

# IDENTIFICATION OF CONTAINERS HOLDING FRESHWATER EELS - FINAL ADVICE

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## Executive Summary

- 1 You are asked to make a decision regarding a proposal to amend the Fisheries (Commercial Fishing) Regulations 2001 (the regulations) to create a labelling requirement for containers holding freshwater eels.
- 2 The regulations currently stipulate that commercial fishers must identify containers holding shellfish and rock lobsters. There are no identification requirements for containers holding eels (e.g. eel holding bags)<sup>1</sup>. Consequently, Fishery Officers have no way of identifying, during a field inspection, the ownership or legality of any catch found in such containers if left unattended. The lack of a container labelling requirement in this context makes it difficult to distinguish legitimate commercial catch from illegal catch, providing an opportunity to conceal illegal fishing activities (e.g. poaching). Due to the nature of commercial eel fishing, fishers often use containers to hold eels after capture.
- 3 An Initial Position Paper (IPP), released on 12 March 2008, proposed to amend the regulations to include freshwater eels within the existing requirements for commercial fishers to label fish containers. The submissions received showed support, in principle, for the policy objective sought, although submitters did not agree with the way in which MFish proposed to do so. The final proposal has been altered to take into account submitters' concerns. The objective of this proposal is to allow quick identification of the ownership of unattended eel holding bags (or other containers) by Fishery Officers, decreasing opportunities for illegal activity and protecting the value obtained from the fishery by legitimate users.
- 4 The final proposal is to create a specific requirement for commercial fishers to label containers holding freshwater eels; however, this would need to be different to those applicable to shellfish and rock lobster. MFish expects the cost of the proposed requirement on commercial fishers to be low, and to be exceeded by the benefits to eel fishery users. Your decision is to be made in the context of section 297 of the Fisheries Act 1996 (the Act), which allows the creation of regulations for a variety of purposes, including the use of any gear, equipment, or devices used for, or related to, fishing.

## The Issue

- 5 Regulation 53 of the regulations requires commercial fishers to label containers holding shellfish and rock lobster with various details<sup>2</sup>. This

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<sup>1</sup> Except for regulation 11P of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 which requires containers holding eels taken from Lake Ellesmere (Te Waihora) to be labelled.

<sup>2</sup> If operating from a vessel, the label must include: the name and registered number of the fishing vessel from which the shellfish were taken; the date on which the shellfish were taken; except in the case of rock lobsters, the area from which the shellfish were taken; the signature of the operator,

requirement helps Fishery Officers identify legitimate commercial catch, isolating that which is not. The lack of a similar requirement for freshwater eels is problematic, given the practice by many commercial fishers of leaving full holdings bags unattended for several days prior to collection.

- 6 Commercial eel fishers often transfer eels to holding bags which are later collected and transported to the premises of Licensed Fish Receivers (LFRs). Eels may be stored in holding bags for several days before this occurs. Commercial eel fishers operate over large areas and can be very hard to locate while fishing. In the event that a Fishery Officer finds a holding bag, and the commercial fisher is not present at the time to confirm ownership, it is important to have enough information to be able to distinguish between legitimate and illegitimate catch. At present it is not possible to do this. The requirement to label containers holding eels would simplify Fishery Officers' task of monitoring commercial fishers' activities and catch, both in the field and through retrospective information checks.
- 7 Lack of container labelling in this context negatively affects legitimate commercial fishers as their catch can be unintentionally misidentified (by Fishery Officers, other fishers or the public) and may be lost. This may also provide an opportunity for illegal fishers to conceal their activity. There are various indicators (e.g. detected offences, submissions to this proposal, MFish intelligence and informant reports) which show that illegal fishing, including poaching, is occurring in freshwater eel fisheries.
- 8 The regulations do not currently provide a requirement for commercial fishers to label containers holding eels; an amendment to the regulations is proposed to create one. The proposed amendment would reduce opportunities for illegal fishing to be concealed as legitimate activities. This would address the issues described above and would allow the identification of eel holdings bags, and other containers, as being related to legitimate commercial activity.
- 9 There are currently no specific container labelling requirements for non-commercial eel fishers. However, this is not believed to be a problem given their practices and smaller catch volumes, and other requirements applicable to them<sup>3</sup>. For this reason, no additional requirements are proposed for non-commercial fishers.

## Summary of Options

### *Initial Proposals*

- 10 The IPP proposed the following options:

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notified user, or master of the vessel from which the shellfish were taken; and the client name and number of the permit holder under whose permit the shellfish were taken. If not operating from a vessel, the label must include: the permit holder's initials and surname; the permit holder's fishing permit number; the date on which the shellfish were taken; except in the case of rock lobsters, the area from which the shellfish were taken; and the permit holder's signature.

<sup>3</sup> For instance, recreational daily bag limit of six eels per person, limit of one fyke net per recreational fisher, customary authorisations valid for limited periods of time, record of customary authorisations available to Fishery Officers, commercial and customary catch taken in the same trip to be differentiated and labelled accordingly.

- a) *Option one - status quo*: Make no amendment to the regulations; commercial fishers would not be required to label containers holding freshwater eels;
- b) *Option two*: Amend the regulations to include freshwater eels within container labelling requirements prescribed in regulations 53(1) and 53(2).

### *Final Proposal*

MFish recommends that you agree to amend the Fisheries (Commercial Fishing) Regulations 2001 to create a requirement for containers<sup>4</sup> holding freshwater eels (*Anguilla dieffenbachii*, *A. australis* and *A. reinhardtii*) to be labelled with the permit holder's initials, surname and client number (**Modified Option 2**).

### Consultation

- 11 Public consultation on the proposal was undertaken.

### Submissions Received

- 12 Submissions regarding this proposal were received from:
  - Tom Hollings, on behalf of Mike Holmes, Chair, Eel Enhancement Company (EECo) - *Commercial Stakeholder Organisation for North Island eel industry*;
  - Ian Mitchell (Mitchell) – *Commercial fisher*;
  - New Zealand Seafood Industry Council Ltd (SeaFIC);
  - William J. Symons (Symons) – *Commercial fisher*.

### MFish Discussion

- 13 SeaFIC, Symons and EECo generally agreed with the policy objective of the proposal, although they did not agree with the specific proposal suggested in the IPP. Mitchell questioned the problem and pointed out that the proposed requirement would not stop fish thieves from stealing legitimate catch from holding bags and fyke nets. Mitchell's submission suggests that theft occurs in the eel fishery. Potentially, such thefts could be linked to poaching and black market activities.
- 14 MFish acknowledges that the proposed requirement would not stop fish thieves from stealing legitimate catch, which is not the aim of the proposal; the intent is to distinguish between legitimate and illegitimate catch held in holdings bags, and the requirement to identify such containers may deter some illegal fishing activity.

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<sup>4</sup> 'Containers' are not defined explicitly in the regulations; the proposal would therefore encompass any form of container that holds commercially-taken eels within it, such as a holding bag, barrel or bin.

- 15 The IPP suggested adding freshwater eels to existing container labelling requirements applicable to shellfish. In submissions and later discussions with submitters, it was determined that those specific requirements could be impractical for commercial eel fishers, and may be excessive to meet the intended objective. MFish has reconsidered the proposal to require only the permit holder's initials, surname and client number to be included in the label. In their submissions, Mitchell, Symons and EEC0 indicated that this is an acceptable alternative to the original proposal.
- 16 Symons submitted that he has already been labelling his holding bags as per the final proposal and mentions that it is a low cost way to identify his property. It is expected that the compliance cost of the proposed requirement for other commercial fishers would be low also.
- 17 EEC0 and SeaFIC suggested the use of voluntary codes of practice, instead of regulation, as a more appropriate way to implement container labelling. These groups perceived regulation, in the way initially proposed, as unnecessary and excessive to meet the objective. MFish believes that a voluntary measure would not achieve the intended objective, given that illegal fishers could take advantage of the non-compulsory nature of the requirement to conceal illegal catch, just as they can take advantage of the lack of a container labelling requirement under the status quo. MFish's proposal is aimed at allowing Fishery Officers to identify and act when potentially illegal catch is found. Nonetheless, having discussed concerns with some individual submitters following the receipt of submissions, the final revised proposal to include the requirement in regulation is amenable to them.
- 18 EEC0 also submitted that one label per cluster of holding bags, as opposed to one label per holding bag, would be enough to determine ownership. MFish believes that defining a 'cluster of containers' in the regulations could create ambiguities and potential for inconsistent enforcement of the requirement. Considering the low cost of labelling individual containers, MFish does not believe that the proposed requirement would be a significant difficulty or cost for commercial fishers.
- 19 SeaFIC and Mitchell suggested that the relevant regulations to amend would be regulation 55, which relates to labelling of fyke nets used for eel fishing, and regulation 57 (SeaFIC only), which relates to fishing gear not associated with vessels. MFish notes, however, that the relevant regulation in this case is regulation 53, which at present only includes shellfish. Regulation 53 relates to gear used for holding fish temporarily (i.e. containers of fish likely to be left unattended after harvest and prior to delivery at a LFR, as for eels) while regulations 54 to 57 relate to gear used primarily for catching fish.
- 20 Other points raised in submissions are summarised in Appendix 2.

## **Rationale for Management Options**

- 21 An amendment to the regulations is proposed pursuant to section 297 of the Act, which allows the creation of regulations for a variety of purposes, including the use of any gear, equipment, or devices used for, or related to,

fishing. In making a decision, you should take into account the risks that the status quo presents (i.e. inability to identify the content of holding bags and other containers as the product of legitimate commercial activities) and the potential benefit of the amendment to the effectiveness of compliance activities and legitimate fishing interests.

## **Assessment of Management Options**

### ***Option 1 – Status Quo***

#### *Impact*

- 22 Option 1 would continue to prevent Fishery Officers from identifying catch in containers holding eels as product related to legitimate commercial activities and taking action in relation to it.

#### *Costs*

- 23 The cost of maintaining the status quo would primarily be the inability for Fishery Officers to distinguish between legitimate and illegitimate catch when inspecting eel holding bags. This is a cost to legitimate commercial fishers given that misidentification of their catch (by Fishery Officers, other fishers or the public) due to the lack of a labelling requirement could result in it being mistakenly returned to the water. A cost to all legitimate fishing interests (commercial, recreational and customary) also exists if the opportunity to conceal illegal catch is created by the lack of an identification requirement for containers holding eels.

#### *Benefits*

- 24 The status quo presents minor cost savings resulting from permit holders not having to label their holding bags and other containers.

### ***Option 2 – Amend the regulations to create a requirement for labelling of containers holding freshwater eels***

#### *Impact*

- 25 Option 2 would enable Fishery Officers (and other fishery interests) to identify the ownership of eel holding bags, and other containers, and in that way confirm that the catch is the product of legitimate activity, allowing illegal catch to be dealt with and thereby acting as a deterrent.

#### *Costs*

- 26 Option 2 would result in administrative costs to fulfil regulatory amendments and to communicate the new requirements to commercial fishers. The costs for commercial fishers would be low, as pointed out by one industry submitter, as all this amendment requires is for commercial fishers to label containers holding eels in a way similar to how other gear and containers are currently labelled.

## *Benefits*

- 27 The proposed amendment would improve Fishery Officers' ability to identify legitimate catch when coming across unattended eel holding bags and other containers and improve verification of reporting. For commercial fishers, the benefit includes a reduction in catch losses resulting from misidentified holding bags. A benefit to other legitimate fishing interests also exists by reducing the opportunity for illegal fishers to conceal unlabelled catch as the product of legitimate activities. These benefits are believed to outweigh the costs described above.

## **Statutory Considerations**

- 28 In considering the proposed amendment, you are required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 29 **Section 5** outlines the application of international obligations and of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 within the context of the Act. The amendment proposed is consistent with, and reinforces, international obligations and obligations set out in the Settlement Act. In relation to eel fisheries, the proposed amendment would reduce opportunities to conceal illegal catch, which affects legitimate fishing interests such as those of tangata whenua. Likewise, New Zealand has obligations under international agreements to manage catadromous species such as eels. The proposed amendment is consistent with that obligation.
- 30 **Sections 8, 9 and 10** set out the purpose, environmental principles and information principles of the Act respectively. By reducing opportunities to conceal illegal catch and protecting the value obtained by legitimate users of the fishery, the proposed amendment is consistent with, and reinforces, this purpose and these principles.
- 31 **Section 297 (1)(viii)** prescribes the power to regulate or prohibit the possession or use of any kind of gear, equipment, or device used for, or related to, fishing, including fish containers.
- 32 Consequently, **regulation 53** of the Fisheries (Commercial Fishing) Regulations 2001 currently requires containers holding shellfish and rock lobster to be labelled. The requirement however does not include containers holding freshwater eels, such as holdings bags. You are asked to make a decision in this context.
- 33 **Regulation 11P** of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 establishes a requirement to label containers holding eels taken from Lake Ellesmere (Te Waihora), among other provisions. There are particular requirements in relation to eels taken from that area therefore the amendment proposed would not imply revoking regulation 11P. If you agree to the amendment proposed, it would not result in conflicting requirements as regional regulations take precedence over general regulations.