

CODE OF PRACTICE

On Foreign Fishing Crew

October 19th 2006



NZ Fishing Industry Guild Inc

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Background and Context

The fishing industry is the fifth largest contributor to New Zealand's export earnings. Charter vessels make up an important part of that result, contributing approximately 40% by volume and 20% by value to total fisheries earnings. Much of that contribution is returned to the local economy by way of market access, fuel, cool storage, stevedoring, food stores, general supplies, hospitality trades and engineering services.

Compliance with ALL relevant New Zealand laws and immigration requirements is a key to the operation of Domestic and Foreign Charter Vessels with foreign crew. To ensure compliance it is important that;

- Industry, crew and government document clearly New Zealand law and immigration requirements in connection with the employment of foreign crew;
- It is done in a way that those requirements can be referenced in relevant processes (eg. immigration processes) without the need for repetition;
- Industry and crew are able to easily understand and access those requirements;
- Industry participants at the highest level formally commit to compliance with those requirements and in so doing are made aware of the consequences of not adhering to them.

Purpose

The purpose of this Code of Practice on Foreign Fishing Crew (COP) is to outline the steps and processes agreed with Government officials, the Fishing Guild and the fishing industry to assist in achieving the highest level of compliance in relation to both immigration requirements and applicable laws of New Zealand. It is acknowledged that fishing industry participants have not agreed to the requirements in respect of minimum levels of remuneration, but that they recognise that compliance is nonetheless important.

Being a signatory and adhering to the Code is a mandatory part of requirements set by Government for the issue of immigration visas and permits to foreign fishing crew.

Definitions and Interpretation

"Approval in Principle" means the preliminary decision, (including the imposition of related conditions) given by the Department from time to time pursuant to the Government's policy for enabling the issue of work visas or the grant of work permits to Crew during specified period(s) for work on specified Vessel(s).

"Authorised Agent" refers to the person nominated by the vessel owner and/or NZ Company as authorised to act as agent for the foreign owner of the vessel, as defined in section 103 of the Fisheries Act 1996.

"COP" refers to this Code of Practice on Foreign Fishing Crew

"Employer" is as defined by law, i.e.

- Generally speaking a Fisher's "employer" is as described in the employment agreement.
- Generally the Department of Labour will require the employer specified in an employment agreement provided as part of a work visa application to be the vessel owner (in the case of chartered foreign fishing vessels) or the New Zealand Company (in the case of New Zealand owned vessels).
- For the purposes of observing the relevant parts of the Minimum Wage Act 1983 and Wages Protection Act 1983, the employer is deemed to be the operator (if the operator is the actual employer) or the person from whom the operator obtained the vessel (i.e. the owners or the owner's agent).
- For foreign fishing vessels, under the usual charter arrangements, the employer for the purposes of section 103(5) of the Fisheries Act 1996 is the person from whom the vessel has been chartered. This person must have a New Zealand Authorised Agent.

Note: In the event of default by the employer in respect of the minimum level of remuneration required by Government Immigration Policy for foreign crew, a New Zealand party will be accountable for ensuring that the remuneration required is paid pursuant to the legally binding Deed of Guarantee.

"Fisher" refers to any foreign crew member (including staff who do not fish, such as processors) working in New Zealand.

"Manning Agent" refers to an overseas manning agent engaged by either the Employer or a Fisher, to assist in either placing or recruiting suitably experienced fishers.

“New Zealand Company” refers to the New Zealand company that owns or chartered a vessel. In the case of a Charter vessel this will be the New Zealand Charter Partner who has entered a formal agreement with the Foreign Charter Partner.

“NZFIG” is the New Zealand Fishing Industry Guild.

“Term” refers to the fishing year October 1st to September 30th each year.

“Visa” is the immigration approval which allows the Fisher to travel to New Zealand.

“Workforce – Immigration” is part of the Department of Labour and is also known as Immigration New Zealand.

“Work Permit” is the immigration approval which allows the Fisher to enter and work in New Zealand.

Parties to the Code of Practice on Foreign Fishing Crew

The parties to the Code of Practice on Foreign Fishing Crew are:

- Department of Labour
- New Zealand Fishing Industry Guild
- New Zealand Seafood Industry Council, on behalf of the individual companies listed in Appendix 8.

Individual New Zealand Companies must agree to abide by the terms of the COP in order to secure immigration approvals for Foreign Crew.

Term of the Code of Practice on Foreign Fishing Crew

This COP will take effect from the date of signing by the parties. The COP may be reviewed by the parties from time to time as is necessary. Any party may give notice to the others of its desire to review the COP.

Operation of the Code of Practice on Foreign Fishing Crew

1. Employer Responsibilities

The New Zealand Company will monitor the Employer’s performance (including that of their Manning Agent if used) to ensure that they:

- Comply with those conditions imposed as part of the grant of work permits to fishers (including the minimum of remuneration requirements set out in Appendix 9, Foreign Charter Vessels Standard Principles for Crew Employment Agreements).
- Comply with the lawful employment-related conditions of the AIP.
- Only recommend and employ experienced Fishers.
- Undertake careful referee checks to ensure that a Fisher is a suitable candidate and not a desertion risk.
- Provide the Fisher in their own language with the educational material attached as Appendix 2 (which will be printed in the form of a Department of Labour pamphlet on Foreign Crew Rights and Obligations) and any additional information that the New Zealand Company may wish to provide.
- Fully investigate any complaints raised by Fishers.

Where used, Manning Agents are a vital link in the employment process and are an important factor in minimising the desertion risk of Fishers and ensuring that fishers receive their minimum entitlements. Consequently, New Zealand Companies agree to monitor carefully the Manning Agents’ performance and share these experiences with other charter companies and the Department of Labour if requested.

New Zealand Companies will require the Employer to only deal with reputable Manning Agents and will urge the Employer to impose financial penalties on any Manning Agent who fails to perform satisfactorily in relation to the contents and objectives of this Code of Practice.

2. *Single vs. Multiple Entry Visas*

Approvals of multiple entry visas will generally be limited to Fishers originating from countries with a low security risk or those whom operate on a regular trip rotation schedule, i.e. trip on trip off. Generally these positions relate to senior officers, where the risk of desertion is very low.

The majority of visas approved will be single entry visas and from time to time the Department of Labour will impose operational measures by which particular labour sources are restricted to single entry visas only. These sources are set out in Appendix 8 to this COP which may be updated by the Department of Labour from time to time.

3. *Arrival Procedures*

Ensuring that new Fishers arriving in New Zealand for the first time are welcomed and transported to their vessel safely is considered an important step in Fishers' welfare and their introduction to a foreign country.

Prior to the arrival of any new Fisher, the New Zealand Company will notify the relevant Department of Labour officer by fax (standard fax template attached as Appendix 1).

This notification should be sent to:

Border and Investigations
Workforce - Immigration
Christchurch

Fax: 03 353 1982

The New Zealand Company will ensure that a representative meets the Fisher after they have cleared Customs and Immigration, and transports them to the vessel, their onward domestic flight or their accommodation.

4. *Crew Education*

The New Zealand Company acknowledges it has a responsibility to educate and inform the Fisher of their rights and obligations in respect of employment and immigration matters, to ensure all new Fishers are briefed on their rights and responsibilities prior to their first voyage and that they are provided with the minimum educational literature, translated into their own language.

As a minimum the New Zealand Company will ensure that each Fisher receives the information attached as Appendix 2.

5. *Passport Security*

Passports with valid visas and travel documents are valuable commodities and can be difficult to replace. The New Zealand Company will, with the agreement of Fishers, provide secure storage for passports, visas and travel documents.

6. *Actions to Manage Ship Desertion Risk Whilst in Port*

Managing the risk of desertion whilst vessels are in port is difficult, especially when recruiters are active in the area.

New Zealand Companies will, as appropriate, implement measures to assist in managing this risk. For example:

- Ensure Fishers have, at minimum, the identification required by port company security
- Utilise port company security systems to monitor activity to and from the vessel
- Brief vessel watchmen to record the number plates of unidentified vehicles seen around the vessel
- Implement a Fishers' shore leave policy and other similar measures to maintain contact with Fishers while ashore

In implementing a shore leave policy and otherwise managing crew desertion risks it is acknowledged that Fishers are entitled to shore leave in and it is not the intent of this section to prevent Fishers from being able to take appropriate shore leave.

7. *Fishers' Welfare*

Accepting the responsibility to monitor Fishers' welfare, the New Zealand Company will ensure that Fishers have access to the following services;

- The New Zealand Company
- The Manning Agent (where applicable)
- Medical and dental treatment
- Assistance with banking services if requested
- Mail service

The New Zealand Company will ensure that their representative is present at the vessel for turnarounds, and that the representative is accessible to Fishers at that time.

The Employer will undertake a full investigation of any complaints or concerns raised by Fishers and co-operate fully with any Department of Labour investigation of complaints. The New Zealand Company must provide assistance to the Department of Labour in investigation of any complaints, and may make a separate investigation of complaints or concerns raised by Fishers once notified of the same.

The New Zealand Company will inform the NZFIG of any serious complaints, allegations or investigations concerning employment conditions and/or non-compliance with this Code of Practice. Furthermore the New Zealand Company will ensure that Fishers involved in such an occurrence are made aware that they have the option of advice or representation from NZFIG or any other employee representative party that they have nominated.

Likewise, in good faith, the NZFIG or other employee representative will inform the New Zealand Company of any complaints, allegations or investigations as the NZFIG or other representative becomes aware of them, such that the New Zealand Company has the right and ability to conduct its own investigation.

8. *Responsibility to keep and make available Accurate Employment Records*

Acknowledging the relevant obligations under the Employment Relations Act, and the need to ensure that minimum terms and conditions set out in Appendix 9 are complied with, the Employer is required to keep in the specified format accurate records of:

- Hours worked by the Fisher
- Deductions made from the Fisher's earnings
- What payment is actually received by the Fisher and where payment is received
- The exchange rate used where payment occurs overseas or is in foreign currency

The Employer or the New Zealand Company will make these records available to the Department of Labour on request.

9. *Obligation to Report Information to Department of Labour*

New Zealand Companies and Fishers will advise the Department of Labour of any information that may assist to prevent any desertion or to apprehend Fishers who have deserted and those people who encourage or assist Fishers to desert in breach of their work permit conditions.

This information should be forwarded to the Border and Investigations branch of Workforce – Immigration in Christchurch. Refer to Appendix 6 for the current contact person in respect of such information.

New Zealand Companies will advise Department of Labour of any serious complaint they receive from Fishers. Likewise, in good faith, the Department of Labour will inform the New Zealand Company of any complaints, allegations or investigations as the Department of Labour becomes aware of them, such that the New Zealand Company has the right to conduct its own investigation

10. *Notification of Deserters*

It is acknowledged that not all Fishers that fail to report for duty or sail with the vessel when it departs, intend to breach the terms of their Work Permit. The New Zealand Company will abide by a two stage notification process:

Stage one: When it is determined by a New Zealand Company that a Fisher has deserted, the New Zealand Company will notify Department of Labour within 48 hours, via the standard format (as attached in Appendix 3). The New Zealand Company will at this time surrender the Fisher's passport and Seaman's Book to the Department of Labour (if in the New Zealand Company's possession). At this point the Fisher will be considered in breach of their work permit and be added to ship deserter statistics.

Stage two: In the case of a Fisher missing at vessel departure, notification will be made within 48 hours of the time the vessel leaves port, or within 24 hours of the time a Fisher is noted as missing during transit to/from a vessel.

A New Zealand Company or Employer of a Fisher, who has been recorded as associated with a deserter under the process above, may apply in writing for that record to be removed from the record of ship deserters in the following circumstances:

- a) The Fisher subsequently returns to their vessel, leaves New Zealand, surrenders to Immigration New Zealand or contacts the Employer or the New Zealand Company before any revocation letter against them becomes effective, and
- b) The New Zealand Company or Employer can otherwise show good cause why the Fisher should not be considered a deserter.

The Department of Labour will advise the New Zealand Company in writing of the acceptance or rejection (including reasons for such rejection) of the request for desertion record removal.

11. Departure Procedure

To ensure that all Fishers departing New Zealand permanently have their departure monitored and that appropriate records are maintained, the New Zealand Company will follow the procedure below.

Prior to the permanent departure of any Fisher, the New Zealand Company will provide a New Zealand Customs Service Officer with notification of this departure via fax (template attached as Appendix 4).

Wherever possible, the New Zealand Company will endeavour to have out-going Fishers transported to their airport of departure. Where practicable, the New Zealand Company will also seek the assistance of airport officials in accompanying Fishers to the boarding gate.

12. Fishers Arriving and Departing with the Vessel

Where Fishers arrive and/or depart with the vessel, as opposed to via a foreign flight, this COP will apply where relevant.

13. Approval in Principle and Work Visa Applications

The process for the giving of an approval in principle (AIP) for the recruitment of Fishers and the process for issuing visas and work permits to those Fishers is crucial for the New Zealand Companies and the Department of Labour.

The Department of Labour will keep New Zealand Companies appropriately involved in the development and application of policy and of any changes to this.

The Department of Labour and New Zealand Companies will liaise to clarify any points of confusion.

Branches of the Department of Labour will liaise to ensure efficient and standardised practice.

It is acknowledged that each application for an AIP or work visa must be assessed on its merits; however the Department of Labour will endeavour to assess all applications for AIP and work visas as quickly as possible.

Upon receipt of AIP applications, the Department of Labour will carry out an initial assessment and advise the applicant within 72 hours of any deficiencies in information or support documentation provided.

Accepting the need for a timeframe to facilitate operational planning, the Department of Labour will exercise best endeavours to ensure that as long as AIP applications are complete and no additional information/documentation is required, then Department of Labour involvement with AIP applications will be completed within 6 weeks of the date of lodgement.

14. *Vessel Working and Living Conditions*

Accepting the responsibility to monitor working and living conditions on board vessels, the New Zealand Company will ensure that facilities and provisions for Fishers are to an acceptable standard, for example:

- All Fishers have access to sufficient fresh water for their needs, including hot water
- Adequate food (quantity and type) is provided
- That Fishers accommodation is clean and dry
- All Fishers have their own bed and suitable bedding
- Washing facilities and toilets are sufficient for the number of Fishers on board
- The vessel carries adequate medical stores
- At least one Fisher holds suitable "ship's medic" qualifications
- That Fishers are provided with suitable protective clothing and equipment to perform their duties.
- Vessel safety and emergency drills are carried out on a regular basis
- The vessel meets flag state safety standards as well as any applicable safety, marine protection, crew living and hygiene standards required by the Director of Maritime New Zealand. (For the guidance of new charter partners, the Maritime New Zealand FCFV checklist is attached in Appendix 10).

15. *Foreign Charter Vessels - Employment Agreements*

COP signatories acknowledge that the Fishers' employment agreements must contain (where applicable) the standard principles set out in Appendix 9 as reflecting the requirements for such agreements contained in the Employment Relations Act.

16. *"Inspections"*

The Employer will comply with inspections as required by Maritime New Zealand and Department of Labour to ensure adherence to the Code of Practice.

Execution

This Code of Practice has been agreed on this 19th day of October 2006 and will remain in force until reviewed.

James Buwalda
Chief Executive
Department of Labour

Peter McKinnon
New Zealand Fishing Industry Guild

Owen Symmans
Chief Executive
New Zealand Seafood Industry Council

Company Name

Address

Phone contact details

[email](#)

NOTIFICATION OF CREW ARRIVAL

To: New Zealand Immigration Service **From:** *Person submitting fax*
Date: 20 October 2006 **Fax:** 03 353 1982
Attn: Geoff Parr / Richard Wilson **Pages:** 1 (including this page)

Dear Geoff / Richard

The following crews are to join our vessel *Vessel Name*.

Flight Details:-

Date of Arrival:- *Date*
Point of Arrival:- *Christchurch International Airport etc*
Time of Arrival:- *Time*
Flight Number:- *Flight*

Fishers' Details:-

Name	Country of Origin	Passport Number
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>

Our company representative in attendance will be:-

Name

Phone contact details

We appreciate your assistance

Kind Regards

Name & Title

Important Information for Foreign Fishing Crews working in New Zealand Waters

Welcome to New Zealand. Your work permit allows you to work in New Zealand waters until it expires (or is revoked). New Zealand has rules regarding your rights as an employee and what foreign workers can do. It is very important you are aware of these

Your rights

Below are the basic legal rights of foreign fishing crew employed on foreign fishing vessels in New Zealand waters.

- You must have a written employment agreement and you must be given a copy of it in your own language. This will tell you **what your pay is, how it is calculated, and when and how it will be paid**. It will also detail the other terms and conditions of your employment, including what to do if you have a disagreement with your employer.
- You must be paid according to the terms and conditions detailed in your employment agreement. These terms and conditions must meet, or be better than, minimum requirements imposed by New Zealand's immigration service as a condition of granting you work permit.

▪ The minimum requirements are:

- (a) You must be paid at least the New Zealand minimum wage **plus another**:
 - NZ \$1.25 an hour (from 1 January 2007 until 31 December 2008)
 - NZ \$1.75 an hour (from 1 January 2008 until 31 December 2009)
 - NZ \$2.00 an hour (from 1 January 2009 until 31 December 2010)

Note: As from 27 March 2006 the New Zealand minimum wage is set at NZ \$10.25 an hour. However, this may change each year, often at the end of March. **You can check the current New Zealand minimum wage at www.ers.govt.nz/pay/minimum.html or call 0800 20 90 20 during working hours. This call is free.**

- (b) The only deductions that can be taken from your pay are for:
 - Food – deductions for food cannot be more than an amount equal to 10% of the minimum wage, calculated on the hours you have worked
 - Visa fees – to check visa fees visit www.immigration.govt.nz or call 0508 55 88 55 during business hours. This call is free
 - The cost of your airfares to and from New Zealand, if this was paid by your employer.

Note: Deductions for food, visa fees and airfares **are not allowed** to take your pay below the New Zealand minimum wage, calculated on the hours you have worked.

Note: Personal expenses, such as cigarettes and phone cards, are not treated as deductions and may be taken from your pay.

- (c) **No other deductions can be taken for your pay.** This includes lodging, entertainment or videos, health insurance and protective equipment or clothing.
- Check your employment agreement to find out what your pay is and how it is calculated. **Remember, nothing in your employment agreement allows you to be paid less than the minimum pay outlined above.**
- If you work on a foreign vessel, a New Zealand person or organisation will have guaranteed that you will be paid these minimum entitlements. If your employer refuses to pay you these minimum entitlements you can require the New Zealand person or organisation to pay them.
- **If you are working on a New Zealand-owned vessel** you may be entitled to extra pay for working public holidays, and to annual holiday pay. You should get this after 12 months service or at the end of your employment. You may also be entitled to a payment if you cannot work because you are sick.

- You must be paid for all of the hours you work. Hours of work in the fishing industry can vary. Your employer must keep records of the hours you work, which you should sign. However, you are encouraged to keep your own record of the hours you work.
- You have the right to work in a safe environment. New Zealand does not tolerate violence against workers or unsafe working conditions. If you experience violence or unsafe working conditions you can complain to the Department of Labour or the Police. The Police or the Department will look into the complaint on your behalf.
- **Your employment agreement will include a procedure for resolving any disputes** you have with your employer. This includes any dispute over how much you are paid, or your living and working conditions. **If you have an employment problem try to resolve it using these procedures.**
- If you want to know more about these issues, have any other questions or want to make a complaint you can:
 - Contact the New Zealand Company that charters the ship you work on.
 - Contact the Department of Labour through our website www.dol.govt.nz or call 0800 20 90 20 during business hours.
 - Contact the New Zealand Fishing Industry Guild (NZFIG) or other employee representative organisation. NZFIG is the union that acts for fishing crew. Call 09 358 3013 or 0274 951 490, email NZFIGuild@xtra.co.nz or write to PO Box 90 212, Auckland.

Note: While the Guild is available as a representative you are able to contact any other relevant union or other representative.

Your obligations

- You can only work for the employer and in the job stated in your work visa/permit. If you work in any other job or for any other employer, your work permit may be revoked.
- If your work permit expires or is revoked you will be in New Zealand unlawfully and you must stop working and leave New Zealand. You can appeal the obligation to leave New Zealand to the Removal Review Authority within 42 days of your permit expiring or being revoked. If you do not lodge an appeal, you can be taken into custody and removed. This would mean you could not come back to New Zealand in the future.
- If you have any questions about your immigration status, contact the New Zealand Company whose ship you are working on. Or contact the Department of Labour's Immigration service by calling 0508 558 855, emailing info@immigration.govt.nz or writing to PO Box 3773, Shortland St, Auckland.

Remember

- You cannot work on land or for another employer. Do not believe anyone who tells you otherwise. **If you do so you may be removed from New Zealand and prohibited from returning.**
- Report to your ship's officers, or your New Zealand agent, any approach made to you from people suggesting you leave your work on the ship to work on shore.
- Ensure your seaman's book is always updated. You may require this information for future employment and work visa/permits.

Company Name

Address

Phone contact details

[email](#)

FORMAL NOTIFICATION OF CREW DESERTER

To: New Zealand Immigration Service **From:** *Person submitting fax*
Date: 20 October 2006 **Fax:** 03 353 1982
Attn: Geoff Parr **Pages:** 1 (including this page)

Dear Geoff & -----

To formally advise that the following crew members have deserted their vessel.

Provisional notification to: Geoff Parr (027) 438 1751 - Date.

Please revoke their work permits.

Passport will be couriered to: Border/ Investigations Christchurch Airport Christchurch attn. Geoff Parr.

Vessel Details:-

Vessel Name:- *Vessel Name*

Desertion date:- *Date*

Port deserted:- *Port Name*

Crew Details:-

Name	Country of Origin	Passport Number	Client Nor
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>	<i>Client No.</i>
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>	<i>Client No.</i>
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>	<i>Client No.</i>

The following action has been taken to find this crew member.

-
-

Kind Regards

Name

Title

Company Name

Address

Phone contact details

[email](#)

NOTIFICATION OF CREW DEPARTURE

To: NZ Customs Service **From:** *Person submitting fax*
Date: 20 October 2006 **Fax:**
Attn: **Pages:** 1 (including this page)

Dear

The following crews are departing New Zealand having completed their employment on the *Vessel Name*.

Flight Details:-

Date of Departure:- *Date*
Point of Departure:- *Christchurch International Airport etc*
Time of Departure:- *Time*
Flight Number:- *Flight*

Crew Details:-

Name	Country of Origin	Passport Number	Client No
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>	<i>Client No.</i>
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>	<i>Client No.</i>
<i>Name</i>	<i>Country</i>	<i>Pass No.</i>	<i>Client No.</i>

Our company representative in attendance will be:-

Name

Phone contact details

We appreciate your assistance

Kind Regards

Name & Title

Industry Contacts

Sanford Limited

Steve Coles
Sanford Limited
Charter Manager
Private Bag 905
Timaru
Ph: 03-688 8054
Fax: 03 688 5400
Mobile: 0274 875 359
E-mail: scoles@sanford.co.nz

Solander Group – including:

Aurora Fisheries Limited;
Timaru Squid Company Limited;
New Zealand Japan Tuna Co. Limited.

Note: the first point of contact is listed for the individual companies but any of the three contacts can be used for ALL companies.

Aurora Fisheries Limited

Jocelyne Kenmore,
Aurora Fisheries Limited
P.O.Box 850
Nelson
Ph: 03 545 9660
Fax: 03 545 9661
Mobile: 021 566 253
A Hr: 03 544 6406
Email: nelson@aurora.nzl.com

Timaru Squid Company Limited

Charles Hufflett
Timaru Squid Company Limited
P.O.Box 5041
Port Nelson
Ph: 03 545 9650
Fax: 03 54 59651
Mobile: 021 321 589
A Hr: 03 548 0472
Email: cch@solander.co.nz

New Zealand Japan Tuna Co. Limited

Peter Ballantyne,
New Zealand Japan Tuna Co. Limited
P.O.Box 5041
Port Nelson
Ph: 03 545 9654
Fax: 03 545 9651
Mobile: 0274 340 597
A Hr: 03 548 0913
Email: pdb@solander.co.nz

Oyang Corporation

Peter Dawson
Oyang Corporation
c/-Fisheries Consultancy Limited
P O Box 43
Lyttleton 8012
Ph: 03 328 9494
Fax: 03 328 3535
Mobile: 021 334 381
Email: pete@fishcon.net

Russ Barron
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P O Box 43
Lyttleton 8012
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Fax: 03 328 3535
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Mike Dawson
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Fax: 03 328 3535
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Southern Storm Fishing Limited

Hyun Choi
Southern Storm Fishing Limited
P O Box 31135
Christchurch
Ph: 03 359 1010
Fax: 03 359 7733
Mobile: 027 555 4440
Email: ssfl@xtra.co.nz

Su Mun
Southern Storm Fishing Limited
P O Box 31135
Christchurch
Ph: 03 359 1010
Fax: 03 359 7733
Mobile: 0274 887 574
Email: ssfl@xtra.co.nz

Sea Resources Company Limited

Ian Pharaoh
Sea Resources Company Limited
P O Box 1933
Wellington
Ph: 04 473 9429
Fax: 04 471 1955
Mobile: 021 247 7666
A. Hr 04 479 6049
Email: ian@searesources.co.nz

Sealord Group Ltd/Sealord Charters Limited

Colin Williams
Fleet Manager
Sealord Group Limited
P O Box 11
Nelson
Ph: 03 546 0932 (ddi)
03 548 3069
Fax: 03 546 7458
Mobile: 021 701 167
Email: chw@sealord.co.nz

Valeri Belov
Charter Fleet Manager
Sealord Charters Limited
P O Box 11
Nelson
Mobile: 021 248 0148
Email: vab@sealord.co.nz

South East Resources (2001) Limited

Murray Williamson
Director
South East Resources (2001) Limited
P O Box 264
Timaru
Ph: 03 684 6226
Fax: 03 684 6225
Mobile: 0274 875 358
Email: serl@xtra.co.nz

David Stevens
Compliance Manager
South East Resources (2001) Limited
P O Box 264
Timaru
Ph: 03 684 6226
Fax: 03 684 6225
Mobile: 0274 322 666
Email: serl@xtra.co.nz

Trans Pacific Fishing Limited

Geoff Morgan
Trans Pacific Fishing Limited
P O Box 600
Tauranga
Ph: 07 571 5260
Fax: 07 571 5261
Mobile: 021 619 556
Email: chcnz@clear.net.nz

Amaltal Fishing Company Limited

Daryl Calder
Vessel Management
Amaltal Fishing Company Limited
Maitai Wharf
P O Box 7064
Nelson
Ph: 03 546 3536
Email: john.vaughan@amaltel.co.nz

Northland Deepwater JV Limited

Peter Dawson
Director
Northland Deepwater JV Limited
P O Box 78345
Grey Lynn
Auckland
Ph: 09 360 6444
Fax: 09 360 6449
Mobile: 021 996 915
Email: peter@ndw.co.nz

Independent Fisheries

Stephen Bishop
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Appendix 8 – Labour Sources Restricted to Single Entry Visas

China
Vietnam
Indonesia
Myanmar

FOREIGN CHARTER VESSELS - CREW EMPLOYMENT AGREEMENTS

STANDARD PRINCIPLES

Introduction

To provide all parties with accountability, consistency, transparency and certainty in negotiated employment agreements, on the following standard principles should apply to all employment agreements for crew working on foreign charter vessels.

Standard Principles

All employment agreements for crew working on foreign charter vessels will contain the following provisions, conditions and requirements (hereafter referred to as “standard principles”). Where an employer believes a standard principle is not applicable, the reason for this will be stated in their supporting documentation provided with their Approval in Principle application to Immigration New Zealand.

- 1) The identity and address of the employer.
- 2) The name and date of birth of the employee.
- 3) The home address of the employee and/or the employee’s agent (if applicable).
- 4) If the employer is not a New Zealand company or citizen, then the identity, address and contact details of the New Zealand Charter Partner.
- 5) If the employment agreement is for a fixed term, the term of employment and reason for it being fixed term.
- 6) The employment position, rank or other designation in which the employee will be employed as well as the name of the vessel(s) on which the employee will be employed.
- 7) The duties of the employee for the position in which the employee is employed (at least in general terms).
- 8) The expected minimum number of hours of work, being at least 42 hours per week on average in relation to the whole of each period of employment in the New Zealand Exclusive Economic Zone, and to be recorded on the form attached as Schedule 1.
- 9) A clause which states that the employer will keep accurate records of hours worked by the employee, as per the format suggested by the NZFIG.
- 10) The remuneration terms and rates, which must as a minimum meet the following (and which will be specified as a conditions of the AIP and the grant of work visas/permits for crew);

Period	Minimum remuneration requirement
Until 31 December 2006	Payment for actual hours worked AT THE MINIMUM WAGE* as defined by the Minimum Wage Act 1983 but in no case less than 42 hours per week over the course of the engagement. Deductions may not take wages below this floor.
1 January 2007	Hours as above. <i>Hourly rate – minimum wage + \$1.25 per hour.</i> Permissible deductions would only be food (calculated at a maximum of 10% of hours worked multiplied by the minimum wage), visa fees and airfares, and must be based on actual, reasonable, verified expenses. Deductions may not take hourly rates below the minimum wage. Genuine and verified personal expenses such as cigarettes, phone cards and non-protective clothing (effectively personal wage advances and not connected with the work) would be allowed and would not be treated as deductions.
1 January 2008	<i>Minimum wage + \$1.75 per hour.</i> Hours, deductions and personal expenses as above. Deductions may not take hourly rates below the minimum wage, as above.
1 January 2009	<i>Minimum wage + \$2.00 per hour.</i> Hours, deductions and personal expenses as above. Deductions may not take hourly rates below the minimum wage, as above.

* As defined by the New Zealand Minimum Wage Act 1983

- 11) If deductions are to be made by the employer as permitted by paragraph 10 above, they will be listed and it acknowledged in the employment agreement that the employee accepts those deductions including the amount. The employment agreement must also specify how/when these deductions are to be made and what supporting documentation will be retained for audit purposes. The record of deductions should conform to that form contained in Schedule 2.
- 12) The currencies of all dollar amounts in the employment agreement
- 13) The timing, manner and method of payment of remuneration under the employment agreement.
- 14) The fact that a Deed of Guarantee has been entered by a New Zealand Party and that the New Zealand Party is available and required to ensure that Fishers are paid to the minimum level of remuneration per para 10 above in the event of failure by their employer to do so. A failure may occur if the employer will not submit to the claim process outlined in the employment agreement (detailed at para 18 below) or where they will not pay any monies awarded following that claims process. The process for recovering minimum levels of remuneration from the New Zealand Party should also be specified as per para 18 below and a copy of the Deed of Guarantee should be attached to the employment agreement.
- 15) Causes for dismissal of the employee by the employer.
- 16) A plain language explanation of employment and immigration rights and responsibilities in the form of the DOL pamphlet on Foreign Crew Rights and Obligations (as set out in Appendix 2) is to be attached as a schedule to the employment agreement.
- 17) That the relevant New Zealand employment institutions under the Employment Relations Act 2000 shall have jurisdiction in relation to problems or disputes arising under the employment agreement.

18) A process for resolving employment problems or disputes in accordance with the following;

- a. *First Step: Resolution with the Captain:* Employees should first take the claim or problem to the Captain. By doing this, it is hoped that the claim or problem will be dealt with in a manner that is appropriate to both parties, with the emphasis on allowing the employee to continue on in employment with the employer having resolved his/her claim or problem or to end employment with the correct employment related conditions being met, including payment of wages at the level required by the employment agreement.
- b. *Second Step: Resolution With Employer.* If resolution with the Captain is not achieved, then the employee should take the claim to the employer. By doing this, it is hoped that the claim will be dealt with in a manner that is appropriate to both parties, with the emphasis on allowing the employee to continue on in employment with the employer having resolved his/her claim or to end employment with the correct employment related conditions being met, including payment of wages at level required by the employment agreement. If the employer does not resolve this issue with the employee, then the following steps can be taken:
 - i. *Labour Inspectorate:* the employee may utilise the services of a Labour Inspector as provided for under the Employment Relations Act 2000.
 - ii. *Mediation Service of the Department of Labour.* If the employee's claim is not resolved to his/her satisfaction within a reasonable period of time of raising it with the Labour Inspector, then the employee or the employer may refer this claim or problem to the Mediation Service of the Department of Labour. This is an informal institution that provides mediation services to employees and employers and those in work related relationships alike.
 - iii. *Employment Relations Authority/Employment Court:* If the employee's claim is not resolved to his/her satisfaction at mediation, then the employee or the employer may refer this claim or problem to the Employment Relations Authority. This is a formal institution that provides an investigation process, resulting in a binding decision, to employees and employers. Either party may file a challenge within 28 days from an unsuccessful Employment Relations Authority determination to the Employment Court.
- c. *Third Step: Resolution With New Zealand Guarantor in Respect of Minimum Remuneration:* If in respect of a claim to remuneration, resolution is not achieved with the employer, by way of the above two steps, then the employee should take the claim to the New Zealand Guarantor under the Deed of Guarantee **in so far as the claim concerns remuneration at the minimum specified levels.** The process to follow where the New Zealand Guarantor does not resolve the employees claim to his/her satisfaction, is as follows:
 - i. *Labour Inspectorate:* The employee may utilise the services of a Labour Inspector as provided for under the Employment Relations Act 2000.
 - ii. *Mediation Service of the Department of Labour.* If the employee's claim is not resolved to his/her satisfaction within a reasonable period of time of raising it with the labour inspector, then the employee or the New Zealand Guarantor may refer this to the Mediation Service of the Department of Labour. This is an informal institution that provides mediation services to employees and the employers and those in work related relationships alike.
 - iii. *Independent Arbitration:* If mediation is not successful, then the employee or the New Zealand Guarantor may seek arbitration of the complaint. A panel of arbitrators has been established by NZFIG, SEAFIC and the Department of Labour that the employee and the New Zealand Guarantor may select an appropriate arbitrator.
 - iv. *District Court.* The employee or New Zealand Guarantor may only seek an appeal to the District Court from the binding arbitration on procedural matters.

d. *General:*

- i. The employee may use the services of a representative, including a union, the NZFIG, Community Law Centre or Citizens Advice Bureau, to assist in the above process.
- ii. The employer, the New Zealand Charter Partner of the employer and the employee (and their representative) must act in good faith in the raising of, and pursuing a claim.
- iii. The employer, the New Zealand Charter Partner of the employer and the employee must comply with the procedures developed under the Employment Relations Act 2000 and Deed Relating to Payment of Crew Wages in Circumstances of Default by Foreign Charter Partner, for the process of pursuing a claim.

19) Specification of the country law which is to be applied to the employment agreement (subject to clauses 17 and 18).

20) A record that before signing the employment agreement, the employee has had the opportunity to obtain independent advice on its terms and conditions and that they clearly understand the terms and conditions of the employment agreement.

21) Signatures of both parties and the date of signing.

Agreed Principles for Implementing Foreign Crew Employment Agreements

Languages

- Employment agreements are to be in both the employee's native language and English.

Hours of work.

- Hours of work for each employee are to be accurately recorded in the form as attached in Schedule 1.
- Hours of work for each employee are to be verified by the employee's signature and recorded in the agreed format.

Deductions

- Deductions made by the employer from employee wages will be limited to those listed in para 10 above and based on demonstrable costs to the employer, or evident value provided by the employer to the employee.
- The employer is to maintain sufficient records and invoices to substantiate deductions made by the employer as per Schedules 2 and 3 attached.
- Deductions made by the employer from an employee are not to be made in a periodic manner (e.g. fixed weekly amount) unless it can be shown that the deduction directly relates to the costs to the employer or value to the employee for the corresponding period.

Payments or allotments overseas

- A portion of the employee's wages may be made by payment or allotment overseas, only with the agreement of the employee as per what is agreed in the employment agreement.
- Where a portion of the employee's wages is paid overseas, accurate records of such payments are to be kept by the employer. Such record shall include:
 - The amount of each payment.
 - The beneficiary of each payment.
 - The currency in which the payment is made.
 - The currency exchange rate between the currency of payment and the New Zealand dollar at the time of the payment.
- Copies of records pertaining to payments of employee's wages overseas must be made freely available to the employee on request.

- Deed of Guarantee of Financial Obligations in Respect of Foreign Crew must be attached as a Schedule to the employment agreement.

Schedule 1



NZ Fishing Industry Guild Inc

FISHING CREW RECEIPT OF GOODS AND SERVICES REGISTER

Employer:

Vessel Name:

Week Ending:

Vessel Production (Prod WT)

Mon	Tue	Wed	Thu	Fri	Sat	Sun

Page _____ of _____

Name	Position	Hours Worked							Total Hours	Employee Signature
		Mon	Tue	Wed	Thu	Fri	Sat	Sun		

Vessel Stamp:

Captain's signature

.....

Schedule 2

DEDUCTIONS

As noted in the body of this document, if deductions are to be made by the employer then it will be listed and acknowledged in the employment agreement that the employee accepts those deductions. The employment agreement must also specify how/when these deductions are to be made and what documentation will be required in support of these deductions.

The table below outlines the required form of supporting documentation required for the permitted deductions;

Deduction	Documentation Required
1. Food	<ul style="list-style-type: none">Records showing dates the employee was on the vessel.
2. Airfares	<ul style="list-style-type: none">Receipts/Invoice copies for the actual employee's travel, which is to clearly show the employee's name and dates of travel.
3. Sundry Items	<ul style="list-style-type: none">Receipts/Invoices for the cost of sundry items to the employer (i.e. personal use items, toiletries, slop chest, etc)Records of quantities of sundry items received by and signed for by employees.
4. Clothing	<ul style="list-style-type: none">Receipts/Invoices showing the cost of the (non-safety) clothing to the employer.A signed acknowledgement of receipt from the employee receiving the clothing.An appropriate level of basic protective clothing will be supplied free of charge, and replacement will be made based on fair wear and tear.
5. Phone calls	<ul style="list-style-type: none">A signed acknowledgement from the employee confirming the dollar value of calls made or phone cards received.
6. Work visa/permit and extension fees	<ul style="list-style-type: none">Records of when and where work visa/permits and extensions were applied for.

Schedule 3



NZ Fishing Industry Guild Inc

FISHING CREW RECEIPT OF GOODS AND SERVICES REGISTER

Employer:

Vessel Name:

Month:

Page ____ of ____

Name	Position	Cigarettes (Packs)	Clothing (\$ amount)	Phone (\$ amount)	Visa/Permit (\$ amount)	(\$ amount)	Other (description)	Other (\$ amount)	Employee Signature

Vessel Stamp:

Captain's Signature _____

Deed of Guarantee of Financial Obligations in Respect of Foreign Crew

NEW ZEALAND GUARANTOR

NEW ZEALAND DEPARTMENT OF LABOUR

NEW ZEALAND FISHING INDUSTRY GUILD INCORPORATED

PARTIES

DATE

2006

[INSERT PARTY] a duly incorporated company having its registered office in **[INSERT DETAILS]** (New Zealand Guarantor)

THE NEW ZEALAND DEPARTMENT OF LABOUR (Department)

THE NEW ZEALAND FISHING INDUSTRY GUILD INCORPORATED a duly incorporated society having its registered office at 22 Emily Place, Auckland (**Guild**)

BACKGROUND

- A. The New Zealand Charter Partner and the Foreign Charter Partner are parties to a Charter Agreement dated **[INSERT DATE]**, whereby the Foreign Charter Partner undertakes fishing activities for the New Zealand Charter Partner in New Zealand's exclusive economic zone.
- B. Crew undertaking work pursuant to the Charter Agreement require a permit granted under the Act to lawfully perform the work. As a condition of the giving of an Approval in Principle by the Department for the grant of work permits under the Act (and the subsequent grant of such work permits), Crew must be paid in accordance with the New Zealand Government's requirements as set out in schedule 1 of this Deed. Crew must also have employment conditions that meet those specified in the Approval in Principle. These obligations should be reflected in the Charter Agreement.
- C. In addition, as a condition for the giving of the Approval in Principle and the subsequent grant of work permits by the Department, the New Zealand Charter Partner must agree to pay to the Department any costs reasonably incurred by the Department in accommodating, maintaining and repatriating Crew as a result of a failure by Crew to depart New Zealand voluntarily upon the expiry or revocation of their work permits.
- D. The purpose of this Deed, the entering of which is a New Zealand Government requirement for the giving of the Approval in Principle and the subsequent grant of work permits by the Department, is to ensure that in circumstances where Crew have been unsuccessful in New Zealand in attempting to require their Employer to meet the New Zealand Government's requirements as set out in schedule 1 of this Deed, the Crew's rights may be enforced by Crew in New Zealand against the New Zealand Guarantor. It is also to ensure that if the New Zealand Charter Partner defaults on its accommodation, maintenance and repatriation obligations, the New Zealand Guarantor is available to meet those expenses.
- E. This Deed has been concluded with the assent and support of the Guild on behalf of Crew.

THIS DEED RECORDS:

1. Definitions and Interpretation

1.1. Definitions: In this Deed unless the context otherwise requires:

Act means the Immigration Act 1987;

Approval in Principle means the preliminary decision (including the imposition of related conditions) given pursuant to the Government's policy enabling the issue of work visas or the grant of work permits to Crew during the period **[SPECIFY PERIOD]** for work on the Vessel(s) **[NAME VESSEL(S)]**;

Charter Agreement means the Charter Agreement dated **[INSERT DATE]** by which the Foreign Charter Partner undertakes fishing activities for the New Zealand Charter Partner in New Zealand's exclusive economic zone on the Vessel(s) **[NAME VESSELS]** as notified in the request for the Approval in Principle;

Crew means any person employed by a non-New Zealand employer to work on the Vessel(s) following the Approval in Principle, and includes without limitation the captain of the Vessel(s) and any officers. For the avoidance of doubt, the term can be used to describe one or more members of the crew;

Deed means this Deed (including any schedules) as it may be amended from time to time;

Employer means the party employing Crew;

Employment Agreement means the agreement entered into between Crew and their Employer, which regulates the employment relationship between those two parties for the purposes of work on the Vessel(s);

Foreign Charter Partner means the foreign party to the Charter Agreement;

Guild means the New Zealand Fishing Industry Guild Incorporated;

New Zealand means the sovereign nation of New Zealand including the land masses constituting the country of New Zealand, and the territorial sea (as defined in Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977) around it, together with any activity relating to New Zealand fisheries resources;

New Zealand Charter Partner means the New Zealand party to the Charter Agreement;

New Zealand Guarantor means the New Zealand Guarantor under this Deed, who may or may not also be the New Zealand Charter Partner, and who must have sufficient ability to meet the obligations agreed to pursuant to this Deed;

Vessel(s) means the fishing vessel(s) used by the Foreign Charter Partner for the purpose of fulfilling its obligations to the New Zealand Charter Partner under the Charter Agreement as recorded in the Approval in Principle; and

Wages means all payments made to Crew (whether personally or to nominated parties of Crew) relating to their employment as Crew on the Vessel(s) operated by the Foreign Charter Partner.

1.2. **Interpretation:** In this Deed:

1.2.1. Headings are for ease of reference only and shall not be deemed to form any part of the context or affect the interpretation of this Deed.

1.2.2. The singular includes the plural and vice versa.

1.2.3. References to one gender include the other gender.

1.2.4. References to persons shall be deemed to include:

(a) individuals, companies, corporations, bodies corporate, firms, partnerships, joint ventures, incorporated and unincorporated associations, organisations, trusts, States or agencies of State, government departments and local and municipal authorities, in each case whether or not having separate legal personality; and

(b) the person's employees, agents and contractors.

1.2.5. References to a statute will be a reference to a New Zealand enactment unless otherwise indicated, and include references to regulations, orders, codes and notices made under or pursuant to such a statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or regulation, or statute or regulation passed in substitution for the statute or regulation referred to.

1.2.6. Where required to be calculated by this Deed, all monetary values will be in New Zealand dollars.

2. **Application to Crew and Department**

- 2.1. The New Zealand Guarantor undertakes to perform the obligations in this Deed for the benefit of Crew and the Department.
- 2.2. For the purposes of enforcing the rights of Crew pursuant to this Deed, the parties recognise the role and standing of the Guild (or any other Crew nominated representative) to undertake any action for and on behalf of Crew.

3. **Payment of Crew**

- 3.1. The Employer is obliged to pay all Crew employed on Vessel(s) in accordance with the New Zealand Government's requirements set out in schedule 1 to this Deed.
- 3.2. Failure by the Employer to pay Crew in accordance with clause 3.1 above will be actionable by Crew against their Employer, according to the relevant employment relationship problem resolution processes set out in the Employment Agreement and the Employment Relations Act 2000.

4. **Event of Failure and Crew Demand**

- 4.1. In the event of a failure of the Employer, in respect of its obligations as to payment of Crew pursuant to schedule 1 to this Deed, Crew may take action against their Employer in the relevant New Zealand employment institutions as set out in the Employment Agreement and the Employment Relations Act 2000. In such circumstances, Crew or their representative should immediately advise the New Zealand Guarantor in writing of the action taken.
- 4.2. If the Crew or their representative take action against their Employer in accordance with clause 4.1 above, and their Employer either:
 - 4.2.1. refuses to submit to the jurisdiction of the New Zealand employment institutions or can not be served after reasonable attempts being undertaken by Crew or their representative; or
 - 4.2.2. submits to the jurisdiction of the New Zealand employment institutions but fails to obey any order lawfully made, having failed to exercise or having unsuccessfully exercised any lawful rights of appeal;

then Crew or their representative may make demand on the New Zealand Guarantor pursuant to clause 5 below for resolution of their claim in accordance with schedule 1 to this Deed by the New Zealand Guarantor.

5. **Form of Demand**

- 5.1. Where Crew make a demand on the New Zealand **Guarantor** pursuant to clause 4.2 above, the demand need not be in any special form but must contain the following minimum information:
 - 5.1.1. the names of the parties involved;
 - 5.1.2. the basis for the claim;
 - 5.1.3. attempts made to resolve the claim with their Employer pursuant to their Employment Agreement (together with approximate dates for such attempts); and
 - 5.1.4. the outcome that the Crew seek.

6. Consequences of Demand

- 6.1. Where clause 4.2 above applies, and where there is a default in terms of clause 4.2.1 above, Crew may demand the New Zealand Guarantor submit to the following processes for resolution of the claim in accordance with schedule 1 to this Deed:
- 6.1.1. initial intervention by a Labour Inspector; and/or
 - 6.1.2. mediation with the assistance of a Department Mediator; and
 - 6.1.3. if a claim can not be resolved at mediation, then Crew may seek the assistance of a single arbitrator, appointed pursuant to the Arbitration Act 1996, to be appointed with the agreement of Crew (or representative on their behalf) and the New Zealand Guarantor in consultation with the Department with the arbitrator's costs to be paid by the New Zealand Guarantor, subject to clause 6.1.5 below;
 - 6.1.4. an arbitrator's final decision will be binding and enforceable by Crew under clause 4.2 above (subject to the limited right to appeal to the District Court on issues of procedure) without the need for such decision to be sealed; and
 - 6.1.5. if Crew use the resolution process in the Deed otherwise than in good faith, then the Arbitrator can consider the issue of costs.
- 6.2. Where clause 4.2 above applies, and where there is a default in terms of clause 4.2.2 above, Crew may demand that the New Zealand Guarantor pay to Crew any sum properly ordered and demanded within 14 days of the date of the demand.

7. Maintenance, Accommodation and Repatriation

- 7.1. The New Zealand Guarantor guarantees to the Department (pursuant to the requirements of the Approval in Principle and subsequent grant of a work permit to Crew) payment of costs reasonably incurred by the Department in respect of maintenance, accommodation and repatriation of Crew in the event of any failure of Crew to depart New Zealand on the expiry or revocation of their work permit.
- 7.2. Where the Department seeks to rely on clause 7.1 above, the Department must provide to the New Zealand Guarantor the following information:
- 7.2.1. the name(s) of the Crew in relation to whom payment is required;
 - 7.2.2. the dates for which payment for maintenance and accommodation is required; and
 - 7.2.3. a breakdown of actual costs incurred.
- 7.3. Where the Department makes demand pursuant to clauses 7.1 and 7.2 above, the New Zealand Guarantor must pay all sums properly demanded within 28 days of the date of demand.

8. Obligations Secured

- 8.1. The guarantees in this Deed relate to all obligations to Crew as set out in schedule 1 of this Deed for the period for which they are in New Zealand and employed by the Employer on the Vessel(s). For the avoidance of doubt, this Deed remains enforceable (in respect of obligations during that period) after the expiry of that period, subject to clause 10.3 below.

- 8.2. For the avoidance of doubt, the guarantees to Crew in this Deed do not extend to any other conditions, which may be negotiated between Crew and the Employer but are not specified in schedule 1 to this Deed.
- 8.3. The guarantees in this Deed continue notwithstanding any lawful decision by the Department to cancel or revoke the work permits of Crew.

9. **Jurisdiction and Choice of Law**

- 9.1. The parties agree that the law governing this Deed and any dispute or matter arising out of it is exclusively that of the State of New Zealand.
- 9.2. The parties agree that (subject to clauses 3.2, 4.1 and 6 above) the Courts of New Zealand have exclusive jurisdiction in respect of any dispute or matter arising out of this Deed.

10. **Miscellaneous**

- 10.1. **Waiver:** No act or omission by any party will be deemed to be a waiver of any of the rights accrued under this Deed. No waiver will be effective unless made in writing by the waiving party.
- 10.2. **Illegality:** If any part of this Deed is found to be illegal or otherwise unenforceable at law, this shall not affect the enforceability of the remaining parts, which shall remain effective to the greatest extent possible following the exclusion of the offending part.
- 10.3. **Limitation:** The rights of Crew to take action against the New Zealand Guarantor shall lapse if no notice of demand (in the manner required by clause 5 above), has been given within 90 days of the date on which a Crew member's employment on the Vessel(s) ceases.
- 10.4. **Notice:** Any notice given by one party to the other shall be deemed to have been delivered five working days after posting to the recipient's registered office or last known address, and on receipt of the notice if forwarded by facsimile or email.
- 10.5. **Authorisation:** The signatories to this Deed warrant that they are authorised to sign this Deed both in form and substance on behalf of the party they purport to represent.

EXECUTED as a Deed

Signed by
NEW ZEALAND GUARANTOR
in the presence of

Authorised Signatory

Authorised Signatory

Witness signature

Full name

Occupation

Address

Schedule 1 - Government Requirements

Period	Minimum remuneration requirement
Until 31 December 2006	Payment for actual hours worked AT THE MINIMUM WAGE but in no case less than 42 hours per week over the course of the engagement. Deductions may not take wages below this floor.
1 January 2007	<p>Hours as above.</p> <p><i>Hourly rate – minimum wage + \$1.25 per hour.</i></p> <p>Permissible deductions would only be food (calculated at a maximum of 10% of hours worked multiplied by the minimum wage), visa fees and airfares, and must be based on actual, reasonable, verified expenses. Deductions may not take hourly rates below the minimum wage.</p> <p>Genuine and verified personal expenses such as cigarettes, phone cards and non-protective clothing (effectively personal wage advances and not connected with the work) would be allowed and will not be treated as deductions.</p>
1 January 2008	<p><i>Minimum wage + \$1.75 per hour.</i></p> <p>Hours, deductions and personal expenses as above.</p> <p>Deductions may not take hourly rates below the minimum wage, as above.</p>
1 January 2009	<p><i>Minimum wage + \$2.00 per hour.</i></p> <p>Hours, deductions and personal expenses as above.</p> <p>Deductions may not take hourly rates below the minimum wage, as above.</p>

Appendix 11- Maritime New Zealand FCFV checklist

SECTION A – PART 1: SHIP DETAILS

To be completed for all ships.

Ship Name:	_____	IMO Number:	_____
Former Names:	_____	Official Number:	_____
Call Sign:	_____	Flag:	_____
Owner	_____	GRT:	_____
Manager	_____	Year of Build:	_____
Charterer	_____	Class Society:	_____
Inspection Date	_____		
Inspection Port	_____	Service Type:	_____
Type of Fish Factory (i.e. Full Fillet, Headed Gutted & Tailed, Fresher):	_____		

Certificates Valid:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Sub Standard:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Ship Detained:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
			Deficiencies:	<input type="checkbox"/> Yes	<input type="checkbox"/> No

SECTION A – PART 2: SHIP CERTIFICATION

	Issued By	Issued	Expires	Last Survey		
				Date	Surveyed By	Place
01 Certificate of Class						
02 Certificate of Nationality						
03 Tonnage Certificate						
04 Safety Radio						
05 Safety Equipment						
06 Liferaft Service						
07 Fire Appliances Service						
08 Inflatable Lifejacket Service						
09 I.O.P.P.						
10 I.S.P.P.						

SECTION A – PART 3: DOCUMENTATION

Note: A ✓ should be placed against those applicable items which are inspected.

Approved stability information

Garbage

Cargo Gear Record Book

Oil Record Book

Record of Drills

Record of Equipment Tests

SECTION B – CHECKLIST

Note: On completion, all areas **MUST** be marked with either a ✓, a **Code Letter** and/or a **Comment**.

Inspection Criteria

Area 1 – External Hull and Pre-Boarding

- | | | |
|--|--------------------------|--|
| 1.1. Hull Condition | <input type="checkbox"/> | Evidence of heavy corrosion or damage |
| 1.2. Tank Leakage | <input type="checkbox"/> | Evidence of any oil or water leakage from tanks |
| 1.3. Hull Markings | <input type="checkbox"/> | Load line and draft marks clearly visible |
| 1.4. Accommodation Ladder and Side Netting | <input type="checkbox"/> | Proper construction-fitting/guard rails or line properly secured with safety net |

Area 2 – Wheelhouse

- | | | |
|--|--------------------------|---|
| 2.1. Magnetic Compass | <input type="checkbox"/> | |
| 2.2. Deviation Card | <input type="checkbox"/> | |
| 2.3. Gyro Compass | <input type="checkbox"/> | |
| 2.4. Echo Sounder | <input type="checkbox"/> | |
| 2.5. Radar | <input type="checkbox"/> | |
| 2.6. GPS | <input type="checkbox"/> | |
| 2.7. Charts | <input type="checkbox"/> | |
| 2.8. Publications – Nautical/Radio | <input type="checkbox"/> | |
| 2.9. Navigation Lights | <input type="checkbox"/> | One Masthead /Sidelights/Stern Light |
| | | Two Masthead /Sidelights/Stern Light |
| 2.10. NUC/Aground Lights | <input type="checkbox"/> | All round / Red over Red |
| | | Not Trawling: All round / Red over White |
| | | Trawling: All round / Green over White |
| 2.11. Fishing Lights | <input type="checkbox"/> | Close proximity: Two all round Red and Two all round White, in a vertical line |
| | | One all round white/most visible place |
| 2.12. Anchor Light | <input type="checkbox"/> | Two all round white/aft light lower than forward |
| | | |
| 2.13. All lights | <input type="checkbox"/> | |
| 2.14. Day Shapes | <input type="checkbox"/> | |
| 2.15. Whistle | <input type="checkbox"/> | |
| 2.16. Fog Signal | <input type="checkbox"/> | |
| 2.17. Bell | <input type="checkbox"/> | |
| 2.18. VHF Radio | <input type="checkbox"/> | |
| 2.19. SSB Radio | <input type="checkbox"/> | |
| 2.20. EPIRB/Hydrostatic Release | <input type="checkbox"/> | |
| 2.21. SART | <input type="checkbox"/> | |
| 2.22. Pyrotechnics | <input type="checkbox"/> | |
| 2.23. Line Throwing Apparatus | <input type="checkbox"/> | |
| 2.24. Man Overboard Lifebuoy/Pyrotechnics | <input type="checkbox"/> | |
| 2.25. Alarm Bell system for Fire, Abandon Ship and Emergency | <input type="checkbox"/> | Must work. Bell codes for Fire/Abandon Ship and Rescue Boat must be clearly displayed |

Area 3 – Accommodation/Catering

- | | | |
|--|--------------------------|--|
| 3.1. Muster and Emergency Station List | <input type="checkbox"/> | Must be available and in correct positions |
| 3.2. Passage ways and exits/access | <input type="checkbox"/> | No Obstructions |
| 3.3. Porthole closing arrangement | <input type="checkbox"/> | Must close/ watertight (test) |
| 3.4. Weather tight/watertight doors | <input type="checkbox"/> | Must close/all dogs-catches must operate and move freely |
| 3.5. Medical Stores | <input type="checkbox"/> | Must be available sighted and up to date |
| 3.6. Electric wiring and switches | <input type="checkbox"/> | No un-authorized wiring – exposed heaters etc. Lights in cabins permanently fitted and wired. No overloaded power points |
| 3.7. Cleanliness / Hygiene | <input type="checkbox"/> | No infested areas |
| 3.8. Storerooms / Freezer | <input type="checkbox"/> | Cleanliness. Alarm Functioning |
| 3.9. Garbage | <input type="checkbox"/> | Garbage Containers fitted with lids |
| 3.10. Galley | <input type="checkbox"/> | Acceptable standard of Hygiene in galley. Fire Blanket |
| 3.11. Signage | <input type="checkbox"/> | Warning notices and signs displayed where required |

Area 4 – Main Deck

- | | | |
|-----------------------------------|--------------------------|---|
| 4.1. Pilot boarding arrangements | <input type="checkbox"/> | Ladder in good condition/Bulwark stanchions fitted/safe access/Lifebuoy with light and line must be ready at boarding station |
| 4.2. Watertight doors / Hatches | <input type="checkbox"/> | Must close. Securing devices must work and move freely |
| 4.3. Ventilation flaps and covers | <input type="checkbox"/> | Must close. Securing devices must work and move freely |

SECTION B – CHECKLIST

Note: On completion, all areas **MUST** be marked with either a ✓, a **Code Letter** and/or a **Comment**.

Inspection Criteria

- | | | |
|--------------------------------|--------------------------|--|
| 4.4. Tank ventilation pipes | <input type="checkbox"/> | Closing devices in working condition/gauges must be clear |
| 4.5. Freeing ports | <input type="checkbox"/> | No closing devices fitted/no obstructions |
| 4.6. Cargo Hatches | <input type="checkbox"/> | Must close watertight. Securing devices must work and move freely |
| 4.7. Mast / Mast ladders | <input type="checkbox"/> | In good condition / no steps missing / not loose |
| 4.8. Derricks – if fitted | <input type="checkbox"/> | In good working order and condition/ Note SWL marked |
| 4.9. Rigging | <input type="checkbox"/> | Good condition / no excessive rust formation |
| 4.10. Shackles | <input type="checkbox"/> | Good condition |
| 4.11. Anchor Windlass | <input type="checkbox"/> | Both sides in good working condition and order. Must be able to drop freely |
| 4.12. Anchors and Cables | <input type="checkbox"/> | Good condition / no excessive rust / no wastage of links permitted |
| 4.13. Stowage of Gas Cylinders | <input type="checkbox"/> | Stowage on deck or in well ventilated lockers / good lashing materials / properly lashed |
| 4.14. Trawl Ramp Door | <input type="checkbox"/> | Fully Functional |

Area 5 – Lifesaving Equipment

Crew must demonstrate working order as requested by the Inspector

- | | | |
|-----------------------------|--------------------------|--|
| 5.1. Lifeboats | <input type="checkbox"/> | In good condition properly maintained. Equipment in good condition and as per list. Pyrotechnics in date. Motor starts |
| 5.2. Launching Arrangements | <input type="checkbox"/> | In good condition and fully operational |
| 5.3. Liferrafts | <input type="checkbox"/> | In date. Hydrostatic release in date and correctly fitted |
| 5.4. Lifebuoys | <input type="checkbox"/> | In good condition with retroreflective tape and grablines |
| 5.5. Lifebuoy lights | <input type="checkbox"/> | Self-igniting light must operate |
| 5.6. Lifebuoy lines | <input type="checkbox"/> | Lines 30m in length/minimum 5mm diameter |
| 5.7. Rescue Boat | <input type="checkbox"/> | Fully operational |

Area 6 – Fire Fighting Appliances (Accommodation / Deck / Engineerroom)

Crew must demonstrate working order as requested by the Inspector

- | | | |
|--|--------------------------|---|
| 6.1. Hydrants | <input type="checkbox"/> | Working order. No corrosion. Good coupling |
| 6.2. Hoses | <input type="checkbox"/> | No holes. Good coupling |
| 6.3. Nozzles | <input type="checkbox"/> | Both spray and jet option. Good coupling |
| 6.4. Portable extinguishers | <input type="checkbox"/> | Condition Service date. Condition |
| 6.5. Brackets for extinguishers | <input type="checkbox"/> | Must be installed and fitted with quick release |
| 6.6. Spare gas cylinder charges | <input type="checkbox"/> | Sufficient quantity |
| 6.7. Spare powder | <input type="checkbox"/> | Sufficient quantity |
| 6.8. Emergency Fire Pump | <input type="checkbox"/> | Fully operational |
| 6.9. Fire blanket for galley | <input type="checkbox"/> | Suitable size. Sound material. Located in galley |
| 6.10. Fire Axes | <input type="checkbox"/> | No rusty blade. Proper handle |
| 6.11. Fireman's Outfit | <input type="checkbox"/> | Fully operational and in good condition |
| 6.12. Breathing Apparatus | <input type="checkbox"/> | In good condition. No leaks. Bottles charged. Spare Air Bottles |
| 6.13. Fixed fire fighting extinguishing system | <input type="checkbox"/> | Condition. No obstructions. Last test date |
| 6.14. Alarm | <input type="checkbox"/> | Must work |

Area 7 - Engineerroom

- | | | |
|---|--------------------------|---|
| 7.1. Emergency Generator | <input type="checkbox"/> | In good condition/properly maintained. Must start and be able to be put on load. Black out test |
| 7.2. Emergency Compressor | <input type="checkbox"/> | In good condition/properly maintained. Must start |
| 7.3. Oily water Separator / Filtration system | <input type="checkbox"/> | Fully operational |
| 7.4. Cleanliness of Bilges | <input type="checkbox"/> | Clean. Must not present a fire hazard |
| 7.5. Emergency Escapes | <input type="checkbox"/> | Must be clear of all obstructions |
| 7.6. Main switch board | <input type="checkbox"/> | No earths on board clear of obstructions |
| 7.7. Fire pumps | <input type="checkbox"/> | In good condition/properly maintained |
| 7.8. Emergency Steering | <input type="checkbox"/> | Tested and fully operational |

Area 8 - Factory

- | | | |
|--------------------------------------|--------------------------|--|
| 8.1. Walkways | <input type="checkbox"/> | Gratings in place |
| 8.2. Emergency Stops | <input type="checkbox"/> | Adequate and appropriate |
| 8.3. Total number of Emergency Stops | <input type="checkbox"/> | |
| 8.4. Machinery safe guards | <input type="checkbox"/> | Guards in place where appropriate |
| 8.5. Signage | <input type="checkbox"/> | Warning notices and signs displayed where required |
| 8.6. Fishmeal Plant | <input type="checkbox"/> | Emergency stops, Gas alarms, Dead Man alarms |

SECTION B – CHECKLIST

Note: On completion, all areas **MUST** be marked with either a ✓, a **Code Letter** and/or a **Comment**.

Inspection Criteria

8.7. Fish Holds

Adequate hazard management in place for safe occupancy

8.8. Personal Protective Equipment

Helmets, PFD's, Boots, Harnesses, Gloves, Wet Weather gear