Legal privilege waived on 13 September 2016

Memorandum

Ref:	Operation ACHILLES Investigation Report
To:	s 9(2)(a)
Cc:	s 9(2)(a)
From:	Investigator s 9(2)(a)
Date:	Jan 2014
Subject:	**OPERATION ACHILLES INVESTIGATION REPORT FINDINGS [DUMPING/NON REPORTING QMS FISH]**

1 EXECUTIVE SUMMARY

1.1 This report has been prepared for legal review and outlines the findings of further investigation into Operation ACHILLES following additional catch analysis and subsequent interviewing of the parties concerned.

1.2 The additional analysis of trips undertaken by the five vessels corroborated the initial findings and confirmed that the unlawful discarding and non-reporting of catch was substantial and an endemic practice amongst the fishers.

1.3 The subsequent interviews of permit holders, skippers and crew confirmed the widespread nature of this activity and also showed an alarming ignorance of the laws, regulations and requirements of the Fishery Act by fishers with many years of experience in the fishing industry.

1.4 It would be my recommendation that all permit holders and skippers be dealt with by way of prosecution whilst the three junior crew of the vessels s 9(2)(b)(ii), s 9(2)(b)(ii) and s 9(2)(b)(ii) be dealt with by way of warning. These recommendations are based on each of the parties satisfying the evidential and public interest tests as set out in the Solicitor General's Prosecution Guidelines.

1.5 Whilst it is unfortunate that my July preliminary report found its way into the hands of industry, I do not believe that it will significantly affect or influence any outcome in so far as this matter is concerned. The lawyer representing a number of these vessels s 9(2)(a) has already referenced this report into a recent email and had raised some issues in particular concerns over previous assurances that may have been given to fishers in the past regarding non prosecution in exchange for allowing observer coverage.

1.6 Any legal review may also need to consider the relevance surrounding any assurances, perceived or otherwise given to fishers regarding the cameras being installed for the sole purpose of dolphin/seabird capture and that discards would not be looked at. My initial enquiries would indicate that whilst this was the primary reason for the installation and fishers were told that the cameras and

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observers were there to monitor dolphin/seabird captures and that they were not there to monitor discards, no assurances were given that they could not be viewed at a later stage or any immunity or other promises given regarding any offences detected.

2 BACKGROUND

2.1 Following the initial phases of OP AHILLES, the final phase involved a comprehensive study and analysis of three hauls from each of the five vessels to more accurately assess the true level of offending and to produce sufficient evidence to support a prosecution if required. The final analysis was completed in September by s 9(2)(a) who had completed the previous analysis. The final phase also involved the completion of video footage briefly summarizing the offending seen for each of the 3 hauls with the intention of using this footage as a supportive tool during the interview stage.

2.2 The interview phase of the operation commenced on 22 October 2013 and ended with the final interview on 6 November 2013. In total 10 persons were interviewed two from each of the five vessels.

2.3 Of note, was that in all 10 of the interviews the subjects spoke openly about their actions and only on one or two occasions invoked the right not to answer any on the grounds of incrimination despite seven of them having legal representation.

2.4 Below is a summary outlining the results of the catch analysis from each of the five vessels, the interviews and recommended course of action. A more comprehensive summary of the catch analysis can be found in the attached appendices.

3 s 9(2)(b)(ii)

3.1 The s 9(2)(b)(ii) meter fishing vessel s 9(2)(b)(ii) is a stern trawler and set net vessel based in Timaru. It is skippered by s 9(2)(a) who is also a director of s 9(2)(b)(ii) which is the permit holder for the vessel. During the period monitored the vessel was crewed by s 9(2)(a) s 9(2)(a) .

3.2 The s 9(2)(b)(ii) was monitored over 24 set net hauls between 7 November 2012 and 7 February 2013.

3.3 The three monitored trips occurred on 6 and 11 December 2012 and 16 January 2013. Both s 9(2)(a) and his crewman were seen to discard many quota species during these hauls the predominant species being ELE, with an average of 46.4% being discarded over the three hauls. (336 in total caught)

3.4 The vessel also high graded GUR, with all small fish discarded 45% of the small number caught. (45 fish in total caught)

3.5 On another two occasions the vessel did not record hauls that were made on 26 November 2012 and 28 January 2013. On both occasions only small quantities of fish were landed.

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INTERVIEWS

3.6 s 9(2)(a) were both interviewed in Christchurch on 22 October in the presence of s 9(2)(a), Solicitor. s 9(2)(a) was also present during the first interview of s 9(2)(a) in May 2013 regarding the hectors dolphin (HDO) capture.

s 9(2)(a)

3.7 s 9(2)(a) is a s 9(2)(a) year old fisherman residing in s 9(2)(a). He is the skipper of the fishing vessel s 9(2)(b)(ii) and has s 9(2) years fishing experience. He is an equal shareholder with s 9(2)(a) of s 9(2)(b)(ii) the permit holder of the vessel s 9(2)(b)(ii)

3.8 s 9(2)(a) was shown the videos of the discarding in the presence of his lawyer immediately prior to the start of the interview.

3.9 In explanation for the discarding of the elephant fish s 9(2)(a) explained that the elephant fish (ELE) discarded were *liced or eaten out by spiny dogs*[1] or alternately they were *live cows*.[2] (cow refers to a female ELE)

3.10 He further stated that he was aware the he should have reported these fish[3] and in explanation as to the dumping of the "live cows: stated that he had done so to *conserve the fishery* and because they were nearing the end of their quota[4].

3.11 s 9(2)(a) also explained he did not think that they would discard large dead whole ELE but some smaller ones would be[5].

3.12 Regarding the GUR discards s 9(2)(a) explained that he knew that he had to record them but that he threw them away because they had no commercial value[6] but the ones that they did throw away were alive[7].

3.13 s 9(2)(a) explained that he was not aware of the reporting requirements regarding carpet shark (CAR).[8] He explained that he used to record them on his NCELR and MHR but on contacting FISHSERVE they told him that the CAR was not required on the MHR so he stopped recording them at all. It would appear that he has become confused and not realised the CAR is not required on the MHR but still required on the NCELR.

3.14 A look at the NCELR's of the past three fishing years involving the s 9(2)(b)(ii) reveal that the reporting of CAR and SPD in the two years prior was almost

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1 s 9(2)(a) Statement: page 4 paragraphs 1 to 4
2 Statement: page 4 paragraphs 4 to 10, page 8 paras 15 & 16
3 Statement: page 4 paragraphs 11 to 14, page 11 paras 11 & 12
4 Statement: page 4 paragraphs 15 & 16
5 Statement: page 9 paragraphs 2 to 6
6 Statement: page 5 paragraphs 9 to 14
7 Statement: page 6 paragraphs 1 & 2
8 Statement: page 6 paragraphs 3 to 12, page 7 paras 11 to 20, page 8 paras 1 to 5

nonexistent compared to the most recent catch returns.

Vessel - s 9(2)(b)(ii)					
Fishing Year	Count of NCE Returns	Count of NCE Trips with these Species Listed		Percentage of NCE Trips with These Species Listed	
		CAR	SPD	CAR	SPD
2010/11	23	2	3	9%	13%
2011/12	2	0	0	0%	0%
2012/13	38	35	33	92%	87%

3.15 s 9(2)(a) was also not aware of his requirements as to the recording of rough skate (RSK)[9] but he was aware of the schedule '6' requirements of spiny dog fish (SPD) even correctly coding them as 'M' in the landed state.[10]

3.16 In reference to the non reported trip on 26 November 2012 s 9(2)(a) explained that he did not record the trip because not many fish were caught although he did know that there was an obligation to report it[11].

3.17 s 9(2)(a) further admitted to the non- reporting of a trip on 29 January (haul 21) [12]where a number of MOK (moki) were caught, he explained that he may have combined two trips into one and that the MOK were most likely taken home and eaten. He then made an extraordinary statement admitting his guilt in this matter[13].

s 9(2)(a) *And according to the Fisheries Regulations they should have been….*

s 9(2)(a) *Yes. I'm not saying I am not guilty. Am I? I'm not denying it. I've been a criminal all my life you just haven't caught me. I shouldn't say that but too late now.*

The regulations my friend is a mind field of inaccuracies and hard to follow and if I was to record every species that I ever caught in my whole fishing career mate I would need a bloody, a list of books a mile high.

3.18 s 9(2)(a) was then asked a number of questions pertaining to the training given to his crewman, s 9(2)(a) s 9(2)(a) . s 9(2)(a) explained that he had given him instructions to discard live fish and also had given him minimal training in regards to the Fisheries Act rules and regulations.[14]

3.19 s 9(2)(a) then summed up why he had committed the offending giving a number of reasons including, the rapid growth of the ELE population,[15] TACC size,[16] and lack of Available ACE[17].

3.20 s 9(2)(a) also made a comment regarding being told that the cameras on his boat were for looking at dolphin and sea bird by catch.[18] However when he is

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9 s 9(2)(a) Statement: page 8 paragraphs 9 to 14, page 11 paras 1 & 2
10 s 9(2)(a) Statement: page 8 paragraphs 7 & 7
11 Statement: page 12 para 6 to page 13 para 6, page 17 para 11 and 12
12 Statement: page 13 para 7 to page 14 para 6
13 Statement: page 14 para 5 & 6
14 Statement: page 17 paragraphs 1 to 4
15 Statement: page 14 paragraphs 7 to 12 page 15 1 & 2
16 Statement: page 15 paragraph 4
17 Statement: page 15 paragraph 5 and 6
18 Statement: page 18 paragraphs 1 to 3

asked why he discarded fish when the he knew that this was being observed he does not offer this reason as an excuse.[19]

s 9(2)(a) *The next question I was going to ask you. Why when you knew the cameras were on the vessel and you could obviously see what was being recorded through the monitors in the bridge did you discard fish?*

s 9(2)(a) *I don't know. To be quite honest. Yeah pretty much just I don't know. Maybe it was fraught with danger and I just, maybe see what sort of reaction I got, probably not the one that I desired but you know. I believe there's, there's bigger issues than this in the fishing industry as you probably guys probably aware and um, I've always said mate, I put my hand up and said I have never been not guilty from the first day of the Quota System started. I stated when they put the cameras on I'm sick of being a bloody criminal. Let's tidy up the act but I don't believe it's just the fishermen's problem, it's everybody's problems and it's a big problem and we've had the discards working five years now and we still don't have an answer.*

s 9(2)(a)

3.21 s 9(2)(a) is the s 9(2)(a) he resides s 9(2)(a) . s 9(2)(a) crews with s 9(2)(a) during the period that they set net over the summer but as of the start of this year became the sole skipper of the s 9(2)(b)(ii) during the period that the vessel trawls through the remainder of the year. s 9(2)(a) obtained his skippers ticket in s 9(2)(a) just prior to his s 9(2)(a) birthday. The last set net season (Nov 2012 to Feb 2013) was the second season that s 9(2)(a) had crewed with s 9(2)(a) .

3.22 s 9(2)(a) admitted to discarding live fish (ELE and gurnard [GUR]) and liced damaged fish. When asked about the discarding of ELE he replied that he was acting under the instructions from s 9(2)(a) and in relation to the live ELE and GUR that he had done this to protect the fishery.[20]

3.23 In relation to the damaged quota fish again he stated that he had discarded them but that he had done so because this is what s 9(2)(a) had told him what to do and that he was not aware of the regulations governing damaged fish[21].

3.24 s 9(2)(a) stated that when it came to discarding small ELE and GUR he again would ask s 9(2)(a) as he was not aware of what sizes were required by the licensed fish receiver (LFR.)[22]

3.25 s 9(2)(a) was also unaware of the schedule 6 requirements regarding RSK stating that they would keep the larger fish but throw the smaller ones back although he was aware of the correct landed state code requirement (M) for SPD .[23]

3.26 With regards to training s 9(2)(a) explained that he had not attended or undertaken any training regarding fishing regulations and compliance and that all training he had received in this area had come from s 9(2)(a) .[24]

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19 s 9(2)(a) Statement: page 18 paragraphs 4 to 5
20 s 9(2)(a) Statement page 4 paragraphs 6 to 10, page 6 para 16
21 Statement page 6 paragraphs 1 to 6
22 Statement page 6
23 Statement page 7 paragraphs 2 to 14, page 8 para 1 to 6
24 Statement page 10 paragraphs 7 to 14

3.27 In summarising, s 9(2)(a) admitted to discarding quota fish but had done so because he had acted under the instructions of s 9(2)(a) and was unaware of the rules and regulations regarding fish discarding.

s 9(2)(b)(ii) SUMMARY

3.28 s 9(2)(a) as skipper and permit holder, knowingly committed serious offences against the Fisheries Act in regards to the discarding and incorrectly reporting of quota and non quota fish. The physical evidence combined with the admissions made by s 9(2)(a) in my opinion satisfy the evidential sufficiency requirements as per the prosecution guidelines.

3.29 s 9(2)(a) offered a number reasons for his course of action, i.e. discarding live fish and confusion with some of the regulations etc, whilst some of these reasons may assist him in mitigation they do not justify the illegal activities undertaken by him in the willful discarding and non reporting of fish.

3.30 The sheer volume of discards (nearly 50% of all ELE) and the endemic nature of his actions would make it difficult to justify any other course of action other than a prosecution. It is my belief that there is nothing in the public interest test that would override this position and that all of the prosecution requirements as per the prosecution guidelines are satisfied in this matter.

3.31 It cannot be overlooked that the overriding motive for dumping in the first instance is lack of ACE and therefore the decision to dump is a financial and deliberate one in defiance of the reporting regulations.

3.32 Fishery Act Offences that could be considered would include section 72 dumping charges in relation to the three monitored trips. I would also suggest a representative dumping charge to cover the entire set net fishing period that the cameras were installed on the vessel (between 7/11/2012 to 7/02/2013).

3.33 Consideration should also be given to section 230(1)(b)[25] charges relating to the false fishing returns supplied by s 9(2)(a) These charges could be laid 'as well as' or alternatively to the above section 72 charges and encompass the same time periods and same fishing trips. Additional 230(1)(a)[26] charges could be considered regarding the two fishing trips that were simply not recorded in the returns.

3.34 In regards to the HDO (hectors dolphin) incident, which has not been covered in detail in this report, I would suggest that due to the difficulty that we would have in proving the deliberate release of the second HDO then it may be prudent to simply charge s 9(2)(a) with not furnishing a "non-fish and protected species catch return" as required under 11E Fisheries Regulation 2001 in relation to the first HDO that was landed. Whilst a return was subsequently furnished it was done some three months after the required time period had elapsed.

3.35 In regards to s 9(2)(a) it would be my recommendation in this instance that even though the offending that has been committed by s 9(2)(a) in relation to

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[25] makes any false or misleading statement, or omits any material information, in any communication, application, record, or return prescribed by or in accordance with this Act, or required for its administration.
[26] fails to keep, or provide, any accounts or records, or who neglects or refuses to provide any records, return, or information, when lawfully requested or required to do so under this Act

the discarding of quota fish satisfies the evidential test of the prosecution guidelines I believe that the public interest test is not met and therefore recommend that he be warned in this matter.

3.36 The particular parts of the test that I refer to are:

I. Whilst the offence is strict liability and reasonably serious I believe a Judge would rightfully take into account the age of the defendant, his lack of knowledge, his acting under orders of a person whom he believed was acting lawfully and sentence him very lightly accordingly.
II. No previous convictions.
III. The unlikelihood of re-offending.

3.37 Another factor that I would include would be the cooperation shown by the defendant especially regarding the forthright interview.

4 s 9(2)(b)(ii)

4.1 The s 9(2)(b)(ii) is an s 9(2)(b)(ii) meter trawler/set net vessel built in s 9(2)(b)(ii) based out of the port of Timaru. The skipper and permit holder during the time of offending was s 9(2)(a) , s 9(2) years. During this period he was accompanied by s 9(2)(a) , s 9(2) years, who has since taken over the running of this vessel as s 9(2)(a) retired in s 9(2)(a) .

4.2 The s 9(2)(a) do not own ELE quota but get there ACE from s 9(2)(b)(ii) .

4.3 The s 9(2)(b)(ii) was monitored over 34 set net hauls between 7 November 2012 and 7 February 2013, the cameras were installed on 30 October 2012 .

4.4 The three monitored trips for this vessel occurred on 25 January 2013 and the 7 and 8 February 2013.

4.5 During the first review, we monitored the haul on 25 January and noted at this time substantial quantities of quota fish (39.6% of ELE) and GUR discarded whilst CAR and SPD were also discarded and not recorded.

4.6 The two subsequent hauls that we then looked at yielded much higher discard rates especially in relation to ELE discards (44.4% and 78.2%) giving an average over the three monitored hauls of 54%.

4.7 Other offending that was observed included the discarding/non reporting of GUR and flounder/sole (FLA) as well as the discarding/non reporting of SPD and CAR.

4.8 Both s 9(2)(a) were witnessed discarding quota fish.

4.9 Of note, during the investigation it was found that s 9(2)(a) had been completing CLR's as well as NCELR's for the same fishing trips during the set net season that we monitored. This had not been picked up by fishserve or fisheries despite the creation of the discrepancies that the duplications would have created. It is unknown at this time over how long s 9(2)(a) had been doing this, it is likely that this is a recent practice as this action would have eventually been picked up by fishserve and acted upon accordingly.

INTERVIEWS

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4.10 Both s 9(2)(a) were interviewed in the presence of their solicitor s 9(2)(a) on 22 October 2013 at Christchurch. As in the case of s 9(2)(a) both gave full explanations and rarely invoked their right to non incrimination.

4.11 They were both shown the video footage immediately prior to the interview in the presence of their solicitor and asked not to make comment at that time.

s 9(2)(a)

4.12 s 9(2)(a) s 9(2) years retired from fishing early in s 9(2)(a) shortly after the monitored set net season. s 9(2)(a) is now the skipper of the vessel s 9(2)(b)(ii). s 9(2)(a) had been fishing by himself for the previous 20 years before working with s 9(2)(a) in November 2012 with the intention of him taking over the fishing business which, has now occurred.

4.13 s 9(2)(a) and s 9(2)(a) are the permit holders for their vessel and have equal partnership.

4.14 s 9(2)(a) appeared very anxious prior to and during the interview. He also appeared confused at times and towards the end of the interview was clearly upset and affected by the evidence that was presented. This became evident when evidence was presented that clearly showed the dumping was substantially greater than he believed it was.

4.15 The first matter that was put to him was in regards to the furnishing of the CLR along with the NCELR. This was not an accusatory question but merely an attempt to seek an explanation as to why he had done this as it was obvious that there was some confusion as to the requirements on his part.

4.16 The following conversation regarding this matter is a good example of the confusion displayed by s 9(2)(a):

s 9(2)(a) *Do you normally fill out two forms?*
s 9(2)(a) *No, no.*

s 9(2)(a) *You have done it for the whole season.*
s 9(2) *Did I?*

s 9(2) *Yeah.*
s 9(2)(a) *Yeah looks like my printing, it's my signature there, my signature there. That might be why I retired.*

s 9(2)(a) *So where you only have to fill in the one, the NCELR, you don't have to fill in the CELR, when you are doing an NCELR. I know it can get a bit confusing.*
s 9(2)(a) *The same as that, different quantities that's all…*

s 9(2)(a) *Yeah pretty – pretty much are identical.*

s 9(2)(a) *Yep.*
s 9(2)(a) *I can't explain it I'm sorry. It's just* s 9(2)(a).

He further added:

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s 9(2)(a) *Oh I, I just can't believe how I have done that. It's um beyond me really.*

4.17 When first asked about why he discarded ELE fish in relation to the first trip on 25 January, s 9(2)(a) gave a confused two tier explanation. The first reason he gave was that some of the fish may have been thrown over because of 'safety concerns'. He attempted to explain that his vessel being fiberglass and only 38 foot long would become unstable when there were too many fish on deck.[27] However when he was shown photographs from the video of that haul and it was pointed out to him that some of the pounds were empty while he was discarding the fish he eventually conceded that there was no safety issue for this haul.[28]

4.18 This further became a non issue and was not raised again when the photographs from the 2 other hauls (7 & 8 February) revealed even less fish on deck while large quantities of ELE were being discarded.

4.19 The second explanation raised was that the fish he had discarded were alive especially in relation to the ELE.[29] He further stated that he thought this was legal.[30]

4.20 In reference to the GUR which were not recorded or landed, s 9(2)(a) stated that, it they were alive then he would have discarded them otherwise he would have filleted them, indicating that these would have been taken home to be eaten.[31] s 9(2)(a) later stated that they had enough ACE for GUR and that they still had a tonne of it left over at the end of the season.[32]

4.21 When asked why there were no CAR and SPD reported on any of the NCELR's (or the duplicated CLR's) s 9(2)(a) replied that he was unaware that they had to be recorded and was also unaware of schedule 6 requirements for any species[33]. s 9(2)(a) admitted to having very poor knowledge of the rules and reporting regulations.[34]

s 9(2)(a) *You understand the law regarding damaged Elephants or damaged Quota Fish?*

s 9(2)(a) *I do now.*

s 9(2)(a) *Yep. Would it be fair to say that prior to us seeing you, you didn't understand the law?*

s 9(2)(a) *Yeah that would be right but I, I should of known. Like I said I did try to fill out this ah Dogs and discharge stuff but it just um, but the paper work I just am.....*

4.22 s 9(2)(a) admitted to discarding ELE due to not having enough Quota (ACE).[35] Further adding that if they had enough Quota then they would not have discarded them[36] however he later retracts this as a reason for the discarding.[37]

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27 s 9(2)(a) statement page 6 paragraphs 3 & 4
28 statement page 10 paragraphs 5 & 6
29 statement page 6 paragraph 4,
30 statement page 23 paragraphs 11 & 12,
31 statement page 12 paragraphs 7 to 10, page 15 paras 3 & 4
32 statement page 22 paragraphs 11 & 12
33 statement page 12 paragraph 13 to page 14 para 2
34 statement page 22 paragraphs 1 to 4
35 statement page 17 paragraph 11
36 statement page 21 paragraphs 7 & 8
37 statement page 23 paragraphs 13 to 16

s 9(2)(a) *But that, there were some pressures on you in regards to the end of the season with quota and ACE availability. So there may have been a financial?*

s 9(2)(a) *Not really no.*

s 9(2)(a) *You don't think there was a financial?*

s 9(2)(a) *Na, I mean I don't mind going over the, the, this is like, like I said I try to go over a wee bit so I can ask for more.*

4.23 When questioned regarding the 3rd monitored haul (8 February) where nearly 80% of the ELE were discarded, s 9(2)(a) seemed genuinely surprised at the high numbers. It was from this point onwards that it appeared that the realization as to the seriousness and extent of the discarding had suddenly become apparent to him.

4.24 Of note is that s 9(2)(a) mistakenly identified the fisher on the vessel in the yellow over-trousers as s 9(2)(a) when it is actually s 9(2)(a), this was not apparent until the following interview with s 9(2)(a), who pointed out this mistake. It is probable that this occurred due to the poor eyesight of s 9(2)(a) and was a genuine mistake.

4.25 One of the rare occasions where any of the fishers spoken to declined to answer a question on the grounds of incrimination occurred when s 9(2)(a) was asked about what he did with damaged or liced fish.[38]

s 9(2)(a) *OK what about your damaged and liced fish. What you, you always thrown them away or* s 9(2)(b)(ii) *take them or anyone take them?*

s 9(2)(a) *I don't want to answer that. Yep.*

4.26 With regards to the crewman, s 9(2)(a), s 9(2)(a) stated that s 9(2)(a) had only been with him at the start of the set net season in question and that he was training him to take over the boat. He further stated that s 9(2)(a) would not have discarded any fish without first giving him an order to discard.

4.27 The final question regarding offending whilst he knew the cameras were operating gave a good summary of this matter.

s 9(2)(a) *Sorry I just have one more question. So you knew the cameras were on you and yet you were throwing fish away so that would indicate to me that either …*

s 9(2)(a) *We weren't worried, I thought we were doing Dolphins. Yeah. I thought that if I had known that we were going to have this meeting here, I would have made sure,* s 9(2)(a) *would of made sure that that books were proper, cause the, he's, he's not very happy with me for telling him to do this and that he's coming up, he's just starting fishing and he doesn't want this hanging over his head.*

s 9(2)(a)

4.28 s 9(2)(a) is s 9(2)(a) and current skipper of the s 9(2)(b)(ii) currently residing in s 9(2)(a).

4.29 During the first part of the interview some of the video footage was shown again to s 9(2)(a). It was during this time in conjunction with viewing photographic stills

[38] s 9(2)(a) statement page 22 paragraphs 17 & 18

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from the video that he was able to correctly identify that it was s 9(2)(a) who was wearing the yellow over trousers on the vessel.

4.30 s 9(2)(a) stated that he started fishing as a deckhand when he was s 9(2)(a) fishing as a deckhand for a number of vessels before becoming a freezing worker for the past 10 years.

4.31 He left the freezing works in September 2012 to join s 9(2)(a) on the s 9(2)(b)(ii) with the view to taking over the fishing business when s 9(2)(a) retired, which he has since done so as of s 9(2)(b)(ii)

4.32 In summary s 9(2)(a) alleged that he was not aware of the regulations in regards to fish dumping and only discarded fish on the instruction from s 9(2)(a).

4.33 When questioned further in regards to whether he should have known about discarding from the time he worked as a deckhand he replied that he only worked on the deck and that it was the 'factory workers' below that knew about quota fish.[39]

4.34 He also stated that even though he obtained his 'skipper's ticket' he had never received any formal training, even while working at s 9(2)(b)(ii), in regards to compliance and regulations.

4.35 s 9(2)(b)(ii) SUMMARY

4.36 The offending that occurred on the s 9(2)(b)(ii) is very similar in the scale and type as that of the s 9(2)(b)(ii) even to the extent as to the explanations given by both skipper and crew. Probably the most disturbing side to s 9(2)(a) s offending is that his extreme ignorance of the rules and regulations and the total time that he has spent as a commercial fisher would make it highly likely that this very substantial discarding and non reporting has been occurring during the entire time he has been fishing and has simply become an endemic practice. It is likely that this deeply engrained behavior is the overriding reason that these particular s 9(2)(b)(ii) based fishers have openly discarded while in full view of the cameras.

4.37 As with the s 9(2)(b)(ii) I would suggest that there are no evidential test matters as per the prosecution guidelines that would preclude any other course of action other than to consider charges against section 72 and/or 230(1)(b) of the Fisheries Act 1996 against the skipper/permit holder s 9(2)(a) in relation to the 3 monitored trips that occurred on 25 January, and 7 and 8 February 2013. A further representative charge should be considered that encompasses the period that the cameras were monitoring the vessel whilst it was set netting between 7 November 2012 and 7 February 2013.

4.38 Other matters that may influence the decision to prosecute pertain to the public interest aspect and relate to:

I. Age s 9(2)(a)
II. No previous convictions
III. The unlikelihood of any further offending (due to retirement)

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39 s 9(2)(a) statement page 12 paragraph 17 to page 13 paragraph 6

4.39 Whilst the above matters need to be taken into consideration we must also consider the perceived 'fairness' if s 9(2)(a) were not to be prosecuted whilst others were to be prosecuted for almost identical offending and circumstances.

4.40 The crewman s 9(2)(a) could be considered slightly different to s 9(2)(a) even though they are very similar again in their explanations as to why they offended. Both of them had only started their first season set netting on each of the vessels at the start of the ECM trial. Both are s 9(2)(a) s 9(2)(a) and were basically crewing to learn the 'ropes' with the view to taking over the vessels as skippers themselves. They both had 'skippers tickets' but neither of them had any formal training in regards to compliance but were both reliant on learning 'the trade' including the rules and regulations from s 9(2)(a) s 9(2)(a).

4.41 The main difference between s 9(2)(a) and s 9(2)(a) is age and experience. s 9(2)(a) unlike s 9(2)(a) is a lot older s 9(2)(a) s 9(2)(a) however s 9(2)(a) had spent approximately 10 years previously as a deckhand and therefore should have been aware of the regulations regarding the discarding of quota fish. In explanation s 9(2)(a) suggested that as he had spent most of this time as a deckhand on the larger vessels then he was not required to learn or know about the quota system and dumping. While this explanation may have some validity my enquiries with experienced ex observers would indicate that this is unlikely and that s 9(2)(a) should have been aware of the illegality of dumping quota fish.

4.42 Despite this it would be my recommendation based on the same public interest test that would apply to s 9(2)(a) that a warning in this matter would be the most appropriate:

i. No previous convictions.
ii. Forthright interview.
iii. Public interest

5 s 9(2)(b)(ii)

5.1 The s 9(2)(b)(ii) is s 9(2)(b)(ii) meter fishing vessel built in s 9(2)(b)(ii) and owned by s 9(2)(b)(ii) the two directors being s 9(2)(a) and s 9(2)(a) from s 9(2)(a). s 9(2)(b)(ii) is also the permit holder for the vessel. The vessel fishes solely into s 9(2)(b)(ii) Timaru and is skippered by s 9(2)(a). The vessel is crewed by s 9(2)(a) and s 9(2)(a).

5.2 The vessel made 13 set net trips between 22 November 2012 and 5 April 2013. Each trip was over multiple days with the vessel recording between 2 to 5 hauls per trip.

5.3 The vessel also long-lined during this period where it targeted mainly LIN (ling) HPB (hapuka) and SCH (school shark).

5.4 The s 9(2)(b)(ii) was reluctant to enter into the electronic monitoring survey. The cameras were installed on 7 November 2012 however s 9(2)(a) would not switch the cameras on and so no camera footage was available until a Ministry Fishery Observer was placed on board the vessel on 14 January 2013.

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5.5 As a result only 2 hauls were able to be data monitored both from the same 5 day trip on 14 and 16 January 2013. We were able to locate another trip on 11 February 2013 where for some reason the camera was turned on. This trip was situated 35 nautical miles off the coast where the s 9(2)(b)(ii) was targeting LIN. Although a complete assessment was not done for this trip a number of qutao fish were discarded ELE and WAR (warehou) and one CRA (rock lobster) was landed but not reported.

5.6 In the 2 trips that were monitored the discard rate for ELE was particularly high (35.8% and 76.12%)

5.7 Of the small number of GUR caught none were reported.

5.8 RSK was also not recorded while SPD/FIN and CAR/FIN were reported the green weight was not reported for the SPD.

INTERVIEWS

5.9 s 9(2)(a) and s 9(2)(a) were both interviewed in Nelson on 29 October 2013 in the presence of their lawyer s 9(2)(a). As with the two previous vessel interviews with s 9(2)(a) both s 9(2)(a) and s 9(2)(a) gave frank interviews and were both forthcoming in their explanations.

5.10 As with the previous interviews both s 9(2)(a) and s 9(2)(a) were shown the video footage of the fishing trips prior to interview in the presence of s 9(2)(a).

s 9(2)(a)

5.11 s 9(2)(a) stated that he had owned the s 9(2)(b)(ii) since s 9(2)(b)(ii) and has been set netting and long lining in the vessel since s 9(2)(b)(ii). He stated that he had been fishing since s 9(2)(b)(ii).

5.12 When asked to give an explanation as to why he discarded ELE, s 9(2)(a) stated that the discarded fish were either too small to process or they were alive and that he further believed that the fish had a very good chance of survival.[40]

5.13 When s 9(2)(a) was asked about the regulations regarding the discarding of ELE he made the following comment stating that he did not know the regulations:[41]

s 9(2) *Do you know what you're, what the fishing regulations require you to do with those elephant fish?*
s 9(2) *I'm not 100%.*

s 9(2) *Yep. Are you aware that they should all be landed?*
s 9(2)(a) *No I was not aware.*

s 9(2) *And aware that they should all be recorded?*
s 9(2) *No.*

5.14 It is likely that s 9(2)(a) made the above comment in reference to damaged and smaller ELE as later on in the interview he made the following comment.

s 9(2) *Why did you discard quota fish?*

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40 s 9(2)(a) statement Page 9 paragraphs 9 to 12 and page 10 paragraphs 7 & 8
41 statement Page 10 paragraphs 9 to 14

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s 9(2)(a) *For one I don't want to bring in a female with an egg.*

s 9(2)(a) *Talking about ELE's yep.*
s 9(2)(a) *Yeah. I don't want to bring in small Ellies that don't get processed and they are still alive, we can catch them next year. And I'm not, I'm not bringing small Rig home that are going to be rejected and they can swim away today. It's the same thing.*

s 9(2)(a) *Were you aware that you were breaking the law?*
s 9(2)(a) *Not 100% no.*

s 9(2)(a) *So you were not aware that you were breaking the law by returning live fish, when like Elephant fish.*
s 9(2)(a) *I knew it was breaking the law chucking big females back*

5.15 This is again covered in detail when summing up at the end of the interview.[42]

s 9(2)(a) *So basically when you are looking at those, the footage it's you and* s 9(2)(a) *onboard the vessel* s 9(2)(b) *over that period of time. That footage clearly shows you throwing Elephant Fish back to which you say you throw them back because they are alive, especially the pregnant females. You were not aware that it was an offence to throw them back?*
s 9(2)(a) *The small ones. Yeah.*

s 9(2)(a) *The small ones.*
s 9(2)(a) *Yeah, yeah.*

s 9(2)(a) *You knew it was wrong to throw the, the ...*
s 9(2)(a) *The big females back.*

s 9(2)(a) *The big females back but you were ...*
s 9(2)(a) *With eggs yep.*

s 9(2)(a) *But you would rather throw them back than?*
s 9(2)(a) *Only when they have got the eggs otherwise we process them.*

5.16 In explanation as to why he discarded the damaged fish s 9(2)(a) explained that he had been previously told by a Fishery Officer that as he was not a 'day tripper' then he was not permitted to put the damaged liced fish in the freezer as this could cause contamination to the other fish[43].

5.17 When asked whether the lack of ACE was a reason for discarding the ELE he stated that this was not a factor and that even with plenty of ACE he would still discard his small and damaged fish and the large pregnant females.[44]

5.18 Later in the interview when asked about the discarding of ELE during the trip on 11 February where every ELE seen landed was discarded, s 9(2)(a) was again asked about ACE. He stated that by about February he would have run out of ACE and would have been 'deeming' (paying deemed value for fish landed). He then explained that he held a regular holding of ELE3 ACE (5 tonne) but never had to pay deemed value prior to 2008.

5.19 He then explained that he 'had' to throw the ELE back due to the pressures put on him by the 'Ministry' in forcing him to fish outside the 4 nautical mile set net zone where he cannot help but catch lots of ELE.[45]

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42 s 9(2)(a) statement Page 29 paragraphs 8 to 17
43 statement Page 10 paragraphs 15 to 17
44 statement Page 17 paragraphs 1 to 6

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5.20 When questioned about the GUR that were not reported s 9(2)(a) stated that he held no ACE for GUR so he always discarded them or ate them for lunch.[46]

5.21 In explanation as to why he had discarded four small SPO (rig) on the second trip s 9(2)(a) stated that he was not aware that he was required to record small rig and even asked how he was meant to record small rig in the NCELR indicating that this was something that he had not done before.[47]

5.22 In regards to his crewman s 9(2)(a), s 9(2)(a) s 9(2)(a) stated that he had employed him s 9(2)(a), he acknowledged that he was responsible for teaching s 9(2)(a) fishery regulations.[48]

s 9(2)(a) *Go back again to* s 9(2)(a) *who is responsible for, ultimately responsible for teaching him in compliance?*
s 9(2)(a) *Me, me I will take full responsibility of* s 9(2)(a) *done cause I've taught him. I've told him what to do, well yeah.*

s 9(2)(a) *Again would it be fair to say that you're knowledge of Fisheries Regulations is probably not up to scratch?*
s 9(2)(a) *Yeah but the Regulations aren't up to scratch.*

5.23 When asked about the CRA that was kept, s 9(2)(a) admitted to eating it and not reporting it. What followed was an interesting exchange that nicely summed up the lack of knowledge s 9(2)(a) has of fishery regulations despite s 9(2) years in the fishing industry.

s 9(2)(a) *Did we mention the, a bit off track, about the third haul? What happened to the Warehou and the Crayfish did we talk about that?*
s 9(2)(a) *No we didn't – the crayfish – it's a good camera to pick it up because I can hardly see it but um. Yeah we only caught the one Crayfish and yeah we had it for lunch, is that a crime?*

s 9(2)(a) *Did you report it in the NCELR?*
s 9(2)(a) *No.*

s 9(2)(a) *Then it is a crime. Yes.*
s 9(2)(a) *Is it? Even if you eat it? So the Koreans, the Koreans record all their Hoki they eat for lunch?*

s 9(2)(a) *Well they do, everything goes down, do you know what the code is if you eat something?*
s 9(2)(a) *No I wouldn't have a razoo mate. Is there a code for it? It's not in the MAF book.*

s 9(2)(a)

5.24 s 9(2)(a) is the s 9(2) year old s 9(2)(a) currently residing in s 9(2)(a). He started as crewman with s 9(2)(a) on board the vessel s 9(2)(b)(ii) just prior to the installation of the cameras in 2012.

5.25 Prior to crewing on the vessel he was a s 9(2)(a) by trade and had not had any previous fishing experience.

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45 s 9(2)(a) statement Page 22 paragraph 15
46 statement Page 15 paragraph 2, page 18 paragraph 13 to page 19 paragraph 4
47 statement Page 18 paragraphs 3 to 10
48 statement Page 24 paragraphs 7 to 10

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5.26 s 9(2)(a) explained that he had not received any training from s 9(2)(a) on compliance or the quota system.[49]

5.27 When asked about receiving any specific instructions from s 9(2)(a) regarding ELE he replied that he had been told to keep the big ones but to throw the little ones and the females back.[50]

5.28 When asked about GUR, s 9(2)(a) corroborates s 9(2)(a) in saying that the GUR was discarded because they had no quota (ACE) for it.[51]

5.29 s 9(2)(b)(ii) SUMMARY

5.30 As with the s 9(2)(b)(ii) and the s 9(2)(b)(ii) there are similar issues in relation to the type and severity of offending and the explanations given by the skipper and crew of the s 9(2)(b)(ii) The skipper s 9(2)(a) frankly admitted to discarding quota fish, in particular ELE and GUR. s 9(2)(a) explanation was twofold, firstly he had no ACE to cover the fish and secondly by discarding them alive then this was 'morally' ok. His justification in discarding the small ones simply because they were too small to process is another example of the disregard of the fishery regulations either because of lack of knowledge or indifference.

5.31 The discards that were observed on the two data monitored trips on 14 and 16 January were done in the presence of a Ministry Observer s 9(2)(a) . s 9(2)(a) was interviewed on 11 October 2013 and a statement obtained. In his statement s 9(2)(a) recalls witnessing the dumping of ELE and other quota species and stated that no permission was sort by s 9(2)(a) or crew to discard any fish.[52]

"During the time that we were out fishing I witnessed s 9(2)(a) and the male crew member discard a number of different quota species. The main fish that I saw discarded were elephant fish. Nothing was ever said about the elephant fish that they were discarded. I didn't say anything to them. They appeared to do it openly in front of me and did not appear to hide what they were doing."

5.32 In explanation as to why s 9(2)(a) did not interfere or say anything about the discards s 9(2)(a) explained that the briefing instructions for the trip outlined the priorities which were mammal and bird observations and non fish by catch collection. The monitoring of quota discards was not a priority. He further stated that he was told by his briefing officer s 9(2)(a) that he discards were not a priority as it would be on camera in any instance.

5.33 I do not see a problem with this approach taken by the observers, s 9(2)(a) is correct in adducing that there would be little value in noting the discards as every discard by the vessel would be recorded by the cameras.

5.34 I believe that in relation to the skipper s 9(2)(a) the threshold in meeting the evidential and public interest criteria according to the prosecution guidelines have been met. There may be an issue regarding consent that I have raised below that could need addressing

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49 s 9(2)(a) statement page 6 paragraphs 1 to 14
50 statement page 9 and page 10
51 statement page 10 17 to page 11 paragraph
52 s 9(2)(a) statement: page 2 paragraph 6

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5.35 Similarly the type of charges that could be laid against s 9(2)(a) would be the same as the s 9(2)(b)(ii) and s 9(2)(b)(ii) . This would include section 72 and 230(1)(b) charges in relation to the two monitored trips and a representative charge covering the times that the cameras were activated on the vessel. Further analysis may be required to identify any other trips where the cameras were activated otherwise we may only be able to lay charges in relation to the two monitored trips and the trip on 11 February where ELE and WAR were seen to be discarded. At this time no detailed analysis has been done on this trip other than a cursory look. If required further analysis can be done on this trip at a later stage if required.

5.36 In regards to the crewman s 9(2)(a) Once again we have very similar circumstances to the crewmen of the s 9(2)(b)(ii) and s 9(2)(b)(ii) . s 9(2)(a) had no previous experience on a vessel prior to starting with s 9(2)(a) just prior to the camera monitoring in November 2012. He had received no formal training on compliance and was reliant totally on the unlawful instructions of s 9(2)(a) on what to do with the quota fish. Whilst there is no doubt that s 9(2)(a) has offended against the Fisheries Act 1996 a decision to prosecute would certainly fail the public interest test and I believe that a warning in this instance would be the most appropriate penalty.

5.37 There is one matter that I believe may possibly be an issue that could be raised by the defense in the future and involves the subject of consent in regards to the placement of the cameras particularly in the case of the s 9(2)(b)(ii)

5.38 The issue is that while I believe the Ministry has acted correctly in obtaining voluntary consent from the fishers via the LFR's to have cameras paced upon the vessels the issue that concerns me is whether there has been true voluntary consent given. The actions of s 9(2)(a) by not turning his cameras on and almost openly expressing his dislike of the whole scheme clearly indicate that if s 9(2)(a) had a choice he would not have the cameras installed on his vessel in the first instance.

6 s 9(2)(b)(ii)

6.1 The s 9(2)(b)(ii) is an s 9(2)(b)(ii) meter fishing vessel built in s 9(2)(b)(ii) and owned by s 9(2)(a) s 9(2)(a) from s 9(2)(b)(ii) and skippered by s 9(2)(a) . s 9(2)(a) is also the permit holder for the vessel. The vessel fishes into s 9(2)(b)(ii) in Timaru.

6.2 The s 9(2)(b)(ii) made 21 set netting trips between 27 October 2012 and 11 January before commencing trawling from 25 January 2013. The EM cameras were installed on 31 October 2012 with the first footage recorded on 8 November 2012.

6.3 The cameras were removed on 24 January 2013 this was on the insistence of the owner s 9(2)(a) following MPI Observer Placement Notices.

6.4 The three reviewed hauls occurred on 5,6 and 19 December 2012. Two other incidents were observed outside the this time frame which included two unreported salmon on 15 November 2012, and a full bin of GUR not landed or recorded on 11 January 2013.

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6.5 Unlike the previous three vessels the s 9(2)(b)(ii) did not discard any large whole ELE instead the discarded ELE's were restricted to damaged fish. It was originally thought that small ELE were being discarded. This conclusion was originally drawn due to a number of factors. The camera placement on the deck of the s 9(2)(b)(ii) was such that there was no clear view of the forward area of the deck where much of the actual processing/binning of the fish took place. While s 9(2)(a) clearly discarded damaged fish over the side of the vessel small ELE were thrown forward of the vessel out of view of the camera. A presumption was made that these fish were then discarded out of view of the camera at a later time. This presumption was based on the premise that the discarding of small ELE was a matter of course for the other four monitored vessels and that this therefore was no exception and there were no small ELE recorded in the invoices obtained from s 9(2)(b)(ii) for the specific hauls in question.

6.6 During interview s 9(2)(a) stated that he did not discard the small ELE instead as he caught only small numbers then he would place them in with the bins of large ELE in the hope that they would not notice them.[53] He further added that as he was paid on the number of ELE that he caught and was not the owner of the vessel then he had no incentive to discard them.

6.7 I found the explanation given by s 9(2)(a) to be very plausible and as a result calculations for the discarded ELE were adjusted accordingly to show only discards for damaged ELE. Of note that there were very few small ELE caught in the first instance so the impact of the adjusted figures was minimal.

6.8 As a result the discard figures for ELE for the s 9(2)(b)(ii) were 13.7%, 6.8% and 3.8% giving a total of 8.4% total discard by number.

INTERVIEWS

s 9(2)(a)

6.9 s 9(2)(a) was interviewed in Christchurch on 24 October 2013, he declined to have a solicitor and freely answered all questions put to him.

6.10 s 9(2)(a) is currently employed as a Labourer at s 9(2)(a) Prior to this he was employed as the skipper on the fishing vessel s 9(2)(b)(ii) during the period that the vessel was involved in the electronic monitoring program.

6.11 He was employed at this time by s 9(2)(a) who is the permit holder of the vessel.

6.12 s 9(2)(a) is a qualified skipper and has been involved in the fishing industry for s 9(2) years fishing mainly the East Coast of the South Island trawling and set netting.

6.13 After viewing the videos s 9(2)(a) enquired about the salmon that were seen being landed. The regulations[54] were then explained to him. s 9(2)(a) acknowledged he was not aware of the requirements regarding the salmon and further stated that the salmon that were caught were subsequently kept and eaten[55].

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[53] s 9(2)(a) statement page 9 paragraph 19 to page 10 paragraph 6
[54] Section 43 Fisheries (Commercial Fishing) Regulations 2001
[55] s 9(2)(a) statement page 8 paragraph 6 to page 9 paragraph 6

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6.14 In regards to the RSK that were discarded in the first haul s 9(2)(a) stated that they normally kept RSK (hauls two and three RSK processed and recorded) however on this occasion he stated that if they were discarded it would probably be because they would have been damaged or liced out. He further acknowledged that he did not know that he could discard them under schedule 6.[56]

6.15 s 9(2)(a) was asked about the GUR that were seen to be placed into a white plastic bucket during the 1st haul on 5 December 2012. He admitted that the GUR would have been taken home as a 'feed' and not recorded.

s 9(2)(a) *OK. Now what happened to the bins you had gurnard in a the bins and then you took some out and put them in a bucket. Where were they destined for?*
s 9(2)(a) *I think it was a feed to take home mhmm.*

s 9(2)(a) *Do you know what you should have done with the?*
s 9(2)(a) *I'm guessing we should have reported it, or recorded it.*

s 9(2)(a) *Yeah.*
s 9(2)(a) *Is this in the Schedule 6 or is this?*

s 9(2)(a) *No, no, if you're taking anything like that home you've really got to put it down as an an eat.*
s 9(2) *OK oh right. See a lot of this stuff we haven't had explained to us much, I know it's probably our own fault, but in some cases we haven't been advised, mhmm.*[57]

6.16 When asked about the taking home of fish for a 'feed' s 9(2)(a) stated that it was common practice and did not think the permit holder s 9(2)(a) would have minded and that he had not told s 9(2)(a) of this practice or received instructions from him.[58]

6.17 The taking fish home for a 'feed' is the same reason given for the bin of GUR that was seen not be unloaded on 11 January 2013. On this occasion s 9(2)(a) stated that he probably split the fish up with s 9(2)(a) who was crewing with him on this occasion.[59]

6.18 s 9(2)(a) was not aware of his reporting obligations regarding the CAR that were discarded[60] or SPD.[61]

6.19 The ELE that s 9(2)(a) discarded were all damaged. When asked for an explanation s 9(2)(a) stated that he was unaware that they had to be kept or reported and that he had always discarded them. He further stated that he had never received instructions on not too discard them.[62]

s 9(2)(a) *OK. Just go, for the first haul we looked at, there were 153 elephants caught. We saw three damaged ones and then discarded. Now again, technically, they have to be landed, as far as the regulations are concerned, landed.*
s 9(2)(a) *Can I just say, we have never landed them.*

s 9(2)(a) *Yep.*
s 9(2)(a) *In my s 9(odd years of fishing.*

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56 s 9(2)(a) statement page 10 paragraph 25 to page 12 paragraph 18
57 statement page 13 paragraph 25 to page 14 paragraph 6
58 statement page 19 paragraphs 3 to 19
59 statement page 22 paragraphs 1 to 16
60 statement page 14 paragraphs 7 to 24
61 statement page 16 paragraph 19 to page 17 paragraph 12
62 statement page 9 paragraphs 7 to 14, page 15 paras 1 to 10, page 25 paras 1 to 16, page 27 para 14 & 15,

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s 9(2)(a) *Yep.*
s 9(2)(a) *And they have never been recorded.*

s 9(2)(a) *Yep.*
s 9(2) *Prior to the quota system and after the quota system, they've never been recorded.*

6.20 When asked about compliance training or receiving instructions from the permit holder s 9(2)(a) explained that he had not received any training[63] apart from being shown by s 9(2)(a) how to operate the vessel.[64]

6.21 When asked about discussions or knowledge of ACE availability and package s 9(2)(a) said that he had a 'fair idea' of what was available and that if he was getting close to reaching the limit he would generally receive instructions from s 9(2)(a) to 'chase' the rig but don't catch too many ELE[65].

6.22 No issues were raised by s 9(2)(a) in regards to the cameras being placed on board being there only to look at dolphins. When asked why he had discarded fish when the cameras were on board he replied that he was not trying to hide anything and wanted the cameras to see what was going on.

s 9(2) *Is that was one of the questions, if you knew why if you knew the cameras were on there, you knew what the footage was.*
s 9(2) *Well we weren't hiding the fact.*

s 9(2) *No.*
s 9(2) *Mmm so I wanted the camera to see what it should have seen.*

s 9(2) *Yeah.*
s 9(2) *Like I wasn't trying to.*

s 9(2)(a) *No.*
s 9(2)(a) *Be willy nilly with the with the camera I was wanting a true reading of what the camera was doing,*

s 9(2)(a) *Yeah.*
s 9(2)(a) *So people can see exactly what they should see.*

s 9(2)(a)

6.23 s 9(2)(a) was interviewed at Timaru on 30 October 2013, he declined to have a solicitor and freely answered all questions that were put to him.

6.24 s 9(2)(a) years is the sole director of s 9(2)(b)(ii) the permit holder for the s 9(2)(b)(ii) and the s 9(2)(b)(ii) . Both vessels are owned by s 9(2)(a) with the s 9(2)(b)(ii) having been owned by him for over s 9(2)(a) . s 9(2)(a) is the current skipper of the s 9(2)(b)(ii) based out of s 9(2)(b)(ii) and fishes solely to s 9(2)(b)(ii) .

6.25 s 9(2)(a) described s 9(2)(a) as a part time fisherman whom he employed to skipper the s 9(2)(b)(ii) over the past three years.

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63 s 9(2)(a) statement page 23 paragraphs 12 to 15
64 s 9(2)(a) statement page 26 paragraphs 19 to 24
65 s 9(2)(a) statement page 25 paragraph 17 to page 26 paragraph 18

6.26 s 9(2)(a) described his knowledge of fishery law as average and had not undertaken any formal courses on compliance but did have his skipper's ticket. He stated that he had learnt most of his fisheries knowledge from other skipper s that he worked with.[66]

6.27 When s 9(2)(a) was asked about what he understood what should happen to damaged fish he replied that he had been told to discard them and he was unaware that they had to be retained and recorded. He further said he had been doing this for over 10 years and had been instructed to by s 9(2)(a) the quota manager from s 9(2)(b)(ii) [67].

s 9(2) *Now what's your understanding of what should happen with the damaged ones?*
Traditionally we've always been told, I've been told this every year for the last 10 years I've been fishing doing set netting we discard the damaged fish, that's what we've done for years.

s 9(2) *Now who told you that?*
s 9(2)(a) *from* s 9(2)(b)(ii) *and he asks us every year he says do what you traditionally do that's what you do yeah.*

6.28 s 9(2)(a) was not aware of the regulations in regards to RSK and schedule 6 but did have some understanding of being allowed to discard SPO and SCH if they were alive.[68]

6.29 s 9(2)(a) stated that s 9(2)(a) was paid a percentage of catch so it was in his own interest to land as many fish as possible.[69]

6.30 When queried about GUR that was landed and not recorded s 9(2)(a) replied that he would have expected s 9(2)(a) to land all his GUR as he had plenty of quota for GUR.[70]

6.31 s 9(2)(a) stated that he was unaware of the regulations regarding the landing of Salmon.[71]

6.32 In relation to CAR and by catch in general s 9(2)(a) was unaware of the obligations to record them on the NCELR.[72]

6.33 In regards to the GUR that s 9(2)(a) was seen not to land on 11 January, s 9(2)(a) said that s 9(2)(a) was required to land all fish and that there were no instructions for allowing fish to be taken home for a 'feed'.[73]

6.34 s 9(2)(b)(ii) SUMMARY

6.35 Unlike the other vessels that were involved in this matter the s 9(2)(b)(ii) was not involved in the discarding of substantial quantities of whole ELE. The ELE that were seen discarded were damaged and lice eaten. This raises the complex issue of damaged fish discards which will be discussed later in this report and

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66 s 9(2)(a) statement page 5 paragraphs 10 to 15
67 statement page 9 paragraphs 5 to 15
68 statement page 10 paragraphs 18 to 25 and page 11
69 statement page 12 paragraphs 5 to 12
70 statement page 13 paragraphs 1 to 20
71 statement page 14 paragraphs 4 to page 15 paragraph 8
72 statement page 15 paragraphs 21 to page 16 paragraphs 10
73 statement page 16 paragraphs 13 to page 17 paragraph 7

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what we should do about them as clearly it is an endemic practice that has been ignored on our part for some time.

6.36 The other offending seen by the cameras on board the s 9(2)(b)(ii) were of a minor scale when compared to the other vessels. It would appear that s 9(2)(a) did not have the same ELE quota problems as some of the other vessels and therefore this pressure was not passed onto to his skipper s 9(2)(a)', who as a 'percentage' paid skipper had a financial incentive to land as many as fish as he could.

6.37 There were however a number of more minor regulatory offences that was observed, the most serious of which was probably the non-reporting of the small quantity of GUR on 11 January 2013 which were deliberately concealed at the point of landing. This itself would appear to be reasonably minor in that this offending was apparently committed not for commercial gain as the fish were allegedly taken home for private consumption. The small quantities involved in this and other incidents would make this scenario more likely as opposed to the fish being sold for any commercial gain. On the other hand although the amounts were small they were deliberate, whilst s 9(2)(a) stated that he was merely taking them home for a feed his actions in crossing out GUR in the NCELR (4046633) showed that he was well aware of his responsibilities in reporting this fish.

6.38 The other offences that were noted related to the discarding/non reporting of the small quantities of FLA and the other GUR that was seen. Again there is no suggestion that these actions were done for any commercial gain and would appear they were committed with the intention of taking home a "feed".

6.39 There is also the issue in regards to the salmon; again I have no reason to doubt s 9(2)(a) in that they were likely taken home and eaten and that there is no evidence to suggest that they may have sold for commercial gain. Whilst it is also likely that the reason given by s 9(2)(a) that he was unaware of his obligations as per s43 of the Fisheries (Commercial Fishing) Regulations 2001 is probably correct never the less this still does not offer any relief as to his liability.

6.40 The last of the offending refers to the incorrect or non-reporting of the SPD and CAR. Again the excuse given is one of ignorance of the regulations regarding his reporting obligations. As above the same issues arise as to there being no commercial or financial reason for doing so other than the reasons put forward by s 9(2)(a) that he was unaware, despite his many years in the fishing industry of the correct reporting procedures. This as previously discussed does not preclude him from liability in fact it could be argued that it makes it worse as these fundamental requirements should be known by commercial fishers of his experience.

6.41 In relation to the skipper s 9(2)(a)', whilst I believe the threshold in regards to meeting the evidential sufficency of the prosecution guidelines are clearly met the criteria regarding the public interest are not so clear.

6.42 Whilst there are a number of reasons that can be put forward 'not to prosecute' on this occasion including.

i No relevant previous convictions. (3 x infringements 2 x warnings)
ii Cooperation given/full and frank interview.
Iii Likelihood of reoffending

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6.43 I believe that the reasons to prosecute outweigh these. The main reason being the number and prevalence of the offences committed and the need for a deterrence. Whilst it is likely that a number of offences were committed due to ignorance of the law there were many that were not. In any event the ignorance of the law almost makes these matters worse as s 9(2)(a) with all of his experience should have known or been aware of them.

6.44 There is also the matter of how it would look if we were not to prosecute s 9(2)(a) but went ahead and prosecuted others in this matter albeit that their offending, in regards to the substantial ELE dumping, is more serious.

6.45 In regards to the liability of s 9(2)(a) as the permit holder in these matters. Whilst it could be argued that in relation to the GUR that was 'hidden' and taken home without his knowledge that he may have some defense[74] in regards to these however in relation to the other reporting offences this defense is not open to him when it comes to the other misreporting offences. It would be hard to offer a defense of taking reasonable precautions and offering due diligence[75] when s 9(2)(a) was completely ignorant of the regulations that he should have had very good knowledge of.

6.46 Because the offending is less serious than the other vessels involved consideration could be given to alternative charges. I think it may be prudent given all the circumstances surrounding this that we could consider charging under the regulations and not the act.

7 s 9(2)(b)(ii)

7.1 The s 9(2)(b)(ii) is s 9(2)(b)(ii) meter fishing vessel built in s 9(2)(b)(ii) and owned by s 9(2)(a) who is also the permit holder for the vessel. The vessel fishes out of s 9(2)(b)(ii) into s 9(2)(b)(ii) in Timaru and is skippered by s 9(2)(a).

7.2 The vessel made 38 set net trips between 17 October 2012 and 30 May 2013. The three selected hauls that were reviewed occurred on 7, 8 and 29 January 2013.

7.3 Similar offending was noted by the s 9(2)(b)(ii) with substantial quantities of ELE being discarded/non reported (29% 29% & 44.5%) as well as small quantities of other by catch. The vessel also did not report discards of SPD and CAR.

INTERVIEWS

s 9(2)(a)

7.4 s 9(2)(a) was interviewed at the Dunedin MPI (fishery) office on 15 November 2013 in the presence of his solicitor s 9(2)(a).

7.5 As with the other fishermen interviewed, s 9(2)(a) allowed s 9(2)(a) the opportunity to offer an explanation as to the activities viewed aboard the vessel. s 9(2)(a) gave a full and frank interview and only invoked his right not to

[74] S 241(1)(a)(i) Fisheries Act 1996 Defences under.the Act
[75] S 241(1)(a)(ii) Fisheries Act 1996 Defences under the Act

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answer any questions under section 216 on one occasion.[76] s 9(2)(a) was shown the video footage in the presence of s 9(2)(a) immediately prior to the interview starting.

7.6 s 9(2)(a) is s 9(2) years old and has been the skipper on board the s 9(2)(b)(ii) for s 9(years. The vessel predominately set-nets, or pots for CRA and BCO. The vessel is owned by s 9(2)(a) . s 9(2)(a) has been fishing full time since he was s 9(2).

7.7 s 9(2)(a) was asked early in the interview why he discarded the ELE[77] he replied:

" mainly the quota issue with the Elephant Fish um and a lot of those fish we threw back most of them were alive."

7.8 When asked further about the quota s 9(2)(a) explained that he was aware that near the end of January they were running low on quota for ELE.[78]

No. All I remember was s 9(2)(b)(ii) *were telling us to ease up on them.*

7.9 s 9(2)(a) was asked whether he would receive any instructions from s 9(2)(a) regarding discarding ELE because of the lack of ACE, s 9(2)(a) replied that he would be told by s 9(2)(a) that they were running low and had to stop landing them.[79]

7.10 When s 9(2)(a) is asked for an explanation as to the discarding damaged ELE he stated that he never landed them and that they are thrown back into the sea and that he was unaware that they should be recorded.[80]

7.11 In regards to the discarding of GUR, s 9(2)(a) invoked his right not to answer this question. [81] This was a little odd as he candidly answered all other questions and I cannot think of any reason why he chose not to answer this one.

7.12 In regards to the discard of SPD, s 9(2)(a) explained that at the time he was unaware of the schedule 6 provisions and that he had always discarded SPD and not reported them and was not aware of the correct landing code (M) for them.[82]

7.13 s 9(2)(a) was asked about the ELE that he was seen to fillet on 7 January and whether it was taken home for a 'feed'. s 9(2)(a) replied "yeah". [83]

7.14 He further stated that 3 flounder that were seen landed but not reported were probably given to either his crewman s 9(2)(a) or a friend that he had bought along with him for the day.[84]

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76 s 9(2)(a) statement: page 9 paragraph 7 & 8
77 statement: page 3 paragraphs 8 & 9
78 statement: page 6 paragraph 9
79 statement: page 8 paragraphs 1 to 10
80 statement: page 8 paragraph 10 to 20
81 statement: page 9 paragraph 7 & 8, page 24 paragraph 1
82 statement: page 9 paragraph 10 to page 10 paragraph 23
83 statement: page 16 paragraph 16, page 17 paragraph 4
84 statement: page 20 paragraph 5 to 8

7.15 s 9(2)(a) was then asked about the fish (GUR, BCO and ELE) that he was seen filleting on 8 January 2013 when no fish were reported in the NCELR landed in the fillet state.[85] He explained that in relation to the damaged fish that were filleted then he thought that this would be ok as they were destined for discard.

7.16 Probably the most telling comment that is made by s 9(2)(a) came after he refered to the cameras being put on the boats and being told that 'they' knew about the discarding and it would not be looked at.[86]

s 9(2) *Like um, we had the, when they first started on about these cameras,* s 9(2)(b)(ii) *rung up and said, you know, we want you'se to have these cameras on your boat. Blah blah blah. That's alright, we said, but ... And they said to us straight out there is, everyone, they know what's happening with little Dogfish, Sand Sharks, little Elephant Fish or someone's out of quota. We know that stuff's getting thrown away and we're not interested in that. We are only ...*

s 9(2) *So now who said that?*

s 9(2)(a) *The guy who put the cameras on and his boss who I talk to on the phone quite a bit. Now I can't tell you any names unfortunately but I could probably go through my book and find them on the boat.*

s 9(2) *So you're saying that the chap that told you that they weren't going to look at all the ...*

s 9(2) *They're not, not there to look at all that other stuff. They're only interested in dolphin catch and, you know, mammal catch, birds and dolphins. And then, look really we did this to help them out.*

7.17 s 9(2)(a) then made the comment:[87]

I mean if I thought this was going to be happening, I mean everything would have been put down in that book.

7.18 s 9(2)(a)

7.19 s 9(2)(a) was interviewed on 6 November 2013 at his home address in s 9(2)(a). He declined to have a lawyer present and gave a full and frank interview that was recorded on DVD.

7.20 Immediately prior to the interview s 9(2)(a) was shown the video footage of the fish discards.

7.21 s 9(2)(a) is a s 9(2) year old fisherman, fishing out of s 9(2)(a). He is the owner and permit holder of 3 vessels, the s 9(2)(b)(ii) and s 9(2)(b)(ii) and has been fishing for s 9(2)(a) years.

7.22 At the first opportunity s 9(2)(a) referred to the issue of the cameras being put on the vessel for the sole[88] purpose of monitoring mammals and that he was 'told' that that is all they were going to look at and that they were too *"just carry on as usual"*. However when asked whether they were given any dispensation to discard fish s 9(2)(a) replied that they were not and again repeated the above line *"just carry on as usual"*.

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85 s 9(2)(a) statement: page 20 paragraph 14
86 statement: page 27 paragraph 18
87 statement: page 29 paragraph 1
88 s 9(2)(a) page 3 paragraph 15 to page 4 paragraph 18

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7.23 s 9(2)(a) is asked to comment on the ELE that were discarded on the video in reference to his understanding of the regulations etc. In summing up his answers s 9(2)(a) basically states that although he knows that the fish should be taken he admits to discarding anything small of damaged or if they are still alive and that it is an accepted and widespread practice and that he could see nothing wrong in what he/they were doing.[89]

7.24 In reference to the damaged fish s 9(2)(a) makes a comment that is very telling and a sad indictment of the entire situation especially as we are talking about someone who has been fishing since the quota system has been in existence.[90]

s 9(2)(a) *So you're saying you throw the damaged fish?*
s 9(2) *The damaged ones back yeah.*

s 9(2)(a) *Now do you not what you're meant to do with those, I know no-one does it but do you know what?*
s 9(2)(a) *Wouldn't have a clue, put them back to the sea.*

s 9(2)(a) *You don't record them anywhere?*
s 9(2)(a) *No no. It would be a real muck up if everyone was recording all these tonnes of stuff wouldn't it?*

7.25 He later added[91]:

s 9(2) *And basically your elephants pretty much you've always thrown just the damaged ones back?*
s 9(2)(a) *Yeah the tiddlers and what-not.*

s 9(2) *Always thrown the small ones back?*
s 9(2)(a) *Yeah.*

7.26 s 9(2)(a) owns 8 tonnes of ELE3 ACE. For the 2012/13 fishing year they over caught approximately 3.5 tonne and paid a deemed value of approximately $4000. This is discussed with s 9(2)(a) on page 7 of the interview. This matter is again raised when s 9(2)(a) is asked about their ACE package for ELE. s 9(2)(a) states that he relies on s 9(2)(b)(ii) to top up his quota via the fishing operations manager s 9(2)(a). However this top up is not guaranteed and not given in advance so during the latter part of the season they are fishing in the hope that the ACE will be covered knowing at that moment they are over caught.[92].

s 9(2)(a) *So when did you know it was all caught?*
s 9(2) *We wouldn't of knew just kept fishing.*

s 9(2)(a) *So basically when you're out there fishing you don't really know if you've got quota to cover it?*
s 9(2) *No, no, no.*

7.27 He further added[93]:

s 9(2) *So if you get told, like* s 9(2)(a) *rings you up and says look there's no more elephant ACE.*
s 9(2) *That's right.*

s 9(2)(a) *What would you?*
s 9(2)(a) *We still keep putting them in.*

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89 s 9(2)(a) page 9 paragraph 5 to page 10 paragraph 14
90 page 10 paragraphs 7 to 12
91 page 35 paragraphs 22 to 23
92 page 14 paragraph 17 to page 15 paragraph 21
93 page 35 paragraph 3

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s 9(2)(a) *You still keep putting them in?*
s 9(2)(a) *Yeah because the thing is as he said somebody else might blow out before the end of the year.*

7.28 Later in the interview s 9(2)(a) states that he was aware that he would be paying a deemed value for the current years fishing for ELE and that if he was allowed to throw ELE's away he would but if he had the quota then he would keep them.[94]

7.29 s 9(2)(a) was not aware of the schedule 6 requirements for SPD or RSK and while he stated that he knew the SPD should have been reported it was not something that they did.[95]

7.30 He was also not aware of his requirements to report CAR or other by catch.[96]

s 9(2)(a) *So when we talk about things like carpet shark you've never never recorded carpet shark, never realised you had to?*
s 9(2)(a) *No never never.*

s 9(2)(a) *Or your by-catch?*
s 9(2)(a) *No, no, no we've just we've taken them out for years.*

7.31 In regards to s 9(2)(a), s 9(2)(a) states that he had not given any instruction to him in regards to how to complete NCELR's. He further added that he had never given s 9(2)(a) any formal training or received any himself.[97]

7.32 s 9(2)(b)(ii) SUMMARY

7.33 The offending displayed by the s 9(2)(b)(ii) is similar to the offending of the s 9(2)(b)(ii) s 9(2)(b)(ii) and s 9(2)(b)(ii) in that there were substantial quantities of ELE discarding as well as non reporting/discarding of other quota and non quota species.

7.34 As with the other vessels the skipper and permit holder readily admitted the offending with similar explanations given.

7.35 Similarly the same issues arise when it comes to the decision on possible charges as there is little or no difference when it comes to assessing the evidential sufficiency of the offences or to the public interest test in the decision to prosecute.

7.36 Neither is there little difference in deciding on the appropriate charges as again there is an extremely similar feel to the offences committed. On this occasion I would follow a similar charging regime as that of the s 9(2)(b)(ii) in that I would recommend for the skipper s 9(2)(a), section 72 and party to[98] section 230(1)(b) charges for each of the monitored trips and representative charges for the period that the cameras were installed between 17 October 2012 and 30 May 2013.

7.37 Consideration could also be given to having the above charges jointly laid with the permit holder s 9(2)(a) as I believe that the evidence shows that he is duly

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94 s 9(2)(a) page 37 paragraphs 1 to 18
95 page 19 paragraph 21 to page 20 paragraph 20, page 25 paragraphs 7 to 12
96 page 35 paragraphs 19 to 23
97 page 30 paragraphs 5 to 11
98 Parties to offences section 66(1)(b)&(2) Crimes Act 1961 as 230(1)(b) of the Fisheries Act 1996 is a 'permit holder' offence.

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complicit and that any defenses open to him in regards to section 241(1)(a)(i)&(ii) Fisheries Act 1996 do not apply . I base this on the similar reasoning given regarding s 9(2)(a) in that s 9(2)(a) 's complete ignorance of the regulations or lack of any due diligence given. s 9(2)(a) is further culpable I believe as there was knowledge of the lack of quota available and encouragement by way of keeping s 9(2)(a) informed of the

8 SUMMARY

8.1 Despite the overwhelming physical/video evidence and subsequent admissions of offending from the parties concerned there are still a number of factors that make this entire matter quite complex.

8.2 One of the issues that will need to be addressed is the discarding of badly damaged fish. The issue here is that whilst it clearly is an offence to discard the fish it would appear that the 'Ministry' has not been as diligent at it could have been over the years in policing this matter. It would appear from the enquiries that I have made with fishery officers etc that this is a known problem that we have turned a 'blind eye' too. The main reason would appear that it is a complex issue that is hard to police and to administer and therefore it has simply been put into the 'too hard basket'.

8.3 This is unfortunate as our actions in not addressing this matter over the years could give the impression that we tacitly condone the illegal behaviour. If we do decide to prosecute for these offences then we must be prepared for some criticism. In any event this problem does need to be addressed with some urgency at the fishery management level.

8.4 The second problem that also needs to be looked at is the issue regarding previously allowing fishermen to illegally discard fish in order to allow fishery officer placement on the vessels. This issue has been raised by s 9(2)(a) s 9(2)(a) after he would appear to have come into the possession of the leaked preliminary report that referred to this issue. Whilst I don't believe that this in itself is a matter of great concern it could have the potential for causing some problems further down the line especially if it is combined with the third issue that needs to be raised which concerns whether the fishermen were given any assurances/promises that the video footage was not going to be used to monitor 'dumping' and more importantly that we would ignore any discarding seen thereby giving them immunity for their actions.

8.5 From the initial enquiries that I have made it is my understanding that the fishermen were told that the cameras were installed on the vessels for the sole purpose of monitoring mammal and bird by catch. No doubt the vessels would not have voluntarily complied if they believed otherwise. Even the briefing instructions given to the observers confirmed this. Although the rationale here would appear to be that they only had to concentrate on the bi-catch and that discarding could be ignored as it would all be captured on film if it were to become an issue.

8.6 In my dealings with the MPI staff who had direct dealing with the fishers s 9(2)(a) s 9(2)(a) , s 9(2)(a) and s 9(2)(a) I have received assurances that whilst fishers were indeed told that the sole purpose of the cameras were for the bi-catch monitoring and that there may have been some references or mention of

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not looking for discarding no fishers were told that they would be given any immunity if discarding was witnessed or recorded.

8.7 At this time no formal statements have been taken from these three in regards to the assurances given by them however I envisage that this will probably need to be done at some stage in the future if this matter were to proceed further.

8.8 It would appear that some of the fishers may have been under the impression that they had some sort of immunity s 9(2)(a) while others were clearly aware that this was not the case, i.e. s 9(2)(a).

8.9 This matter was deliberately not raised at length at interview as I did not want to present an opportunity for the fishers to unfairly exploit; instead I tackled the problem by asking the open question of getting them to explain why they offended when they knew the cameras were on them thereby allowing for a more accurate explanation.

8.10 Whilst the responses were mixed it would appear that whist some of them were under the impression that they may have thought we would not be looking at discards none of them directly stated that they thought they would be immune from prosecution.

8.11 Another avenue that could be looked at and what may have influenced some of the fishers is the role that s 9(2)(b)(ii) and s 9(2)(b)(ii) had in getting the fishers to accept the cameras on the vessels. This has yet to be explored but I have no doubt that without their assistance the fishers would not have agreed.

8.12 This also raised the other matter regarding consent. As previously mentioned I do have some concerns regarding the consent issue as to the fishers allowing the cameras on their vessels in the first instance. My concerns may well be ill founded but I am uncomfortable with the fact that it is very clear that in regards to the s 9(2)(b)(ii), s 9(2)(a)'s actions showed that he did not want the cameras on his vessel and that the only reason that they were on there was the pressure/influence that s 9(2)(b)(ii) bought to bear.

8.13 I do not think that the Ministry has deliberately erred in this matter but I do think that when we seek 'consent' then we should get that consent directly from the party concerned and not through another a 3rd party that is not in a position to give that consent in the first instance. In any regard this is a matter for the legal people to ponder. If this was to be examined further then more in depth enquiries will need to be made.

8.14 This file is now presented for initial legal review. Once this has been completed a decision will need to be made as to the final outcome. I have no doubt that there are further enquiries that may need to be made to satisfy some of the issues that I have raised.

s 9(2)(a)
Investigator

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APPENDIX A VESSEL SUMMARY s 9(2)(b)(ii)

The EM was installed on the s 9(2)(b)(ii) on 22 November 2012 and was monitored over 24 set net hauls between 7 November 2012 and 7 February 2013.

The following are the findings for the 3 reviewed trips for the s 9(2)(b)(ii) on 6 December 2012, 11 December 2012 and 16 January 2013.

Review Trip #1 6 December 2012

Of the 69 ELE landed on board 22 (31.8%) were discarded. This included all small and damaged ELE. It was noted in other trips that this vessel also discarded large intact ELE if there were not many caught during that haul.

All RSK were discarded and not reported in the catch effort return.

Four of the 12 GUR caught were discarded (25%), only large fish were kept.

One large school shark was discarded [20:40:15] whilst small ones were kept. The large school shark did not appear to be alive and was discarded 1 min after being landed. [20:39:03]

One flounder was kept but not reported in the catch effort.

s 9(2)(b)(ii) **: Catch Assessment (1) for EM Set-Net Haul 06Dec2012:**

Haul Occurred: UTC 5Dec2012 20:27:23 to 22:44:08 – Duration 2 hrs 16 minutes:
Haul Landed: NZ 6Dec2012 NCELR Sheet: 4039894 Dated: 6Dec2012

Species Code	Name	ITQ	# of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	47	GUT	6 x 30kg bins
ELE	Elephant fish – damaged e.g. head only, head and spine only	Y	13	DIS	
ELE	Elephant fish – whole, small	Y	9	DIS	
GUR	Gurnard – large	Y	12	GRE	1 x 5kg bin
GUR	Gurnard – small (<30cms)	Y	4	DIS	
SCH	School Shark	Y	6	DRE	2 x 30kg bins
SCH	School Shark	Y	1	DIS	Not Reported

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SPO	Rig	Y	89	DRE	7 x 30kg bins
CAR	Carpet Shark	N	10	DIS	30kgs discarded (Reported)
SPD	Spiny Dogfish	Y	42	DIS	20kgs discarded (Reported)
FLA	Flatfish	Y	1	Unknown	Not Reported
RSK	Rough Skate	Y	3	DIS	Not Reported

ELE	Elephant fish	69	Total Caught
		22	DIS
		31.80%	DIS

GUR	Gurnard	16	Total Caught
		4	DIS
		25%	DIS

SCH	School Shark	7	Total Caught
		1	DIS
		14%	DIS

FLA	Flatfish	1	100% DIS/NR

Review Trip #2 11 December 2012

This trip also involved substantial dumping.

Of the 157 ELE caught 79 (50.3%) were discarded.

Half of the 24 GUR were discarded.

One RCO was discarded.

s 9(2)(b)(ii) **Catch Assessment (2) for EM Set-Net Haul 11Dec2012:**

Haul Occurred: UTC 10Dec2012 Start 20:20:30 End UTC 11Dec2012 00:16:20 – Duration 3.91 hrs
Haul Landed: NZ 11Dec2012 NCELR Sheet: 4039897 Dated: 11Dec2012

Species Code	Name	ITQ	# of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	78	GUT	8 x 30kg bins

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ELE	Elephant fish – damaged e.g. head only, head and spine, eaten-out	Y	26	DIS	
ELE	Elephant fish – whole, large	Y	25	DIS	
ELE	Elephant fish – whole, medium	Y	23	DIS	
ELE	Elephant fish – whole, small	Y	5	DIS	
GUR	Gurnard – large	Y	12	GRE	1 x 8kg bin
GUR	Gurnard – small (<30cms)	Y	12	DIS	
SCH & SPO	School Shark ÷ Rig	Y	181	DRE	12 x 30kg bins SPO 1 x 30kg bin SCH
RCO	Red Cod	Y	1	DIS	Not Reported
CAR	Carpet Shark	N	5	DIS	20kgs discarded (Reported)
SPD	Spiny Dogfish	Y	40	DIS	50kgs discarded (Reported)
RSK	Rough Skate	Y	2	DIS	Not Reported

ELE	Elephant fish	157 79 50.30%	Total Caught DIS DIS

GUR	Gurnard	24 12 50%	Total Caught DIS DIS

RCO	Red Cod	1	100% DIS/NR

OBSERVER/REVIEWER comments from this trip:

1. The skipper and deckhand used the starboard scupper to dispose of many of the unwanted ELE.

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2. The unwanted ELE were thrown or kicked up to the scupper: the fish were then periodically kicked out the scupper – to reduce the volume of fish being openly discarded over the gunwales.
3. This vessel openly high-graded Elephant fish and Gurnard
4. Many ELE were initially thrown into processing pound, but later discarded overboard – over Port gunwhale – by deckhand s 9(2)(a)
5. ELE tend to average about 3kgs per gutted fish, so 240kgs reported on NCELR equates to about 80 fish, which is commensurate with the count of ELE not discarded (78).
6. All SCH and SPO were retained, processed and landed, so were counted as a combined tally – to speed-up review (no need to check tail-notch or dorsal spots for separate ID).
7. NCELR Declared weights for SCH, SPO, GUR, CAR, SPD, ELE look reasonable – based upon size range of fish for each species.

Review Trip #3 16 January 2013

This trip also involves substantial dumping.

Of the 100 ELE caught 63 (57.2%) were discarded.

Three of the 5 GUR (60%) were discarded.

One KIN was discarded, it appeared to be of legal size and dead. It was not reported.

One FLA (flounder) was caught and not reported.

s 9(2)(b)(ii) **Catch Assessment (3): for EM Set-Net Haul 16Jan2013:**

Haul Occurred: UTC 15Jan2013 Start 21:03:47 End UTC 15Jan2013 23:29:58 – Duration 2.5 hrs:
Haul Landed: NZ 16Jan2013 NCELR Sheet: 4016002 Dated: 16Jan2013

Species Code	Name	ITQ	# of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	47	GUT	5 x 30kg bins
ELE	Elephant fish – damaged	Y	56	DIS	
ELE	Elephant fish – whole, large	Y	2	DIS	
ELE	Elephant fish – whole, medium	Y	3	DIS	
ELE	Elephant fish – whole, small	Y	2	DIS	
GUR	Gurnard – large	Y	2	GRE	Not Reported
GUR	Gurnard – small (<30cms)	Y	3	DIS	

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SCH	School Shark	Y	8	DRE	1 x 30kg bin SCH
SPO	Rig	Y	24	DRE	1 x 35kg bin SPO
KIN	Kingfish	Y	1	DIS	Not Reported
CAR	Carpet Shark	N	100	DIS	150 kgs discarded
SPD	Spiny Dogfish	Y	98	DIS	30 kgs discarded
RSK	Rough Skate	Y	7	DIS	Not Reported
FLA	Flatfish	Y	1	GRE	Not Reported

ELE	Elephant fish	110	Total Caught
		63	DIS
		57.27%	DIS

GUR	Gurnard	5	Total Caught
		3	DIS
		60%	DIS

KIN	Kingfish	1	100% DIS/NR
FLA	Flatfish	1	100% DIS/NR

OBSERVER/REVIEWER comments from this trip:

1. The skipper and deckhand threw fish (FLA, GUR, RSK, ELE) under net roller – to disguise later processing/discard of these fish
2. ELE and RSK were later discarded from deck and from under net roller
3. This vessel openly high-graded Elephant fish and Gurnard
4. Many damaged and whole ELE were initially retained on deck, but later discarded overboard – possibly to deter reviewer from tracking fish
5. ELE tend to average about 3kgs per gutted fish, so 150kgs reported on NCELR equates to about 50 fish, which is commensurate with the count of ELE not discarded (47).
6. 1 x FLA and 2 x GUR were later retrieved from under net roller by deckhand s 9(2)(a) *and thrown towards wheelhouse – forward of camera field-of-view: likely for EAT*
7. NCELR Declared weights for SPD and CAR discards look low: likely more like 150kgs SPD discarded and more like 200kgs of CAR – based upon fish size ranges.
8. The Kingfish discarded appeared to be dead and appeared to be as long as the deckhand's arm – about 70-80cms – so not Schedule 6 live release.
9. All RSK were discarded: all appeared to be dead, and one was kept on deck for over 2 hours before discard – hence not Schedule 6 live release.
10. Previous reviews of this vessel have shown FLA, GUR and RSK being filletted (likely for EAT) and not declared on NCELR.

GENERAL OBSERVER/REVIEWER FINDINGS

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The following are the general findings and comments from the reviewer.

1. This vessel discarded all small ELE, all damaged ELE, and large intact ELE if not many caught
2. This vessel discarded all RSK – dead or alive: RSK only processed WRS when Observer onboard, and once – when filleted – likely for EAT
3. This vessel high-graded Gurnard
4. This vessel discarded Large SCH – no sign of life: some large SCH processed
5. This vessel also discarded legal-sized RCO, KAH, KIN, MOK
6. This vessel processed FLA/FIL, RSK/FIL, HAP/HGU + de-scaled, GUR/FIL, MOK/GRE likely for EAT: not recorded as EAT in NCELR
7. This vessel finned Blue Shark (BWS) without recording species or fins in NCELR

NON REPORTED TRIPS

The s 9(2)(b)(ii) made 2 fishing trips that were not reported

The first non reported trip occurred on 26 November. A short haul was made of only one hour's duration where only a few quota fish were landed (haul #5). There was not NCELR completed for this haul. NCELR 403890 relates to a trip on 22 Nov whilst the next NCELR 403891 was for 27 November 2012.

The second non reported trip occurred on 28 January 2013 and relates to the NCELR #4016005. On this occassion3 hauls were made over the period 28 to 29 January but only two were entered in the NCELR.

It appeared that the first haul (#19 on 28 Jan) has been correctly reported. The species catch and UTC camera timings coincide with the NCELR.

The second haul (#20) also occurred on 28/29 Jan (net set at 0430 hrs 28 Jan hauled at 1040 hours 29 Jan). The catch mix in the video coincided with what is recorded in the NECLR for the next haul (29 Jan) however the date and set and haul times do not.

In the third haul (#21) the net was set at 0500 hours 29 Jan and hauled at 1120 hours 29 January. The timings and date match the NCELR however the catch mix in the video does not. The video show substantial quantities of MOK (many of which were discarded) and other species such as GUR which do not appear in this NCELR.

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APPENDIX B VESSEL DISCARDS SUMMARY: s 9(2)(b)(ii)

The s 9(2)(b)(ii) was monitored over 34 set net hauls between 7 November 2012 and 7 February 2013 with the cameras being installed on 30 October 2012.

The first of the 3 sample hauls for this vessel occurred 25 January 2013 with a haul time duration of 1 hour 53 minutes. Of note was the skipper deliberately turned off the cameras before the haul was completed with a number of ELE still visible in the net. It is not known why the cameras were turned off.

As well as the Net Catch Effort Landing Returns the s 9(2)(b)(ii) had also mistakenly furnished Catch Landing Returns for each trip as well over this period. This resulted in the 'doubling up' of data being entered into the system which caused a large discrepancy in the furnished returns.

It is not known why the skipper had done this but it would seem that he is unaware of his reporting obligations in this area. The information on both returns is the same except for the recording of 'FIN's' in the CLR which is not recorded in the corresponding NCELR.

At the time of reviewing these videos the Reviewer was only aware of the NCELR's and not aware of the CLR's that were submitted. This was not an issue for the 3 evidential hauls that were reviewed as no schedule 6 releases were recorded on these CLR's.

The following was noted for the haul corresponding to Net Catch Effort Return 4039894:

1. The vessel discarded 39.6% of all its ELE which included small and damaged ELE as well as some large. This vessel would appear to be high grading this species.

2. Of the four GUR caught, one was discarded while the other three were not recorded.
3. The vessel high graded rig (SPO).
4. All SPD were discarded and not recorded in the Catch Effort Return (schedule 6).
5. All EM video footage is displayed in Coordinated Universal Time (UTC[99]) time. To convert the time to NZST add 13 hours

s 9(2)(b)(ii) **Catch Assessment (1): for EM set-net haul NZ 25Jan2013:**

Haul Occurred: UTC 24Jan2013 17:45:56 to 19:38:31 – Duration 1 hrs 53 minutes (plus*):
Haul Landed: NZ 25Jan2013 NCELR Sheet: 4051110 Dated: 25Jan2013

Species Code	Name	ITQ	# of fish caught	Processing	NCELR

[99] The timings that are shown on the EM video screens are shown in Coordinated Universal Time (UTC), an International standard time, which has superseded Greenwich Mean Time (GMT). The UTC time is 13 hours behind New Zealand Daylight Saving Time (NZDST). For example, where the screen shows 3 December 2012 at 21:10:05 (UTC) it is in fact 4 December 2012 at 10:10:05 hours (NZDST).

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ELE	Elephant fish – large	Y	128	GUT	15 x 30kg bins
ELE	Elephant fish – thrown onto deck by rails – not into pounds: likely discard	Y	22	Likely DIS	
ELE	Elephant fish – damaged e.g. head only, head and spine only	Y	1	DIS	
ELE	Elephant fish – whole, intact, many smaller, some large	Y	61	DIS	
GUR	Gurnard	Y	3		Not reported
GUR	Gurnard (small <30cms)	Y	1	DIS	Not reported
SPO	Rig	Y	11	DRE	1 x 25kg bin
SPO	Rig (small)	Y	1	DIS	
CAR	Carpet Shark	N	7	Likely DIS	Not reported
SPD	Spiny Dogfish	Y	5	Likely DIS	Not reported

ELE	Elephant fish	212 84 39.62%	Total Caught DIS DIS

GUR	Gurnard	4 4 100.00%	Total Caught DIS/NR DIS

SPO	Rig	11 1 9.09%	Total Caught DIS DIS

The OBSERVER/REVIEWER made the following observations from this haul.

1. Vessel openly discarded damaged and whole ELE and retained only the largest, intact ELE: obvious high-grading
2. Vessel retained some GUR but openly discarded others: high grading: none reported in NCELR
3. Vessel retained an RSK but none was reported on NCELR: likely discarded

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after skipper switched off cameras: hence not Schedule 6 live release.
4. Vessel failed to report any SPD Schedule 6 discards – 27 fish: about 50-60kgs estimated: none recorded in NCELR.
5. Vessel retained 2 x FLA – likely LSO or NZ Sole: none recorded in NCELR: likely Discarded off-camera or Eaten.
6. Vessel landed two hauls on 8Feb2013, declaring 3 x 30kg bins of ELE/GUT for both hauls combined: I have estimated 60kgs (2 bins) of ELE/GUT came from this haul – commensurate with only 20 ELE/GUT landed.
7. The deckhand s 9(2)(a) *appears to discard many ELE over the Port Rail just forward of the Deck Camera Field-of-view: they are not thrown into the Port pound for gutting: I have concluded that these ELE were all discarded.*

EM Catch Assessment Haul #2 7 February 2013

The second monitored haul occurred on 7 February 2013. Again there was substantial discarding/non reporting.

s 9(2)(b)(ii) **: Catch Assessment (2): for EM set-net haul NZ 7Feb2013:**

Haul Occurred: UTC 6Feb2013 20:27:07 to 23:12:40 – Duration about 2.75 hours:
Haul Landed: NZ 8Feb2013 NCELR Sheet: 4051115 Dated: 8Feb2012

Species Code	Name	ITQ	# of fish caught	Processing	NCELI
ELE	Elephant fish – large	Y	15	GUT	60 kgs
ELE	Elephant fish – damaged	Y	11	DIS	
ELE	Elephant fish – whole, intact, small (Est<50cms)	Y	1	DIS	
HAP	Hapuka	Y	2		Not rep
GUR	Gurnard	Y	1		Not rep
GUR	Gurnard	Y	2	DIS	
SPO	Rig	Y	42	DRE	60 kgs
SPO	Rig	Y	3	DIS	
SCH	School Shark	Y	21	DRE	60 kgs
CAR	Carpet Shark	N	38	DIS	Not rep
SPD	Spiny Dogfish	Y	19	DIS	Not rep
FLA	Flatfish	Y	1	DIS	Not rep
RSK	Rough Skate	Y	2	DIS	

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RSK	Rough Skate	Y	1		Not rep
SEV	Sevengill Shark	N	2	DIS	Not rep

ELE	Elephant fish	27	Total Caught
		12	DIS
		44.44%	DIS

GUR	Gurnard	3	Total Caught
		3	DIS/NR
		100.00%	DIS

SPO	Rig	45	Total Caught
		3	DIS
		6.67%	DIS

FLA	Flatfish	1	100% DIS/NR
RSK	Rough Skate	3	100% DIS/NR
HAP	Hapuka	2	100% DIS/NR

The OBSERVER/REVIEWER made the following observations from this haul..

1. Vessel openly discarded damaged and whole ELE and retained only the largest, intact ELE: obvious high-grading
2. Vessel retained some GUR but openly discarded others: high grading: none reported in NCELR: all likely discarded
3. Vessel openly discarded 2 RSK, but retained one RSK: none were reported on NCELR: one RSK likely discarded off-camera later, hence not Schedule 6 live release.
4. Vessel failed to report any SPD Schedule 6 discards – 19 fish: about 30-40kgs estimated: none recorded in NCELR. [NOTE: also not recorded in CLR]
5. Vessel discarded 1 x FLA – likely LSO or NZ Sole: none recorded in NCELR: FLA retained on other haul (8Feb2013) thus likely Discarded off-camera – as opposed to EAT.
6. Vessel landed two hauls on 8Feb2013, declaring 3 x 30kg bins of ELE/GUT for both hauls combined: I have estimated 60kgs (2 bins) of ELE/GUT came from the other haul – commensurate with only 1 bin (10 ELE/GUT) landed from this haul.
7. Vessel landed 3 x 30kg bins of ELE/GUT, for both hauls combined: I have estimated 3kgs per ELE/GUT, which represents about 30 ELE fish landed – out of the 128 ELE fish caught on this trip (over 2 hauls).
8. Both crew threw fish to be processed into fish pounds. SPD and CAR are thrown onto a heap on deck for later discard. Many other fish (HAP, ELE, SPO) were also thrown onto this discard heap on deck – not into fish pounds.
9. The vessel high-grades SPO: most are retained but small, skinny and damaged SPO are discarded.
10. The vessel retained live sharks (SEV, CAR, SPD) on deck for considerable periods (over 30 minutes) before eventual discard: this is an unethical approach to these discard species.
11. The skipper deliberately switched the EM Cameras off prior to fish processing on deck after the haul: EM battery drain issues do not apply whilst

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the vessel is steaming and processing (plus likely discarding) fish.

EM Catch Assessment Haul #3 8 February 2013

The third monitored haul occurred on 8 February 2013. Again there was substantial discarding/non reporting with nearly 80% of ELE discarded during this trip.

s 9(2)(b)(ii) **: Catch Assessment (3): for EM set-net haul NZ 8Feb2013:**

Haul Occurred: UTC 7Feb2013 20:27:42 to 23:33:06 – Duration about 3 hours (plus*):
Haul Landed: NZ 8Feb2013 NCELR Sheet: 4051115 Dated: 8Feb2012 (Hauls correctly dated 2013)

Species Code	Name	ITQ	# of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	22	GUT	90 kgs Greenweight
ELE	Elephant fish – damaged	Y	23	DIS	
ELE	Elephant fish – whole, intact, small (Est<50cms)	Y	6	DIS	
ELE	Elephant fish – whole, intact, medium (Est 50-60cms)	Y	24	DIS	
ELE	Elephant fish – whole, intact, large (Est>60cms)	Y	26	DIS	
GUR	Gurnard	Y	3		Not reported
GUR	Gurnard	Y	2	DIS	
SPO	Rig	Y	18	DRE	30 Kgs Greenweight
SCH	School Shark	Y	35	DRE	90 kgs Greenweight
CAR	Carpet Shark	N	27	DIS	Not reported
SPD	Spiny Dogfish	Y	27	DIS	Not reported
FLA	Flatfish	Y	2		Not reported
RSK	Rough Skate	Y	1		Not reported

ELE	Elephant fish	101	Total Caught
		79	DIS
		78.22%	DIS

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GUR	Gurnard	5 2 40.00%	Total Caught DIS/NR DIS

FLA	Flatfish	2	100% DIS/NR

The OBSERVER/REVIEWER noted the following for this trip.

1. Vessel openly discarded damaged and whole ELE and retained only the largest, intact ELE: obvious high-grading
2. Vessel retained some GUR but openly discarded others: high grading: none reported in NCELR
3. Vessel retained an RSK but none was reported on NCELR: likely discarded after skipper switched off cameras: hence not Schedule 6 live release. [NOTE: also not recorded in CLR]
4. Vessel failed to report any SPD Schedule 6 discards – 27 fish: about 50-60kgs estimated: none recorded in NCELR. [NOTE: also not recorded in CLR]
5. Vessel retained 2 x FLA – likely LSO or NZ Sole: none recorded in NCELR: likely Discarded off-camera or Eaten.
6. Vessel landed two hauls on 8Feb2013, declaring 3 x 30kg bins of ELE/GUT for both hauls combined: I have estimated 60kgs (2 bins) of ELE/GUT came from this haul – commensurate with only 20 ELE/GUT landed.
7. The deckhand s 9(2)(a) *appears to discard many ELE over the Port Rail just forward of the Deck Camera Field-of-view: they are not thrown into the Port pound for gutting: I have concluded that these ELE were all discarded.*

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APPENDIX C VESSEL SUMMARY: s 9(2)(b)(ii)

The s 9(2)(b)(ii) was very reluctant to enter into the electronic monitoring survey. Even after the cameras were installed the vessel would not turn the cameras on. The trips that were captured for the survey were only made possible because there was a Ministry Fishery Observer on board. As a result only 2 hauls were able to be recorded.

The vessel made 13 set net trips between 22 November 2012 and 5 April 2013. Each trip was over multiple days with the vessel recording between 2 to 5 hauls per trip.

The vessel also long lined during this period where it targeted mainly LIN HPB and SCH.

The EM cameras were installed on 7 November 2012 but were not switched on until 14 January 2013. They were eventually removed from the vessel on 16 April 2013.

All EM video footage is displayed in Coordinated Universal Time (UTC[100]) time. To convert the time to NZST add 13 hours.

The following was noted for this haul Net Catch Effort Return number4046876:

1. Even in the presence of a Ministry Observer the vessel openly discarded large quantities of fish. The 315 ELE recorded as retained is most probably over reported as a number of fish that were thrown onto the starboard side of the vessel were counted as retained. This was because due to the camera angle the reviewer could not be certain they were discarded. However a review of this tape combined with the low kilogram weight of 600 kilograms of ELE recorded in the Catch Effort would strongly indicate that this number is high. An accepted figure of approximately 3 kilograms per ELE (GUT state) would put the expected return figure at approximately 900+ kilograms. Even when using the conservative figure a total of 35.58% of ELE were discarded.
2. The s 9(2)(b)(ii) did not record RSK or the 1 GUR that was landed.
3. 4 small rig (SPO) were discarded.
4. While SPD/FIN and CAR/FIN were reported the green weight was not reported for the SPD.

s 9(2)(b)(ii) **Catch Assessment (1) for a representative EM set-net haul:**

Haul Occurred: UTC 13Jan2013 21:52:21 to 14Jan2013 03:22:16 – Duration 5.5 hrs
Haul Landed: NZ 16Jan2013 NCELR Sheet: 4046876(5 hauls)Dated: 16Jan2013 : haul dated 14Jan2013

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100 100 The timings that are shown on the EM video screens are shown in Coordinated Universal Time (UTC), an International standard time, which has superseded Greenwich Mean Time (GMT). The UTC time is 13 hours behind New Zealand Daylight Saving Time (NZDST). For example, where the screen shows 3 December 2012 at 21:10:05 (UTC) it is in fact 4 December 2012 at 10:10:05 hours (NZDST).

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NOTE: MPI Observer on board during this haul

Species Code	Name	ITQ	# of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	315	GUT	600 kgs GW Reported
ELE	Elephant fish – small or damaged but not openly discarded	Y	23	Likely DIS	
ELE	Elephant fish – whole	Y	46	DIS	
ELE	Elephant fish – whole – medium size (50-70cms)	Y	56	DIS	
ELE	Elephant fish – whole – smaller size (40-50cms)	Y	16	DIS	
ELE	Elephant fish – damaged: unsuitable for GUT	Y	33	DIS	
SCH	School Shark	Y	329	DRE	1100 kgs GW Reported
RSK	Rough Skate	Y	2	DIS	Not reported
RSK	Rough Skate	Y	2	Likely DIS	Not reported
SPO	Rig	Y	296	DRE	800 kgs GW Reported
SPO	Rig (small)	Y	4	DIS	
GUR	Red Gurnard	Y	1	Likely DIS	Not reported
CAR	Carpet Shark	N	74	FIN	No GW recorded
SPD	Spiny Dogfish	Y	38	FIN	No GW recorded
SPD	Spiny Dogfish	Y	15	DIS	Not reported
SEV	Seven-gill Shark	N	1	DRE	1 x box of 11kgs

ELE	Elephant fish	489	Total Caught
		174	DIS
		35.58%	DIS

GUR	Gurnard	1	Total Caught
		1	DIS/NR
		100.00%	DIS

RSK	Rough Skate	4	Total Caught
		4	DIS/NR
		100.00%	DIS

The OBSERVER/REVIEWER made the following comments from this haul

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Conclusions:	
1. Vessel high-graded ELE	
2. Vessel high-graded SPO	
3. Vessel discarded all RSK	
4. Vessel recorded SPD/FIN but failed to report SPD/DIS (Schedule 6)	
5. Vessel does not report GUR catches on NCELR	
6. 600kgs GW ELE looks low for 315 large fish: usually about 3kgs per fish after GUT: likely further ELE discards off-camera	
Note: Both skipper and deckhand were openly discarding: primarily the skipper – over the port side – away from the Observer	

Review Trip #2 16 January 2013

s 9(2)(b)(ii) **VESSEL DISCARDS SUMMARY: Catch Assessment (2): For EM Set-Net Haul NZ 16Jan2013:**

Haul Occurred: UTC 15Jan2013 20:31:54 to 16Jan2013 00:14:26 – Duration 3.75 hrs
Haul Landed: NZ 16Jan2013 (5 hauls) NCELR Sheet: 4046876 Dated:16Jan2013: this haul 16Jan2013
NOTE: MPI Observer on board during this haul

Species	Name	ITQ	# of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	32	GUT	20 kgs GW Reported
ELE	Elephant fish – whole – large (Est>60cms)	Y	26	DIS	
ELE	Elephant fish – whole – medium size (Est 50-60cms)	Y	24	DIS	
ELE	Elephant fish – whole – smaller size (Est <50cms)	Y	3	DIS	
ELE	Elephant fish – damaged: unsuitable for GUT	Y	49	DIS	
SCH & RIG	School Shark and Rig Combined	Y	484	DRE	1300 kgs SCH GW 700 kgs SPO GW Reported
SPO	Rig (small)	Y	4	DIS	
SCH	School Shark (small)	Y	1	DIS	
RSK	Rough Skate	Y	3	DIS	Not reported
GUR	Red Gurnard	Y	8	DIS	Not reported
CAR	Carpet Shark	N	61	FIN	No GW recorded
SPD	Spiny Dogfish	Y	59	FIN	No GW recorded
SPD	Spiny Dogfish	Y	23	DIS	Not reported

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KIN	Kingfish	Y	2	GRE or DRE?	15 Kgs GW Reported
HAP	Hapuka	Y	3	HGU	15 Kgs GW Reported

ELE	Elephant fish	134	Total Caught
		102	DIS
		76.12%	DIS

GUR	Gurnard	8	Total Caught
		8	DIS/NR
		100.00%	DIS

RSK	Rough Skate	3	Total Caught
		3	DIS/NR
		100.00%	DIS

SPO	Rig	4	DIS

SCH	School Shark	1	DIS

The OBSERVER/REVIEWER made the following comments regarding this trip.

1. Vessel high-graded ELE and discarded many perfectly intact, high-grade, large ELE
2. Vessel declared only 20kgs Greenweight of ELE for this haul, which equates to about 6 or 7 whole fish: it is likely many of the 32 counted above as kept (some small/medium), were actually discarded off-camera
3. Vessel high-graded SPO and SCH: small, skinny or slightly damaged fish are openly discarded
4. Vessel discarded all RSK: no sign of life, so not Schedule 6 live release: none recorded in NCELR as caught or landed
5. Vessel failed to report many whole SPD that are openly discarded: these should be reported as Schedule 6 discards in the NCELR.
6. Vessel discards all GUR and did not report GUR catches on NCELR
7. Both skipper s 9(2)(a) and deckhand s 9(2)(a) openly discarded fish
8. The deckhand s 9(2)(a) threw many fish at an angle just over the Starboard gunwhale, in an effort to make it look like the fish were not going overboard

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APPENDIX D VESSEL DISCARDS SUMMARY: s 9(2)(b)(ii)

The s 9(2)(b)(ii) made 21 set netting trips between 27 October 2012 and 11 January 2013 before commencing trawling from 25 January 2013. The EM camera was installed on 31 October 2012 with the first footage recorded on 8 November 2012.

The cameras were removed on 24 January 2013 this was on the insistence of the owner s 9(2)(a) following MPI Observer Placement Notices.

The 3 reviewed hauls occurred on 5, 6 and 19 December 2012.

Two other incidents were observed outside this time frame, they are:

On 15 November 2012 the vessel landed 2 large salmon neither of which were recorded in the Catch Effort Return. [101] (4044925)

On 11 January 2013 s 9(2)(a) placed a full bin of GUR onto the starboard side of the vessel and covered it with a tarpaulin. When the vessel arrived at port it unloaded from the port side 23 bins of ELE, SPO and SPD. The GUR is retained on the boat. Nor GUR is recorded in the Catch Effort Return for this haul.(4046876)

The following was noted from set net trip that occurred on 5 December 2012 Net Catch Effort Return 4046632 a 3 hour haul:

1. The s 9(2)(b)(ii) processed fish landed off camera. Damaged and small fish were retained on deck either processed off camera or discarded. It was though that it was highly likely that these fish were discarded as s 9(2)(b)(ii) invoice for this landing (refer A1080780) only recorded purchasing large ELE. (They also do not accept damaged ELE). However further inquires indicated that it was more likely that these fish were retained and simply placed in with the large ELE and simply accepted by the LFR as large ELE due to the insignificant numbers involved.
2. All RSK were not recorded and likely discarded.
3. One flounder (FLA) was landed but not recorded on the Catch Effort Return.
4. Approximately 5 to 10 GUR are placed into a white plastic paint bucket prior to unload. This is suspicious behavior. The vessel lands 2 bins (57.5 kilograms) of GUR into s 9(2)(b)(ii) from this trip. There would be no apparent reason to remove these GUR from the fish bins and place them into a bucket other than to not have them included in the fish unload. It is more likely that these fish were destined for another source other than the Licensed Fish Receiver (LFR).

Review Trip #1 5 December 2012

s 9(2)(b)(ii) **Catch Assessment (1): for EM set-net haul:**

[101] **Taking or possession of salmon prohibited** Section 43 Fisheries (Commercial Fishing) Regulations 2001 http://www.legislation.govt.nz/regulation/public/1986/0219/latest/DLM110348.html

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Haul Occurred: UTC 4Dec2012 18:54:55 to 4Dec2012 21:55:06 – Duration 3 hrs
Haul Landed: NZ 5Dec2012 NCELR Sheet: 4046632 Dated: 5Dec2012

Species Code	Name	ITQ	# of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	120	GUT	12 x 30kg bins
ELE	Elephant fish small	Y	12	Kept	
ELE	Elephant fish – damaged e.g. head only, head and spine only	Y	18	Kept	
ELE	Elephant fish – damaged e.g. head only, head and spine only	Y	3	DIS	
SCH, SPD, SPO	School Shark, Rig and Spiny Dogfish combined	Y	341	SCH/DRE SPO/DRE SPD/GRE	1 x 30kg bin 4 x 30kg bins 2 x 30kg bins
RSK	Rough Skate	Y	2	Likely DIS	Not reported
RSK	Rough Skate	Y	1	DIS	Not reported
GUR	Gurnard	Y	69	GRE	2 x 30kg bins
FLA	Flatfish	Y	1	Kept	Not reported
CAR CAR	Carpet Shark Carpet Shark	N N	6 2	Kept DIS	Not reported Not reported

ELE	Elephant fish	153 21 13.73%	Total Caught PROB DIS PROB DIS

GUR	Gurnard	69 0 0.00%	Total Caught DIS/NR DIS

FLA	Flatfish	1	100% DIS/NR

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The following was noted by the OBSERVER/REVIEWER for this trip.

1. FLA also caught but not reported on 27Nov2012; also on 12Nov2012
2. Bin of fish – incl GUR – not unloaded when other bins unloaded – covered by tarp on starboard side of deck at unload(11Jan2013: Check TCELR): refer video.
3. 5-10 GUR put in white bucket (not fish bin) prior to unload UTC 4Dec2012 22:59:10 (143_000.avi) possibly destination EAT: refer video **[Refer photos/video]**
4. Damaged ELE discarded also on 7Nov2013
5. 2 x Salmon (about 5kgs and 12kgs) caught and kept on 15Nov2012: not reported in NCELR: **[Refer photos/videos]**
6. Lots of small ELE (<50cms) and many damaged ELE not openly discarded (e.g. 12Nov2012), so should appear in LFR documentation as damaged and low grade: otherwise likely discarded off-camera

Review Trip #2 6 December 2013

s 9(2)(b)(ii) **Catch Assessment (2): for EM set-net haul:**

Haul Occurred: UTC 5Dec2012 20:09:14 to 5Dec2012 23:25:40 – Duration 3.25 hrs
Haul Landed: NZ 6Dec2012 NCELR Sheet: 4046633 Dated: 6Dec2012

Species Code	Name	ITQ	# of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	254	GUT	45 x 30kg bins
ELE	Elephant fish small	Y	6	Kept	
ELE	Elephant fish – damaged e.g. head only, head and spine only	Y	14	Kept	
ELE	Elephant fish – damaged e.g. head only, head and spine only	Y	5	DIS	
SCH, SPO, SPD	School Shark, Rig and Spiny Dogfish combined	Y	83	SCH/DRE SPO/DRE SPD/GRE	1 x 30kg bin 3 x 30kg bins 1 x 30kg bins
SPD	Spiny Dogfish	Y	1	DIS	Not reported
RSK	Rough Skate	Y	4	WRS	1 x 30kg bin

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SSK	Smooth Skate	Y	1	WRS	1 x 30kg bin
GUR	Gurnard	Y	7	Kept	Not reported
FLA	Flatfish	Y	2	Kept	Not reported
CAR	Carpet Shark	N	19	DIS	Not reported

ELE	Elephant fish	279	Total Caught
		19	PROB DIS
		6.81%	PROB DIS

GUR	Gurnard	7	Total Caught
		7	NR
		100.00%	DIS/NR

SPD	Spiny dog	1	100% DIS/NR

The following was noted by the OBSERVER/REVIEWER for this trip.

1. Vessel appeared to retain FLA and GUR for EAT, and not record these in NCELR.
2. Crew were careful to put/throw/process most ELE forward of the deck-camera: likely some damaged and small ELE discarded forward of deck camera field-of-view.
3. Many small SPD processed forward of deck camera: some of these were likely discarded off-camera: one small SPD was openly discarded: no SPD Discards reported on NCELR (Schedule 6).
4. NCELR: skipper had started adding the entry for GUR (Catch Landing Section) but then scribbled this entry out. The 7 x GUR fish caught were never reported in NCELR for this haul.

Review Trip #3 19 December 2013

s 9(2)(b)(ii) **Catch Assessment (3): for EM set-net haul:**

Haul Occurred: UTC 18Dec2012 20:33:39 to 18Dec2012 22:33:33 – Duration 2 hrs
Haul Landed: NZ 19Dec2012 NCELR Sheet: 4046640 Dated: 19Dec2012

Species Code	Name	ITQ	# of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	94	GUT	8 x 30kg bins
ELE	Elephant fish small	Y	6	Kept	
ELE	Elephant fish – damaged e.g. head only, head and spine only	Y	4	Kept	

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SCH, SPO, SPD	School Shark, Rig and Spiny Dogfish combined	Y	56	SCH/DRE SPO/DRE SPD/GRE	1 x 30kg bin 3 x 30kg bins 1 x 30kg bins
RSK	Rough Skate	Y	8	WRS	1 x 30kg bin
SAL	Salmon	Y	1	GRE	Not reported
HAP	Hapuka	Y	2	HGU	1 x 30kg bin (LFR 7kgs GW)
GUR	Gurnard	Y	21	GRE	1 x 30kg bin
UNI	Unidentified	UNK	1	GRE	Not reported
CAR	Carpet Shark	N	7	DIS	Not reported

ELE	Elephant fish	104 6 3.85%	Total Caught PROB DIS PROB DIS

GUR	Gurnard	21 0 0.00%	Total Caught DIS/NR DIS

UNI	Uknown	1	100% DIS/NR

SAL	Salmon	1	LANDED

The following was noted by THE REVIEWER/OBSERVER.

1. Vessel retained Chinook Salmon and did not declare these in NCELR (2 Salmon also caught on 15Nov2012, and not reported in NCELR)
2. Crew were careful to put/throw/process all ELE forward of the deck-camera: likely some damaged and small ELE discarded forward of deck camera field-of-view.

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APPENDIX E VESSEL SUMMARY: s 9(2)(b)(ii)

The EM cameras were installed on 8 November 2012 with the first recording made on 28 November 2012. The cameras were removed on 10 Aril 2013.

Initially the vessel targeted ELE, SPO and SCH (18 hauls between 17/10/2013 &12/01/2013) before switching to ELE, WAR, LIN and MOK in mid January. (14/01/2013 #4047223)

The first selected haul occurred on 29 January 2013 of 2 hours 20 minutes duration.

The following was noted from this haul Net Catch Effort Return number 4048311:

63 of the 216 ELE landed (29%) were discarded by this vessel.

3 of the 12 GUR caught (25%) were discarded by this vessel, on this occasion all of these fish were small.

SPD were discarded but not reported correctly as schedule 6 discards in the Net Catch Effort Return.

s 9(2)(b)(ii) **Catch Assessment (1): for EM set-net haul:**

Haul Occurred: UTC 28Jan2013 22:00:00 to 29Jan2013 00:20:26 – Duration 2 hrs 20 minutes: Haul Landed: NZ 29Jan2013 NCELR Sheet: 4048311 Dated: 29Jan2013

Species Code	Name	ITQ	#of fish caught	Processing	NCELR
ELE	Elephant fish – large	Y	153	GUT	13 x 30kg bins
ELE	Elephant fish – damaged e.g. head only, head and spine only	Y	1	DIS	
ELE	Elephant fish – whole, some small, many large	Y	62	DIS	
GUR	Gurnard – large	Y	9	GRE	1 x 3kg bin
GUR	Gurnard – small (<30cms)	Y	3	DIS	
MOK	Blue Moki	Y	14	GRE	2 x 30kg bins
MOK	Blue Moki – small	Y	1	DIS	
SCH	School Shark	Y	1	DRE	1 x 1kg bin
SPO	Rig	Y	1	DRE	1 x 1kg bin
CAR	Carpet Shark	N	26	DIS	Not reported

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SPD	Spiny Dogfish	Y	14	DIS	Not reported
FLA	Flatfish	Y	1	GUT	1 x 1kg bin

ELE	Elephant fish	216	Total Caught
		63	DIS
		29.17%	DIS

GUR	Gurnard	12	Total Caught
		3	DIS/NR
		25.00%	DIS

Catch Assessment Haul #2 7 January 2013

s 9(2)(b)(ii) **Catch Assessment (2): for EM set-net haul:**

Haul Occurred: UTC 6Jan2013 03:44:00 to 6Jan2013 06:26:20 – Duration 2.75 hrs
Haul Landed: NZ 6Jan2013 NCELR Sheet: 4047218 Dated: 6Jan2013

Species Code	Name	ITQ	#of fish caught	Processing	NCELR
ELE	Elephant fish – large and medium sized	Y	46	GUT	6 x 30kg bins
ELE	Elephant fish – damaged e.g. head only; head and spine only; eaten-out	Y	31	DIS	
ELE	Elephant fish – small or damaged	Y	6	DRE/FIN	Not reported
GUR	Gurnard – large	Y	1	GRE	Not reported
UNI	Species Uncertain	UNK	1	DIS	
SCH & SPO	School Shark and Rig Combined	Y	84	DRE	7 x 30kg bins SPO 1 x 30kg bin SCH
CAR	Carpet Shark	N	65	DIS	Not reported
SPD	Spiny Dogfish	Y	21	DIS	Not reported
FLA	Flatfish	Y	3	GUT	Not reported

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SEV	Sevengill Shark	N	1	DRE	4kgs reported
XHG	Black Shag	N	1	DIS	Reported : X

ELE	Elephant fish	83	Total Caught
		37	DIS
		44.58%	DIS

GUR	Gurnard	1	Total Caught
		1	DIS/NR
		100.00%	DIS

FLA	Flatfish	3	Total Caught
		3	DIS
		100.00%	DIS

The OBSERVER/REVIEWER made the following observations from this haul.

1. Vessel high-graded ELE: damaged ones discarded and small ones not processed .
2. Vessel did not report all ITQ species caught e.g. GUR, FLA
3. Vessel did not report discarded SPD: could be Schedule 6.
4. Skipper appeared to process small and some damaged ELE for tail-fins and possibly for some tail-flesh: rest of head/trunk/pectorals discarded: tail sections put in shark-fin bin.
5. 1 x Dead Seabird (Looked like Black Shag) caught, discarded and reported on NCELR (4047218) and NPC (004701)

Catch Assessment Haul #3 8 January 2013

s 9(2)(b)(ii) **Catch Assessment (3): for EM set-net haul:**

Haul Occurred: UTC 8Jan2013 05:16:20 to 8Jan2013 07:11:15 – Duration about 2 hrs
Haul Landed: NZ 8Jan2013 NCELR Sheet: 4047220 Dated: 8Jan2013

Species Code	Name	ITQ	#of fish caught	Processing	NCELR
ELE	Elephant fish – large and many medium sized	Y	45	GUT	5 x 30kg bins
ELE	Elephant fish – damaged e.g. head only; head and spine only; eaten-out	Y	11	DIS	

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ELE	Elephant fish – small	Y	1	DIS	
ELE	Elephant fish – small or damaged	Y	7	FIL/EAT	Not reported
GUR	Gurnard – medium sized	Y	1	FIL/EAT	Not reported
UNI	Species Uncertain	UNK	1	FIL/EAT	
SCH & SPO	School Shark and Rig Combined	Y	25	DRE	3 x 30kg bins SPO 1 x 5kg bin SCH
CAR	Carpet Shark	N	85	DIS	Not reported
SPD	Spiny Dogfish	Y	13	DIS	Not reported
FLA	Flatfish	Y	1	GUT/FIL/EAT	Not reported

ELE	Elephant fish	64	Total Caught
		19	DIS
		29.69%	DIS

GUR	Gurnard	1	Total Caught
		1	DIS/NR
		100.00%	DIS

FLA	Flatfish	4	Total Caught
		4	DIS/NR
		100.00%	DIS

The OBSERVER/REVIEWER made the following observations from this haul.

1. Vessel high-graded ELE: most damaged ones discarded unless retained for FIL/EAT: many medium sized fish gutted and landed on this trip.
2. Vessel retained and filleted fish for EAT and did not report this in NCELR e.g. ELE, FLA, GUR, and what looked like a small BCO
3. Vessel did not report discarded SPD: could be Schedule 6.

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