Submission of the New Zealand Council of Trade Unions Te Kauae Kaimahi

to the

Ministerial Inquiry into Foreign Charter Vessels

P O Box 6645
Wellington

7th October 2011

1. Introduction

1.1. This submission is made on behalf of the 39 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 330,000 members, the CTU is the largest democratic organisation in New Zealand.

1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.

1.3. We welcome the opportunity to make a submission on the Ministerial Inquiry into Foreign Charter Vessels (the 'Inquiry').

1.4. Our submission is that the operation of Foreign Charter Vessels ('FCVs') harms New Zealand's international reputation, does not maximise economic return from our fisheries resources, and fails to provide acceptable and equitable labour standards. Therefore the Inquiry needs to make recommendations that address policy, legislative and economic development issues.

2. Summary of Recommendations

2.1. Our full recommendations are set out in Section 11 of this submission.

2.2. Commit to a phase out of FCVs.

2.3. Require all vessels catching fish in our economic zone to be NZ flagged ships.

2.4. Require observers on all FCVs at all times when in operation.

2.5. Revise the Code of Practice on Foreign Fishing Crew including adding further parties, increasing the $2.00 an hour margin, providing more support for claimants, lodging of employment agreements with Labour Department and making the code enforceable.

2.6. The right to employ foreign crew should only be possible by application to a nominated government department which requires that predetermined criteria are met before a ship can be chartered.

2.7. Monitor conduct in home countries by manning agents and refuse to grant future visas through those manning agents where breaches of human rights have occurred.

2.8. Require a proportion of FCV crew to be NZ citizens.

2.9. Establish a ‘chain of responsibility’ which explicitly links holders of ITQ to employment standards and practices on FCVs.

2.10. The Government should rigorously abide by existing international obligations particularly in relation to Forced Labour and Human Trafficking and should ratify the Work in Fishing ILO Convention No.188.

2.11. That the Government actively seek technical advice and training support from the ILO and IMO, to enhance NZ's Labour Inspection capacity and policies for inspection of fishing vessels, and to ensure NZ laws and practices are consistent with ILO conventions 29, 81, 97, 105, and 188.

2.12. Legislation should require that any fish caught in the New Zealand Exclusive Economic Zone (EEZ) must be subject to value-added processing in New Zealand other than legitimate full processing ships based on no more than the number operating in 2007.

2.13. Specify which species should be subject to value-added processing in New Zealand, and develop research and development proposals to lift the value of species currently attracting low returns.

2.14. Investigate whether consents by the chief executive of Ministry of Fisheries to the licensing of FCVs, should be made on the condition that the vessels are fully demise chartered to the NZ operator.

2.15. Establish a fishing industry development project (which encompasses all parties including unions) that promotes employment opportunities (specifically including land-based options), value-added practices, expanded training provision, and investment options. There also needs to be access to sector-development funding.

2.16. Develop a training structure for young workers to see the fishing industry as a career move for the future and look at the skills needed and how the provision of training can be better delivered to develop these skills.

2.17. Review the government negotiating position on rules of origin in future trade agreements with a view to encouraging the processing of fish in New Zealand.

3. Working Conditions on FCVs

3.1. As evidenced by Stringer, Simmons and Coulston[1] there have been numerous documented cases of crew members not being paid, being underpaid, having their wages eaten up by agency fees and being verbally, physically, and in some cases sexually, abused. Their research was based on over 140 interviews as well as prior reports, including from the Maritime Union of New Zealand.

3.2. Recent publicity has focused on the *Oyang 70*, *Oyang 75* and *Shin Ji* vessels. As pointed out by Stringer et al, these were not unregulated or unreported fishing vessels, but were legally fishing on behalf of New Zealand annual catch entitlement holders. Their research extended to crew from other FCVs than the above. In the last six years there have also been incidents involving *Melilla 203, Sky 75, Oyang 96, San Liberatore, Marinui,* and *Malakhov Kurgan*.

3.3. Workers are underfed, cold, without adequate beds, drinking poor quality water, and working long hours to the point of collapse. There is insufficient wet weather gear, injuries (particularly to fingers), and non-reporting of accidents.

[1] Stringer, C., Simmons, G., and Coulston, D. (2011) "Not in New Zealand waters surely? Labour and human rights abuses aboard foreign fishing vessels", New Zealand Asia Institute 11-01, page 3.

3.4. But there are also physical attacks, humiliating treatment, and sexual harassment.

3.5. There are sometimes two different employment contracts. Wages are subject to excessive deductions, and there are significant wage arrears. In some cases, workers are forced to pay fees to get a job.

3.6. These incidents are too numerous to be regarded as incidental. While they may fall short of being completely systemic, there is a case for major reform.

3.7. We note that in a December, 2004 report of the Department of Labour[2], there was reference to union concerns at that time about non payment of wages.

3.8. Other concerns raised included pay as low as $US140 per month with heavy deductions taking actual pay even lower; serious physical and mental abuse; long working hours of 12 hours or more per day; denial of access to passports or fisherman's books; absence of washing or laundry facilities; there was no provision for differing religious or cultural needs; poor food and in some cases little food at all.

3.9. We have a major concern that this Inquiry will regard the adverse treatment of workers on FCVs as occasional rather than at a significant level and therefore will simply recommend a 'tidy up' of the current system.

3.10. In fact, Stringer et al[3] state that the "abuse is widespread and continues unabated". We therefore submit that the response must be commensurate with the scale of the problem.

3.11. The 2002 salary rates which applied to NZ crew were as follows:

---

[2] Department of Labour (2004) 'Employment Conditions in the Fishing Industry – Final Report on Foreign Crew on New Zealand Fishing Vessels", 2 December.

[3] Stringer, C., Simmons, G., and Coulston, D. (2011) "Not in New Zealand waters surely? Labour and human rights abuses aboard foreign fishing vessels", New Zealand Asia Institute 11-01, page 18.

Position	Annual Salary – NZ$
Master	125,000
1st Mate	92,448
2nd Mate	89,665
Boatswain	61,099
Chief Engineer	97,890
1st Engineer	73,091
2nd Engineer	62,812
3rd Engineer	48,667
4th Engineer	43,677
Factory Engineer 1	76,174
Factory Engineer 2	48,677
Trainee Engr/Trainee Factory Engr	39,406
Fishmeal 1	50,495
Fishmeal 2	44,041
Factory Manager	76,174
Factory Supervisor	55,960
Senior Fisher	53,938
Fisher A	48,677
Fisher B	41,028
Fisher C	35,928
Trainee Factory or Galley Hand	30,133
Chief Cook	63,983
Assistant Cook	45,258

3.12. The conditions that apply on FCVs bear no comparison to these rates. In fact the pay and conditions are shocking and are an indictment of the fishing industry in New Zealand.

4. Chain of Responsibility

4.1. We submit that ITQ holders must have a chain of responsibility through to the working conditions on FCVs. They cannot simply say it is not their concern. That is not corporate social responsibility. It is an attempt to avoid any responsibility.

4.2. The sanctions that apply for misuse of quota are significant and have perhaps driven quota holders to devolve responsibility to FCV companies.

4.3. If the cleaning at a hospital is substandard, the District Health Board cannot simply say it is not their concern.

4.4. The contracts need to be specific on the matter of standards.

4.5. There is the added problem of what happens when a company says it is insolvent and cannot pay wages.

5. International Obligations and other Legal Issues

5.1. New Zealand is a member of the International Labour Organisation (ILO), the International Maritime Organisation (IMO), and the United Nations. These organisations have issued instruments setting international standards for activities that fall within the scope of this Inquiry. Additionally, there are general provisions of the international human rights standards laid out in the Universal Declaration of Human Rights and the International Human Rights Covenants. These include the right to life, liberty and the security of person. They prohibit slavery, torture and any form of cruel, inhuman and degrading treatment and they recognise the right to equality before the law. Article 23 of the Declaration addresses rights that are to be afforded in the sphere of work.

5.2. Membership of the IMO and of the ILO imposes certain obligations on member states, even if they have not ratified particular instruments. For example, membership of the ILO pre-supposes a commitment to eliminating Forced labour in areas under the member state's control, in line with core labour conventions C29 Forced Labour and C105 Abolition of Forced Labour.

5.3. New Zealand is a signatory to the following ILO conventions for work in the maritime sector which can include work on fishing vessels:

- Unemployment Indemnity (Shipwreck) Convention, 1920 No.8 (ratified 1980)
- Medical Examination of Young Persons (Sea) Convention, 1921 No.16 (ratified 1961)
- Officers' Competency Certificates Convention, 1936 No.53 (ratified 1938)
- Minimum Age (Sea) Convention (Revised), 1936 No.58 (ratified 1946)
- Certification of Able Seamen Convention, 1946 No.74 (ratified 1961).

5.4. New Zealand is also a signatory to a number of other ILO conventions which may apply in the fishing sector:

- Forced Labour Convention, No.29, 1939 (ratified 1938)
- Labour Inspection Convention, No.81, 1947 (ratified 1959)
- Migration for Employment, No. 97, 1949 (ratified 1950)
- Abolition of Forced Labour Convention, No.105, 1957, (ratified 1968).

5.5. There are two new ILO conventions which relate to the maritime and fishing sectors. These are the Maritime Labour Convention, 2006 and ILO Convention 188, Work in the Fishing Sector. New Zealand has not yet ratified either of these conventions. The CTU understands that officials are evaluating the provisions of the conventions and relevant New Zealand law and practice for possible future ratification.

5.6. The background document to the Ministerial Inquiry states that *New Zealand can only apply the ILO marine Conventions to which it is currently party to New Zealand flagged fishing vessels*. This is potentially misleading as there are other conventions and laws that apply to New Zealand flagged fishing vessels. There is also the possibility that acts by operators of foreign chartered vessels that are internationally recognised as illegal, such as forced labour, would

invalidate their registration under the *Fisheries Act 1996* and agreement to act in accordance with the Fisheries Code of Practice.

5.7. Media and research reports have been released of human rights and labour rights abuses on board fishing vessels operating in the Exclusive Economic Zone (EEZ) (see References at end of submission). The reports describe situations that fit the ILO's definition of forced labour and the United Nations' definition of human trafficking.

5.8. In 2008, the ILO released *A handbook for Labour Inspectors* entitled, *Forced Labour and Trafficking*[4]. This handbook contained current definitions, cases and training resources to enable labour inspectors to investigate accusations of forced labour and trafficking. It defined forced labour as: *"all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."* The handbook clarifies the modern meaning of these terms, and provides case examples, and training resources for responding to forced labour situations.

5.9. The ILO's definition of forced labour comprises two basic elements: the work or service is exacted under the menace of a penalty and it is undertaken involuntarily. The penalty does not need to be in the form of penal sanctions, but may take the form of a loss of rights and privileges. Moreover, the menace of a penalty can take many different forms. A menace may range from psychological threats through to physical violence or restraint, or even death threats addressed to the victim or relatives. Employers on board ships regularly require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour. Being isolated at sea adds to the vulnerability of workers on fishing boats.

---

[4] "Forced Labour and Human Trafficking: A handbook for Labour Inspectors", by Beate Andrees, International Labour Office, 2008, http://www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS_097835/index.htm

5.10. While many victims enter shipboard employment voluntarily they may subsequently discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it. Forced labour situations may be more common in certain economic sectors, but a forced labour situation is determined by the nature of the relationship between a person and an "employer", and not by the type of activity performed, however hard or hazardous the conditions of work may be. Nor is the legality or illegality under national law of the activity decisive in determining whether or not the work is forced.

5.11. The ILO has received reports indicating that seafarers and fishers are at particular risk of forced labour and trafficking. In June 2006 the International Transport Workers Federation (ITF) published the report *Out of Sight, Out of Mind*[5] about seafarers, fishers, and human rights. Amongst the incidents reported, was one of the cases from New Zealand involving the Sky 75; a Korean vessel. Ten crew members from Indonesia fled the ship with complaints of abuse, excessive hours of work, poor and rotting food, no medical treatment and no pay. This example is far from uncommon as reported by Dr Stringer et al. The isolation and confined circumstances of groups of workers, together with frequent difficulties in identifying legal liabilities towards crews, can make them particularly vulnerable.

5.12. In 2009 the ILO released its global report on forced labour, *"The cost of coercion"*[6]. It describes modern forms of forced labour currently occurring around the world, including the situation of some seafarers and fishers. It also attempts to quantify the economic cost to workers affected by forced labour and trafficking.

---

[5] Out of Sight, Out of Mind, ITF, 2006, http://www.itfglobal.org/files/extranet/-1/2259/HumanRights.pdf

[6] "The cost of coercion, Report of the Director-General: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work", International Labour Conference, 98th Session 2009, Report I (B) International Labour Office, Geneva, http://www.ilo.org/ilc/ILCSessions/98thSession/ReportssubmittedtotheConference/WCMS_106230/lang--en/index.htm

5.13. In addition to human suffering, what are the financial costs of coercion to the people who work in forced labour situations? How much money is illegally withheld from people in forced labour? Answering these questions requires some estimate of the "opportunity cost" of being in forced labour, namely the income lost through being in forced labour rather than in a free employment relationship. ILO research over the past few years suggests that the loss of income associated with coercion can be traced to two main sources. The first is the underpayment of wages. It is suggested that economic exploitation is the main reason why some employers use coercion. In most cases, people in forced labour receive wages lower than the market rate, in some cases less than the subsistence minimum. People in forced labour often receive wages net of some artificial deductions imposed in a discretionary way by their employer. For example, victims may be overcharged for the cost of their accommodation – a cost which is often directly deducted from the victims' nominal wage. Workers in bonded labour, who repay a loan through their work, may face deductions for food or housing, on which employers charge a substantial premium over the market price. These deductions contribute to further reducing the net payments received by people in forced labour.

5.14. Underpayment of wages includes forced overtime and other forms of "excessive work" which are not adequately remunerated. Forced labourers typically work longer days and longer weeks than free workers, sometimes up to 16 hours a day for seven days a week. This overtime is not remunerated at a higher rate than regular working hours; at best forced labourers receive their usual hourly wage. In addition to the longer working hours, the "excessive work" sometimes includes the work of family members, such as wives and children who contribute to the production of goods and services but receive no payment. All these forms of unpaid or underpaid "excessive work" should be taken into account when estimating the total cost of coercion.

5.15. The second source of lost income, which arises mainly in cases of human trafficking, is the financial costs associated with the recruitment process.

Migrant workers trafficked into forced labour often incur a series of costs linked to their recruitment, including payments to a recruitment agency or a broker, funding a particular type of training necessary for being eligible for admission to the destination country, acquiring language skills, or payment for the visa and transportation. While all types of migrant workers incur such recruitment costs, ILO research points to a positive relationship between the amount spent during the recruitment process and the probability of becoming a victim of forced labour.

5.16. There are cases both overseas and in New Zealand where the crew of a ship that has got into difficulties are fired from their positions and sent back to their home country either with no money or with only a portion of the wages they were owed.

5.17. The United Nations definition of Trafficking is that *"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."* Exploitation includes …forced labour or services, slavery or practices similar to slavery, or servitude.

5.18. The New Zealand Government has implemented legislative changes to the *Crimes Act 1961* in order to fulfil its obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of the United Nations Convention Against Trans-national Organised Crime (sections 98B, 98D, 98E and 98F of the *Crimes Act 1961* as inserted from 18 June 2002 by the *Crimes Amendment Act 2002*). Section 98A is also relevant to these obligations.

5.19. We believe that our recommendations, if implemented, would also address any concerns about allegations and evidence of forced labour and trafficking.

5.20. The application of the ILO Convention 81, Labour Inspection and the administration of the relevant legislation is vested in the Department of Labour under the direction of the Minister of Labour, with the exception of health and safety inspection in the maritime and aviation sectors, which is under the supervision and control of Maritime New Zealand and the Civil Aviation Authority respectively. The *Fisheries Act* specifies that Labour Inspectors are able to investigate conditions on licensed ships operating under a permit in the EEZ.

5.21. New Zealand has ratified ILO Convention 97, Migration for Employment. This convention requires that migrant workers have access to health care, and be treated fairly in respect of wages and conditions. Workers on fishing boats are sometimes denied these.

5.22. New Zealand is a member of the International Maritime Organisation (IMO) which is a specialised agency of the United Nations responsible for measures to improve the safety and security of international shipping and to prevent marine pollution from ships. It is also involved in legal matters, including liability and compensation issues and the facilitation of international maritime traffic. IMO was established to *adopt* legislation. Governments are responsible for *implementing* it. When a Government accepts an IMO Convention it agrees to make it part of its own national law, and to enforce it like any other law.

5.23. New Zealand has ratified IMO Conventions including:

UNCLOS United Nations Convention on the Law of the Sea
SOLAS International Convention for the Safety of Life at Sea; and
STWC International Convention on Standards of Training, Certification and Watchkeeping for Seafarers

5.24. New Zealand has not yet ratified STWC – F, International Convention on Standards of Training, Certification and Watchkeeping for Fishers. New

Zealand has not yet ratified the Torremolinos Protocol[7] but it has developed Maritime Rules consistent with the protocol.

5.25. The United Nations Convention on the Law of the Sea (UNCLOS) was adopted in 1982. UNCLOS provides a regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources. It embodies in one instrument traditional rules for the uses of the oceans and at the same time introduces new legal concepts and regimes and addresses new concerns. The Convention provides the framework for further development of specific areas of the law of the sea which is usually done in consultation.

5.26. IMO has adopted a number of resolutions in respect of Port State Control (PSC) over the years. In 1995, the 19th IMO Assembly adopted resolution A.787 amalgamating guidelines contained in relevant IMO resolutions, with the aim of providing one set of basic guidelines on the conduct of PSC inspections. In 1999 resolution A.882, amending the procedures for Port State Control, was adopted. Member Governments, through the conduct of PSC inspections at their ports and discussions at IMO, realised that more effective PSC could be conducted by signing regional agreements. Accordingly, the nine regional PSC agreements that have been signed and are currently in operation including the following two agreements ratified by New Zealand:

- the Paris Memorandum of Understanding on Port State Control (Paris MoU), adopted in Paris on 1 July 1982;
- the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MoU) signed in Tokyo on 1 December 1993.

5.27. States have different levels of jurisdiction over each of the three areas in the Fishing Sector - port; coastal; and flag State jurisdiction. Convention 188 sets a

---

[7] http://www.maritimenz.govt.nz/Rules/List-of-all-rules/Part40D-maritime-rule.asp

requirement for flag States to establish a system for the enforcement of compliance. In practical terms this is likely to mean there will have to be a number of qualified inspectors to check on living and working conditions and they will issue certificates that can be checked. In addition port States can investigate complaints and report back to the flag State. Anyone with an interest in the welfare of the fishers can make a complaint.

5.28. In the case of the fishing sector in New Zealand's EEZ, foreign chartered vessels fishing to a New Zealand quota allocation do so under registration. They sign up to the New Zealand Government Fishing Code of Practice and have agreed to abide by that Code. New Zealand owned and flagged vessels fishing in the EEZ are covered by New Zealand employment law.

5.29. New Zealand has laws and policies intended to protect vulnerable workers from exploitation. Where these laws appear to be in conflict with other laws then Courts may decide which set should be followed in particular situations. For fishing workers on ships operating in New Zealand's EEZ, relevant guidance would come from the worker's employment contract, the place of formation of the contract, the home bases of employer and employee, the language and form of the contract, and the conditions under which the work is permitted in the area. In New Zealand, employment statutes such as the *Minimum Wage Act 1983* (NZ) (the Minimum Wage Act) and the *Wages Protection Act 1983* (NZ) (the Wages Protection Act) are mandatory. Parties cannot contract out of their provisions. Under Part 5 of the *Fisheries Act 1996* the operator of a foreign fishing vessel may apply to the Minister of Fisheries for a license to fish in the EEZ. The license issued may contain (subsection 83(4) (r))*…such other matters as the Minister considers necessary or expedient for the purpose of this Act or any other enactment or otherwise.*

5.30. Section 103(1) of the Act requires all vessels fishing in New Zealand fisheries waters (including the EEZ) to be registered. Section 103(5) provides that, in the case of foreign vessels, while the vessel is in New Zealand fisheries waters the

protections of the Minimum Wage Act and the Wages Protection Act apply to people working on the vessels. Section 103(5) (a) deems all work-permit holders engaged on the vessel to be employees.

5.31. Under subsection 4(1) (o) of the *Admiralty Act 1973*, New Zealand Courts may hear any claim by a master or member of the crew of a ship for wages, and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the *Maritime Transport Act 1994,* is recoverable as wages in the Court and in respect of the manner in which wages may be recovered. But the provisions of the *Admiralty Act* are seldom used. Problems were rarely reported to authorities. Most foreign fishers do not speak English. They were unlikely to be aware of their rights under New Zealand statutes. Many fear retaliation, either abuse by their employers or black-listing by the industry as a whole. There are reports of threats being made to the families of crew members who laid complaints.

5.32. Fishing vessels are in port for only a short time. It is difficult for non-English speakers, unfamiliar with New Zealand, to obtain assistance before the vessel sails out of jurisdiction. The operator of the vessel has a high degree of control over the movements of persons on the vessel and has the ability to restrict their contact with the outside world. The Maritime Union reports hearing of cases where private security guards are posted to stop crew coming ashore.

5.33. The Fisheries Act regulation of employment in the EEZ was woefully inadequate. Problems were almost never reported, and when cases were brought, the rights of crew were not effectively upheld. Although it is not perfect, the Code of Practice represents a considerable advance and has the potential to be enormously beneficial for foreign crew members. Its efficacy, however, depends on its enforceability and the legal and practical difficulties of enforcing the Code are considerable.

5.34. In its global report *The cost of coercion,* the ILO offered states training on the means to identify and tackle forced labour. Similar assistance could be

provided for research on forced labour and trafficking. This would help generate awareness that forced labour is a concern for all countries and all kinds of economies. The ILO has said that, subject to demand, support will be provided for quantitative surveys of forced labour and trafficking. Existing toolkits – including those for labour inspectors, judges and prosecutors, and business leaders –can be adapted to national contexts. An ILO programme could engage more closely with the academic community and major policy institutions, promoting research and teaching on the economic and other underpinnings of forced labour in the modern global economy.

5.35. Existing obligations need to be rigorously observed and ratification and implementation of the ILO Work in the Fishing Sector should be promoted and greater regulation of the fishing industry must be introduced.

6. Code or Practice

6.1. The Department of Labour conducted an investigation into the fishing industry in December 2004. Although the focus of the inquiry was conditions on New Zealand vessels employing foreign crew, the investigators realised there were real areas of concern over the use of overseas-owned contract vessels operating in New Zealand waters. The Department's report primarily discussed issues relating to the timing of wage payments for both New Zealand and foreign crew members on New Zealand ships and whether these payments were Minimum Wage Act compliant.

6.2. Annex Three of the full report relied on confidential interviews with crew and we have already mentioned concerns around pay, working hours, abuse and food.

6.3. The report revealed the Fisheries Act section 103 was woefully inadequate. Problems with enforcement and a lack of reporting meant operators of foreign charter vessels in New Zealand waters were able to flout the Act's requirements with impunity. Further, the Act did not address the non-financial problems of abuse and poor working conditions.

6.4. The public release of the report in May 2005 resulted in a number of questions in Parliament, with National, United Future, New Zealand First and the Greens all exhorting the government to take action. The Labour government's response was to announce a review of the process by which visas allowing foreigners to work in the EEZ were granted. In October 2006, the review resulted in the introduction by the Department of Labour of a new Code of Practice on Foreign Fishing Crew.

6.5. The Code of Practice outlines the minimum work conditions that must be met before visas to work in the EEZ will be granted to foreign crew members. In addition to setting out minimum remuneration and conditions, the Code 'introduces a new accountability framework'. All New Zealand parties to foreign fishing vessel charter arrangements are required to be signatories to the Code. The New Zealand charter partner can then request an Approval in Principle from the Department of Labour to allow the foreign charter partner to employ foreign crew members. An Approval in Principle will only be granted if the Department is satisfied the Code of Practice will be adhered to and that the charter partners have a history of compliance with the Code. If an Approval in Principle is not granted, the foreign crew will not receive visas to work in New Zealand waters.

6.6. In addition to the substantive obligations imposed by the Code, two significant procedural requirements are introduced to aid its enforcement. The first of these enforcement provisions is a requirement the New Zealand charter party enter into a Deed of Guarantee of Financial Obligations in Respect of Foreign Crew. This Deed requires the New Zealand party to reimburse the Department of Labour for any costs incurred in accommodating, maintaining and repatriating crew. It also gives crew the right to enforce wages claims against the New Zealand party if they cannot enforce them against the foreign employer.

6.7. The Deed of Guarantee makes the New Zealand party liable to the crew only with regard to wages claims. There is no liability for breaches of any other

employment condition. Liability for wages claims can only be enforced against the New Zealand party if the crew first take action in New Zealand against their employer and the employer either: refuses to submit to the jurisdiction or cannot be served; or fails to obey orders made by the New Zealand institutions. The rights of the crew to take action against the New Zealand party will lapse if notice of demand is not given to the New Zealand party within 90 days of the crew member ceasing to be employed on the vessel.

6.8. This very short limitation period, together with the requirement that crew pursue the foreign employer first, means a New Zealand party is unlikely ever to be held accountable under the Deed. One case brought by the crew against their employer took more than two years to wind through the New Zealand courts. Although the Code stipulates dispute resolution through the perhaps speedier Employment Relations Authority and Employment Court, it is difficult to conceive of a situation where all avenues will have been exhausted within a three month period.

6.9. The Code requires employment contracts to contain a dispute resolution procedure involving the Labour Inspectorate, the Mediation Service and then the Employment Relations Authority and Employment Court. If resolution is not achieved and if the claim concerns wages, the crew can then pursue the New Zealand charter partner through the Department of Labour and the District Court.

6.10. The Code contains no expectation New Zealand law should apply to the employment agreements. There is only a requirement the applicable law be specified in the agreement. There is a question mark over whether the dispute resolution stipulations override the right of crew to take a case to the High Court in its Admiralty jurisdiction. Bringing an Admiralty proceeding potentially allows the court to declare the plaintiffs not only have a claim against their employer or employer's agent but also to have a claim over the vessels on which they worked. Plaintiffs may be better off legally in bringing High Court proceedings

rather than by taking a dispute to the Employment Relations Authority.[12] This has been argued at Court of Appeal level in relation to a successful wages claim by unpaid workers from the Russian vessel Udovenko. The Court of Appeal held that the specialised jurisdiction conferred by section 4(1)(o) of the *Admiralty Act* was not affected by the employment statutes. They found it would contravene the policy behind the protective employment legislation if the benefits of bringing proceedings in an Admiralty Court were precluded. Requiring employment disputes of foreign fishers to be heard in the employment institutions should not prevent the ancient seafarers' right to have a wages dispute heard in an Admiralty court.

6.11. The introduction of the Code has received a mixed response. The International Transport Workers' Federation considered it would raise standards in the industry and clamp down on rogue operations. The Maritime Union, while welcoming it as a symbolic step, remains sceptical as to its efficacy. Some industry participants have welcomed the Code, saying foreign charter vessels should eventually be phased out altogether. Maori fishing interests, on the other hand have spoken against the Code.

6.12. All New Zealand parties to foreign fishing vessel charter arrangements are required to be signatories to the Code of Practice on Foreign Fishing Crew (2006). However, intimidation and threats against families of crew, together with language barriers and difficulties of access to New Zealand support institutions mean abuses of fishing crew are likely to remain under-reported. We can expect to see serious improvement in industry conditions only if Immigration New Zealand actively investigates the history of Code compliance of New Zealand charter partners and refuses visas where there have been breaches of the Code. It is doubtful whether this will happen in practice. Lack of the resources to proactively investigate conditions on the vessels is likely to mean the Code is enforced only where complaints are made by crew.

6.13. The Australian Government has reviewed illegal fishing in its waters and has recommended that states should work together to establish a global database of vessels to help port authorities identify and exercise greater scrutiny and inspection of these vessels during port visits, allow countries to better review the previous history of fishing vessels seeking to enter their registries, allow RFMOs to work together to identify the movements of such vessels from region to region[8].

6.14. We have recommended revision of the Code of Practice on Foreign Fishing Crew in a number of areas.

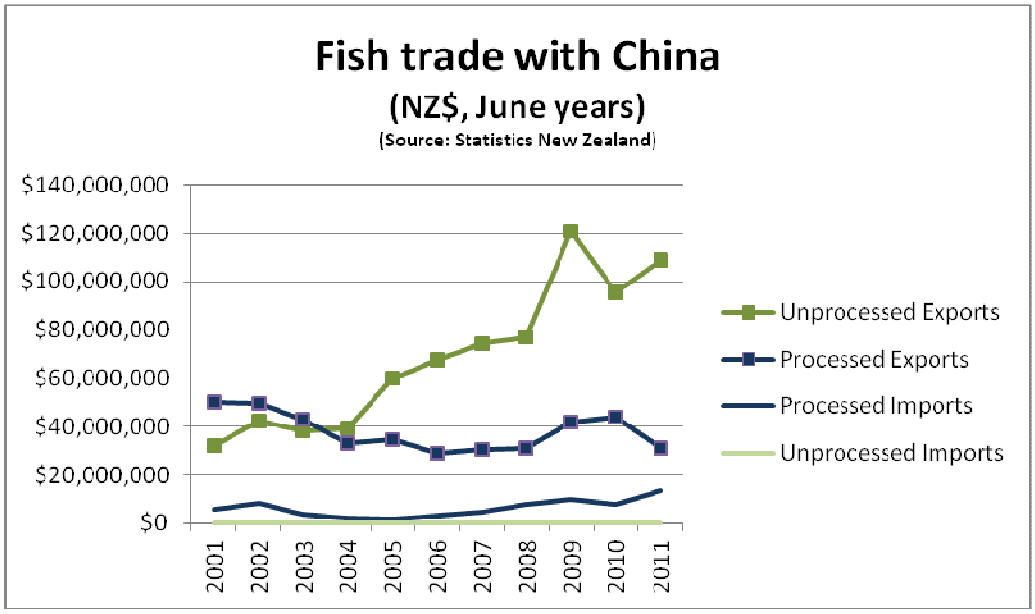
7. Trade and Tariff Issues

7.1. We understand that Tuna boats land their product directly into Japan and assume they thereby avoid Japanese tariffs. This gives preferential treatment to those vessels. We also understand that catches from Korean flagged vessels get tariff free access into Korea whether or not the catch has been landed in New Zealand (which it normally has). Again, this gives preference to those vessels, discourages the use of New Zealand vessels and may discourage processing depending on how the tariffs apply.

7.2. All vessels and quota owners can get preferential access to China under the New Zealand-China Free Trade Agreement because the rules of origin used by New Zealand and that FTA regard all catch from New Zealand waters as of New Zealand origin, independent of the ownership or flag of the fishing vessel.

[8] "The Changing Nature of High Seas Fishing: How flags of convenience provide cover for illegal, unreported and unregulated fishing", http://www.daff.gov.au/fisheries/iuu/high-seas; "Steps Australia has taken to address illegal fishing", http://www.daff.gov.au/fisheries/iuu/illegal-fishing.

7.3. All tariffs on the entry into China of fish products (including molluscs, crustaceans etc) will be gone from 2012 (with one exception, Extracts & juices of meat, fish & aquatic invertebrates, which will be gone from 2013). Such tariffs have never been high: most started at about 10-12 percent, and have reduced in equal steps from 2008. The agreement has been a further incentive to export unprocessed product, have it processed in China and either sell it there or re-



export it. The accompanying graph shows the steep rise in value of exports to China of unprocessed (i.e. frozen, not otherwise processed) fish and the fall in exports of processed fish, while imports of processed fish have risen and unprocessed fish imports are negligible.

7.4. Again, these rules are encouraging processing of the New Zealand catch overseas rather than in New Zealand and help explain the fall-off in the New Zealand processing industry.

7.5. These rules should be reviewed and lessons learned for future trade agreements with a view to encouraging the processing of fish in New Zealand.

8. Economic Return

8.1. Even if there was an original case for the use of FCVs, this era has now passed. New Zealand clearly can develop alternative models. Stringer et al advocate a “sunset clause” to phase out FCVs. They argue that the technical expertise, operational capabilities and capital exists in New Zealand to operate such vessels.

8.2. The picture the economic data presents is of considerable potential for added value from processing the fish caught in our waters, but a declining industry with processing falling faster than other parts of the industry. It is an industry with falling employment and low wages.

8.3. Fishing benefits the New Zealand economy through direct and indirect channels. The direct channels include catching the fish, and processing of the fish in New Zealand. These have a multiplier effect on the economy because fish catching and processing activities purchase goods and services, including capital plant and equipment, in order to function, and the profits and wages in turn buy more goods and services.

8.4. Some of the purchased goods and services come from New Zealand while others are imported. The chartering of foreign vessels is an example of the latter. To the extent that profits are earned by New Zealand owned companies, they stay in New Zealand. Similarly, wages earned by New Zealand residents stay in New Zealand. However, when fish is caught by vessels owned overseas, crewed by overseas residents, and processed either on board the vessel or overseas, the benefits to the New Zealand economy will be much less and they represent a lost opportunity for the New Zealand economy.

8.5. The following information on multipliers was provided by Christchurch economic consultant Geoff Butcher. Note that this approach is a useful but partial one. A “general equilibrium” model of the economy would allow a more complete

analysis of the effects of a change in the fishing industry, including its effect on tax revenue, wages, profits and the Balance of Payments.

8.6. The most recent multipliers for fishing (i.e. taking catch) available are for 2006-07. These do not include the impacts of fish processing (considered below), and treat chartered foreign vessels simply as a cost to the local quota holders (so for example do not include the wages paid to the vessels' crew or the profits paid to their owners).

8.7. Value added directly was $0.31 million per $1 million of catch value. However the total value added including indirect effects was 3.18 times the direct effects, so the total national value added per $1 million of catch was $0.99 million.

8.8. Direct employment was 4.1 full-time equivalent employees (FTEs) for every $1 million of catch. However the indirect employment effect was 2.9 times that, bringing it to approximately 12 FTEs for each $1 million of catch in 2006/07 dollars.

8.9. Prices received in the Fishing and Aquaculture sector increased 40.1 percent between September 2006 and June 2011[9], so the employment per $1 million catch will have fallen accordingly, but the exact change will also be affected by productivity in the fishing effort. If there was no change in productivity the current employment ratio would be approximately 8.5 FTEs per $1 million of catch.

8.10. The most recent multipliers available for fish processing are from 2003-04 because since then, its data has been merged with other food processing. In that year, Butcher estimated that "every dollar of fish that went into processing emerged as $3 of processed product". The current value will depend very much on how the cost of raw fish has changed. It also varies between the products produced. More recently, Butcher found the value of processed fish was about double that of the raw fish input.

[9] Statistics New Zealand, Producer Price Index (outputs).

8.11. Total value added nationally was $0.76 m per $1 million of processed output.

8.12. In 2003/04 approximately 8 FTEs were employed per $1 million of processed output (excluding fishing itself). Prices received by the Seafood Processing sector have increased 52.0 percent since then. So if $3 of processed product still results from each dollar of raw fish, for each $1m of fish caught, we get $3m of processed product and employment of 16 FTEs assuming no change in productivity. If only $2 of processed product results from each dollar of raw fish then employment would be only 10.5 jobs per $1m of fish caught.

8.13. Adding the two together, for each $1m of catch which is processed, we get between $2m and $3m of processed product and employment of 19 to 24.5 FTEs. For each $1m of processed product, there are between 10 and 12 FTEs. Geoff Butcher notes that "this is significantly more than the 8.5 jobs per million of processed product which we estimated in a recent study of an integrated fish farm and processing plant."

8.14. Processing the fish doubles or triples the number of jobs created from about 8.5 per $1 million of catch to between 19 and 24.5 FTEs. It increases the national value added in a similar ratio, but this is difficult to estimate more exactly because of the significant price changes over the period.

8.15. The contribution of fishing (i.e. catching only) to New Zealand's total GDP is available until 2007 and is shown in Table 1. In 2007 it was $247 million, made up of $77 million in compensation of employees, $150 million in gross operating surplus (profits, interest, etc), and $20 million in taxes on production less subsidies. Payments to workers in the industry were around one third of total value added, and operating surplus two-thirds. The labour share is slightly higher than agriculture, similar to forestry, but lower than most manufacturing (e.g. employees in food, beverage and tobacco manufacturing received around 50 percent of the income) and the economy as a whole (a little under 50 percent).

8.16. It is notable that since 2000 both gross operating surplus and employee earnings have fallen in dollar and real terms. Operating surplus peaked in 2001, while employment costs peaked in 2002. In real terms (relative to the CPI), gross operating surpluses fell by 43 percent between 2000 and 2007, while employee earnings fell 32 percent. Output prices barely changed over this period – they fell by 4 percent having peaked in 2001. As a proportion of national GDP, fishing's share halved from 0.32% to 0.16% from 2000 to 2007.

Table 1: Contribution of Fishing to GDP ($ million)

	Gross operating surplus	Compensation of employees	Taxes on production less subsidies	Total Contribution to GDP	Labour Share
2000	220	94	21	335	29.9%
2001	242	90	17	349	27.1%
2002	215	116	19	350	35.0%
2003	169	107	-3	273	38.8%
2004	157	95	15	267	37.7%
2005	154	86	17	257	35.8%
2006	149	65	21	235	30.4%
2007	150	77	20	247	33.9%

8.17. The contribution of seafood processing to New Zealand's GDP is not readily available. However the following wages data provides some indication. In the seafood processing industry, there was a sharp decrease of 25 percent in the number of employees between 2005 and 2009, but average annual employee earnings in real terms (taking account of inflation) rose by 24 percent in the same period. Real average earnings were virtually unchanged between 2000 and 2005.

8.18. Average earnings were very low at $24,580 per year in 2009, less than half the economy-wide average weekly earnings ($951 per week or equivalent to $49,451 per year in March 2009). Gross annual earnings for all employees in the industry rose by 5.2 percent and PAYE deductions rose by 9.3 percent in real terms between 2000 and 2005, but fell by 7.2 percent and 2.8 percent

respectively between 2005 and 2009. These data would be consistent with fewer employees working longer hours, though with few working all year and full time. Employees in the industry contributed $54 million in income tax in 2009.

Table 3: Wage and Salary Employees and Annual Earnings in the Seafood Processing Industry[1]			
	Tax year[2]		
	2000	2005	2009[3]
Count of employees[4]	11,172	11,769	8,820
Average annual earnings ($)	15,600	17,610	24,580
Average annual PAYE deductions ($)	-3,550	-4,170	-6,090
Average annual earnings after PAYE deductions ($)	12,050	13,440	18,490
Gross annual earnings ($)	174,252,570	207,201,830	216,826,700
Gross annual PAYE deductions ($)	-39,660,180	-49,021,360	-53,724,460
Gross annual earnings after PAYE deductions ($)	134,592,390	158,180,460	163,102,240

Table 4: Earnings in the Seafood Processing Industry after inflation (March 2009 dollars)			
	Tax year[2]		
	2000	2005	2009[3]
Count of employees[4]	11,172	11,769	8,820
Average annual earnings ($)	19,893	19,864	24,580
Average annual PAYE deductions ($)	-4,527	-4,704	-6,090
Average annual earnings after PAYE deductions ($)	15,366	15,161	18,490
Gross annual earnings ($)	222,208,200	233,727,143	216,826,700
Gross annual PAYE deductions ($)	-50,574,963	-55,296,917	-53,724,460
Gross annual earnings after PAYE deductions ($)	171,633,238	178,430,215	163,102,240

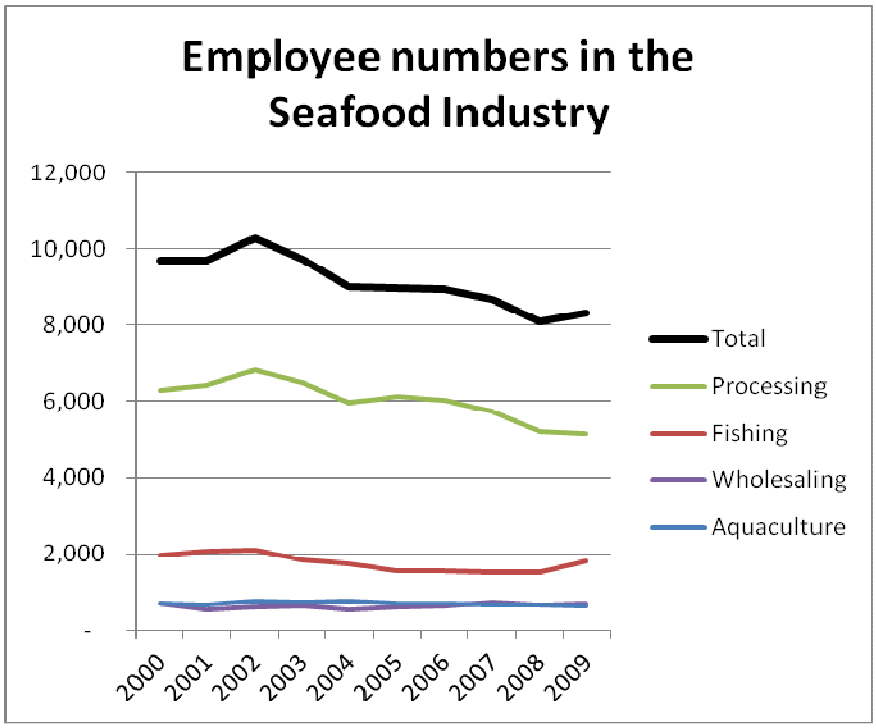
Source: Statistics New Zealand

Note:
(1) The seafood processing industry is ANZSIC 06 classification C112000.
(2) Covers all wage and salary jobs in the year ending March.
(3) Includes provisional data for the March 2009 quarter.
(4) People are only counted once regardless of how many jobs they have within the tax year in this industry.

8.19 In the seafood industry as a whole (including Aquaculture, Fishing, Fish and Seafood Wholesaling, and Seafood Processing), the number of people employed fell steadily between 2000 and 2010, apart from the years 2002 and 2003. In 2010, numbers were less than four-fifths (79 percent) of their peak in 2002. Seafood processing has been by far the largest employer – but also the area in which employment has fallen most steeply. The industry has laid off nearly 50 percent of the number of on-shore workers at the peak of 2002. In

2005, the closure of Sealord's Dunedin operation resulted in the loss of 850 jobs.

Table 5: Employee numbers in the Seafood Industry					
Year	Aquaculture	Fishing	Processing	Wholesaling	Total
2000	690	1,990	6,300	700	9,680
2001	660	2,070	6,430	520	9,680
2002	750	2,100	6,830	590	10,270
2003	730	1,860	6,490	640	9,720
2004	750	1,740	5,970	540	9,000
2005	700	1,560	6,120	590	8,970
2006	710	1,550	6,040	640	8,940
2007	680	1,520	5,750	720	8,670
2008	670	1,530	5,220	680	8,100
2009	650	1,820	5,160	700	8,330



Source: Statistics New Zealand, Business Statistics, Detailed industry by territorial authority.

8.20 The decline in processing is a reflection of the failure of the industry to add value to its catch. Table 6 shows a large decline in TACC from 716,806 tonnes to 593,514 tonnes in 2005 and decreasing more slowly into 2009 (578,033 tonnes), indicating depletion of the fishing resource.

8.21 On top of the depletion, the percentage with added value declined steeply between 2000 and 2009, whether expressed as a proportion of the value exported (falling from 61 to 40 percent) or the TACC (falling from 16 to 10 percent). ("Added Value" was defined for these purposes as all forms of processing other than Headed & Gutted, Whole fish and Other Forms. This could be seen as generous.)

Table 6: Added Value of Finfish for years 2000, 2005 and 2009.

	2000		2005		2009	
NETT	**Tonnes**	**NZ$FOB**	**Tonnes**	**NZ$FOB**	**Tonnes**	**NZ$FOB**
Finfish with Added Value						
Fresh fillets	708	$10,164,083	570	$6,147,435	780	$10,886,804
Live	397	$3,816,638	207	$1,793,978	323	$2,228,902
Frozen fillets	49,575	$373,236,419	33,159	$221,392,225	19,675	$164,833,960
Processed & other fish meat	34,454	$59,850,371	25,706	$29,096,683	22,164	$48,452,529
Meal, Blocks, Minced	19,323	$89,274,931	12,988	$46,276,909	9,179	$55,161,818
Prepared	8,812	$53,762,645	5,441	$29,040,733	8,153	$58,916,388
Smoked, Salted or in Brine	236	$7,606,549	271	$4,288,383	209	$7,124,990
Total Finfish with Added Value	113,506	$597,711,636	78,341	$338,036,346	60,484	$347,605,391
Total Export of Finfish	217,092	$980,594,358	220,466	$698,837,167	207,633	$858,623,164
TACC (tonnes)	716,806		593,514		578,033	
Added Value as a % of Exports	52.28%	60.95%	35.53%	48.37%	29.13%	40.48%
Added Value as a % of TACC	15.83%		13.20%		10.46%	

Source: "New Zealand Seafood Exports, Report 7 Seafood exports by species by country", New Zealand Seafood Industry Council

8.22 There are various employment options in the industry. These are: New Zealand vessels and New Zealand crews; Foreign vessels and New Zealand crews;

Foreign vessels and a mix of New Zealand and foreign crews; and Foreign vessels and foreign crews. The last option is predominant. The quota cannot be foreign-owned but the benefits can still be captured offshore.

8.23 To make matters worse a lot of the fish processing done on-shore is also done by foreign labour – back in countries like China and Thailand.

8.24 We acknowledge that there are some service, maintenance and provedores jobs to support FCVs but different economic models would result in much higher levels of employment directly involved in harvesting and processing deepwater fish.

8.25 We understand that foreign vessels catch close to 80% of all iwi deepwater quota. We are not alone in assuming that as a result of Treaty of Waitangi settlements, and resulting division of fishing quota, a positive environment for Māori employment would grow alongside harvesting of this indigenous resource.

8.26 Of course there are complexities. It is a difficult industry. ITQ confers a right to a defined percentage of the economic rent available from the specified fish stock. Annual catch entitlements, the value of the species in parcels of quota, total allowable catch pathways, fish prices, exchange rates, fisheries management costs and so forth are all important factors in addition to labour costs.

8.27 Yet we also see in the industry some positive models that include value-added processing on-shore and New Zealand owned, operated and crewed vessels. Of course, some in the industry argue that the value of quota and other factors have a huge bearing on the economics of these models. But at the very least they indicate that in certain circumstances the reliance on FCVs is misplaced.

8.28 Foreign fishers do not pay GST, PAYE, or ACC in New Zealand. Of course, some would argue that neither do fishers receive ACC. But the increasing costs associated with New Zealand Immigration Service investigations, supporting crew that have abandoned their vessels, access to New Zealand's emergency

services, and other actions by the Labour Department and others need to be taken into account.

8.29 There is also a risk that FCVs threaten the reputation of New Zealand in respect of environmental standards, respect for human rights, and sustainability.

8.30 We note that in a 2 December, 2004 report of the Department of Labour[10], there was reference to union concerns about loss of employment in the context of FCVs. In that same document, there is reference to concerns by New Zealand companies about their inability to compete with low wages paid on FCVs.

8.31 We understand that all significant New Zealand deep water fishing companies use some foreign vessels and/or "lease" quota (sell ACE) to companies that operate foreign vessels.

8.32 We believe that there is the basis for a greater level of capital investment in fishing vessels that are New Zealand owned and operated.

8.33 While harvested quota from FCVs counts as New Zealand exports we submit that any significance given to that fact should be discounted to recognise that the value is captured offshore rather than flowing through to decent jobs for New Zealanders.

8.34 We recommend that the Government establish a fishing industry development project (which includes all parties including unions) that promotes employment opportunities (specifically including land-based options), value-added practices, expanded training provision, increased cooperation between producers in maximising the value of exports, and investment options. There also needs to be access to sector-development funding.

8.35 We also recommend greater resources are put into training and developing career options in the fishing industry.

[10] (2004). Department of Labour., 'Employment Conditions in the Fishing Industry – Final Report on Foreign Crew on New Zealand Fishing Vessels", 2 December.

9. New Zealand Flag Vessels

9.1 Australia requires all fish caught in its exclusive economic zone to be caught with Australian flag vessels. Once again, New Zealand has rejected the option that provides regulation of high standards, employment growth, decent wages and conditions.

9.2 Because Australian quota is fished by Australian vessels only, by virtue of article 92 of UNCLOS, Australian law applies to all aspects of the operation automatically.

9.3 Fishing permits and Statutory Fishing Rights (SFRs) under the Australian *Fisheries Management Act 1991* specify use of a particular fishing vessel, and that vessel must be an Australian boat. 'Australian boat' is very strictly defined in the Act as an Australian-built boat, based in Australia, and wholly owned by an Australian resident or Australian company. Foreign-owned boats qualify as 'Australian' if they are registered in Australia and not under demise charter. There is provision for other boats to be declared 'Australian' if the Australian Fisheries Management Authority is satisfied they will be sufficiently controlled by Australian interests and the nature of the boat's operation in the Australian Fishing Zone justifies such a declaration.

9.4 Foreign fishing licences can be assigned to non-Australian boats, but this regime is strictly controlled. The Australian Fisheries Management Authority has not issued any foreign fishing licences in recent years. The reservation of all fishing to Australian vessels only, means Australia has the right to enforce Australian labour regulations in their fisheries waters. The level of abuse and exploitation seen in the New Zealand industry is absent from Australian fishing.

10. Time Charter or Demise Charter?

10.1. Under the *Fisheries Act 1996*, the Chief Executive of the Ministry of Fisheries can set conditions for a consent involving the registration or operation of a vessel by a foreign person (Section 103 (4)).

10.2. Section 103 also refers to “possession and control” of the vessel.

10.3. It is our understanding that usually FCVs are operating under time charters rather than demise charters.

10.4. A demise charter would mean that the possession and control of the vessel is handed over to the New Zealand operator by the foreign owner and the crew are employed by the New Zealand operator.

10.5. We suggest investigation of this issue to ascertain if it is more beneficial for crew to be on a demise charter rather than a time charter.

11. Recommendations

11.1. We set out our recommendations below. In some cases, adoption of one recommendation would impact on the extent to which other recommendations would need to be addressed.

11.2. Commit to a phase out of FCVs.

11.3. Require all vessels catching fish in our economic zone to be NZ flagged ships. If necessary this could be phased in. This is what happens in Australia. It means that normal New Zealand maritime requirements would apply. It does not rule out the use of foreign labour.

11.4. Require observers on all FCVs at all times when in operation. This is already the practice on some FCVs so should be made a requirement. This would be paid for either through an increased levy or directly by the FCV operator.

11.5. Revise the Code of Practice on Foreign Fishing Crew in the following areas: add further parties in the CTU; remove the 90 day limitation; increase the $2.00 an hour above the minimum wage to $5.00 an hour; require contracts between NZ companies under the Code and employers, and also employment agreements to be provided to the Labour Department; allow crew to take action against New Zealand parties as a first rather than last resort; extend the visas of

such claimants to enable them to remain in New Zealand until their case is settled; provide support for crew taking such cases; allow cases to be broader than just wages; and make the Code enforceable in law. This Review should also consider the option of broadening the Code to New Zealand's full minimum code with enforceability under New Zealand labour law. This Code was a good start but it needs to be improved and should be enforceable.

11.6. The right to employ foreign crew should only be possible by application to a nominated government department which requires that predetermined criteria are met before a ship can be chartered. As part of the application, the NZ company must accept liability for failure to meet the provisions of the Charter agreement such as employment conditions and Breach of health and safety and minimum standards/regulations on board the vessel.

11.7. Monitor conduct in home countries by manning agents and refuse to grant future visa through those manning agents where breaches of human rights have occurred. While there is evidence of the Labour Department (for instance in the *Oyang 75* case) advising manning agents that future visa applications would be affected by adverse treatment of crew once home in Indonesia, this should be a standard part of Labour Department operations rather than an occasional threat.

11.8. Require a proportion of FCV crew to be NZ citizens. This could be phased in over several years. We suggest 60 percent.

11.9. Establish a 'chain of responsibility' which explicitly links holders of ITQ to employment standards and practices on FCVs. This would mean legislation that sets out specific provisions that must be in contracts.

11.10. The Government should rigorously abide by existing international obligations particularly in relation to Forced Labour and Human Trafficking and should ratify the Work in Fishing ILO Convention No.188, noting that C188 provides for progressive implementation of its provisions.

11.11. That the Government actively seek technical advice and training support from the ILO and IMO, to enhance NZ's Labour Inspection capacity and policies for inspection of fishing vessels, and to ensure NZ laws and practices are consistent with ILO conventions 29, 81, 97, 105, and 188.

11.12. Legislation should require that any fish caught in the New Zealand Exclusive Economic Zone must be subject to value-added processing in New Zealand other than legitimate full processing ships based on no more than the number operating in 2007.

11.13. Specify which species should be subject to value-added processing in New Zealand, and develop research and development proposals to lift the value of species currently attracting low returns. We recognise this is difficult but the development of Orange Roughy and Hoki are examples of how such investment and development can occur.

11.14. Investigate whether consents by the chief executive of Ministry of Fisheries to the licensing of FCVs, should be made on the condition that the vessels are fully demise chartered to the NZ operator.

11.15. Establish a fishing industry development project (which encompasses all parties including unions) that promotes employment opportunities (specifically including land-based options), value-added practices, expanded training provision, and investment options. There also needs to be access to sector-development funding.

11.16. Develop a training structure for young workers to see the fishing industry as a career move for the future and look at the skills needed and how the provision of training can be better delivered to develop these skills.

11.17. Review the government negotiating position on rules of origin in future trade agreements with a view to encouraging the processing of fish in New Zealand.

12. Conclusion

12.1. The CTU welcomes this Inquiry.

12.2. We believe that our submission has shown that the operation of Foreign Charter Vessels ('FCVs') harms New Zealand's international reputation, does not maximise economic return from our fisheries resources, and fails to provide acceptable and equitable labour standards.

12.3. Therefore the Inquiry needs to make recommendations that address policy, legislative and economic development issues.

12.4. We have made some recommendations that address all these areas.

12.5. We welcome further engagement in the Inquiry.

References

1 Research presentation by Christina Stringer, Glenn Simmons and Hugh Whittaker of University of Auckland and Daren Coulston of Tamatea Tairawhiti Ltd, "*Not in New Zealand´s waters, surely? Labour and human rights abuses aboard foreign fishing vessels"*
http://xa.yimg.com/kq/groups/2214212/1740474009/name/Stringer%20et%20al%202011%20-%20Not%20in%20NZ's%20waters%20Working%20Fin

Summary and information about researchers
http://www.business.auckland.ac.nz/uoa/home/about/od-our-departments/od-management-international-business/seminars-and-events-7/events/template/event_item.jsp?cid=411216

2 News stories on Forced Labour on Foreign Chartered Fishing Vessels

2(a) http://www.stuff.co.nz/national/4841777/Slavery-at-sea-exposed 3 April 2011
2(b) http://www.stuff.co.nz/sunday-star-times/news/5224830/US-seeks-answers-on-abuse-of-crews 3 July 2011
2(c) http://www.stuff.co.nz/sunday-star-times/5261803/Families-of-fishing-crew-face-backlash 10 July 2011
2(d) http://www.stuff.co.nz/national/5402951/Fishing-probe-turns-ugly 7 August 2011
2(e) http://www.stuff.co.nz/nelson-mail/opinion/editorial/5421816/Its-high-time-to-test-those-fishing-claims 10 August 2011
2(f) http://www.theaucklander.co.nz/news/insidious-and-disturbing-practices/1065840/ 11 August 2011
2(g) http://www.odt.co.nz/news/politics/174697/fishing-probe-launched-amid-abuse-allegations 23 August 2011
2(h) http://www.stuff.co.nz/national/5511094/Korean-boat-crew-leave-empty-handed 26 August 2011

3 SFWU Petition to Parliament on the Seafood Industry seeking an Inquiry
3(a) http://www.sfwu.org.nz/news.asp?pageID=2145822798&RefID=2141739193
3(b) http://www.parliament.nz/en-NZ/PB/Presented/Petitions/0/7/a/49DBHOH_PET3057_1-Petition-of-Neville-Donaldson-on-behalf-of-SFWU.htm

4 MUNZ Submission in support of the Petition for an Inquiry
http://www.parliament.nz/NR/rdonlyres/63E901C8-A090-49C6-B07A-29106D8A8195/198410/49SCPP_EVI_49DBHOH_PET3057_1_A199771_ServiceandFoo.pdf

5 US State Department Trafficking in Persons Report 2011
http://www.state.gov/g/tip/rls/tiprpt/2011/164233.htm

6 Ministerial Inquiry into Foreign Charter Vessels Fishing in New Zealand Waters
http://www.fish.govt.nz/en-nz/Consultations/Ministerial+Inquiry+into+Foreign+Charter+Vessels/default.htm

7 Plan of Action to Prevent People Trafficking

http://www.dol.govt.nz/publications/research/people-trafficking/people-trafficking.pdf

8 Modern Day Slavery: Employment Conditions For Foreign Fishing Crews In New Zealand Waters, *Jennifer Ann Devlin* Australian and New Zealand Maritime Law Journal, Vol 23, No 1 (2009) https://maritimejournal.murdoch.edu.au/index.php/maritimejournal/article/view/82

9 Maritime Rules: http://www.maritimenz.govt.nz/Rules/List-of-all-rules/Part40D-maritime-rule.asp

10 Modern Day Slavery: Employment Conditions For Foreign Fishing Crews In New Zealand Waters, *Jennifer Ann Devlin* Australian and New Zealand Maritime Law Journal, Vol 23, No 1 (2009) https://maritimejournal.murdoch.edu.au/index.php/maritimejournal/article/view/82

11 (2004). Department of Labour., 'Employment Conditions in the Fishing Industry – Final Report on Foreign Crew on New Zealand Fishing Vessels", 2 December.