2000
Te Ika Paewai Limited	If Nippon Suisan Kaisha Limited becomes a 50% owner and then acquires Basuto	New Zealand	Declined	2000
Te Ika Paewai Limited	If Sea Harvest Corporation owns 50% to continuing to hold quota if Sea Harvet acquires Basuto	New Zealand	Declined	2000
Te Ika Paewai Limited	If Sea Harvest Corporation owns 50% to continuing to hold quota if Sea Harvet acquires Basuto	South Africa	Declined	2000
Sea Harvest Corporation Ltd	Sea Harvest acquiring quota interest of Basuto	South Africa	Declined	2000
Irvin & Johnson Limited	Irvin & Johnson Limited acquiring quota via Basuto	South Africa	Declined	2000
Nippon Suisan Kaisha Ltd	Nippon Suisan Kaisha Limited acquiring interest in 50% of Sealord quota	Japan	Declined	2000
Ceebay Holdings Limited	Ceebay Holdings, permission to continue holding quota	Japan	Lapsed	2000
Ceebay Holdings Limited	Ceebay Holdings, permission to continue holding quota	New Zealand	Lapsed	2000

Source: Overseas Investment Office.

# Key Points from The Code of Practice

- 1 The Code of Practice applies to foreign flagged FCVs only (not foreign fishing crews working on domestic vessels). The Code of Practice and FCV immigration policy have the following minimum remuneration requirements:
  - Minimum wage plus \$2.00 per hour for actual hours worked but in no case less than 42 hours per week over the course of the charter. The employer must keep records of hours worked. The requirement to pay the minimum wage and an additional \$2 an hour was an attempt to ensure that crew receive the same terms and conditions as New Zealanders doing comparable work and to ensure that the use of FCVs would not provide a competitive advantage over New Zealand crew due to lower labour costs.
  - Permissible deductions must only be for food, visa fees and airfares, and must be based on actual, reasonable and verified expenses. Deductions may not take hourly rates below the minimum wage for all hours worked. Deductions must be agreed in writing by the employee.
  - Genuine and verified personal expenses such as cigarettes, phone cards and non-protective clothing (effectively personal wage advances and not connected with the work) are allowed and will not be treated as deductions.
- 2 The Code of Practice requires that:
  - crew employment agreements align with New Zealand standards, and that employment disputes are settled in New Zealand employment institutions;
  - a New Zealand party must guarantee any financial obligations relating to crew remuneration, repatriation and support that are not met by the foreign employer;
  - crews have minimum working and living conditions covering areas such as clothing, hygiene, meals, and the provision of amenities, and
  - regular reporting requirements apply, including provisions for onboard inspections by DoL officials, to ascertain compliance with the Code of Practice. Labour Inspectors are not present on vessels while they are at sea.
- 3 The Code of Practice also provides for:
  - a safe work environment;
  - that an employee can complain to DoL or the New Zealand police;
  - access to employment relationship resolution institutions, including Labour Inspectors, the Mediation Service, Employment Relations Authority and the Employment Court, for the resolution of employment problems; and
  - standard principles for employment agreements that are similar to those found in the Employment Relations Act.
- 4 The Code of Practice can be found at:  
[http://www.immigration.govt.nz/NR/rdonlyres/A1F84CCF-D285-45D3-AD42-5C50F00CC9C9/0/CodeofPracticeonForeignFishingCrew\\_201006\\_.pdf](http://www.immigration.govt.nz/NR/rdonlyres/A1F84CCF-D285-45D3-AD42-5C50F00CC9C9/0/CodeofPracticeonForeignFishingCrew_201006_.pdf)

# Vessel operators and FCVs operating in the EEZ

Table 4: Vessel operators involved in EEZ fisheries during the 2010/11 fishing year

Company name	Number of FCVs	Number of domestic EEZ vessels
Anton's Trawling Company Ltd	–	1
Craig Robert Boote	–	1
Independent Fisheries Ltd	2	–
Maruha (NZ) Corporation Ltd	2	–
New Zealand Longline Ltd	–	2
Northland Deepwater Ltd Partnership	1	–
Pelagic Fishing Limited	–	1
Pescatore Fishing Limited	–	1
Richardson Fishing Company Ltd	–	1
Sanford Ltd	4	11
Sealord Charters Ltd	4	4
Solander Group:		
Aurora Fisheries Ltd	1	–
Timaru Squid Company Ltd	1	–
New Zealand Japan Tuna Company Ltd	4	–
Southern Storm Fishing (2007) Ltd	2	–
South East Resources (2001) Ltd	3	–
Talley's Group Ltd	–	7
Tu'ere Fishing Ltd	1	–
United Fisheries Ltd	2	–
<b>Total</b>	<b>27</b>	<b>29</b>

Source: MAF Database.

Note: EEZ vessel is defined as a vessel over 30 metres registered length.

Table 5: FCVS that operate in the New Zealand EEZ year-round

Vessel name	Flag state	Date arrived NZ	Date left NZ	Name of NZ vessel operator (fishing permit holder)
Alexander Buryachenko	Ukraine	1998	n/a	Sealord Charters Ltd
Aleksey Slobodchikov	Ukraine	1992	n/a	Maruha (NZ) Corporation Ltd
Dong Won 519	Korea	1994	n/a	Sanford Ltd
Dong Won 530	Korea	2005	n/a	Sanford Ltd
Dong Won 701	Korea	1991	n/a	Sanford Ltd
GOM 379	Korea	At least 1987	n/a	Northland Deepwater Limited Partnership
Ivan Golubets	Ukraine	1992	n/a	Independent Fisheries Ltd
Mainstream	Dominica	1995	n/a	Independent Fisheries Ltd
Meridian 1	Dominica	1994	n/a	Sealord Charters Ltd
Melilla No. 201	Korea	1991	n/a	UFL Charters Ltd
Melilla 203	Korea	2004	n/a	UFL Charters Ltd
Ocean Dawn	NZ	2011	n/a	Sealord Charters Ltd
Oyang No 75	Korea	2011	2011	Southern Storm Fishing (2007) Ltd
Oyang No 77	Korea	1990	n/a	Southern Storm Fishing (2007) Ltd
Pacinui	Korea	1997	n/a	Sanford Ltd
Profesor Mykhaylo Aleksandrov	Ukraine	2001	n/a	Sealord Charters Ltd
Shin Ji*	Korea	2009	n/a	Tu'ere
Sur Este 700	Korea	1997	n/a	South East Resources Ltd
Sur Este 707	Korea	1992	n/a	South East Resources Ltd
Sur Este 709	Korea	1993	n/a	South East Resources Ltd
Tomi Maru 87	Japan	1988	n/a	Aurora Fisheries Ltd

Source: MAF Database.

Note: All vessels except for the *Shin Ji* are trawlers and all product is landed in New Zealand.

\*The consent to register the *Shin Ji* was withdrawn by MAF in January 2012 due to the revocation of their Safe Ship Management Certificate.

Table 6: FCVs that operate in the EEZ seasonally

Vessel name	Flag state	Date arrived NZ	Date left NZ	Name of NZ vessel operator (fishing permit holder)
Choko Maru No 88	Japan	Jan 2011	April 2011	Timaru Squid Company Ltd
Kaiyo Maru No. 30	Japan	Dec 2010	May 2011	Maruha (NZ) Corporation Ltd
Hoshin Maru No. 58	Japan	April 2011	June 2011	New Zealand Japan Tuna Company Ltd
Hoshin Maru No 77	Japan	April 2011	June 2011	New Zealand Japan Tuna Company Ltd
Koshin Maru No 7	Japan	April 2011	8 June 2011	New Zealand Japan Tuna Company Ltd
Taiwa Maru No. 8	Japan	April 2011	June 2011	New Zealand Japan Tuna Company Ltd

Source: MAF Database.

Note: All these vessels are surface longliners, apart from the *Choko Maru No 88*, and the *Kaiyo Maru No 30* which are squid jiggers. All product taken by these vessels is exported directly to Japan.

# Annex

## New Zealand Maritime Qualifications and training



- 1 To work in the deep sea fishing industry, New Zealanders must hold an appropriate qualification. Maritime Rule 31C (Crewing and Watchkeeping Fishing Vessels) sets out the requirements for the number of crew and qualifications required on domestic vessels.
- 2 Maritime qualifications relate to the navigation and operation of the vessel and are regulated by Maritime New Zealand. There are four main approved providers of maritime qualifications in New Zealand. Maritime qualifications for crew on fishing vessels and the approved training providers are shown in the table below.

Table 7: Maritime qualifications and approved providers

Qualification	Required for	Approved to provide training	Specific to fishing?
Master Deep Sea Fishing Vessel	Master of any fishing vessels operating in the unlimited area (NB for manning purposes in accordance with 31A & 31B considered equivalent to NZOM)	Nelson Maritime School	Yes
Mate Deep Sea Fishing Vessel	First Mate of any fishing vessels operating in the unlimited area Master of fishing vessels greater than 50 metres operating in the offshore area – must be endorsed with NZOM	Nelson Maritime School	Yes
New Zealand Offshore Master (NZOM)	Master of fishing vessels less than 50 metres operating in the offshore area	Bay of Plenty Polytechnic Nelson Maritime School New Zealand Maritime School (Auckland)	No
New Zealand Offshore Watchkeeper	Second Mate of fishing vessels greater than 45 metres operating in the unlimited area Mate of vessels more than 20 metres operating in the offshore area	Bay of Plenty Polytechnic Nelson Maritime School New Zealand Maritime School	No
Marine Engineer	Engineer on any fishing vessels operating in any area (the specific class of engineer required depends on engine size and area of operation)	Depends on the engineering class Nelson Maritime School New Zealand Maritime School Bay of Plenty Polytechnic	No
Advanced Deckhand (Fishing) <sup>77</sup>	Deckhand for any fishing vessel operating in the unlimited area and fishing vessel greater than 20 metres operating in the offshore area	Nelson Maritime School New Zealand Maritime School Timaru Fishing School Westport Deep Sea Fishing School	Yes

Source: Maritime New Zealand.

<sup>77</sup> This qualification essentially relates to watchkeeping.

- 3 In relation to processing fish onboard, Seafood ITO is the Industry Training Organisation (**ITO**) for New Zealand's seafood industry. Most of the training takes place on the job as Seafood ITO trainees are usually employed within the industry and learn while they are earning wages or a salary. There are three relevant qualifications:
  - National Certificate in Seafood Processing.
  - National Certificate in Seafood Risk Management.
  - National Certificate in Seafood Vessel Operations.
- 4 These qualifications are based on unit standards, and more than 15 training organisations around New Zealand have consent to assess these qualifications from the New Zealand Qualifications Authority.

## Training schools

### Timaru Fishing School

- 5 Timaru Fishing School offers training for at-sea factory processing and deckhands. The training programmes offered at the School are for deep-sea and inshore trawlers, land based processing factories and seafood retail outlets. Around 60 students complete the training each year and around 85 percent achieve employment in the industry.

### Westport Deep Sea Fishing School

- 6 Westport Deep Sea Fishing School provides training for factory workers (seafood processing and at-sea processing) and deckhands. The courses are residential and 70 – 100 students complete the training and are placed in employment every year. On average, students are aged 19 – 25, but range from 16 to 40 years.

# Information about the SSM system

- 1 The Maritime Rules require FCVs to enter into the SSM system after two years of continuous operation. The rationale for this two-year 'window' was that it allowed the foreign flagged vessels time to meet New Zealand's safety requirements.
- 2 Before entry into SSM and before FCV operations are allowed to commence, MNZ requires proof that the vessel is fit for purpose. This can be accomplished either by the Director of MNZ recognising safety certificates issued by the flag State of the vessel or by requiring a survey by an MNZ recognised surveyor.
- 3 For the Director to recognise foreign safety certificates, the certificates must be deemed to be of an equivalent standard to New Zealand certification. If the Director is not satisfied that the foreign certificates are equivalent, a full survey of the vessel by a MNZ recognised surveyor will be required.
- 4 Even if foreign safety certificates are recognised, the vessel is still required to undergo an inspection covering documentation and visual checks of safety appliances. This is to check that the vessel meets the requirements of the foreign certificates and is fit for purpose.
- 5 Foreign certificates have historically been recognised by MNZ, despite little detailed knowledge of the certification requirements of the flag States concerned. MNZ is now more rigorously scrutinising FCV documentation.

## Entry into SSM

- 6 Once an FCV enters the SSM system, New Zealand's Maritime Rules apply to vessel maintenance and operating limits, vessel design and construction, communications and medical stores, except in the few cases where the Rules specifically apply to New Zealand flagged vessels.
- 7 On entry into the SSM system (after the two year transition period), all FCVs are required to undergo an out of water survey. This is required unless the vessel owner or operator can demonstrate that a regular regime of out of water surveys has been maintained and has the documentation to prove it. This survey is important, as it provides a baseline for subsequent surveys. A declaration by the surveyor that the vessel is 'fit for purpose' is required by MNZ as part of the application for an SSM certificate. Follow-up out of water surveys are then carried out every two or two and a half years, depending on the characteristics of the vessel.<sup>78</sup>
- 8 MNZ policy requires that, after the first out of water survey, FCVs undergo six-monthly inspections by an MNZ Safety Inspector to ensure continued compliance with the standards set by MNZ. This inspection focuses on documentation but also includes registration checks, standard SSM compliance inspections and visual checks of some safety appliances. It is not an in-depth survey, neither is it designed to verify compliance against all Maritime Rules.

<sup>78</sup> For example, a vessel with a water lubricated propeller shaft will be surveyed every two years and one with an oil lubricated propeller shaft will be surveyed every two and a half years.

# Crew qualification equivalence

- 1 The legal framework for issuing maritime certificates of competency and the recognition of equivalent certificates and occupations are the Maritime Transport Act 1994 (**MTA**), the Maritime Rules (the Rules) and the Trans-Tasman Mutual Recognition Act 1997.<sup>79</sup>

## The Maritime Transport Act and Rules

- 2 The powers of the Director of MNZ to issue and recognise certificates of competency are set out in section 41 of the MTA. Section 41 (2) provides specifically for the recognition of qualifications and certifications as follows:

*For the purpose of granting or renewing a maritime document, or recognising a document as a maritime document, the Director may, subject to any provisions in the maritime rules, recognise such qualifications or certifications as he or she considers appropriate in each case.*

- 3 Maritime Rule 31C prescribes the crewing requirements for fishing vessels. This rule specifies the type of certificates to be held by the crew and provides for the acceptance by the Director of equivalent certificates of competency.

## Recognition Process

- 4 The procedure for the assessment and issue of an 'Endorsement attesting Recognition of a Non-New Zealand Certificate' involves:
  - receipt of a formal application and fee;
  - completion of a fit and proper person assessment;
  - successful verification of the certificate to be recognised with the issuing Administration;
  - confirmation that the candidate meets the applicable medical requirements;
  - assessment of the certificate held and review of the requirements met for it to be issued; for example, evaluation of curriculum for the foreign certificate against the course requirements for the equivalent New Zealand certificate, academic qualification, ancillary certificates and/or sea service as may be relevant;
  - successful completion of a Safety Oral examination, which is conducted to the appropriate level of certificate (occupation) and includes questions to assess the candidate's knowledge and understanding of New Zealand legislation and competency in English. This examination is conducted by an MNZ examiner.
- 5 A candidate may be issued with a three month statement allowing them to sail if the first five steps are completed successfully (time to undertake the Safety Oral examination).
- 6 MNZ have had few applications to recognise foreign fishing crew qualifications, and these have been addressed on a case-by-case basis. At present, MNZ has little knowledge of the training systems and curricula of the countries of applicants and limited capability internally to assess them in a timely manner.

<sup>79</sup> The Trans-Tasman Mutual Recognition Act 1997 (TTMRA) provides for the recognition of occupations between Australia and New Zealand.

- 7 Requiring FCV crews to hold equivalent qualifications would lead to an increase in applications. This would require a closer audit of applicant country qualification systems and processes and likely require one-off country visits to establish baseline information.
- 8 For countries that are signatories of STCW-F (the Ukraine and Russia) it may involve processes similar to those used for recognising other convention (SOLAS and STCW) documents, with a desktop assessment and followed by the Safety Oral exam. However, even in this case, MNZ may wish initially to undertake a more substantive audit of the training system and curricula against STCW-F standards. It is possible that MNZ could seek third parties assessments where appropriate (for example, Australia and the United Kingdom).

# Bibliography

As noted in the Introduction, a lot of information in this Report was provided by Department of Labour, Maritime New Zealand, Ministry of Agriculture and Forestry and Ministry of Foreign Affairs and Trade.

Animal Products Act 1999

Jacqueline Alder, Sarika Cullis-Suzuki, et al, 3 May 2010. Aggregate performance in managing marine ecosystems of 53 maritime countries. *Marine Policy* Vol. 34 Issue 3: 468-476.

*China Daily*

Code of Practice on Foreign Fishing Crew

Council Regulation (EC) No 1005/2008 of 29 September 2008 [available from: <http://eur-lex.europa.eu>].

Coriolis Research, October 2010. *Moving to the centre: the future of the New Zealand food industry*

Coriolis Research, October 2011. *Investors Guide to NZ Food & Beverage Industry*

Crimes Act 1961

Deepsea Fishing Crew Employment Register

Department for Environment, Food and Rural Affairs (UK), 2011. *Attitudes and Behaviours around Sustainable Food Purchasing* [available from: <http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-food-attitudes-report-110406-mainreport.pdf>].

Doing Business 2010, World Bank Group [available from: <http://www.doingbusiness.org/reports/global-reports/doing-business-2010>].

Doing Business 2012, World Bank Group [available from: <http://www.doingbusiness.org/reports/global-reports/doing-business-2012>].

Department of Labour [www.dol.govt.nz](http://www.dol.govt.nz)

Dr. Douglas Fairgray, Garry McDonald, Fiona Cooke, October 2008. *The Economic Impacts of the Seafood Sector in New Zealand*. Market Economics.

Fisheries Act 1996

Fisheries (Commercial Fishing) Regulations 2001

Fisheries 2030

FishServe - <http://www.fishserve.co.nz/>

Food and Agriculture Organisation, 2008. *State of World Fisheries and Aquaculture*.

Health and Safety in Employment Act 1992

Human Rights Act 1993

Immigration Act 2009

Immigration Instructions 'Recognised Seasonal Employer (RSE) Category'

Immigration Instructions 'Crew of Foreign Chartered Fishing Vessels'

Immigration New Zealand [www.immigration.govt.nz](http://www.immigration.govt.nz)

International Convention for the Safety of Life at Sea (SOLAS)

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (SCTW-F) 1995

ILO LABORSTA, ILO database of labour statistics (available from: <http://laborsta.ilo.org>)

*Jakarta Globe*

*Le Monde*

Kelly Lock and Stefan Leslie, 2007. *New Zealand's Quota Management System: A History of the First 20 Years*. Motu Economic and Public Policy Research.

Maritime New Zealand, *Guide to entry into Safe Ship Management*, 2009.

Gareth Morgan and Geoff Simmons, 2011. *Hook, Line and Blinkers: Everything Kiwis Never Wanted to Know About Fishing*, Phantom House Publishers.

Clement & Associates Limited, (multiple years). *New Zealand Commercial Fisheries: The Atlas of Area Codes and TACCs*, Clement & Associates Limited.

OECD/FAO, 2011. *OECD-FAO Agricultural Outlook 2011-2020*, OECD Publishing and FAO (available from: [http://dx.doi.org/10.1787/agr\\_outlook-2011-en](http://dx.doi.org/10.1787/agr_outlook-2011-en)).

Maritime New Zealand [www.maritimenz.govt.nz](http://www.maritimenz.govt.nz)

Ministry of Agriculture and Forestry, *Briefings for Incoming Ministers*, 2011.

Ministry of Agriculture and Forestry catch database

Ministry of Agriculture and Forestry, *Observer Manual*, 2011.

Ministry of Agriculture and Forestry, *Observer Standard*, 2007.

Ministry of Agriculture and Forestry, February 2011. *Primary Growth Partnership project on Precision Seafood Harvesting Media Backgrounder*.

Maritime New Zealand, *Guide to entry into Safe Ship Management*, 2009.

Maritime Rules

Maritime Protection Rules

Maritime Transport Act 1994

Minimum Wage Act 1983

Ministry of Agriculture and Forestry [www.maf.govt.nz](http://www.maf.govt.nz)

National Library of New Zealand <http://www.natlib.govt.nz>

Nelson Maritime School publications

New Zealand, Waitangi Tribunal, 1992. *The Ngai Tahu Sea Fisheries Report 1992*, Brooker & Friend.

OECD Guidelines for Multinational Enterprises

Overseas Investment Office <http://www.linz.govt.nz/overseas-investment>

Pricewaterhouse Coopers, 3 November 2011. *Department of Labour Review of the Immigration Fishing Audit Process*.

U Rashid Sumaila, Ahmed S Khan, Andrew J Dyck, Reg Watson, Gordon Munro, Peter Tydemers and Daniel Pauly. 2009. *A bottom-up re-estimation of global fisheries subsidies*. University of British Columbia.

Sanford Limited, *Continuous Disclosure Notice*, 16 April 2009 [available from: <http://www.sanford.co.nz>]

SeaFIC <http://www.seafood.co.nz/>

Seafood Industry Council Export Statistics.

Seanet <http://seanet.org.nz>

Ship Registration Act 1992

Statistics New Zealand, *Business Demographic Statistics and the Linked Employer-Employee Database*.

Personal communication, Dr. Christina Stringer, Senior Lecturer, University of Auckland

Tax Act 2007

Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

The Convention on the Standards of Training, Certification and Watchkeeping (SCTW)

*The Guardian*

*The New York Times*

*The Times (UK)*

Torremolinos Protocol for the Safety of Fishing Vessels 1993

Universal Declaration of Human Rights, 1948

United Nations Convention on the Law of the Sea, 1982

US Department of State *Trafficking in Persons* Report 2011.

US Tuna Treaty

Wages Protection Act 1983

Boris Worm, Ray Hilborn, et al. 2009. Rebuilding Global Fisheries. *Science* Vol. 325 (5940): 578–585

# Glossary

## A

<b>ACE</b>	Annual Catch Entitlement. An entitlement to harvest a quantity of fish, aquatic life, seaweed or other stock, taken in accordance with a fishing permit and any conditions and limitations imposed by or under the Fisheries Act. Up to 10 percent of ACE may be carried forward from one fisheries year to the next.
<b>ACC</b>	Accident Compensation Corporation.
<b>AFL</b>	Aotearoa Fisheries Limited. Established by the Māori Fisheries Act 2004 following an iwi agreement. AFL owns 50 percent of Sealord Group Limited.
<b>AIP</b>	Approval in Principle. Immigration New Zealand temporary work visa policy that allows fishing companies to recruit foreign fishing crews and is required for vessels on a time charter arrangement.
<b>Agreed Record</b>	Agreed Record of Conclusions between the EU and New Zealand for a simplified form of the catch certificate.
<b>ASEAN</b>	Association of Southeast Asian Nations. There are ten member states – Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. ASEAN aims to accelerate the economic growth, social progress and cultural development in the regions.

## B

<b>Bareboat charter</b>	See Demise charter.
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## C

<b>CAR</b>	Corrective Action Request. These are issued to vessels for any non-compliance with the Animal Products Act 1999.
<b>Classification Society</b>	A classification society is a non-governmental organisation that establishes and maintains technical standards for the construction and operation of ships and offshore structures. The classification society will also validate that construction is according to these standards and carry out regular surveys in service to ensure compliance with the standards.
<b>Coastal State</b>	Generally referred to as the State in whose waters vessels are operating. New Zealand is the coastal State in relation to FCVs.

<b>Code of Practice (on Foreign Fishing Crew)</b>	The Code of Practice sets minimum working and living conditions for FCV crews, including regular reporting and provisions for onboard inspections.
<b>Commercial fishing permit</b>	Any person who wishes to catch fish for the purpose of sale requires a commercial fishing permit issued under the Fisheries Act 1996. Permits are issued for a period of between one and five years upon payment of an application fee.
<b>Compliance risk profile</b>	Fisheries compliance and monitoring activities are targeted to fisheries based on a risk assessment process. This risk assessment does not specifically address any vessels, and is instead based on the fishery involved, time of year, historical offending in the fishery among other matters. This risk profile is not vessel specific, but does eventually affect the level of compliance monitoring and subsequent enforcement activities.
<b>Contiguous Zone</b>	The area seaward measured from the outer edge of the territorial sea another 12 nautical miles to a total of 24 nautical miles from the baseline. The contiguous zone has no fishery-related significance.

## D

<b>DAS</b>	Deepwater Allocation System, precursor to the QMS. Individual quota was allocated to those existing deepwater fishing companies that could show they had the ability to access the fishery and had arrangements in place to process the catch. In turn, government permitted these companies to harvest their catch entitlement in the most efficient manner which included the use of FCVs. The DAS included the following seven species: barracouta, hake, hoki, ling, orange roughy, oreo dory and silver warehou.
<b>Deemed values</b>	Deemed values are set for each fish stock in the QMS. They are set at a level to discourage commercial fishers from targeting fish in excess of ACE and at the same time encourage them to land and report unintended by-catch. MAF sets both interim and annual deemed value rates for each quota management stock. The annual deemed value rate for a stock will always be higher than the interim deemed value rate.
<b>Deepwater Group</b>	Deepwater Group is an amalgamation of EEZ fisheries quota owners in New Zealand. Deepwater Group Ltd shareholders include Anton's Seafoods Ltd, Aotearoa Fisheries Ltd, Independent Fisheries Ltd, Mariner Holdings, Ngai Tahu Seafood Resources, Ngapuhi Fisheries Ltd, Ngati Porou Seafoods, Sanford Ltd, Sealord Group Ltd, Solander Fisheries Ltd, Southern Cross Quota Holdings, Talley's Group Ltd, Te Ohu Kaimoana and Vela Fishing Ltd. Each shareholder owns deepwater quota and each has one share in the Deepwater Group Ltd company.

<b>Deepwater species</b>	Fish species that are harvested at depths ranging from 500-1000 metres. For the purposes of this Inquiry, deepwater species are those listed in Annex D.
<b>Deepsea Fishing Crew Employment Register</b>	The Deepsea Fishing Crew Employment Register is operated independently by Clement and Associates Limited (a Nelson based fisheries services company), and is funded by the fishing industry. Clement and Associates Limited advertises for expressions of interest from suitably qualified people in the major newspapers twice yearly. The Deep Sea Fishing Register is currently the only labour market test for Immigration when applying for an AIP.
<b>Demise charter</b>	Also known as a 'bare-boat charter'. Under a demise charter arrangement the boat is chartered without the crew and the New Zealand charter party is responsible for organising the crew for the vessel. Demise charter is defined in section 2 of the Ship Registration Act 1992.
<b>DG</b>	Director-General of MAF. The DG has specific powers related to commercial fishing, such as impose conditions on registration for a fishing permit.
<b>Discarding</b>	Discarding is the return of caught fish to the sea. Discarding of QMS species is allowed only for species listed in the Sixth Schedule of the Fisheries Act or if the discarding is authorised by a fisheries observer. Such discards are still considered to have been taken and must be covered by ACE or incur a deemed value payment.
<b>Domestic vessel</b>	A vessel that is New Zealand owned and registered under the Ship Registration Act 1992.
<b>DoL</b>	Department of Labour administers the Accident Compensation Act 2001, Employment Relations Act 2000, the Health and Safety in Employment Act 1992, Immigration Act 2009, the Wages Protection Act 1987 and the Minimum Wage Act 1987.
<b>Dumping</b>	An offence under the Fisheries Act 1996 which involves disposal of unsaleable catch, dead or alive, during or after fishing operations.

## E

<b>Employment Court</b>	The Employment Court is a specialist Court for employment disputes, particularly challenges to determinations of the Employment Relations Authority, questions of interpretation of law.
<b>EEZ</b>	Exclusive Economic Zone is the area between 12 and 200 nautical miles from shore. Coastal States have sovereign rights to resources within the EEZ, but limited civil and criminal jurisdiction.
<b>EEZ fishing fleet</b>	For the purposes of this report, the EEZ fishing fleet is defined as all fishing vessels greater than 30 metres in registered length.

<b>EEZ species</b>	For the purposes of this Report, EEZ species is defined as fish species targeted by the offshore (or EEZ) fishing fleet that includes FCVs. EEZ species include both deepwater and pelagic species (species found in surface waters).
<b>Employment Relations Authority</b>	The Employment Relations Authority resolves employment relationship problems that cannot be solved through mediation. It is an independent body set up under the Employment Relations Act 2000.
<b>EU</b>	European Union.

## F

<b>FAO</b>	The Food and Agriculture Organisation of the United Nations. FAO's mandate is to raise levels of nutrition, improve agricultural productivity, better the lives of rural populations and contribute to the growth of the world economy.
<b>FCV</b>	Foreign Charter Vessel. For the purposes of this Report, FCV means a foreign owned vessel that is on charter to a New Zealand based operator.
<b>Fishing year</b>	For most fish stocks, the fishing year runs from 1 October in one year to 30 September the next year. The second year is often used as shorthand for the split years. For example, 2012 is shorthand for 2011/12. The fishing year for southern blue whiting commences on 1 April.
<b>Fishmeal</b>	A solid product obtained by removing most of the water and some or all of the oil from fish or fish waste. Fish meal is generally sold as a powder, and is used mostly in compound foods for poultry, pigs and farmed fish <sup>80</sup> .
<b>Fish Stock</b>	Fish species found in the New Zealand EEZ typically are made up of a number of biologically and geographically distinct stocks that have little or no interbreeding with other stocks of the same species. Fish stocks are geographical units used for fisheries assessment and management purposes that typically enclose the area covered by one or more biologically distinct stocks.
<b>Fishery Officer</b>	A Fishery Officer is a mandated compliance officer employed by MAF to enforce fisheries legislation.
<b>Flag of Convenience</b>	A country that has little enforcement of international labour, safety and environmental regulations of ships and allows vessels to register there to avoid regulations.
<b>Flag State</b>	The State to which a vessel is registered to. The vessel flies the flag of the State it is registered with. New Zealand is the flag state for vessels registered in New Zealand under the Ship Registration Act 1992.

<sup>80</sup> <http://www.fao.org/wairdocs/tan/x5926e/x5926e01.htm>

<b>Flag State Jurisdiction</b>	The concept under UNCLOS that flag States have primary jurisdiction with regard to civil and criminal matters that take place on board vessels (even if the vessel is operating in another State's EEZ).
<b>Foreign license</b>	An arrangement where, often due to a lack of capacity, a coastal State allows another State to fish within its EEZ and return its catch to foreign ports. Foreign license arrangements ceased when the QMS came into force in 1986.
<b>Full processing vessel</b>	A fishing vessel that is involved in the full processing of fish material or fish product for human consumption, such as preparing frozen-at-sea fish fillets.

## G

<b>Genuine link</b>	In the context of flying the flag of a particular State, a genuine link is often required between the vessel and the flag State. Genuine link is not defined internationally.
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## H

<b>High grading</b>	Dumping fish, usually illegally, to retain fish of the greatest value only. <sup>81</sup>
<b>Highly Migratory Species</b>	Highly migratory species are species which migrate through a range of EEZs and the high seas and are listed in Annex I of UNCLOS and schedule 4B of the Fisheries Act 1996. They include albacore tuna, bigeye tuna, skipjack tuna, yellowfin tuna, southern bluefin tuna, the marlins, and swordfish. <sup>82</sup>
<b>HSE Act</b>	Health and Safety in Employment Act 1992.

## I

<b>ILO</b>	International Labour Organisation. The ILO is the United Nations' specialised agency responsible for the promotion of social justice and internationally recognised human and labour rights.
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<sup>81</sup> [http://seanet.org.nz/index.php?option=com\\_content&task=view&id=140&Itemid=69](http://seanet.org.nz/index.php?option=com_content&task=view&id=140&Itemid=69)

<sup>82</sup> [http://seanet.org.nz/index.php?option=com\\_content&task=view&id=140&Itemid=69](http://seanet.org.nz/index.php?option=com_content&task=view&id=140&Itemid=69)

**ILO Convention 188 Work in Fishing (C188)**

C188, Work in Fishing 2007 is designed to ensure that people employed in the fishing industry have decent conditions of work on board fishing vessels. C188 imposes obligations on States to establish minimum conditions of service, accommodation and food, occupational safety and health, medical care and social security for commercial fishers who work on vessels flagged to the State. New Zealand has not ratified C188.

**Immigration officer**

An employee of the Department of Labour with powers designated under the Immigration Act 2009. Immigration officers are responsible for issuing visas and processing applications.

**Interaction**

In the context of seabirds and marine mammals, interactions include all animals live or dead that are brought on deck or seabirds that are observed killed by fishing activity. It excludes any animals that were decomposing, and those that land on deck or collide with the vessel superstructure.

**IMO**

International Maritime Organisation. The IMO is the United Nations' specialised agency responsible for safety and security of shipping and the prevention of marine pollution by ships.

**IOC**

Imposition of Conditions. MNZ may impose additional conditions on a vessel requiring identified issues with maritime safety to be rectified.

**ITO**

Industry Training Organisation. For the fishing industry, this is covered by Seafood ITO, which provides nationally recognised qualifications for people in the industry.

**ITOC**

Integrated Targeting and Operations Centre. ITOC is a facility based in the Auckland Customhouse staffed by the key border agencies of Customs, Immigration New Zealand, MAF and MNZ. Inter-agency co-operation within ITOC already includes the sharing of risk information and intelligence.

**ITQ**

Individual Transferable Quota. A property right that represents the quota owners share of a fishery. There are 100 million shares in each fishstock. The amount of shares owned determines the amount of ACE generated each fishing year. ITQs can be bought or sold.

**IUU**

Illegal, Unreported and Unregulated fishing activity. Illegal fishing is when vessels operate in violation of the laws of a fishery. Unreported fishing is fishing that has not been reported, or misreported to the relevant national authority. Unregulated fishing is when vessels fish without a nationality, or when flying the flag of a country not party to the regional organisation governing that fishing area or species.

**Iwi**

Māori word for a set of people bound together by descent from a common ancestor or ancestors. Modern meaning: tribe.<sup>83</sup>

<sup>83</sup> <http://www.natlib.govt.nz/about-this-site/glossary/iwi>

## J

### Jigging

A fishing method where a type of fishing lure known as a jig is used to catch fish. The jig is continually moved in a vertical up and down motion. This is usually done at night with powerful lights to attract species such as squid.

## L

### Labour Inspector

Labour Inspectors are warranted employees of the Department of Labour. Their main tasks are to ensure compliance with employment law including the Employment Relations Act 2000, the Minimum Wage Act 1983 and the Wages Protection Act 1983.

### Labour market test

A labour market test is often undertaken by the Department of Labour before a work visa is approved. It is to check if there are any available New Zealanders to fill the position.

### Landing/Land (to)

Landing, in relation to fishing, is the removal or discharge of fish from the vessel.

### Licensed Fish Receiver

Only those persons licensed as Fish Receivers are permitted to receive fish for the purpose of sale from commercial fishers. Section 191 of the Fisheries Act 1996 restricts the disposal of commercially taken fish, aquatic life, and seaweed by commercial fishers.

### Limited Processing Vessel

A Limited Processing Vessel's operation is restricted to limited fish processing. For example, the washing, scaling, gutting, deheading, tubing, tailing, chilling, freezing, storage, packing or transport of fish material or fish product for human consumption.

## M

### MAF

Ministry of Agriculture and Forestry, administers the Fisheries Act 1996 and the Animal Products Act 1999.

### MAF Observer

MAF observers are unwarranted employees of MAF who are trained to collect accurate data during fishing voyages to inform scientific analyses, fisheries management decisions, and compliance investigations.

<b>Manning Agent</b>	A manning agent is responsible for arranging crew to work on an FCV. Manning agents are based outside of New Zealand.
<b>Maritime Safety Inspector</b>	Maritime Safety Inspectors are warranted employees of MNZ who inspect vessels for safety and seaworthiness. In the case that a vessel is found to be in breach of safety standards, Maritime Safety Inspectors can detain a vessel in port until repairs are made.
<b>MHR</b>	Monthly Harvest Return. The MHR lists by fish stock, all fish taken in the month reported. This information is used in the balancing regime that generates deemed values.
<b>Middle depth species</b>	Species that are harvested at depths ranging from 200-500 metres. Key species include hoki, hake and ling. For the purposes of this report, middle depth species are included in the general term 'deepwater species'.
<b>Minister for Primary Industries</b>	A new Ministerial portfolio that incorporates the responsibilities formerly included in the Agriculture, Biosecurity, Fisheries and Aquaculture, and Forestry portfolios.
<b>MNZ</b>	Maritime New Zealand. Administers the Maritime Rules and Marine Protection Rules drafted under the Maritime Transport Act, the HSE Act on board vessels, and the Ship Registration Act 1992.
<b>MOSS</b>	Maritime Operator Safety System. MOSS is a new system to monitor vessel safety that is being developed by MNZ. MOSS is expected to be implemented beginning in 2013.
<b>MOU</b>	Memorandum of Understanding, which is a document describing a bilateral or multilateral agreement between parties. It is often used in cases where parties cannot create a legally enforceable agreement.

## N

<b>New Zealand charter party</b>	The New Zealand based company that is party to charter agreement for a particular fishing vessel.
<b>New Zealand Fishing Industry Guild</b>	The New Zealand Fishing Industry Guild is a registered union under the Employment Relations Act 2000 and represents commercial fishers throughout New Zealand.
<b>New Zealand fishing vessel</b>	A vessel registered to fish under section 102 of the Fisheries Act 1996. Both foreign owned and New Zealand owned vessels are classified as New Zealand fishing vessels once they have completed this registration process and are subject to all fisheries legislation.
<b>NZCTU</b>	New Zealand Council of Trade Unions. The NZCTU represents over 330,000 members in 39 affiliated unions.

# O

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<b>Observer Standard</b>	The Observer Standard sets out standards with regards to food, accommodation, access to cooking and toilet facilities and amenities that vessels must provide in order to ensure a safe working environment for MAF observers. Meeting the standard is a requirement for registration of an FCV under the Fisheries Act.
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<b>OECD</b>	Organisation for Economic Co-operation and Development. The mission of the OECD is to promote policies that will improve the economic and social well-being of people around the world. The OECD has 34 member countries and includes the USA, Canada, Australia, United Kingdom, Japan, Korea and New Zealand.
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# P

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<b>Pelagic</b>	Pelagic species are those that are found in the top third of the water column for example, swordfish, tuna, kahawai and pilchards.
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# Q

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<b>QMA</b>	Quota Management Area. The geographical boundaries on which a fish species is managed under the QMS.
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<b>QMS</b>	Quota Management System. The fisheries management regime used in New Zealand to ensure sustainable use of fisheries resources. The QMS is based on individual quota shares allowing fishers the rights to a proportion of the total allowable catch, which is set annually for fishstocks based on scientific information.
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<b>Quota</b>	Quota is the property right of a stock represented as shares that can be bought and sold. The total number of quota shares for each fish stock is 100,000,000 shares. Quota share holdings are guaranteed by the Crown and are able to have mortgages and other securities registered against them. Aggregation limits prohibit quota owners from holding more than a specified amount (typically 35-45 percent for deepwater species) of quota shares unless given Ministerial approval.
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<b>QOL</b>	Qualifications and Operational Limits Framework. If introduced, QOL would align the existing certificate structure for New Zealand fishing qualifications with STCW-F.
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# R

<b>RCS</b>	Regulated Control Scheme is a food safety risk management tool. Limited processing vessels operate under the RCS. Vessels are required to have appropriate documented systems, to undergo an initial compliance audit prior to fishing and to then be subject to regular verification audits.
<b>Registration</b>	Can mean either registration of vessels under the Ship Registration Act 1992 (reflagging to New Zealand), or registration as fishing vessels under the Fisheries Act 1996.
<b>Registration risk profile</b>	During the registration process for an FCV, MAF analyses the vessels' history with regards to compliance, legal, fisheries management, and observer standard regulations. Based on the outcome of this analysis, a risk profile is assigned to the vessel. This risk profile is subsequently used to determine the level of observer coverage on the vessel as well as any additional conditions to be placed on the DG's consent to the registration.
<b>Risk profiles</b>	There are two fisheries related risk profiles, Registration Risk Profiles and Compliance Risk Profiles.
<b>RFMO</b>	Regional Fisheries Management Organisation. RFMOs are multi-lateral organisations with responsibility for coordinating management of highly migratory fish stocks, fish stocks that straddle national fisheries management boundaries, and other high-seas species.
<b>RMP</b>	Risk Management Programme is a food safety risk management tool. RMPs are required for all full processing fishing vessels. The RMP is a written programme that describes how the business will manage its production and processing to meet the requirements of the regulatory regime.
<b>RSE</b>	Recognised Seasonal Employer. Immigration New Zealand policy to allow Pacific migrants to work temporarily in the horticulture and viticulture industries.

# S

<b>SeaFIC</b>	Seafood Industry Council. SeaFIC is the company established to represent the fishing industry through the provision of advice to the government and industry, and promotion of the healthy development of the seafood industry.
<b>SOLAS</b>	International Convention for the Safety of Life at Sea. The main objective of SOLAS is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. SOLAS does not apply to fishing vessels.

<b>SSM</b>	Safe Ship Management. A system to enforce the Maritime Rules and Maritime Protection Rules undertaken by MNZ. The SSM system was designed to ensure that all aspects of the operation of domestic vessels are fit for purpose and of a sufficiently high standard.
<b>SSM Surveyor</b>	An SSM surveyor is a surveyor officially recognised by MNZ to assess the construction and systems onboard a vessel to determine if an SSM certificate can be issued.
<b>STCW</b>	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers. Initially adopted in 1978 and significantly amended in 1995, STCW prescribes minimum standards relating to training, certification and watchkeeping for seafarers which countries are obliged to meet or exceed. STCW does not apply to fishing vessels.
<b>STCW-F</b>	International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel. STCW-F sets training and certification standards for skippers and watchkeepers on fishing vessels of more than 24 metres. The Convention requires basic (pre-sea) safety training for all fishing vessel personnel. It represents a first attempt to make standards of safety for crews of fishing vessels mandatory internationally. STCW-F will enter into force in October 2012.

## T

<b>TAC</b>	Total Allowable Catch. Total quantity of each fish stock that can be taken by commercial, customary Māori interests, recreational fishery interests and other sources of fishing-related mortality, to ensure sustainability of that fishery in a given period, usually a year. This term is defined in the Fisheries Act.
<b>TACC</b>	Total Allowable Commercial Catch. Total quantity of each fish stock that the commercial fishing industry can catch in a given year. The TACC is a portion of the TAC that is set after allowances have been made for customary and recreational fishing, and for other sources of fishing-related mortality. This term is defined in the Fisheries Act.
<b>TAIC</b>	Transport Accident Investigation Commission. TAIC is a standing Commission of Inquiry and investigates significant aviation, rail, and marine accidents and incidents to avoid similar occurrences in future.
<b>Tax Resident</b>	A person is a New Zealand tax resident if they are personally present in New Zealand for more than 183 days in total in a 12-month period.
<b>Territorial sea</b>	The area between the coastline and 12 nautical miles. Under UNCLOS, coastal States enjoy full sovereign jurisdiction in the territorial sea.
<b>Time Charter</b>	Under a time charter, the New Zealand Charter Party contracts the vessel and the crew as one package. Twenty six out of 27 FCVs operating in New Zealand's EEZ are on time charter agreements.

**Trucking**

An offence under the Fisheries Act, also known as area misreporting. Trucking is the transportation of fish between fisheries management areas for the purpose of area misreporting. This means that fish taken in one area is reported and counted against ACE by the permit holder in another area.

**TOKM**

Te Ohu Kaimoana. TOKM is the Māori Fisheries Trust, established by the Māori Fisheries Act 2004, an organisation that works to advance Māori interests in the marine environment, including customary commercial fisheries, aquaculture and providing policy and fisheries management advice and recommendations to iwi and the wider Māori community.

**Torremolinos Protocol**

The 1993 Torremolinos Protocol for the Safety of Fishing Vessels. The Torremolinos Protocol covers construction, stability, machinery, fire protection, protection of crew, lifesaving equipment, emergency procedures, radio communication, navigation equipment, and vessel certification for fishing vessels. The Protocol generally applies to fishing vessels over 24m, although some provisions are restricted to fishing vessels of more than 45m. The Torremolinos Protocol is likely to enter into force in late 2015.

**TPP**

Trans-Pacific Partnership. A free trade agreement that is being developed between the United States, New Zealand, Australia, Brunei Darussalam, Chile, Malaysia, Peru, Singapore and Viet Nam.

**U****UNCLOS**

United Nations Convention on the Law of the Sea (10 December 1982). UNCLOS defines the rights and responsibilities of countries in their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources.

