

DEBRIEF – Operation Horse

The following is a summary of the relevant points in relation to the Investigation and Prosecution of the events and persons associated in this Case.

- 1 Each year in the Southern Ocean during early September, Southern Blue Whiting congregates into extremely dense schools for purpose of spawning. Significant catches of SBW are possible during this time and care has to be taken to ensure that participating commercial fishing vessels do not over-catch in relation to their trawl recovery and processing capacity.
- 2 Section 72 of the Fisheries Act 1996 prohibits the Dumping of Fish, the specie of which are subject to the Quota Management System and for which no minimum size limit is set, unless the species of fish in question is specifically identified in the sixth Schedule to the Act.
- 3 The fish specie, Southern Blue Whiting (*Micromesistus australis*), the fish at the centre of this Investigation, is subject to the Quota management System and there is no minimum size limit set. It is not identified in the Sixth Schedule of the Act as being a specie of fish which is lawfully able to be discarded.
- 4 Dumping of QMS specie fish is viewed by the Ministry of Fisheries as the possibly the greatest threat to the integrity of the system. The practice is rumoured to be widespread - *'the industries alleged dirty little secret,'* but is

inherently difficult to detect, it is wasteful and it is an abuse of the privilege entrusted to fishers to pursue commercial fishing activities within the New Zealand Exclusive Economic Zone.

- 5 The fish specie Southern Blue Whiting is not viewed as being under threat from commercial fishing pressure however the practice of intentionally dumping significant quantities of the target catch is both wasteful and strikes directly at the heart of the QMS.

Allegations of Dumping

- 6 During November 2004 the Christchurch Office of the Ministry of Fisheries received information that the FV AORERE had, on a recent voyage dumped significant quantities of SBW. It was not until March 2005 that the informant was contacted directly by Fishery Officers. The informant stated that in September 2004 significant dumping of SBW had taken place onboard the AORERE and that he could support that allegation with a video recording he had personally taken of the alleged offending. The informant showed the video to the investigating Fishery Officer (Senior Investigator s 9(2)(a)). However the informant would not release the video at that point and would not make a statement in support of his allegations. The informant was unsure whether he wished to continue his involvement in the fishing industry and believed that the release of the video would jeopardise his chances of continuing with such employment.

The Vessel – F.V. AORERE

7 On the 5th of September 2004 the 66 metre Fishing Vessel AORERE (stern trawler of Norwegian design), sailed from the Port of Dunedin to the Southern Ocean fishing grounds to target fish for Southern Blue Whiting (SBW). The vessel was under the command of the Skipper Lee Craig HARDING and 1st Mate James Jeffery ALFORD. The vessels processing factory was under the control and management of Ross William McCOY.

8 The AORERE, the vessel at the centre of this matter, is a large factory trawler fishing vessel with an overall length of 66 metres and was registered in Panama. It was owned at the time of the offences by Frenndrawl Ltd, a Norwegian fishing company who had chartered the vessel to SEALORD Charters Limited, a New Zealand fishing company, based in Nelson. SEALORD Charters Ltd crewed and operated the vessel, they were also the holder of the fishing permit and registration of the vessel for purposes of commercial fishing within New Zealand fishery waters. The vessel had been fishing in New Zealand under the authority of that fishing permit and pursuant to the Frenndrawl charter agreement.

9 The AORERE, like all trawlers of its type processes its catch at sea. The vessels processing factory had a limited throughput which was dependent upon the specie of fish and the specifications for its fish production. In respect of SBW on this voyage, the aim was to fillet the fish and process the produced skinned flesh into a 'block'. This is significant processing and is therefore a

limiting factor to factory throughput. Waste fish product along with damaged and small whole fish is usually sent to the meal plant for production into a dried fish meal product.

The Informant

10 The Informant and Senior Investigating Officer s 9(2)(a) continued to have contact over the following year. In April 2006 the Informant again contacted SFI s 9(2)(a) and stated he was prepared to release the video. He was also prepared to make a statement in support of his allegations if SFI s 9(2)(a) could find verification from within the AORERE crew.

11 During this meeting the Informant also produced an A4 sized printed photograph he claimed to have taken from the AORERE mess room notice board. The photo showed a full cod end of a large trawl of fish with the noting 'Midnight 14th September' written by the informant on the bottom of the photo. The Informant claimed the full cod end would be in the 60 to 80 tonne range and was a 'Bragg Shot' (photograph) he believed was taken and placed on the notice board by the Defendant ALFORD.

12 Later estimates by experienced FV AORERE crew members put the weight of the 'Bragg Shot' trawl at being between 40 and 60 tonnes.

13 An examination of the Trawl Catch Effort and Processing Returns (TCEPRs) supplied to the Ministry of Fisheries for the 14th and 15th September 2004

showed the maximum individual trawl to be recorded as being an estimated 25 tonnes. An examination of all the returns supplied for the complete voyage show that the maximum estimated size of any individual trawl during the voyage was 25 tonnes and this occurred on 8 separate occasions.

- 14 A subsequent examination of the records made on board the FV AORERE by the Defendants HARDING and ALFORD during the voyage in question for the period around the 14th September showed recordings for 2 separate trawls being landed onto the vessel, the first being 20+ tonnes for 2300hrs on 14th September, and the second being 40+ tonnes for 0307hrs on 15th September.

Alleged Offending - 6 to 19 September 2004

- 15 The video recording taken and supplied by the Informant showed dumping of SBW from the AORERE from the 13th to the 19th September 2004.
- 16 The informant alleged that the dumping started soon after the start of fishing for SBW in the Southern Ocean on the 6th September and continued for the duration of the time spent target fishing for that specie, approximately 2 and a half weeks.
- 17 In respect of the quantity of SBW dumped, the informant alleged that between 10% and 40% of the catch was discarded. The quantity varied depending on

the vessels catch rate. The greater the amount being caught the greater the amount being dumped.

- 18 In regard to why the dumping occurred, the informant stated that the factory just couldn't cope (process) with the amount of SBW being caught and that those in control of the vessel made the decision to dump.

The Investigation – The Crew

- 19 Acting on the information received, Fishery Officers initiated an investigation code named - *Operation Horse*. The operation slowly identified and then located all known FV AORERE crew members. On the 10th July 2006 Operation Horse was terminated with a view to conducting simultaneous interviews with all the identified crew so as to verify the informant's allegations without interference from any third party.

- 20 21 Ex-AORERE crew (excluding the defendants) were located and interviewed. Of the 21, 13 gave accounts which, to varying degrees substantiated the informant's allegations. The other 8 crew members stated that they either did not witness dumping of SBW first hand or had only a minimal recall of the actual AORERE fishing trip in question. None of the 8 crew denied that the dumping actually took place.

- 21 Contained in the 13 statements are numerous confirmations of the alleged dumping. A common theme runs through many which in essence relate to the

processing factory not being able to cope with the amount of SBW the vessel was catching. This being compounded by the action of loading or stacking catches (trawls) on top of the contents of a previous trawl so the factory doesn't in effect catch up.

22 A sample of quotes from the statements are as follows:

- 'We were trying to get the fish out of one pound, it was half full maybe 15 to 20 tonne in there, I was told there was another big bag was on its way, so I was told to flush that pound overboard.'
- 'It, (the vessel) was pulling up fish and pretty much chucking it straight back except for the big ones, there was a hell of a lot of small fish in the those bags.'
- 'We were told to put it (the fish) straight into the sump so it would get munched up so the spotter planes, MAF didn't see whole fish floating. It was shocking, plus we weren't getting paid for it, they were biffing away our bonuses.'
- 'A lot of people were really angry because it was an awful lot of fish, the Filipino crew had never seen anything like that wastage.'
- 'They were catching big bags, ridiculous bags, it wasn't holding up, too long too soft to process, everyone was upset about it, we could catch it next year.'
- 'During the only time I worked down there, (in the pound for about 4 hours), I dumped about 2 tonne.'
- 'We were landing some of the biggest bags in my 8 year career.'
- 'I heard people talking about it but never witnessed it.'

- ‘We were hauling a fairly large bag and at the same time I was watching a steam of whole fish go past.’

The Interviews

23 The Defendants HARDING, ALFORD and McCOY were interviewed in relation to their knowledge of, and involvement in, the alleged offending. All 3 initially denied any knowledge or participation in the offences. However the defendant McCOY retracted his first statement made to a Fishery Officer and made a second statement to his legal Counsel. This second statement confirmed the occurrence of the some offending (Dumping of SBW) and identified the Defendant HARDING as having made the initial decision to break the law.

24 SEALORDS employees were also interviewed. All 6 interviewed were senior position holders within the company and denied any knowledge or sanctioning of the offending. SEALORDS maintained that they had in place stringent policies and guidelines regarding dumping.

Sealords Stance

25 Allegedly, SEALORDS were initially made aware of the allegations of illegal dumping of SBW by the Informant in person in late 2005. A copy of the video was passed to SEALORD Representatives during a meeting in relation to another separate issue. As a result of viewing the video, SEALORDS re-declared an extra 23,000kgs of SBW catch in March 2006 to the Ministry of Fisheries via an Amended Monthly Harvest Return (MHR). In effect

SEALORDS accepted the contents of the video as showing the discarding of whole SBW and adopted a mathematical procedure to estimate the quantity of SBW being discarded over a 15 day period.

26 SEALORDS did not discuss the contents of the video with either the Informant, being the person making the accusations, or the Defendants HARDING and ALFORD being the persons in control of the AORERE, or the Defendant McCOY as the AORERE Processing Factory Manager through which the dumped fish passed or for that matter with s 9(2)(a) being SEALORDS own deepwater fishing expert or with any other person on board the AORERE during the relative period. Instead SEALORDS, when confronted with the allegations of significant offending through the dumping of a QMS specie, adopted a narrow and perhaps somewhat selective method of attempting to resolve the issue.

Relevant Factors in the Prosecution

27 There are seven factors that are relevant in this matter:

- (a) Intentional dumping of an undefined, yet significant quantity of SBW took place on board the AORERE over an extended 15 day period during September 2004.

- (b) The vessels Skipper, Mate and Factory Manger at the time, all knew of the illegal activity but did not either stop it themselves or inform any shore based staff who could.
- (c) The Crew were alarmed by the illegal activity but felt powerless to do anything to stop it.
- (d) Estimates quantifying the amount of dumping range from McCoy's' 60 tonnes in 3 days to the Informants' 10 to 40% of the total SBW catch over the 16 days, being 80 to 311 tonnes. There is a difference in the TCEPRs of 154 tonnes between the estimated total catch and the converted processed catch.
- (e) Dumping of this nature is a major breach of the trust that is afforded to Commercial Fishers within NZ fisheries Waters
- (f) The 'Big Bag' of Midnight 14th September was under reported by HARDING and ALFORD in the TCEPR by as much as 40 tonnes.
- (g) The offending in this case was not a one off lapse of judgement by the Defendants HARDING, ALFORD and McCOY. It was a deliberate and intentional circumvention of Fisheries law. It was committed by experienced and trusted commercial fishers over an extended period of time who were well aware of the consequences of such offending.

The Prosecution Process

28 On 20 September 2007, 2 key members of the crew, being the Mate (2nd in Command) and the Factory Manager, each pleaded guilty to 15 Charges of Dumping the QMS specie – Southern Blue Whiting. Each of the 15 charges related to a sequential day when it was alleged the dumping occurred. They

were convicted and fined \$20,000 each (plus various costs). Additionally ALFORD was fined \$5000 for the Charge in relation to his part in the offence of furnishing a False TCEPR for the Big Bag as captured in the 'Bragg Shot' photograph.

29 The Company (SEALORDS) entered an early guilty plea to a charge in relation to the furnishing to the Ministry of Fisheries, false information in an Amended MHR in respect of the dumping.

30 As a consequence to their guilty pleas and convictions they were both (the Mate and Factory Manager) re-interviewed in relation to the offending and later summonsed to give evidence in the prosecution of the vessels Skipper, Lee HARDING.

31 In a 2 week defended hearing during late November and early December 2007 in the Nelson District Court the Ministry of Fisheries put forward a prosecution case which relied heavily upon former crewmembers giving evidence against their former Skipper. This was a very rare and unusual event due to the fact that fishing vessel crewman adhere rigidly to the code that -
'What happens at sea stays at sea.'

32 It has to be noted that the defendant HARDING steadfastly refused to admit guilt in the matter. His lawyer Gary Barkle put up a very competent defence. At the conclusion of the defended hearing Judge Walker reserved his decision.

33 Judge Walkers released his decision in mid February 2008. He found that HARDING must have known what was taking place on board his vessel and as a consequence found him guilty of dumping Southern Blue Whiting on 7 of the sequential days on which he was charged along with falsely under-declaring a 'Big Bag' of fish caught by the vessel. The 7 days related to a period of intense fishing which correlated to the taking of the video (13th to 19th September 2004).

34 HARDING's fines totalled \$50,000.

35 The earlier convictions of McCOY and ALFORD and latterly HARDING raised the issue of Forfeiture of the Aorere. Judge Walker found that special reasons existed relating to the offences which influenced his ruling in this matter. No forfeiture was ordered.

36 SEALORDS pleaded guilty to a regulatory charge of furnishing to the Ministry of Fisheries, a false or misleading Amended MHR in relation to the fish that was caught and subsequently dumped from the Aorere. Judge Walker took the view that the actions of Sealords were reasonable in the circumstances but that there was more they could have done to ascertain the true nature of the allegations of dumping.

37 SEALORDS were fined \$10,000 in regard to the single charge they faced.

Defence Counsel

Consequences of Conviction

The following items were subject to forfeiture as a consequence of the convictions entered for Harding and as a result of the previous for the offences:

- The AORERE together with fishing gear, implements, appliances, material, containers, goods or equipment valued at \$5 million

38 As a result of the conviction of Sealords the FV Aorere was again subject to forfeiture. Judge Walker again found that special reasons relating to the offence existed and therefore influenced his decision not to order the vessel forfeit.

Released under the Official Information Act