
Worker Livelihood

Section Detail Report

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Overview

Fishers who work in New Zealand's seafood industry have rights and protections provided by legislation and associated rules and regulations. The fishers' rights are protected whether they are working on vessels within New Zealand waters, or on New Zealand flagged vessels in international waters.

New Zealand has international obligations and domestic legislation which set minimum standards that New Zealand employers and contracting businesses need to comply with, in respect of their fishers.

The rights and protections include fair employment provisions, non-discriminatory processes, and internationally-aligned training requirements.

New Zealand flagged fishing vessels are subject to New Zealand law whether they operate within the New Zealand Territorial Sea, 200-mile exclusive economic zone (EEZ) or in international waters outside of the EEZ. The fishing vessels vary in length up to 104 metres and may have a single crew or house up to 90 men and women. Workers on board these vessels may be engaged in a variety of tasks including fishing, fish processing, engineering, food-service, housekeeping and vessel operations.

All vessels are regularly inspected, in line with New Zealand's legislation, and are also subject to spot checks by Maritime New Zealand's Maritime officers at any time. This is to ensure that all vessels meet the required standards for a vessel of their class.

By law, seafood companies are required to protect worker rights, ensure a safe and healthy work environment and avoid unlawful discrimination in their operations.

Outlined below are the key principles New Zealand seafood companies are subject to and which are described in more detail in the following pages:

- government oversight to ensure worker protection
- prohibition of child or forced labour
- freedom of association and collective bargaining
- housing, meals and recreational facilities
- protection from unlawful discrimination
- contractual arrangements for wages
- appropriately qualified crew on board fishing vessels.

Key facts

NZ legislation provides that:

- forced, bonded or indentured labour is prohibited
- child labour and exploitation is prohibited
- any threats of penalty or sanction are prohibited
- legal entitlements to work are provided
- freedom of movement is protected
- freedom of association is protected

- discrimination is prohibited
- bullying, harassment or abuse of any kind is prohibited
- non-contract wage deductions are prohibited
- disciplinary actions must be understandable and legal
- workers must be treated with respect and dignity
- recognised employment relationships are required by law
- fair and transparent compensation mechanisms are required by law
- contracting relationships cannot be used to avoid obligations to workers
- reasonable working hours (including rest periods) are protected.

Scope

This report describes New Zealand's approach for ensuring the livelihood of fishers working in the New Zealand seafood industry, including the compliance and verification measures used to confirm minimum requirements are being met.

The report covers:

- the rights and protections of fishers who work on New Zealand flagged fishing vessels, whether the ships are in New Zealand or international waters;
- the international obligations, domestic legislation and standards which comprise the minimum settings that New Zealand employers and contracting business need to comply with in respect of their fishers.

The term "fishers" on fishing vessels includes skippers, mates, marine engineers, factory technicians, deck crew, processing factory crew, food service and housekeeping crew. Other persons may also be on board fishing ships such as Ministry of Primary Industry (MPI) Fisheries Observers.

New Zealand law requires all vessels fishing in New Zealand waters to be registered as New Zealand vessels, and their fishers to be covered by New Zealand employment law via the Fisheries Act 1996 including the (Foreign Charter Vessels and Other Matters) Amendment Act 2014¹. This report therefore covers the livelihood of all fishers whether New Zealand citizens or foreign nationals.

This report does not cover;

- workers who work in shore-based fish processing factories;
- New Zealand fishers working on non-New Zealand fishing ships;
- any use by the New Zealand seafood industry of foreign flagged vessels for fishing beyond New Zealand waters; or
- fishers involved in customary or recreational fishing activities.

¹ Fisheries Act 1996 including the (Foreign Charter Vessels & Other Matters) Amendment Act 2014.

The New Zealand approach

The New Zealand seafood industry must comply with all relevant legislation relating to the human rights, employment and safety of fishers. Within New Zealand, various aspects of worker livelihood are specified through Acts of Parliament and supported by associated rules and regulations as well as decisions of the courts. Compliance with these legal requirements provides the minimum standard that every business and vessel must achieve in order to participate in the seafood industry. Fishers' work contracts are not standardised. The major companies contract their fishers on different terms.

For seafood industry participants, these requirements are primarily covered under the:

- Maritime Transport Act 1994 (MTA)²,
- Employment Relations Act 2000 (ERA)³,
- Minimum Wages Act 1983⁴,
- Holidays Act 2003⁵,
- Human Rights Act 1993⁶,
- Wages Protection Act 1983⁷,
- Equal Pay Act 1972⁸,
- Crimes Act 1961⁹, and
- Health and Safety at Work Act 2015 (HSWA)¹⁰.

International Labour Organisation (ILO) and International Maritime Organisation (IMO) convention provisions that relate to fisher livelihood¹¹ and training,¹² are partly incorporated into New Zealand law by some of the above legislation.¹³

The first section below (*Freedoms and respect in work*), largely focusses on the obligations of employers of fishers who work on New Zealand vessels. The various obligations are encompassed in a number of New Zealand Acts, including the Maritime Transport Act 1994 (MTA)¹⁴, the Employment Relations Act 2000¹⁵, the Human Rights Act 1993 (HRA)¹⁶ and various rules and regulations associated with these Acts.

² Section 429 of the MTA provides that Maritime New Zealand (MNZ) is the regulator for maritime activities, and that the Director of MNZ has the authority to make Maritime Rules under Part 4 of the MTA to regulate maritime activity. Such Maritime Rules cover maritime training, skipper/crew certification requirements and safety management systems for fishing ships.

³ The ERA provides that employees and employers must deal with each other in good faith, and must not directly or indirectly, do anything to mislead or deceive each other, or that is likely to mislead or deceive each other.

⁴ The purpose of the Minimum Wage Act 1983 is to allow a prescribed minimum wage to be set for persons who are aged 16 years or older.

⁵ The purpose of the Holidays Act 2003 is to promote balance between work and other aspects of employees lives and to provide employees with minimum entitlements to annual holidays, public holidays, sick leave and bereavement leave.

⁶ The purpose of the Human Rights Act 1993 is to help ensure that all people in New Zealand are treated fairly and equally. The Act also sets out the role of the Human Rights Commission.

⁷ The purpose of the Wages Protection Act 1983 is to set out the way wages must be paid and prevent unlawful deductions from wages.

⁸ The purpose of the Equal Pay Act 1972 is to enable the elimination and prevention of gender discriminations in remuneration rates in all sectors of paid employment.

⁹ The Crimes Act 1961 codifies serious criminal offences in New Zealand law.

¹⁰ The Health and Safety at Work Act 2015 is New Zealand's workplace health and safety law and sets out the principles, duties and rights in relation to workplace health and safety.

¹¹ The Human Rights Act 1993 encompasses protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights.

¹² The International Maritime Organisation International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995 provides the training framework for which the New Zealand fishing qualifications are aligned with.

¹³ Human Rights Act 1993 and the Maritime Transport Act 1994.

¹⁴ Maritime Transport Act 1994.

¹⁵ Employment Relations Act 2000.

¹⁶ Human Rights Act 1993.

The second section deals with wages and contract terms. This provides explanations of fishing arrangements and the various ways in which fishers are compensated for their work including employees' contracts and contracts for service including share-catch arrangements. It includes fishing arrangements for New Zealand fishers, and non-New Zealand fishers working on foreign-charter fishing vessels which operate in New Zealand waters. These foreign-charter vessels must be registered as New Zealand ships.

The third section covers the fishers' right to a safe and healthy workplace. Much of the specific health and safety obligations of employers, and rights of fishers are covered in the *Health and Safety Section Detail Report*. However, this report does cover fishers' entitlement to health and safety training, and the authority of the skipper to ensure a safe and healthy work environment on board is maintained.

Freedoms and respect in work

Forced, bonded or indentured labour is prohibited

Slavery and the use of forced, bonded or indentured labour is prohibited in the New Zealand labour market, including on New Zealand fishing vessels.¹⁷

The International Labour Organisation (ILO), of which New Zealand is a founding member, sets labour standards, and aims to promote workers' rights, encourage employment opportunities, enhance social protection and strengthen dialogue on work-related issues. New Zealand has ratified 61 ILO conventions, of which 34 are still in force.¹⁸ New Zealand has not ratified the ILO convention C188 Work in Fishing Convention¹⁹.

Modern slavery and human trafficking in the fishery industry is a matter of current concern internationally and New Zealand is aware of moves by other countries to combat it. This is an issue that could affect the offshore supply chains of the New Zealand seafood industry.²⁰

In December 2020 MBIE published the Plan of Action against Forced Labour, People Trafficking and Slavery 2020-2025²¹.

In April 2021, New Zealand participated as one of the "Five Countries" to discuss the impact of Covid-19 on migration and borders, including the potential for irregular migration and human smuggling to increase once border restrictions are lifted. The Five Countries have agreed to work together to assess emerging irregular migration trends and threats.²²

Immigration New Zealand is committed to preventing migrant worker exploitation. In 2020 New Zealand authorities successfully prosecuted a local case of human trafficking and dealing in slaves²³ (in that case relating to horticulture). It is also of note that in March 2022, the Supreme Court dismissed the application for leave to appeal this case.²⁴

The Ministry for Business, Innovation and Enterprise (MBIE) has an online reporting form which allows anyone to report migrant exploitation²⁵.

¹⁷ Crimes Act 1961, ss 98 and 98AA consistent with C029 Forced Labour Convention, 1930 (No.29) and C105 Abolition of Forced Labour Convention, 1957 (No.105).

¹⁸ ILO conventions ratified by New Zealand - [available from: ILO Conventions ratified by New Zealand](#).

¹⁹ ILO convention C188 Work in Fishing Convention.

²⁰ See <https://www.beehive.govt.nz/release/new-zealand-determined-stamp-out-people-smuggling>,

https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12008047 and

<https://www.stuff.co.nz/business/industries/102067508/government-tells-multinationals-to-search-for-slavery-as-australia-enacts-audit-law> (last accessed 11 March 2022).

²¹ <https://www.mbie.govt.nz/dmsdocument/13568-combatting-modern-forms-of-slavery-plan-of-action-against-forced-labour-people-trafficking-slavery> (last accessed 11 March 2022)

²² <https://www.beehive.govt.nz/release/five-country-ministerial-communic%C3%A9> (last accessed 11 March 2022)

²³ High Court decision — [R v MATAMATA \[2020\] NZHC 1829 \[27 July 2020\]](#)

²⁴ <https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-16.pdf> (last accessed 11 March 2022)

²⁵ <https://reportmigrantexploitation.employment.govt.nz/> (last accessed 11 March 2022)

A New Zealand prosecution for fisheries offences (involving the forfeiture of two fishing vessels) uncovered a secondary issue of unpaid crew wages, which became the subject of litigation pursued through to the Supreme Court of New Zealand.²⁶ A settlement was reached in November 2018 that included the crew issues.²⁷

Child labour and child exploitation is prohibited

Child labour and child exploitation is prohibited on New Zealand fishing vessels. The Maritime Transport Act²⁸ provides that no person shall employ on any New Zealand ship any person of an age that requires that person to be enrolled at school. The school leaving age in New Zealand is presently set at age 16.²⁹

Consequently, fishers must be at least 16 years of age to work on a New Zealand ship. New Zealand therefore meets the basic requirement of the ILO convention no. 188 which is that the minimum age for working on a fishing vessel shall be 16 years.

New Zealand also prevents child labour in other ways such as the fact that the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 Part 4 s46 requires that a person under the age of 15 may not work with machinery.

In practice, the age at which fishers are employed on New Zealand deep sea fishing vessels appears to be at least 17 years of age, with some companies not recruiting anyone under the age of 18.

Child exploitation is prohibited in New Zealand and is provided for with the Crimes Act s98AA³⁰.

Employment of young persons

New Zealand seafood companies who employ young persons (persons under the age of 18 years) on a fishing vessel, must keep a register of such persons³¹

In addition, in accordance with Maritime New Zealand's Maritime Rules³², any fisher under the age of 18 is required to undergo a detailed Maritime NZ medical examination by an approved medical practitioner.

New Zealand seafood companies generally have policies on the employment of young persons (persons aged under 18 years as provided for in the MTA) and provide in-house training for young persons before they go to sea. These policies are aligned with the legal requirements for young persons including minimum age, working with machinery and medical examinations.

The pre-sea training is designed to prepare young persons for the realities of life at sea, both in terms of safety training, the potential stresses of working and living in a somewhat isolated environment, and the highly physical nature of the work when on duty.

As mentioned already, some seafood companies only employ persons 17 years and over, and for some, it is a minimum of 18 years.

²⁶ *Sajo Oyang Corp of Korea v Ministry for Primary Industries* [2015] NZDC 13876, *Hartono v Ministry for Primary Industries* [2015] NZHC 3307, *Sajo Oyang Corp of Korea v Ministry for Primary Industries* [2017] NZCA 182, [2017] NZAR 611, *Hartono v Ministry for Primary Industries* [2018] NZSC 17, [2018] 1 NZLR 857.

²⁷ *Sajo Oyang Corporation v Ministry for Primary Industries* [2018] NZHC 3041.

²⁸ Maritime Transport Act 1994 s 26.

²⁹ Education and Training Act 2020 Part 3, s 35.

³⁰ Crimes Act 1961 s98AA.

³¹ Maritime Transport Act s 26.

³² Maritime New Zealand rules Part 34 Subpart A.

Any threats of penalty or sanction are prohibited

All work on New Zealand fishing vessels is required to be conducted on a voluntary basis and must not be under any threat of any penalty or sanction.³³ New Zealand seafood companies are required to employ fishers on mutually agreed terms.³⁴

This worker protection is provided for within the New Zealand Crimes Act 1961 and the Employment Relations Act 2000.

Section 98 and 98AA of the Crimes Act 1961³⁵ provides that forced labour and slavery, is a crime in New Zealand. The Employment Relations Act 2000 provides that parties to employment relationships must deal with each other in good faith.

Legal entitlements to work are provided

New Zealand seafood companies can only employ or recruit persons who are legally entitled to be in New Zealand, and who are legally entitled to work in New Zealand as a fisher (Immigration Act (IA) 2009 s 21). The employer must make sure an employee can legally work.³⁶

People entitled to work in New Zealand are those who:

- are New Zealand or Australian citizens (including people born in the Cook Islands, Niue and Tokelau), or
- have a New Zealand residence visa, or
- have a New Zealand work visa or a condition on their New Zealand temporary visa showing they are allowed to work.

Seafood companies must also ensure that all relevant documentation that evidences a fisher's right to work in New Zealand, is available for inspection by immigration officers at all times.

Should it transpire that a fisher was in fact working unlawfully, New Zealand seafood companies are still required to pay fishers in accordance with the Minimum Wage Act, the Holidays Act and the Wages Protection Act 1983.³⁷

Freedom of movement is protected

Employers of fishers on New Zealand fishing vessels are required to ensure that all persons on board a fishing vessel whether at sea, or whilst in port, have freedom of movement.³⁸ This worker protection is provided for within Bill of Rights Act 1990.

Some seafood companies have a company "freedom of movement policy" which covers the fisher's right to move freely (appropriately) about the vessel when not on duty. Fishers who are not on duty are also free to go ashore when vessels are in port.

Generally, whether a company policy exists or not, fishers are free to move about the vessel in their breaks, and when the vessel is in port, when not rostered onto a shift. Companies also provide turnaround crews, for when vessels are in port so fishers who have just completed a trip, are free to have some leave before the vessel leaves port again.

In New Zealand, fishers are also free to change employment and move between the different companies' vessels, subject to any non-compete clause in their contracts.

Freedom of association is protected

³³ Crimes Act s 98 and s 98AA.

³⁴ Employment Relations Act 2000.

³⁵ Section 98 and 98AA of the Crimes Act 1961 consistent with C029 Forced Labour Convention, 1930 (No.29) and C105 Abolition of Forced Labour Convention, 1957 (No.105).

³⁶ Immigration Act 2009 s 350.

³⁷ Immigration Act 2009 s 351.

³⁸ New Zealand by the Bill of Rights Act 1990 s 18.

Seafarer's rights to freedom of association (unions, collective bargaining and striking) are protected in New Zealand.³⁹ This worker protection is provided within employment relations law in New Zealand which promotes observance of the principles underlying the International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively.⁴⁰

Employees have the freedom to choose whether or not to form a union or be members of a union. No-one can apply undue influence on another person because the person is not a member of a union.

The Employment Relations Amendment Act 2018⁴¹ introduced a number of employment law changes that aim to improve fairness in the workplace.

The 2018 amendments provide for employees to have extended protections against discrimination on the basis of union membership status.⁴² Employers must advise new employees that a collective agreement exists, if this is the case. Employers must also provide information about the relevant union to prospective as well as to new employees.⁴³ Employee contracts cannot require a person to:⁴⁴

- become or remain a member of a union,
- cease to be a member of a union, or
- not to become a member of a union.

An employment contract cannot confer any preference because the person is or is not a member of a union or a particular union.⁴⁵

For the first 30 days of an employment contract, new employees must be employed under terms consistent with any collective agreement. The employer and employee may agree more favourable terms.⁴⁶

An employer must allow union members to attend a specified number of meetings per year.⁴⁷

Unions and employers can bargain for a collective agreement.⁴⁸

The New Zealand Fishing Industry Guild is a registered union for New Zealand commercial fishermen. It exists to represent the interests of its members and to promote excellence in the harvesting of inshore and deep-water fishing stocks in a sustainable and responsible manner. It also provides advice and advocacy, and negotiates on behalf of members, with their commercial fishing employers, to provide the best possible employment conditions and incomes for its members.

There is a mix of union members and non-union members employed across the New Zealand fishing industry. Many New Zealand fishers working for New Zealand seafood companies are members of the Guild.⁴⁹

Discrimination is prohibited

New Zealand employers are required to ensure that their workers are not discriminated against unlawfully before and during employment. This includes the recruitment process, compensation, training and promotion opportunities, termination of employment and retirement.

³⁹ Employment Relations Act 2000 – Part 3 Freedom of Association.

⁴⁰ Employment Relations Act 2000 Part 1 s 3.

⁴¹ Employment Relations Amendment Act 2018.

⁴² Employment Relations Amendment Act 2018 s 104 and s 107.

⁴³ Employment Relations Amendment Act 2018 s 63b.

⁴⁴ Employment Relations Act 2000 s 8.

⁴⁵ Employment Relations Act 2000 s 9: (a) any preference in obtaining or retaining employment; or (b) any preference in relation to terms or conditions of employment (including conditions relating to redundancy) or fringe benefits or opportunities for training, promotion, or transfer.

⁴⁶ Employment Relations Amendment Act 2018 s 62.

⁴⁷ Employment Relations Act 2000 s 26.

⁴⁸ Employment Relations Act 2000 Part 5 Collective Bargaining, ss 31-34.

⁴⁹ Personal communications with Sanford, Sealord, Independent and Talleys fishing companies.

This worker protection is provided for within the Human Rights Act 1993⁵⁰, the Employment Relations Act 2000⁵¹, and the Bill of Rights Act 1990⁵².

In addition to human rights protections of general application⁵³ there are specific protections for workers such as parental leave entitlements⁵⁴ and fisheries specific measures such as the 2014 amendments to the Fisheries Act 1996 to regulate labour conditions on foreign charter vessels.⁵⁵

The Parental Leave and Employment Protection Amendment Act 2017 came into force on 1 July 2018. This amended the Parental Leave and Employment Protection Act 1987 and provided for extended parental leave of up to 22 weeks for either parent.⁵⁶ This was further extended to 26 weeks from July 2020.⁵⁷

Everyone in New Zealand has the right to freedom from discrimination on prohibited grounds. Areas subject to this protection include employment.⁵⁸ The relevant prohibited grounds are:

- sex
- marital status
- religious belief
- ethical belief
- colour
- race
- ethnic or national origin
- disability
- age
- political opinion
- employment status
- family status
- sexual orientation.

Where a religious or ethical belief requires its adherents to follow a particular practice, an employer must accommodate the practice so long as any adjustment of the employer's activities required to accommodate the practice does not unreasonably disrupt the employer's activities.⁵⁹

Employment law and human rights law do contain permitted exceptions from what would otherwise be unlawful discrimination in employment.⁶⁰ For instance, if a person's age is related to a genuine occupational requirement for employment this can be an exception. The design of some older vessels may not be able to reasonably accommodate gendered facilities. Further, if an employer could not reasonably accommodate a disabled worker in terms of services and facilities required by that person or the working environment would be unreasonably put at risk then different treatment may be permitted.

Bullying, harassment or abuse of any kind is prohibited

Bullying, harassment or abuse of any kind is prohibited on New Zealand fishing vessels. This worker protection is provided for within the New Zealand Health and Safety at Work Act 2015 (HSWA), which requires employers to create a safe working environment for their

⁵⁰ Human Rights Act 1993, ss 21-22, and Employment Relations Act 2000, s 105.

⁵¹ Employment Relations Act s 104

⁵² Bill of Rights Act 1990 s 19

⁵³ Bill of Rights Act 1990 and Human Rights Act 1993.

⁵⁴ Parental Leave and Employment Protection Act 1987. The Act (a) sets minimum entitlements with respect to parental leave for male and female employees; (b) protects the rights of employees during pregnancy and parental leave; and (c) entitles certain persons to up to 22 weeks of parental leave payments.

⁵⁵ Fisheries Act 1996 including the (Foreign Charter Vessels and Other Matters) Amendment Act 2014.

⁵⁶ The Parental Leave and Employment Protection Amendment Act 2017 s 1A.

⁵⁷ The Parental Leave and Employment Protection Amendment Act 2017 s 2A.

⁵⁸ Section 22 of the Human Rights Act 1993 protect applicants for employment or employees from discrimination on prohibited grounds.

⁵⁹ Human Rights Act 1993, s 28.

⁶⁰ Human Rights Act 1993 ss 27-29. See also the Employment Relations Act 2000, s 106.

employees (as well as any other contractors, sub-contractors or visitors to the workplace). Employers must take all reasonable practicable steps to avoid exposing employees to unnecessary risk of physical or psychological harm.

The HWSA⁶¹ applies to New Zealand fishing vessels and to foreign vessels on demise charter to New Zealand based operators when operating in New Zealand.

Sexual harassment, racial harassment and victimisation is unlawful in New Zealand.⁶² Employers must have processes to deal with complaints including acknowledging and investigating the complaint and taking steps to prevent any repetition of the harassment.

The majority of the New Zealand seafood companies have bullying and harassment policies in place to protect fishers as well as covering these subjects in their employment agreements. The companies also provide fishers with pre-sailing inductions which cover these policies. These policies ensure that fishers are made aware of the effects and consequences of bullying and harassment, which are generally classed as misconduct or serious misconduct under employment agreements and employer policies.

Workers must be treated with respect and dignity

Employers of New Zealand fishers are required to treat their workers with respect and dignity.⁶³

Employers and employees must deal with each other in good faith and must not mislead or deceive each other.⁶⁴

These worker protections are provided for within the Employment Relations Act 2000.

Disciplinary actions must be understandable and legal

Any disciplinary action taken by a New Zealand employer must be for a good reason and must follow the general principles of a fair and reasonable process.⁶⁵ This worker protection is provided for within the Employment Relations Act 2000.

Seafood companies generally have disciplinary policies. These policies are made clear to the fishers by induction information and handbooks covering all company policies and standards.

Suspension procedures are also covered within these policies. A suspended employee fisher may remain on full pay while an investigation is taking place. However, this is situation dependent. Contract share fishers would not generally be paid for periods they are not engaged.

Any employee who considers they have been treated unfairly or wrongly dismissed can raise a personal grievance with their employer.⁶⁶

Self-employed share fisher's contracts would normally cover dispute resolution processes. Any unresolved dispute would be dealt with by litigation or alternative dispute resolution.

⁶¹ Health and Safety at Work act 2015 s 10.

⁶² Human Rights Act 1993 ss 62-66; Employment Relations Act 2000 ss 108-109.

⁶³ Employment Relations Act 2000: The purpose of the Act, ERA (s 3) is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship — by recognising that employment relationships must be built not only on the implied mutual obligations of trust and confidence, but also on a legislative requirement for good faith behaviour; and by acknowledging and addressing the inherent inequality of power in employment relationships; and by promoting collective bargaining; and by protecting the integrity of individual choice; and by promoting mediation as the primary problem-solving mechanism other than for enforcing employment standards.

⁶⁴ Employment Relations Act 2000, Part 1 s 4.

⁶⁵ In the absence of an agreed disciplinary procedure then employers must use a careful, thorough and fair process for all forms of disciplinary action, including warnings, corrective action or dismissal. Section 103A of the Employment Relations Act 2000 provides a justification test to determine if a dismissal or other action is justifiable.

⁶⁶ Employment Relations Act ss 102 and 113. Section 103 defines what comprises a personal grievance.

Non-contract wage deductions are prohibited

New Zealand seafood companies can only make lawful and agreed deductions from wages. This worker protection is provided for by Wages Protection Act 1983 (WPA).⁶⁷ Deductions can only be made from wages for lawful reasons such as tax, student loan repayments or child support payments. Additionally, all other deductions must be agreed to in writing between the employer and the employees.

Limited deductions from fishers' wages for food can occur.

For foreign crews working on New Zealand fishing vessels, employers may only deduct amounts from foreign crew wages for:⁶⁸

- food (calculated at a maximum of 10% of hours worked multiplied by the minimum wage)
- airfares to and from New Zealand
- Immigration New Zealand work visa application fees

Any deductions must be based on actual and reasonable confirmed costs. An additional protection is that employers can't make deductions that bring the hourly rate below the New Zealand minimum statutory wage for all hours worked.

New Zealand seafood companies, in practice, do not make deductions from wages for disciplinary reasons. Demotion may be an outcome of a disciplinary process where there will be a reduced remuneration package applicable to the new role. In addition, for summary dismissal, some companies will only pay retainer payments to the date of dismissal and the fisher would not receive any catch bonus payment. This must be covered and detailed in the fishers' collective employment agreement.

Provision of wages and contract terms

Recognised employment relationship required by law

New Zealand seafood companies must provide every employee with a written employment agreement. This worker protection is provided for by the Employment Relations Act 2000.⁶⁹

Employers are also required to keep a copy of the employment agreement (or the current signed terms and conditions of employment). The employer must keep an 'intended agreement' even if the employee hasn't signed it. Employees are entitled to a copy of their agreement on request.

The employee agreement must include:

- names
- description of the work
- an indication of where the employee is to perform the work
- any agreed hours of work
- the wages or salary and
- a plain language explanation of the services available for the resolution of employment relationship problems.

⁶⁷ Wages Protection Act 1983 ss 4-5A. An employer may only make lawful and reasonable deductions, with written consent of the worker. The employer may not make general deductions without first consulting with the worker even if the employment contract contains a general deductions clause.

⁶⁸ Immigration New Zealand website - <https://www.immigration.govt.nz/employ-migrants/explore-your-options/your-responsibilities-and-obligations/law-immigration-employment/crew-employment-conditions>. (last accessed 11 March 2022)

⁶⁹ Employment Relations Act s 65.

This agreement must contain the terms and conditions of employment. It may be a collective employment agreement or an individual employment agreement. If it is an individual agreement, for the first 30 days, new employees must be employed under terms consistent with any collective agreement. The employer and employee may agree more favourable terms.⁷⁰

This requirement protects fishers as it provides evidence of the mutually agreed terms of employment.

Fishers are free to choose to work as employees or as independent self-employed contractors if the seafood company offers this.

Even though independent self-employed contractor arrangements, such as the share fisher's agreements discussed below, are not required to be in writing, the larger New Zealand seafood companies do generally sign written agreements with share fishers, and some do this every time a fisher joins a fishing ship on a new trip.

Minimum rights (such as the minimum wage and annual holidays) are legal requirements and apply even if they're not in the employment agreement. An employment agreement cannot reduce these rights or trade them off for other things. The Employment Relations Amendment Act 2018 has re-introduced mandatory paid rest breaks for workers.⁷¹

Where fixed term employment is chosen the employer must have genuine reasons for a fixed term and that reason cannot be to exclude the rights of the employee under the Employment Relations Act or the Holidays Act 2003, or to assess the suitability of the employee.⁷²

There are various forms of contracts used in the fishing industry. These range from simple employee contracts, employee contracts which include a "share of the catch" arrangements, and independent contractor (self-employed) share fisher agreements.

The majority of the seafood companies operating larger vessels (e.g. factory processors) use employee agreements for their fishers or engage fishers as self-employed contractors under "share fishing" contract arrangements. The smaller inshore vessels are often owner operated, and engage their crew primarily as individually negotiated share fishers.

Fair and transparent compensation mechanisms required by law

Seafood companies in New Zealand are required to compensate their fisher employees through fair and transparent processes. Compensation must be understood by both parties, communicated in a written form and provided in an appropriate language.

Employees are entitled to minimum wages levels.⁷³ The minimum wage level is reviewed annually in New Zealand. Additionally, the Wages Protection Act 1983 (s 7) provides that wages must be paid in money.

Examples of fishing arrangements

The information below describes four different approaches taken by New Zealand seafood companies and operators to remunerate fishers.

1 - Value of catch

Some seafood companies have employment agreements with fishers, where their pay is based on the total dollar value of the catch. The whole crew on any vessel is on this system. Once the final processed catch figures are available, the crew receive a fixed percentage of the catch's value which is divided among them based on their position or grade.⁷⁴ The company receives the remainder.

⁷⁰ Employment Relations Amendment Act 2018 s 62 (3).

⁷¹ Employment Relations Amendment Act 2018 Part 6D ss 69ZC to 69ZEB.

⁷² Employment Relations Act s 66.

⁷³ Minimum Wage Act 1983 s 4.

⁷⁴ The fishers are on a sliding scale of compensation, where the skipper receives the highest proportion, and the lower ranked/experienced deckhands, general hands or trainees receive the lowest proportion. New Zealand fishing companies confirm that in 2022 this system still provides the lowest paid fisher with around \$65,000 to \$90,000 per annum before tax. This is expected to rise in the coming year. Different species have different market values, and vessels which only head and gut the fish, are on a slightly different system as this has a lower value than other filleted species. The systems used to calculate the compensation to the crew all work out in a fair manner, and all fishers receive relatively the same amount whichever vessel type they are working on.

If no fish were caught on a journey the company would still meet minimum wage requirements based on the employment agreement's specifying working 12 hours each day.

Fishers on these employee contracts are paid regularly, weekly, whether they are on board a vessel or on their trip off. Crew work in rotation (skippers and officers work one trip on and one trip off and factory hands usually work two trips on and one trip off).

2 – Volume of catch

Some seafood companies employ fishers on employee contracts that comprise a retainer and a catch bonus. The annual package figures are based on a catch level which is set each year as a volume of fish. This arrangement is different to the previously described value-based system, as it is volume based and not value based. Fishers complete one trip on and then one trip off with wages being paid fortnightly

In this system, all the fishers, except the skippers (who are on individually negotiated contracts), are normally covered under a collective agreement. Most of the fishers working under this type of arrangement are union members.

3 – New Zealand minimum wage for foreign guest labour

Some seafood companies also charter in fishing vessels with foreign crews to operate in New Zealand waters. These vessels are required to be New Zealand flagged vessels and are normally operated under a New Zealand company. Employers recruiting foreign crew to work on a fishing vessel must provide employment that meets certain conditions.⁷⁵

Such conditions include minimum requirements for⁷⁶:

- Working and living conditions on the vessel
- Crew Welfare
- Employment agreements
- Minimum payments
- Payments frequency
- Allowable deductions, including limitations on deductions
- Payment of wages

Immigration New Zealand provides guidance and standardised principles for proposed employment agreements by overseas employers who employ crew to work on fishing vessels in New Zealand waters.⁷⁷

Immigration New Zealand provides guidance on employer responsibilities and obligations.⁷⁸ Such obligations include:

- Recruitment
- Manning agents
- Sponsorship
- Arrival and departure for crew flying into/out of New Zealand
- Explaining crew rights and obligations
- Desertion
- Managing crew complaints

⁷⁵ See, for example, guidance material for crew working in New Zealand fisheries waters produced by Immigration New Zealand <https://www.immigration.govt.nz/documents/forms-and-guides/important-information-for-foreign-crews-working-in-new-zealand-fisheries-waters-inz-1214.pdf> (last accessed 1 March 2022).

⁷⁶ Immigration New Zealand website – crew employment conditions – see <https://www.immigration.govt.nz/employ-migrants/explore-your-options/your-responsibilities-and-obligations/law-immigration-employment/crew-employment-conditions> (last accessed 1 March 2022).

⁷⁷ Immigration New Zealand website - Standard principles for crew agreements – see <https://www.immigration.govt.nz/employ-migrants/explore-your-options/your-responsibilities-and-obligations/law-immigration-employment/standard-principles-for-crew-employment-agreements> (last accessed 1 March 2022).

⁷⁸ Immigration New Zealand – Employer responsibilities and obligations – see <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/work-and-employment/employer-responsibilities-and-obligations> (last accessed 1 March 2022).

- Employment records
- Audits
- Crew working conditions.

New Zealand legislation requires foreign crew to be paid under New Zealand employment legislation for Foreign Charter Vessels (FCV's) discussed earlier in this report.⁷⁹ These fishers' employment agreements are not part of a New Zealand collective employment agreement.

Employers of such foreign fishers must explain to crew members before their first voyage to New Zealand, their rights and obligations under New Zealand immigration and employment law. Employers must also provide each crew member with a copy of a guide⁸⁰ in their own language. The Immigration New Zealand website - *Explaining Crew Rights and Obligations* page⁸¹, currently provides the guides in twelve different languages, including English (link below), Korean, Chinese, Ukrainian, Russian and Samoan.

Foreign crew must be paid either directly to a bank account, or in cash if that is their preference.

The foreign crew fishers must be paid consistently:

- to at least meet New Zealand minimum wage requirements plus an extra \$2 an hour⁸²
- for all hours worked
- for at least 42 hours per week on average over the course of their employment
- for their entitlements to holiday pay, sick pay if applicable and for public holidays.

The crew member must also be paid all wages due at least 24 hours before they leave New Zealand at the end of their contract.

On top of this, there may be negotiated opportunities for bonuses to be paid from different catches and based on how the vessel's budget is managed. Such bonus systems benefit the fishers as they have the opportunity to earn more and is also of benefit to the companies as costs are controlled. It is a more complex process to that applying to New Zealand fishers. In a bonus system, the wages are distributed to the fishers proportionately, based on roles. The skippers receive the highest proportion. This system empowers the skipper, encouraging them to ensure the vessel is maintained and operated economically.

Foreign crew fishers are subject to deductions from their wages (detailed earlier in this report). Deductions must be based on actual and reasonable confirmed costs. Employers can't make deductions that bring the hourly rate below the New Zealand minimum statutory wage for all hours worked.

Foreign fishers are free to choose how many contracts they complete. Many have an eleven-month contract and are free to choose to renew or to return to their home country.

4 – Share fishing agreements

⁷⁹ Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014.

⁸⁰ Important information for Foreign Fishing Crews working in New Zealand Waters' guide.

⁸¹ Immigration New Zealand website - *Explaining Crew Rights and Obligations* page – see <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/work-and-employment/employer-responsibilities-and-obligations> (last accessed 12 March 2022).

⁸² Immigration New Zealand website – see <https://www.immigration.govt.nz/documents/forms-and-guides/important-information-for-foreign-crews-working-in-new-zealand-fisheries-waters-inz-1214.pdf> (last accessed 12 March 2022).

Some deepwater seafood companies operate their fishing fleet with self-employed contract fishers on share fishing arrangements. Under these share fisher contracts fishers provide their services under a profit-sharing arrangement. They are paid on the value of the catch landed from each trip, less agreed costs (e.g., food, fuel while at sea).

At the end of the trip, the total catch allowance is calculated and once the advances have been deducted, the balance is paid to the fishers.

Many share fishers are members of the New Zealand Fishing Guild. Share fishing is an accepted arrangement in the New Zealand industry.

The share allocation can be a complex equation and can be related to the species and the tonnage rate for each species. In such cases, all crew members receive a proportion of the catch, the amount of which depends on their role on the vessel. The skipper would receive the highest proportion, whilst the lower-level crew such as a general hand, will receive the lowest proportion. The proportion also depends on the qualifications and experience of the individual fisher. Fishers therefore have an incentive to become qualified to higher levels.

Skippers and officers generally work one trip on and then one trip off. Factory workers generally work two trips on and one trip off. Despite being self-employed, some seafood companies still pay the fishers in line with the expected catch for a voyage they will have taken no part in achieving.

As self-employed contractors, these fishers must make their own arrangements for accident compensation and holiday pay. They are not covered by legislation protecting employees such as the Employment Relations Act 2000, the Minimum Wage Act 1983 or the Holidays Act 2003. However, some seafood companies ensure that in practice, share fishers earn above New Zealand's minimum wage levels. Within these companies, the fishers also get regular advances based on the expected catch to have regular cash flow to their own businesses.

Some seafood companies, using share fisher contracts, also offer training agreements where the company pays for training including qualification fees, accommodation and travel costs, and an allowance to provide basic domestic support whilst they are not attached to a vessel as a share fisher. The training duration may be up to 6 months. This encourages fishers to upskill.

The New Zealand inshore fishing fleet includes a number of smaller vessel owner operators, who largely engage their crew on an individual basis as share fishers.

Contracting relationships cannot be used to avoid obligations to workers

New Zealand seafood companies are required to employ their fishers on mutually agreed terms, which are lawful and not contrary to the ERA or other employment legislation.⁸³ Employee fishers are also entitled to minimum standards of employment protected by legislation as discussed elsewhere in this report.

Nothing in the employment contract can override the employees' rights and protections as provided for within any Act. This means contracting relationships cannot be used to avoid legally required obligations to workers. This worker protection is provided by a number of Acts including the Human Rights Act, the Crimes Act, the Health and Safety at Work Act, the Minimum Wage Act and the Wages Protection Act.

Self-employed contract fishers are not covered by all of the same employment legislative protections, and they must negotiate with the seafood company to set the terms and conditions of their engagement. It is those obligations, as negotiated, that cannot be avoided for self-employed fishers.⁸⁴

Self-employed share fishers however will still be protected by other legislation such the Health and Safety at Work Act 2015, the Crimes Act and the Human Rights Act. The share fisher contracts cannot be used to avoid the broader set of obligations under these Acts that seafood companies have to their fishers and workplaces.

Seafood companies must also comply with the MTA which provides that neither the master nor crew can forfeit their rights to wages or a lien on the ship.⁸⁵

Reasonable working hours (including rest periods) are protected

In New Zealand employers and employees are free to agree the number of hours worked per day.⁸⁶ The nature of the maritime industry benefits from this flexibility and employment and share fisher contracts reflect this.

An employee's hours of work must be agreed to by the employer and employee in their written employment agreement.⁸⁷

Zero hours employment agreements are unlawful in New Zealand.⁸⁸ Employees do not have to make themselves available for work without guaranteed minimum hours. Employees are under no obligation to accept extra hours of work not specified in their employment agreement.

The length of shifts worked by fishers varies from company to company, and role to role. For most fishers working on New Zealand fishing ships, these agreements are typically one of the following:

- 6 hours on with 6 hours off, or
- 8 hours on with 8 hours off, or
- 12 hours on with 12 hours off, or

⁸³ Employment Relations Act 2000 s 65.

⁸⁴ Whether a person is an employee or self-employed contractor is a legal question. In New Zealand the test for determining this was set by the Supreme Court decision in *Bryson v Three Foot Six Ltd* [2005] ERNZ 372. In the event of a dispute the court, or employment relations authority, must determine the real nature of the relationship. The parties' intentions and terms of contract are relevant but not determinative. Control, integration into the enterprise, economic reality and whether the person performing the services is doing so on their own account are evaluated. For a recent application of this in a fishing industry context, albeit the inshore fishery, see *Cockburn v Morning Dance Fish Co Ltd* [2017] NZERA Christchurch 57 (fisher found to be a contractor on a share fishing arrangement, not an employee and so not entitled to the protections in the Employment Relations Act 2000 against unjustified dismissal). This is consistent with the 2015 Employment Court decision of *Sealord Group Limited v Aaron Pickering* [2015] NZEmpC 76 describing share fishing arrangements in New Zealand.

⁸⁵ Maritime Transport Act 1994 ss 28-29.

⁸⁶ Minimum Wage Act 1983 s 11B(2).

⁸⁷ Employment Relations Act 2000 s 67C. Hours of work must be specified within either a collective agreement, or an individual agreement. Hours of work includes the number of hours of guaranteed work, the days of the week on which work is to be performed, the start and finish time of the work and any flexibility required.

⁸⁸ Employment Relations Act 2000. Under s 67D(2) an availability provision may only be included in an employment agreement that specifies agreed hours of work and that includes guaranteed hours of work among those agreed hours and that relate to a period for which an employee is required to be available that is in addition to those guaranteed hours of work.

- other agreed variations of this depending on the workflow at the time.

The working hours agreed for fishers will normally vary depending on the type of work the fisher is doing. For example:

- the skippers usually work 12 hours on with 12 hours off,
- the factory workers would normally work 6 or 8 hours on/off because of the physical and repetitive nature of the work.

Generally, fishers work a maximum of 12 hours a day whilst at sea. The seafood companies generally ensure that fishers get at least six hours of continuous time off duty in any 24-hour period.

Employee fishers are entitled to specified meal and paid rest breaks while on duty.⁸⁹ Self-employed contractors must negotiate their own arrangements. Meal and rest breaks must give the employee a reasonable chance during work periods to rest, refresh and take care of personal matters and be appropriate for the length of their working day.

Under New Zealand's health and safety legislation⁹⁰ physical and mental fatigue is a hazard. The seafood companies are required by law to manage hazards to avoid affecting their employees and contractors. The seafood companies provide training in this area and recognise fatigue is a serious risk in this industry. There are also fatigue guidelines produced by the industry regulator, Maritime New Zealand.⁹¹ New Zealand fishing companies have policies on minimum hours of rest.

Additional securities provided by the New Zealand Government

Injury

The Accident Compensation Corporation (ACC) is a New Zealand Crown entity responsible for administering the country's universal no-fault accidental injury scheme.⁹²

Everyone in New Zealand is covered by ACC's no-fault scheme if they've been injured in an accident, whether at work or not.⁹³

For employee fishers, an earner levy is deducted from their gross pay. Self-employed share fishers pay ACC directly.⁹⁴

Depending on the kind of injury, and whether the person can continue to work, fishers who are injured may be able to claim:

- the cost of medical treatment, and other rehabilitation services
- weekly income – currently up to 80% of the usual income level up to a maximum
- special equipment to help the person at home or work
- programmes to help the person get back to work, or to live independently.

Fishing companies can self-manage their accident compensation obligations in partnership with the ACC or as accredited employers⁹⁵. Partnering enables a company to take over management of its workplace injuries while purchasing cover from the ACC. Partnering companies are incentivised to produce timely interventions and manage the costs of the scheme more directly and efficiently. Reduced

⁸⁹ Employment Relations Act 2000 s 67ZD. While employee rest breaks must be paid, meal breaks need not be.

⁹⁰ Health and Safety at Work Act 2015 s 16.

⁹¹ Maritime New Zealand Fatigue guidelines – see <https://www.maritimenz.govt.nz/commercial/safety/health-and-safety/fatigue.aspx>.

⁹² Accident Compensation Act 2001.

⁹³ The scheme is funded by the government, employers and employees. To help cover the costs of work injuries, employers and self-employed people pay an annual 'work levy', based on the liable payroll of their business and the risk associated with the industry it belongs to. The specific amount of the work levy is set for each industry once a year, after a consultation process that takes account of public feedback.

⁹⁴ Some seafood companies re-compensate their share fishers for an amount equivalent to the ACC levies.

⁹⁵ Accredited Employers are large employers who effectively act on behalf of ACC for their employees' work-related injuries. Companies are approved by ACC for this process and are audited annually. The audits include business health and safety management practices. This programme can offer significant downwards levy adjustments as long as the company delivers all of the statutory entitlements such as weekly compensation for lost earnings.

levies provide cost savings.⁹⁶ This benefits the fishers as injury claims and rehabilitation costs are managed by the company rather than the fisher. It provides prompt access to any medical rehabilitation, which ultimately aims to assist the fisher to return to work in as timely a manner as is possible.

These schemes generally benefit fishers as the companies can directly manage the rehabilitation of the fishers, and they can resume working in a timelier manner than if the fishers had to work with ACC directly.

Disability

The New Zealand welfare system also provides for government-funded unemployment benefits and disability allowances for people who have a disability that is likely to last at least six months; have regular, ongoing costs because of the disability that are not fully covered by another agency (for example ACC); are a New Zealand citizen or permanent resident and who normally live in New Zealand and intend to stay here.

The amount of the disability allowance is means tested. It depends on how much the person and their partner earn. Similarly, unemployment benefits are subject to stand-down periods and means testing.

Superannuation (Kiwisaver)

New Zealand seafood companies are required to comply with the voluntary superannuation scheme set out in the Kiwisaver Act 2006. The purpose of this Act is to encourage a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in pre-retirement. The Act aims to increase individuals' well-being and financial independence, particularly in retirement, and to provide retirement benefits.

This Act provides for schemes (*KiwiSaver schemes*) to facilitate individuals' savings, principally through the workplace.

Fishers who are employees, who are either a New Zealand citizen, or are entitled to be in New Zealand indefinitely, are entitled to be enrolled in the scheme into which the employee and employer contribute. This Act does not apply to the foreign fishers working on Foreign Charter Fishing vessels.

Self-employed share fishing contractors can make their own superannuation arrangements, including by enrolling in a KiwiSaver scheme but will not be eligible for a contribution from the seafood company in the same way that an employee fisher receives an employer contribution towards their superannuation savings.

Protections of personal health and safety

Skipper and crew ticketing requirements

Seafood companies are required to comply with Maritime Rules covering crewing and watchkeeping, fisher qualifications, and medical standards. Skippers, mates, engineers and deck crew who work on New Zealand fishing vessels must be properly trained and qualified.

These manning levels and qualification requirements ensure that the skipper and crew are properly trained, appropriately qualified and that the fishing vessels are properly manned for all aspects of the safe operation of a fishing vessel. They are designed to ensure fishing vessels are operated safely and competently. They also provide opportunities for fishers to advance and develop themselves within the fishing industry, and thus increase their earning potential.⁹⁷

⁹⁶ The ACC Partnership Programme costs less because companies only pay for the treatment and rehabilitation of whatever actual injuries occur, rather than a larger premium to cover a theoretical maximum of injuries.

⁹⁷ Maritime Rule Part 31: Crewing and Watchkeeping applies to deep-sea fishing vessels. This rule prescribes the qualification requirements and the minimum manning levels required for fishing vessels.

Section 31.20⁹⁸ of this Rule also requires that a minimum safe crewing assessment must be carried out for the specific operation. The owner and skipper of a vessel must ensure that they assess and monitor, on an on-going basis, the effectiveness of the crew and ensure that the total crew carried on board includes sufficient qualified crew to operate the ship safely in accordance with:

- a minimum safe crewing assessment in accordance with Rule 31.21; and
- any minimum safe crewing document issued by the Director of MNZ under 31.22.

All operations on board must be considered when assessing the actual manning levels required to safely operate the vessel. This may mean that more than the minimum required crew are required to be carried.

Maritime Rule Part 32 provides New Zealand's structure for nautical and engineering certificates for fishers. Subpart D of the Rule deals with the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F)⁹⁹ (aligned) certificates of competency, which are designed for fishing vessels. This rule provides detailed requirements for persons wishing to attain each certificate of competency.

In addition, Maritime New Zealand has produced individual competency frameworks which detail the competencies to be covered within the fishing vessel training programmes. The content of the competency frameworks is aligned with the Food and Agriculture Organisation of the United Nations Document for Guidance on Training and Certification of Fishing Personnel,¹⁰⁰ which in turn is aligned with the requirements of the STCW-F convention.

Under the Maritime Transport Act 1994¹⁰¹ anyone required to hold a maritime document, such as a Certificate of Competence or licence (e.g., skipper, mate) must ensure that they hold the appropriate maritime documents and all the necessary qualifications.

Workers provided adequate training to understand their rights and responsibilities and to ensure their personal health and safety

Fishers are all provided an induction by the seafood companies before they can commence working on a fishing vessel. This induction includes their job description, their rights and responsibilities and basic health and safety training. It will also include an introduction to the hazards and risks of working on a fishing vessel, whether at sea en-route to the fishing grounds, whilst fishing or alongside the wharf in port.

For workers that are required to be qualified as part of the minimum manning requirements, they are required to have STCW-F Basic Safety Training. This includes fire, survival first aid, security and personal safety and social responsibility training.

The Master's (skipper's) Duties

The skipper of a New Zealand fishing vessel has various authorities and responsibilities which inherently allow him/her to operate the vessel safely, protect the fishing operation and its commercial viability. In protecting the commercial viability of the fishing operation, the skipper is also protecting the fishers' livelihood.

Under the Maritime Transport Act 1994,¹⁰² the skipper of a fishing vessel is deemed to:

- be responsible for the safe operation of the ship on a voyage, the safety and wellbeing of all passengers and crew, and the safety of cargo carried; and

⁹⁸ Maritime Rule Part 31: Crewing and Watchkeeping 31.20.

⁹⁹ International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F).

¹⁰⁰ Food and Agriculture Organisation of the United Nations Document for Guidance on Training and Certification of Fishing Personnel.

¹⁰¹ Maritime Transport Act 1994 s 17.

¹⁰² Maritime Transport Act 1994 s 19.

- have final authority to control the ship while in command and for the maintenance of discipline by all persons on board; and
- be responsible for compliance with all relevant requirements of this Act and regulations and maritime rules made under this Act, except in an emergency when, in the interests of safety, immediate action in breach of this Act or of regulations or maritime rules made under this Act is necessary.

Additionally, the Maritime Crimes Act 1999 (MCA)¹⁰³ provides that it is a crime for a person to endanger the safe navigation of a ship, including threatening to do something that could endanger the safe navigation of a ship or who places or causes to be placed on a ship, anything that could endanger the safe navigation of a ship.

The MCA 1999¹⁰⁴ also provides that the master (skipper) may deliver an offender to the appropriate authorities of a country that is a party to the Rome Convention. The skipper is also able to search persons and baggage on a ship if she or he has reasonable grounds to believe that a crime has been or is likely to be committed on board the ship. Under this Act, the skipper of a fishing vessel is empowered to ensure the vessel is operated safely, and to take action to prevent crimes being committed on board the vessel.

Workers legally entitled to safe and healthy workplaces

Fishers working on New Zealand fishing ships are entitled to safe and healthy workplaces. This right is confirmed by the Health and Safety at Work Act 2015 (HSWA), the Maritime Transport Act 1994,¹⁰⁵ and the Maritime Crimes Act 1999.

The purpose of the HSWA is to provide for a balanced framework to secure the health and safety of workers and workplaces.¹⁰⁶ HSWA¹⁰⁷ specifically refers to application of the Act to ships including fishing ships whether New Zealand flagged or foreign demise chartered ships. Additional details can be found in the *Health and Safety Section Detail Report*.

Provision of food, medical care and repatriation

Seafood companies have specific duties in relation to the health of fishers on New Zealand vessels. These worker protections are provided for within the Maritime Transport Act 1994.¹⁰⁸

Under the Act, if a voyage is terminated, or if the fisher has been left behind due to a variety of reasons such as injury, illness or shipwreck, employers must arrange and pay for all reasonable repatriation expenses of a fisher.¹⁰⁹

Under the Act, employers must provide food and water for all voyages, suitable in quantity and quality and nutritive value. Employers must also ensure that any fisher requiring medical attention while overseas¹¹⁰ receives all necessary medical attention at the employer's expense.¹¹¹

The seafood companies also use various "at sea" radio medical advice services such as International SOS.

Vessel safety

Maritime Rule 40D provides for the safe design, construction and equipment of fishing ships registered under the Fisheries Acts 1983 and 1996.¹¹²

¹⁰³ Maritime Crimes Act 1999 s 4.

¹⁰⁴ Maritime Crimes Act 1999 s 11.

¹⁰⁵ Maritime Transport Act 1994.

¹⁰⁶ Health and Safety at Work Act 2015 s 3.

¹⁰⁷ Health and Safety at Work Act 2015 s 10.

¹⁰⁸ Maritime Transport Act 1994 ss 22-23.

¹⁰⁹ Maritime Transport Act 1994 s 22.

¹¹⁰ Maritime Transport Act 1994 s 23.

¹¹¹ When New Zealand fishing vessels are in New Zealand, the fishers, including foreign crews, are covered by the New Zealand health system. Foreign crews may additionally, have other insurance cover.

¹¹² New Zealand Maritime Rules are a form of legislative instrument or tertiary legislation made under the authority of the Maritime Transport Act 1994. The authority for making Part 40D is found in sections 36(a), 36(b), 36(c), 36(d), 36(j), 36(l), 36(p), 36(q), 36(t) and 36(u)(ii) of the Maritime Transport Act 1994.

For fishing ships of more than 6 metres in length, and any boats of lesser length which may operate beyond enclosed waters and more than 2 miles from the coast, the requirements are specifically stated in the body of Part 40D.

For ships beyond 45 metres in length, the requirements reflect, in many respects, those of the 1993 Protocol to the Torremolinos International Convention for the Safety of Fishing Vessels¹¹³. Note the Protocol is not fully implemented in New Zealand domestic law because the survey and certification requirements are inconsistent with current New Zealand maritime safety policy and rules.

Maritime Rule 40D covers fishing ship features including (but not limited to):

- design, survey, construction and structural strength
- machinery
- electrical
- stability
- freeboard requirements
- life-saving appliances
- fire protection
- structure
- ventilations systems
- heating installations
- storage of dangerous materials
- means of escape
- protection of the crew
- radio communications
- navigational equipment and arrangements
- anchors and cables
- crew accommodation
- fish processing equipment.

Some fishing ships, however, must be marked with a line for compliance with stability/freeboard requirements.¹¹⁴ The mark required by that rule is referred to as a “load line mark”. However, this should be taken in its literal meaning as there is no link to requirements from the International Maritime Organisation Load Line Convention. The requirements of rule 40D.35 relate specifically to stability and seaworthiness of fishing vessels, not compliance to Part 47.¹¹⁵

Abuse of drugs and alcohol prohibited

The abuse of drugs and alcohol while at sea is a health and safety risk. The duties placed on the seafood industry to manage health and safety risks are detailed in the *Workplace Health and Safety Section Detail Report*.

The major seafood companies all have drug and alcohol policies. Drug testing is referred to in employment and share fishing contracts and general company policy handbooks.

Some of the seafood companies complete pre-employment, post-accident/post-incident, reasonable cause and random testing.

Conformance and verification measures

A number of New Zealand authorities, commissions and regulatory bodies are involved with monitoring, verifying and dealing with conformity and verification issues.

These include:

- Maritime New Zealand

¹¹³ 1993 Protocol to the Torremolinos International Convention for the Safety of Fishing Vessels.

¹¹⁴ Maritime Rule 40D.35.

¹¹⁵ New Zealand Maritime Rules Part 47.

- Human Rights Commission
- Employment Relations Authority
- MBIE Labour Inspectorate
- WorkSafe New Zealand
- Ministry for Primary Industries
- New Zealand Qualifications Authority.

Maritime New Zealand (MNZ)

The purpose of Maritime New Zealand is to be the regulator under the Maritime Transport Act 1994¹¹⁶. MNZ is also designated to carry out health and safety regulatory functions under the Health and Safety at Work Act 2015, for ships as workplaces and work aboard ships.

MNZ also manages port state control inspections of fishing vessels which cover health and safety of the operation, training, manning levels, accommodation, provisions, certification and labour issues. These inspections may be random, or they may be instigated by a complaint or issue highlighted from a previous port visit in New Zealand or another country.

Fishing vessels are also subject to MOSS audits to ensure they are operating in line with their Maritime Transport Operator Plan. MOSS audits are explained in more detail below.

MNZ also perform regular reviews of maritime training institutions in New Zealand to ensure that the quality management systems and procedures meet MNZ's requirements.

Human Rights Commission

The Human Rights Commission was set up in 1977 and works under the Human Rights Act 1993 and other legislation. The purpose of the commission is to promote and protect the human rights of all people in Aotearoa New Zealand. The Commission works towards "a free, fair, safe and just New Zealand where diversity is valued, and human dignity and rights are respected."¹¹⁷

Employment Relations Authority

The purpose of the Employment Relations Authority is to help to resolve employment relationship problems. It is an independent body set up under the Employment Relations Act 2000. The authority will assist fishers, their employers and unions with disputes or other employment problems.

Labour Inspectorate

The New Zealand Ministry of Business Innovation and Employment provides a labour inspectorate to investigate breaches of, and ensure compliance with, New Zealand employment law. In the case of breaches of the law, compliance action will be taken against employers.

WorkSafe New Zealand

WorkSafe operates under the Health and Safety at Work Act 2015 as New Zealand's work health and safety regulator. WorkSafe and MNZ will often work together in the case of a safety incident or investigation. In the case of breaches of the law, employers and contracting companies will be prosecuted.

Ministry for Primary Industries

New Zealand's Ministry for Primary Industries operates a fisheries observer programme. At least one observer may be placed on all deep-sea fishing vessels. They monitor the environmental impact of fishing activity and record accurate and reliable data relating to vessel catch and processing. Under the Fisheries Act 1996¹¹⁸ observers may also be required to observe and record information related to employment matters. These are mostly matters to do with the Employment Relations Act, and the Health and Safety at Work Act

¹¹⁶ Maritime Transport Act 1994.

¹¹⁷ See www.hrc.co.nz/about/ (last accessed 12 March 2022).

¹¹⁸ Fisheries Act 1996.

2015¹¹⁹ and MNZ related matters. However, the MBIE Labour Inspectorate can also request other information relating to employment matters if they wish, such as hours worked etc.

Immigration New Zealand

Seafood companies must also ensure that all relevant documentation that evidences a fisher's right to work in New Zealand is available for inspection by immigration officers at all times. Immigration New Zealand will also investigate any suspected instances of human trafficking.

New Zealand Qualifications Authority (NZQA)¹²⁰

NZQA operates under the Education and Training Act 2020¹²¹. NZQA performs quality assurance functions about qualifications for the New Zealand government. NZQA approves programmes of study leading to New Zealand qualifications. The New Zealand maritime training providers are required to be approved by NZQA for delivery of training that leads to any New Zealand qualification. Individual programmes of study that lead to maritime qualifications are individually approved by NZQA.

MNZ has an MOU with NZQA to allow MNZ to ensure international and domestic training standards are met and consistent across New Zealand.

External Measures and Reporting

MBIE Labour Inspectorate¹²²

The labour inspectorate is active in checking various aspects of worker livelihood for fishers working on New Zealand vessels including:

- employment agreement terms
- hours of work including records
- rest periods
- deductions from wages.

The inspectorate may receive information from the MPI fisheries observers who are on board the fishing vessels. These reports may include information about the hours workers are on duty, rest breaks, deductions and other labour issues. The reports are then compared with the timesheets and other records that the fishing company provides, to check for any discrepancies. The inspectors also endeavour to speak to fishers when they are not on board the fishing vessels in order to verify information, they have received related to labour practices.

When such verification measures identify breaches of employment legislation, the inspectorate is then active in the recovery of monies owed to the fishers such as wages arrears. The inspectorate is also active in checking employment agreements.

In respect of share fishing contract arrangements, the inspectorate does not accept carte blanche that all the fishers involved are contractors. The inspectorate will investigate these types of contracting arrangements to determine whether the fisher/s are in fact employees and as such covered by the requirements of all the New Zealand labour legislation including the Employment Relations Act 2000.

¹¹⁹ Health and Safety at Work Act 2015.

¹²⁰ New Zealand Qualifications Authority.

¹²¹ Education and Training Act 2020.

¹²² Information received from MBIE Labour Inspectorate – also see <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate/labour-inspectors>

The inspectorate aims to encourage seafood companies to have systems in place to monitor and verify that all fishers are paid for all the hours they work, that accurate records are kept and that unlawful deductions are not made from fisher's wages.

New Zealand is committed to upholding worker entitlements. An example of this is that in 2018, a Japanese fishing company chartered by a New Zealand business was ordered to pay more than \$180,000 in arrears and penalties following an MBIE Labour Inspectorate investigation that found serious employment breaches.¹²³ Another example of a Labour Inspectorate investigation more recently, resulted in a prosecution in 2021 for a hospitality company that systematically underpaid workers and falsified hours of work records¹²⁴.

Immigration

Immigration officers may also search and inspect a fishing vessel to look for specified persons.

International Maritime Organisation (IMO)

The IMO audits New Zealand for conformity with international maritime conventions including those related to seafarer training. These audits are usually undertaken every five years. Such audits include visits to maritime training providers.

Internal measures

The fishing industry vessel operations are monitored via the New Zealand Maritime Operator Safety System (MOSS). Within this system, each operator must hold a Maritime Transport Operator Certificate to cover the vessels in its operation.

Each company must also have an approved Maritime Transport Operator Plan (MTO) to cover the safe operation of its vessels. There will be vessel specific parts of the MTO. The plan covers:

- the fishing activities the overall operation will be involved in
- the key personnel responsible for the fishing vessel operation including resourcing, training, safety and maintenance
- the manning requirements for each vessel
- crew training
- identifying and assessing the safety risks
- identifying the maritime rules, the fishing operation must comply with.

The MTO must include safe operating and information management procedures including:

- safe operating procedures for harm prevention including fatigue management
- safe operating procedures for emergency response
- information management procedures.

An approved survey plan forms part of the MOSS and includes a vessel survey plan, a maintenance plan and a spare parts list.

Each New Zealand fishing vessel is subject to MOSS audits by a Maritime Officer, which look at how the fishing operation is performing against the Maritime Transport Operator Plan (MTO) under the Maritime Transport Operator Certificate (MTOC).

¹²³ Law Society New Zealand – see <https://www.lawsociety.org.nz/news/legal-news/fishing-company-penalised-for-exploitation-of-workers-in-nz-waters/>

¹²⁴ *Labour Inspector of the Ministry of Business Innovation and Employment v Jeet Holdings Ltd* [2021] NZEmpC 84 - see <https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2021-NZEmpC-84-A-Labour-Inspector-v-Jeet-Holdings-Ltd-Judgment.pdf>

The frequency of the audits depends on an initial risk profile score. This could be from 1 to 24 months. Part of the audit will involve a review of the operator risk profile. This looks at the safety system across the whole of the operation. The risk profile score will decide when the next audit will be which could be 2 to 48 months after the audit.

The audit covers:

- vessel details and requirements including maintenance of the vessel, survey requirements and compliance with relevant maritime rules
- people who have control and responsibility over the operation
- crew training and manning levels
- changes to the operator plan including activities, ports or harbours and vessels
- checking that the operator plan is kept up to date and changes recorded
- management of safety risks and hazards
- harm prevention
- protection of the environment.

The Maritime Officer will talk to the people named in the operator plan to make sure they know and understand their responsibilities.

Current initiatives

The major seafood companies have formed a voluntary Health and Safety forum which meets regularly to discuss and share common health and safety issues and best practice. The forum is also considering setting future common standards for the industry.

Comparability to international best practice

Overarching measures

Human Rights

New Zealand ratified the Universal Declaration on Human Rights¹²⁵ in 1948 and has since acceded to many international human rights instruments. The independent New Zealand Human Rights Commission (HRC) works across New Zealand to increase adherence to human rights standards in law, policy and practice. As New Zealand's national human rights institution, the HRC works for a free, fair, safe and just New Zealand, where diversity is valued, and human dignity and rights are respected.¹²⁶

Labour Laws

New Zealand was a founding member of the International Labour Organisation (ILO) in 1919 and remains a routine participant.¹²⁷

Fisher Certification

The New Zealand system for fisher qualifications, including skipper, engineers and crew, is aligned with the IMO convention Standards of Training and Certification of Watchkeeping Personnel on Fishing vessels 1995 (known as STCW-F). STCW-F sets training and certification standards for crew on seagoing fishing vessels of 24 metres or more in length.

¹²⁵ Universal Declaration on Human Rights in 1948

¹²⁶ See Human Rights Commission – Our Work.

¹²⁷ International Labour Organisation – Ratifications for New Zealand.

New Zealand acceded to the STCW-F Convention on 21 November 2017 with an entry of force date of 4 March 2018. Fishers are issued with STCW-F Certificates of competency. This means other countries may recognise New Zealand fishers' certificates.¹²⁸

The relevant Maritime Rules were already largely aligned with STCW-F in 2014. However, some further rule changes were made in April 2017 to give full effect to the STCW-F requirements. These changes came into effect in March 2018. (There is a five-year transition allowance as provided for in STCW-F).¹²⁹

New Zealand's trade agreement with Australia (the NZ-Australia Closer Economic Relations (CER) agreement) has in turn led to broader economic integration between the two countries. One aspect of this is the Trans-Tasman Mutual Recognition Arrangement (TTMRA) which allows for anyone who is registered to practice an occupation in one country to practice in the other. Maritime New Zealand has a defined list of Australian and New Zealand fisheries qualifications that assist with recognising qualifications in either country.¹³⁰

¹²⁸ New Zealand Treaties online – Ministry of Foreign Affairs and Trade – see <https://www.treaties.mfat.govt.nz/search/details/t/3893>

¹²⁹ Maritime New Zealand Rules, amendments 2017 STCW-F.

¹³⁰ The table of equivalent certificates between New Zealand and Australia is provided on the Maritime New Zealand website.

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