

TE OHU
KAIMOANA



MĀORI FISHERIES TRUST

**Government decisions on the future of
Foreign Charter Vessels**

Briefing to Mandated Iwi Organisations and Asset Holding Companies

Contents

Purpose	2
The Independent Review of Foreign Charter Vessels	2
The Government’s decision	2
Potential impacts	4
Where to next?	5
Appendix 1: Why do we have FCVs in New Zealand?	7
Appendix 2: Current framework for managing FCVs	9
Appendix 3: Conclusions of the Independent Review Panel, and overview of recommendations	12
Appendix 4: The Independent Review Panel’s recommendations	15

Purpose

1. The purpose of this paper is to provide you with a briefing on the Government's recent decision to require the reflagging of Foreign Charter Vessels. The paper contains an outline of the Government's decision as we understand it and relevant background information.

The Independent Review of Foreign Charter Vessels

2. In August 2011, the government convened an independent review of foreign charter vessels (FCVs). The objective of the review was to ensure that the operation of foreign owned and foreign flagged vessels chartered by New Zealand fishing companies supports the following government objectives:
 - Protect New Zealand's international reputation and trade access
 - Maximise the economic return to New Zealand from our fisheries resources
 - 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.
3. The panel submitted its 130 page report to the government in late February. Its report contains 15 recommendations which are summarised elsewhere in this paper. Immediately following receipt of the report, the government decided to implement the first 6 recommendations, which involve improvements to the current system for managing FCVs.
4. The remaining 9 recommendations pointed to more substantive and longer term legislative changes. Ministers asked officials for advice on these recommendations to enable them to decide how to respond.

The Government's decision

5. On Tuesday 22 May, the Government announced that it has decided to require the re-flagging of foreign fishing vessels at the end of a transition period of four years. In the meantime and to cover the transition period, they will continue to implement their earlier decision to implement changes to the current system for managing FCVs.
6. In some respects the decision to require the re-flagging of all FCVs is surprising. Members of the Independent Review Panel, who reported their findings and recommendations to the Government at the end of February this year, decided against recommending the reflagging of all FCVs to New Zealand because of the uncertainties and risks reflagging would pose for the future of the FCV fleet and the fishing industry generally (p 91 of Review Panel Report). For instance, they noted that "a number of firms and regional economies depend heavily on the business generated by the FCV fleet" and "reflagging could also reduce the value of quota and the price of ACE if it resulted in a significant downsizing of the fleet" (p 91 of the Panel's report).

7. The Government has stated that its reason for taking this decision is that re-flagging a vessel to New Zealand provides a much clearer basis for it to apply and enforce New Zealand laws and standards relating to health, safety and employment on foreign fishing vessels in our Exclusive Economic Zone (EEZ).
8. The Panel noted that the current regime for managing FCVs contains a number of grey areas around New Zealand's jurisdiction to enforce standards relating to health, safety and employment, raising questions about New Zealand's ability to act to enforce New Zealand health, safety and labour standards on foreign flagged ships. In the view of many, these jurisdictional questions increase the risk that New Zealand's reputation as a responsible nation will be undermined, negatively affecting the sales of NZ products (including fish) into international markets. Clearly if the Government is able to act to address problems on FCVs, and is seen to do so, New Zealand's international reputation has a greater chance of being protected and enhanced.
9. The Panel commented that "despite jurisdictional and practical problems, it seems ...that New Zealand's government agencies can do more to ensure compliance with New Zealand rules and standards". Agencies have been "acting in isolation, with little in the way of information sharing or co-ordinated decision making on FCV issues" (para 452).
10. Government agencies do not seem to have been quick to act until recently – from the time that the Review Panel commenced its investigation. For example, the Review Panel's report outlines the number of vessel detentions and Imposition of Conditions (IOC) requirements that were imposed on fishing vessels in relation to maritime safety rules. Since 2006, 15 detentions and IOCs were imposed on fishing vessels, nine of which were issued to Korean FCVs, one to a Japanese vessel, one to a Dominican vessel and the remainder to domestic vessels. Since June 2011, six FCVs, four of which have been Korean flagged and one each from Japan and Dominica, have been detained (page 69 of the Panel's report). The fact that 1 vessel was detained between 2006 and 2011, and 6 were detained in the six months between January 2011 and February 2012 suggests that the activity of government agencies has stepped up since the Review Panel began its investigation.
11. Much of the media attention given to FCVs has created an impression that the Government is powerless to act in the current regime, influencing public opinion through national and international media. In the midst of all this, and despite Te Ohu repeatedly providing information to show that Maori quota is only a minor part of that fished by FCVs (a maximum of 17% overall) accusations continue to be made that Maori quota is the cause of the problem. It could be argued that public opinion has, for all intents and purposes, been readied to applaud the "banning" of FCVs from New Zealand waters. And in the view of many, a transition of four years is far too long to wait.
12. The decision taken by the Government is not the approach we would have promoted. Rather, we have advocated that much could be done to tighten the current regime, including ensuring that government agencies monitor and enforce New Zealand standards where not complied with – thereby removing problem situations.

Potential impacts

13. While we have yet to receive more detailed information on how the Government's decision will be implemented, it is likely a number of things will affect whether existing charter parties can continue to operate once the re-flagging requirement comes into force in four years' time. For instance:
- How practical/possible it will be to re-flag vessels that are only in New Zealand waters for short periods (for instance as is the case with the squid fishery)?
 - What will New Zealand's liability for these vessels be once they leave our waters?
 - More importantly, how willing will the owners of the current FCV fleet be to allow their vessels to be re-flagged?
 - If these vessels are re-flagged, what other things (including recognition of crew qualifications) need to be done to ensure that appropriate crew can continue to be employed on those vessels?
 - If existing vessels cannot transition into the new regime, how costly will it be to find alternative charter vessels, or to purchase vessels?
14. Sealord has pointed out that there would be a number of issues to work through with the Government if the owners of their Ukrainian FCVs (who are the Ukrainian Government) are to agree to enable their vessels to be re-flagged. For one thing, the qualifications of the crew would need to be recognised in New Zealand. The Government has stated an intention to address this issue and it will be important to hold them to that commitment.
15. In the lead up to the end of the transition period, as the government intends to press on with implementing many of the recommendations of the Review Panel that related to tightening up the present system (including additional observers, stronger compliance and monitoring by all government agencies). We will need to ensure that the way these measures are implemented does not undermine the ability of good operators to make the transition into the new regime.
16. The impact on iwi quota owners is difficult to predict in precise terms. Modelling of average ACE prices for all stocks fished by FCVs (either in part or as a whole) suggests that the worse-case scenario (which would mean FCVs cannot work under the new regime and thus the stocks they currently fish are no longer fished) could reduce the value of settlement quota by up to \$120 million, and reduce annual income by about \$10 million. This comes from both the loss of income for the low value stocks that cannot be caught by the NZ fleet as well as the expected reduction in ACE price for the high value species like hoki and orange roughy because there will be less boats and therefore less competition for ACE as well as increased costs from the new regime and overheads spread over a far lesser volume of fish caught.
17. Minimising the impact will depend on a number of things including:
- The way the Government's short and longer term measures are implemented (as noted above)
 - The arrangements iwi are able to make in future to sell or fish their ACE.

Even in the best situation there will however be a reduction in ACE prices due to the additional costs that will apply – it is hard to estimate this but it could be expected that it will be at least a 15% reduction across the board resulting in a combined annual loss of income to all iwi of approximately \$2.4M and combined overall loss of capital value in the settlement of \$27M.

18. Te Ohu Kaimoana does not endorse the abuse of crew, or illegal fishing activity. As noted earlier, the decision to require the re-flagging of all FCVs is not one we would have promoted. In our view, it would be possible to strengthen and tighten the current regime to ensure that poorly managed FCVs can be appropriately sanctioned. We consider that the recent action by government agencies combined with implementation of the first six recommendations of the Panel’s report could resolve the situation.
19. Nevertheless the decision has now been made and it will be important to work with the Government to ensure that the good operators can make the transition to the new regime in four years’ time.
20. The attached Appendices provide background information on:
 - Why we have FCVs in New Zealand (Appendix 1)
 - The current Framework for managing FCVs (Appendix 2)
 - The overall conclusions of the Independent Review Panel (Appendix 3)
 - Initial comments on the Panel’s recommendations (Appendix 4)

Where to next?

21. Te Ohu intends to do what we can to ensure that the way the Government’s decisions are implemented does not undermine the ability of iwi and quota holders generally to harvest their ACE for stocks currently fished by FCVs. This will involve working with officials and other industry parties on :
 - the development of measures to assist current good operators to make the transition to re-flagging
 - the more immediate measures the government intends to introduce (we note that many of these measures may be redundant once re-flagging is introduced).
22. We will provide you with an update when we receive further information. In the meantime if you wish to discuss this matter further, please contact Kirsty Woods (kirsty.woods@teohu.maori.nz) or Laws Lawson (laws.lawson@teohu.maori.nz).

Appendices

Appendix 1: Why do we have FCVs in New Zealand?

1. Under the United Nations Convention on the Law of the Sea (UNCLOS) 1982, every coastal nation has the full rights to manage and use the fisheries and other natural resources found within its EEZ. However other provisions in UNCLOS state that if the coastal state does not use the fisheries resources, they must make these available to other nations under government-to-government arrangements. This means if New Zealand industry boats do not catch the sustainable commercial catch in our EEZ, it must be made available to other nations. New Zealand has the 4th largest EEZ in the world and relatively productive deepwater fisheries. In the late 1970s New Zealand had very limited capacity itself to harvest fish in the EEZ. To assist transfer of experience, New Zealand companies were encouraged to enter into joint ventures with overseas fishing companies with appropriate foreign owned and flagged vessels (FCVs). Use by the NZ fishing sector of FCVs still constitutes NZ use under UNCLOS.
2. There are two broad types of charters of foreign vessels. These are either time charters or demise charters. Most (nearly all) charters in New Zealand are time charters. Under these a New Zealand fishing company who holds a fishing permit (allowing the company to harvest fish in New Zealand) enters into a charter agreement with a foreign company whereby:
 - The vessel and crew are chartered as a package
 - The vessel is foreign flagged
 - The foreign owner employs the crew
 - The NZ party applies for an Approval in Principle (AIP) to bring in foreign crew, and subsequently each member must apply for and receive a work visa.

Under a demise charter a New Zealand fishing company who holds a fishing permit (allowing the company to harvest fish in New Zealand) enters into a charter agreement with a foreign company whereby:

- the vessel is chartered without the crew
- the vessel can be either NZ or foreign flagged
- the NZ charter party employs the crew
- no AIP is required, but the foreign crew must apply for and obtain a work visa.

For both charter types, FCV registration requires consent from the Director-General of MAF (now the Ministry of Primary Industries – MPI) and conditions can be imposed as part of registration under the Fisheries Act.

3. While initially the sector was dominated by FCVs, the proportion of these has reduced over time from more than 75% in 2000 to approximately 50% in 2010/2011. This in part reflects the significant reduction in catch as a result of decreases in the TACC of hoki (from 250,000 tonnes in 2000/01 to 90,000 tonnes in 2008/09). The Panel's report points out that in 2010-2011 there were 56 vessels in the deep water fleet –of these 27 are charter vessels with 26 being time charters and 1 a demise charter.

4. Industry statistics show that the total average volume of deep water fish stocks is approximately 450,000 tonnes¹ with the export value of these fisheries over the last 5 years averaging \$650 million. Further analysis of these statistics shows that FCVs catch approximately 57% of the total volume but only account for an average value of around 47%. That shows that FCVs predominantly catch the lower value species.
5. The use of charter vessels is largely an economic issue. Charter vessels provide an economic option to :
 - a. access specialist catching gear to catch quantities of 'high volume, low value' fisheries for which it is uneconomic for a NZ party to build (and crew) a suitable boat to catch these species
 - b. more easily adjust volumes caught without subsequent significant effects on the asset base of companies
 - c. allow small companies (including iwi) who could never on their own be able to afford to purchase and run suitable boats to effectively participate in the market profitably.
6. It is notable that all of industry use FCVs for catching certain species. While it was claimed in the media and to the Inquiry panel that "Maori ACE is the principal source of ACE for FCVs", analysis by Te Ohu Kaimoana demonstrated that for the 9 key species fished on FCVs, ACE from settlement quota could not account for more than 17% of the volume fished by FCVs. One additional consequence of FCVs operating in the market is that there is greater demand to purchase ACE in any year. This of course means that the presence of FCVs results in higher ACE prices than would be the case without that capacity looking to buy ACE.

¹ This is approximately 75% of the total catch in the QMS

Appendix 2: Current framework for managing FCVs

1. Under UNCLOS New Zealand does not have full sovereignty in the EEZ. New Zealand does have full rights to manage and use the fisheries and other natural resources found within the EEZ (subject to the requirement that it make available on a country-to-country basis any fish its domestic industry does not catch.)
2. However under UNCLOS, the health, safety and labour standards for crew on board foreign flagged vessels operating within New Zealand's EEZ are the responsibility of the country to which the vessel is flagged.
3. This mix of responsibilities underlies much of the debate around how New Zealand should respond to the allegations that have been made in the media in recent years about treatment of crew on FCVs.
4. In light of this situation, the government has already implemented a number of measures that give it a greater ability to set standards in regard to pay and working conditions of crew on FCVs. Because of New Zealand's ability to exercise full jurisdiction in the EEZ on fisheries management (but not health and safety), all these provisions have been linked to the Fisheries Act, or to specific decisions made under that Act (see Figure 1). For instance, section 103 (5) of the Fisheries Act requires that foreign crew on board FCVs be subject to the Minimum Wage Act 1983 and the Wages Protection Act 1983. This means crew must be paid the minimum wage plus an additional specified sum per hour and the recovery of costs incurred by the FCV on behalf of a crew member cannot reduce the total below the minimum wage (in addition it should be noted the crew are not required to pay New Zealand tax or ACC).
5. FCVs must comply with all relevant provisions of the Fisheries Act and its regulations. Thus all vessels fishing in New Zealand waters, including FCVs, must be registered under the Fisheries Act. Specific provision is made in the Act for the chief executive to impose such conditions on FCVs as he/she thinks fit (s 103 (4)).
6. In 2006, in response to concerns about a number of issues including a perceived lack of opportunity for New Zealand crew and vessels to fish in the EEZ, the Department of Labour, the Fishing Industry Guild and the Seafood Industry Council developed a Code of Practice that aims to achieve "the highest level of compliance in relation to both immigration and applicable laws of New Zealand". The Code sets out 15 provisions relating to the use of FCVs and foreign crew. Key provisions include:
 - Employer responsibilities: employers of crew on FCVs are the owners of the vessel. The Code requires the New Zealand party that charters the vessel to monitor the employers' performance (including their Manning Agents if they are used) to ensure certain matters are complied with, including conditions on work permits; employment of experienced fishers and investigation of any complaints raised by fishers.

- Fishers' welfare: the New Zealand charter party accepts responsibility to monitor fishers' welfare by ensuring they have access to certain services (including the New Zealand Company, the Manning Agent and medical and dental treatment)
 - Responsibility of the New Zealand company to ensure that facilities and provisions for fishers are to an acceptable standard
 - Requirements to make employment records available to the Department of Labour Requirements in relation to managing the risk of desertion
 - Procedures for gaining an Approval-in-Principle from immigration authorities to recruit foreign crew, including adherence to standard principles in crew employment agreements
 - Requirement to provide a guarantee in respect to financial obligations of foreign crew.
7. Additional standards have also been established to ensure the health and safety of observers on board FCVs. These include a risk assessment process that means that vessels considered to be of "high risk" (including vessels that are new to New Zealand waters) would be subject to full observer coverage. Those considered to be medium to low risk would have reduced levels of coverage – with low risk vessels being covered by the normal process that applies to the deepwater fleet. Costs for high risk vessels would be covered by the vessel owner. In addition, inspections by Maritime NZ (MNZ) have to be made and be satisfactory prior to registration. Vessels must enter New Zealand's Safe Ship Management System after two years.

Responsibility of Flag State (Korea, Japan, Ukraine, Dominica)		Responsibility of Coastal State (NZ)
<i>Jurisdiction over crew and ship</i>		<i>Jurisdiction over the management of EEZ natural resources</i>
Implement and enforce laws and standards re health and safety, qualifications, wages, vessel design and construction	Foreign Charter Vessel Fishing in New Zealand’s EEZ	Implement and enforce rules about harvesting of fisheries Subject to all same Fisheries Act requirements as NZ vessel (including observers).
	<p style="text-align: center;">Concerns for NZ</p> <p>Wages for foreign crew Equity with domestic vessels Opportunities for NZ crew</p> <p style="text-align: center;">→</p> <p>Health and safety on board FCVs</p> <p style="text-align: center;">→</p> <p>Suitable observer standards</p> <p style="text-align: center;">→</p>	<p style="text-align: center;">Responses</p> <p>Standards linked to Code of Practice, immigration “Approval in Principle” and vessel registration criteria under the Fisheries Act</p> <p>Deepsea Register linked to immigration approvals; Requirements for foreign crew to be paid NZ minimum wage plus additional amount linked to the Fisheries Act.</p> <p>Improved standards for food, safety and accommodation on board; implementation of a risk assessment framework for registration and observer coverage for fisheries management purposes.</p>

Figure 1 RESPONSIBILITIES OF FLAG AND COASTAL STATES UNDER UNCLOS AND HOW NZ HAS ADJUSTED RESPONSIBILITIES SINCE 2006 TO DEAL WITH CONCERNS

Appendix 3: Conclusions of the Independent Review Panel, and overview of recommendations

1. The Panel's report considered the effect of FCVs on New Zealand's reputation, the role of FCVs in maximising the economic return to New Zealand from our fisheries resources, and what additional things might be required to ensure acceptable and equitable New Zealand labour standards.
2. The Panel concluded that "while FCVs make a useful contribution to New Zealand's economy, this should not be at the expense of New Zealand's international reputation" and "the image of the seafood industry specifically, and New Zealand's reputation for safe and sustainable seafood production generally, need to be protected". In the panel's view, FCVs should be required to meet the same minimum standards, and adhere to the same rules as domestic vessels (paras 447 – 448).
3. The Panel acknowledged that most of the criticisms it heard related only to a small number of FCVs from one flag state (Korea). While numerous attempts have been made to resolve the issues through legislation and the Code of Practice, "certain FCV owners and New Zealand charter parties are not meeting their obligations" (para 450). The panel stated that it is clear to them "that there have been serious breaches of the Code of Practice and equally clear that the response from both the industry and government agencies has been inadequate." (para 441)
4. The panel commented that the ability of government agencies to monitor and enforce the relevant laws and regulations is subject to weaknesses (para 451). This is in part due to the intrinsic difficulty of controlling the activities of fishing vessels operating a long way from shore. Jurisdictional confusion is an added complication (see previous Appendix).
5. However, the Panel commented that "despite jurisdictional and practical problems, it seems ...that New Zealand's government agencies can do more to ensure compliance with New Zealand rules and standards". Agencies have been "acting in isolation, with little in the way of information sharing or co-ordinated decision making on FCV issues" (para 452). Indeed, the report notes that since June 2011 (and the intense increase in media attention), 9 FCVs have been detained in port or had notices served on them, compared to just two cases in the previous five years (para 464).
6. The report noted that in February 2012, for the first time, MAF has denied consent to an application for registration on a FCV. "After considering the history of the applicant MAF did not have confidence in the ability of the vessel and its operators to conduct fishing operations responsibly and within the applicable legislative and regulatory frameworks" (para 335).
7. On the issue of economic return, the panel commented that it has been handicapped by a shortage of "hard financial information from the fishing industry and therefore it has been

difficult to identify the full economic implications of their recommendations. The Panel “heard widely divergent views on such questions as the availability of alternative fishing vessels and suitable New Zealand crews to fill the gap left by any reduction in the size of the FCV fleet”. The impact of the changes recommended “on the price of ACE and the value of quotas is similarly difficult to predict as are the implications of allowing the current regime to continue”. They note that “these uncertainties will need to be kept in mind as the recommendations for change are assessed” (paras 453 and 454).

8. The panel made recommendations under the following headings:
 - Practical improvements by agencies
 - Closer interagency cooperation
 - Legislative amendments
 - International conventions
 - Policy changes
 - Implementation of recommendations.
9. The Panel’s full recommendations and our brief preliminary comments on each recommendation are contained in Appendix 4. Our initial assessment is summarised below.

Recommendations 1 – 6

10. In March, the Government decided to implement recommendations 1 – 6. Industry parties (including Te Ohu Kaimoana) have stated support for these recommendations, subject to having the opportunity to have input into the way they are implemented. They noted that implementation of these recommendations is likely to increase costs – but the full extent needs to be clarified.

Recommendations 7 – 14

11. Ministers stated they wished to receive advice on the implications of implementing recommendations 7 – 14 before making decisions. In general, recommendations 7 - 11 and 14 appear to be workable – but again - subject to further analysis of how they would be implemented.
12. Recommendations 12 and 13 are the most far reaching. They would mean that New Zealand charter parties become the direct employers of the crew of FCVs, along with associated costs and obligations. If not implemented carefully, this has the potential to undermine the viability of FCVs and therefore reduce the value of quota and ACE for the stocks they fish and could certainly undermine the value of settlement quota.
13. Recommendation 12 proposed restricting the use of FCVs in New Zealand to demise charters. Under this option the New Zealand charter agent would need to accept responsibility for the “bare boat”. The vessel could be New Zealand or foreign flagged, the crew could be New Zealanders or foreign nationals with visas (or a mix) but either way, they would be directly

employed by the New Zealand charter party. There are a number of questions and potential difficulties here:

- Are vessels available that are suited to the fisheries and of satisfactory quality given the large liabilities the New Zealand party will take on?
- If there are suitable vessels can they be readily operated by a New Zealand crew:
 - If yes, are sufficient experienced New Zealanders able to crew the vessel?
 - If no, has the company got the infrastructure to be able to directly employ foreign crew, including appropriate back-up in the crew's country?

14. Recommendation 13 proposes to provide an empowering ability in the Fisheries legislation to re-flag to New Zealand some or all the FCVs operating in New Zealand's EEZ should this be deemed necessary in the national interest. The panel notes that this option might be a high risk path and it is unclear how many of the existing FCVs would contemplate re-flagging and how quick the New Zealand fleet would be in a position to fill gaps resulting from the departure of other vessels.

15. There are two other aspects to this recommendation. The first is that a perverse incentive will be created for parties that oppose FCVs to continue to campaign on allegations of unsatisfactory performance by FCVs. This will mean the government's goal to protect our international reputation will remain under attack until it (likely) eventually uses the power. The second is that if as a result of exercising that power (or requiring demise charters as recommended above) the New Zealand industry does not have the capacity to catch these fishstocks, then the New Zealand government may have to make that catch available through government-to-government arrangements to those same vessels but at marginal economic gain to New Zealand.

16. Recommendations 12 and 13 are intended to give New Zealand greater control over the problem areas identified in the report. In particular they are a means to overcome any jurisdictional issues should New Zealand parties and others test New Zealand's ability to extend standards through the Fisheries Act. From our preliminary discussions with officials, we understand that the measures may not need to go as far as the recommendations suggest provided suitable arrangements for accountability and performance are achieved. We understand that the Ministers' objective is to ensure that a New Zealand party is able to be held fully accountable for the performance of FCVs so that existing problems do not continue and risk jeopardising trade.

Appendix 4: The Independent Review Panel's recommendations

Inquiry Panel Recommendations 1 – 6 [accepted by the Government in March 2012]

Practical improvements by agencies

Panel Recommendation 1

That the Ministry of Agriculture and Forestry continues its efforts to strengthen monitoring and enforcement of FCVs, including, but not restricted to, the following areas:

- placing an observer on all FCVs fishing in the EEZ;
- streamlining and improving observer reporting processes on FCVs, including making greater use of technology;
- ensuring that any outsourcing arrangements for its observer programme avoid possible conflicts of interest on the part of contracted firms and that the Ministry of Agriculture and Forestry has full control of the programme;
- ensuring the collection and availability of compliance data broken down by vessel, operator and charter party;
- considering additional ways of securing enforceable guarantees for any deemed value debts incurred; and
- considering non-fisheries offences when making FCV registration decisions.

Te Ohu Kaimoana preliminary comment

1. These recommendations relate to proposed improvements to the regime as it relates to fisheries management and the Fisheries Act, including use of observers, more enforceable guarantees that deemed value debts will be paid and taking non-fisheries offences into account when making registrations under the Fisheries Act.
2. Having reviewed the current provisions that relate to FCVs – as summarised in the body of this paper, it appears to us that some of these recommendations are already catered for (for instance the use of a risk based approach to observer coverage). However implementation of some of these provisions can clearly be streamlined.
3. Further clarification will be required as to the role observers will play (particularly if it extends beyond fisheries matters), the costs of coverage, and who will deliver observer services. It had been agreed that the deepwater fleet would be moving to a greater level of observer coverage for fisheries management purposes but this was on the basis of more cost effective delivery of observer services via third party providers. The implications of the recommendations for this approach also need to be identified.

Panel Recommendation 2

That Maritime New Zealand maintains its stronger focus on the enforcement of FCV compliance with New Zealand's maritime safety standards, including, but not restricted to, the following areas:

- maintaining the present higher standards of vessel safety inspections of FCVs;
- introducing the Maritime Operator Safety System vessel safety system to enable Maritime New Zealand to take more direct responsibility for safety audits of FCVs, clearly identifying a New Zealand party that can be held accountable for any breaches and removing the two year transitional provision for FCVs arriving in New Zealand waters; and
- taking steps to facilitate the recognition of foreign qualifications for the crews of FCVs.

Te Ohu Kaimoana preliminary comment

4. Industry parties have signalled practical concerns with removing the two year period for new FCVs to move into the Safe Ship Management System. There are also practical difficulties for short term charters (including exploratory vessels) who fish in New Zealand waters for short periods every year – and processes for entering into, or de-listing from the system at short notice. Other recommendations will also have implications for these vessels.

Panel Recommendation 3

That the Department of Labour continues its efforts to strengthen its monitoring and enforcement arrangements for FCVs, including, but not restricted to, the following areas:

- rapid implementation of the improved audit system for FCVs;
- tightening up the Code of Practice on Foreign Fishing Crew, for example by placing the onus of proof on the New Zealand charter party and requiring FCV crew wages to be paid into a New Zealand bank account;
- increasing the frequency and thoroughness of inspections;
- introducing a 'fit and proper person' requirement into the Approval In Principle process;
- replacing the Deepsea Fishing Crew Employment Register with the standard immigration labour market test;
- proactively informing FCV crews of their rights and FCV operators of their responsibilities; and
- reducing timeframes for FCV operators to provide information and remedy problems.

Te Ohu Kaimoana preliminary comment

5. Our initial response is that the clear desire of Ministers to hold New Zealand Charter Parties accountable and to ensure government agencies can fully audit and verify performance means practical ways to support this recommendation will be needed.

6. Industry parties have raised concerns about the implications of removing the current process for testing the labour market (through the Deepsea Register) and using the standard labour market test. In part this is because the Deepsea Register was instituted as a result of inadequacies in the standard labour market test earlier. Industry parties are concerned about the availability of New Zealand qualified (and drug-free) crew – particularly if they are pressed to take on unsuitable crew members.
7. There are also concerns about the use of New Zealand bank accounts, as on some FCVs, crew are paid directly in cash by the New Zealand Charter party and this option is currently required under legislation.

Closer inter-agency co-operation

Panel Recommendation 4

That an interagency Steering Group on FCVs be established to co-ordinate the evaluation of information relating to the operation of FCVs before agency decision making, and that this Steering Group be chaired by a senior Ministry of Agriculture and Forestry official.

Te Ohu Kaimoana preliminary comment

8. This seems a sensible measure, and industry parties consider industry representation on this group would be useful and appropriate along with a collaborative approach involving MAF's VADE methodology and a firm commitment from industry to participate fully and respond to problems.

Panel Recommendation 5

That a pilot programme of compliance monitoring be developed across the Department of Labour, Ministry of Agriculture and Forestry and Maritime New Zealand. Personnel would be trained to monitor compliance on high-risk FCVs in such areas as fisheries rules, vessel safety and labour standards, food safety and seabird and bycatch prevention measures. The costs of this programme should be recovered from vessel operators whose compliance record and risk profile is such that compliance monitoring is required on their vessel(s).

Te Ohu Kaimoana preliminary comment

9. In principle, we agree that monitoring of high risk companies should be an additional charge to the companies involved – and it is our understanding that is the case now. Further clarity is required on the nature and extent of additional compliance measures and who should bear the costs.
10. Compliance with fisheries regulations is an issue for domestic vessels as well as FCVs – so this programme could apply equally across the whole fleet.
11. Another aspect that will need to be considered along with recommendation 1 above is the changing nature of the duties of an observer. At present the fisheries investigation/ data

gathering is the key aspect of the job. With the changes proposed here there may be consequences for the ability of observers to deliver this vital data.

12. While it can be readily understood who should bear the additional costs when a vessel moves from standard to high risk, it is not clear who pays for the overall training of the officers to gain the necessary competencies, particularly when an option open to government (and recently exercised) is to refuse what it considers high risk operators.

Panel Recommendation 6

That the Department of Labour, Ministry of Agriculture and Forestry and Maritime New Zealand continue their work on the option of co-ordinated FCV inspections both in-port and at-sea along the lines described in this Report.

Te Ohu Kaimoana preliminary comment

13. No problems with this recommendation are envisaged.

Panel Recommendations 7 – 14 [Under further consideration by Government]

Legislative amendments

Panel Recommendation 7

That the following amendments be made to the Fisheries Act 1996:

- include an explicit power to suspend or revoke the registration of an FCV at any stage when information is received that, in the Director General's opinion, warrants reconsideration of the initial decision to consent to that vessel's registration;
- include a provision enabling the Director General to take vessel safety considerations into account in determining whether to grant consent to register an FCV;
- include provisions increasing the visibility and accountability of the New Zealand-based authorised agent of the FCV owner;
- review the defence provisions to clarify the obligations of the parties involved in an FCV fishing operation;
- enable either the authorised agent of the FCV owner or the New Zealand permit holder to be served with any documents relating to an FCV's operations; and
- include in either the Fisheries (Commercial Fishing) Regulations 2001 or the Fisheries Act 1996 the key conditions in the Director-General's consent to strengthen them.

Te Ohu Kaimoana preliminary comment

14. We support the general thrust of this recommendation (in addition we think it may also be useful to enable the Director-General to amend the conditions on registration).
15. At present, the Director-General cannot revoke registration but only refuse to renew registration on expiry of the current term. The prospect that registration can be revoked should also act as a stronger incentive for compliance.
16. Nevertheless, caution will be needed and evidential requirements specified before the Director-General decides to revoke a vessel's registration. Safeguards will be required to address the potential for false accusations. We also think it prudent for the Director-General to have to provide the New Zealand Charter party with reasons for suspending, revoking or amending registration.

Panel Recommendation 8

That application of the Health and Safety in Employment Act 1992 be extended through Section 103 of the Fisheries Act 1996 to the crew of FCVs (in the same way as the Wages Protection Act 1983 and Minimum Wage Act 1983 are currently applied to FCVs).

Recommendation 9

That any consequential amendments required to the Health and Safety in Employment Act 1992 and Maritime Transport Act 1994 be made to reflect the incorporation of the Health and Safety in Employment Act 1992 in the Fisheries Act 1996.

Recommendation 10

That the Maritime Rules be revised to ensure that they apply to FCVs as well as New Zealand ships.

Te Ohu Kaimoana preliminary comment

17. As with the above, we accept this recommendation as necessary to make the current system work better. However we will be working with industry to explore implementation questions.

International conventions

Panel Recommendation 11

That the Government announces its intention to conduct a national interest analysis of the Torremolinos Protocol and International Maritime Organisation Convention STCW-F with a view to ratifying these conventions at the earliest possible date; and that an assessment also be made of the merits of ratifying International Labour Organisation Convention C188 – Work in Fishing.

Te Ohu Kaimoana preliminary comment

18. Further analysis is needed of the implications of ratifying these protocols – particularly as they will apply to the whole industry, not just FCVs. Preliminary advice suggests that many FCVs will be in compliance with much of this code but NZ vessels may not.

Policy changes

Panel Recommendation 12

That:

- the Fisheries Act 1996 be amended to restrict registration to vessels on demise charter;
- the New Zealand charter party must be the employer of FCV crew under a New Zealand employment agreement;
- the Code of Practice be revised to reflect these changes; and
- there be a transition period of either two years from the date of the government’s decision, or until the amended legislation is passed (whichever is the later), to allow industry to adapt to this policy change.

Te Ohu Kaimoana preliminary comment

19. While there is some scope for interpretation of what a demise charter arrangement is, it is our understanding that a “demise” charter arrangement involves chartering a vessel without officers and crew. The charter is then fully responsible for all expenses associated with the vessel including hiring the vessel’s master and crew. The recommendation envisages that the New Zealand party will be the employer.
20. Having to change time charters to demise charters would have major implications for existing charter parties. For example, they would have to directly employ crew and would need to ensure foreign crew pay tax. This has further implications for administration and overheads, even though the foreign crew are unlikely to benefit from having paid tax.
21. If the New Zealand charter party had to seek new crew and could not get sufficient numbers domestically, they would not have the right systems to recruit overseas themselves.
22. There is much concern amongst charter operators that this move could mean the end of FCVs resulting in plenty of surplus ACE. This in turn would either drive down the prices of ACE, or if it is not fished at all – reduce its value to zero. This would have major implications for the income streams of iwi, and iwi owned fishing companies who use FCVs. There are also clear implications for short-term charters – for whom these provisions are likely to be impractical.
23. Further analysis is required to:
- a. identify these cost implications more clearly
 - b. Identify other ways (for instance through measures contained in earlier recommendations) to ensure that a New Zealand entity is accountable for all employment and labour standards.

24. More detailed comments are in the body of this briefing.

Panel Recommendation 13

That the Fisheries Act 1996 be amended to include an empowering provision for the reflagging to New Zealand of some or all FCVs operating in the EEZ should this be deemed necessary in the national interest.

Te Ohu Kaimoana preliminary comment

25. The proposed contained in this recommendation appears intended to act as a “threat” that hangs over industry – to an incentive to comply with New Zealand standards. The implications of New Zealand flagging are that the New Zealand charter party would become the employer of the crew, and face similar issues outlined above.

26. In addition, questions are raised about New Zealand’s liability for these vessels when fishing beyond the EEZ. For instance they will still be subject to New Zealand’s Safe Ship Management System.

27. More detailed comments are in the body of this briefing.

Panel Recommendation 14

That consideration be given to how the provisions of the Crimes Act 1961 might be applied to the activities of foreign flagged FCVs in New Zealand’s EEZ.

Te Ohu Kaimoana preliminary comment

28. We do not envisage major problems with this recommendation.

Implementation of recommendations

Panel Recommendation 15

That, once decisions are taken on the recommendations in this Report, steps be taken to engage with industry on a detailed implementation plan.

Te Ohu Kaimoana preliminary comment

We support this recommendation, and note that the Government has taken steps to work with industry not only on the recommendations it has accepted, but also to identify those that it has yet to consider.