

Forced Labour

New Zealand's experience shows that labour conditions on board foreign charter vessels are far from perfect

Even as New Zealand grabbed international media headlines for good fisheries management practices, it was also exposed for employing forced labour on board foreign-flagged fishing vessels in its exclusive economic zone (EEZ). Until very recently, foreign charter vessels (FCVs)—all above 30 m registered length—accounted for over half the marine fish catch from the New Zealand EEZ and nearly 50 per cent of the value of total seafood exports. These included southern blue whiting and hoki that are certified as sustainable by the Marine Stewardship Council (MSC). The FCVs were employed to fish privately owned quota under contract to a domestic permit holder within the EEZ.

The forced labour conditions included poor living and working conditions, physical and sexual abuse by officers, non-payment of wages and manipulation of time sheets, especially of Indonesian crew members on board Korean-flagged FCVs (see page 8).

How could such a laudable sustainable fishing regime—“rated as first equal out of all marine regions around the world”, according to the 2012 Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels—perform so poorly when it comes to labour conditions on board FCVs in its EEZ? How come there were no prosecutions for the use of forced labour on board these FCVs, a criminal offence under international law, when there were numerous prosecutions related to fisheries violations?

The Ministerial Inquiry attributed forced labour conditions on board FCVs in its EEZ mainly to a flaw in the FCV programme. All FCVs in the New Zealand EEZ are mainly from Korea, Japan, Ukraine or Dominica. They were time charters and flying foreign flags. Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), New Zealand, as a coastal State, is not responsible for labour conditions on board foreign-flagged FCVs, which are the responsibility of the respective flag State.

The recommendation of the Ministerial Inquiry was, therefore, to convert all time charters to bare-boat or demise charter. A bill to this effect—the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill—is being discussed in the New Zealand Parliament to bring all FCVs under the New Zealand flag.

According to latest reports, however, the Primary Production Committee of the Parliament proposes to provide loopholes to FCVs to get around registering under a New Zealand flag, especially to FCVs targeting certain species of tuna, or to FCVs employed by vessel operators holding catch entitlement from the Maori settlement quota.

Combining effective conservation and management measures of the coastal State with ineffectual labour standards of the flag State is suggestive of revenues and profits in the New Zealand fisheries being made at the cost of better working and living conditions, especially of poor migrant fishers on board FCVs from developing countries.

Whether FCVs are eventually to be re-flagged or not, all flags fishing in the New Zealand EEZ must be required to ratify the Work in Fishing Convention, 2007, of the International Labour Organization (ILO).

Secondly, ecolabelling and fisheries certification as well as catch-certification programmes should include social auditing to ensure that fisheries management systems take into account not only biological, technological, economic, environmental and commercial aspects but also all social aspects, including working and living conditions of fishers on board fishing vessels.

Thirdly, while labour conditions are left to the jurisdiction of the flag State under UNCLOS, the FCV experience would underscore the need for effective legal mechanisms to shift the burden of proof to vessel operators to demonstrate that fishers are not treated poorly on board fishing vessels.

Fourthly, and most importantly, the international community should think of mechanisms whereby labour-supplying States take responsibility for recruitment, working and living conditions and social protection of fishers, and co-ordinate with the flag State, port State and the market State regarding the welfare of fishers on board third party fishing vessels.

New Zealand has a responsibility, and an opportunity, to improve labour conditions in fisheries. We would like to see it grabbing newspaper headlines for the right reasons: the allocation of fishing rights should be conditional on respecting human rights.

