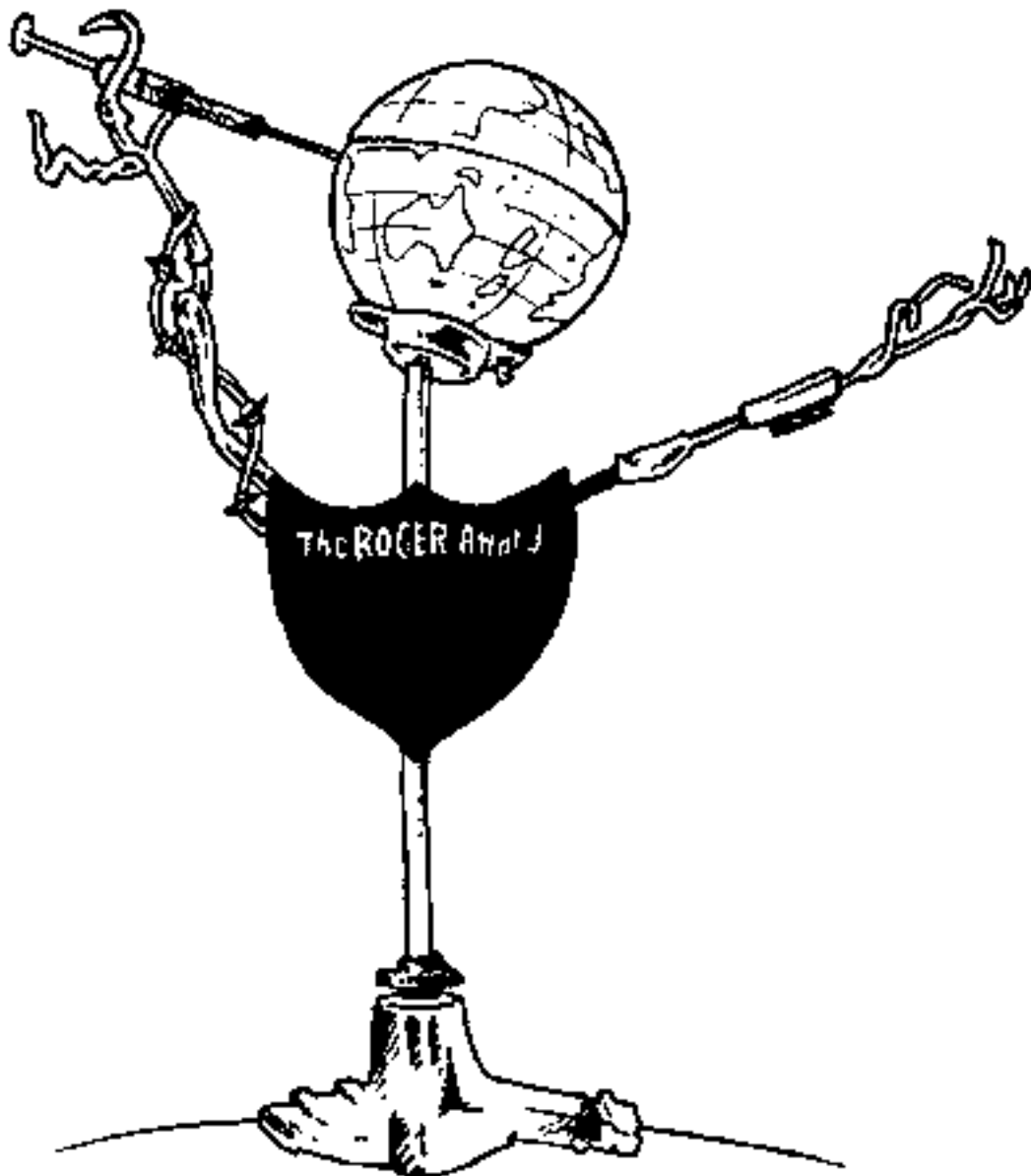


# The Roger Award 2012 Report

For the worst Transnational  
Corporation operating in  
Aotearoa/New Zealand in 2012



Organised by CAFCA (Campaign Against Foreign Control of Aotearoa) and Gatt Watchdog

# **2012 Roger Award**

**For The Worst Transnational Corporation Operating In  
Aotearoa/New Zealand**

## **Judges' Statement**

### **Winner**

**Taejin Fisheries Co. Ltd**

### **Second =**

**Rio Tinto Alcan NZ Ltd  
King Salmon**

### **Accomplice Award**

**The Government  
United Fisheries Ltd**

### **Judges**

**Paul Maunder, Christina Stringer, John Maynard  
Sam Mahon, Wayne Hope**

# Judges' Statement On 2012 Roger Award

**Paul Maunder, Chief Judge**

The judges for the 2012 Roger Award came from very different societal roles. Wayne Hope and Christina Stringer are both university lecturers. Wellington-based John Maynard is a postie, union delegate and President of the Postal Workers Union, as well as a political activist in his own community. Cantabrian Sam Mahon is an artist, writer and activist, and I am a West Coast based writer, theatre and film director, community activist and coordinate the Local Affiliates Council of trade unions.

It is an honour to have been given this role of Chief Judge and to write the *Judges' Statement*. But I am also sceptical of myself in this role, for as an artist I work primarily from the imagination, which is a very different role from that of the politician. Although I have academic credentials in my own field, I don the academic hat with reluctance, certainly in the field of economic and political analysis, where I am more interested in contradiction, and in which I find the most telling writers currently adopt almost a prophetic tone. This report then will inevitably be different, be, in many ways, an act of story telling, in the sense that American philosopher Fredric Jameson views story telling:

“I always insist on a third possibility beyond the old bourgeois ego and the schizophrenic subject of our organisation of society today: a *collective subject*, decentred but not schizophrenic. It emerges in certain forms of storytelling that can be found in Third World literature, in testimonial literature, in gossip and rumours, and in things of this kind. It is a story telling which is neither personal in the modernist sense, nor depersonalised in the pathological sense of the schizophrenic text. It is decentred, since the stories you tell there as an individual subject don't belong to you; you don't control them the way the master subject of modernism would. But you don't just suffer them in the schizophrenic isolation of the First World subject of today”.<sup>1</sup>

The Roger Award investigates the doings of the chosen transnationals, then judges these operations according to criteria of economic dominance, profiteering and dishonesty; the treatment of workers and clients; interaction with the environment; and political interference. Underlying these criteria is an implicit framework of national, regional and community integrity as the preferred state of affairs: that there should not be economic dominance by a corporation, that they shouldn't make undue profits, that they should be honest, should treat their workers and clients fairly, that they should not despoil the environment, and that they should not interfere politically – either at the national or local level. This framework has been tenuous, to say the least, since the onset of globalisation, a tendency whose very essence has been to increase profits, to exploit cheap labour, to open up national and local trade to transnationals and to transcend sovereign boundaries.

## **Finalists**

**Vodafone**

**BAT (British American Tobacco)**

**Newmont Waihi Gold**

**IAG (Insurance Australia Group)**

**the Australian-owned banks (ANZ/ASB/BNZ/Westpac collectively)**

**Rio Tinto Alcan NZ Ltd/NZ Aluminium Smelters Ltd**

**King Salmon**

**Taejin Fisheries Co. Ltd.**

The nominations were often sketchy, consisting mainly of a few lines accompanied by a gathering of newspaper clippings focussing on the particular transnational. In the case of British American

Tobacco, this extended to blogs and twitters. But there was greater analysis of the Taejin nomination and certainly a strong community analysis in the case of King Salmon. Scoring was done via a system of marking. One of our judges, Christina Stringer, was part of a group which published a report on the activities of foreign charter vessels, and sensing a possible conflict of interest, simply entered the average mark of the other judges in terms of the Taejin nomination. One would gather from this “competition”, however, that the press is still serving its function, if the reader is prepared to search, and that certainly the business pages are revealing.

The judging and the judgements resonate at a variety of levels. One level is that of revelation and a resulting outrage that these things are happening. Another is perhaps nostalgia for a previous time of national integrity. Another level is that of undergrad cheekiness – giving the fingers to the rich and powerful. There is also a level of pastor sermonising on the evils that have resulted from the fall, when Roger Douglas ate the neo-liberal apple. Behind the resonance there is however, as well, a suggested sub text: What is to be done? Can this ideology and accompanying belief that there is no alternative (TINA) be subverted?

### **TINA Has Staying Power**

There is a view of late, for example, Brian Easton’s latest article in *Foreign Control Watchdog*, that neo-liberalism as an ideology is dead.<sup>2</sup> Perhaps in its purist ACT form (that all Government is necessarily bad), it may be, but the key programme of market-based economics, with labour being simply a traded resource, of managerialism<sup>3</sup> applied across the board, of limited Government interference in free trade, and of an openly traded currency, remain in place, virtually across the political spectrum. And TINA has been around long enough to have penetrated deeply.

Greymouth/Mawhera, the closest town to where I live, is in economic difficulties because it is largely dependent on unsustainable corporate activity. There have been a series of visioning meetings to try and find a way forward. The last one I attended was made up of the community sector. The key factors for a healthy community were put up: equity, good housing, public services available, active lifestyles, sustainable employment, cultural integrity, social and community capital, communities at the centre of planning... on it went, this description of Nirvana. I had to intervene: Without tackling globalisation and neo-liberalism, I pointed out, all this is pie in the sky. A roomful of blank eyes turned to me. The community sector, often the political sector, is on the one hand, sleeping with TINA, on the other having these neo-communitarian dreams. In writing this report I want to be aware of this contradiction, otherwise we will be simply posturing, without pondering this fundamental problem of TINA’s very successful seduction, and the fact that we keep voting her/him into our bed.<sup>4</sup> This in turn begs the question of how democratic the democratic system is; the role of hegemony and so on. Currently we are faced with the asset sale contradiction: when is a mandate a mandate? Or do we share the cynicism of Rightwing commentator, Neale McMillan, when he writes:

“The major parties know in their heart-of-hearts that it was not specific policies that determined the election results, but rather the cumulative effect of jiggery-pokery with John Banks in Epsom, the Prime Minister’s personal popularity, and a lack of confidence in Labour forming a government”.<sup>5</sup>

In plainer words, the electorate is politically illiterate and elections: a sort of reality TV show.

### **The Also-Rans**

As we read through the evidence put forward by the nominators, the tales of skulduggery and manipulation were writ clear. UK-based **Vodafone**’s NZ branch, for example, told some serious lies in its advertising and its service contracts and was prosecuted by the Commerce Commission. Meanwhile the corporation built its market position by acquiring Telstra Clear. But perhaps the latter is jockeying for position in order to take over Telecom without falling foul of the Commerce

Commission's monopoly rules. These are of course, transnational games with the customer mere pawns. We have come to accept these games as "normal", as "necessary", for without them we would not have access to the range of product that is desirable. That is TINA speaking.

When we turned to the nominee **British American Tobacco**, we were on different ground. It is easy to condemn a corporation whose product is known to be harmful to health and addictive. The anti-smoking campaign has been remarkably successful at the sovereign level, with its aim of making New Zealand smoke-free by 2025. It has succeeded in banning smoking from pubs, public buildings, prisons and parks, and is aiming to tackle the beaches. It is led, not by the consumers, but by the non-consumers. The tax on the product continues to rise and the packets are covered with health warnings and not on public display. The problems associated with smoking are well documented and well publicised. But as well, there is something odd happening here. Alcohol is surely as damaging (involved in 70% of crime according to the Police Commissioner<sup>6</sup>) and for some people, just as addictive. Fatty takeaway foods, sugar-saturated drinks, computer games, sedentary life styles, baby infant formulas are all problematic to health... But with the anti smoking campaign, we have been able to restore national sovereignty; we have been able to achieve something. Hence the outrage when BAT decided to retaliate as the demand for plain packaging was placed on the agenda. They embarked on a Website-based "ideological crusade" in the words of one of our judges and threatened to take the government to the World Trade Organisation, which will be a costly exercise no matter who wins. So here we have a clear case of a transnational brand versus political sovereignty. But if only this level of moral outrage could be turned onto the Trans-Pacific Partnership Agreement (TPPA)...

We turn to **Newmont Waihi Gold**, a corporation with headquarters in Colorado, and its Waihi Mine, and find that the issues are somewhat complex. Mining is a grubby business environmentally, for it requires digging holes in the ground. It also requires heavy machinery, explosives, and it creates noise and dust and mess. But as well, modern technology requires stuff that comes out of the holes. Since the arrival of the Pakeha, Waihi has revolved around the mine, but a few years ago it was announced that the mine would close in 2007 and the giant hole, a truly remarkable sight, would be filled with water to form a lake. Some people from outside the area bought the relatively cheap housing in the hope that the town would enable a pleasant, post-mining lifestyle. Instead, the company changed its mind. The mining has continued and it is now planned to tunnel under areas of the town itself. The newcomers are understandably, very angry. And environmentalists such as Green Party MP, Catherine Delahunty, continue to argue that mining has no place in an area such as the Coromandel. The company is trying to silence criticism through various charitable bribes including topping up sale prices of houses. The explosions, the vibration and the dust continue. But others in the town, those employed at the mine and shopkeepers, are pro-mining for economic reasons. That's mining. It's a messy, divisive business, with the companies, like Newmont Waihi Gold, generally holding the upper hand. And of course the National-led Government continues to believe that mining will be the country's economic salvation.

## **Disasters Natural & Manmade**

Feeling a little depressed, we move to post-earthquake Christchurch – strange phrase that – we seem to be in an era of posts – post modern, post mining, post earthquake... Capitalism has kept us in its clutches by being very productive and allowing the workers to purchase some of the produce. And post WW11 the range of stuff we in the West have access to has vastly increased: house and innumerable gadgets, car(s), boat, second house etc. Our private equity, which we can pass on to our children, has grown – for the middle class and upper working class anyway. It's a big part of TINA's embrace - and the insurance business makes it relatively secure. It often drives a hard bargain, but generally, if the house burns down, they build us another. In the meantime they invest their funds and reinsure themselves as well, a process which no one knew much about, until a city fell down.

This challenged the insurers because statistically, it wasn't good for their profit margin. And add volatile weather and a variety of consequent disasters world wide, it was looking problematic. But as well, and here it gets complex, the Government provided some cover for natural disasters, giving up to \$100,000 to the home owner for damage occurred. But this had been set years ago and should have doubled to take into account the increase in house prices. But in post-earthquake Christchurch, this ad hoc capitalist planning resulted in an overly complex process. Firstly, the Government's Earthquake Commission had to assess a damaged property to establish the \$100,000 mark. Then, if the damage were more severe, the insurer covered the rest, and this involved a second inspection (which waited for the Government's assessment before being undertaken). And then as well, there was testing of the land to be carried out, to see if it were able to be restored, or the level of foundation required. Needless to say this led to a lot of confusion and frustration and waiting, which the insurance companies did not object to, because their money stayed in the bank or investment fund, earning its return. Meanwhile, some insurance companies, e.g. AMI, went broke because they weren't reinsured to a sufficient level, and were bought up by the **Insurance Australia Group** which trades as State, AMI and NZI. But does IAG want all of the customers of the company it has bought? And when someone sells a damaged, yet to be repaired house, are they selling the insurance claim against damage, or are they selling the replacement agreement, if that is what is required when the land is surveyed? And there can be a significant difference. Well, that's a matter that can be argued out in the courts. And the biggest of the insurance companies, Insurance Australia Group (**IAG**) has been predatory and hard-nosed in this muddled environment, even managing a \$115 million profit in the midst of chaos. In the words of one of our judges it can be accused of being "slow to communicate with clients and slow in paying out... IAG has miscalculated sums involved in claims. It has arbitrarily changed the status of many 'red zone' properties from total loss to repair, and it has restricted the legal rights of those purchasing earthquake damaged properties". And it has increased its' premiums. A lot of people subsequently hate it.<sup>7</sup> So IAG, you got a bad report card from us, and the people of Christchurch, who, surely, will not vote for TINA again?

Now we're in the thick of it - money, insurance claims, private equity – and banks. The big four – Australian-owned **ANZ, BNZ, Westpac, ASB** – comprise 91% of NZ's total incorporated bank assets.<sup>8</sup> They have managed, in the midst of a recession, to make a seemingly fantastic profit of \$3-4 billion, an increase of 20% on the previous year. Most of this, after they have helped saved a few endangered species, goes back to Australia, meaning the NZ government has to borrow the overseas currency to enable this to happen. For Green Party Co-Leader, Russel Norman, this constitutes the single biggest outflow of the current account deficit.<sup>9</sup> Their net interest margins (the difference between the banks' borrowing and lending rates) are high, approaching profiteering. But academics such as Massey University's David Tripe believe this is okay<sup>10</sup> and TINA smiles voluptuously. Funny that, the academics. Only a few of them question TINA, the rest are presumably partaking of her services. And the bank Chief Executive Officers (CEOs) are creaming it: Westpac's \$3.8 million, ANZ's \$3 million, BNZ \$2 million... according to First Union's Finance Secretary, Andrew Cassidy, 60 times the average bank worker's pay. \$70,000 a week. Presumably they pay tax, but I wouldn't bet on it. But even if it comes down to \$50,000 a week (the average teacher's annual salary) what do they do with \$7,000 a day? How do they justify this? The market sets the rate? What market? The market in CEOs? And meanwhile they rationalise staff numbers and quibble at a wage rise to match inflation for their workers, workers who are stressed because of the need to reach performance targets involving the selling of new debt to customers. And the banks charge \$100 to reverse a one-off on-line payment. And for years they were tax dodgers. As Cassidy points out: "It is simply unsustainable [in terms of] income inequality, good society and good economic principles"<sup>11</sup> As well, they have been persuading farmers into something very problematic called "interest-rate swaps". Someone with a fixed interest rates swaps with someone else with a floating rate. The economics are complex, but it amounts to gambling and as with the sub-prime mortgage disaster, it's not ultimately a sensible thing to do.<sup>12</sup> Very bad marks. But why are their customers not all moving to NZ-owned banks? And how come the Government account is with an Aussie bank? And how come this is not generating the level of moral outrage that smoking generates? That is a question that

could lead to a need for the services of John Kirwan.

## Equal Runners Up

### 1/ Rio Tinto Alcan NZ Ltd

It regularly crops up near the head of this list of villains, is the archetype of the bullying transnational, riding roughshod over nation State and community. As winner of the previous Roger Award, the 2011 *Judges' Report* undertook a detailed analysis, which it is unnecessary to repeat. However, the broad outlines need to be drawn. In the 1960s, Tiwai Point was chosen as the location for an aluminium smelter for a number of reasons. Aluminium smelting requires a large and very reliable power source to continually supply electricity to reduction cells, and Tiwai Point's proximity to the then proposed Manapouri Power Station made it an attractive location. In addition, Tiwai Point was close to the deep sea port of Bluff and the well-established infrastructure of the city of Invercargill. The smelter commenced operations in 1971.

It did a deal with the Government, agreeing to buy a lot of electricity (13.67% of the national output) in return for setting up in a remote, industrially underdeveloped part of the country. It justified the building of a large hydro scheme. Almost – for it would only do so if the electricity was cheap. What it pays has never been revealed. Once the deal was done, it had us by the balls and has continued to squeeze ever since. It is corporate welfarism, but somehow doesn't attract the same vindictiveness as the sickness beneficiary. Any move to scale back the level of welfare leads to threat of closure and job losses and the Government and regional powers that be, shaking in their boots. Funny, how the moving of a good proportion of our skilled population overseas doesn't result in the same level of panic. The Emissions Trading Scheme led to a real bluff, resulting in it being awarded surplus carbon credits which it could sell and consequently make a profit out of being a major polluter<sup>13</sup> In 2012, it cried wolf because of the drop in world aluminium prices and tried to insist on rewriting its' contract with Meridian (which already had some slack in terms of world aluminium prices), sacked some workers and once again threatened to close. According to its Website, NZ Aluminium Smelters contributes \$506 million to the Southland economy (13.5 per cent of Southland's Gross Domestic Product), 2,400 full time equivalent jobs and \$1,700 million in Southland regional sales,<sup>14</sup> so locals are reluctant to see it go. And if it did leave there'd be a power surplus and the price would drop to the ordinary consumer. How dreadful.

In the midst of this ruckus (and we never did hear what came out of its' negotiations with Meridian), former Green Party Co-Leader, Jeannette Fitzsimons, came up with a challenge to TINA<sup>15</sup> If the business is so unprofitable, she suggested, why doesn't the NZ government buy it at a low price, shut down the old plant and use it for parts, keep the new plant going and establish local manufacturing based on the aluminium supply available? Use the surplus power to give everyone a cheap base supply, any usage past this base to be exponentially charged in order to encourage power saving. What is this? Rational, environmentally sustainable State planning? A challenge to TINA? Forget it. Bad marks all round. We'll see Rio Tinto back next year.<sup>16</sup>

### 2/ King Salmon

This is a company 51% owned by a Malaysian family. It owns six salmon farms in the Marlborough Sounds, producing 8,900 tonnes of salmon a year and it wants to expand the operation and establish a further nine farms, raising production to 27,000 tonnes. There are 575 marine farms in the Marlborough Sounds, the majority of which are mussel farms. Marine farms are problematic in an area like the Sounds, as they are an industrial activity, generating noise, odour, traffic, lighting, damaging habitat, affecting water quality, and they constitute a privatising of public water space. The Sounds is "a unique area of species, habitats and communities",<sup>17</sup> with tensions arising

as well from ferry traffic, foreign ownership, tourism and people seeking a lifestyle option. The Marlborough District Council serves the functions of both regional and district council and its plan prohibited marine farms from some areas of the Sounds.

Along comes the Government with its plans for economic boost, and Cabinet has decided that aquaculture is a development possibility and it dreams of reaching annual exports of \$1 billion dollars by 2025. It sets up the Environmental Protection Authority (a euphemism if ever there was one), which can bypass the Resource Consent Process (conducted by local bodies) because, with appeals to the Environment and higher Courts, the latter is apt to be a long-winded process. Democracy moves slowly. The Environmental Protection Authority “administers applications for major infrastructure projects of national significance”.<sup>18</sup> This meant that King Salmon, whose project is somehow of national significance, could apply to the EPA to have its application heard, and could then argue a case to change the District Plan so that the areas previously prohibited to marine farming could now have the use as “discretionary”. The locals, including the Council, found this to be an attack on local democracy – which of course, it was. The EPA’s process is a fast track one, and this disadvantages the community, who have to get a complex case together quickly. It turns into a David and Goliath situation.

While the EPA considered all sides of the case, there were complex issues to be submitted to: the results of depositing uneaten food pellets and bio-fouling material on the sea bottom under the cages: the addition of nutrients: possible algae blooming; the effect on other wildlife; the effect on landscape quality; the actual economic benefits locally, among others. All required expert reports and King Salmon came well armed. This becomes outright corporate bullying, aided by the Government, and community can be seen as the last bastion of resistance to globalisation. Except that the tangata whenua were divided, for the Crown has made a commitment to provide Maori with 20% of all marine farming space. Bad marks, King Salmon. With KiwiRail talking about moving the ferries and King Salmon and its ilk distorting the alternative visitor-based economy, this community is seriously vulnerable. Tough bikkies, folks. You can always move to Auckland. As one of our judges commented:

“King Salmon’s performance echoes so closely my own experiences within the environmental battles here in Canterbury. The bypassing of the District Plan in favour of the EPA is a logical, tactical move but trivialises the democratic voice... the David and Goliath fight is common to all environmental struggles given that the applicant usually comes heavily armed with paid PhDs whose crafted evidence needs to be countered by equally expensive experts. The King Salmon deal is simply an example of the worst in this present Government’s attitude to the democratic process...”.

In fact, this move to sabotage local democratic processes is a particularly insidious one. The King Salmon case has been heard, the tribunal gave the go ahead for half the farms. The tribunal considered all points of view, and was aware of the community having been placed at a disadvantage, but ultimately legislative frameworks and precedent provide the backbone for decision making, rather than community intuition. And one must suspect that behind the legislative frameworks, are some discreet phone calls and some discreet meetings between the rich and the powerful.

## **The 2012 Winner**

### **Taejin Fisheries Company Limited**

All this has been run of the mill profiteering, creating of inequality, undermining of State, region and community, and environmental pillage. We’ve still got our 50 inch LED HD TV to keep us distracted. But occasionally the underbelly of late capitalism reveals itself, the fascist, labour camp aspect, with companies using “fraudulent documentation, exploitation, intimidation, coercion,



blacklisting, inhumane working conditions, brutal beatings, sexual assault and even murder”.<sup>19</sup> With these harsh words we turn to **Taejin Fisheries Company Limited** and its local comprador, United Fisheries Limited of Christchurch. The formula is simple: You’ve got a resource, turn to the Third World for cheap, unorganised “slave labour” in order to process that resource. In this case you lease your fishing quota to foreign charter vessels owned by a South Korean company about whom information is non-existent, who employ Indonesian crew on their two trawlers, *Melilla 201* and *Melilla 203*.

## Modern Day Slavery

Let me quote from an article by E. Benjamin Skinner: “Slaves Put Squid on Dining Tables From South Pacific”:

“On March 25, 2011, Yusril became a slave. That afternoon he went to the East Jakarta offices of Indah Megah Sari (IMS), an agency that hires crews to work on foreign fishing vessels. He was offered a job on the *Melilla 203*, a South Korea-flagged ship that trawls in the waters off New Zealand. ‘Hurry up’, said the agent, holding a pen over a thick stack of contracts in a windowless conference room with water-stained walls. Waving at a pile of green Indonesian passports of other prospective fishermen, he added: ‘You really can’t waste time reading this. There are a lot of others waiting; and the plane leaves tomorrow’.

“Yusril is 28 (Yusril asked that his real name not be used out of concern for his safety). He was desperate for the promised monthly salary of \$US260, plus bonuses, for unloading fish. His wife was eight months pregnant, and he had put his name on a waiting list for the job nine months earlier. After taking a daylong bus ride to Jakarta, he had given the agent a \$US225 fee he borrowed from his brother-in-law, *Bloomberg Businessweek* reports in its Feb. 27 (2012) edition. The agent rushed him through signing the contracts, at least one of which was in English, which Yusril does not read.

“The terms of the first contract, the ‘real’ one, would later haunt him. In it, IMS spelled out terms with no rights. In addition to the agent’s commission, Yusril would surrender 30% of his salary, which IMS would hold unless the work was completed. He would be paid nothing for the first three months, and if the job was not finished to the fishing company’s satisfaction, Yusril would be sent home and charged more than \$US1,000 for the airfare. The meaning of ‘satisfactory’ was left vague. The contract said only that Yusril would have to work whatever hours the boat operators demanded.

“The last line of the contract, in bold, warned that Yusril’s family would owe nearly \$US3,500 if he were to run away from the ship. The amount was greater than his net worth, and he had earlier submitted title to his land as collateral for that bond. Additionally, he had provided IMS with the names and addresses of his family members. He was locked in”.<sup>20</sup>

## Crews Fight Back

Despite this, and despite the knowledge that if they protest the local manning agent will threaten their families at home, in October 2012, 89 crew members, both past and present, sought legal representation in New Zealand. They petitioned for unpaid wages, including unpaid overtime. The claim came to over \$NZ4 million. Some crew claimed to be owed three years’ wages. The crew also protested at the premises of United Fisheries Limited, the legal guarantor of unpaid wages. There were also serious allegations of dumping fish and oil and crossing quota boundaries (*trucking* it is officially called). They told stories of abuse:

“When Ruslan, 36, a friend of Yusril’s on the 203, snapped two bones in his left hand in a winch, it took three weeks before he was allowed to go to a hospital. The morning after

his discharge he was ordered back to work but could not carry out his duties. The company removed him before any follow-up medical appointments. ‘I was a slave, but then I became useless to the Koreans, so they sent me home with nothing’, he says. Today, back in his home village in Central Java, Ruslan has a deformed hand. While IMS, the recruiting agency, finally paid him \$US335 for three months of work, it has blacklisted him, according to Ruslan, because he spoke to investigators, and it has refused to help with medical bills”.

United Fisheries Ltd had turned a blind eye, and the Government, with neo-liberal wisdom, allows companies to regulate themselves. But if you exploit people to this level they do get desperate enough to fight back, and if they do it in NZ they can't easily be shot by some local thugs. And luckily there's the odd investigative reporter who uncovers the situation,<sup>21</sup> and some academics who analyse it,<sup>22</sup> and as the news gets out, there's the end purveyor of the goods (United Fisheries sells a lot of its product to the US), worried about its brand. For it knows that its customers, if they get to know the sort of abuse that's going on to produce that can of clean green NZ fish, might not buy it. An embarrassing fuss results and the Government finds itself once again guilty of having collaborated in all this unpleasantness (together with other local fishing companies, including iwi), and decides it has to act. Result: the bringing in of conditions that will make the foreigners and their local hirers decide it's uneconomic - and we'll have to have our own fishing fleet and we can train some of our young unemployed to work it – and it's all possible. TINA gets the sulks at this point and takes to her room with a headache.

So as well as giving the top award to this company, we can, in a way, thank them, for they break through the spin and enable us to see exactly what is going on. And we may even decide, one day, surely one day, to put TINA on a row boat and cast her (or him) off – or maybe get her a job on a foreign charter vessel. And we may also become smart enough to realise that no matter how engaging the pimp may be, that we don't want TINA or the services supplied, or those of the pimp, and our desires will need to be satisfied in some other, more fruitful way.

## Accomplice Award

### United Fisheries Ltd and the NZ Government

The nominators of Taejin Fisheries, also put forward **United Fisheries Ltd** and **the NZ Government** as worthy of the Accomplice Award, and the judges agreed. Of course, any local quota holder leasing its quota to foreign charter vessels could be judged equally harshly, but in this specific case it is United Fisheries Limited, which, we are informed on its Website, is:

“a family owned business with a highly knowledgeable and experienced team of fishing, marine farming, production, marketing and administration personnel and [is] one of the largest employers in the Christchurch area.

“The supply of fish, the essential raw material for our business is largely assured by having our own ‘quotas’ covering the main commercial species of New Zealand. The catching operation utilises company-owned and operated fishing vessels, and a number of chartered deep-sea factory trawlers”<sup>23</sup>

Bloomberg reports that:

“United Fisheries’ headquarters features gleaming Doric columns topped with friezes of chariot races. It was designed to resemble the temples to Aphrodite in Cyprus, the homeland of United’s founder, Kypros Kotzikas. The patriarch started in New Zealand with a small fish and chip restaurant. Some 40 years later, his son, Andre, 41, runs a company that

had some \$US66 million in revenue last year (2011). Although three *Melilla* crew members, citing abuse, had run away nine days before I spoke with Kotzikas, he told me he had heard of no complaints from crew on board the ships, and he had personally boarded the vessels to ensure that the conditions 'are of very high standard'.

"I don't think that claims of slavery or mistreatment can be attached to foreign charter vessels that are operating here in New Zealand' he said. 'Not for responsible operators'. Kotzikas said that while New Zealand's labour laws are 'a thousand pages of, you know, beautiful stuff', he believed they did not necessarily apply beyond New Zealand's 12-mile territorial radius".

The United Fisheries "family" turned a blind eye to conditions on the trawlers (I suspect their fish and chip shops didn't employ unionised labour either), until desperate crew members invaded their establishment. At that stage, the family business began to smell a little fishy. Press columnist, *Chalkie*, reports that the way the quota system works means that to fish commercially you have to have annual catch entitlement (ACE) specific to each of the stock you want to catch. You can have this entitlement either by having quota for that stock or by buying quota from someone else. As the stock target varies through the year there are many bidders on the ACE market, and if you can cut labour costs you can afford to pay more for ACE. Win win - except for the Third World crew.<sup>24</sup>

### **Buck Passing & Whitewashing**

As usual, the governance issue is complicated (neo-liberalism was supposed to get rid of bureaucratic obfuscation). The Fisheries Act 1996 applies the Minimum Wage Act and the Wage Protection Act to the crew of foreign charter vessels and gives the Department of Labour responsibility for ensuring compliance. Meanwhile the Department of Immigration issues visas for the crew. By 2005 there were reports of serious abuse and of "floating sweatshops", but all that happened was the introduction of a Code of Practice which was supposed to ensure that all companies using foreign charter vessels paid \$2 an hour above the minimum wage. This was opposed by Maori fishing interests who saw cheap labour as a way of maximising returns. The Department of Labour inspectorate, who came out of the Pike River Royal Commission with blood on its hands, was equally dilatory in terms of ensuring compliance on foreign charter vessels. Ministry of Fishery inspectors on trawlers decided they weren't there to oversee employment issues. They were something of a prisoner on a foreign charter vessel and a single inspector couldn't stay awake for 24 hours a day.

In an e-mail, Peter Elms, a Fraud and Compliance Manager with Immigration New Zealand, cited a Police assessment, which found that complaints from crews amounted to *nothing more* than disputes over work conditions; alleged minor assaults; intimidation; workplace bullying; and non-payment of wages. Elms said his department had two auditors who visited each vessel every two or three years, and they had found nothing rising to the level of human trafficking, a crime punishable in New Zealand by up to 20 years in prison. Buck passing from Fisheries, to Immigration to Labour to Police... it has been the usual story of let the company self regulate until the shit really hits the fan, then run for cover. So, accomplices, or something worse than that? The same question had to be asked of Pike River Mining Company and the Department of Labour. And meanwhile, in other areas, Health and Safety becomes obsessive, parents having to sign permission slips so their kids can climb a tree in the school playground.

It is at this stage, that one can join the Spanish in becoming indignant. It is easy, and simple enough, to hate a corporate villain and an over-paid CEO. But this insidious collaboration at this level of framework, best signified by the approaching Trans Pacific Partnership Agreement, these clauses of collaboration in thick documents that it takes a saint to plough through and detect consequence. And then the mind bending, brain-cell-consuming agitation to alter a phrase or two, in order to try and protect some sovereignty, some meaningful level of democracy, even though democracy means putting up with the addled views of Maud down the road... One yearns to be a Zapatista in

a ski mask. Occasionally columnist, Chris Trotter hits the nail on the head. In a recent column on the restrictions facing New Zealanders in Australia, he describes us as “downtrodden and spiritless” until “we find the courage to build again a nation worth loving – not leaving”.<sup>25</sup>

Congratulations, once again, to the Roger Award organisers, for making us aware and for keeping an eye on things. Thanks as well, to the nominators, for going to the trouble to research the villains. And can we suggest that perhaps an additional award would be useful: a Peter Award (named after the Jackson lad), for the most anti-union company in NZ in any particular year.

## Endnotes for the Judges’ Statement

1: Andrew Ross, ed. “Universal Abandon? The Politics of Postmodernism”, Edinburgh University Press, 1989, p21.

2: Brian Easton, “The Politics Of NZ (Inc)”, *Foreign Control Watchdog* 131, December 2012, Christchurch, Foreign Control Watchdog Inc., <http://www.converge.org.nz/watchdog/31/07.html>

3: The view that public services should operate in the same manner as business.

4: I am trying to be non sexist in this metaphor; what I’m getting at is the commodification of love, desire and relationship.

5: *Grey Star*, 14/1/13

6: *Morning Report*, National Radio, 14/1/13

7: I suddenly wondered how much of the NZ economy is foreign-owned. The Capital Markets Taskforce estimated that 40% of company equity is held by foreigners. According to Statistics New Zealand, 26% of companies with 100 or more staff are overseas owned.

<http://www.med.govt.nz/business/economic-development/pdf-docs-library/cmd-taskforce-research/structure-of-nz-companies.pdf>

8: *NZ Herald*, 21/11/12

9: *Press, Business Day*, 24/10/12

10: *NZ Herald*, 27/6/12

11: *Press, Business Day*, 15/11/12

12: *Press, Chalkie*, 14/11/12

13: See *Judges Report*, Roger Award 2011 <http://canterbury.cyberplace.org.nz/community/CAFCA/publications/Roger/index.html#2011>

14: [http://www.riotintoalcan.com/eng/whatweproduce/1804\\_nzas.asp](http://www.riotintoalcan.com/eng/whatweproduce/1804_nzas.asp), accessed 17/1/13

15: *Opinion Piece*, [www.nzherald.co.nz](http://www.nzherald.co.nz), 6/9/12

16: I realise that I’ve mentioned two Green MPs and one ex-Green MP so far, whereas Labour members have not cropped up – perhaps this is simply a result of their respective performance? Perhaps after David Shearer’s January 2013 “State of the Nation” address, things may change for the better.

17: [www.epa.govt.nz](http://www.epa.govt.nz) King Salmon draft report. Accessed 12/1/13

18: *Ibid*

19: See Christina Stringer, Glenn Simmons and Daren Coulston, “Not in New Zealand waters, Surely? Labour and human rights abuses aboard foreign fishing vessels”, University of Auckland: NZ Asia Institute Working Paper Series, No 11-01. Available at <http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf>

20: <http://www.bloomberg.com/news/2012-02-23/slaves-put-squid-on-u-s-dining-tables-from-south-pacific-catch.html>

21: <http://www.stuff.co.nz/business/industries/6341357/Sealord-defends-foreign-chartered-fishing-operation>

22: See endnote 19.

23: [www.unitedfisheries.co.nz](http://www.unitedfisheries.co.nz). Accessed, 12/1/13

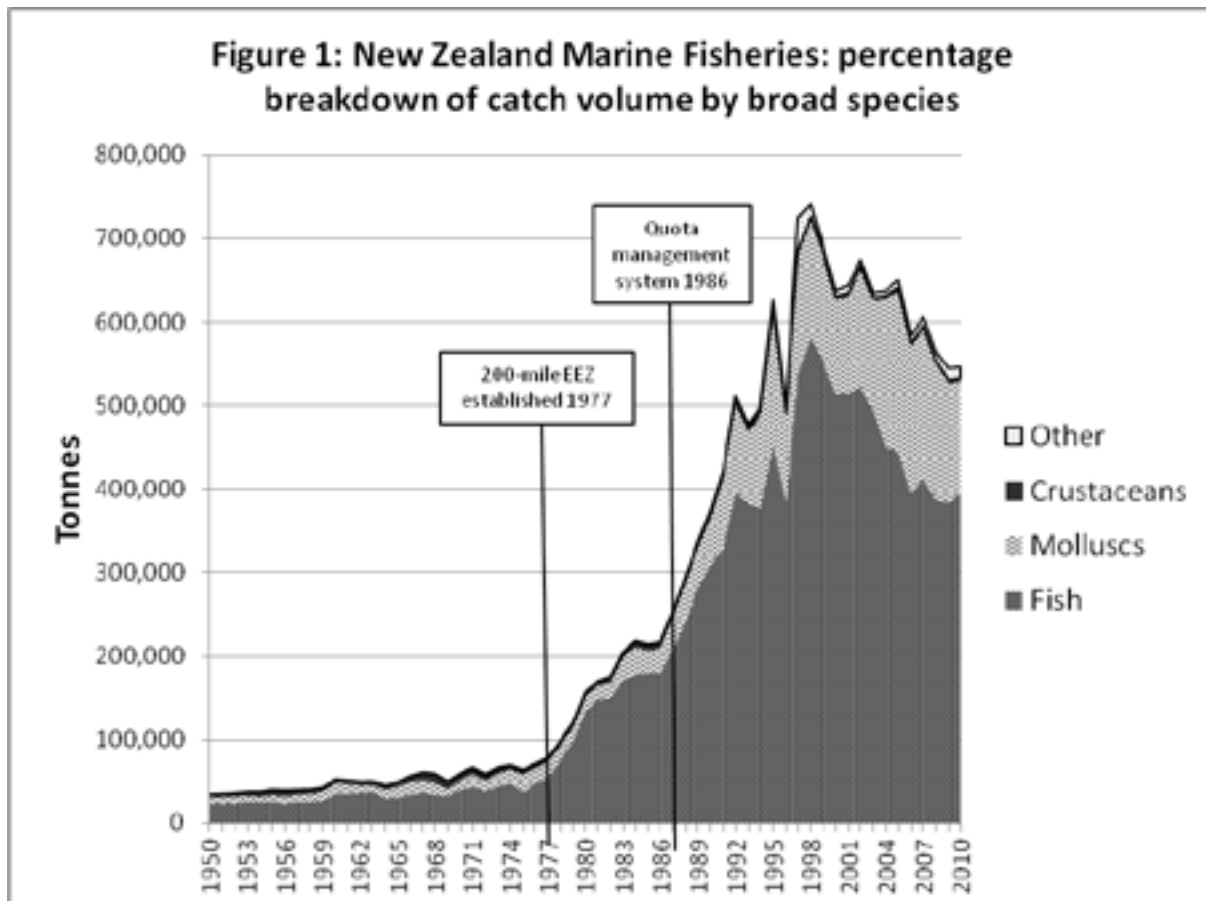
24: Thanks to an excellent article by *Chalkie*, “Foreign charter vessel mess needs fixing”, *Press, BusinessDay*, 14/3/12

25: *Dominion Post*, 18/1/13

# Judges' Report

## Taejin Fisheries

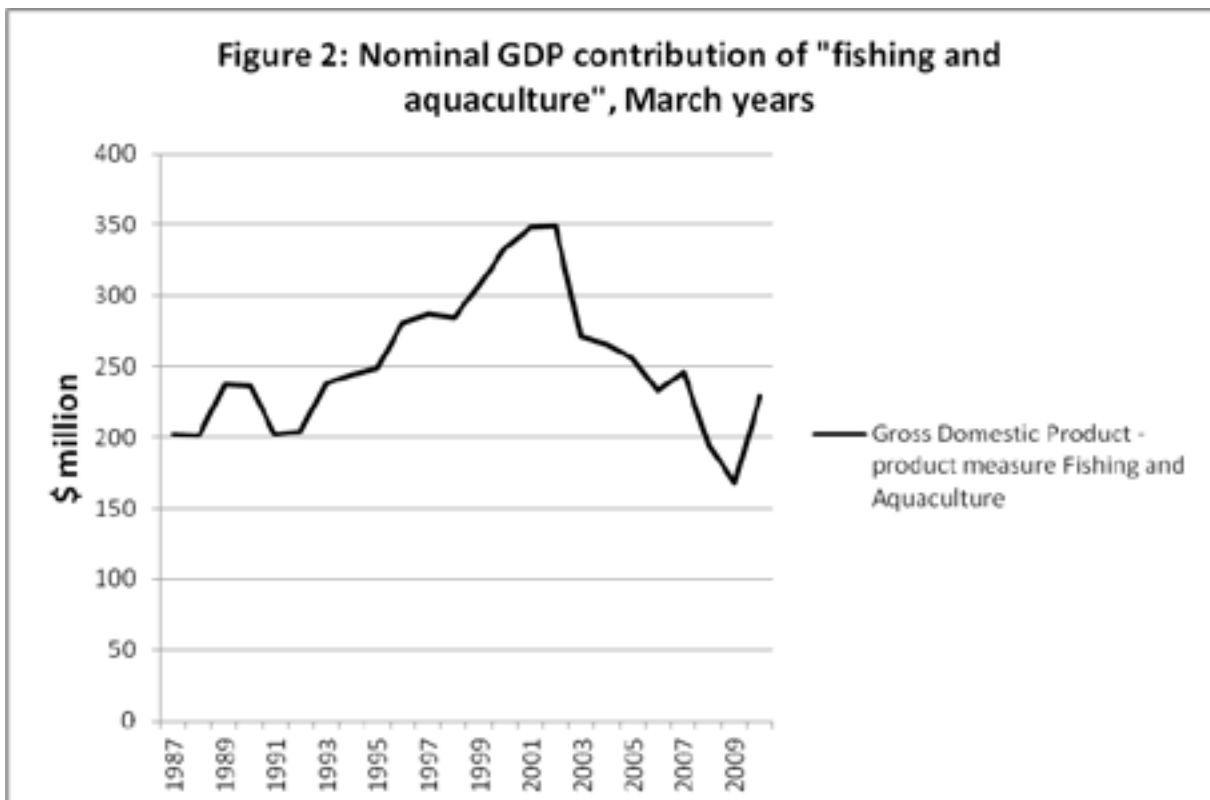
To readers of *Foreign Control Watchdog* the disgraceful record of exploitation of foreign crews working on chartered fishing vessels in New Zealand's Exclusive Economic Zone will already be familiar.<sup>(1)</sup> To understand why labour standards in the New Zealand marine fishery have been allowed to slide so far, it's worth considering the industry's history. The most important piece of that history is captured in Figure 1 below, showing the total tonnage of catch, broken down amongst the main types of fishery, since 1950.



Source: Food and Agriculture Organisation (FAO) database at <http://www.fao.org/fishery/statistics/global-production/en>, accessed 24/2/13.

Until the late 1970s, fishing by New Zealand operators was an inshore activity directed mainly to the home market, with offshore waters fished by Japanese, Taiwanese, Korean, and Soviet vessels operating on their own account. A 200-mile Exclusive Economic Zone was declared in 1977<sup>(2)</sup>, triggering a boom of investment in new capacity by local operators and a steep rise in the catch of fish and "molluscs", mainly squid (tonnage of "crustaceans" - mainly crayfish - has remained fairly constant since the 1970s following a shortlived boom in the late 1960s). The tonnages of fish and squid (the sectors in which foreign charter vessels have been important in the past decade) peaked in 1998 at 624,000 tonnes. Since then, tightened quota restrictions and falling stocks of some key species (especially orange roughy) have brought the annual catch down by about one third, to less than 430,000 tonnes per year.

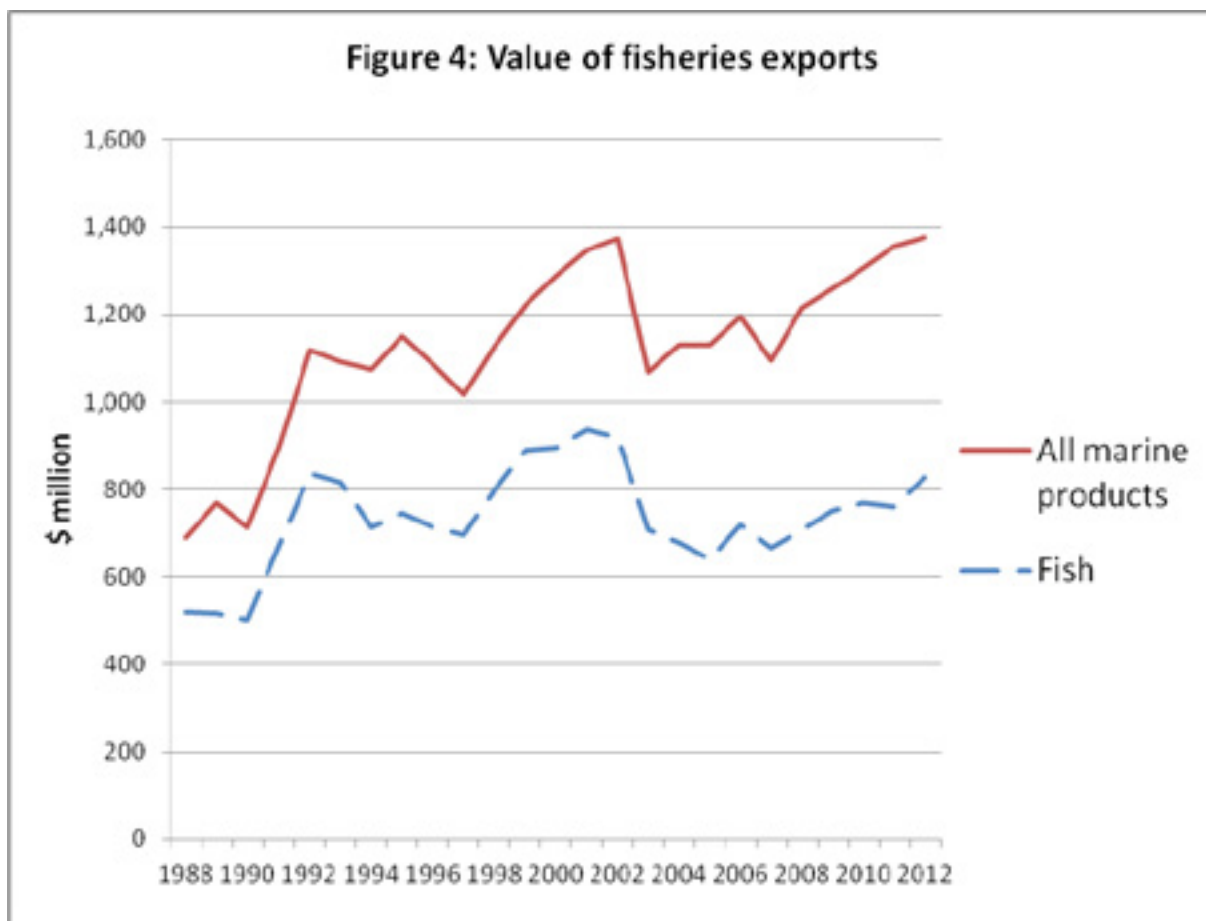
Other economic statistics tell the same story about the past decade. The fishing industry's contribution to New Zealand's Gross Domestic Product (GDP) fell from \$350 million in 2002 to \$230 million in 2010 (Figure 2).



Source: Statistics New Zealand, National Accounts.

Export volumes have been flat (Figure 3); export earnings from fish in 2012 were the same as in 1992, following a couple of cyclical swings (Figure 4); and even adding in squid and other marine products (Figure 4 again) raises the growth rate of nominal export earnings since 1992 only to 1% a year, well below inflation.





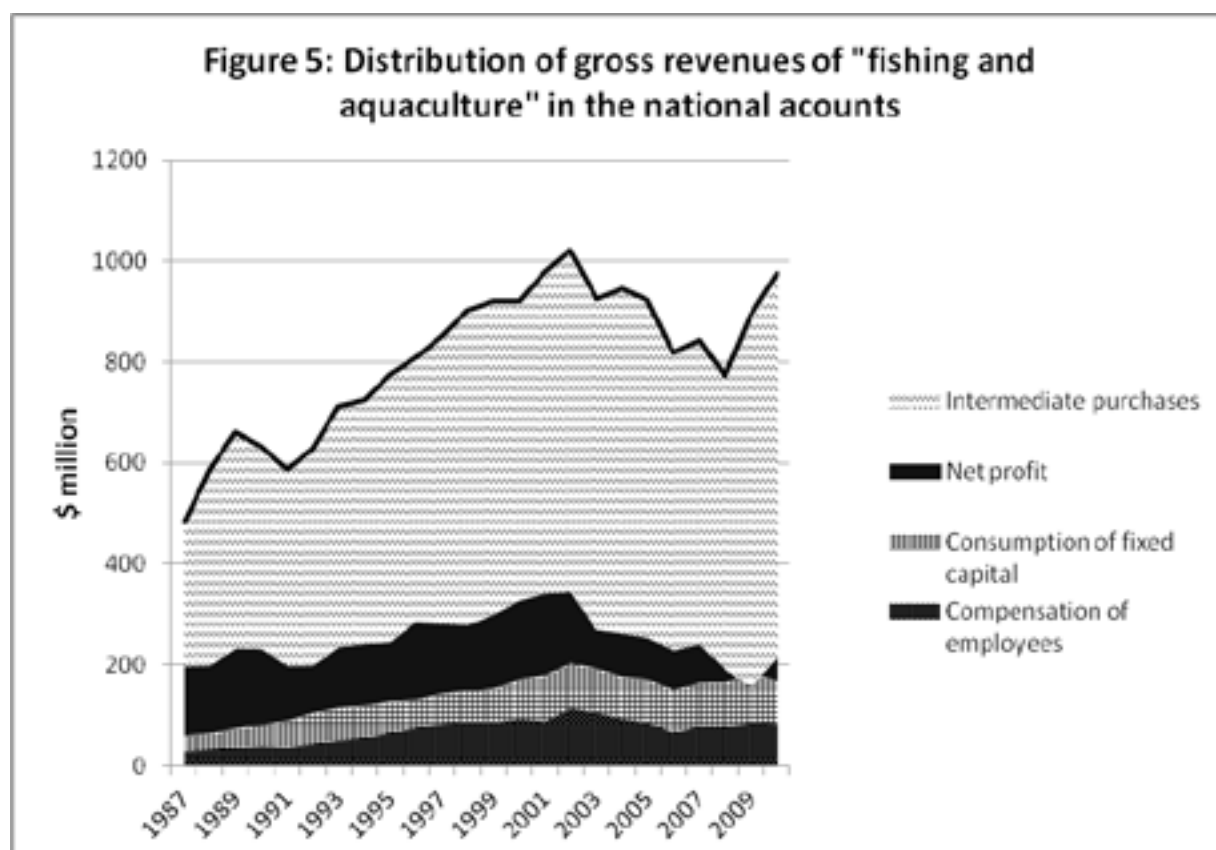
Source: Statistics New Zealand, Infoshare Table TEX001F, accessed 28/2/13.

### Capitalism's Brutal Tradeoff

In short, this is an industry based on a limited natural resource, whose growth phase has ended and whose profitability therefore depends on the margin between world prices for the product and the costs of extracting and processing it. New Zealand companies can't influence the world price, so their only way to raise profits is to cut their costs. That's where foreign chartered vessels come in. New Zealand's fishing quota management regime relates to fish within New Zealand's territorial sea (up to 12 nautical miles from shore) and within its Exclusive Economic Zone (EEZ) which extends from that 12 nautical miles limit to 200 nautical miles from New Zealand's coast. Foreign chartered vessels (FCVs) operating under contract to the New Zealand fishing companies which hold the annual catch entitlements (ACE) for particular fish species subject to the quota regime "are restricted to operating in the EEZ". (3)

By having their allowable catch caught by these boats, local owners of fishing quota are able to capture, as extra profit, the savings on wage and other costs that can be secured by the employment of virtual slave labour on often-substandard vessels. Capitalism's stark tradeoff between wages and profits is here at its most brutal. Figure 5 shows the squeeze on profits and on wages paid to the New Zealand-resident workforce, as the industry's boom faded from 2002 to 2008. Falling gross revenues, combined with relatively incompressible costs of "intermediate purchases" - including fuel and charter fees for FCVs - drove both gross and net profit down. A 27% cut in the industry's local wages bill was made possible by cutting back onshore processing(4) and by an increase in the use of FCVs with foreign crew, with companies such as Taejin Fisheries jostling at the head of the queue, offering low contract rates to New Zealand fishing companies who would look the other way when questions were raised about pay and conditions on their boats. Not for the first time, greed and profits came before the law in the priorities of local capitalists. All the more important

that those responsible for enforcing the law ought to be vigilant and uncompromising in defence of labour law and basic human rights. So where was the New Zealand government and its agencies?



Source: Statistics New Zealand, National Accounts.

### Government Appeasement Of Fishing Industry

Government appeasement of politically powerful local fisheries interests whose profits would have suffered from effective enforcement of New Zealand's labour laws, has been a longstanding theme. Stories of poor labour conditions in the foreign fishing fleet were already surfacing back in 2003 as times got hard. Talleys, complaining of unfair competition for its locally crewed boats, recruited Peter Dunne to make a fuss,<sup>(5)</sup> but the problem has persisted throughout the following decade. So the furore over Taejin Fisheries in 2011-2012 was merely the latest round in an ongoing saga of exploitation of foreign workers, quietly sanctioned by the New Zealand Government behind a façade of handwringing.

The Fisheries Act 1996 – in theory - applied the Minimum Wage Act and the Wage Protection Act to the crews of foreign charter vessels and made the Department of Labour responsible for enforcement. Nine years later, the Department admitted in a December 2004 report<sup>(6)</sup> that it had failed in that task. The report was suppressed for months, with Minister Paul Swain refusing Official Information Act requests, until it finally surfaced in May 2005 at the same time as media reports highlighted virtual slave labour conditions in the industry.<sup>(7)</sup> Having owned up to inaction, the Department of Labour indicated it had no intention of doing anything more: “no action would be taken ... We don't doubt the sincerity of what we heard but our ability to act on it is somewhat limited. We have only been able to deal with foreign ships in terms of anecdote ... there is a lack of verifiable information on pay rates on charter ships... foreign ships come to port infrequently which made it difficult to check that the law was being upheld”.<sup>(8)</sup>

### Code Of Practice

A year further on, Immigration Minister David Cunliffe announced with much fanfare “a substantial



range of measures to improve conditions for foreign crew on foreign charter fishing vessels in New Zealand waters... The new measures include a mandatory code of practice with improved minimum working and living conditions, a requirement that a New Zealand party acts as guarantor to ensure crew are paid what they are owed, and an expectation that crew employment disputes will be settled in New Zealand”.<sup>(9)</sup> The statement went on to note that:

“over the past few years, there have been some instances of foreign charter vessel fishing crew not being paid their full entitlements, and experiencing poor living and working conditions. In seeking to enforce the conditions of AIPs<sup>(10)</sup> and subsequent work permits, the Government encountered some instances of difficulty as the crew are usually employees of a foreign party.

“New Zealand’s immigration policy requires all temporary migrant workers to be paid the industry standard rate (the market rate) to ensure New Zealanders are not displaced from job opportunities, and that domestic wages are not artificially depressed. In general, however, foreign charter vessel crew have been paid at the low end of the range applicable in the New Zealand fishing industry”.

So, the Government sat down for a chat with the fishing industry (including, one presumes, United Fisheries, the clients of Taejin):

“At the request of the ministers, Department of Labour and Ministry of Fisheries officials began talks with fishing industry representatives in 2005 to improve the foreign charter vessel industry. The Government has progressively tightened conditions for fishing crew working on foreign vessels. From April 2005, the Government required that crew be paid the minimum wage (with no deductions to take net pay below the minimum wage). In November 2005, conditions were further strengthened by requiring that foreign crew were paid for a minimum of 42 hours a week calculated over the course of the engagement.

“From November 2005, discussions with industry have focussed on improving pay rates, working and living conditions, treatment, accountability, monitoring and enforcement. The Government worked with industry and decided the comprehensive package outlined here:

- The form of crew employment agreements will align with New Zealand standards and there will be an expectation that crew employment disputes will be settled in New Zealand.
- A new accountability framework will apply, in which a suitable New Zealand party will act as guarantor for all obligations relating to specified minimum levels of crew remuneration, repatriation and support. Crew will have access to appropriate dispute resolution mechanisms in quantifying a claim on the guarantee if necessary.
- Revised minimum working and living conditions contained in a mandatory Code of Practice on Foreign Fishing Crew will apply, covering areas such as health and safety, hygiene, meals, and provision of amenities.
- There will be much stronger regular reporting requirements for the foreign vessels, and the government will be able to undertake onboard inspections regarding immigration, employment and health and safety conditions on demand.

“...The new minimum pay for crew on foreign charter vessels agreed by

Cabinet will be:

- from 1 January 2007, the minimum wage (currently \$10.25 an hour) plus \$1.25 an hour
- from 1 January 2008, the minimum wage plus \$1.75 an hour
- from 1 January 2009, the minimum wage plus \$2 an hour.

“The payments above will be for actual hours worked but in no case less than 42 hours a week over the course of the engagement. Deductions, which are strictly limited, may not take wages below the minimum wage. Increases in the minimum wage would become effective immediately ... Lodging, entertainment (videos), health insurance and protective equipment would not be permissible deductions. All other deductions would be prohibited. Deductions by other means, such as invoicing and agency fees would also be prohibited”.

### **Peanuts For Crews; Thousands For MPs**

All this provides the background to the 2012 Roger Award and Accomplice Awards. The Christchurch firm United Fisheries happily continued to charter vessels from Taejin Fisheries with no apparent serious effort to ensure decent living conditions, pay, and working hours, for the crews on the boats (so did another major fishing company, Sanfords, according to the Bloomberg journalist who broke the ongoing story in 2011).<sup>(11)</sup> The Government continued to issue work permits for new crew to be employed offshore without regard to press reports of ill-treatment. The only positive aspect of the sorry tale is that Cunliffe’s 2006 code of practice gave the crew of the *Melilla 203* grounds for a court case in late 2011, alleging non-payment of wages and ill-treatment.<sup>(12)</sup> The ship was then seized by the High Court in December 2011. Its sister ship *Mellila 201* was similarly arrested in February 2012, following a court application by the Slave Free Seas charitable trust.<sup>(13)</sup> Meantime a report from a team of researchers at Auckland University set out detailed evidence of labour abuses on FCVs.<sup>(14)</sup>

Another Ministerial Inquiry duly followed the 2011 scandal, with its report published in February 2012;<sup>(15)</sup> but ten months later - in October 2012 - crew members from *Melilla 201*, still seeking their legal entitlements, were storming into United’s Christchurch fish factory and being met with the usual self-serving patter from the owners. The fishing industry may be reluctant to pay the wages of the crew on FCVs, but it is more generous in another direction:<sup>(16)</sup>

“Electoral Commission returns show Labour MP Clayton Cosgrove accepted \$17,500 from Independent Fisheries of Christchurch at last year’s election (2011). Some of its catch came from *Oyang 70* and other Korean boats used by Southern Storm (2007) Ltd. Labour MP Shane Jones received \$10,000 from Nelson’s Sealord Fisheries, part-owned by iwi, and which uses Ukrainian boats.

“United Fisheries Ltd gave \$3,000 to Labour MP Megan Woods and \$2,800 to National MP Nicky Wagner. The Christchurch company uses Korean foreign charter vessels recently condemned in a Ministerial report for damaging New Zealand’s international image. Talleys, a Nelson company opposed to FCVs, gave \$5,000 each to National MPs Eric Roy, Colin King, Chris Tremain, Joanne Goodhew, Todd McClay, Lindsay Tisch, Chris Auchinvole, and Chester Borrowes”.

Naturally, all these MPs emphasised that they were in no way influenced, and there could be no question of impropriety. It is just that: “The economic model that has developed for fishing in the EEZ fisheries in New Zealand over the last 30 years has built in the opportunity to contract FCVs as part of its normal operating practice”.<sup>(17)</sup> And that economic model may be described in Monty Python terminology as a nudge nudge, wink wink model.

## **Squeezing Prices & Wages**

And so to the 2012 Roger winners: **Taejin Fisheries Co Ltd and accomplices, United Fisheries and the Government.**

Taejin Fisheries is a Korean company, operating fishing vessels under contract to UFL Charters Ltd, a subsidiary of United Fisheries Limited, of Christchurch. While the 2012 Roger Award goes to Taejin for the treatment of its fishing crews, both the Government and United Fisheries have won Accomplice Awards for their part in the regulation and operation of foreign chartered vessels' (FCVs) arrangements. FCVs catch a large proportion of the quota-managed fish species mostly found within the EEZ. They deliver the fish to the New Zealand fishing companies, in this case United Fisheries, which then sells the fish, almost all of which is exported. Very little of the fish caught in the EEZ enters New Zealand's domestic market.<sup>(18)</sup> The international market price for the type of fish caught and the form in which it is delivered determines the export price, and "the key financial drivers of the EEZ fishing industry are revenue, the cost of obtaining sufficient ACE (annual catch entitlements) to cover catch, crew wages and fuel costs."<sup>(19)</sup>

## **Private Companies Should Have Finances Made Public**

Evidently, in their drive to operate profitably in this export area, the New Zealand fishing companies squeeze the price paid to their contractors; in this case United Fisheries squeezes Taejin. The contractors also hold down costs, in part by imposing very long hours on their fishing crews, and underpaying them. There is no solid financial information available about Taejin Fisheries, which is not registered in New Zealand. United Fisheries is a closely held family-owned New Zealand company. New Zealand's financial reporting regime allows such companies to keep their financial affairs private but, in 2010, the Ministry of Economic Development (MED) considered changing the statutory requirements for financial reporting. Whether economically significant companies should file audited financial reports was one of the matters considered. Of course they should – these companies can have a major impact on matters that affect everyone, and have significant public policy implications. Part of the price for the privilege of incorporation should be public accountability, and that includes making publicly available financial information about a company's operations.

In his submission responding to the discussion document, Andre Kotzikas, United Fisheries Chief Executive Officer said that the United Fisheries Holdings Group "employs approximately 185 people within New Zealand, has an annual turnover in excess of \$80m (mostly exports), and assets of +/- \$58m", and that there are, in addition, "substantial assets in this fishing enterprise not held within the UFHL Group Company structure."<sup>(20)</sup> Kotzikas' view, shared by others, was that the primary reason for preparing financial reports is for shareholders to hold management accountable for financial operations, and "parties other than the owners do not and should not have rights to financial information of a privately owned entity, except by mutual consent". Rejecting the idea that "economically significant companies should be required to produce and file publicly accessible audited reports", Kotzikas argued that, "the arguments supporting this stand [are] rather thin, and certainly have not been tested by rigorous debate or evidence of market failure or dysfunction".<sup>(21)</sup>

United Fisheries' well-deserved 2012 Accomplice Award demonstrates why Kotzikas' view should be rejected. United Fisheries' role in the appalling treatment of foreign fishing crews damages New Zealand's international reputation in the fishing industry, and undermines the clean and green image New Zealand likes to project in foreign markets. Further, international and local concerns about "ethical and sustainability standards" in New Zealand's EEZ fishing activities may damage New Zealand access to product markets, including but not limited to, the seafood industry.<sup>(22)</sup> The fact that United Fisheries is a family-owned company is not a valid reason for exempting it or other economically significant companies from filing on the public record audited financial reports.

## **NZ Weak On Maritime Law; Hasn't Signed Key Conventions**

New Zealand's government also deserves its Accomplice Award for its complicated nudge nudge, wink wink economic model that has indeed built in FCV opportunities which facilitate the exploitation of FCV crew. Fishing by FCVs within New Zealand's Exclusive Economic Zone occurs within a complicated mix of maritime law and domestic law which limits the New Zealand government's power to require acceptable conditions on those vessels. Creating and maintaining this complicated mix has allowed successive Governments to conduct their public handwringing exercises whenever public attention is drawn to the conditions imposed on these people.

New Zealand has full sovereignty over activities within its 12 nautical mile territorial limit, but its rights in the EEZ area relate "primarily [to] the right to exploit and manage fisheries and other natural resources and to protect the marine environment".<sup>(23)</sup> Under maritime law, New Zealand has jurisdictional powers over vessels sailing under the New Zealand flag, but vessels sailing within the EEZ under the flag of a different country are under the jurisdiction of that country. Unlike most other developed countries, New Zealand's government allows the FCVs working within its EEZ to operate under flags other than New Zealand's. According to the Ministry report, "fishing in the EEZ of most other developed countries ... is carried out almost exclusively by domestically flagged vessels."<sup>(24)</sup> The fishing vessel's "flag state has responsibility for the health, safety and qualifications of crew on board its fishing vessels and for the safety standards of the vessel's construction and operation".<sup>(25)</sup> Nudge nudge.

In addition to maritime law, there are various International Maritime Organisation (IMO) conventions, but "fishing vessels and crew are expressly excluded from" those conventions. The New Zealand government is a signatory to some of the IMO conventions but has not signed the two IMO conventions developed to deal with fishing vessel safety, and standards of training, certification and watchkeeping.<sup>(26)</sup> The International Labour Organisation has developed conventions covering migrant workers and fishing crew. NZ's government has not signed these conventions.<sup>(27)</sup> Wink wink.

In 2006, New Zealand government officials, the Fishing Guild and the fishing industry agreed on a code of practice on foreign fishing crew. It is worth quoting from this code because, when he announced it, Immigration Minister David Cunliffe called it mandatory. But codes of practice are about self-regulation. They allow the Government to claim it has done something, and rely on industry members, in this case members of the fishing industry, to observe it. This code is supposed to "impose a broad range of employment requirements on the use of foreign labour on foreign flagged FCVs operating within the EEZ".<sup>(28)</sup> "Individual New Zealand companies must agree to abide by the terms of the code of practice in order to secure immigration approvals for foreign crew."<sup>(29)</sup> The code of practice requires the New Zealand company to monitor practices on the FCVs, including the minimum remuneration requirements which are based on New Zealand's labour laws.<sup>(30)</sup>

### **"Voluntary Compliance"**

In other words, the code of practice is not law - it depends on voluntary compliance by the very people who stand to gain by ignoring it. Nudge nudge, wink wink. In 2012, Kotzikas, who said he boarded the FCVs to check standards, had not heard complaints from crew members. He reportedly described New Zealand's labour laws as "a thousand pages of, you know, beautiful stuff", but believed those laws "did not necessarily apply beyond New Zealand's 12-mile territorial radius". Nudge nudge, wink wink, say no more!

## Endnotes for the Judges' Report

- (1) Victor Billot, "Blood and Salty Water: the New Zealand fishing industry's failed experiment with globalisation", *Watchdog* 130, August 2012, <http://www.converge.org.nz/watchdog/30/10.html> .
- (2) <http://www.fish.govt.nz/en-nz/Commercial/About+the+Fishing+Industry/default.htm>
- (3) Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, 2012, p.21, para 79.
- (4) The Council of Trade Unions' submission to the 2011 Ministerial Inquiry provides extensive information about the industry's turn away from value-added processing towards bulk unprocessed (frozen) exports, especially to China. The submission is online at <http://union.org.nz/policy/ctu-foreign-fishing-vessels-submission> .
- (5) "Fishing jobs lost to cheap labour: Dunne", *Nelson Mail*, 22/12/03, p.2.
- (6) Department of Labour, "Employment Conditions in the Fishing Industry - Final report on foreign crew on New Zealand fishing vessels", 2/12/04.
- (7) Tim Hunter, "Floating sweatshops flout NZ law", *Sunday Star Times*, 15/5/05, p.3; Chalkie, "Foreign charter vessel mess needs fixing", *Press* 14/3/12, p.A12.
- (8) Tim Hunter, "Floating sweatshops flout NZ law", *Sunday Star Times*, 15/5/05, p.3.
- (9) Government press release, 10/9/06.
- (10) Approvals in Principle; granted by the Immigration Minister to allow employment of foreign crew.
- (11) Skinner, B. (2012) "Slaves put squid on dining tables from South Pacific", [www.bloomberg.com/news/print/2012-02-23/slaves-put-squid-on-u-s-dining-tables-from-south-pacific-catch.html](http://www.bloomberg.com/news/print/2012-02-23/slaves-put-squid-on-u-s-dining-tables-from-south-pacific-catch.html)
- (12) On the legal background see Peter Dawson and Renee Hunt, "The legal regime governing the operation of foreign charter vessels in New Zealand", (2011) 25 *Australian & New Zealand Maritime Law Journal* , available online with a large collection of articles and information on FCVs at <http://www.maritimelaw.co.nz/articles/10/24/> .
- (13) <http://www.radionz.co.nz/news/national/98931/korean-ship-detained-at-lyttelton>
- (14) Christina Stringer, Glenn Simmons and Daren Coulston, "Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels", *New Zealand Asia Institute Working Paper Series* 11-01, <http://docs.business.auckland.ac.nz/Doc/11-01-Not-in-New-Zealand-waters-surely-NZAI-Working-Paper-Sept-2011.pdf>
- (15) Report of the Ministerial Inquiry into the use and operation of foreign charter vessels, February 2012, <http://www.fish.govt.nz/NR/rdonlyres/1CD50F2C-5F55-481D-A3CB-9A7EC25CBE54/0/2012foreignchartervesselsreport.pdf> .
- (16) Michael Field, "No cash for crews, but plenty for MPs", *Sunday Star Times* 15/4/12, p.3.
- (17) Deepwater Group of the Seafood Industry Council, submission to the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, p.1, para 2.1.
- (18) Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, 2012, p.33, para 124.
- (19) Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, 2012, p6, para 138.
- (20) Submission by United Fisheries Holdings Ltd, Christchurch in response to the MED discussion document (2009) on the statutory framework for financial reporting.
- (21) Submission by United Fisheries Holdings Ltd, Christchurch in response to the MED discussion document (2009) on the statutory framework for financial reporting.
- (22) Ministry for Primary Industries, Regulatory Impact Statement analysing options for the management of foreign charter vessels, 2012, p.13, para 79
- (23) Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, 2012, p. 13, para 28.
- (24) Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, 2012, p. 24, para 87.
- (25) Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, 2012, p. 18, para 62.
- (26) Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, 2012, p.18, paras 63, 64.
- (27) Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, 2012, para 69
- (28) Report of the Ministerial Inquiry into the use and operation of Foreign Charter Vessels, 2012, para 70
- (29) Code of practice on foreign fishing crew, 2006, p.5.
- (30) Code of practice on foreign fishing crew, 2006, p.5.