

Exploited, Blacklisted, Destitute

Migrant fishers who work as crew on board vessels of New Zealand companies often have to grapple with exploitation, abuse, blacklisting and oppressive working conditions

In 2011, Indonesian fishers from South Korean vessels fishing in New Zealand's waters, engaged in industrial action. The first to do so were fishers (seven in total) from the *Shin Ji* in May and 31 from the *Oyang 75*. Later that year, fishers from another South Korean vessel also engaged in industrial action. Problems on board South Korean vessels continued. For example, in 2013, 16 crew walked off the *Pacinui*, claiming they were owed unpaid wages. That same month, 21 *Sur Este 707* crew walked off for the same reason.

The vessels fishing on behalf of New Zealand companies and quota holders were crewed by South Korean officers and migrant fishers from Indonesia. In effect, many fishers were victims of forced labour. Their pathway to forced labour began in Indonesia where they had been subjected to deceptive recruitment practices, including excessive recruitment fees, and deception about the legality of their contract and their rights in New Zealand. Once on board the vessels, many endured harsh employment conditions. They worked extremely long shifts under threat of penalty, often in unsafe working conditions, controlled through debt bondage, intimidation, and threats, with some subjected to physical and sexual abuse.

After they became aware of their right to a minimum wage, the continued abuse, coupled with falsified records of working hours, violated their sense of dignity, and they refused to work. The unprecedented courageous actions of the *Shin Ji* and *Oyang 75* fishers are significant as they helped reshape the regulatory landscape of the deep-sea fishing industry in New Zealand, thus laying

the foundation for better working conditions for future fishers.

The actions of the *Shin Ji* and *Oyang 75* fishers swung the spotlight to the extent of abuse that had been happening in the foreign charter vessel (FCV) sector for many years. In July 2011, the New Zealand government announced a Ministerial Inquiry into the FCV sector. A combination of events, beginning with the crew's actions and support from advocates, coupled with academic research detailing the extent of the abuse, pressure by

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non-governmental organizations (NGOs), and domestic and international media commentary, kept the issue at the forefront. A key outcome of this inquiry was that the government enacted the Fisheries (Foreign Charter Vessels and other Matters) Amendment Bill in 2014. The Bill required all foreign-flagged vessels to enter onto the New Zealand register of shipping as New Zealand vessels by 1 May 2016. Reflagging means that crew and vessel will come under New Zealand law. Another outcome was full observer coverage on all vessels, with the observer's functions extended to monitor labour conditions.

Foreign vessels

In 2011, there were 13 South Korean vessels operating in New Zealand's waters. By 2016, six had undertaken

This article is by **Christina Stringer** (c.stringer@auckland.ac.nz) of the Department of Management and International Business, University of Auckland, New Zealand, and **Ani Kartikasari** (Ani.Kartikasari@lincoln.ac.nz) of the Department of Agribusiness and Markets, Lincoln University, New Zealand

the reflagging process. Three were operated by Dong Won Fisheries, a company with a long-standing relationship with Sanford, one of New Zealand's largest fishing companies. Another vessel chartered by Sanford, which was also reflagged, belonged to Juahm Industries. Both Dong Won Fisheries

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and Juahm Industries established subsidiary companies in New Zealand—DW New Zealand Limited and JAICO Limited, respectively.

The fifth vessel was the former *Melilla 203*, which had been seized in 2015 under a High Court order by its creditors, specifically, UFL Charters Limited, the New Zealand company which had previously chartered the vessel. The *Melilla 203* was purchased from the High Court by KNW Co. Ltd, a company owned by GOM, a South Korean company with long-established connections in New Zealand. The sixth vessel reflagged was also owned by GOM.

As part of the New Zealand's government efforts to address problems in the FCV sector, the Crown also gathered evidence as to the extent of environmental offences. On board several FCVs, the fishers were required to illegally dump fish and oil. Those who engaged in industrial action began to detail the extent of fish dumping. When the majority of crew were sent home by Immigration New Zealand, some remained in New Zealand as witnesses for the Crown in its prosecution of officers from the vessels *Oyang 75*, *Oyang 77*, *Melilla 201* and *Sur Este 707*. The officers from these vessels were found guilty of illegal dumping of fish and filing fraudulent returns. The extent of dumping was such that it was estimated that *Oyang 75* dumped up to NZ\$1.4 mn worth of fish during

two fishing trips. The vessels were forfeited to the Crown under the Fisheries Act 1996. Further, Southern Storm Fisheries, the New Zealand charterer of the *Oyang 75* was fined for failing to notify Maritime New Zealand of the discharge of harmful substances, including oil, into the sea.

The Sajo Oyang Corporation paid a bond to the Crown to keep operating their vessels which are now fishing off the coast of South America. Nevertheless, the Crown retains legal rights over these vessels. Currently, the two Oyang vessels are subject of a relief from forfeiture claim by fishers from the *Oyang 70* (which sank in August 2010 with the loss of six lives) and *Oyang 77* vessels. The fishers, who were employed prior to those who engaged in industrial action, are seeking compensation for outstanding wages owed to them through underpayment. The *Oyang 75* and *77* vessels are estimated to be worth US\$8 mn (NZ\$9.6 mn) and NZ\$1.5 mn, respectively. Of the other two vessels forfeited to the Crown, the *Melilla 201* vessel was sold to a shipping scrap yard for around NZ\$200,000, while the *Sur Este 707* is fishing in foreign waters.

While the New Zealand government was undertaking efforts to improve working conditions in the deep-sea industry, exploitation was occurring in the inshore fisheries. In March 2015, two fishers whose contracts had ended complained about being underpaid. They had each paid around 20 mn rupiah (around NZ\$2,000) to obtain employment with a New Zealand company. They were initially required to work in the company's processing factory, which was not part of their contractual obligation, before working on the fishing vessels. In the processing factory, the hours worked by the New Zealand workers were electronically recorded, whereas the hours for the Indonesians were recorded manually.

Working hours

On board the vessels, the fishers had sometimes worked 12-hour

days, seven days a week and over a 10-month period, had received less than NZ\$8,000. According to their contract, they should have received NZ\$3,141.66 per month based on “42 hours per week” and hence, they calculated they were owed near NZ\$20,000 each. They and other fishers had previously complained to their employer only to be told if they “complain too much, they will be replaced by Filipinos”.

An analysis of bank records confirmed that at a minimum, they had not been paid their monthly contract wage. The two fishers remained in New Zealand, supported by advocates, seeking to obtain their outstanding wages. In May 2015, following the expiration of their work visa, they returned to Indonesia. Subsequently, months later, after an investigation by the New Zealand Ministry of Business, Innovation and Employment (MBIE), the two fishers received a financial settlement for unpaid wages based on the contractual amount of NZ\$3,141.66 per month, as opposed to the greater amount of actual hours worked. These being vessels already under the New Zealand flag indicates that reflagging FCVs may not necessarily resolve the problems of fraud and underpayment.

In July 2017, Ikeda Suisan Company, a Japanese fishing company operating in New Zealand’s exclusive economic zone (EEZ), was fined NZ\$122,252 for its failure to pay the Indonesian crew on board the *Hoshin Maru 77* their correct wage entitlement. An investigation by the Labour Inspectorate found that between 30 April and 23 June 2015, 5,200 hours were not recorded. In contrast, the six Japanese officers on board the vessel received their correct entitlement.

Supported by their New Zealand advocate, who found lawyers to act on behalf of crew from a number of vessels, civil litigation claims were filed. On their return home, eventually all the fishers from the *Oyang 75* and *77* vessels were contacted by the Sajo Oyang corporation and offered ‘peace’ agreements to settle claims. The approach to the fishers was made

during Ramadan, with Sajo Oyang representatives bringing with them a suitcase of cash. Many fishers were destitute because of the debts they owed for their recruitment fees and because they had not received their correct wage entitlement while working on board the FCVs. Thus, many accepted the agreement. In return for the cash payment, they agreed to “withdraw any complaints and allegations of any kind made to any government agency”. The cash payment brought each fisher up to their contractual six hours per day; however, on average, they had worked 16-hour days. Crew from Juahm Industries’ *Pacinui* vessel, were also offered a cash payment. One fisher was offered NZ\$7,000 cash, whereas he was owed NZ\$90,000 in unpaid wages.

PT IMS (an Indonesian recruitment agent) placed advertisements in *The Jakarta Globe* in February 2013, asking fishers from the *Dong Won 519*, *530* and *701* vessels who had worked from between June 2009 to May 2012, to contact them for monies owed because of “miscounting/miscalculation by Dong Won Fisheries”. An audit undertaken by Immigration New Zealand had identified underpayment compared to the minimum of 42 hours a week associated with their work visas.

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Other fishers—such as those from *Oyang 77*, the *Sur Este 700*, *707*, and *709* vessels, *Pacinui*, *GOM 379*, and the *Dong Won 701*, *530*, *519* and *522* vessels—through the efforts of their advocate and lawyers, eventually received a financial settlement that they would not have otherwise received.

However, those who had worked in New Zealand prior to, or at the time of, the industrial action or who had settled a wage claim were blacklisted.

They included those who had returned home prior to June 2011. Those who had not engaged in industrial action, particularly those who had remained on their vessel during the industrial action, felt victimised by the blacklisting. It appears that the Korean companies, at the centre of the dispute, collectively

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issued a directive to the recruitment agents in Indonesia that any fisher who had worked in New Zealand during the period of the industrial action be blacklisted from any of their vessels, regardless of where these vessels are now operating.

Thus, those fishers who helped bring about a regulatory shift in New Zealand were denied access to benefits that those currently working in the industry are entitled to. Five years later, many former fishers have not found permanent work since returning home; mostly, they work as temporary labourers on a day-to-day basis. Many are destitute and some have become victims of fraud. Keen to return to New Zealand, some paid exorbitant fees to recruitment agents who they thought were legitimate—for example, for work in a non-existent shrimp processing factory or for non-existent jobs with legitimate New Zealand companies.

While the *Oyang 75* and *77* fishers who engaged in industrial action brought about significant regulatory changes, to date, no one has been prosecuted in New Zealand for the labour abuses that occurred on the vessels. While the New Zealand government successfully prosecuted officers from four vessels for fish-dumping offences, many fishers felt they were only useful to the government to provide evidence of dumping and other illegal activities: “The New Zealand government is

more interested in their fish than in us being beaten and underpaid”.

In February 2017, the New Zealand government introduced new measures to protect migrant workers in all industry sectors. Employers who exploit migrant workers will be denied the ‘privilege’ of hiring migrant workers for between six months and two years. We hope that this measure will be another significant deterrent to fishing operators, as the industry is reliant on migrant fishers. 

For more

https://www.icsf.net/images/samudra/pdf/english/issue_65/3893_art_Sam65_e_art02.pdf

Forced into Slavery

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11889139

Slug Guns and Slavery: Cleaning up the Fishing Industry

<https://ssl.law.uq.edu.au/journals/index.php/maritimejournal/article/view/82/133>

Modern Day Slavery: Employment Conditions for Foreign Fishing Crews in New Zealand Waters

https://www.researchgate.net/publication/276921874_New_Zealand%27s_turbulent_waters_The_use_of_forced_labour_in_the_fishing_industry

New Zealand’s Turbulent Waters: The Use of Forced Labour in the Fishing Industry