

# INITIAL POSITION PAPER: PROPOSED MANAGEMENT MEASURES TO MITIGATE THE RISK FROM FOREIGN CHARTER VESSELS OPERATING IN NEW ZEALAND'S EEZ

1 The purpose of this initial position paper (IPP) is to set out the Ministry of Fisheries (MFish) proposed management measures to mitigate the risk from the operation of some foreign charter vessels (FCVs) in New Zealand's EEZ. MFish invites stakeholders to submit their views on these proposals including the likely cost implications to their businesses should these measures be implemented.

## Executive summary

2 In October 2007 MFish and the Seafood Industry Council (SeaFIC) formed a joint FCV review group tasked with identifying and addressing the risks associated with the current operation of FCVs in New Zealand's EEZ. The focus of this review was to address the risks posed by the operation of some FCVs to observer and fishery officer health and safety, and the likelihood that the operation of some FCVs may compromise the integrity of the New Zealand fisheries management regime. The review group was also tasked with identifying potential solutions to these issues.

3 The measures set out in this paper were developed in conjunction with the joint review group. In December 2007 the Acting Chief Executive of MFish gave his approval that these measures could be consulted on as MFish's initial position on the management of this issue. These proposed measures will apply to FCVs on time or voyage charter to a New Zealand operator.<sup>1</sup>

4 MFish is consulting on the implementation of the following measures for 1 June 2008:

- a) Require all vessels greater than 46m to adhere to an approved standard of accommodation, food and amenities for observers.
- b) Increase observer coverage onboard FCVs – the level of coverage will depend on the level of risk associated with that vessel.
- c) Require FCV operators to submit valid vessel safety inspection certificates as part of their registration application. These safety inspection certificates must be issued by Maritime New Zealand (Maritime NZ) or an approved agent of Maritime NZ.
- d) Require FCVs that have operated in New Zealand waters for longer than 12 months to participate in a Safe Ship Management System Programme (SSMS).
- e) Require vessel operators seeking to register a FCV to supply a specified and comprehensive package of information as part of the registration approvals process. This information will include the requirement to provide details of the vessels proposed catch plan for the duration of the charter agreement.
- f) Require the permit holder associated with a FCV to provide details of how they propose to source the annual catch entitlement (ACE) required for the key target and

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<sup>1</sup> **Time/voyage charter:** The New Zealand Company charters the vessel services and the crew rather than the actual vessel.

bycatch species as set out in the vessel's catch plan.

- g) Reduce the registration period for high risk vessels from 12 months to 6 month or 3 month periods.

5 MFish is also proposing to make explicit the Chief Executive's power to revoke FCV registration in situations where the vessel does not comply with its conditions of registration consent. Making this power explicit will require a change to the Fisheries Act 1996 (the Act) and therefore this will not be implemented by 1 June 2008.

6 MFish also intends to improve the internal process for reviewing, assessing and approving FCV registration applications. These changes are currently being implemented.

7 MFish proposes that the management measures described above, taking into consideration any changes that may occur as a result of this consultation period, are implemented in time for 1 June 2008. For some vessels the majority of these measures will only apply when the vessel's existing registration expires and the vessel operator seeks to re-register the vessel. MFish can advise that it will not accept any vessel re-registrations up until 1 June 2008 unless the existing registration is due to expire or has been cancelled before this date.

8 MFish is also consulting on a proposal to require permit holders to provide some form of financial guarantee in favour of MFish as a condition of registration approval. MFish recognises that additional analysis and development work is required on this issue before it can be successfully implemented as MFish policy.

9 MFish wishes to advise stakeholders that the decision on the implementation of these measures is a decision for the Chief Executive of MFish.

### **Rationale for management intervention**

10 Both MFish and stakeholders are concerned that some FCVs pose a risk to the integrity of the fisheries management regime and to the health and safety of MFish employees and contractors. MFish believes that tighter control over the operation of FCVs is required and the proposals detailed in this IPP are designed to achieve the required level of control.

11 Health and safety (H&S) conditions aboard certain FCVs compromise MFish's ability to ensure the safety and wellbeing of fisheries officers and observers who may have to spend time onboard these vessels. Poor conditions onboard some FCVs can also act as a limiting factor in observer placement. Decisions have been made in the past not to place observers onboard some FCVs because of the H&S risk. If Observer Services are unable to fulfill their duties, as listed under Part XII of the Fisheries Act, this has implications for the integrity of the fisheries management regime.

12 Evidence suggests there is also a greater risk associated with the operation of some FCVs, in comparison to domestic vessels, particularly in terms of:

- a) Defaulting on deemed value invoices
- b) Illegal fishing practices such as dumping and misreporting
- c) Lack of adherence to industry initiated voluntary codes of practice

- d) Increased environmental risk from the use of old and poorly equipped vessels
- e) MFish's inability to use foreign crew as witnesses in prosecution cases.

13 In September 2007 the Acting Chief Executive of MFish invited SeaFIC to participate in a joint review group to address issues surrounding the operation of the FCV fleet. SeaFIC was invited to select industry participants to attend.

14 The focus of this review was to address the risks posed by the operation of some FCVs to observer and fishery officer H&S, and the likelihood that the operation of some FCVs may compromise the integrity of the New Zealand fisheries management regime. The review group was also tasked with identifying potential solutions to these issues.

15 The review group did not consider the wider 'whole of government' issues associated with the use of FCVs and, with the exception of Maritime NZ, no external agencies were involved in this review process. However, MFish will consider establishing an inter-agency initiative to improve the exchange and transfer of relevant information on the operation of FCVs between government agencies later this year.

16 The purpose of the review group was not to achieve consensus on each issue but rather to secure direct input from FCV operators on the development of potential management solutions.

17 The review group met twice during which time the following solutions were identified. These solutions, described below, form the basis of the management proposals outlined in this IPP:

- a) Improving safety onboard FCVs for MFish observers and fishery officers
  - i) Introducing an approved standard for observer food, accommodation and amenities.
  - ii) Implementing a process to ensure FCVs provide a safe working environment for MFish staff and contractors.
- b) Protecting the integrity of the fisheries management regime by:
  - i) Increasing observer coverage for FCVs.
  - ii) Improving the MFish process for reviewing and assessing applications to register a FCV.
  - iii) Increasing the information requirements for vessel operators wishing to register a FCV.
  - iv) Establishing a process for revoking vessel registration.
  - v) Requiring permit holders using a foreign charter vessel to provide MFish with some form of financial security.

18 The proposed management measures arising from these solutions are discussed in more detail in the section below.

## **Analysis of proposed management options**

19 To mitigate the risk from the operation of FCVs in New Zealand's EEZ MFish is proposing the following measures for implementation for 1 June 2008:

- a) Require all vessels greater than 46m to adhere to an approved standard of accommodation, food and amenities for observers.
- b) Increase observer coverage onboard FCVs – the level of coverage will depend on the level of risk associated with that vessel.
- c) Require FCV operators to submit valid vessel safety inspection certificates as part of their registration application. These safety inspection certificates must be issued by Maritime NZ or an approved agent of Maritime NZ.
- d) Require all FCVs that have operated in New Zealand waters for longer than 12 months to participate in a Safe Ship Management System Programme.
- e) Require vessel operators seeking to register a FCV to supply a specified and comprehensive package of information as part of the registration approvals process. This information will include the requirement to provide details of the vessels proposed catch plan for the duration of the charter agreement.
- f) Require the permit holder associated with a FCV to provide details of how they propose to source the ACE required for the key target and bycatch species as set out in the vessels catch plan.
- g) Reduce the registration period for high risk vessels from 12 months to 6 month or 3 month periods.

20 MFish does note that while these measures have been developed to address the risks from FCVs some of the management measures proposed will have implications for the domestic fleet. Where this is the case this will be made explicit in the description of the management measure that follows.

### ***Observer standard***

21 MFish is proposing that under s. 226 of the Act all vessels which are required to accept an observer placement must meet an approved standard for food, accommodation and amenities. This standard, which will specify the minimum level that must be met, will apply to all vessels irrespective of size and nationality and therefore will apply to the domestic fleet. The standard will address the minimum requirements across the following areas:

- a) Food
- b) Accommodation
- c) Access to cooking facilities
- d) Access to sanitary facilities
- e) Access to amenities.

22 Contravening or failing to comply with an approved standard relating to section 226 (1) of the Act is an offence and is liable to a fine not exceeding \$100,000.

23 MFish recognises that deploying a 'one size fits all' standard may not be appropriate. By categorising the New Zealand domestic and FCV fleet by vessel size the standard can be modified for different sized categories of vessels. The current focus is on approving a standard, the components of which will apply to all vessels greater than 46m in length that operate in New Zealand's EEZ.

24 Appendix 1 details the components of the standard MFish is consulting on. When this standard is approved MFish intends that it will apply to all vessels over 46m in length irrespective of whether they are foreign chartered or domestic vessels. The components of the proposed standard are based on a range of International Labour Organisation conventions and observer standards from overseas jurisdictions.

25 The final standard will be approved by the Chief Executive by 1 June 2008. All FCVs new to New Zealand from that date will be required to meet this standard before registration approval is given.

26 MFish recognises that some vessels currently operating in New Zealand will not be able to meet this standard by 1 June 2008. Therefore MFish is proposing that vessel operators have 18 months (from 1 June 2008) to ensure their existing vessels meet the standard.

27 As part of the registration approvals process MFish will require all FCVs seeking vessel registration to be inspected by an MFish agent prior to being granted registration approval. MFish proposes that fishery officers will undertake these inspections. A key function of this inspection will be to ensure that the vessel is equipped to meet the approved observer standard. If a vessel fails to meet the standard registration approval may be withheld.

28 Vessel operators will also be required to maintain adherence to the standard throughout the duration of their registration as a condition of their registration consent. MFish also intends that both fishery officers and observers will continue to assess a vessel's performance against the standard throughout the registration period. Failure to meet the standard on an ongoing basis could lead to a re-consideration of the vessel's current registration approval and may result in the vessel not achieving registration in future years.

29 Fishery officers may also order a vessel back to port under s. 204 (1) of the Act, following the detection of any breaches of the observer standard since, under this proposal, ongoing compliance with the standard will be a condition of consent under s. 103 (4) of the Act.

30 MFish wishes to receive submissions from all stakeholders on this proposed standard. MFish also wishes to receive submissions from those stakeholders that operate vessels greater than 46m in length, on:

- a) The likely cost implications of modifying existing vessels to meet the standard as set out in Appendix 1; and
- b) The practicalities of chartering vessels in the future that can meet that standard.

31 MFish does not intend to apply this standard to vessels under 46m in length at this time although further work on this issue will be progressed as a matter of priority during 2008.

### **Requirement for increased observer coverage onboard FCVs**

32 MFish is proposing to implement a risk based approach to determine the appropriate level of observer coverage onboard FCVs. For some vessels this new approach is likely to result in a greater level of observer coverage than exists currently.

33 Under this proposal three risk profiles (high risk, medium risk and low risk) will be used to characterise FCVs. When a FCV is registered it will be assigned to one of these risk profiles which will determine the level of required observer coverage. The table below provides an overview of each risk profile.

	<b>High risk</b>	<b>Medium risk</b>	<b>Low risk</b>
Criteria	All new FCVs to New Zealand	Existing vessels, which have previously been classified as low risk, seeking re-registration and where issues have been identified  Existing FCVs but where senior crew have changed (master/factory manager)  New vessels that have successfully completed the initial two observed trips	Low risk vessels which have been through the high/medium/low hierarchy and are not deemed to pose a risk by virtue of their FCV status  Low risk vessels seeking re-registration where the permit holder and vessel operator details remain unchanged, where the senior crew have NZ fishing experience and where no issues have been identified during the re-registration assessment.
Actions	Full observer coverage (up to 4 trips.)	Vessel must have one of the next 2 trips observed.	Observed as part of the normal fishery specific observer requirements
Standard	If after 4 trips there are outstanding issues relating to the vessel complying with the conditions of registration then registration may be revoked  If there are no issues identified the vessel will be classified as medium risk	If there are no issues identified then the vessel is classified as low risk  If there are issues identified the vessel will be reclassified as high risk	If there are issues identified the vessel will be reclassified as either medium or high risk

#### **High risk vessels**

34 All FCVs new to New Zealand will be classed as high risk vessels. Vessels assigned a high risk profile will be required to have their first two trips observed. If during these two trips no issues are identified in terms of the operation of the vessel or with the vessel adhering to the conditions of its registration, then the vessel will be re-classified as medium risk. If a breach occurs or if any events during the two observed trips cause MFish to consider the vessel should remain as high risk then the vessel will be observed for a further two trips. MFish will advise vessel operators of the reasons behind the decision to retain the high risk status for their FCV.

35 If no breaches are detected during the second two trips then the vessel may be classified as a medium risk and the observer coverage requirement for medium risk vessels will apply. However, if following the four observer trips there are still outstanding issues regarding the vessel's ability to meet the conditions of registration then registration revocation will be considered.

36 Any vessel which has previously been classed as either a medium risk or a low risk vessel and where there have been breaches of the conditions of registration consent or areas of concern have been identified, will be re-classified as a high risk vessel and will be required to accept MFish approved observers for their next two full length fishing trips.

37 To ensure all tows and factory activity onboard the vessel are observed MFish will require high risk vessels to accept two observers for each trip.

### *Medium risk vessels*

38 A vessel will be assigned to a medium risk profile if it has had two observed trips completed (as a high risk vessel) without incident. Medium risk vessels will be required to have one of their next two full length trips observed.

39 Vessels will also be characterized as medium risk if:

- a) A vessel is seeking re-registration and has previously been characterised as low risk but where MFish has identified some minor concerns with the vessel operation following an assessment of the registration application.
- b) A low risk vessel has a crew change at senior level.

40 If during an observed trip onboard a medium risk vessel, a breach of the registration conditions occurs or a possible breach of the Act occurs then the vessel will be reclassified as a high risk vessel. The vessel will be required to have its next two trips observed as per the requirements for a high risk vessel.

41 If no issues or breaches are identified the vessel will be classified as low risk.

### *Low risk vessels*

42 Low risk vessels are not required to have additional observer coverage beyond the normal fishery-specific observer coverage requirements. A vessel will be classified as low risk if no issues or potential breaches are detected during the vessels' status as a medium risk.

43 A vessel seeking re-registration, which has previously been categorised as low risk and where the permit holder and vessel operator details remain unchanged, where the senior crew has New Zealand fishing experience and where no issues have been identified during the re-registration assessment, will remain classified as a low risk vessel.

44 An assessment of a low risk vessel's performance against the conditions of registration will still occur through normal observer coverage or through fishery officer inspections. Breaches of these conditions will mean the vessel is reclassified as either high or medium risk depending on the extent of the breach.

### *Factors that will determine a vessel's risk status*

45 MFish expects that in the majority of cases a vessel's risk profile will move from high risk to low risk over the course of the registration period.

46 MFish will consider evidence of a vessel's compliance with the following factors in determining if a vessel should be reclassified from high risk to a medium or low risk classification:

- a) Full compliance with the pre-trip observer personal safety check.
- b) Continued compliance with the observer accommodation standard.
- c) Acceptable auditable performance against industry operating procedures<sup>2</sup>.
- d) Assessment of a vessel's performance against the catch plan (provided during registration)
- e) Appropriate adherence to environmental mitigation measures during the trip e.g. deployment of required bird mitigation devices.
- f) Compliance with the general requirements of the Fisheries Act 1996 and supporting regulations. Breaches to the Act will be addressed through the normal process however MFish considers that the existence of such concerns would mean the vessel poses a higher risk and should be classified as a high risk vessel.

### *Cost of additional observer coverage*

47 MFish proposes using the following charging arrangements to fund this additional FCV-specific observer coverage:

- a) The cost of observer coverage on those vessels classed as high risk will be charged directly to the vessel operator. MFish does not consider the level of observer coverage required for high risk vessels can be undertaken as part of a routine observer trip.
- b) Cost of observer coverage onboard medium risk vessels will be charged directly to the vessel operator unless the observer coverage can be facilitated as part of the normal fishery-specific observer coverage requirement. The MFish Observer Programme will determine when this is possible.

48 Currently the typical cost of a day's observer coverage is \$525 (exclusive of GST) per day.

49 MFish considers this risk based approach will be more costly to those operators that continue to pose a risk to the integrity of the management regime and the H&S of MFish staff and contractors. However, this approach is likely to be more cost effective than the current observer regime for those operators whose vessels are classed as low risk vessels, as some of the normal fishery-specific observer coverage may be filled by medium risk vessels as a priority.

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<sup>2</sup> MFish is currently auditing vessel performance against a number of the voluntary management initiatives developed by industry – to date vessels performance are audited against the vessel management plans, marine mammal operating procedures and the hoki operating procedure.

### ***Requirement for valid safety inspection certificates***

50 To address the concern that FCVs can and do pose a safety risk to MFish staff and contractors working on these vessels, MFish is proposing to make it a requirement of vessel registration that vessel operators supply valid vessel safety certificates for the vessel seeking registration. These certificates must be issued within the previous 31 days prior to the vessel operator seeking registration and must be issued by Maritime NZ or an approved agent of Maritime NZ.

51 For vessels that have operated in New Zealand's EEZ for less than 12 months vessel operators must provide a copy of the '*Recognition of a non-New Zealand Ship*' document issued by Maritime NZ. This document must have been issued within the previous 31 days of the date the registration application was received by FishServe. The vessel operator must also provide details of any corrective actions that Maritime NZ has identified, the timeframe for their implementation and the process the vessel operator intends to follow to ensure the vessel can meet the requirements of the SSMS within twelve months. There must be no corrective actions listed that require immediate attention before the vessel can be considered safe to fish.

52 For vessels that have operated in New Zealand's EEZ for longer than 12 months the vessel must be party to a SSMS programme and the vessel operator must provide documentation as evidence of this when applying for registration.

### ***Requirement for all FCVs to be party to Safe Ship Management after 12 months of operating in New Zealand's EEZ***

53 MFish proposes making it a requirement that all vessels operating in New Zealand's EEZ for longer than 12 months must be party to SSM. This twelve month requirement will be cumulative so that vessels that only spend part of the fishing season in New Zealand's EEZ will be required to participate once their total fishing time in New Zealand's EEZ exceeds 12 months.

### ***Requirement to supply specific information when registering a FCV***

54 MFish considers that the information currently provided by vessel operators seeking to register a FCV is insufficient to make a complete assessment of the likely risks associated with the vessel.

55 MFish proposes that future applications to register a FCV must, in addition to the approved application form "Application to register a vessel owned or operated by an overseas person", include the following information:

- a) Details of the permit that the vessel intends to fish on. Applicants for registration will be required to specify the permit they will be fishing under. The details provided should include the permit number and the name and contact details of the permit owner. A FCV, if registered, will only be permitted to fish on this permit.

MFish proposes that this will be a condition of consent which operators must comply with under section 103(1)(c) of the Act. Where the permit conditions change operators will need to apply for cancellation of registration under section 107(3) and seek a fresh registration with the new permit details. The requirement for permit holders to apply to cancel the registration will itself be a condition of registration consent.

- b) A copy of the charter agreement between the vessel owner and the New Zealand operator in its entirety including all appendices. The charter agreement should:
- i) Provide the name, nationality, address, phone number and signature of the vessel operator, vessel owner and permit holder.
  - ii) Set out the responsibilities of the vessel operator, permit holder, foreign owner and crew and these should be consistent with the Fisheries Act 1996. Appendix 2 describes these responsibilities in more detail.
- c) A declaration made by the New Zealand operator that there is only one charter agreement in place between the New Zealand operator and the vessel owner for the operation of the vessel during the duration of the proposed registration period. Through this declaration the operator will also be required to confirm that there are no ancillary agreements in place which mitigate statements or condition referred to in the actual charter agreement. An approved form has been developed for this purpose a copy of which can be found in Appendix 3.
- d) A copy of the catch plan for the vessel detailing the expected target and bycatch species that the vessel intends to harvest. MFish acknowledges that a catch plan will only ever be indicative but will require that the catch plan provided is realistic given the size of the vessel and the fisheries it intends to operate in. The information provided should include details of the key target species and when the vessel intends to fish these target species during the fishing year. The catch plan should also include details of the expected quantities of the major bycatch species that will be caught when harvesting the target species.

In deciding if the catch plan provided by the vessel operator is realistic, MFish will consider previous catch effort returns for the vessel and deemed value invoices as indicators of possible catch rates in the future. MFish will also monitor the vessels performance against the catch plan throughout the duration of the FCV registration.

- e) Evidence that the vessel operator will ensure that the vessel adheres to the relevant voluntary management initiatives.<sup>3</sup> Evidence to support this requirement will include:
- i) Confirmation that where appropriate the voluntary initiative has been adapted for the vessel under consideration e.g. a vessel specific vessel management plan.
  - ii) Evidence that the key components of the various operating procedures have been translated into the language of the crew.

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<sup>3</sup> These voluntary management initiatives include:

- Use of SLEDs in the SQU6T fishery
- Adherence to vessel Management Plans (VMPs)
- Adherence to Marine Mammal operating Procedure (MMOP)
- Adherence to hoki operating procedure
- Area specific orange roughy management measures.

- iii) Confirmation that the vessel operator/permit holders are signatories to the required voluntary initiatives.

56 MFish will use this information to determine if the risks associated with the operation of the FCV have been sufficiently mitigated. If the Chief Executive, or his delegated authority, is not satisfied that this is the case then the vessel will not be given registration consent. This information will also be used to determine, once the vessel is registered, which risk profile the vessel should be assigned to.

### ***ACE sourcing requirements***

57 The review group considered an option to require the permit holders linked to the FCV to possess a certain minimum quantity of ACE to support the vessel's catch plan. The review group considered that this minimum could be up to 50% of the total ACE requirements for the target and key bycatch species, as set out in the vessel's catch plan.

58 However, MFish considers that at present this option may not be feasible under the Act. Instead MFish is proposing that the permit holder behind a FCV will be required, as a condition of registration, to provide details of how they intend to source the ACE required for the key target and bycatch species as set out in the vessels catch plan.

59 The purpose of this condition is to ensure permit holders and vessel operators have given due consideration to how the ACE necessary to support their fishing activity will be sourced so as to avoid over reliance on deemed values payments. The Act requires that fishers balance their catch with ACE in the first instance. MFish supports the use of deemed values to manage temporarily small overruns of ACE holdings but does not support their use as substitutes for ACE.

60 MFish considers that insufficient evidence that a FCV will be able to source the ACE necessary to balance its catch will be considered by the Chief Executive or his delegates when deciding to give registration approval. Evidence that a permit holder has failed to source sufficient ACE will be considered when the vessel seeks re-registration in future years.

61 MFish is also proposing that for those vessels that seek registration part way during the fishing year, they will be required to provide details of their ACE sourcing arrangements for the remainder of that fishing year. However, as a condition of registration MFish may also require that a new catch plan and ACE sourcing details are provided when the new fishing season begins.

### ***Reduced registration period***

62 MFish is proposing that in the short-term it will consider approving shorter registration periods for high risk vessels. Under the current registration process FCVs are registered for 12 months.

63 There is currently ambiguity around the powers MFish has under the Act to revoke FCV registrations once a certificate of registration consent has been issued, except under certain circumstances which are described below. MFish recognises the importance of making this power explicit but acknowledges that this is likely to require an amendment to the Act.

64 MFish is concerned the lack of formal revocation power may not be a timely or effective deterrent to high risk FCVs. MFish currently relies on the annual registration requirement to encourage good vessel performance. MFish does not consider this situation provides adequate incentives for vessel operators to adhere to the conditions of their registration consent.

65 Therefore MFish proposes providing shorter approval periods of either 3 or 6 months for vessels that MFish considers are high risk and for vessels that have operated in New Zealand for less than 2 years. Once this original registration period has elapsed the vessel will be re-registered provided no issues have arisen during the first registration period. This re-registration will be based on the vessel's original application with the additional requirement that the vessel will have a second MFish inspection before approval is given. A new registration application will be required every 12 months.

66 The Chief Executive may choose not to re-register a FCV after the initial registration period if he is satisfied that the conditions attached to vessels registration consent or if the conditions that were part of the registration process have not been met or are unlikely to be met in the future.

67 MFish considers the reduced registration period will be a short-term measure until the appropriate changes can be made to the Act. Once the power to revoke has been specified in the Act, MFish considers it reasonable that longer term FCV registrations are permitted, possibly in line with the current domestic vessel regime where vessels can be registered for up to five years.

### **Role of MFish**

68 In addition to the requirements proposed above, MFish is also making the following internal process changes:

- a) Implementing an internal review process to ensure that all applications to register a FCV are reviewed and assessed, by the relevant groups within MFish, prior to the Chief Executive giving approval consent.
- b) Requiring fishery officers to undertake ongoing inspections of FCVs to ensure continued compliance with the standard for observer accommodation, food and amenities.
- c) Requiring MFish observers to undertake a pre-trip personal safety inspection each time they are placed on a FCV.

### ***Internal review process***

69 MFish has recently implemented a coordinated process to review and assess FCV applications. Vessel operators will continue to apply to FishServe when seeking to register a FCV.

70 A key component of this internal process is the creation of a FCV co-ordinator role within MFish to:

- a) Act as the key contact point with FishServe. FishServe will continue to act as the contact point for all registration applications
- b) Coordinate input from relevant MFish Business groups (Compliance, Legal, Deepwater team, Observer Programme, International)
- c) Inform Compliance that a pre-registration inspection is required
- d) Liaise with Maritime NZ, where appropriate, to ensure the vessel has met the required vessel safety requirements

- e) Liaise with FishServe, where appropriate to source any additional information required from the applicant as part of the approvals process
- f) Compile any conditions that should be attached to the registration consent
- g) Provide advice to the Chief Executive in situations where there is uncertainty over whether registration should be approved.

71 MFish is concerned that the current approvals process allows insufficient time to undertake a complete risk assessment of the vessel and the individuals and companies behind that vessel. MFish proposes to increase the approvals time frame from the current 10 days to 30 working days. The 30 working days would commence once the application is received by FishServe.

72 The proposed 30 working days will be the upper limit of the time that will be required by MFish to approve an application. As some applications will be more straightforward to assess than others, certain approvals could be made in a shorter timeframe.

73 MFish can advise that while a new internal process has been created to review FCV applications, the proposed change to the approvals time frame, from 10 days to 30 working days, will not be implemented until 1 June 2008.

74 MFish welcomes submissions from stakeholders on the proposal to increase the timeframe for approvals from 10 days to 30 working days.

### ***Fishery officer inspection of FCVs***

75 MFish is also proposing that as a condition of the registration process MFish fishery officers will undertake an inspection of each FCV seeking registration to ensure that:

- a) The vessel has met the minimum requirements as set out in the observer standard; and
- b) The vessel is suitably equipped to fish legally within New Zealand's EEZ. This will also ensure the vessel has the appropriate facilities to meet any environmental mitigation requirements that are in place.

76 MFish will accept and process registration applications for vessels not currently in New Zealand's EEZ but final registration approval will be subject to the results of this inspection.

77 MFish will provide fishery officers with the appropriate training to undertake these inspections.

### ***Observer pre-trip personal safety check***

78 To address current safety concerns onboard some FCVs and the risk this may pose to the H&S of observers placed on these vessels MFish is proposing that vessel masters will be required to provide a safety induction to observers when they first board a FCV. This pre-trip safety induction will consist of:

- a) **Hazard identification:** The observer, accompanied by the master, or other senior crew member, must carry out a hazard inspection of all the major vessel areas. The vessel master (or senior crew) should identify pre-existing or potential hazards on

the vessel and communicate clearly to the observer the management processes in place to regularly assess and manage these hazards and the process for identifying any new hazards arising. The observer should determine if these hazards are adequately managed or if there is a risk of serious personal harm created by any of these hazards.

- b) **Safety certificate confirmation:** The observer should confirm that:
- i) A valid copy of the vessels SSMS certificate or current Maritime NZ recognition document is held onboard.
  - ii) The vessel is surveyed for the limits it is intending to operate to.
- c) **Personal safety assessment:** The observer should be satisfied, before sailing on a FCV, that the vessel is unlikely to pose an unnecessary risk to their personal health and safety. The observer will be expected to ensure that:
- i) There is a personal flotation device available for their use and that this device is within date.
  - ii) There are lifebuoys deployed round the deck of the vessel and that these are accessible by the observer, if required.
  - iii) There is accessible fire fighting equipment throughout the vessel and that this equipment is in date.
  - iv) They are aware of their muster station in an emergency and that there is a life raft allocated for their use and that this life raft is in a position to be readily deployed when required.
  - v) There are clear and unobstructed egress points from all internal observer accommodation areas to allow for safe and unimpeded exit.
  - vi) The vessel is carrying an EPIRB onboard.

79 If the observer is not satisfied during this pre-trip personal safety check that the vessel provides a safe working environment, then they are not required to sail on the vessel. The observer will report any issues to the MFish Observer programme which in turn will advise both Maritime NZ and the vessel operator of these issues. In these situations MFish is proposing that the vessel does not sail until it is in a position to carry the observer, as the requirement to carry an observer is likely to be a condition of the vessel's registration consent; and operating such a vessel contrary to the conditions of consent would be a breach of s. 103 (1) of the Act.

## **Other management proposals**

### *Requirement for permit holder to provide a financial guarantee*

80 MFish is concerned that permit holders using FCVs may have insufficient assets to cover deemed value invoices or other financial obligations under the Act, such as penalties and fines following any breaches of the Act. This risk was highlighted recently when an outstanding deemed value invoice of approximately \$2.3m was incurred by a company that has since gone into liquidation.

81 To address this risk MFish is considering a proposal that will require permit holders to provide MFish with evidence that they are in a position to meet any financial obligations under the Act likely to arise during their period of registration. This evidence could be in the form of letters of credit worthiness accompanying the registration application or the requirement that the permit holder provides a bond or a 3<sup>rd</sup> party guarantee in favour of MFish as a condition of registration approval.

82 MFish is not proposing to implement this proposal by 1 June 2008 as it requires further development as a policy option. MFish intends to continue working on this proposal over the coming months. MFish does note that some domestic vessels may display similar risk profiles to high risk FCVs and the further analysis on this issue will include determining the applicability of this proposal to high risk domestic vessels. Once this policy option has been finalised it will be consulted on fully.

83 MFish would welcome stakeholders views on this proposal including the two options described above.

### **Timeframe for implementation**

84 MFish intends that the measures described in this IPP will be implemented by 1 June 2008, with the exception of the requirement for the permit holder to provide evidence of their financial security. MFish recognises that in some cases these measures will only apply at a vessels next registration. MFish can advise that it will **not** accept any vessel re-registrations up until 1 June 2008 **unless** the existing registration is due to expire, or has been cancelled, before this date.

### **Consultation**

85 MFish is seeking views from stakeholders on the management options presented in this IPP. Stakeholder submissions will be considered before the final advice is prepared for the Chief Executive. MFish particularly welcomes information on the likely costs associated with the management options proposed.

86 Although MFish is not intending to implement the requirement for permit holders to provide some form of financial guarantee by 1 June 2008, MFish welcomes stakeholder's views on this proposal.

87 MFish requests that submissions are received no later than Thursday 20 March 2008. Submissions can be emailed to Tracey Steel at [tracey.steel@fish.govt.nz](mailto:tracey.steel@fish.govt.nz) or returned by post to Tracey Steel, Ministry of Fisheries, PO Box 1020, Wellington.

88 Please be advised that all submissions will be publicly available under the Official Information Act 1982 (OIA). Should any person or organisation wish for any information contained in their submission to be withheld under the OIA, the grounds for withholding the information must be provided in the submission

## **Appendix 1: Approved Standard for accommodation food and amenities for MFish Observers**

### **Food:**

1. Observers should be provided with sufficient potable water and wholesome food for the duration of the trip they are observing.
2. Neither MFish nor any observer should be required to supplement the food and water consumed by the observer during the trip. It is acceptable for MFish and the observer to provide additional food for the duration of the voyage to take into consideration the observer's food preferences.
3. All food and drinking water should be stored and handled in such a manner as to ensure its protection against contamination.

### **Accommodation:**

Observers should be provided with sleeping accommodation of the following standard:

1. Emergency escapes should be provided from all observer accommodation areas. These emergency escapes should be clearly identified and remain unobstructed throughout the voyage.
2. Observer sleeping accommodation:
  - Observers should be provided with their own sleeping accommodation
  - Should be maintained in a clean condition and should be kept free of goods and stores which are not the personal property of the observer.
  - Should be non-smoking when the observer is at sea.
  - Should provide for clear head room no less than 1.90 meters. Should be not less than 1.0m<sup>2</sup>, excluding space occupied by berths, lockers, built in tables and chairs and other fixed furniture.
  - Berths should not be arranged side by side in such a way that access to one berth can only be obtained over another.
  - Each berth should be fitted with a comfortable mattress with a cushioned bottom. The mattress should be clean and free from vermin and bad odour.
  - Each berth should be provided with an adequate supply of clean fresh bed linen and a fresh supply should be maintained through the voyage.
  - Berths should not be arranged in tiers of more than two.
  - The lower berth in a double tier should be not less than 12 inches (.30 meter) off the floor
  - The minimum inside dimensions for a berth to be occupied by an observer should be 6 feet 3 inches by 2 feet 3 inches (1.90 meters by 0.68 meters).
  - Observers should be allocated sleeping space that provides accommodation for no more than two persons during the period when observers are onboard. A four berth cabin is acceptable provided no more than two persons occupy the cabin.
3. Adequate reading light should be provided for every berth in addition to the normal lighting of the sleeping room. Adequate reading lighting should be provided over the observers work station.
4. Observer accommodation must include the following furniture for use by the observer during the trip:

- Clothes locker capable of hanging and storing clothes. It must also be possible to lock this clothes locker
- A drawer for papers and documents
- Table/desk with appropriate seating
- Book rack
- Coat hooks.

**Access to cooking facilities:**

1. Observers should be permitted access to the galley when required provided it is an appropriate time to do so.
2. The galley should be equipped with suitable facilities and utensils to enable the observer to prepare hot and cold drinks and light meals.

**Access to sanitary facilities:**

Observers should have access to sanitary accommodation of the following standard during their trip:

1. Access to a toilet with an ample flush of water, available at all times, that can be flushed after use.
2. Toilet facilities must be properly equipped with wash hand basins
3. Toilet paper should be supplied and its disposal managed in a hygienic manner that disinfects the waste paper and controls odours or flushes it to waste.
4. Functioning wash hand basins, soap dispensers with soap and hygienic towelling should be available for observer use on the factory floor and in the galley at all times.
5. Shower supplied with hot and cold fresh water – this could be a salt water shower with a fresh water rinse.
6. Sanitary facilities for use by the observer should be maintained in a clean and hygienic condition throughout the duration of the voyage.
7. Toilet accommodation should be adequately ventilated
8. Sanitary equipment and the floors in sanitary accommodation shall be made of durable material, should be easily cleaned, impervious to damp and should be properly drained.
9. If required, private and lockable toilet and washing facilities must be provided for female observers.
10. Observers should be guaranteed privacy and reasonable access to sanitary facilities.
11. Soil pipes and waste pipes should be fully functional during the voyage and constructed so as to minimise the risk of obstruction and to facilitate cleaning. They should not pass through freshwater or drinking water tanks.

## **Amenities:**

1. Mess room accommodation, separate to the sleeping accommodation, should be provided with sufficient tables and seats to facilitate up to two observers in addition to the normal crew numbers.
2. Observers should be provided a workspace in a part of the vessel that is smoke free. This work area can be in the observer's cabin.
3. The cabin and the observers work station in the bridge and factory should provide for clear head room of no less than 1.90 meters. Where obstacles reduce the head height below 1.9 metres (e.g. sea doors, pipes) they should be clearly marked and padded if appropriate.
4. A work station should be provided in the factory suitable for the secure placement of observer scales and allowing enough space to lay out a 1.5 metre fish length measuring ruler. The station should be fixed at a comfortable work height for the observers to stand at. It should be located ideally as close to the pound, or whole fish sample collection area, as possible while being safely away from hazards such as saws and augers.
5. Facilities for washing and drying clothes should be made available to the observer. Freshwater and soap powder should be available to wash the clothes.
6. A designated area must be provided, in addition to the observer's cabin space, for the storage of wet weather gear and equipment.
7. Vessel must be equipped with the appropriate medical equipment and medical expertise in case of medical emergency.
8. Where appropriate, observers must be permitted access to satellite communications systems and must be able to have messages sent and received on their behalf by means of the communication equipment on board the vessel at all times. Access to this equipment for personal communication will be at the vessel masters discretion.
9. The MFish Observer programme should be advised of any notifiable disease present on the vessel before an observer is placed on that vessel. The operator is also required to advise the MFish Observer programme if a notifiable disease is detected on a vessel that recently had an observer placed on board. The New Zealand Food Safety Authority requires vessel operators to provide notice of any disease events onboard the vessel. MFish wishes to ensure this notification is also provided to the MFish Observer programme.

**Appendix 2: requirements for individuals involved in vessel registration as set out in the Fisheries Act 1996**

Fisheries Act 1996	Foreign Owner	NZ Operator	NZ Permit Holder
S103(2)(c)	Foreign owner must have a NZ Authorised Agent		
S103(5)(b)(ii)	For the purposes of other Acts, owner is employer of crew		
S225/226	<b>Owner</b> /master/operator to provide access/accommodation to Observers on vessel to an approved standard	<b>Owner</b> /master/ <b>operator</b> to provide access/accommodation to Observers on vessel to an approved standard	
S103 (1) & (2)		Operator must apply for registration & comply with all conditions of registration process	
S103(1) (b)		Operator to register vessel	
S224	Notice of intention to place an Observer may be served on <b>owner</b> master or operator. No person shall then cause or allow vessel to put to sea....	Notice of intention to place an Observer may be served on owner master or <b>operator</b> . No person shall then cause or allow vessel to put to sea....	
S89 S76			Permit holder is responsible for catch. Must pay deemed values for catch caught in excess of ACE
Fisheries (Reporting) Regulations 2001 – Part			Permit holder is responsible for correctly completing and submitting a range of returns (monthly harvest return, trawl catch effort return, catch landing return)

### **Appendix 3: Statutory Declaration Form**

#### **Statutory Declaration**

I (*AB*) of (*Occupation and company name (should be the New Zealand operator)*) solemnly and sincerely declare that

The charter agreement provided in this application to register the foreign charter fishing vessel (*name*) is the only current and valid charter agreement in existence *between (name of New Zealand operator) and (name of overseas vessel owner)* for the operation of the (*vessel name*) in New Zealand's Exclusive Economic Zone for the period of registration being applied for.

There are no ancillary agreements in place which override or negate this current charter agreement.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Signed: AB

Declared at  
this                    day of                    20  
before me

Justice of the Peace, Solicitor or other person authorised to take statutory declarations