

IDENTIFICATION OF CONTAINERS HOLDING FRESHWATER EELS – INITIAL POSITION PAPER

Executive Summary

- 1 The Ministry of Fisheries (MFish) is proposing to amend the Fisheries (Commercial Fishing) Regulations 2001 ('the regulations') to extend container labelling requirements to freshwater eels. The regulations currently stipulate that commercial fishers must identify containers holding rock lobsters and shellfish. Container identification requirements do not currently apply to eels (e.g. eel holding bags)¹.
- 2 There is currently no requirement for commercial fishers to label eel holding bags. Fishery Officers have no way of identifying the legality of any catch found in such containers when they are left unattended. Some commercial eel fishers transfer eels from fyke nets to holding bags, in which they may be stored for several days, before a licensed fish receiver (LFR) collects them, or the accumulated catch is taken to the premises of a LFR. Eel fishers work across large areas, thus it is hard to identify the fishers responsible when holding bags are located without any labels on them.
- 3 The proposal is to amend the regulations to include freshwater eels within the requirement for commercial fishers to label fish containers.

Regulatory Impact Analysis Requirements

- 4 A Regulatory Impact Statement for this issue has been completed because the proposal is to introduce a new requirement.

The Issue

- 5 Regulations 53 requires commercial fishers to label fish containers containing cockle, kina, mussels, octopus, oyster, paddle crab, paua, pipi, scallop, tuatua, rock lobster, or rock lobster tails with various details². These requirements allow Fishery Officers to identify legitimate commercial activities, isolating those which are not. The requirement however, does not include containers holding freshwater eels. This is inconvenient in the eel fishery given the

¹ 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.

² If operating from a vessel, the label must include: (a) the name and registered number of the fishing vessel from which the shellfish were taken; (b) the date on which the shellfish were taken; (c) except in the case of rock lobsters, the area from which the shellfish were taken; (d) the signature of the operator, notified user, or master of the vessel from which the shellfish were taken; and (e) 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: (a) the permit holder's initials and surname; (b) the permit holder's fishing permit number; (c) the date on which the shellfish were taken; (d) except in the case of rock lobsters, the area from which the shellfish were taken; and (e) the permit holder's signature.

practice by some commercial fishers of leaving full holdings bags unattended for several days prior to collection.

- 6 Commercial eel fishers often transfer eels to holding bags from which these are collected by, or transported to, 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 locates a holding bag, and the commercial fisher is not present at the time to confirm that it is his or her catch, it is important 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 the Fishery Officer's task of monitoring commercial fishers' activities and catch. Lack of identification in this context may affect legitimate commercial fishers as their catch could be misidentified (by Fishery Officers, other fishers or the public) and may be lost, but may also provide an opportunity for illegal fishers to conceal their activity.
- 7 The regulations do not currently provide for a requirement to label containers holding eels. An amendment to the regulations is proposed to require commercial fishers to label containers holding eels. This would address the issues described above and would allow the identification of eel holdings bags, as being related to legitimate commercial activity.
- 8 There currently are no specific container labelling requirements for non-commercial eel fishers either. This however is not believed to be a problem given the practices of non-commercial fishers and other requirements³. For this reason, no additional requirements are proposed for non-commercial fishers.

Summary of Options

Option 1 – Status quo

- 9 Make no amendment to the regulations; commercial fishers are not required to label containers holding freshwater eels.

Option 2 – Amend the regulations to include freshwater eels within container labelling requirements

- 10 An amendment to the regulations to include freshwater eels (*Anguilla dieffenbachia*, *Anguilla australis* and *Anguilla reinhardtii*) within container labelling requirements (*preferred option*)⁴.

Rationale for Management Options

- 11 An amendment to the regulations is proposed under section 297 of the Fisheries Act 1996 (the Act), which allows the creation of regulations for a

³ For instance, recreational daily bag limit, customary authorisations valid for limited periods of time, record of authorisations available to Fishery Officers, commercial and customary catch taken in the same trip to be differentiated and labelled accordingly.

⁴ This would imply amending regulation 53 of the Fisheries (Commercial Fishing) Regulations 2001 by adding 'freshwater eels' to the species listed under 53(1) and 53(2).

variety of purposes, including the use of any gear, equipment, or devices used for, or related to, fishing. In making a decision, the Minister should take into account the risks that the status quo presents (ie. inability to identify the content of holding bags 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

- 12 Option 1 would continue preventing Fishery Officers from identifying catch in eel holding bags as related to legitimate commercial activities, as these would continue to be excluded from container labelling requirements.

Costs

- 13 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) could result in their catch being lost. 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 eel holding bags.

Benefits

- 14 Aside from minor cost savings from not making regulatory amendments and communicating changes and new requirements to commercial fishers, the status quo presents no benefits.

Option 2 – Amend the regulations to include eels within container labelling requirements

Impact

- 15 Option 2 would enable Fishery Officers (and other fishery interests) to identify the ownership of eel holding bags, 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

- 16 Option 2 would result in minor administrative costs to fulfil regulatory amendments and communicating the new requirements to commercial fishers. The costs for commercial fishers would be minimal as all this amendment requires is for commercial fishers to label containers holding eels in the same manner as other gear and containers holding other species are currently labelled.

Benefits

- 17 The proposed amendment would improve the ability of Fishery Officers to identify legitimate catch when coming across eel holding bags. 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 under legitimate activities. These benefits are believed to outweigh the costs described above.

Statutory Considerations

- 18 In considering the proposed amendments, the Minister is required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 19 **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.
- 20 **Sections 8, 9 and 10** set out the purpose, environmental principles and information principles of the Act respectively. The proposed amendment is consistent with, and reinforces, this purpose and these principles.
- 21 **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 container labelling requirements.
- 22 Consequently, **regulation 53** of the Fisheries (Commercial Fishing) Regulations 2001 require containers holding cockle, kina, mussels, octopus, oyster, paddle crab, paua, pipi, scallop, tuatua, rock lobster, or rock lobster tails to be labelled. The requirement however does not include containers holding freshwater eels, such as holdings bags. The Minister is asked to make a decision in this context.
- 23 **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 the Minister agrees to the amendment proposed, it would not result in conflicting requirements as regional regulations take precedence over general regulations.

Other Management Issues

- 24 During the development of this IPP, MFish considered proposing changes to the information required in current labelling and marking requirements for

gear and containers (e.g. the 'client number of the permit holder' as opposed to the 'permit number'). It was decided to not propose any changes for that purpose at this stage given that the issue is beyond the scope of this paper. Regardless of this, MFish would appreciate input from stakeholders on this issue within submissions, particularly with regards to any inconveniences caused by current labelling and marking requirements for gear and fish containers.

IDENTIFICATION OF CONTAINERS HOLDING FRESHWATER EELS – SUMMARY OF SUBMISSIONS

1 MFish received submissions on the IPP 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 (SeaFIC);
- William J. Symons (Symons) – *Commercial fisher*.

General Submissions

- 2 SeaFIC, Symons and EECo agreed with the policy objective of the proposal, although they disagreed with the specific manner in which the objective was proposed to be attained in the IPP. Mitchell questioned the problem and thus the need for the proposed requirement, highlighting that labelling would not stop fish thieves from stealing legitimately harvested eels from unattended holding bags, as it currently occurs. In submissions and in further discussions, submitters expressed concern about the need and practicality in the eel fishery of requirements applicable to shellfish. Nonetheless, Mitchell, Symons and EECo indicated that labelling with a name and client number would be an acceptable alternative to the proposal outlined in the IPP. Symons submitted that he has already been labelling his bags as per the final proposal.
- 3 EECo 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 as unnecessary and excessive to meet the objective. EECo also submitted that one label per cluster of holding bags, as opposed to one label per holding bag, would be enough to determine ownership. SeaFIC and Mitchell suggested that the relevant regulations to amend would be regulation 55, which relates to labelling of fyke nets, and 57 (SeaFIC only), which relates to fishing gear not associated with vessels.

Other Submissions

- 4 SeaFIC also made reference to the implications of the definition of ‘holding receptacles’ in the Fisheries (Reporting) Regulations 2001, which specify destination codes to be used in returns set out under those regulations. SeaFIC also recommended an amendment to regulation 57, which outlines fyke net labelling requirements. Both of these points are outside the scope of this paper

and should be addressed separately (e.g. within the fisheries planning processes for the eel fishery).