

This Regulatory Impact Statement has been prepared by the Ministry for Primary Industries. It provides an analysis of options for the management of Foreign Charter Vessels, following a Ministerial Inquiry into the use and operation of Foreign Charter Vessels in New Zealand.

Parts of the paper have been withheld under the following sections of the Official Information Act 1982:

- Section 6A – [because it would] prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand;
- Section 6(b)(i) – [because it would] prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of any other country or any agency of such a Government;
- Section 9(2)(h) – maintain legal professional privilege;
- Section 9(2)(b)(ii) – protect information that would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;
- Section 9(2)(g)(i) – maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.

Regulatory Impact Statement

Government Response to the Ministerial Inquiry on Foreign Charter Vessels

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry for Primary Industries (MPI). It summarises analysis of options in response to recommendations made by the Ministerial Inquiry into the use of Foreign Charter Vessels (FCVs) in New Zealand.
2. The two main options to consider are for demise chartering or reflagging all FCVs to New Zealand. Both options are intended to ensure that a New Zealand party has possession and control of the FCV, and are accountable for its actions.
3. MPI considers that reflagging best meets the Government objectives for FCVs. Reflagging also delivers greater accountability than demise charters, as the Government would more easily be able to prosecute for offences under the Crimes Act. Reflagging would ensure trade access to markets that require flag State certification and would protect New Zealand's fisheries brand overseas.
4. Ministers are required to make a decision based on uncertainty with regards to the cost effects of either demise or reflagging options. In the short term it is clear that both options will increase costs and will require companies to change existing business arrangements and/or source alternative vessels.
5. The main uncertainties relate to the economic impacts of changing existing business arrangements, including potential loss of access to vessels. Industry claims that all existing FCV capacity would be lost under either option, having a potential economic impact of NZ\$300 million annually. This worst case scenario would have spin off impacts on quota and ACE prices and the Fisheries Deed of Settlement with iwi. MPI considers the worst case scenario is unlikely.
6. New Zealand is also unique in the developed world in allowing FCVs to fish in the Exclusive Economic Zone (EEZ) without reflagging. FCVs operating in New Zealand have reflagged vessels to other States in the past. For these reasons, MPI considers that there is a precedent that access to vessels will likely be retained in the long term along with an economic incentive for foreign companies to continue fishing in New Zealand. This will however add cost to existing business processes and may push the smaller companies that rely on old and inexpensive vessels to fish alternative stocks and change their business practices.
7. Reflagging now will have impacts on industry, but will also comprehensively address the jurisdictional issues, legislative complexity, trade access and reputational issues in the long term. This is the most durable option and is less likely to require Ministers to revisit the issue in future.

Scott Gallacher
Ministry for Primary Industries
17/05/2012



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Executive summary

8. In March 2012, Cabinet agreed on measures to improve monitoring and enforcement of the existing management regime for FCVs and directed officials to provide further advice on options for legislative change to strengthen accountability for FCVs to a New Zealand party.
9. This RIS assesses options to strengthen accountability for FCVs and to meet the Government objectives for FCVs. The two main options to consider are whether to require demise charter arrangements or for all FCVs to be flagged as New Zealand ships ('reflagging')¹.
10. Officials consider that reflagging meets the Government's objectives for FCVs by:
 - Making a New Zealand party accountable for the employment of crew and vessel making any enforcement action by agencies more effective;
 - Ensuring New Zealand criminal law applies in full to New Zealand-flagged vessels;
 - Resolving trade access and reputational concerns through New Zealand's complete control over the activities of New Zealand flagged FCVs in our EEZ; and
 - Simplifying the regulatory regime governing FCVs. This would provide certainty for industry and likely improve the long term business environment for industry, reduce compliance costs for Government and eliminate a policy incoherences created by FCVs.

Demise chartering would not fully resolve jurisdictional, market access and reputational issues associated with FCVs.

12. The costs and risks to industry of requiring either demise charters or reflagging are difficult to quantify because of the unavailability of commercial information. Industry advises that the difference in costs between the two is likely to be small.
13. MPI has received feedback from industry that some FCV owners may be unwilling to convert to demise charters or reflag their vessels to New Zealand. If this is the case, this would limit New Zealand's capacity to fish, and consequently lower the value of some fish quota unless alternative vessels could be sourced. MPI considers this risk is low as vessels flagged to the FCVs' flag States are known to reflag to other States.
14. MPI has assessed the risks and benefits of demise chartering and reflagging and consider that the long term benefits of reflagging outweigh the risks.

¹ Under a demise charter, only the vessel is chartered. The NZ company assumes control and possession of the vessel for the duration of the charter period, including the right to employ officers and crew to operate the vessel. Under a time charter, both the vessel and crew are chartered as a package, with control and possession of the vessel being retained by the vessel's foreign owner.

Background

Operation of FCVs in New Zealand

15. The fishing fleet operating in New Zealand waters is a mix of domestically owned and operated fishing vessels and FCVs. FCVs are vessels that are owned by a foreign person and fish in New Zealand waters under contract or charter to a New Zealand company.

Jurisdiction for FCVs

16. Under the United Nations Convention on the Law of the Sea (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 as long as there is a genuine link between the vessel and the flag State and the vessel satisfies any conditions set by the flag State.
17. Under New Zealand's Ship Registration Act 1992, only fishing vessels chartered on a demise basis may be flagged to New Zealand.
18. An FCV 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. In contrast, an FCV flagged to a foreign State, and operating under a charter arrangement in New Zealand, is subject to a complex legal and management framework, which aims to mimic the rights and obligations present in New Zealand law.
19. Under UNCLOS, New Zealand only has jurisdiction over the management of its fisheries resources within the EEZ. The flag State has jurisdiction over the "internal economy" of the vessel, which includes primary jurisdiction for health and safety issues, employment and criminal matters within the EEZ.

Options

20. The Ministerial Inquiry made 15 recommendations. Recommendations 1 to 6 have been agreed by the Minister for Primary Industries and the Minister of Labour and are being implemented. These recommendations remain valid regardless of the options proposed in this paper.
21. The Ministerial Inquiry also recommended legislative amendments to improve accountability and provide for greater enforcement of New Zealand law.

22. There are three options which are discussed below:
- **Option 1:** time charter with recommendations 1-11²;
 - **Option 2:** demise chartering with New Zealand employer and employment agreement and associated legislative change;
 - **Option 3:** require all FCVs to reflag to New Zealand.

Criteria for analysis

23. The Government objectives in relation to foreign owned and flagged vessels chartered by New Zealand fishing companies are to:
- Protect New Zealand's international reputation and trade access;
 - Maximise the economic return to New Zealand from our fisheries resources; and
 - Ensure acceptable and equitable New Zealand labour standards are applied on all fishing vessels operating in New Zealand's fisheries waters.
24. Officials consider that ensuring legislative and regulatory simplicity, in line with Government's objective for better and less regulation is also a relevant objective that ought to be considered.
25. Table 1 summarises how each option addresses the issues with FCVs and meets the Government's objectives.

² Further information on the recommendations of the Ministerial Inquiry can be found at the following link: <http://www.fish.govt.nz/NR/rdonlyres/1CD50F2C-5F55-481D-A3CB-9A7EC25CBE54/0/2012foreignchartervesselsreport.pdf>


Table 1: Comparison of options against Government objectives for FCVs

	Ensure that acceptable and equitable standards apply	Protect NZ reputation	Protect NZ trade access	Maximise economic return		Ensure legislative simplicity	Net impact to New Zealand
				Revenues	Costs		
Option 1	<p>Recs 1-6 ✓ Goes some way, but does not address fully as jurisdictional/ [redacted] remain for labour and HSE issues.</p> <p>Recs 7-11 ✓+ Extending the HSE Act through the Fisheries Act goes further, but does not address fully as jurisdictional issues with the Crimes Act.</p>	<p>Recs 1-6 XX NZ reputation continues to be at risk as jurisdictional issues remain for labour.</p> <p>Recs 7-11 X Some improvement if conventions ratified.</p>	<p>Recs 1-6 X Trade access continues to be a problem, unless industry voluntarily reflags.</p> <p>Recs 7-11 X No additional benefit to recs 1-6.</p>	<p>Recs 1-6 X Loss of access to markets and economic loss due to reputation impacts.</p> <p>Recs 7-11 X No additional benefit to recs 1-6.</p>	<p>Recs 1-6 ✓✓✓ NZ companies would retain operational flexibility + other benefits.</p> <p>Recs 7-11 ✓✓✓ No additional benefit to recs 1-6.</p>	<p>Recs 1-6 X Complex web of legal and policy frameworks remain in place, creating [redacted] and costs to Government.</p> <p>Recs 7-11 XX Legal and policy complexity exacerbated, and with costs and risks.</p>	<p>Recs 1-6 Short term direct costs the lowest.</p> <p>Indirect medium-long term costs highest (trade and NZ reputation).</p> <p>Recs 7-11 Short term direct costs low.</p> <p>Indirect medium-long term costs high (trade and NZ reputation).</p>
Option 2	<p>✓✓ Goes further as foreign crew will be subject to New Zealand employment and Health and Safety law, though [redacted] remain.</p> <p>Jurisdictional issues with the Crimes Act would remain.</p>	<p>? Some positive impact due to greater protections for crew.</p> <p>[redacted] due to enforcement difficulties (especially Crimes Act) and concerns with continued use of foreign-flagged FCVs.</p>	<p>X Trade access continues to be a problem, unless industry voluntarily reflags.</p>	<p>? Possible loss of revenue if loss of capacity results in some fish being uncaught.</p> <p>Revenues depend on whether industry voluntarily reflags and retains access to markets.</p> <p>[redacted]</p>	<p>XX Some loss to economic return as additional costs imposed.</p> <p>Risk of loss of access mitigated by 4 year transition.</p>	<p>XX Legal and policy complexity exacerbated, and with costs and risks.</p>	<p>Short term direct costs marginally higher than Option 1 due to employment and maritime safety costs.</p> <p>Indirect medium-long term costs lower as reputational risks addressed further but trade access not addressed.</p>

	Ensure that acceptable and equitable standards apply	Protect NZ reputation	Protect NZ trade access	Maximise economic return		Ensure legislative simplicity	Net impact to New Zealand
				Revenues	Costs		
Option 3	<p>✓✓✓</p> <p>All New Zealand law applies and can be enforced, including employment, Health and Safety law and Crimes Act.</p>	<p>✓✓✓</p> <p>Fully addressed as all NZ law would apply.</p>	<p>✓✓✓</p> <p>Trade access and policy issues resolved as all FCV fish responsibility of NZ.</p>	<p>✓✓</p> <p>Long term benefits of access to markets, reputation and investment certainty. Possible impact if loss of capacity results in some fish being uncaught.</p>	<p>XXX</p> <p>As for Option 2 but slight increased tariff cost due to likely loss of tariff free access, mitigated by 4 year transition.</p>	<p>✓✓✓</p> <p>Complexity fully addressed as NZ law would apply along with a simplified management approach.</p>	<p>Short term direct costs marginally higher than Option 2 due to tariff implications.</p> <p>Indirect medium-long term costs lowest as reputational and trade risks fully addressed.</p>

Key problem summary

26. New Zealand is believed to be unique in that the use of FCVs is otherwise limited to developing countries. Some of these, such as [REDACTED], are believed to favour a coastal State based certification approach in line with New Zealand. Others however, such as [REDACTED] have responded by reflagging all FCVs into their domestic fleet.
27. Internationally, the trend is for flag States to have sovereignty over vessels fishing in their EEZ, either through domestic ownership of vessels or reflagging of foreign owned vessels. UNCLOS places jurisdiction for health and safety and labour standards with the flag State of the vessel.
28. FCVs operating under a time charter in New Zealand currently retain the flag State of the vessel owner. Ensuring accountability for the health and safety and labour standards on FCVs is difficult as the foreign owner retains possession and control of the vessel and is distanced from New Zealand jurisdiction. An example is where the use of manning agents based in other countries has made it difficult to determine if crew receive wages they are entitled to.
29. During 2011 there were complaints and allegations about such issues as vessel safety, living and working conditions, physical and sexual abuse, underpayment and manipulation of time sheets. This has resulted in the US identifying fishing in New Zealand as a problem area with regards to human trafficking on FCVs. Retailers in the UK and US are paying close attention to sustainability and ethical considerations around seafood products, and the New Zealand brand could be seriously affected if the management response is not seen to be effective.

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31. Lack of jurisdiction for FCVs has created difficulties for New Zealand industry to access the EU market. Certification requirements are increasingly the responsibility of the flag State. The use of foreign-flagged FCVs has made it difficult for New Zealand to ensure market access as New Zealand does not have control over certification of fish. As a result, New Zealand caught fish is currently being blocked into certain markets. Loss of access to markets further impacts New Zealand's reputation for security of supply and there is a risk that reputational damage could spread to other sectors.
 32. The management framework in New Zealand is unnecessarily complex in order to work around the lack of jurisdiction. For example, labour standards for foreign crew are monitored through immigration processes and Minimum Wages through the registration process under the Fisheries Act. This complex arrangement makes management of FCVs more difficult, resulting in poor coordination between agencies and poor enforcement of New Zealand law.
 33. All of the above issues have tarnished New Zealand's reputation as a safe, sustainable and socially responsible supplier of seafood.

Regulatory impact analysis – analysis of options

Option 1: Time charter + recommendations 1-11

34. Under this option, FCVs continue to operate under time charter arrangements. Recommendations 1 to 6 which relate to improvements to the coordination, monitoring and enforcement by MPI, Maritime New Zealand (MNZ) and Department of Labour (DOL) processes would go some way to improve compliance with the existing law.
35. Option 1 could also include recommendations 7-11 of the Ministerial Inquiry report.
36. Recommendation 7 proposes amendments to section 103 of the Fisheries Act 1996 to better support MPI's ability to regulate the operation of FCVs and allow for stronger enforcement of any breaches to fisheries laws. In addition, the Inquiry recommended including provisions to increase the visibility and accountability of the New Zealand parties linked to the FCV.
37. Recommendations 8-9 propose to apply the Health and Safety in Employment Act 1992 (HSE Act) through the registration requirements of s103 of the Fisheries Act. Recommendation 10 proposes to revise the Maritime Rules so that they apply to FCVs as well as New Zealand ships.

38. Recommendation 11 proposes that the government conduct a national interest analysis of international conventions to set standards for conditions for work, safety and qualifications on fishing vessels.

Benefits of Option 1

39. Increased observer coverage would act as a deterrent and provide agencies with necessary information to take enforcement action. The establishment of an interagency steering group would improve coordination in decision making and managing risk.
40. Improved implementation of the existing management framework will strengthen monitoring and enforcement of health and safety and labour conditions on FCVs in New Zealand, while retaining operational flexibility and low cost for industry.
41. In 2011, export revenues from FCVs totalled around \$300 million out a total of approximately \$1.5 billion dollars for all New Zealand seafood exports (including aquaculture products and catch from inshore vessels).

FCVs provide New Zealand companies with operational flexibility, including the ability to change catching capacity without significant capital investment. FCVs also allow low value fish species to be harvested economically

43. Recommendation 7 would strengthen the abilities of the MPI Director-General to enforce New Zealand rules through the vessel registration process. Industry would retain the flexibility and low short-term costs of time charter arrangements. The application of the HSE Act would provide greater protection to crew on board FCVs.
44. Recommendation 11 proposes that the Government undertakes a national interest analysis of international maritime conventions. If ratified, the International Maritime Organisation Conventions (IMO) (Torremolinos Protocol, C188 and SCTW-F), New Zealand would be in a better position to apply its vessel safety, training and certification, health and safety standard on board FCVs. Ratification of these instruments would provide a much stronger and more transparent link between domestic and international regulatory regimes.

Costs of Option 1

45. Tightened monitoring and enforcement of existing law will impose costs on industry. The extent of costs will be relative to current levels of compliance for individual companies. MPI can estimate the following costs:
- Auditing costs for immigration Approval in Principle processes will increase from \$210 to \$4900 (per operation) per annum to cover the costs of the audit process. This will increase costs by around \$113,000 pa across the whole FCV fleet.
 - Costs of refitting vessels to meet New Zealand standards will vary by vessel, but should be minimal given a majority of FCVs have refit vessels over the last 12 months and already comply with MNZ standards.

- Increased observer costs will vary by vessel but will range between \$170,000 to \$195,000 per vessel per annum for high risk FCVs.

46. Increased costs to meet existing laws may make some businesses unviable. This is a low risk, as improved enforcement in 2011 has already imposed a majority of costs to refit vessels, or pushed them out of New Zealand.

Risks of Option 1

47. The activities on board FCVs are undermining Government objectives. An analysis is set out below.

New Zealand has limited jurisdiction over FCVs

48. The complexity of the current system for managing safety and labour issues on board FCVs reflects New Zealand's past efforts to regulate in areas that it does not have full jurisdiction.

[REDACTED]

[REDACTED]

51. In the case of the *Oyang 70* (a Korean vessel that sank, with the loss of six crew in late 2010), the limited nature of New Zealand's jurisdiction was amply illustrated by the fact that agencies had no automatic jurisdiction to investigate the sinking. That rested with the Korean authorities.

[REDACTED]

Labour standards

53. The use of time charter arrangements has made it difficult to hold the foreign owner accountable for breaches of New Zealand standards. The breaches ranged from poor crew accommodation, hygiene of facilities, and food quality to the more serious questions of unsafe working environments, underpayment of wages and physical abuse.

[REDACTED] Further, the use of manning agents based in other countries has made it difficult to determine if crew receive wages they are entitled to. [REDACTED]

Trade access

55. The difficulties in applying equitable New Zealand safety and labour standards on board FCVs create a perception that New Zealand is failing to take appropriate action. This perceived inaction has damaged New Zealand's international reputation. Concerns have been raised by the US government and markets about the claims of human rights abuses on some FCVs. These concerns could limit access to the US market as sanctions are imposed on importers to the US and buyers choose not to purchase fish from FCVs.
56. These developments are an example of the increasing use of market measures by States and the private sector to address fisheries sustainability, legality and labour issues. These market measures often target the flag State, their flagged vessels and product of their flagged vessels. Market access of FCV product risks becoming increasingly dependent on their flag States, which in some cases do not have the systems, capacity or international recognition to meet the necessary market requirements.
57. The more immediate example affecting FCVs is the EU requirement for flag State catch certification to prove that fish was legally caught. Buyers in intermediate countries such as the US and China are consequently requiring these certificates for the possible onward sale of fish to the EU and this requirement could spread to buyers in other markets.
58. After a year of discussions with the EU, New Zealand had to work with Korea and Japan on flag State certification by the rejection of Spain of New Zealand certified FCV product. The EU is New Zealand's third most valuable market, with charter vessels accounting for around a quarter of exports (NZ\$57 million of NZ\$201 million in 2011).
59. Foreign flag State certification does not, however, automatically guarantee access for all FCV product to the EU market. 
60. Foreign flag State certification also undermines New Zealand's firmly held position that New Zealand, as the coastal State with exclusive management rights and responsibilities, should be responsible for FCV catch certification. In addition, flag State certification can be expected to generate questions around rules of origin for FCV caught fish, and consequently questions as to what tariffs apply, and which sanitary certificate and therefore which market access provisions apply.

Better regulation, less regulation

61. The current system for managing safety and labour issues on board FCVs is complex to administer. The Minimum Wage Act 1983 and the Wages Protection Act 1983 are applied through the Fisheries Act. Immigration policy is also used to impose minimum remuneration requirements and compliance with employment law. Best practice would be to enforce labour and health and

safety law through primary legislation for those areas, rather than the primary legislation for fisheries. For the current approach to be effective, coordination across agencies is required.


62. Until recently, coordination has been problematic and has resulted in poor monitoring and enforcement on board FCVs. Reliance on the complex management framework may create ongoing problems in the long term, which is not a durable solution. The current management framework is inconsistent with the Government's objective for better and less regulation.
63. Recommendations 8 - 9 would add further complexity to the management framework discussed above through the attempt to apply health and safety legislation through fisheries legislation.

Option 2: Demise charter + employment agreements

64. Option 2 would remove the ability to use time charter arrangements. The crew (foreign or New Zealand) would be required to be employed by the New Zealand company and have a New Zealand employment agreement. This means that all New Zealand employment law would apply on board FCVs.
65. As for Option 1b, recommendations 7 to 11 would also be implemented under Option 2.
66. As a condition of Option 2, MPI proposes that the Government would phase out work around certification arrangements with foreign markets. This would be used as a means of incentivising New Zealand operators to reflag FCVs voluntarily in order to secure long term access to these markets.

Benefits of Demise Charters

67. Demise chartering would mean New Zealand could insist on appropriate workplace conditions and take action against any exploitative labour practices. This would provide greater protection to foreign crews and help protect New Zealand's international reputation.
68. Demise chartering is also more closely aligned to the current FCV operating model so may be an easier transition for industry.

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70. Option 2 would provide more flexibility to industry than Option 3. New Zealand companies could make a business decision to reflag voluntarily if access to markets was impacted by certification requirements.

Costs of Demise Charters

71. In addition to the costs of Options 1a and 1b, the demise charter option would impose the following costs on industry:
 - Pay rates for workers increasing by approximately 12.5 percent as a result of compliance with labour laws, Holidays Act etc under an employment

agreement (assuming that the \$2 increment above the minimum wage is retained), adding approximately \$4.9m in costs annually across the whole FCV fleet³.

- A one off cost of around \$6300 is payable for the recognition of foreign qualifications of the crew (per vessel) in line with MNZ requirements. Assuming this is paid per vessel, and the crew would work on the vessel on an ongoing basis, this would be a cost of \$150,000 across the whole FCV fleet. Revalidation would be required up to every five years, at a cost of around \$2300 per vessel⁴.

72. Anecdotally, industry also claims that there would be potential crewing difficulties under a demise charter due to foreign crew unwilling to work for a foreign employer, and/or foreign union issues. MPI has not been able to test these claims.
73. MPI notes the risk of loss of access to foreign crew is balanced by the potential benefits of increased employment opportunities for New Zealanders. This is a key concern of submissions, particularly from iwi, to the Ministerial Inquiry.
74. Industry advises that demise chartering would mean responsibility for maintenance (including VAT and other taxes on parts) and insurance costs. As FCVs are typically older vessels, operators are concerned this could add significant cost to their business arrangements due to the potential for mechanical failures on FCVs.
75. Under a time charter agreement, these costs are covered by the foreign owner of the vessel. Potential costs vary according to the type of mechanical issue, but industry suggests that these could be enough to make a business unviable. It is possible, however, that New Zealand companies are able to continue to contract out of these costs.
76. [REDACTED] Market access for fish from Korean and Japanese FCVs continues to be reliant on the flag States, and wider policy incoherences and associated risks remain.

Risks of Demise Charters

[REDACTED]

[REDACTED]

³ In 2010-11 there were 1265 work visas approved for FCV crew. Increased costs per vessel are estimated to be \$205,000 per annum and there are currently 24 FCVs in the fleet.

⁴ The fee for recognition of equivalence will only be a small element of the cost for recognition for the applicant. There are the safety oral examination costs and for some the need to do supplementary examinations to meet the equivalence. However the bulk will relate to the costs – financial and temporal – for the applicant to provide the appropriate evidence in English.

Reputational and trade impacts

78. Due to tighter accountability to the New Zealand party, Option 2 is expected to go some way to addressing the reputational impacts caused by time charters. New Zealand companies and the Government will be able to point out that New Zealand has control over the vessels and are fully accountable.
79. The continued use of foreign-flagged vessels may not address the ethical and sustainability concerns of foreign markets however. There may be a perception that although demise charters have improved enforcement of standards, the vessels are still linked to foreign states that have lower ethical and sustainability standards. This could impact trade of seafood and other products into markets such as the UK and US, where consumers are most aware of these issues. The potential indirect economic value of this risk is difficult to quantify due to the uncertainty around the reaction to the management approach.

Access to vessels

80. The more significant risk to the fishing industry of Option 2 over Option 1 is access to vessels.
81. Anecdotally, industry has advised MPI that Ukrainian vessel owners will not be willing to shift to demise arrangements to New Zealand. [REDACTED]
[REDACTED]
[REDACTED] Some domestic industry participants have also informed MPI that Korean owners would be unwilling to accept demise charter arrangements with New Zealand.
82. Some of these concerns are, officials believe, overstated particularly because there tends to be a reluctance of industry players to consider any alternatives to their existing arrangements.
83. MPI contacted ship brokers in Asia and Europe to test vessel availability for FCVs currently used in the EEZ. Feedback suggests that there are limited alternative suitable vessels available for either time or demise charter, however suitable vessels would be available for sale to New Zealand companies.
84. Some fishing companies have long-standing business arrangements with existing FCVs owners. Use of alternative vessels and charter arrangements creates uncertainty in the performance of the vessels, and industry claims this exposes them to further risk. It has not been possible to verify these claims, or quantify the marginal costs of sourcing alternative vessels relative to existing cost structures for FCVs.
85. Appendix one to three provide an analysis of the possible impacts of demise charter or reflagging based on a worst case scenario involving a loss of access to current vessels from Japan, Korea, Ukraine and Dominica. These diagrams indicate that a worst case scenario could result in a loss in export revenues of around \$300 million annually and potentially make some fisheries unviable, e.g. some squid, jack mackerel, southern blue whiting and hake stocks where 80-99% is currently caught by FCVs.


86. For the reasons outlined above, we consider the worst case scenario of no vessels being available and fish remaining un-harvested to be an unlikely outcome of demise chartering.

Impact on quota and ACE trade prices

87. An impact of a more expensive fishing operation would decrease the value of ACE, particularly in the short term as the market for ACE adjusts to new market settings. ACE is the catching right generated each year from quota, and prices reflect the expected value (returns less cost of fishing) of the current year's fishing. Potential impacts are hard to establish and are difficult to quantify. ACE prices are affected by a number of factors, such as catch limits, aggregation limits and environmental factors. Despite this, officials advise that there is likely to be some impact as ACE reflects operating costs to some extent.

Impact on the 1992 Deed of Settlement

88. Requiring demise charters or reflagging of all FCVs may disproportionately impact on Maori and iwi quota holders, particularly if vessels are unavailable. Iwi quota holders that utilise FCVs may have less flexibility to change operating models for maximising the return from their quota because quota can only be sold to other iwi or to Te Ohu Kaimoana. This limitation is set out in the Maori Fisheries Act and reflects contemporary arrangements agreed by the Maori Fisheries Commission subsequent to the signing of Maori Fisheries Deed of Settlement in 1992.

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90. The Crown could also refer to the principle that settlements do not impinge on the Crown's right to develop policy in response to contemporary issues. At this stage, it is difficult to quantify this risk. Officials have consulted with a range of iwi leaders on the reflagging option to minimise the risk and have committed to investigating options to enable iwi to continue to maximise returns from their quota and ACE holdings.

Ensure legislative simplicity

91. Demise charter arrangements would be based on the existing management framework for FCVs. Recommendation 7 is for Health and Safety legislation to be implemented through the registration requirements of the Fisheries Act. The demise charter option would add further complexity to Option 1.

Impact on investment

92. MPI considers that the empowering provision for reflagging proposed by the Ministerial Inquiry could lead to a freeze in investment in deepwater fisheries due to the uncertainty created for industry. For this reason, MPI recommends that the provision should not be implemented if Option 2 was chosen.

Option 3: Reflagging all FCV as New Zealand vessels after 4 years from Cabinet decision + employment agreement (preferred option)

93. Option 3 would require all FCVs operating in New Zealand to be flagged as New Zealand ships. Reflagging is the most comprehensive approach as it provides New Zealand with full civil and criminal jurisdiction for activities on board FCVs. Reflagging would mean that all New Zealand law would apply, specifically health and safety, employment and criminal law.
94. Under Option 3, it is proposed that recommendations 7 (strengthening the Fisheries Act) and 11 (national interest analysis for IMO Conventions) Recommendations 8 to 10 and 14, related to health and safety, maritime law and criminal law, would not be necessary as New Zealand would have full jurisdiction for these matters.

Benefits of Reflagging

Ensure legislative simplicity

95. Option 3 best meets the Government objectives for FCVs. Reflagging to New Zealand provides New Zealand with full jurisdiction over FCVs. This would reduce legislative and regulatory complexity in the management of vessel safety, health and safety and employment laws. As the vessels would be subject to all domestic laws, policy and operational responsibilities would lie with the agencies best placed to enforce them.

Ensure that acceptable and equitable standards apply

96. Reflagging would also provide certainty regarding enforcement of New Zealand laws to the New Zealand party. By addressing jurisdictional issues, reflagging goes further than demise charter arrangements by enabling the Crimes Act to be enforced more easily in the EEZ. [REDACTED]

Reputational and trade impacts

97. Trade policy and market access issues will also be resolved through reflagging. Most immediately, New Zealand will be able to fully respond to market access requirements, including flag State catch certification requirements, without relying on the certification assurances of third party States. Reflagging would also strengthen and simplify New Zealand's position on rules of origin in negotiating Free Trade Agreements and labour issues in the Trans-Pacific Partnership Agreement.
98. Despite short term cost to industry, reflagging would set better conditions for growth of the domestic fishing industry in the long term. This will be achieved through a clearer and simpler management framework that inspires industry confidence that FCVs and domestic vessels are operating on a level playing field, and subsequently encourages investment.

Costs and risks of Reflagging

99. Costs that industry will incur if required to reflag are hard to estimate, but the difference in costs between Options 2 and 3 is likely to be marginal. This is supported by feedback from industry.
100. A direct cost on industry of flagging to New Zealand is the \$2000 administrative fee under the Ship Registration Act. This fee would be payable every time the vessel changed the flag to New Zealand, so could occur yearly for seasonal vessels.

[REDACTED]

[REDACTED]

103. [REDACTED]

The increased operating costs faced by some of these smaller domestic companies may mean that reflagging causes them to become unprofitable.

104. Option 3 would have similar impacts on quota and ACE prices and the Deed of Settlement as Option 2, due to the similar increased operating costs and consequently lower profits.
105. As for Option 2, a notable risk to the fishing industry of Options 3 would be access to vessels. Several of the current FCVs have a record of reflagging, including the two Dominica-flagged vessels (which are Ukraine-owned). Vessels flagged to Korea are also known to regularly reflag to other countries. So sourcing alternative vessels may not be necessary.
106. There are no precedent risks to other types of vessels (e.g. ferries) operating in New Zealand waters as a result of requiring all fishing vessels to reflag to New Zealand.
107. A summary of the direct costs of each option is in Table 2 below.

Table 2 – Direct costs of the options

	Observer coverage	Employment costs	Immigration admin audit costs (AIP)	Increased costs to MNZ to recognise qualifications	Insurance and maintenance	Reflagging administration costs	Tariff access
Option 1	Increased costs of \$195,000 pa for high risk vessels ⁵	N/A	\$113,000 increase across fleet (\$4900 per operation)	N/A	N/A	N/A	N/A
Option 2	As for Option 1a	Increase by 12.5% - around \$4.9m across whole fleet pa	As for Option 1a	\$6300 per vessel revalidated for around \$2300 every 5 years.	Increase in potential cost (depends on circumstances)	N/A	N/A
Option 3	As for Option 1a	As for Option 2	As for Option 1a	As for Option 2.	As for Option 2	\$2000 to register - total of \$50,000 across whole fleet	\$850,000 to \$4.8 million increase in tariff costs

Conclusion and recommendations

108. On balance, MPI recommends that all vessels operating in the EEZ be required to be flagged to New Zealand. This recommendation goes one step further than the Ministerial Inquiry because MPI considers the reputational risks of continued use of vessels flagged to other States to be too high to use demise charters. Despite the uncertainties surrounding the potential impacts on industry (costs and access to vessels) reflagging best meets the Government's long-term objectives.
109. Reflagging would not require the current complex legislative and policy arrangements as New Zealand would have civil and criminal jurisdiction.
110. Reflagging would also provide certainty regarding enforcement of New Zealand laws to the New Zealand party. Further, the Crimes Act would be fully enforceable. This would provide confidence to the US that fishing crews are treated well, and facilitate US businesses to prove that product from New Zealand meets supply chain standards for the wellbeing of the crew.
111. MPI acknowledges the uncertainties around additional short-term costs to industry and risks around access to alternative vessels. MPI considers any short term impacts will be balanced by the long-term benefit to the fishing industry of providing a durable solution to the management of FCVs.

⁵ \$195,000 assumes a cost of \$650 per day and 300 days per annum. This figure is based on the assumption of each FCV carrying one observer at all times. This figure may be increased based on observer availability or the result of cross-agency risk profiling.

112. Reflagging would set up better conditions for the fishing industry to continue operating in the long term in a socially and environmentally responsible manner. Reflagging will provide the most certainty that New Zealand's international reputation is protected and is not tarnished further through links to foreign flag States.

Consultation and engagement

113. The Ministerial Inquiry took place between August 2011 and February 2012.
114. Seventy two submissions were received, and public hearings were held in Auckland, Christchurch, Nelson and Wellington.
115. MPI has engaged with industry on recommendations 7-15 and incorporated feedback into the RIS.
116. MPI has engaged with iwi leaders on the potential impacts of the options on the 1992 Deed of Settlement.
117. MPI and the Department of Labour have consulted with the Ministry of Foreign Affairs and Trade (MFAT), Maritime New Zealand (MNZ), Ministry of Economic Development (MED), Te Puni Kokiri (TPK) and the Treasury in the preparation of this paper, and their views have been reflected in its development.
118. The Department of Prime Minister and Cabinet (DPMC) has been briefed on the paper.

Implementation

119. The demise charter and reflagging options would both have impacts on the fishing industry that will require re-adjustments to existing practices in addition to those required to recommendations 1 to 6.
120. MPI agrees with the Ministerial Inquiry (recommendation 15) that once decisions are taken on the report, steps be taken to engage with industry and iwi on a detailed implementation plan.
121. If the reflagging options is chosen then MPI will work with industry on interim arrangements to ensure uninterrupted trade access where possible.
122. The Government recognises that recognition of equivalent qualifications is a significant barrier to reflagging for industry. The Government is committed to removing the obstacles to recognition of foreign qualifications and provide certainty to industry. The Ministry of Transport, MPI and MNZ will work to ensure that there is capability to recognise foreign qualifications within 12 months of Cabinet's decision.
123. The four-year transition period suggested by MPI is an appropriate transition period to require reflagging of all FCVs. A relatively short time sends strong signals to export partners concerned that New Zealand is moving to address the issues raised in the Inquiry. In addition, it reinforces that New Zealand is responsible and has a robust world leading fisheries management regime. Four years also gives adequate time for development of necessary legislative







changes and legislative process and enables industry to adjust to the new arrangements in an orderly fashion.

Monitoring and evaluation

124. MPI will closely monitor the economic impact of the chosen option and adjust the implementation plan where necessary to minimise the impact in industry in the short to medium term.
125. MPI will also monitor the trade access and reputational outcomes of the chosen option and assist industry to gain access to markets where possible in the interim period.

Appendix 2: The value of Foreign Charter Vessels to New Zealand

Value of FCV caught fish by export market

Export destination	Estimated value attributable to FCV catch	Total value of market for NZ seafood (year to December 2011)
All markets	\$302M	\$1533M
 China	\$80M	\$300M
 European Union	\$57M	\$201M
 Australia	\$31M	\$275M
 Japan	\$18.8M	\$132M
 Korea	\$11M	\$51M
 United States	\$9M	\$161M

Note: Estimated value attributable to FCVs is based on the average % taken by FCVs over the last 6 years

Appendix 3: Value of Foreign Charter Vessels by flag State



Catch value

\$158 M

Highest value fishstocks fished by Korean FCVs

Fishstock	Total fishstock catch value	Korean FCV % of catch	Catch value
Hoki 1	\$235.7M	18%	\$42.4M
Squid 1T	\$45M	65%	\$37.7M
Squid 6T	\$58.3M	67%	\$31.3M
Hake 7	\$12.5M	85%	\$10.5M

Barriers to reflagging

A requirement to reflag vessels could impact on financial arrangements with Korean banks.

Ukraine

Catch value

\$94 M

Highest value fishstocks fished by Ukrainian FCVs

Fishstock	Total fishstock catch value	Ukr FCV % of catch	Catch value
Jack Mackerel 7	\$40.5M	72.2%	\$29.3M
Hoki 1	\$235.7M	10.6%	\$24.9M
Southern Blue Whiting 6I	\$22M	47.6%	\$10.5M
Squid 6T	\$58.3M	12.4%	\$7.2M

Barriers to reflagging

Industry has advised that the Ukrainian owners will not permit their vessels to be reflagged to another jurisdiction.

Dominica

Catch value

\$45 M

Highest value fishstocks fished by Dominica FCVs

Fishstock	Total fishstock catch value	Dom FCV % of catch	Catch value
Hoki 1	\$235.7M	4.8%	\$11.4M
Jack Mackerel 7	\$40.5M	26.9%	\$10.9M
Southern Blue Whiting 6I	\$22M	25.5%	\$5.6M
Squid 6T	\$58.3M	8.4%	\$4.9M

Barriers to reflagging

These are the only vessels registered in Dominica and the State has limited role in registration of these vessels.

The State would not prevent vessels from being reflagged to New Zealand.

Japan

Catch value

\$27 M

Highest value fishstocks fished by Japanese FCVs

Fishstock	Total fishstock catch value	Jap FCV % of catch	Catch value
Southern Bluefin Tuna	\$19.2M	36%	\$6.9M
Squid 1J	\$4.1M	100%	\$4M
Hake 1	\$6.7M	43%	\$2.8M
Squid 1T	\$45M	6%	\$2.7M

Barriers to reflagging

Anecdotal evidence suggests Japan would not permit its vessels to be reflagged to another jurisdiction

Note: All values are estimates and have been calculated using price per greenweight kilogram. This was calculated by converting the unit price of the highest value export product form.

