



7 October 2011

Paul Swain
Chair of the Ministerial Inquiry into Foreign Charter Vessels
c/o Jenny Wood
Ministry of Agriculture and Forestry
PO Box 1020
Wellington 6140

Dear Mr Swain

Please find attached the Department of Labour's submission to the Ministerial Inquiry into Foreign Chartered Fishing Vessels.

The Department of Labour welcomes the opportunity to make a submission to the Inquiry. The fishing industry is a key export industry for New Zealand. It is important that the structural settings in the industry, including labour settings, maximise the contribution to New Zealand's economic growth while maintaining New Zealand's international reputation and maintaining equitable labour standards for all workers.

If you have any questions about this submission or want the Department to attend an oral hearing please contact Chris Hubscher, Team Manager Immigration policy. Chris can be contacted by email at chris.hubscher@dol.govt.nz or by phone 04 915 4209.

Yours sincerely

Jeremy Corban
for Secretary of Labour



7 October 2011

Department of Labour submission to the Ministerial Inquiry into Foreign Chartered Fishing Vessels

Purpose

- 1 This submission, prepared by the Department of Labour (the Department), responds to the request for submissions by the Panel for the Ministerial Inquiry into Foreign Chartered Fishing Vessels (FCVs). The submission outlines the Department's views on:
 - labour market issues in the deep sea fishing industry
 - the minimum labour standards that should apply to foreign crew, and
 - mechanisms through which these standards could more effectively be enforced.

Key points

- 2 In summary:
 - From the Department's perspective, the two key issues with regard to the use of foreign labour in New Zealand deep sea fishing operations are:
 - whether it is possible and desirable to generate more employment opportunities for New Zealanders to work on deep sea fishing vessels, and
 - what minimum labour standards should apply to foreign crew and how these could be more effectively enforced.
 - The two questions have been considered separately. However, they do have implications for each other. For example, redressing regulatory advantages currently enjoyed by FCV operators may help level the playing field with operators of New Zealand fishing vessels.
 - Additionally, an increase in the number of New Zealanders employed on domestic deep sea fishing vessels would reduce the concerns that exist around the conditions of foreign crew. Greater use of New Zealand labour would create stronger incentives to maintain domestic standards, making it easier to ensure acceptable and equitable treatment of all workers in the fishing industry.
 - In the Department's view, if increasing the number of New Zealanders employed in the industry (through more use of domestic vessels) could be done without unduly impacting on the overall value of the fisheries resource, there are likely to be significant benefits for New Zealand.
 - To achieve this, depending on the degree to which segmentation is feasible, it could be useful to focus efforts on higher value fisheries where domestic vessels already operate. But it is probably not realistic to expect that the

whole deep sea fishing effort could be crewed by New Zealanders. This means that there is always likely to be a role for some foreign crew in the deep sea sector of the industry.

- In general, New Zealand labour regulations, excluding the Health and Safety in Employment Act (the HSE Act) already apply to FCVs. But these regulations have proved difficult to enforce in practice. In order to ensure acceptable and equitable treatment for FCV crews and reduce the risk to New Zealand's international reputation, the Department recommends extending the coverage of New Zealand labour standards by bringing FCVs under the HSE Act, and requiring payment of ACC levies. This will also help level the regulatory playing field for New Zealand fishing operators.
- To ensure that current and any new minimum labour standards can be better enforced, the following should be considered:
 - a requirement for a New Zealand employer and employment agreement for foreign fishing crew, whether on FCVs or reflagged domestic vessels
 - more resources put into enforcement of labour standards, including investigating joint agency compliance roles, and
 - better regulation of overseas manning agents.

Background

- 3 New Zealand seafood companies often charter foreign vessels through a 'joint venture' to harvest their deep sea quota. Charter agreements are either a demise charter or a time charter. In a demise charter, the New Zealand operator crews and physically operates the vessel. A time charter is simply a contract to perform services. The owner crews and operates the vessel and provides the contracted services (i.e. fishing) to the New Zealand Charter Partner (NZCP).
- 4 Both types of charters are acceptable under the Fisheries Act 1996, as quota holders are under no obligation to catch the quota themselves. FCVs as currently operated are time charters. This means the foreign joint venture partner is responsible for operating and crewing the vessel.
- 5 The deepwater fishing fleet comprises approximately 45 vessels, 19 of which are FCVs. The majority of FCVs are either Ukrainian vessels with Eastern European officers and crew, or Korean vessels with Korean officers and Southeast Asian (mainly Indonesian) crew. Crewing FCVs is generally subcontracted through offshore manning agents. Often, the crew are paid in part via these manning agents, who retain a certain portion as fees and commission.
- 6 Issues related to labour standards, crew safety (including both workplace and personal safety) and ship jumping have occurred at regular intervals in the past. Challenges in applying and enforcing New Zealand's employment and health and safety laws have led successive Governments to use immigration policy as a means of achieving industry compliance with minimum employment standards.

The Government's objectives for the Ministerial Inquiry

- 7 The Ministerial Inquiry into Foreign Fishing has been set up in response to concerns related to the safety and conditions of FCV crew and vessels. The Government objectives for the Ministerial Inquiry are to:

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

Underlying labour market issues in the fishing industry

- 8 The New Zealand deepwater fleet is a mix of domestic and FCV vessels. There are slightly more New Zealand vessels, but FCVs are generally larger than domestic vessels. Approximately 1,200 to 1,500¹ FCV crew and officers were approved work visas in the last financial year. The Department has estimated, based on 2006 census records and the number of domestic vessels, that there are approximately another 1,000 – 1,200 workers on domestic deep sea vessels. A small number² of foreign crew are also working on these domestic vessels.
- 9 In general, FCV use is more prevalent in lower value and/or seasonal fish species. For example FCVs only catch around 30 percent of the total hoki catch but take almost all of the commercial squid and jack mackerel catch. The proportion of FCVs and domestic vessels has remained relatively constant for a number of years. This suggests that there is currently some sort of equilibrium in the mix of foreign and domestic labour existing within the deep sea fishing sector.
- 10 One key reason why FCVs are used is that they are a cheaper alternative to using New Zealand-flagged and crewed vessels, due to their lower labour costs. Despite immigration policy requirements that require FCV crew to be paid more than the minimum wage (subject, however, to deductions), FCV crew pay is still likely to be significantly lower than the level of pay normally received by New Zealand crew of domestic vessels.³ Where FCV crew are from countries with lower living standards, fishing companies are able to offer lower levels of pay than New Zealanders would receive. Many crew from Southeast Asia, for example, are happy to accept terms and conditions that are far below New Zealand norms, but are still adequate to support themselves and their families.
- 11 From the Department's perspective, the two key issues with regard to the use of foreign labour in New Zealand deep sea fishing operations are:
- whether it is possible and desirable to generate more employment opportunities for New Zealanders to work on deep sea fishing vessels, and
 - what minimum labour standards should apply to foreign crew and how these could be more effectively enforced.

¹ Data on occupations and the industry or sectors of workers is not accurately captured by Immigration New Zealand's (INZ) application management system. Data is therefore based on estimates only.

² Domestic fishing companies have received authorisation to recruit around 85 foreign crew to work on domestic vessels through approvals in principle (AIPs) approved by INZ's Christchurch branch over the past two years. A manual search would need to be undertaken to provide exact numbers of crew actually approved under the AIPs. A manual search would also be required to ascertain the number of foreign crew approved under other policies or through other branches. The time constraints on the submission process mean that it has not been possible to undertake these searches.

³ No recent research has been done on this, but a 2006 study found FCV crew pay was well below the norm for crew of domestic vessels.

FCVs and deep sea fishing employment opportunities for New Zealanders

- 12 One of the objectives of the inquiry is to maximise the economic return to New Zealand from our fisheries resources. At one level this can be taken to mean maximising the commercial value of the fisheries quota. At another level, economic return to New Zealand can be taken to include consideration of wider economic development issues, and distributional issues such as the contribution to economic activity in the regions, job opportunities for locals and contribution to the tax base.
- 13 The Department is not aware of any studies which look at this issue in depth. As such we consider it an open question whether status quo arrangements are achieving the best outcomes for New Zealand overall. The Department recommends that the Inquiry Panel give careful consideration to whether the industry should be moved towards greater use of New Zealand vessels and crew, with these wider benefits in mind.

Impact of FCVs on domestic vessels and crew

- 14 The lower labour costs for FCVs put operators of New Zealand-crewed vessels at a relative disadvantage to FCV operators. This cost saving can have significant financial benefits for FCV users and some quota holders, but may limit opportunities for the expansion of the domestic fleet and jobs on it.
- 15 The degree of competition between domestic vessels and FCVs, however, remains unclear. It appears that while to some extent the two fleets operate in different fisheries niches, there are certain fisheries (i.e. hoki) in which both domestic and foreign vessels operate. This could imply that FCVs are operating in a sphere which New Zealand-crewed vessels could conceivably fill.
- 16 Current immigration settings attempt to protect job opportunities for New Zealand fishers, and their terms and conditions, through the requirement for labour market testing,⁴ and minimum remuneration requirements (above the statutory minimum wage) for FCV crew.⁵ But it is unclear that either of these requirements has actually achieved the desired outcomes. This is because:
- The existing labour market test has proven redundant in the FCV context. With time charters, the crew is recruited overseas. The working and living environment on the vessel is effectively foreign, and terms and conditions are likely to be much less attractive than on a domestic vessel.
 - We do not know the extent to which the minimum remuneration requirements have helped to maintain the current equilibrium between domestic (New Zealand-crewed) vessels and FCVs. What is clear is that they do not appear to have made domestic vessels more competitive against FCVs.
- 17 It should also be noted that there is no guarantee that the minimum pay (or any future increases to it) actually makes its way to the crew. Use of manning agents means that 'clipping the ticket' is an established feature in the sector, at least where Southeast Asian crew are concerned. Increasing the minimum pay in

⁴ A check to ensure that no suitable New Zealanders are available.

⁵ Crew are paid no less than the minimum wage plus \$2 per hour for all hours worked, with deductions not to take net pay below the minimum wage for all hours worked (unless less than 42 hours per week were worked, in which case 42 hours at the minimum wage plus \$2 must still be paid).

isolation of other measures might mean that New Zealand companies pay more to foreign manning agents and other third parties, with no actual benefit to the crew.

To what extent it would be advisable to rebalance the fishing effort towards New Zealand-crewed vessels?

- 18 In general, other things equal, the Department supports efforts to increase employment opportunities for New Zealanders, including in the fishing industry. More New Zealand crew and consequently more New Zealand vessels would also meet some of the objectives of the Inquiry because:
- the scope for exploitative labour practices would be diminished (New Zealanders simply would not tolerate, and could not afford, the kinds of practices alleged - especially towards Indonesian crew), reducing the risk to New Zealand's international reputation and our market access, and
 - New Zealand legislative standards, including employment law, would apply to domestic vessels and would be more easily enforceable.
- 19 However, the impact on the fishing industry would need to be carefully considered. An increase in the domestic fleet (as New Zealanders would be unlikely to work on FCVs) and an improvement in the terms and conditions offered would be required to make the job more attractive to New Zealanders, but would consequently result in higher labour costs for current FCV users, and with that, potentially lower commercial value of the quota. But it is unclear how this would play out in terms of overall economic return to New Zealand, and the dynamics of the industry.

What efforts would be required to attract more New Zealanders

- 20 In the Department's view, a significant increase in the use of New Zealand crew and vessels is possible, but only over time, and only if there is a significant improvement in conditions and remuneration in parts of the deep sea fishing sector. Appropriate investment in training would also need to be made. If the costs for up-skilling are met by the operators this would further increase their operating costs.
- 21 It is likely that additional workers would come from a range of sources, including people currently on benefits and workers moving from other industries. The Ministry of Social Development advises that there are currently 891 job seekers with work experience in fishing-related jobs registered with Work and Income. However, it is unknown how many would be prepared to work on deep sea vessels. Some New Zealand domestic vessels already have foreign crew on them, indicating that there may be a shortage of suitable and available New Zealand workers.
- 22 Given this, it is unlikely that the whole fishing industry would be able to be crewed using only New Zealand workers in the short or even medium term, even assuming appropriate conditions and remuneration. Accordingly, there is likely to be a role for foreign crew, even if they are on New Zealand domestic vessels. To ensure that an increase in foreign crew onboard domestic vessels did not negatively effect job opportunities and pay onboard these vessels, immigration requirements would need to be well managed.

The Department's assessment

- 23 Moves to increase the use of New Zealanders in the fishing industry would distribute the direct economic benefits from the fishing industry to more New Zealanders by providing job opportunities. An added advantage would be that this would also

meet the other objectives of the Inquiry by reducing the likelihood of exploitative labour practices (which New Zealanders would be less likely to accept).

- 24 The Department does not have information on the impact increasing the number of New Zealanders (and the subsequent increase in labour costs) would have on the economic return of certain New Zealand fisheries and companies. However, if increasing the number of New Zealanders employed in the industry could be done without unduly impacting on the overall value of the fisheries resource, there are likely to be significant benefits. In particular, depending on the degree to which segmentation is feasible, it could be useful to focus efforts to increase the numbers of New Zealanders on higher value fisheries where domestic vessels already operate.
- 25 If the panel recommends increasing the numbers of New Zealanders, the Department's recommended approach would be to 'New Zealandise' the FCV fleet by re-flagging vessels to New Zealand, and requiring New Zealand employers and New Zealand employment agreements. New Zealand employers could be required to make genuine attempts to recruit New Zealanders, including by offering market rates of pay. However, in our view it is unlikely that the whole New Zealand fishing effort could be crewed from available New Zealanders in the short to medium term. There is likely to be some role for foreign workers on an ongoing basis.

What minimum labour standards should apply to foreign crew, and how can they be more effectively enforced?

- 26 It is likely that there will continue to be a role for foreign crew in the New Zealand fishing effort, either through FCVs or foreign crew on domestic vessels. Consideration needs to be given to what minimum labour standards should be applied and how those standards can be ensured. Redressing regulatory advantages currently enjoyed by FCVs may also help level the playing field with New Zealand operators.
- 27 The impetus for this inquiry is allegations of onboard abuse and systematic underpayment of FCV crew. This has obvious implications for the treatment of people in terms of New Zealand's domestic laws, its international commitments and the values of New Zealand society. In addition, the perception – and reality – of the exploitation of those working on FCVs has the potential to damage New Zealand's international reputation and relationships and our economic interests.
- 28 Human rights and labour issues are also an increasingly prominent consideration in international trade. A perception by New Zealand's trading partners or consumers in those countries that New Zealand-sourced fish products are produced under exploitative labour conditions may see boycotts or other forms of action taken which would affect the industry as a whole.

Current labour and immigration regulatory regime for FCV crew

- 29 In general, New Zealand's minimum regulatory employment standards already apply to FCVs. This includes the Minimum Wage Act 1983 and Wages Protection Act 1983 (through the Fisheries Act 1996). Labour Inspectors, the Employment Relations Authority and the Employment Court have jurisdiction to deal with complaints made by crew on FCVs. But coverage of the Health and Safety in Employment Act (HSE) Act is limited to workers with a New Zealand employment agreement or contract, on ships undertaking coastal trade, and on New Zealand-flagged vessels. This excludes FCVs as they are currently operated.

- 30 Challenges in applying and enforcing employment law, combined with the lack of coverage of the HSE Act, have led successive Governments to use immigration policy as a means of achieving compliance with minimum employment standards on FCVs. Immigration policy is a useful mechanism for encouraging compliance as companies need immigration approval to recruit FCV crew. Immigration requirements for FCV crew are set out in immigration policy, and the Code of Practice for Foreign Fishing Crew.
- 31 The immigration policy requirements have two general aims. The first is that FCV crew should receive decent and ethical treatment in New Zealand, including minimum employment conditions and basic protection from mistreatment. The second is that use of FCVs should not undermine job opportunities and terms and conditions for existing and potential domestic crew.
- 32 Current immigration policy (as reflected in the Code of Practice) requires that:
- crew are paid no less than the minimum wage plus \$2 per hour for all hours worked, with deductions not to take net pay below the minimum wage for all hours worked (unless less than 42 hours per week were worked, in which case 42 hours at the minimum wage plus \$2 must still be paid)
 - crew employment agreements align with New Zealand standards, and employment disputes are settled in New Zealand employment institutions
 - FCVs take action to manage ship desertion and overstaying, including notifying the Department when crew arrive and depart
 - crews have minimum working and living conditions covering areas such as clothing, hygiene, meals, and the provision of amenities, and
 - regular reporting requirements apply, including provisions for onboard inspections by Department officials, to ascertain compliance with the Code of Practice.
- 33 The immigration requirements are subject to regular and formalised auditing by the Department of Labour.

Effectiveness and operational challenges

- 34 The policy and legislative framework for FCVs poses a number of enforcement challenges. In practice, it is difficult for labour inspectors and immigration officers to identify and access the real employer of crew on FCVs. Generally, the employees' employment agreements are with overseas parties, making investigation of specific issues problematic. So, while the Fisheries Act 1996 may create an employer for the purposes of the Minimum Wage Act and the Wages Protection Act, and the Code of Practice makes the New Zealand Charter Partner liable for any breaches, this may not be completely effective when the 'deemed' employer or responsible person has limited day to day real responsibility for operation of the vessel and the terms and conditions of employment for its crew.
- 35 Recent amendments to the Employment Relations Act 2000 have provided Labour inspectors with a wider range of compliance tools. Where there is an accountable New Zealand employer, these tools could be used in dealing with employment issues aboard fishing vessels.
- 36 To assure crew health, safety and welfare, the arrangements in place assume FCVs are subject to their own national health and safety legislation similar to that

applying on a New Zealand vessel. This may or may not be the case, and regardless of the law applicable, there may or may not be compliance with the Flag State's laws. Non-compliance with maritime transport or health and safety legislation may endanger crew and/or the viability of the fishing ventures themselves, resulting ultimately in the loss of vessels and crew. It could also potentially undermine New Zealand's reputation as a safe place to do business or as a responsible trading partner.

- 37 The Department's ability to enforce immigration policy and employment relations requirements is complicated by the fact that many crew tend to be paid in part through offshore manning agents. The Department audits how much the vessel operator pays out. It is not, however, readily able to determine or enforce how much actually gets paid to the crew members, given that these transactions take place offshore and often in cash.

What labour standards should apply?

- 38 In order to protect New Zealand's international reputation, acceptable and equitable New Zealand labour standards (including safe working environments) should be applied to all FCV crew. At an absolute minimum this should include access to safe working conditions, suitable accommodation, clean food and water and protection from coercion and forced labour. As discussed above, minimum regulatory employment standards already apply to FCV crew. The current regulatory framework goes further than this and also applies a \$2 increment above the New Zealand statutory minimum wage (which may, however, be deducted away back to the minimum wage).
- 39 A range of options are possible in relation to labour standards and related regulation. These go from complete coverage of New Zealand health and safety and employment laws and policies including the payment of ACC levies to the basic minimum standards applied by our international obligations.
- 40 FCV operators have previously argued that the New Zealand minimum wage should not apply to FCV crew. However, the Department recommends maintaining the existing minimum regulatory labour standards that apply to FCVs, and extending coverage of the HSE Act and requiring the payment of ACC levies. This would ensure acceptable and equitable treatment for foreign crew, reduce the risk to New Zealand's international reputation and help level the playing field for New Zealand domestic fishing operators.

Statutory minimum wage

- 41 FCV operators have previously argued that the New Zealand statutory minimum wage (and the \$2 increment required by immigration policy) should not apply to FCV crew. This is because the minimum wage is designed to ensure persons residing in New Zealand earn enough to cover the cost of living in this country. FCV crew are accommodated on board so do not face the cost of living in New Zealand. They are likely to consider wage rates acceptable or not on the basis of the costs they face in their home countries. In many cases, because these costs (and incomes) are lower, it is clear they would be prepared to work for much less than the New Zealand minimum wage.
- 42 Excepting FCV crew from the New Zealand statutory minimum wage would reduce the labour costs of FCVs. It would also reduce the amount of resources expended

by the Department trying to enforce minimum rates of pay (noting that such efforts may not always be successful anyway).

43 But removing the right to the New Zealand minimum wage is not recommended by the Department, because of the reasons below.

- It would give FCVs significant competitive advantage over domestic vessels. It is not clear that this cost saving would deliver broader economic benefits for New Zealand.
- Foreign crew would be likely to earn considerably less than equivalent New Zealand fishing crew and other workers in other New Zealand industries. This could create an incentive for them to 'jump ship' and seek illegal work in New Zealand.
- It is likely to lead to the perception of exploitation of FCV crew both by New Zealanders and overseas observers. FCV crew have limited ability to negotiate better terms and conditions for themselves. This would be likely to impact on our international reputation.

Health and safety

44 The HSE Act does not currently apply to FCV crew. The safety standards of the vessels themselves are ultimately the responsibility of the flag state. In the Department's view, any workers in New Zealand waters should be subject to the same protection from injury and death as New Zealanders. It therefore recommends that coverage of the HSE Act be extended to FCVs. This could be achieved through re-flagging vessels to New Zealand (in which case they would no longer technically be FCVs). As an alternative, a legal opinion is currently being prepared as to whether it would be possible to extend the HSE Act to FCVs without their reflagging to New Zealand. This opinion will be made available to the Panel.

How could labour standards be better enforced?

45 In general, minimum labour standards, excluding the specifics of the HSE Act, already apply to FCVs – albeit through somewhat indirect mechanisms. It is the difficulties some crew face in demanding minimum standards of treatment, and challenges the New Zealand government faces in enforcing these standards on foreign vessels and employers that have proven problematic.

46 The section below outlines possible approaches to improve New Zealand's ability to enforce minimum labour standards. Ensuring appropriate incentives for compliance and making enforcement easier would reduce the risk of abuse and underpayment of foreign crew.

Requiring New Zealand employers

47 Requiring a New Zealand employer and employment agreements for foreign crew would enable the Department to more easily identify and hold to account the actual employers of foreign crew. This approach improves both incentives and ease of enforcement. It would also help ensure more equitable labour standards across the fishing industry, by:

- extending New Zealand health and safety legislation and ACC weekly compensation to all foreign crew
- affording foreign crew the same entitlements as New Zealand crew in terms of holidays and sick leave

- making a New Zealand employer genuinely accountable for meeting all employment legislation, and
 - eliminating a cost advantage that FCV users get by not paying ACC and other levies and taxes that New Zealand employers and employees must pay.
- 48 It could also be possible to more tightly manage the recruitment and employment of the foreign workers. The Recognised Seasonal Employer (RSE) policy, which has a Pacific preference, manages foreign labour in the horticulture and viticulture industries. RSE policy contains strict rules around pastoral care and minimum remuneration. Government to Government arrangements govern recruitment in the Pacific Islands, reducing potential for non-transparent 'ticket clipping' by third parties.
- 49 Consideration should be given to an RSE-type model in the fishing industry, which could even extend to the nationalities of crew that New Zealand would consider acceptable to undertake this work. RSE policy's Pacific focus has enabled good economic returns for Pacific workers and their communities, while at the same time helping to meet seasonal labour shortages. Pacific countries are actively seeking more labour mobility opportunities with New Zealand and elsewhere.

Better policing of current policy

- 50 It would be possible to place more evidentiary obligations on the NZCP under the Code of Practice. This could include the obligation for them to prove payments to crew members overseas. This would assist the audit process by ensuring that it was up to the NZCP to prove the payment of wages have been made rather than the Department having to prove that they were not made.
- 51 In addition, the resources that Government agencies have available for auditing FCVs could be increased. The Department is currently reviewing the effectiveness of the Code of Practice auditing programme undertaken by INZ. This will look at whether the current processes are robust enough and how they might be funded in the future.

Operational challenges

- 52 While there may well be small operational efficiencies that can be found within the current enforcement processes, more focus on forensic accountancy services and auditing practices are likely to increase the overall costs of enforcement. Offshore employers and manning agents will always create challenges for enforcement of immigration policy and employment law.

Better linkages with other agencies

- 53 Agencies could work together on compliance activities on FCVs. Agencies already devote significant resources to monitoring catches and auditing Code of Practice requirements. There may be the opportunity to mandate fisheries observers as labour inspectors, or combine the roles in some way. More onboard observers would be better able to monitor the hours worked and labour standards for FCV crew. A health and safety function could also be included if the HSE Act is extended to cover FCV crew.

Operational challenges

- 54 Onboard inspectors would not be able to assess how much the crew are actually paid, because in many cases the crew's payment is remitted overseas via manning

agents and/or other intermediaries. In addition, pay arrangements are generally not finalised until the end of each trip. It should also be noted that in the current fiscal environment, further investigation would be needed on the operational, legal and financial implications of dual roles for enforcement and inspection.

Better regulating the use of offshore manning agents

- 55 Tighter regulation or outright banning of the use of manning agents offshore could reduce the risk of wages paid in New Zealand not reaching the workers. It could also reduce the risk of workers arriving in New Zealand in debt after having paid up front for their job. Another option could be engaging with the foreign governments of FCV crew to regulate the activities of manning agents (as noted above, similar arrangements are in place for the RSE policy).
- 56 Payment through bank accounts in New Zealand could also be made a requirement. This would provide greater transparency and make it easier to ensure foreign crew receive their minimum entitlements. This would give manning agents less ability to unaccountably 'clip the ticket'.

Operational challenges

- 57 There would be constraints on the usefulness of such steps without the ability to enforce them. Manning agents are a standard part of shipping practices around the world, particularly in developing countries. An outright ban would be likely to lead to manning agents continuing 'under the radar' with potentially less oversight.
- 58 In all likelihood, manning agents would continue to play a role for foreign crew from places such as Indonesia. They might charge crew more for a job offer up front if they were unable to take a percentage of the crew wages. Methods of remittance would also need to be investigated because the crews' families are likely to rely on money paid to them personally by the manning agent. It raises the issue as to whether conditions and pay for foreign crew would best be improved by targeting nationalities whose countries' infrastructure, laws and governments are most likely to support the crew retaining the full value of their earnings.

ACC provisions for FCV crew

- 59 Foreign crew aboard FCVs are generally covered by ACC. A crew member injured aboard an FCV may be entitled to rehabilitation and lump sum compensation, but will not be entitled to weekly compensation unless he or she is an earner who can establish "earnings as an employee" and remains in New Zealand (i.e. PAYE income payments). But ACC levies are not paid, because FCV crew wages are not subject to New Zealand tax.
- 60 Arguably, this is inequitable, in that foreign crew are entitled to ACC benefits while not subject to the associated levies. The Department considers that payment of ACC levies be seen as a part of the cost of operating in New Zealand's EEZ, The Department notes that payment of levies would be required for foreign crew operating under New Zealand employment agreements and paying New Zealand tax.

The Department's assessment

- 61 In general, New Zealand labour regulations (excluding the HSE Act) already apply to FCVs. But in practice these regulations have proved difficult to enforce. In order to ensure acceptable and equitable treatment for FCV crews and reduce the risk to New Zealand's international reputation, the Department recommends extending

coverage of New Zealand labour standards by bringing FCVs under the HSE Act, continuing to require the minimum wage, and requiring payment of ACC levies. This will help level the regulatory playing field for New Zealand domestic fishing operators.

62 To better enforce New Zealand's laws and labour standards, the following requirements should also be considered:

- require a New Zealand employer and employment agreement for foreign fishing crew, whether on FCVs or reflagged domestic vessels
- more resources being made available for enforcement of labour standards, including investigating joint compliance roles, and
- better regulation of overseas manning agents.

63 This approach would meet two of the objectives of the inquiry, because:

- the scope for exploitative labour practices would be diminished, reducing the risk to New Zealand's international reputation and our market access
- equitable New Zealand legislative standards, including employment law, would apply and would be more easily enforceable.

64 This approach, on its own, is unlikely to significantly increase the costs of using foreign crew.⁶ This is because although boats would reflag to New Zealand, in many cases the existing foreign crew would remain, and have the same rate of pay as under the current regime. Significant increases in costs is only likely to occur through increases in the number of New Zealand domestic crew (because terms and conditions would need to be made attractive to New Zealanders).

⁶ It has been estimated that if New Zealand employers and employment agreements were required, but wage rates were not increased above the minimum wage, wage costs on operators would only increase approximately three percent.