

Question and Answers – Foreign Charter Vessels

What is wrong with the current regime around foreign-owned fishing vessels?

Currently, foreign-owned fishing vessels can be chartered by New Zealand companies. The problem is that this does not enable full application of New Zealand law to the use and operation of foreign vessels operating in New Zealand waters.

The Ministerial Inquiry into the use and operation of Foreign Charter Vessels identified issues relating to health and safety and labour conditions of crew, securing access to international markets and protecting New Zealand's international reputation.

What has the Government done in response to the Ministerial Inquiry since its initial announcement in March 2012?

In March the Government decided it would accept in principle the first six recommendations of the Inquiry Panel. Since then three key agencies (Department of Labour, Maritime New Zealand and the Ministry for Primary Industries), have looked at how best to implement them and have begun actioning them.

Auditing (done by Department of Labour) is being strengthened with the appointment of specialist external audit providers KPMG.

Agencies have provided advice on the remaining nine recommendations for Cabinet consideration.

What are you planning to do now?

Cabinet has now decided to require all foreign-owned fishing vessels to be flagged as New Zealand ships ("reflagging"). This means that a New Zealand operator will be responsible for hiring crew and the full range of New Zealand law will apply. Reflagging is viewed as the cleanest, most comprehensive and enduring option to meet Government objectives for foreign-owned fishing vessels.

Specifically, reflagging:

- places foreign-owned fishing vessels under the responsibility and control of New Zealand in the same way as other New Zealand ships and flagged fishing vessels;
- holds domestic operators accountable for the employment of crew and vessel making any enforcement action by agencies more effective;
- ensures New Zealand criminal law applies in full to New Zealand-flagged vessels – if breaches of labour law (underpayment of wages, illegal deductions) occurred, the Department of Labour in New Zealand would be able to investigate and address these;
- resolves trade access and reputational concerns through New Zealand's complete control over the activities of vessels in our Exclusive Economic Zone (EEZ).

- deems them to be New Zealand ships for the purpose of New Zealand law.

What is reflagging?

Under the United Nations Law of the Sea Convention 1982 (UNCLOS), ships, including fishing vessels, are required to fly the flag of the country in which they are registered (the 'flag State'). They may change flags provided there is a genuine link between the vessel and the flag State and the vessel satisfies any conditions set by the flag State.

A foreign-owned fishing vessel flagged to New Zealand would be deemed to be a New Zealand ship and would fall fully under New Zealand sovereignty and therefore be subject to the same legislative and regulatory requirements and enforcement provisions as a domestically owned and flagged vessel.

What are the benefits of reflagging for foreign crew?

Reflagging will provide greater protection to the crew as they would be employed by a New Zealand-based party under a New Zealand employment agreement. The New Zealand employment relations and health and safety law (and criminal law) would automatically apply. If there were breaches then the Department of Labour (underpayment of wages, illegal deductions) and Maritime New Zealand (health and safety) would be able to investigate and address them, and take enforcement action.

Police can investigate criminal acts.

What is the process to require reflagging?

The requirement to reflag all vessels to New Zealand will require legislative changes to the Fisheries Act.

There will be a four-year transition period from the date of announcement of Cabinet's decision to enable industry to make adjustments to existing business arrangements and reflag vessels to New Zealand. All fishing vessels operating in the New Zealand EEZ will be required to reflag to New Zealand by 22 May 2016.

What are the main changes for New Zealand companies that use FCVs?

Reflagging will result in the following changes:

- A New Zealand operator will be required to flag the foreign-owned vessel to New Zealand under the Ship Registration Act for the duration of time the vessel is fishing in the New Zealand EEZ;
- The New Zealand operator will employ the crew and all crew, whether New Zealand and/or foreign, will have a New Zealand employment agreement;
- All crew will be required to have qualifications recognised as equivalent to the necessary New Zealand qualifications.

New Zealand companies will not have to pay ACC levies for any foreign crew because crew are not residents for tax purposes.

How will foreign crew be protected until the reflagging takes effect in four years?

Protections for crew will continue during the transition period as the Code of Practice for Foreign Fishing Crew will continue to be used to set the minimum remuneration and labour standards on board FCVs.

The Code of Practice will be strengthened by a range of measures including the burden of proof being placed on the New Zealand Charter Party, and New Zealand bank accounts being required for crew wages.

The Department of Labour has already taken steps to improve monitoring and enforcement of FCVs as recommended by the Inquiry.

As part of the strengthened regime for monitoring compliance with the Code, the Department is using an independent audit provider, KPMG, to carry out audits to ensure that accurate wage and time records are kept. These new audits are part of the Approval in Principle (AIP) process which enables the recruitment of foreign fishing crew. The first two audits under the improved system are underway.

Recommendations 1 to 6 of the Ministerial Inquiry which were agreed by the Minister for Primary Industries and the Minister of Labour in March 2012 are currently being implemented and will make significant improvements to the monitoring and enforcement of employment and health and safety rules on board foreign-owned fishing vessels.

The Ministry for Primary Industries and the Ministry of Foreign Affairs and Trade will continue to work with our international trading partners to maintain access to markets where possible until reflagging is implemented.

Amendments to Fisheries Act will be developed as appropriate to effectively implement the decisions.

(Recommendations 8 to 10, requiring amendments to the Health and Safety in Employment Act 1992 and the Maritime Rules are no longer required under reflagging.)

Will there be observers on all foreign-owned fishing vessels?

Yes. Ministry for Primary Industries observers will be placed on all foreign-owned fishing vessels. They will be trained in labour law and health and safety law, and will take notes and report back to onshore agencies.

We aim to have observers on all foreign-owned fishing vessels within twelve months.