

Ministry of Agriculture and Forestry's submission to the Ministerial Inquiry into Foreign Charter Vessels

Introduction

1 This submission provides the Ministry of Agriculture and Forestry's views on the issues associated with the use of foreign charter vessels (FCVs) in a fisheries context. The submission also describes some preliminary options that the FCV Inquiry Panel may wish to consider when determining how best to address the issues associated with the use of these vessels. However, the Ministry has not yet completed a detailed cost and benefit analysis of the options presented below and this would be required before these options could be considered for implementation.

Background

2 The Ministry is one of a number of agencies with responsibilities regarding the use of FCVs in New Zealand waters. The Ministry's primary responsibility with regard to FCVs is to ensure compliance with fisheries law.

3 FCVs fishing in New Zealand waters must comply with all relevant provisions of the Fisheries Act 1996 and Regulations made pursuant to it. Before conducting any fishing activity within New Zealand waters, FCVs must be registered as New Zealand fishing vessels under the Fisheries Act 1996, which requires the consent of the Chief Executive of the Ministry of Fisheries (now Director General of the Ministry of Agriculture and Forestry).

4 The use of FCVs has given rise to a range of issues that touch upon a wide array of matters, both directly and incidentally associated with commercial fishing. These issues include labour, immigration, maritime safety, trade/market access and fisheries compliance.

5 The Ministry notes that many of these issues are not unique to New Zealand but are in fact global in nature. The use of foreign owned fishing vessels in various configurations is not unusual practice around the world. The employment of foreign crew of mixed nationality on vessels (fishing and non-fishing) is widespread and the potential for their mistreatment is also a global issue. The Ministry considers the Inquiry to be an opportunity for New Zealand to proactively identify and address these problems and thereby maintain New Zealand's reputation as a responsible fishing nation.

Key Issues

6 The Ministry acknowledges that, from a fisheries perspective, there are issues with the way FCVs currently operate. Specifically these issues are:

- a. The use of FCVs can have implications for New Zealand's ability to access overseas markets for its seafood. Flag State based measures are increasingly being expected by markets (States and private sector) and regional fisheries management organisations. These include fisheries product certification, flag State black listing and trade sanctions targeted at flag States. Under current arrangements New Zealand may be constrained in its ability to respond to flag State based measures for product harvested by FCVs.

However, the Ministry also acknowledges that the use of Korean FCVs can on occasion provide for market access, as product caught by a Korean vessel is exported to Korea tariff free. This can provide some of the users of Korean vessels with a price advantage over their competitors.

- b. Concerns that some foreign crew working on the FCV fleet are not sufficiently trained in the rules and regulations of the New Zealand fishing regime leading to poor and in some cases illegal fishing practices
- c. The negative public perception associated with the operation of FCVs and the wider New Zealand fleet, and the implications that this negative media coverage has on the wider seafood sector, the government and New Zealand.

7 The Ministry also acknowledges that the full suite of issues associated with the use of FCVs is wider than the fisheries specific issues listed above. The Ministry considers that submissions from stakeholders and other government agencies will likely address this wider suite of issues. The Ministry recognises that a key challenge facing the Inquiry Panel will be to fully indentify the nature and extent of these issues and to provide effective solutions.

Current use of FCVs

8 There are currently 26 FCVs operating in New Zealand that are flagged to four countries: South Korea, Ukraine, Japan and Dominica. Twenty of these FCVs are trawlers in deepwater fisheries that operate year round; most of which have a long history as part of the deepwater trawl fleet. Other FCVs operate in seasonal fisheries that cannot support a permanent harvesting capacity in New Zealand. The average vessel age of the current FCV fleet is 26 years, compared to 23 years for the deepwater domestic fleet.

The Deepwater Fleet

9 The Deepwater fleet comprises approximately 45 vessels, 20 of which are FCVs. Most companies that fish for deepwater species use FCVs or have used them in the past. Deepwater trawl vessels generally fish between 300 and 340 days per year. Some FCVs are specially equipped to operate in certain deepwater fisheries such as the trawl fishery for jack mackerel.

10 Of the nine main species caught by FCVs, roughly two thirds of the total volume has been taken by FCVs over the last five years. This is approximately 40% by volume of the total commercial harvest of all species in the Quota Management System. The annual value of this catch has ranged between \$275 and \$387 million. The Ministry has previously provided a detailed analysis of catch taken by FCVs.

The Highly Migratory Species Fleet

11 The highly migratory species (HMS) fleet comprises approximately 30-35 vessels. The majority of these are domestic vessels, with four Japanese FCVs currently operating.

12 The four FCVs operate in the southern bluefin tuna (SBT) fishery between April and June/July, predominantly off the west coast South Island. These four FCVs catch about one third of the catch in the SBT fishery. The SBT fishery is just one component of these FCVs' fishing plan as they also fish outside New Zealand waters in the Tasman Sea and elsewhere in the western and central Pacific. During this time they are managed by Japan as the flag State.

13 These four Japanese FCVs are all operated by the New Zealand Japan Tuna Company Ltd which has share-holdings from Solander Ltd and Sanford Ltd. The joint venture has operated since 1989.

Ministry's Position

14 The Ministry considers that it is appropriate to allow quota owners to choose the most appropriate means to both harvest their quota and ACE allocations and to operate their businesses. For some operators this could be achieved by the lease of foreign owned vessels under contractual arrangements; and the Ministry supports this continuing. The Ministry acknowledges that on occasion the use of foreign labour to crew these vessels is both necessary and appropriate. The Ministry also considers that irrespective of how business operations are structured they should make an economic contribution to New Zealand.

15 However, such flexibility should occur within a robust legislative and standards regime that is adequately monitored and enforced. This is critical to ensure that:

- a. In terms of compliance with New Zealand legislation there is a level playing field for all operators. The Ministry acknowledges that this is not currently the case given that the full extent of New Zealand law, particularly legislation relating to labour and vessel safety, does not apply to foreign flagged vessels operating in New Zealand waters.
- b. The safety and wellbeing of Ministry staff (Observers and Fishery Officers) and crew working on these vessels is assured.
- c. The actual operation of the New Zealand fleet contributes to, rather than compromises, the positive reputation of the seafood sector nationally and internationally.

Ministry Recommended Options

16 Effectively addressing the FCV related issues described above is likely to require a suite of responses. The Ministry recognises that there is unlikely to be a single solution to all the issues, and neither can one issue or solution be considered in isolation.

17 The Ministry has identified a range of possible solutions to these issues and has, at a high-level, described the associated practical implications. It is important to note that the solutions presented in this paper have not been fully analysed and nor have the related costs been determined. The Ministry considers that further work would be required to assess the likely costs and benefits and to determine the most appropriate means to give effect to these proposals.

Reflagging

18 While New Zealand fisheries law already applies to FCVs, the option to require FCVs to reflag to New Zealand could solve and simplify the trade related issues described above. As well as ensuring New Zealand's full jurisdiction over these vessels, bringing them under a New Zealand flag could also clarify New Zealand's rights and responsibilities. The reflagging option would not preclude the future use of foreign owned or foreign-crewed vessels. However the Ministry recognises that reflagging all FCVs to New Zealand will likely impact on the ability of some operators to secure tariff free access of product from Korean vessels into Korea.

19 The processes and some of the costs and benefits associated with reflagging have been described in previous submissions to the Panel. If the Panel considers that reflagging is a solution then further work would be warranted in the following areas:

- a. More accurately estimating the costs of reflagging at the individual company level

- b. Exploring the implications for issuing high seas fishing permits to FCVs that are reflagged to New Zealand. This has implications for our ability to (1) fully control those foreign owned vessels that carry a New Zealand flag and choose to operate on the high seas, and (2) be satisfied that we fully meet the UNCLOS requirements that there is 'a genuine link between the State and the ship'
- c. Determining that there is an adequate supply of foreign owned vessels that can be reflagged to New Zealand.

Increased agency coordination

20 The Ministry considers there could be benefits from greater coordination between agencies with responsibilities for FCVs. This cross-government approach could consist of three elements, each of which is discussed in more detail below:

- a. Single government-wide approval process for the operation of foreign owned and, if a decision is taken not to require vessels to reflag, foreign flagged vessels in New Zealand.
- b. The development and implementation of a single set of government-wide standards to apply across all EEZ vessels.
- c. A government wide monitoring and enforcement capability to ensure standards and legislation are adhered to.

Coordinated approach for approving vessels to operate

21 Joint responsibility could be required of the agencies that oversee foreign owned vessels to grant permission for these vessels and their crew to be registered and operate in New Zealand e.g. MAF, DoL and MNZ. With necessary supporting processes, this should ensure that relevant information is shared between agencies to inform the approval process. The coordinated approach would extend to shared risk assessments and sharing capabilities in the compliance and enforcement arena.

22 There is also the issue of whether a coordinated and information sharing approach should also apply to all domestic vessels (above a certain size). This should ensure that labour and safety requirements etc. are capable of being met across all vessels before an individual vessel is given permission to operate.

23 A full assessment of the costs associated with implementing this option is required but it is possible that developing a coordinated approach could reduce duplication across agencies leading to efficiencies and cost savings.

Standards for all vessels

24 As discussed above a key issue is the negative public perception associated with fishing and the view that part of the New Zealand fleet is engaged in illegal practices. This has implications for how the seafood sector is viewed domestically and for our international reputation. This became apparent recently when the Ministry received enquiries from the US media and the US government regarding concerns with how New Zealand seafood is caught in light of recent media coverage on the FCV issue.

25 A means to address this issue could be the development of a suite of government-wide standards that could apply to all vessels (above a certain size) relating to fisheries, safety, labour and immigration responsibilities. These standards would apply irrespective of whether the vessel was New Zealand or foreign owned and irrespective of the nationality of all or part of the crew. Such a standards regime should mean that all vessels are treated equitably and should ensure there is a level playing field with respect to the entire New Zealand fleet meeting New Zealand legislative requirements.

26 A decision to reflag all foreign owned vessels as New Zealand vessels should make it easier to implement a suite of standards across all vessels.

Government wide monitoring and enforcement capability

27 A cross agency approval and monitoring regime could be supported by the creation of a new form of compliance officer with powers in the areas of fisheries, labour and vessel safety. Such officers could be placed on high risk vessels to ensure compliance with a range of laws, and to assess performance against standards, in a cost effective manner. The Ministry considers that this function could be implemented as part of a risk-based framework. If the Panel considers compliance officers would offer an effective solution to the issues under consideration, further work would be warranted in the following areas:

- a. The roles and responsibilities and range of legal powers of such officers;
- b. Determining how best to establish the function and who would act as lead agency;
- c. How the programme would be funded. Options could include:
 - i. Crown funded
 - ii. Cost recovered from industry
 - iii. Direct charge to those vessel operators whose vessels are deemed to be highest risk.

28 The Ministry considers the existing Fisheries Observer Programme is not structured to deliver this function. Putting aside their current limited legal powers as scientific observers, the current work programme means that observers have little time to perform wider compliance duties. Should the Panel consider that this option has merit the Ministry's preference would be to create a new fishery-officer type function to achieve this requirement rather than use the existing observer programme.

Accountability

29 At present there can be difficulties in holding New Zealand permit holders accountable for any legal breaches by FCVs. The Ministry has identified legal amendments that would better support the Ministry's ability to ensure the compliant operation of vessels, including FCVs, in New Zealand's EEZ.

30 The identified legal amendments include:

- a. Enhancing the Ministry's ability to hold the New Zealand permit holder accountable for breaches of fisheries law (where FCVs are concerned). For example clarifying the Ministry's expectation of what steps are required for a permit holder (ie normally the New Zealand charter party to the FCV) to be able to rely on the legal defence of taking "all reasonable precautions" and "all reasonable steps" under sections 241 and 245 of the Fisheries Act.

- b. Amending the Fisheries Act to enable either the authorised agent of the FCV owner, or the New Zealand permit holder to be served with any documents relating to the FCV operation and requiring service under the Fisheries Act and related legislation.

Other caps in the FCV legal framework

31 In addition, the Ministry has identified other gaps in the legal framework that, if addressed should result in FCVs operating in the New Zealand EEZ more effectively.

- a. The processes for registering, amending or revoking registration of FCVs does not allow for sufficiently responsive management. For example, section 103 of the Fisheries Act could explicitly provide for the suspension and revocation of the Director-General's consent to register a vessel should the Director-General consider that the risk profile of the vessel merits such an action.
- b. Some conditions normally attached to the Director-General's consent pursuant to section 103(4) of the Fisheries Act would be more legally robust if included in either fisheries commercial regulations or the Fisheries Act to assist with enforcement. For example specific requirements relating to observer coverage and requirements relating to compliance with Maritime New Zealand Rules.
- c. If the Panel concludes that both demise charter and time charter FCVs should continue to be utilised, a legislative amendment could clarify that the registration provisions in section 103 are intended to apply to both types of charter arrangements. Alternatively, if the Panel concludes that only demise charter FCVs should be utilised, then this could be expressly provided for in the legislation.

Other matters

33. Working with FCVs is often constrained by poor communications due to the limited English speaking abilities of both officers and crew. Requiring English speakers able to translate the vessel language of the FCV to be part of the crew would assist the work of the Ministry and wider government.