

19 October 2021

Seafood Workforce Inquiry Panel
C/- Ministry for Primary Industry

**SUBMISSION ON DRAFT REPORT OF THE MINISTERIAL INQUIRY INTO THE USE
AND ALLOCATION OF MIGRANT LABOUR IN THE SEAFOOD SECTOR**

1. Thank you for the opportunity to comment on “*Te whakatipu I ngā tāngata o Tangaroa*” - the Draft Report of the Ministerial Inquiry into the use and allocation of migrant labour in the seafood sector.

WHO WE ARE

2. Fisheries Inshore New Zealand Limited (FINZ) represents 80% by value and volume of the inshore finfish, pelagic and tuna fisheries of New Zealand. Its role is to deal with national issues on behalf of the sector and to work directly with and on behalf of its quota owners, fishers, committees and affiliated Commercial Stakeholder Organisations (CSOs). As part of that work, it also works collaboratively with other industry organisations and Sector Representative Entities, Seafood New Zealand, Te Ohu Kaimoana, Fisheries New Zealand (FNZ) and the Department of Conservation (DOC).
3. Its key outputs are the development of, and agreement to appropriate policy frameworks, processes and tools to assist the sector to more effectively manage inshore, pelagic and tuna fish stocks, to minimise their interactions with the associated ecosystems and work positively with other fishers and users of marine space where we carry out our harvesting activities.
4. FINZ works closely with its committees and affiliated CSOs (including Southern Inshore Fisheries Management Company) that focus on regional and operational issues and DWG where there is an overlap in issues.
5. Based on a survey of industry employers, the review estimates there are some 200 migrant workers engaged in inshore fishing activity. That estimate is accepted as the best estimate. These positions will be primarily full-time crew members, not being transferred to other land-based processing. There will be other migrant workers engaged in companies processing the inshore seafood catch. We cannot comment on the likely numbers in that activity as it is beyond our mandate.

THE BACKGROUND

6. On 2 July 2021, the Minister for Oceans and Fisheries, Hon David Parker, established a Ministerial Inquiry with the overall objective of reducing the seafood sector’s reliance on migrant labour and increasing the number of New Zealanders working in the sector. The Inquiry would investigate the use and allocation of

migrant labour in the seafood sector, with a view to establishing principles and mechanisms by which the rights to employ migrant labour could be allocated in the future on a reducing basis. The Government has an ambition to transition the seafood sector to a principally New Zealand workforce, where New Zealanders are employed in rewarding jobs, rather than exporting the labour value component of returns.

7. The Panel surveyed stakeholders and sought detailed information from the sector about their employment of migrant labour and other relevant matters. They held 36 one-to-one meetings with a range of stakeholders. FINZ did not meet personally with the review panel appointed by the Minister but encouraged those operators who use migrant labour to meet with and participate in the panel's discussions.
8. The report recommends:
 - a. the government move to increase the certainty and predictability of migrant flows into the sector in exchange for constraining the number of migrants available
 - b. examine establishing a more formal training system which would allow locals to enter the sector with the same degree of skills as migrants (this might involve a modern apprenticeship-type arrangement)
 - c. introduce an explicit requirement, similar to that in the Recognised Seasonal Employer (RSE) scheme, that migrants be paid industry-standard terms and conditions of employment
 - d. a sector-wide annual cap be put in place, using a system of tradeable permits to provide the flexibility needed to ensure migrants can be employed in the highest value roles within the cap
 - e. the current Fishing Crew Work visa be replaced with a Seafood Sector visa, which would allow migrant workers to be employed anywhere in the sector
9. FINZ supports the general thrust of the recommendations, and our submission should also be read as endorsing the Seafood New Zealand submission.
10. However we cannot support all the report's recommendations. In particular, FINZ cannot support the permit development which might be interpreted as creating create reputational damage through being cast as a 'migrant worker trading scheme' that could be portrayed as treating people as private tradeable property. We propose instead that it be referred to as "transferable".

THE ISSUES

11. The primary issue at stake in this review and recommendations is the substitution of New Zealand labour for migrant labour used in the New Zealand seafood sector. The underpinning argument appears to be a market failure has occurred due to the seafood sector being unwilling to pay for New Zealand labour. The construct in the review is to address the market failure by restricting the supply of migrant labour to force up the price industry will be willing to pay for New Zealand to effect the substitution or to innovate and reduce the demand for migrant labour.
12. The general strategy is based on economic theory that would indicate labour can be substituted and that the mechanism is price. That theory is however not realistic and should not be used to effect fundamental change in the economy. Driving a price change to effect a change in labour resources can and will have other undesired outcomes in the demand for labour as entrepreneurs seek other outcomes, which could include closure, innovation or processing of raw products offshore. None of those options are beneficial to domestic labour markets.
13. It is a sad but undeniable reality that New Zealand society and the labour force has become increasingly divorced from the primary sector on which New Zealand's economy is based. New Zealanders simply no longer wish to undertake physical labour in tough working and living conditions, separated for times from the comforts of modern living in an environment that has low tolerance for recreational drugs and alcohol. These conditions are a requirement for the fishing sector but it is not

unique in New Zealand in that respect. All primary industries face significant problems in accessing labour. New Zealand is also not unique in that respect, with all modern third world economies facing the same problem. While the government can strive to change the situation by active intervention, it butts against a hard reality that New Zealanders do not want the type of employment being offered to them. As shown in the survey, the median wages paid in the seafood sector are nearly \$80,000, the median annual wage in New Zealand is nearer \$54,000, a 50% difference – but still labour is a problem. Price/wages are not the constraint, attitudes and willingness are.

THE DETAILS OF THE PROPOSAL

The Visa

14. At present, AIP visas are approved for selected migrant applicants. The migrant worker's tenure in New Zealand is constrained to the vessel specified in the permit and by contract to the employer. The draft report does not indicate whether those conditions will continue or whether visas will be available to migrant workers on request of the migrant. A removal of the direct visa-employer relationship as seems envisaged will necessitate consideration of issues such as:
 - a. The criteria for the granting of a visa
 - b. The number of and ratio of visas to permits
 - c. Would a visa be transferable between migrant workers
 - d. The ability of a visa holder to transfer between eligible employers and commensurate responsibilities of each of the employers
 - e. The rights of a permit holder sponsor when a visa holder wishes to transfer to another permit holder
 - f. If the number of permits is decreased, what would be the policy for a reduction in the number of visas.
15. The visa will become a three year visa eligible to be used throughout the seafood sector- including at sea harvesting, land based processing and in aquaculture, thereby providing greater flexibility in the range of operations a visa holder may work. The visa will be a multi-visit visa allowing the visa holder the opportunity to travel home. The visa will not restrict a visa holder to a specified vessel or company. These conditions are seen as desirable.
16. *Until more details are provided on the nature and conditions applying to a permit as set out in 13 above, FINZ is unable to provide general support for the visa recommendations.*

Permits

17. At present, there is no permit system although employers who seek to sponsor and employ migrant workers must prove themselves to be fit and proper persons.
18. The permit will be a right to employ a migrant worker that holds a visa– it will be for a FTE for year. It is not associated with any particular migrant worker or position. A migrant worker cannot be employed by an employer unless they have a permit available for that worker. The permit would be in perpetuity and transferable between employers. A cap on the number of permits is proposed.
19. The number of permits has not been determined.
20. The report recommends that the allocated number of permits should be less than the permits being used in order to ensure migrant workers are used in those roles providing best value and achieving the policy aim of reducing the use of migrant workers. We cannot agree to that approach for it would likely be punitive on the small employer who is least able to sustain a reduction in the availability of migrant workers. The initial cap must be for full amount that the industry currently requires. This should be based off pre-COVID levels but should also look at increases in any business in the interim

that provides more employment and should also consider how to allow for increased requirements where a sector could develop if there is access to needed expertise (eg open ocean aquaculture).

21. The report also recommends that the number of permits should be subject to a sinking lid policy. While such a policy would assist to achieve the policy outcome of reducing the use of migrant labour, unless New Zealand labour resources are available to be substituted, the net result is a loss of production and overall employment for New Zealand.
22. The report recommends that one permit provides for the right to employ a migrant on a fulltime basis for a year. It is not clear whether a permit can be used at one point in time to cover the employment of a number of migrant workers providing their total employment under the permit does not exceed a fulltime year. For example, can a permit be used to cover 4 migrants, be they on a Seafood sector permit, a Working Holiday visa or a Student visa, for three months employment – a total 1 FTE. Table 3 of the report indicates that the number of migrant workers can vary through the year from a maximum of 1,170 at some time during the year and to a minimum of 700. In total, it represents 860 FTE positions. If a permit can only be used to employ one migrant worker at a time and say 860 permits are issued, the sector could be 300 employees light at the peak production period. Assuming that sea-based positions are generally full-time and given the inability of companies to resource that need from New Zealanders, it is unclear how the 300 deficit would be filled.
23. It is unclear how a variation in the cap might be effected. It has been suggested that the cap should be as a proportion of the total sector employment level. The report does not discuss how the employment level in the industry is to be defined or at what intervals would the cap be reviewed. It is assumed by the panel that the overall sector will increase its employment rather than decline. If so, the number of permits would increase. The report suggests this should be sold through a tender process. However it is not clear whether a firm wanting to increase its activity level and engage additional migrants for example will have access to an increased cap within a timely period. Will they be required to bid for available permits and workers as they might need to or in the absence of any readily available permits or workers be forced to defer any expansion plans?
24. It is not clear what would happen if the sector contracts, how will the number of permits be reduced – will the Government enter into the open market to buy back the permits it needs. And is there are no willing sellers? What would happen if the contraction in the seafood sector is in an activity that does not engage migrant workers? In that circumstance the number of permits would need to reduce through lower seafood sector employment but the demand for migrant workers would not be decreased. What would the policy be for reducing the number of migrant workers in New Zealand?
25. It is not clear how the initial cap/permits would be allocated. It would be reasonable that the permits should be allocated based on the number of migrant workers employed by and to those companies who were using migrant labour prior to the impact of COVID-19. A number of employers have lost migrant workers since the advent of COVID-19. As a consequence of not being able to employ replacement New Zealand crew or gain suitable migrants, a number of vessels have been tied up resulting in a number of former New Zealand crew being laid off because the vessel would have inadequate manning levels. We see no reason why those operators and crew should be forced to suffer permanently by not having access to permits.

WORKING TERMS AND CONDITIONS

26. Use of migrant labour has often been associated in the press by detractors with below standard wages and poor working conditions.
27. That is not the case in the seafood sector.
28. The Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014 required that all foreign charter fisheries vessels operating in New Zealand had to be New Zealand flagged, comply with all New Zealand employment relations and health and safety law and have a New Zealand employment agreement.

29. Migrant workers in the seafood sector are required by the Government to be paid the Minimum Wage plus an additional \$ per hour, that is, \$24 per hour. In contrast it is estimated that there are some 350,000 New Zealanders employed on a full-time basis receiving less than that amount.
30. The review panel estimated from data supplied by the large firms that the salaries paid in the deepwater and inshore sectors were greater on average than the median New Zealand salary of \$57,740, notwithstanding that the fishing sectors worked less days than the average New Zealand worker. The fishing industry data includes all migrant workers. It should also be noted that over 50% of the employees in the deepwater and inshore sectors need no qualifications to undertake their role. The average salary paid to a deckhand on a fishing vessel, who would not be required to hold a qualification, is approximately \$80,000 – that compares favourably with the median New Zealand salary of \$57,740 and salaries paid to many qualified employees.
31. In addition to minimum wage rates prescribed, all fishing crews whether on foreign charter vessels or not are entitled under law to a minimum standard of crew accommodation, food and work safety equipment.
32. The claims often heard that conditions on New Zealand fishing vessels are deplorable have no substance.

REPUTATIONAL RISK

33. The seafood sector is concerned that any policy developments should not be capable of being interpreted as or be portrayed as a form of “modern day slavery”. We are only too aware that our detractors will use any and every tactic and opportunity to denigrate the sector without regard to the veracity of their claims.
34. We are concerned that, irrespective of how the sector comments on the scheme when introduced, those detractors will seize the opportunity to comment in disparaging, emotive language. Any commentary by the Government or any government agency must seek to minimise the prospect of negative publicity and stress that the use of migrant labour is not modern-day slavery. The scheme as introduced is not a form of slavery and the industry does not engage in such practices.
35. Reference to the salaries paid, the opportunities created and the benefits flowing back to the world should be reflected in communications. The sector favours the employment of New Zealanders but in the face of unwillingness of New Zealanders to take advantage of the opportunities, the sector has no choice but to resort to the use of migrant labour. This is all too common in New Zealand, as evidenced more widely in the primary sector, the construction sector and the engineering sector.

THE POSSIBLE OUTCOMES

36. In essence, the proposal seeks to limit the supply of migrant labour by actively intervening to decrease the supply, increasing the cost of such labour thereby incentivising the use of domestic labour as a substitute. With wages in the sector already significantly higher than positions elsewhere in the economy, there is significant doubt that such a strategy will have the desired outcomes.
37. Higher labour costs will see a decrease in the profitability of the sector. The inshore sector is already under significant financial and economic pressure. Spatial access to fishing grounds is being lost to other uses or non-use of the marine environment. Fisheries management settings are favouring increased allocations to the recreational sector whether through direct catch allocations or through settings such as higher abundance which reduces the annual yield. MPI cost recovery levels are increasing. Cameras are a new imposition and source of concern to the sector. Policy reforms such landings and discards unless accompanied by improved and agile fisheries management will only be to the detriment of the commercial sector. Continued cost pressure will see companies withdraw from the fisheries, vessels laid up and crew, both New Zealanders and migrant labour, laid off. The number of vessels registered has decreased by some 300 in the past three years. The increase in potential crew availability from that reduction in the fleet has not been sufficient to offset the need for migrant labour.

38. Higher labour costs will incentivise the cost effectiveness of automation particularly in the processing sector. Experience in the introduction of automation most commonly leads to a reduction in, and is often driven by a desire to reduce, labour costs. Increasing the relative cost of labour will ultimately result in increased levels of automation. While economies of scale and low profitability have decreased and possibly precluded interest in automated processing machines, the proposals in the review will only serve to increase interest in automation. That will result in a reduction of the demand for labour, both New Zealanders and migrant.
39. Higher New Zealand seafood processing costs may also result in companies moving processing of industrial fish offshore. The markets served by industrial fish are largely offshore and there are cost benefits to exporting the catch in a raw form to be processed offshore. Again both New Zealanders and migrant labour would lose their opportunities to be employed here should that happen.

OUR PREFERRED APPROACH

40. The seafood sector needs certainty of the supply of labour to plan and operate for the future. It needs a sound business infrastructure and an economy managed on sound business principles and not ideology based policy. We are not supporters of excessive or unwarranted government intervention that will create market failures and market distortions. For those reasons we cannot support the scheme as proposed in the draft report.
41. The seafood sector needs confirmation from the New Zealand government that it will have access to the labour resources it needs to operate in a profitable and efficient manner.
42. The seafood sector will commit to a New Zealander first policy.
43. Government will commit funding to promote and provide seafood sector training to encourage greater employment in the seafood sector. It should also promote employment opportunities and the merits of the sector as a career choice.
44. The Government needs to recognise that the New Zealand labour force in general has low willingness to be employed in the primary sector and price incentives to achieve such outcomes can only result in lost employment opportunities for New Zealanders and migrants alike and lost production and revenue for the economy as a whole.
45. The sector needs access to migrant labour resources where New Zealand is unable to provide efficient productive labour resources at a cost-effective level.
46. It supports in principle a visa and permit system as proposed.
47. Three year, transferable seafood sector visas are considered appropriate to meet the full-time roles in the sector. Visas should only be available where sponsored by sector participants under contracts of employment. Visas should not be attached to vessels or specific positions and only contractually to employers.
48. There must be sufficient visas issued to meet the labour resource needs of the sector.
49. A scheme based on a permit to employ a migrant worker has appeal but needs to operate in a business focused manner.
50. Permits should be tradeable to allow for changes in employment patterns and needs. Permits should be gifted to employers based on their pre-COVID-19 use unless their level of demand has decreased. Any additional new permits should be tendered in the marketplace.
51. There should be no sinking lid policy. Any reduction in the number of permits should reflect a reduction in demand for migrant labour.
52. In addition to the visas and permit scheme for the employment of migrant labour, the sector should have access to migrant labour on a seasonal basis to allow for seasonal increases in the demand for labour.

53. The government will assist companies to innovate and improve their productivity, noting that this may reduce both domestic and migrant labour needs.
54. The Government will not intervene in the setting of wages in the sector nor introduce any other economic distortions to impact on the industry.
55. The government will support the sector to develop a sector-initiated scheme to transition the sector to a greater use of New Zealand labour.
56. While it is understandable that the report is trying to define the headline principle and does not provide the detail needed for the system to operate, our experience has been that many proposals have had their intent destroyed by poor implementation. If the Government adopts the report of the panel, it should do so initially at a principle level and require official and industry to collaborate to develop sufficient detail for the sector and the government to have confidence that the proposal will in fact be practicable and work. Part of that work will require significant consultation with the seafood sector on the proposed details, once it has been developed so that the feedback can assist its refinement.



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