



Submission to the Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels

October 2011

A. Introduction

1. Some two years ago, a German individual approached our firm for advice in relation to a proposed investment in the New Zealand fishing industry. This individual had been the chairman of a German Fishing industry body and had owned several large trawlers. He met with several industry representatives and in the course of familiarising himself with the New Zealand (and Nelson) fishing industry, he had occasion to visit Port Nelson and in spent some time looking at the vessels in the port.
2. Shortly after this, he met with our firm to discuss investing in New Zealand and made a penetrating observation on our fishing industry that we have had cause to reflect on several times over the past two years. Unsolicited by us, he observed that the small inshore trawlers, that lined the quay on Vickerman Street, were uniformly ancient and run-down and ascribed this mainly to the fact that several foreign flagged fishing vessels were moored at other wharves in Nelson. Curious as to how he arrived at that conclusion, he mentioned that the presence of large foreign flagged vessels, with their low cost and overhead structure, had the effect of distorting the economics of the fishing industry and the operators that were the most vulnerable to this were the small inshore fishermen. Put simply, the effect of the operation of these foreign flagged vessels would be that the small operators would be put out of business.
3. The Ministerial Inquiry ("the Inquiry") into the use and operation of foreign charter vessels ("FCVs") in New Zealand is a timely review of a practice that has been tainted with controversy since its inception. What was originally intended to be a temporary entry of these vessels in New Zealand in order to develop local capacity has now become an entrenched practice that, for the reasons set out in this submission, creates significance dissonance at multiple levels, which we will seek to explore in this submission.
4. The practice of chartering foreign crewed vessels to fish for New Zealand fish stock has been the subject of a number of previous reviews which have focussed on the threat FCVs pose to the QMS as well as the labour conditions on board FCVs.¹ However, those reviews have not resulted in any change to the way in which these vessels are operated.
5. We hope that this Inquiry, with its broad Terms of Reference, will result in meaningful and significant change in the policy and law that governs the use of FCVs with the ultimate result being the removal of time-chartered FCVs from New Zealand waters.
6. We thank the Inquiry Panel ("the Panel") for the opportunity to make a submission to the Inquiry. We would like to speak to our submission at the meeting planned for Nelson. Our contact details are on the front cover of this submission.

¹ 2004 Department of Labour review into labour conditions on FCVS, 2008 Ministry of Fisheries review on FCVs

B. Background

7. Dawson & Associates is a maritime and commercial law firm that is based in Nelson but operates around New Zealand and the Pacific. The principal of the firm, Peter Dawson, has practised as a maritime and fisheries lawyer in South Africa, Namibia and New Zealand for the past 20 years. Peter has a long standing interest in the way in which New Zealand permits foreign flagged vessels to fish in New Zealand's EEZ and has co-authored a paper with Renée Hunt on the subject of FCVs titled "*The Legal Regime Governing the Operation of Foreign Charter Vessels in New Zealand*" which has been submitted for publication in the Maritime Law Association of Australia and New Zealand (MLAANZ) journal.²
8. On arrival in New Zealand, some ten years ago, Peter was astonished to find that foreign flagged vessels, in particular Korean flagged vessels, were granted permits to operate in the New Zealand fishery. Immediately prior to his departure from South Africa, he had been involved in a case involving a Dong Nam vessel that had been detained in Cape Town for significant fisheries offending within South African waters. Korean flagged vessels have a uniformly poor reputation amongst third-world African states for poor labour practices, and unscrupulous pillaging of third-world fishing nations.
9. The Terms of Reference for the Inquiry have a particular policy orientation with three broad objectives:
 - to establish whether the presence of FCVs in the New Zealand EEZ is a threat to national reputation and access to international markets.
 - to establish whether the presence of FCVs enables New Zealand to extract maximum economic return from our fisheries.
 - to ensure that acceptable and equitable labour standards are applied to all fishing vessels operating in waters of the EEZ.
10. Specifically, the Inquiry is to consider:
 - a) The application of New Zealand's legislative regime to the use and operation of fishing vessels, and in particular FCVs, with respect to labour, immigration, maritime safety and fisheries management and the compliance with that regime by such vessels and their operators;
 - b) Any international reputation risks associated with the use of FCVs;
 - c) Any trade access risks associated with the use of FCVs;

² A copy of the article can be found on our website here: <<http://www.dawsonlaw.co.nz/content/13/>>

- d) Whether the economic factors supporting the use of FCVs deliver the greatest overall benefit to New Zealand's economy and to quota owners;
- e) Whether acceptable and equitable labour standards (including safe working environments) are, or can be, applied on all fishing vessels operating in New Zealand's fisheries waters within the Exclusive Economic Zone; and
- f) Any other matters that the Inquiry considers relevant.

C. Our Submission

- 11. While we will make comment on all of the above matters, our submission will focus principally on issues associated with the legislative regime and the labour standards aboard FCVs as per paragraphs 9(a) and 9(f) above.

The Legislative Regime governing the use and operation of FCVs

International Obligations

- 12. The United Nations Convention on the Law of the Sea (UNCLOS) provides a framework of rules governing all uses of the oceans and their resources. New Zealand signed UNCLOS in 1982, with accession occurring in 1996. By virtue of UNCLOS, New Zealand has sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources of its EEZ (article 56), however it must develop proper conservation and management measures to ensure the resource is not endangered by over-fishing (article 61). Article 62 further obliges New Zealand to promote the objective of optimum utilisation of the living resources.
- 13. To achieve this objective, New Zealand must assess the allowable catch and determine its own capacity to harvest the resources. If it does not have the capacity to harvest the entire allowable catch, it must give other states access to the surplus through agreements or other arrangements.³ New Zealand may set the terms and conditions of these agreements or arrangements, and the laws and regulations that apply, by virtue of article 62(4). Article 62(4) sets out a non-exhaustive list of matters affecting these agreements that may be prescribed by laws and regulations.
- 14. The requirement to give other States access to New Zealand's EEZ is fettered by the condition that the New Zealand has regard to geographically disadvantaged and land-locked States. The obligation to permit access is further fettered by the requirement that New Zealand must take into account the matters listed in article 62(3), in particular, 'the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests'.

³ UNCLOS, art 62(2).

15. New Zealand companies claim that they do not have the capacity to harvest all of the total allowable catch and therefore, they need to use FCVs.⁴ If this is true, then, pursuant to its obligation under article 62(2), New Zealand must allow other States access to that part of the total allowable catch that cannot be harvested using domestic capacity.
16. While historically, New Zealand has had a number of access agreements in place (including with Japan, Korea and the USSR) currently New Zealand's only state-to-state access agreement in force is between United States of America and Pacific Island nations.⁵ Instead of state-to-state agreements, New Zealand has allowed foreign companies with vessels flagged in multiple jurisdictions to secure access to New Zealand's fisheries through commercial arrangements with New Zealand fishing companies.
17. Under these arrangements, the foreign vessel is harvesting the fish stock on behalf of New Zealand companies. It is a feature of these charter arrangements that the New Zealand charter partner retains to itself title in the fish products harvested, and indeed is accountable to the Ministry of Fisheries for ensuring that the catches are acquitted against Annual Catch Entitlement ("ACE"), generated from quota, that cannot be owned or held by foreign states or foreign nationals. In other words, by virtue of these arrangements, all of the allowable catch is harvested and, as a result, there is no 'surplus' of allowable catch for the purposes of article 62.
18. New Zealand's obligations under article 62(2) are directly addressed in Part 5 of the Fisheries Act 1996 ("the Fisheries Act"). This Part provides the Minister of Fisheries with a mechanism to apportion part of the Total Allowable Commercial Catch, described as 'foreign allowable catch', to foreign vessels.⁶ Specifically, sections 81-83 provide that the Minister must determine the foreign allowable catch for a fishstock and may apportion that foreign allowable catch to other states. Operators wishing to take advantage of the foreign allowable catch must then apply for a licence.
19. There is currently no foreign allowable catch allocated to foreign states or vessels under Part 5 of the Act. What we have instead is a situation where, because New Zealand companies claim that they do not have the domestic capacity to harvest that total allowable catch, they create 'joint ventures' with foreign vessel owners whereby the foreign flagged vessel, using foreign labour, harvests New Zealand fish.
20. The practice of allowing FCVs to operate as they currently do avoids the state access arrangements required by article 62 of UNCLOS. Accordingly, it is at odds with the obligations set out in article 62, and international practice. As a condition for operating in their fisheries

⁴ Stuart, G, Sealord Chief Executive, "If the foreign charter vessels weren't here, we'd probably just leave the fish in the sea because we don't have the boats or the people to be able catch them", 'Sealord Refutes claims', *Gisborne Herald*, 11 March 2010, 4.

⁵ Under the Multilateral Treaty on Fisheries between Certain Pacific Island Parties and the United States of America, entered into force on 9 December 1988. Under this access agreement, vessels flagged to the United States may fish skipjack tuna in parts of New Zealand's EEZ.

⁶ *Fisheries Act 1996* (NZ), s81-88.

waters, most developed coastal nations require vessels to be a owned domestically as a primary means to protect their resources.⁷

21. Despite this, New Zealand's international obligations are cited as reasons for the continued operation of FCVs in New Zealand under the current regime.⁸ If article 62 can be relied on in this way (and we do not think it can) then, in addition to its obligations under article 62(2), New Zealand must also take into account 'the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests' when giving other states access to its EEZ.⁹ A number of further aspects can be highlighted:
22. Firstly, the export of fish and fish products in the fifth largest export earner in New Zealand and, as such, it is clearly of strategic significance to New Zealand's economy. However, the use of FCVs deprives New Zealand fishers of jobs both on and off shore.¹⁰ Annually some 2500 foreign fishers are employed on the foreign charter fleet. Meanwhile, 154,000 New Zealanders are registered job seekers with Work and Income New Zealand.¹¹ Furthermore, while New Zealand companies that engage FCVs argue that use of such vessels creates jobs on land in New Zealand for those processing product received from the charter vessels,¹² the reality is that catches of these vessels are increasingly being processed offshore (in China, Korea and elsewhere) and there is little or no value added in New Zealand.¹³ This fact itself is damaging to the New Zealand Brand, as the product, although caught in New Zealand waters and labelled 'Product of New Zealand', never reaches our shore. In fact, New Zealand food safety authorities have little or no oversight of the processing facilities and methods on board the vessels or in the off-shore factories. Recent pictures of the factory conditions on FCVs should be cause for alarm in this respect.
23. In addition to the employment aspect, foreign owned vessels feature in multiple significant Ministry of Fisheries prosecutions for offences against the Fisheries Act. For example, a Japanese company was prosecuted (together with the New Zealand charterer) and ordered to pay \$4.2 million for misreporting catches using the practice of trucking.¹⁴ In addition, under the QMS, if FCVs catch in excess of their quota/ACE allocations, the deemed value bills cannot be claimed against the vessel owner. Thus, as happened in 2008, if the New Zealand charterer goes into liquidation, the Ministry of Fisheries is left without recourse against the vessel.
24. Secondly, New Zealand must take into account the significance of the living resources of its EEZ to its other national interests. Offending by foreign fishing vessels not only affects the economy as noted above,

⁷ For example Australia, the UK, Canada, South Africa, and Namibia.

⁸ Ministry of Fisheries, *Management measures to mitigate the risk from foreign charter vessels operating in the New Zealand EEZ* (2008), 1.

⁹ UNCLOS art 62(3).

¹⁰ Coulston, D, 'Industry Out-sourced', *Gisborne Herald Bulletin*, 11 March 2010, 4; NZ Fishing – Keep it K-iwi campaign <www.nzfishing.net.nz>

¹¹ As at June 2011, New Zealand Statistics, <www.stats.govt.nz> 6 September 2011.

¹² Sanford, Submission No 65 to the Primary Production Select Committee on the Fisheries Bill 1994, 52.

¹³ Stringer, C, Simmons, G, and Rees, E, 'Shifting post production patterns: exploring changes in New Zealand's seafood processing industry', *New Zealand Geographer*, forthcoming.

¹⁴ 'Group fined \$4m for illegal fishing' *Nelson Mail*, 15 March 2011, 4. 'Trucking' means catching fish in one quota management area and declaring it to be caught in another.

but it is also a drain on the resources that New Zealand is required to protect under its international obligations set out in Part V of UNCLOS. New Zealand claims its fisheries management to be 'world class'.¹⁵ However, this type of offending, together with the high profile media reports of poor working and living conditions on board FCVs¹⁶ is a poor reflection on New Zealand's management of its fisheries. Accordingly, beyond a purely profit centred commercial argument for a few companies, it is difficult to see how such arrangements are in New Zealand's national interest.

Domestic laws

Section 103 Fisheries Act

25. Section 103 of the Fisheries Act provides for the registration of all fishing vessels, including FCVs, engaged in commercial fishing in New Zealand waters.
26. An unusual feature of this section is that it permits the registration of foreign flagged vessels on the New Zealand fishing vessel register, without the requirement for the vessel to be owned or flagged in New Zealand. In fact, on the wording of section 103(4), other than the requirement to have a New Zealand agent, there does not need to be a New Zealand connection at all. In other words, a foreign flagged vessel on demise charter to another foreign entity can apply for registration.
27. Most FCVs that are currently registered under s103 are time chartered to New Zealand based operators; however the scheme of the Fisheries Act contemplates that such vessels will operate on the basis of a *demise charter*.
28. A core characteristic of a demise charter is that possession and control of the vessel has passed from the owners to the demise charterers. One of the tests of possession and control of a vessel is to determine who employs the master and crew. Under a demise charter, the charterer becomes, for the duration of the charter, the de facto "owner" (sometimes referred to as the "disponent owner") of the vessel and the master and crew act under their orders, and through them they have possession and control of the ship.¹⁷ In contrast, time charter arrangements are, in essence, contracts for the provision of services, including the use of the chartered ship.¹⁸ Under time charter arrangements, the charterer directs the vessel where to go but the possession and control of the vessel remain with the owner and it is the owner who is the employer of the master and crew.
29. It is clear from the wording of section 103(1) that no person is allowed to use a vessel to fish for commercial stock in New Zealand unless the vessel is registered and the person taking the stock is registered as an operator of, or notified user in relation to, the vessel.¹⁹ Section

¹⁵ Ministry of Fisheries: Statement of Intent 2009-2014, p 2.

¹⁶ See for example Michael Field, 'Slavery at Sea' *Sunday Star-Times*, 3 April 2011, 1; Michael Field, 'Rescued fishing crew left starving', *Sunday Star-Times*, 10 April 2011, 7.

¹⁷ Davies, M, *Bareboat Charters* (2nd Ed, 2005), 1.

¹⁸ *Ibid*.

¹⁹ *Fisheries Act 1996* (NZ), s103(2).

103(2) further requires that an application to register a fishing vessel is made by the 'operator' of the fishing vessel.

30. The term 'operator' is defined in the Fisheries Act to mean:²⁰

in relation to a vessel, the person who, by virtue of ownership, a lease, a sublease, a charter, a subcharter, or otherwise, for the time being has lawful possession and control of the vessel.

31. The key statutory language in this definition is the phrase 'possession and control'. As we have noted above, the central characteristic of a demise charter is that the charterer has 'possession and control' of the vessel. It is this person that must apply to the Chief Executive for registration of the vessel. Thus, as a departure point, the application for registration should *only* be made by either a vessel owner or demise charterer. This would be consistent with the intention of the legislation to impose obligations upon the party who has control over the vessel and against whom the protective measures set out in the legislation can be effectively enforced.
32. Section 103(2)(c) of the Fisheries Act sets out additional registration requirements that apply to foreign owned or operated vessels (that have consent to be registered under subsection 4). In such cases, the application must specify the name and address of a New Zealand person to be the authorised agent of the person from whom the operator has, by virtue of a lease, a sublease, a charter, a sub-charter, or otherwise, for the time being obtained 'possession and control' of the vessel. The section requires the appointment of this agent for the purposes of s103(5). It is this subsection that contains the provisions of the Minimum Wage Act and Wages Protection Act. Whilst there is reference to a lease, a sublease, a charter, and a sub-charter, no time or voyage charter can vest the element of possession and control in the operator – only a demise charter achieves this end.
33. It is apparent, therefore, that the section limits the class of person able to apply for the registration of a foreign vessel on the New Zealand fishing register for the purposes of undertaking commercial fishing in New Zealand waters to either the owner of the vessel or demise charterer of that vessel. FCVs operate in New Zealand predominantly on a time charter basis. Consequently, the New Zealand Charter Party ("the NZCP") does not have possession and control of the vessel. Put differently, for the purposes of s103 of the Fisheries Act, the NZCP is not, and cannot be, the 'operator' as contemplated by that section given that it does not have lawful possession or control of the vessel in the same way as it would under the terms of a demise charter. At best, the New Zealand charterer can only be the agent of the operator as contemplated in section 103(2)(c).
34. As a result, in order to comply with the requirements of the section, it is the foreign vessel owner or demise charterer, not the NZCP, that must apply for consent to the registration of the vessel under section 103(2). Notwithstanding this requirement, in practice, the application for registration is made by the NZCP itself or as 'agent' for the foreign Charter Party ("the FCP") and the Chief Executive registers the vessel

²⁰ Fisheries Act 1996 (NZ), s2.

in the name of the New Zealand charterer.²¹ This practice of consenting to the registration of vessels on the New Zealand fishing register on the basis of a time charter by the FCP to the NZCP is contrary to the wording of section 103. In particular, the lack of clarity in the wording of s103(2) and the practise of time-chartering FCVs casts significant doubt on the legal nexus between the owner of the vessel and their obligations under the Fisheries Act because the entity that has possession and control of the vessel (i.e. the foreign owner) is not the registered 'operator' for the purposes of the Act. The effect of the lack of clarity as to the legal nexus, creates many opportunities for unscrupulous opportunities operators to avoid the full impact of New Zealand legislation. It is correct to say that the Fisheries Act 1996 is a world class statute, however s103(2) and s103(4) creates a legal vacuum. By way of an example, a FCV owner can catch quota species in excess of sufficient ACE to cover catches which will result in a "deemed value" charge on the charterer of the vessel. In the event of the liquidation of the charterer, there is no pathway by which the Ministry of Fisheries may recover a deemed value bill from the FCV operator. The Fisheries Act 1996 does not provide a pathway. The Admiralty Act 1973 does not recognise a "deemed value" bill to be a "Maritime claim" as contemplated by s4 of the Act which prevents a vessel from being arrested for this claim.

Labour laws

35. The crew remain employed by the foreign vessel owner, and subject to the laws of the flag state. Thus, whilst s103(5) makes the Minimum Wage Act and the Wages Protection Act of application to these contracts,²² the employment relationship, remains subject to the law of the flag or the agreed law and jurisdiction of the contract. As such, the built-in protections, which are a feature of the Employment Relations Act, have no application to these contracts which leaves employees with few remedies other than those set out in s103(5).
36. Section 103(5) of the Fisheries Act 1996 deems each person engaged or employed on FCVs to be an employee for the purposes of the Minimum Wage Act and the Wages Protection Act. This section also gives the Employment Relations Authority and the Employment Court jurisdiction in any dispute relating to the application of these acts.
37. Unfortunately, this section, on its own, is difficult to enforce for crew who do not speak English, are not well resourced and cannot afford long, drawn out litigation but who find themselves up against an unscrupulous employer with deep pockets. For this reason and because of a lack of reporting, and the fact that the Fisheries Act did not address issues around working conditions, the Code of Practice was developed.

²¹ Ministry of Fisheries *Quota Management System; Foreign Charter Vessels*, <<http://fs.fish.govt.nz/Page.aspx?pk=81&tk=249>> (23 March 2011).

²² In her article, 'Modern Day Slavery: Employment Conditions for Foreign Fishing Crews in New Zealand Waters', *Australia and New Zealand Maritime Law Journal*, Vol 23, No 1 (2009), Jennifer Devlin questions the ability of a New Zealand statute to be of application to an international contract entered into between two foreign nationals.

Code of Practice

38. The Code of Practice, to which the Department of Labour, the New Zealand Seafood Industry Council (on behalf of New Zealand fishing companies) and the New Zealand Fishing Industry Guild are parties, is a set of policy guidelines of Immigration New Zealand (under the umbrella of the Department of Labour) that applies to the charter arrangements between the FCP and the NZCP.
39. The Code sets out a package of measures designed to regulate work conditions on FCVs and set minimum remuneration requirements. The Code also introduced a so-called 'accountability framework' in respect of crew.²³ Under the Code, the NZCP must be a signatory to the Code to be able to allow the FCP to employ foreign crew members. An 'acceptable New Zealand party' is required to provide a Deed of Guarantee For Financial Obligations In Respect of Foreign Crew ("the Deed of Guarantee") guaranteeing payment to crew in the event of default by the employer and repayment of costs incurred by Immigration New Zealand in the event of default by the NZCP.²⁴
40. It is clear from reports of conditions on board FCVs (as detailed in media reports and in the University of Auckland's paper²⁵) that the COP is not being complied with. In fact, it appears that conditions on board such vessels have not improved since the Code was introduced.
41. While its ambitions are commendable, in terms of the day-to-day operation of FCVs, the Code has failed in its goal of effectively regulating working conditions on board FCVs for the following reasons:
 - a. *The FCV owner/operator is not a signatory to the Code*

The preamble to the Code specifically recognises that fishing industry participants (i.e. FCV operators) have not agreed to the requirements in respect of minimum levels of remuneration but that they recognise that compliance is nonetheless important.²⁶ This is the fundamental problem with the operation of the Code: it attempts to regulate the behaviour of a party that is not a signatory (i.e. the vessel owner and employer). Firstly, while the employer has specific obligations under the Code, these obligations cannot be enforced against the employer directly, but rather they are enforced against the NZCP, which is charged with the responsibility of ensuring the employer meets obligations set out in the Code. Secondly, the Code also sets out responsibilities of fishers. It is highly unlikely that these people even understand the existence of the code, let alone have an understanding of their obligations under it. In particular, there is no requirement that a copy of the Code be provided to the crew.

²³ Immigration New Zealand *Fact Sheet – Crew of chartered foreign fishing vessels – New standards* (20 October 2006).

²⁴ Department of Labour *Code of Practice on Foreign Fishing Crew* (19 October 2006) Appendix 10, 'Deed of Guarantee of Financial Obligations in Respect of Foreign Crew', s6, s7.

²⁵ Stringer, C, Simmons, G, and Coulston, D. (2011) 'Not in New Zealand waters, surely? Labour and human rights abuses aboard foreign fishing vessels', University of Auckland, <<http://www.business.auckland.ac.nz/uoa/home/about/our-research/bs-research-institutes-and-centres/new-zealand-asia-institute-nzai>>.

²⁶ Department of Labour *Code of Practice on Foreign Fishing Crew* (19 October 2006) "Purpose".

b. *Compliance with the Code is easily avoided*

As a corollary of the above point, the obligations set out in the Code are relatively easy to avoid. For example, time records are easy to manipulate.

Furthermore, the NZCP is charged with the responsibility of ensuring the working and living conditions on board FCVs are to an acceptable standard. The media reports and pictures of conditions on board show quite clearly that the conditions are not acceptable. Because they are not the employers, and have no day-to-day oversight of the management and operation of the vessels, there does not seem to be any real impetus on NZCPs to ensure that acceptable labour standards apply.

Under the Code, crew are required to receive specified information including certain Department of Labour information, as well as copies of their employment agreements. It is questionable whether the crew actually receive this information, or even fully understand it, and even if they do, they are unlikely to retain a copy for future reference. This leaves the crew vulnerable to exploitation as they are not aware of their rights under the Code.

The crew's wages are frequently paid into the bank account of a manning agent rather than their own bank account. This makes it difficult to ascertain whether the crew actually receive their full entitlements.

c. *The crew fall through the cracks*

Typically, the crew are recruited by a foreign manning agent with whom they sign an agreement. The crew then sign a further agreement with the vessel owner. They then complete further paperwork in the form of visa applications before arriving in New Zealand. They often do not speak English and may or may not be able to read or write in their native language. The only contact with the NZCP, who is responsible for their wellbeing, is likely to be limited to a brief meeting at the airport and transit to/from the vessel.

d. *The Deed of Guarantee is easily circumvented*

Under the Deed, the New Zealand Guarantor must have 'sufficient ability to meet the obligations agreed pursuant to this Deed'.²⁷ However, there is no prescribed method of assessing the ability of the Guarantor to meet the obligations agreed under the Deed of Guarantee. It is noteworthy that this Deed becomes effectively useless when the New Zealand Guarantor goes into liquidation, as has occurred in the case of the *Shin Ji*. When seven crew walked off the ship in Auckland in June 2011, with complaints of unpaid wages and poor work and living conditions, the NZCP, Tu'ere Fishing Limited, placed itself into voluntary liquidation. This puts into question the robustness of the processes used to assess the ability of a guarantor to meet its obligations under the Deed. How and when are these assessments made, if they are at all?

²⁷ Ibid s1.1.

e. *The dispute resolution process is unworkable*

Under the Deed of Guarantee, the crew is required to address the issue of under-payment with their employer first, by recourse to the New Zealand employment institutions.²⁸ However, there is no provision in the Deed of Guarantee (or in the Code of Practice) that requires the employer to submit to the jurisdiction of the New Zealand Courts. While, under the terms of the employment agreement governing the employment of the crew, the employer may have agreed to the jurisdiction, the employer is not a signatory to the Deed of Guarantee. In the event that the employer either refuses to submit to the jurisdiction, or fails to honour any order made, the crew are then entitled to make demand on the Guarantor.²⁹ This demand must be made within 90 days of the crew member ceasing to be employed on the vessel.³⁰ Such a short limitation period is a significant hurdle for crew in circumstances where they must pursue their employer, who may be from a different jurisdiction, first.

This problem is replicated in respect of other employment problems such as working and living conditions and the treatment of crew on board the vessels. In these circumstances, the crew have to navigate through a number of procedural hurdles in order to pursue an employment relationship problem. In particular, they must first raise any problems with the Captain, then their employer. Most crew on board these vessels are poorly resourced. It is unlikely that they have a copy of their employment agreement with them on the vessel to consult when confronted with an issue relating to their work. Even assuming that the crew are aware of their rights under the employment agreement, the procedural hurdles present too great an obstacle for vulnerable foreign crew.

Immigration

42. In order to obtain work visas for foreign crew to work on FCVs in New Zealand's EEZ, the NZCP must request an Approval in Principle (AIP) to recruit foreign fishing crew from the Department of Labour in respect of specified periods of work on specified foreign vessels.
43. The power to make immigration policy (or in current terminology, 'immigration instructions'), including the Code of Practice, is given by s22 of the Immigration Act 2009 (previously s13B of the Immigration Act 1987). This section refers simply to the making of immigration instructions relating to the rules or criteria under which eligibility for the issue of visas is to be determined.³¹ Immigration instructions are not regulations, but rather statements of government policy.³² The instructions are set out in the Operational Manual of Immigration New

²⁸ Department of Labour *Code of Practice on Foreign Fishing Crew* (19 October 2006) Appendix 10, 'Deed of Guarantee of Financial Obligations in Respect of Foreign Crew', s 4.1

²⁹ Department of Labour *Code of Practice on Foreign Fishing Crew* (19 October 2006) Appendix 10, 'Deed of Guarantee of Financial Obligations in Respect of Foreign Crew', s 4.2.

³⁰ Department of Labour *Code of Practice on Foreign Fishing Crew* (19 October 2006) Appendix 10, 'Deed of Guarantee of Financial Obligations in Respect of Foreign Crew' s10.3.

³¹ Immigration Act 2009, s22(3).

³² Immigration Act 2009, s22(8).

Zealand pursuant to s25 of the Immigration Act. Immigration New Zealand must evaluate immigration applications (including AIPs) according to the criteria set out in the instructions.

44. There is a specific set of instructions that apply to crew of foreign charter vessels (set out in section WJ of the INZ Operational Manual). The general objective of work visa instructions (i.e. employment opportunities for New Zealand citizens and residents should be protected) applies to requests for AIP in respect of foreign crew on FCVs.³³ In accordance with Section WJ, in order to be granted an AIP, the NZCP must:
 - a. Satisfy Immigration New Zealand that there are no (or insufficient) suitably qualified and experienced New Zealand citizens or residents available to crew the foreign vessel for the specified period;
 - b. Satisfy Immigration New Zealand that they, and the FCP, will comply with the Code, and the parties have a history of compliance with the Code; and
 - c. Supply a completed "Deed of Guarantee For Financial Obligations In Respect of Foreign Crew".³⁴
45. The departure point for an assessment of an application and the underlying policy consideration that must be satisfied in relation to such applications is that INZ must determine whether the NZCP has made genuine attempts to find suitability qualified and experienced New Zealand citizens or residents available to crew the particular vessels for the particular period. Specifically, the NZCP must provide evidence that there are no suitable and available New Zealand applicants on the Deep Sea Fishing Crew Employment Register (DSFCER).³⁵ The NZCP may provide additional information to support the case for recruiting overseas crews such as evidence that Work and Income NZ were unable to provide suitably qualified and experienced New Zealand citizens or residents or evidence from others in the fishing industry about the current state of that part of the labour market.³⁶
46. The DSFCER referred to above (and in section WJ3.1.1(a) of the INZ Operational Manual) provides a database of people seeking work on deep sea fishing vessels within New Zealand waters and is available for fishing companies wanting to place qualified and experienced local crew on vessels. The register is operated by Clement & Associates Limited, a private company specialising in the provision of fishing information, analysis and advice, which places advertisements in newspapers and online on a quarterly basis seeking registrations by New Zealand fishers. These advertisements do not reference specific

³³ Immigration New Zealand *Operational Manual*, Section WJ3.1(a): 'Requests for approval in principle for FCFV crew members'.

³⁴ Immigration New Zealand *Operational Manual*, Section WJ3.1(a)-(d): 'Requests for approval in principle for FCFV crew members'.

³⁵ Immigration New Zealand *Operational Manual*, Section WJ3.1.1(a).

³⁶ Immigration New Zealand *Operational Manual*, Section WJ3.1.1(b).

jobs but are published to encourage New Zealand fishers looking for work to register their details on the register.³⁷

47. Whether or not the DSFCER gives a true representation of the pool of suitable New Zealand fishers looking for work is questionable. Some in the industry argue that the use of the DSFCER in the AIP process, as evidence of the availability of suitable New Zealand crew, is effectively a box-ticking exercise. The register is not audited to assess its effectiveness and it is not clear whether any New Zealander has been employed on foreign charter vessels from the register. Further, given that there are no specific jobs advertised or particular employers looking for workers in respect of the DSFCER, there is little incentive for New Zealand fishers to register on the DSFCER or maintain their registration.
48. Given the above, we submit that INZ's reliance on the DSFCER is misplaced and that the Panel recommend that the use of the DSFCER be reviewed.
49. It is noteworthy that in other pathways for recruiting foreign workers in New Zealand, the request for an AIP is made by the employer. In the case of FCVs however, it is the NZCP, not the employer of the crew, which must apply for the AIP. This is another example of the way in which New Zealand law/policy is stretched to capture the unique operation of FCVs.

Maritime Safety

50. The requirements for the safe operation of vessels in New Zealand are set out in the Maritime Transport Act 1994 ("the MTA"). The detailed technical standards and procedures that put into effect these principles are set out in the Maritime Rules ("the Rules"). Historically, FCVs operating in New Zealand fisheries waters were not required to meet New Zealand maritime safety standards but were assessed by a classification society or governed by the maritime legislator of the relevant flag state. However, there is significant variety in the rules and standards of inspection between classification societies and amongst flag states. As a result of concerns relating to the condition and safety of FCVs, the Rules were amended so that the Safe Ship Management regime set out in Rule 21 was to apply to all foreign fishing vessels registered under section 103 of the Fisheries Act after they had been operating in New Zealand for a period of two years.³⁸
51. Notwithstanding the provisions of Rule 21 (read with Rule 46), the foreign vessel is still subject to the requirements of the relevant flag state. As a result, there are two parallel safety regimes that apply to the condition and operation of FCVs in New Zealand waters. This creates uncertainty as it is not clear, where the maritime regulation of the vessel's flag state has a more permissive requirement in regard to a particular aspect of maritime safety than the Rules, which regime should be enforced.

³⁷ The New Zealand Deepsea Fishing Crew Employment Register information sheet

³⁸ *Maritime Rules* (NZ), R21.10(2), R21.9(2).

52. Further, where an accident or casualty occurs on a foreign flagged vessel within the 12 nautical mile jurisdiction of the MTA, it is difficult to determine the extent to which the MTA (and its attendant Rules) will apply and override the provisions of the law of the flag state.
53. In addition to the question of which safety regime applies to foreign flagged vessels, there is also a major issue with the ability of Maritime New Zealand (MNZ) to investigate major maritime incidents beyond 12 nautical miles. More specifically, despite an FCV being registered under s103 of the Fisheries Act as a New Zealand fishing vessel, MNZ does not have the authority to investigate incidents that occur within New Zealand's EEZ, but beyond 12 nautical miles. Such incidents include the sinking of the *Oyang 70* in August 2010. In that case, the Korean Maritime Authority appointed TAIC to investigate the sinking on its behalf. The report prepared by TAIC will not be released publicly due to a confidentiality clause in the agreement with the Korean Maritime Authority. We understand, however, that it will be considered by the Coroner in the inquest in the deaths of the crew of the *Oyang 70*.

Fisheries Management

54. In the late 2000s, concerns were raised about the safety, standard and operation of foreign fishing vessels chartered by New Zealanders to fish in New Zealand waters. In response, a major review of management controls for FCVs was conducted by the Ministry of Fisheries, together with industry.
55. The Ministry of Fisheries prepared a report on Management Measures to Mitigate the Risks from FCVs. In that report, it was acknowledged that the Ministry considers that the operation of some FCVs may compromise the integrity of the New Zealand fisheries management regime because of the risk posed by FCVs in terms of:
 - a. Defaulting on deemed values;
 - 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 FCVs; and
 - e. Ministry of Fisheries ability to use foreign crew as witnesses in prosecution cases.
56. As a result of this report, a new regime for FCVs was announced and came into effect on 1 July 2008.
57. We submit that, notwithstanding this regime, FCV operators continue to breach the rules evidenced by the fact that the risks identified in paragraph 54 above, are still present. In particular, as we noted earlier in this submission, FCVs continue to feature highly in MFish prosecutions for fisheries offences. Further, the sinking of the *Oyang 70* raises questions as to the seaworthiness of FCVs and their compliance with safety regulations.

58. In 2010, Hon Phil Heatley announced the Fisheries 2030 Strategic Direction which provides a long-term goal for the New Zealand fisheries sector. The primary goal is to have “New Zealanders maximizing benefits from the use of fisheries within the environmental limits”.³⁹ To support the goal, two outcomes are specified:

“Use – Fisheries resources are used in a manner that provides greatest overall economic, social, and cultural benefit, including:

- *An internationally competitive and profitable seafood industry that makes a significant contribution to our economy*

...

Environment – The capacity and integrity of the aquatic environment, habitats and species are sustained at levels that provide for current and future use...”

59. The operation of FCVs offend the second outcome supporting the Strategic Direction, in that FCVs have been consistently shown to be poor stewards of the integrity of the aquatic environment. In particular, high-level prosecutions of these vessels for dumping fish, trucking, high grading and other offences consume time and resources of the Ministry of Fisheries, which in the present economic environment could be better allocated.

Taxation of Foreign Fishers

60. New Zealand bases its taxing jurisdiction on the internationally accepted principle that a country can tax its residents on worldwide income, but may only tax non-residents on income derived from sources within that country.⁴⁰ Non-resident workers will be taxed under section YD4(4) of the Income Tax Act 2007 on salaries and wages ‘earned in New Zealand’. Accordingly, whether or not the income of non-resident fishers is earned in New Zealand hinges on how ‘New Zealand’ is defined for tax purposes.⁴¹

61. The Income Tax Act 2007 sYA1 defines ‘New Zealand’ in the following way:

New Zealand includes—

- (a) *the continental shelf;*
- (b) *the water and the air space above any part of the continental shelf that is beyond New Zealand’s territorial sea, as defined in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977, if and to the extent to which—*
 - (i) *any exploration or exploitation in relation to the part, or any natural resource of the part, is or may be undertaken; and*

³⁹ Ministry of Fisheries, “Fisheries 2030: New Zealanders maximising benefits from the use of fisheries within environmental limits”, <<http://www.fish.govt.nz/NR/rdonlyres/4DD60325-CADD-4E5C-92BF-A6E17C202A54/0/fisheries2030report.pdf>> p 5.

⁴⁰ Letter to Hon Mark Gosche, Chair of Transport and Industrial Relations Committee setting out the response to matters raised with the Committee by Talleys Fisheries on 14 February 2008, during submissions on the immigration Bill, undated, p 3.

⁴¹ Ibid.

- (ii) *the exploration or exploitation, or any related matter, involves, or would involve any activity on, in, or in relation to the water or air space*

62. In short, the definition of New Zealand for tax purposes includes the continental shelf and the water above any part of the continental shelf:

[t]hat is beyond New Zealand's territorial seaif any ... exploitation in relation to the part or any natural resource of the part is ... undertaken and the...exploitation involves any activity on, in or in relation to the water ...

63. Paragraph (b) of the definition, is complex and difficult to follow. In part because of this complexity, there are competing interpretations. On one hand, it can be argued that the definition requires a nexus between the part of the continental shelf and the use of the water above it. Thus, harvesting sea creatures attached to the shelf is captured by the definition, but water in which a vessel harvests 'mobile fish' above the shelf is not part of NZ.⁴² On the other hand, it is conceivable that the definition is wide enough to include activities taking place in the water and air space above the part of the continental shelf. Regardless of the competing interpretations, IRD is of the view that paragraph (b) only extends to fishing that relates to harvesting creatures of the seabed or its subsoil. Accordingly, it has consistently held that New Zealand's Inland Revenue Commissioner does not have the jurisdiction to tax foreign fishers.

64. As a matter of language, the definition is sufficiently wide in expression to 'include' fishing in the waters of the EEZ above the part of the continental shelf. Accordingly, it is possible for New Zealand to take account of foreign fishers in its tax regime.

Labour Standards on fishing vessels

65. The Panel is required to consider whether acceptable and equitable labour standards (including safe working environments) are, or can be, applied on all fishing vessels operating in New Zealand's fisheries waters within the Exclusive Economic Zone.

66. The condition of many of the vessels in the foreign charter fleet is substandard, to say the least. This fact is evident in recent photographs of the vessels themselves, and the working and living areas inside the vessels, and was recognised by the Ministry of Fisheries when it initiated its review in 2008. In that review, the Government and industry acknowledged that conditions on board the vessels were poor and decisions had been made not to place observers on board FCVs because of the health and safety risk.⁴³ The Ministry did not want to put their own employees at risk, but the Government is quite happy to allow foreign crew work visas so that they can be exposed to the same, and even greater risk. This is not acceptable.

⁴² Harris, G. A. *Income Tax in New Zealand* (2004), Chapter 16.4, 744.

⁴³ Ministry of Fisheries, *Management measures to mitigate the risk from foreign charter vessels operating in the New Zealand EEZ* (2008), 1.

67. In our view, acceptable and equitable labour standards can and should be applied on all fishing vessels operating in New Zealand fisheries waters. This can be achieved, at least in the short term, by requiring foreign charter vessels to be demised chartered and with a minimum of New Zealand crew.

International reputation and trade risks associated with the use of FCVs

68. While we are not experts in this area, we can comment as follows:
- a. The recent publicity, in the form of editorials in *Professional Skipper*, articles in the *Sunday Star-Times*, the academic papers produced by the University of Auckland, as well as numerous stories posted on-line are extremely damaging to New Zealand's reputation in terms of fisheries management, labour standards and treatment of foreign workers.
 - b. New Zealand's export markets are vulnerable to such publicity particularly when it comes to food harvesting and processing. As we have said previously, New Zealand does not have sufficient oversight of the conditions in the factories on board these vessels. Pictures of the state of the factories aboard FCVs should be cause for alarm when they are used to process fish that is then labelled 'product of New Zealand'. FCV operators lack accountability and have consistently demonstrated that they are poor stewards of New Zealand's natural resources.
 - c. New Zealand spends a lot of money and time promoting its "clean, green" image abroad, but it is allowing antiquated, inefficient and environmentally unfriendly vessels to catch up to 62.5% of New Zealand fish.
 - d. It seems incongruent that Korean flagged vessels that are harvesting New Zealand fish in New Zealand's EEZ are permitted to export the product into Korea duty-free. In contrast, a New Zealand company operating with a New Zealand flagged vessel is obliged to pay a 15% duty on the same product being sent to the same market. This is, in effect, a form of subsidy for FCVs and it is astonishing that such 'reverse' subsidies are permitted in New Zealand. We cannot reconcile this with the present government's emphasis on assisting New Zealand businesses to enter international markets.

Do the economic factors supporting the use of FCVs deliver the greatest overall benefit to New Zealand's economy and to quota owners?

69. The Code of Practice states that charter vessels contribute "approximately 40% by volume and 20% by value to total fisheries earnings. Much of that contribution is returned to the local economy by way of market access, fuel, cool storage, stevedoring, food stores, general supplies, hospitality trades and engineering services".⁴⁴

⁴⁴ Department of Labour *Code of Practice on Foreign Fishing Crew* (19 October 2006), "Background and Context", p 4.

70. This contribution, with the exception of perhaps market access, can be made equally by a New Zealand flagged fleet. In other words, if the FCV fleet were to be replaced by a domestically crewed fleet, there would be little lost in terms of the contribution to the New Zealand economy identified above and much to be gained.
71. In the event of the collapse of a joint venture involving FCVs (and there have been a number) the New Zealand creditors, including those industries listed above, are often left unpaid. It is far more likely that creditors will be able to recover lost revenues from New Zealand based operators, than foreign vessels operators. The New Zealand admiralty law reports are replete with cases involving failed joint ventures.⁴⁵
72. FCVs maintain a competitive advantage over domestic operators because of their lower operating costs associated with labour and taxation. According to Stringer et al, Government policy supports the use of FCVs provided that "the use of FCVs does not provide a competitive advantage over New Zealand crew due to lower labour costs".⁴⁶ It is clear from the above, that the use of FCVs does exactly that – provides a competitive advantage over New Zealand crewed vessels due to lower labour costs.
73. The reliance on FCVs for over 30 years has resulted in a disinvestment in the New Zealand fishing industry and a consequent loss to the New Zealand economy in terms of:
 - a. A lack of innovation and emphasis on advanced catching methodology (net technology) and processing technology on board deep sea vessels;
 - b. A "missing generation" of qualified fishermen in New Zealand. The absence of a policy and programme of employment and training of New Zealanders aboard these vessels has left the New Zealand fishing industry with a limited pool of qualified deck hands, engineers and officers available for both the deepwater and inshore fisheries;
 - c. Devastation of the inshore fleet of vessels and vessel operators as they struggle to compete with the FCVs that catch valuable inshore stock and then bid-up the lease fees.
74. The Government needs to refocus on New Zealand innovation and start making a significant investment into achieving productivity gains domestically to enable the industry, particularly the smaller players, to develop and compete on a more level playing field.

⁴⁵ See <<http://www.maritimelaw.org.nz/cases.html>>

⁴⁶ Stringer, C, Simmons, G, and Coulston, D, (2011) 'Not in New Zealand waters, surely? Labour and human rights abuses aboard foreign fishing vessels', University of Auckland, p 4.

D. Conclusion

75. The German investor that we referred to in the preamble to this submission chose not to invest in the New Zealand fishing industry and we have not heard from him since.
76. On careful analysis, the current New Zealand Immigration and Ministry of Fisheries policy in allowing these vessels to operate within the EEZ on the skewed interpretation of s103(2) and s103(4) of the Fisheries Act is legally and commercially unsustainable for the reasons outlined above. If, in a judicial review, the two Ministers were called upon to defend particular decisions made in granting AIPs or permits for these vessels to operate, it seems to us that the court would have little difficulty in finding that the Ministers have failed to take into account relevant considerations, or alternatively have taken into account irrelevant considerations in exercising their powers.
77. The incoherent policy considerations, together with a poorly drafted s103 of the Fisheries Act, creates significant legal and other tensions, which are required to be addressed urgently.

E. Recommendations

78. The Panel is required to make recommendations on how to manage FCVs. Based on the contents of this submission, we suggest the following recommendations be made.

What is the role for FCVs in harvesting New Zealand's fisheries resources?

79. After 29 years operation in New Zealand, the FCVs have established an entrenched position in the New Zealand fishing industry. Notwithstanding this, the abuses (in terms of labour, health and safety, and fisheries) that have occurred on board FCVs must not be allowed to continue. It is time for them to go.
80. If FCVs are to be permitted to continue operating, then it must be by virtue of a demise charter to a New Zealand based operator. This will help ensure that operators of the vessels are subject to the full range of New Zealand legislation as applies to domestic operators.
81. In addition, better compliance mechanisms should be put in place to ensure that foreign crew receive their full entitlements. For example, it should be a requirement that the crew's wages are paid into a New Zealand bank account in their name.
82. We note that bringing FCVs onshore should only be a short-term solution. New Zealand needs to refocus on developing its domestic fleet, both deep water and inshore, and the government should pursue policies that encourage investment by New Zealand companies in modern vessels and technology.
83. In this regard, the current funding structure (as provided through Seafic) does not foster real innovation within industry in terms of achieving productivity gains. There is no incentive for the big companies to look to alternatives when they have access to FCVs. Accordingly, the funding mechanism needs to be restructured to encourage smaller industry players to initiate industry led projects focused on plant and equipment. Any such fund should be managed independently so that no entity or block can control the decision-making. Encouraging small to medium sized operators to look to better methods of fishing will enable them to compete with the bigger operators, who will, in turn, be forced through competition to follow suit.

An appropriate policy framework and institutional design, in line with government objectives, for the operation of fishing vessels in New Zealand's fisheries waters in the Exclusive Economic Zone.

84. The government objectives are outlined in the Fisheries 2030 Strategic Direction.
85. New Zealand is not maximising benefits from the use of these fisheries. Significant direct and indirect revenues are being lost to New Zealand in the form of lost tax revenues (Income tax, GST, PAYE) and indirectly through diverting revenues to foreigners that could and should be invested in the New Zealand economy. We have further

demonstrated that the two goals supporting the Fisheries 2030 Strategic Direction are not supported by the operation of foreign charter vessels. They do not provide the “greatest overall economic social and cultural benefit”. It is our view that they have the opposite effect, and in fact remove economic, social and cultural benefits that rightly belong to New Zealanders.

86. Further, Government resources are consumed in a constant battle to ensure that these vessels meet New Zealand safety standards. FCVs are demonstrated to be consistently non-compliant with the Maritime Transport Act and are disproportionately represented in Maritime New Zealand’s statistics for accidental injuries and deaths.
87. Accordingly, it is our view that the Panel recommends a high-level change in policy focused around the New Zealandisation of these FCVs through:
 - a. The requirement that the vessels be demised chartered to New Zealand operators;
 - b. That the vessels be flagged in New Zealand in order to address the safety/OSH/application of employment legislation to these operations;
 - c. That the full wages and profits of these vessels be subject to New Zealand income tax, GST, PAYE and ACC deductions;
 - d. That a minimum NZ crewing requirement (both officers and crew) be progressively implemented in order to provide opportunities for the employment and training of New Zealanders;
 - e. That the vessels (like Australia) should be fully New Zealand owned after a period of two years).
 - f. That an independent funding body be established to fund innovation (including plant and equipment) to encourage vessel development and fishing technology by industry.

The appropriate legal framework that should underpin this regime.

88. In our view, the appropriate legal framework for the operation of FCVs is set out in sections 81-88 of the Fisheries Act 1996. The current basis on which FCVs are allowed to operate in New Zealand, through s103(4) is at odds with New Zealand’s international obligations as expressed in UNCLOS and s5 of the Fisheries Act 1996.
89. The departure point should be an amendment of s103 of the Fisheries Act 1996 to achieve the following outcomes:
 - a. That, as a short-term interim arrangement, that FCVs be fully demised chartered to New Zealand operators as a condition for receiving permits; and
 - b. That they be required to be New Zealand flagged; and

- c. That it be specified either in policy, or as a condition for the issue of a vessel licence that a minimum number of crew (say 50% including officers and crew) be New Zealand residents or citizens; and
- d. That within a period of say two years, no vessels be licensed unless they are New Zealand owned. It is suggested that ownership of vessels could be consistent with the requirements for overseas investments in fishing quota as expressed in sections 56-62 of the Fisheries Act 1996.

Options for, and the practicability of, monitoring and enforcing adherence to the recommended legislative and policy settings.

- 90. The Code of Practice has done little or nothing to address the abuse of workers with FCV operators playing lip-service to the requirements of the Code together with the Minimum Wage Act and Wages Protection Act.
- 91. Accordingly, in our view, there should be an unequivocal policy change, together with prescriptive legislation (by way of an amendment of s103 of the Fisheries Act) that would achieve the objectives outlined above. Should the policy be amended, together with the consequential legislative amendments, it is suggested that the FCVs would fall under the New Zealand enforcement and compliance mechanisms, with a resulting decrease in enforcement and compliance costs together with the operators being directly accountable for any breaches of NZ legislation.
- 92. The issue of AIP's is normally done on an annual basis. We suggest that for current operators, that it become a requirement to obtain the renewal of an AIP, that the vessel be demise chartered to a New Zealand company, and that the crew be paid in New Zealand under a New Zealand contract of employment.

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