Ministerial Inquiry into Use and Operation of Foreign Charter Vessels

Submission by Christopher Ludeke, Managing Director, Arendale Ltd.

**Background**

C. Ludeke

**Australian Government - New South Wales Treasury - Investigator.**

As an investigator with this Department I carried out investigations involving state taxation compliance and criminal taxation fraud.

**Ministry of Fisheries**

For approximately 3 years from 1989 I was employed by the Ministry of Fisheries in their Christchurch office as their Registrar of Fisheries.

I also held a fisheries officer warrant.

**Vela Fishing Ltd**

From 1994 for approximately 14 years I held the position as Resource Manager with this company – at that time Vela Fishing Ltd was regarded as the 4th biggest owner of Fishing Quota in New Zealand (formally the Wattles Fishing Quota portfolio).

In this position I had overall responsibility for operation of their vessels in New Zealand in respect to complying with the various laws surrounding such operation.

**Managing Director – Arendale Ltd**

For the past 4 years I have operated this in which I contract my services to various fishing companies to provide fisheries management services – mainly in the area of fisheries compliance.

**Former Director – Hokl Fishery Management Company (7 years) - now know as the Deep Water Group.**

**Foreign Charter Vessel Management Involvement**

During my role with Vela Fishing Ltd I was responsible for the management of 10 deepwater foreign fishing vessels (vessels with crew numbers ranging from 37 to 80 crew) of Japanese, Russian and Norwegian ownership.

For the past 4 years my company Arendale Ltd has provided management services to both New Zealand and foreign fishing companies in respect to the operation of 2 -Korean flagged vessels. These vessels employ Korean officers and Indonesian crew.
Of the 10 deep water vessels of Japanese, Norwegian and Russian ownership I found the working conditions and living conditions for the crew to be of a high standard.

The Norwegian owned vessels in particular were of a luxury standard with cafeteria dining, superior crew cabins and some with saunas.

**Episodes of Violence**

During my time managing these vessels I recall only two episodes of serious violence.

They were:

1. **Murder and Serious Injury** – Fishing Vessel “Seminosonov”.

   This incident involved a “love triangle” between two Russian seamen and a female crew member.

   One of the seamen stabbed to death a fellow seaman who was a rival partner of the female crew member.

   He also stabbed the female crew member causing her serious injury.

   This murder and assault was dealt with at the time by the New Zealand police.

2. **Ministry of Fisheries- Observer Rape** - FV “Seahunter 1”

   This incident involved a Ministry of Fisheries Observer raping another Ministry of Fisheries (female) Observer at an end of voyage function.

   The observer was subsequently found guilty of rape by the NZ court and is currently serving a prison sentence.

3. **Drunk and Disorderly Conduct** (On Shore).

   Over the years I have assisted crew who were arrested for drunk and disorderly conduct while on shore leave.

   Historically this is what some seamen do and realistically will continue to do.

   Some cases were dealt with by the police and resulted in appropriate fines imposed by the court.

   Those convicted were reported to the immigration office as required.

Apart from the above episodes I was unaware of any systematic abuse, mistreatment or acts of violence against foreign crew on these vessels.

*Submission by Christopher Ludick, Managing Director, Arendal Ltd. Dated 29 September, 2011*
Over the past 4 years my company has been contracted by the Korean vessel owners to help manage their Korean flagged vessels.

The two Korean vessels which I helped manage are former Japanese built vessels.

They have Korean officers and Indonesian crew.

**Indonesian Crew Absconding From Their Vessels**

For the past 3 years no crew have absconded from the 2 Korean vessels which I have been involved with.

Prior to that there were incidences of Indonesian crew who “ran away” from their vessels whilst they were on shore leave.

In almost all cases these crew had be encouraged away from their vessels by organized illegal labour agents who arranged for them to work illegally mainly in fruit orchards, vineyards and farms.

This practice stopped upon the successful and well publicized prosecution by the Department of Labour against illegal agents for foreign workers – many of the illegal workers were recruited from foreign charter fishing vessels.

When these absconding crew finished illegally working on orchards and vineyards and wanted to return back to Indonesia they invariably alleged mistreatment on board their former fishing vessel as justification for their action of "jumping ship".

However in my experience and as a result of my own investigations I formed the view that these allegations were largely false.

Significantly, such allegations of mistreatment on the vessels by the “run away” crew were not supported by their fellow Indonesian seamen.

**Episodes of Violence and Mistreatment of Crew - Korean Vessels**

Currently there is a “no violence policy” on the Korean vessels which I am currently involved with.

During my time with the Korean vessels there have been the following incidences:
Korean Vessels

Continued

As with the Japanese, Russian and Norwegian crews there have been episodes of drunken behavior by crew while they are on shore leave.

Some of these incidences have been investigated by the police and when deemed appropriate the offenders have been dealt with through the courts.

In these cases the immigration office was informed as required.

On one particular occasion I recall what I would describe as a personality clash between some individual Korean officers and a small number of Indonesian seamen.

In this particular incident, three Indonesian seamen were transferred to a different vessel in the fleet to diffuse the situation. They continued their work contract period without any further problems.

Living Conditions – Korean Vessels

Generally the conditions are more spartan than the Norwegian and Russian charter vessels due in part to their design.

I have over the years had regular meetings with the Ministry of Fisheries observers placed on the present Korean vessels which I assist in managing and they have advised me that:

1. They found onboard conditions comfortable.
2. Crew relationships good. No evidence of abusive behavior.
3. Food of a very high quality.

These comments are reflected in the official observer reports which I have sighted.

It is significant to record that at no time have I ever had a Ministry of Fisheries observer raise concerns to me about the mistreatment of crew or their living conditions.
Standard of Food

The meals provided to the crew are identical for both the Korean crew and Indonesian crew – with the exception that the Indonesians do not have pork dishes for religious reasons.

Currently the Korean vessels I am involved with employ Indonesian cooks to prepare all the meals for the crew.

In my view, the standard of food is varied, nutritious and of a high standard.

A typical evening meal would consist of a chicken or beef curry, fried fish, vegetable soup, side salads with a selection of Korean side dishes (spicy) followed by a selection of fruit. Many New Zealanders in my view would enjoy these healthy meals.

Crew Welfare Measures – Keeping the Crew Happy.

In recent years my company provided a crew “welfare program” on behalf of the vessel owner and NZ charter company.

It is funded by the Korean vessel owner.

I have routinely made a practice of interviewing the vessel crew to enquire about their welfare and to identify and issues of concern or problems they may wish to discuss with me.

Such conversations are documented by me and presented in regular compliance reports to both the vessel owners NZ representative and NZ charterer.

On just about all occasions they have advised me that they are happy and have reported no complaints to me.

My overall impression is that the Captains have been successful in providing a “family like” environment for their crew on their vessels.

As part of this program the crew for the past two years have been provided with the following services:

1. All Day shuttle bus trips to Akaroa for a BBQ lunch, marae visits, bush and beach walking.
2. Half day shuttle bus tours to places of interest in Christchurch.
3. Visits to the Christchurch City Mosque.
4. Twice a year the crews enjoy visits to local Chinese restaurants.
5. Provide crew with DVDs and entertainment games.
6. Assistance with crew banking needs.

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Why Allow Foreign Seamen in New Zealand?

Arendale Ltd has over the past four years been engaged by several New Zealand fishing companies to recruit foreign fishing crew from overseas for the use on their vessels.

Such recruitment efforts include:

1. Extensive advertising in newspapers.
3. Contacting the NZ Fishing Industry Guild to check if they have any available crew.
4. Checks with WINZ for any suitable candidates for the vacant crew positions.

Only when such efforts fail to provide suitable candidates did I seek approval from the Department of Labour to recruit overseas workers on behalf of these New Zealand fishing companies.

The Department of Labour ensures that proper "work test" has been carried out before they approved the NZ Fishing company to employ overseas crew.

From my experience there is a genuine shortage of New Zealand workers prepared to work on deep sea fishing vessels.

There are, in my view, a number of reasons for this. They include the uncomfortable and demanding nature of the work, long periods away from family and friends (up to 4 weeks) and the difficult work conditions – wet factory conditions.

Fishing companies have advised me that their fishing operations have been disrupted simply because they are unable to get their vessels away from the wharf due to lack of available crew.

They simply are unable to attract reliable, skilled labour despite offering attractive remuneration packages.

Use of Foreign Charter Vessels in New Zealand

I believe from my business experience that Foreign Charter vessels have made a valuable contribution to the New Zealand Fishing Industry.

By way of example, it was the expertise and knowledge of foreign fishing officers who used their expertise and skill in developing the process known as "once frozen at sea fish fillets".

It was this technique of processing fish at sea that opened up what turned out to be one of New Zealand's most valuable export fish – Hoki.

Before this development Hoki was regarded as a rubbish fish with little commercial value.

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Use of Foreign Charter Vessels in New Zealand (Continued)

The foreign charter fleets continue to fish some of the less valued species which are unattractive for New Zealand flagged vessels to catch – species such has Squid, Jack Mackerel and Barracuda.

Without their efforts much of these particular species would simply stay in the sea uncaught.

Significant Additional Material

I have attached to these submission 2 significant articles in support of the use of Foreign Fishing vessels in New Zealand.

They are:

   Refer Attachment 3

2. Statement by the Hon Jim Anderton – Minister of Fisheries
   “Foreign Fisherman Strictly Regulated”
   Refer Attachment 4

Evidence at Inquiry

I am happy to give evidence directly to this Inquiry at its Christchurch sitting.

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Managing Director

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Mallick 2013 Crew - VRS25 to Christchurch
 Moscow, Dec '2010.

Source: Arawa Ltd - Wallace Report
CRAW MAGAZINE 203 - TRAP TO MV ARAORA
ONE OF THREE GROUPS - 2 SEPARATE DAYS

Source: ARENDAL WELFARE REPORT
INTRODUCTION

1. The New Zealand Seafood Industry Council (SeaFIC) appreciates the opportunity to comment on the IPP “Proposed Management Measures To Mitigate The Risks From Foreign Charter Vessels Operating In New Zealand’s EEZ” released on 8 February 2008.

2. SeaFIC has consulted with industry participants in the development of this submission. There are many differing views on FCVs, from the fundamental issue of their use to the detail of their management. These differences reflect the diverse nature of the industry participants. For example, while there are participants who use FCVs, there are also participants who are opposed to FCVs. Each will accordingly have a different perspective as to the role, need for and use of FCVs.

3. While SeaFIC is providing this submission after consultation with the wider industry, a number of participants, both mandated industry representatives and companies, may provide their own submissions.

4. SeaFIC believes it is well qualified to present its own submission in respect of FCVs and in some instances provide recommendations that may differ from industry or company submissions. SeaFIC is able to draw on both its policy and scientific expertise in considering situations and its generic perspective is based on a principled review of the QMS and its provisions.

5. The seafood industry has long held concerns as to the condition and behaviour of some foreign charter vessels operating in the New Zealand EEZ. To that end, the industry supports the intent of the Ministry to institute safeguards for the protection of our fisheries.
SEAFIC PRINCIPLES

6. The Act allows for the use of registered FCVs to catch fish in the New Zealand EEZ.

7. There is no role for the Ministry or any party to interfere directly or indirectly (for example, through barriers to entry or cost impositions) with the choice of a permit holder as to how his fish will be caught, providing at all times the legislation relating to New Zealand fisheries is not breached. SeaFIC supports that principle and will oppose any proposals to interfere with the choice of a permit holder.

8. The Act allows for fish to be taken without prior ownership or arrangements of ACE to cover the catch. While SeaFIC supports that principle and will oppose any proposals that will by direct or indirect means attempt to amend that principle.

9. SeaFIC does not accept that the Ministry has the right or the power to establish regulations or conditions which are contrary to the provisions of the Act. Secondary legislation such as regulations must be consistent with and further the objectives of the Act. They cannot contain provisions contrary to the Act under which they are enabled. Such regulations would be ultra vires. This also applies to conditions on consents as proposed. The Chief Executive’s powers are bound by the legislation and he cannot insert conditions that are inconsistent with the Act or are contrary to the Act.

THE PROCESS

10. As a general comment on the process, SeaFIC is concerned that this proposal is essentially a “knee-jerk” reaction to:
   a. a single default on a deemed values payment;
   b. two events where a new FCV caught a significant number of sea-birds; and
   c. an ongoing but minor issue as regards observer health.

11. It is noted that, in all instances above, neither the financial viability of the Crown or the sustainability of New Zealand fisheries stocks was at risk from the events. In respect of the other causes cited by the Ministry as the basis for this proposal,
   a. illegal fishing practices are a matter for compliance, as with any breach by any operator;
   b. lack of adherence to industry initiated voluntary codes of practice is an issue for the industry, not the Ministry. Industry codes of practice are not breaches of law and cannot be elevated to such status; and
   c. inability to use foreign crew as witnesses is a matter of law not changed by these proposals.

12. It is inappropriate that measures are being proposed which have operational and cost implications for all FCVs, including those currently operating safely in the New Zealand EEZ.
13. SeaFIC recognises that there is a need to address issues in respect of a small number of FCVs but there should be no need for a heavy-handed approach that penalises and imposes costs and restrictions on the remainder of the fleet. A more limited intervention that would be selectively applied to the potential problems would have been more appropriate.
Foreign fishermen strictly regulated

Banning foreign fishing boats from catching fish under New Zealand’s quota system is not a panacea for the industry’s problems, writes JIM ANDERTON.

Doug Saunders-Loder is unhappy about the use of foreign charter vessels to fish for hoki (Perspective, Oct 1).

He wrote that the men and women of the New Zealand domestic fishing fleet are annoyed because they have the capacity to catch all the available quota but "are being denied the opportunity to do so because of the presence of foreign charter vessels".

A foreign charter vessel is one that is foreign-owned and has a foreign crew but has been chartered by a New Zealand company, usually as part of a joint business venture, to fish for the quota the New Zealand company owns under the Quota Management System (QMS).

Foreign vessels are required to be registered with the Ministry of Fisheries and for a company to be able to employ foreign crews, the Minister of Immigration must first be satisfied that no New Zealanders are available to do the work. The wages offered must be comparable to New Zealand rates so that foreign crews cannot be used as a source of cheap labour.

On top of these checks, chartered foreign vessels are not allowed, by law, to fish within New Zealand’s territorial waters, which go out from the shoreline to 12 nautical miles.

So, for example, foreign charter vessels are not allowed to fish in Cook Strait, which is a significant hoki fishery yielding around 25 per cent of the annual catch. And this percentage is likely to increase, as I have requested that hoki previously harvested from the Western stock be taken from Cook Strait. Domestic vessels are the only ones allowed to fish in this area.

We all agree that charter vessels need to be closely managed, and Government and industry are working together to make improvements in this area. However, in 1986 the QMS established, among other things, that New Zealand companies and quota owners are free to use whomever they choose to catch their fish and where the fish is processed. Furthermore, the international law of the sea requires all countries to share their exclusive economic zone with foreign vessels, if they do not have the domestic fishing capacity to sustainably harvest the available fish stock.

However, New Zealand only permits foreign-owned vessels to fish within its waters if they do so for New Zealand owners of fish quota.

Having discussed this issue with many within the industry, I understand that the commercial fishing industry is not of one mind over the use of foreign vessels. Maori, who are now the industry’s biggest player, have in the recent past strongly supported the use of charter vessels, as have many other large and medium-sized quota owners. In fact, most deepwater and middle-depth fisheries quota owners support their use.

Despite Doug Saunders-Loder’s claim, the Cabinet cannot change the law "by the stroke of a pen" overnight. The Fisheries Act would need to be changed by Parliament, requiring extensive consultation with stakeholders, including the fishing industry, and then would need to enjoy majority support in Parliament.

I usually get asked by the fishing industry to reduce bureaucracy and red tape, not introduce more of it.
In the past 10 years, the number of charter vessels harvesting the key deepwater and middle-depth species has dropped by half – but so has the size of the domestic fleet. Over that same period, the number of tonnes harvested dropped by only 25%. The trend in fisheries is to consolidate fishing capacity in order to obtain efficiencies.

If the industry collectively agrees that a debate over the use of foreign charter vessels is worth having, then I am happy to have it. I am just as concerned as the New Zealand Federation of Commercial Fisherman about the fate of New Zealand fishing firms and the processing plants in Lyttelton, Greymouth, Westport, Nelson and a dozen other communities around this country. But these rationalisations have more to do with the state of some of our fish stocks, than with foreign vessels fishing our waters.

I can best meet concerns over the future of the fishing industry by setting catch limits that are sustainable and, as long as no New Zealanders miss out on jobs, letting industry determine the best way to catch fish. Outlawing foreign charter vessels is not the simple answer some in the industry would have us believe.

*Jim Anderton is the Minister of Fisheries.*