SUBMISSION ON THE REVIEW OF THE REGUALTION THAT PERMITS STALLING OF NETS ON THE KAIPARA HARBOUR

Peter Yardley
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21.08.07

I submit that the regulation permitting stalling on the Kaipara Harbour should be removed.

After 33 years of commercial flounder netting on the Kaipara Harbour my thoughts are the following:

Deliberate stalling of nets happens on the Kaipara on a regular basis. The thinking behind deliberate stalling seems to be that every last fish will be caught with no thought or care about loss of quality and loss of juvenile species.

The current laws allow for the stalling of nets no longer than 540 metres. With the low level of fishery officers who come occasionally and always at high tide stalling is seldom observed. The larger tides occur around midday so the corresponding low tide when nets are stalled happens late evening or early morning.

This week I observed nets of about 800 metres that were set on Saturday at 9.00am and stalled at 5.30pm with no fisherman present and again at 6.00am also unattended. They were finally retrieved at 9.00am Sunday having been allowed to stall twice over a soakage time of 24 hours with no fisher in attendance. The effect on the mature fish quality, the slaughter and dumping of juvenile and unwanted species is immeasurable. This is an ***almost*** legal set on the Kaipara and happens almost daily in some areas.

My submission is to remove stalling, cut soakage times to 6 hours and have compulsory net attendance. Net mesh sizes and weights (monofilament, light weight very hard on juvenile species) need to be looked at closely. The minimum fish size for flounder is too small, many fish have never bred and market resistance is huge. (2007 market price for 27cm flounder is $1.00/kg.) Because it is legal fishermen will still land it. This has resulted in the demise of many fishermen.

If the Ministry is serious about sustainable management, for the future of the fishery, I feel the time is right to meet with the Kaipara Harbour Sustainable Fisheries Management Study Group and work out a comprehensive management plan for the harbour.

I believe that the harbour has a valid fishing future, but not with the outdated laws which govern the fishery. I live and work on the most dynamic and potentially prosperous fish farm in the world. It is in the hand of the Ministry of Fisheries to make this possible for all Kaipara residents and visitors alike.

Peter Yardley
Commercial Fisher.

Amendment to the Recreational Scallop Season in Fisheries Management Area 9

SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS

27 August 2007

option4
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Parnell, Auckland
contact@option4.co.nz

1. This submission is made by option4 (the submitters), an organisation which promotes the interests of non-commercial marine fishers in New Zealand, to the Ministry of Fisheries (MFish) in response to MFish's proposed amendment to the recreational scallop season in Fisheries Management Area 9 (FMA9).

2. The FMA9 scallop fishery extends from North Cape to Tirua Point, north Taranaki. Within that area there are a number of scallop fisheries that have different characteristics.

3. In recognition of the outstanding issues associated with the Kaipara Harbour, this submission addresses scallop management in FMA9 excluding that Harbour. MFish is bound to deal with both tangata whenua and the Kaipara Harbour Sustainable Fisheries Management Study Group (KHSFMG) in addressing the temporary section 186A closure to the harvesting of scallops and the longer-term management issues of concern to the local Kaipara community.

Submission

4. option4 submit that the following open season apply to the FMA9 (excluding the Kaipara Harbour) scallop fishery:

    - **Preferred option** - 1st September to 31st March the following year (inclusive), to align with the FMA1 scallop season;
    - **Second option** - 15th July and 14th February the following year (inclusive), that is, no change to the current season.

5. option 4 opposes proposals to shorten the harvesting season for scallops in FMA9 as there are no legitimate reasons for doing so. It is outrageous to expect non-commercial fishers to accept anything less than the current season. We do not accept the MFish proposals for the following reasons:

    - the west coast scallop fishery is a food fishery of importance to both recreational and customary fishers.
    - closing the season earlier to both reduce the take of under-sized scallops and thereby the pressure on compliance is not supported. This is because if there is an issue with the take of undersize scallops then that needs to be addressed through education and higher profile enforcement measures.
    - scallop abundance and condition can vary considerably from year to year. The main drivers for this are recruitment and growth rates and not the length of the season.

6. The recent High Court decision regarding the judicial review of the Minister's 2004 and 2005 kahawai decisions (the Kahawai Legal Challenge) made particular mention of the purpose of the Fisheries Act 1996, in that the Minister of Fisheries has a statutory obligation to manage fisheries both sustainably and to enable people to provide for their wellbeing. We have not seen any evidence of MFish' effort to assess changes in the social, economic and cultural wellbeing that would result from changes proposed in the FMA9 scallop fishery Initial Position Paper (IPP). option4 would expect that shifting the season to reduce winter catch, when scallops may be in poor condition, and allow better access over summer when scallops may be in good condition would have a positive impact on people's wellbeing. However, shortening the season would have a negative impact on the people's ability to provide for their wellbeing during good seasons.

7. The submitters appreciate that scallops are highly variable and therefore the quality and quantity of scallops available varies from season to season. During poor seasons we would expect fishing effort to decrease. If a sustainability issue is identified this could be managed at a more local scale with the use of rahui.

8. MFish's proposed amendment to the recreational scallop season in FMA9 is a sustainability measure under section 11 of the Fisheries Act 1996 therefore section 12 obligations apply.

9. Section 12 requires that the Minister before doing anything must provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned, or an interest in the effects of fishing on the aquatic environment in the area concerned, and have particular regard to kaitiakitanga.

10. There is no mention in IPP of these requirements and whether the Minister has satisfied his section 12 obligations in relation MFish's proposed amendment to the recreational scallop season in FMA9, a sustainability measure.

11. The submitters request MFish that before doing anything further in relation to proposed amendment to the recreational scallop season in FMA9 that MFish take such steps required by section 12 to have the Minister to comply with the Minister's obligations under section 12.

12. There has been some debate on whether there should be a ban on scallop dredging at night. However, night dredging seems to be more of an issue in the Kaipara Harbour than the Manukau Harbour. There maybe a need for MFish to consider a dredging ban during the hours of darkness on the Kaipara Harbour, following consultation with tangata whenua and the local community. We do not support a QMA wide ban on night dredging at this time.

Conclusion

option4 thank MFish for the opportunity to have input into the process for this very important fishery.

Please keep us informed both in relation to the progress of this proposed sustainability measure, and in further management proposals for this fishery.

Trish Rea
On behalf of the option4 team
PO Box 37-951
Parnell, Auckland.

I wish to make the following submission to the proposed "Amendment to the Recreational Scallop season in Fisheries management 9"

Please read this submission in conjunction with my report on the proposed changes as previously prepared (report follows this submission as addenda)

1. I support option 2 – open season on September 1st annually.

Scallops in Manukau Harbour, where hand gathering occurs, are generally in poor condition during July to August. Using September 1st opening helps keep rules simple for fishers as it would then be the same for all of the Auckland Region. And scallops would be in better condition.
From a compliance perspective same day opening of both coasts prevents catches found on the east coast.

2. I support option 3.

A January 1st closing date in the middle of the generally accepted Christmas Statuary Holidays means compliance staff will be less available to police/manage the resource. Although still the holiday season a January 24th closing means compliance staff- permanent and voluntary are more readily available.
The resources require numerous staff to police/manage the areas – as to date the voluntary self policing/management of the resource has never occurred.

3. Another option could be to close the season December 24th. This would

Be good for the resource as usually a predominance of undersize scallops are found after this date. Although this date may well be very unpopular/unacceptable to residents/holidaymakers/gathers.

4.Ongoing monitoring of the Manukau Scallop beds needs to be maintained.

Trevor Collings QSM
HFO Team Leader
24.08.07

addenda

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After studying the document regarding the proposed changes to the scallop season, I wish to make the following comments, which relate specifically to the Southern Manukau Scallop Fishery.

The Manukau Harbour Scallop Fishery is almost unique in that it is accessible to pedestrian pickers, ---certainly the only such resource within 200km of Auckland City. I believe that there should be serious concerns now as to the sustainability of this resource, considering how little seems to be known of the extent, gathering pressure and replenishment to this recreational resource, even under the present regulations. From my experience and observations over the last twenty years of active involvement, with others, in the administering of the compliance regulations in the Clarks Beach area, the following matters need to be given serious consideration before there is any alteration to the scallop season in this area

1. Over the years there has been an obvious reduction in shell size gathered through the season and available annually.
2. During the season, the first month or so from 15 July, harvested scallops are generally of poor condition and few gatherers venture out collecting due to the poor weather conditions and the poor quality of the catch.
3. During mid August to about end September catches usually consist of scallops measuring from 100 to 115 and in reasonable condition. There are significantly larger numbers of gatherers during this period.
4. From about end September through to December, an even greater number of harvesters return with scallops in reasonable condition, however the size of legal sized scallops drops down to catches generally measuring 100mm to 105mm. We also start to see the number of undersize scallops being bought in as part of the catch quota increase significantly.
5. During January and February catches range from " no legal sizes found" to all scallops harvested being less than 100mm -- the legal size.
6. During the time frame September to February many harvesters comment that there are plenty of scallops present with size ranges between 97mm to 99mm.

There does not appear to be any statistical data available, both on the scallop stock and on the natural replenishment of the stock.

Compliance records should give some information as to the actual history of quantities of legal size and undersize taken and the harvesting patterns described in points 1 to 6 above.

Numbers of harvesters vary greatly seasonally and due to weather patterns, tidal conditions and agal bloom events.

Early season numbers range up to 50 – 100 harvesters per month.

Mid season gathers can number to over 1000 harvesters per month.

On extremely advantageous weather and tidal conditions, (with more emphasis on weekends particularly) up to 3000 harvesters have been observed daily.

Shifting the season to start 7 weeks later would improve the quality of the early season catches, but will also mean more harvesters will visit the site during the better and warmer weather.
It is known that harvesters have come long distances to gather scallops at this location, e.g. Hamilton/Cambridge in the Waikato, all Auckland suburbs includingHenderson, Whangaparoa, and Pakuranga.
Consequently I believe this will mean that the quantity of available scallops will still run out in January and February or perhaps even earlier, resulting in more pressure on the undersized portion of the resource.
More compliance effort would be needed to police the resource if it is to be retained for the future. This in turn means other compliance issues cannot be policed during this very popular recreational fishing/seafood harvesting period, (in particular snapper fishing is in full swing with an abundance of undersize fish about in all harbours).
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The harvesting results of scallop dredgers are not considered in this submission.

These comments have been discussed with colleagues from the North Manukau and Kaipara harbours' areas.
They concur with the concerns and validity of the base data used here.

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Conclusion

No changes should be made to the seasons timing in this areas at least until Mfish has adequate data of harvest size, pressure sustainability and replenishment over the entire season.

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HFO Team Leader.

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TV Collings QSM
HFO Team Leader.

24 August 2007 File: F108-02/TM

Ministry of Fisheries
P.O. Box 1020
WELLINGTON

Attention: Tracey Steel

Tena koe

REVIEW OF REGULATORY MEASURES AND OTHER MANAGEMENT CONTROLS FOR 1 APRIL 2008

INTRODUCTION

This submission is made by Te Ohu Kai Moana Trustee Ltd ("Te Ohu"), a statutory body established under the Maori Fisheries Act 2004 to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing and fisheries related activities, in order to –

(a) ultimately benefit the members of iwi and Maori generally; and
(b) further the agreements made in the Deed of Settlement; and
(c) assist the Crown to discharge its obligations under the Deed of Settlement and the Treaty of Waitangi; and
(d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Deed of Settlement.

Maori, through the Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (collectively referred to in this submission as the "Settlement") have rights and interests in both commercial and non-commercial fishing. Maori are therefore involved in and affected by regulatory changes directed at commercial and non-commercial fisheries. In addition, through the settlement, the Crown has an obligation to provide for the input and participation of Maori in the conservation and management of New Zealand's fisheries resources. While Te Ohu makes this submission to ensure that the rights held by Maori through the settlement are not cumulatively damaged or eroded we consider that this submission does not remove the requirement for the Crown to consult with Maori directly.

The Initial Position Paper ("IPP") dated 29 June 2007 entitled *Review of Regulatory and Other Management Controls for 1 April 2008* discusses seven prospective regulatory changes – six for commercial fisheries, 1 for a non-commercial fishery, in which Maori have interests. Accordingly it is appropriate that Te Ohu comment on those proposals on behalf of Maori.

EXECUTIVE SUMMARY

The IPP covers seven separate regulatory proposals. Summarised, the issues and proposed solutions are –

Stalling of nets in Kaipara Harbour

The Kaipara Harbour is the only place in New Zealand where commercial set nets can be left in place through a falling tide ("stalled"). This practice was established to enable fishers to safely access their nets given the tidal nature of the Kaipara Harbour waters and so leave netted fish on the dry until fishers are able to collect them. Some consequences of this practice are to leave fish in the dry or prevent fish in waters behind the nets escaping. Stakeholder complaints against the practice concentrate on fish quality deterioration and wastage. Essentially this is appears to be a stakeholder perception problem that needs to be managed rather than a sustainability concern requiring regulatory change.

No information is provided in the IPP on whether the extent of the practice in the Kaipara, or the fish losses involved constitutes a clear sustainability problem. Similarly the human safety issues which led to stalling being allowed in the Kaipara and the relevance of Kaipara fish catches to the management of northern inshore fishstocks are also omitted.

Te Ohu supports Mfish Option 1 – to continue to permit stalling of nets in the Kaipara Harbour (Status quo) while further investigations into the nature and extent of the problem are undertaken. Any subsequent regulatory change should be based on the severity of these problems for sustainability.

Recreational scallop season in FMA9

Currently recreational fishing for scallops in the north-west North Island area is limited to the Manukau Harbour as the other main fishery, in the Kaipara Harbour, has been closed for two years. Local recreational fishers have complained about the quality of scallops in the early part of the season in the Manukau and of the difficulty of taking legal sized scallops at the end of the season. No information is provided in the IPP on the current state of the scallop stocks in either harbour although it does indicate the Kaipara closure may need to be extended as the stock is still depleted.

Te Ohu considers that difficulties with the taking of suitable scallops from the Manukau suggest that stock is also in trouble and the fishery may need to either be closed or the TAC reduced.

Te Ohu supports Mfish Option 1 – Make no change to the existing scallop season at present but recommends that the status of the scallop stocks needs to be clarified and sustainable harvest levels assessed before any regulatory season date changes are made.

Surf clam dredge size

Present rules for dredge sizes were developed for the commercial scallop and dredge oyster fisheries and are not appropriate for surf clams. The surf clam fishery is new and gear design and size is still the subject of experimentation. In addition, unlike the scallop and oyster fisheries, the clam fishery operates in the surf zone and operator safety is a significant issue.

Recent gear experiments indicate a larger surf clam dredge than the Regulations currently permit may be beneficial both in reducing tow numbers and disruption to non-clam bycatch and in exposing fishers to danger for shorter periods.

Te Ohu supports Mfish Option 3 – Exempt the surf clam fishery from regulation 78 while the gear experiments are continuing and at least until the design has been stabilised.

Fishing interactions with marine turtles

Marine turtles are protected species in New Zealand waters but some encounters with fishing gear, particularly nets and long lines, do occasionally occur. The regulatory provisions dealing with such encounters apply only to nets, leaving operators who encounter turtles while using other fishing gear types with no direction on actions to be taken.

In addition, New Zealand is a signatory to the Western and Central Pacific Fisheries Convention (WCPFC). The Commission which administers the Convention has resolved on a number of actions to preserve marine turtles. However, New Zealand's Regulations currently do not provide the data that would enable this country to meet its international commitments.

Te Ohu agrees that Regulations should be amended to cover all fishing methods which encounter turtles; to provide the data required by WCPFC; and to clarify for fishers the actions and reporting required of them.

Te Ohu also agrees that a single set of reporting requirements that is consistent with both international and domestic legislation is required. Accordingly, Te Ohu wants this review of the Fisheries (reporting) regulations 2001 aligned with the Wildlife Act (including its proposed amendments) and the proposed new non-fish by catch reporting regulations so that there are neither parallel nor inconsistent reporting requirements.

Container type reporting for Sixth Schedule discards

The Fisheries Act Sixth Schedule provides for the return to the sea of catches of a number of species, often for reasons of size or of being taken outside the recognised fishing season. The Regulations covering the reporting of such discards require that fishers report, in each case, the type, number, size and weight of product in each container of catch discarded.

The problem is that discards under the Sixth Schedule frequently are made when the catch is sorted before it would reach containers, making it impossible for fishers to comply with the regulatory requirement.

Te Ohu supports MFish Option 1 – Remove the requirements to report “container-type” details so limiting the reporting required to quantity.

Allow paddle & deepwater crabs to be returned to the sea

Both fisheries are relatively new and are still being developed. Both use pots as the target method to take crabs, which cause little damage to the animals. However both species are also taken as a bycatch from other fishing gear (such as trawl nets) being used to target other species. Damaged crabs can result from these bycatches.

Both fisheries also face a market preference for crabs over a minimum size and, as a complication, fishers of paddle crabs in FMAs 3, 4, 5 and 6 are faced with a minimum crab size which is not related to the size the market demands.

Currently neither paddle crabs nor deepwater crabs are included on the Act Sixth Schedule so neither undersized crabs nor crabs in berry cannot legally be returned to the sea. This makes little sense in terms of sustainability, market requirements and is acting to reduce fishery returns.

Te Ohu supports Mfish Option 3 – Add Paddle crab taken by the potting method to the Sixth Schedule so that unwanted crabs taken by this method can be discarded at sea if they are likely to survive; and

Te Ohu supports MFish Option 3 b) – remove the minimum legal sizes that apply to paddle crab in PAD 3, 4, 5 and 6.

Te Ohu supports Mfish Option 3 – Add deepwater crabs caught with potting gear to the Sixth Schedule so that unwanted crabs taken by this method can be discarded at sea if they are likely to survive.

Te Ohu recommends that Mfish consider instituting research to ascertain the survival rates of damaged crabs to allow consideration of a wider Sixth Schedule listing at a later stage.

DETIALED COMMENTS ON THE SPECIFIC IPP PROPOSALS

Review of the regulation that permits stalling of nets in the Kaipara Harbour

Introduction and Problem Definition
"Stalling" is the term applied where fish caught in a set net are left stranded by a falling tide or, if not entangled in the net, are prevented from escaping on the falling tide because there is insufficient water left around the net ends. The process is banned everywhere in New Zealand except in the Kaipara Harbour. The IPP states the practice is permitted in that Harbour *to help fishers who were not able to collect their nets easily due to the tidal nature of the harbour.* The exemption is contained in Regulation 14 of the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986.

The IPP draws on anecdotal information suggesting that stalling is a widespread practice amongst commercial set netters operating in the Harbour. It suggests that the Kaipara Harbour exemption is unnecessary and also suggests the practice causes *a significant wastage of fish* in the flatfish, grey mullet and rig fisheries because stalled fish deteriorate in quality and become unfit for sale. Despite making these deterioration and wastage claims, the IPP provides no information on any of –

- the number of commercial set netters fishing in the Harbour who allow their nets to stall; or
- the number of nets involved; or
- how much fish of which species are affected by stalled nets; or
- for how long fish affected by stalled nets maintain their quality; or
- the quantities of stalled net fish which become unusable; or
- whether or not wasted fish from stalled nets is included in commercial harvest returns and counted against quota.

Options
The IPP puts forward three Options for dealing with the perceived problem –

(a) Retention of the current exemption; or
(b) Require fishers in the Kaipara Harbour to attend their stalled set nets at all times; or
(c) Prohibit stalling of nets in the Kaipara Harbour.

No preference is indicated by MFish in the IPP for any of these options.

Comments
The IPP appears to imply that fisheries occurring in the Kaipara Harbour are separate entities and are managed separately from those of the same species in the wider waters of FMA9. That is not the case. In fact, catches in the Harbour frequently form only a small proportion of the total allowable catches for northern fishstocks and events in the Harbour may have little relevance to the overall management and abundance of those fishstocks.

To Te Ohu's knowledge, no plans for managing inshore fishstocks in FMA9 (including in the Kaipara) exist and the present stalling proposals have not been evaluated in terms of the sustainability of the stocks concerned. In addition, the complete lack of information on the extent to which stalling occurs in the Harbour and the quantities of fish affected or wasted makes evaluation of the need for any regulatory change difficult.

While Te Ohu does not support wastage of fish, we recognise that stalling was allowed to continue in the Kaipara Harbour as a matter of safety and access when the process was banned elsewhere. The speed of the outgoing tidal currents and the risks of fishers being stranded were significant factors in the 1986 decision to continue stalling. No change to the stalling regulatory provisions should be made until the information gaps identified above have been investigated and the safety risks of removing the exemption assessed.

Te Ohu considers that concentrating on net stalling in the Harbour without also considering wider sustainability and management issues for the inshore FMA9 stocks involved is premature. These issues could be amongst those considered in the development of a comprehensive management plan for FMA9 waters. This would seem a better option. For this option a full and separate consultation process will need to be initiated to ensure all relevant stakeholders are involved.

Te Ohu would like to see the process and substance of regulatory proposals consolidated and clarified to ensure that all stakeholders have sufficient understanding of and realistic expectations of regulatory change. We consider that the regulatory process is not the vehicle for managing stakeholder perceptions about fisheries management and that there has been a growing tendency towards this. The Kaipara Harbour is an example of where stakeholder concerns have arisen in the past without sufficient information having been provided to keep expectations relating to regulatory change in perspective.

Recommendations
Te Ohu supports Mfish Option 1 – to continue to permit stalling of nets in the Kaipara Harbour (Status quo) while further investigations into the nature and extent of the problem are undertaken including:

- Detailed information on the usage of the set net stalling practice, on resultant fish wastage and on wasted catch reporting has been obtained; and
- Safety risks resulting from removal of the net stalling exemption have been assessed.

At that stage the need for the stalling exemption can be validly assessed.

Te Ohu recommends that:

- Mfish undertake an educational programme of work to ensure that stakeholders have sufficient access to quality information (including fundamental fisheries management processes and concepts) and
- the current practice of utilising the regulatory process to manage stakeholder perceptions is discontinued.

Amendment to the recreational scallop season in FMA9

Introduction and Problem Definition
Essentially there is no commercial fishery for scallops in FMA9 (north-west North Island) south of the Ninety Mile Beach. The area is open to recreational fishing but activity is largely limited to the protected waters of the Manukau and Kaipara Harbours. Local Scallop stocks in the Kaipara Harbour have been subject to serial depletion and that Harbour has been closed to recreational scallop harvesting since July 2005, leaving only the Manukau Harbour available.

Scallops are short lived, quick growing and fertile. The main spawning period in northern New Zealand waters is January but scallops are known to spawn several times in a year. Larval and juvenile scallop life stages are subject to high mortality rates, leading to large year-to-year fluctuations in abundance. No information is provided in the IPP on the current state of the Kaipara and Manukau scallop stocks.

A national minimum size and a recreational harvest season apply for scallops – from 15 July to 14 February inclusive – but local harvesters contend northern scallops are generally in poor condition at the start of the season and frequently under-sized at seasons end.

No clear problem is defined in the IPP for the north western recreational scallop fishery. However, the complaints about poor condition and small sizes have led MFish to put forward options aimed at protecting undersized scallops and assisting fishers harvest the best quality scallops.

Options
The options put forward in the IPP for comment are –

a. *Status quo* (no change to present rules); or
b. (i) Delay season opening by 4 weeks, to 15 August; or
   (ii) Delay season opening by 7 weeks, to 1 September; and/or
c. (i) Close season 3 weeks earlier, on 24 January; or
   (ii) Close season 6 weeks earlier, on 1 January.

Comments
No definitive information on the current states of the Manukau and Kaipara Harbour scallop stocks is included in the IPP, although it does suggest that the Kaipara Harbour recreational fishing closure, timed to finish in July 2007, might need to be extended as the stock has not recovered. While scallop populations naturally fluctuate over a wide range, difficulty with harvesting legal sized animals suggests that the current Harbour populations are too low for the current total allowable catch level.

Shortening the season would assist recovery of the stocks but the real question would seem to be – "What level of scallop harvest, if any, can be permitted?" Until information is available to answer that question, altering the season start or closure dates will be of little benefit. Accordingly Te Ohu proposes that an urgent survey be made of recreational scallop stocks in both the Kaipara and Manukau Harbours to assess –

- The current states of the two stocks;
- If the Kaipara fishery should be reopened or the current closure extended;
- What level of harvest can be allowed from the Manukau Harbour, or if that Harbour also should be closed;
- What alterations to the current fishing restrictions will be required to implement those sustainable harvest decisions.

Recommendations
Te Ohu supports Mfish Option 1 – Make no change to the existing scallop season at present but recommends that the status of the scallop stocks needs to be clarified and sustainable harvest levels assessed before any regulatory season date changes are made.

Te Ohu would like to see the process and substance of regulatory proposals consolidated and clarified to ensure that all stakeholders have sufficient understanding of and realistic expectations of regulatory change. We consider that the regulatory process is not the vehicle for managing stakeholder perceptions about fisheries management and that there has been a growing tendency towards this. The Kaipara Harbour is an example of where stakeholder concerns have arisen in the past without sufficient information having been provided to keep expectations relating to regulatory change in perspective.

Te Ohu recommends that:

- Mfish undertake an educational programme of work to ensure that stakeholders have sufficient access to quality information (including fundamental fisheries management processes and concepts) and
- the current practice of utilising the regulatory process to manage stakeholder perceptions is discontinued.

Surf clam dredge size

Introduction and Problem Definition
The surf clam fishery is still being developed. It targets seven species of surf clams found in the turbulent waters of the tidal surf zone, down to about 10m depth, with different species being found at different depths. Experiments with the most suitable design of dredges (also called clam rakes) are still being conducted and recent work suggests that variations on the traditional scallop and oyster dredge designs may be desirable.

Present restrictions on dredge designs originated in the scallop and oyster fisheries. They are contained in Regulation 78 of the Fisheries (Commercial Fishing) Regulations 2001 and specify that –

- Where two dredges are towed at a time, only one of those dredges can have a bar or bit longer than 2.5m; and
- Where three or more dredges are towed at a time, none of those dredges can have a bar or bit longer than 2.5m.

In experimental work, surf clam fishers have developed a dredge which has a bar 3.6m long, which is proving to be more effective than the smaller dredges. Fewer tows are required with the larger dredge to achieve the clam harvest, reducing harvest costs and lessening sea bottom damage. Further experimental work is underway to achieve an optimum dredge design and the bit size may change again. Unless the Regulation is changed though, these advanced dredge designs will not be able to be used.

Options
The IPP puts forward three options for consideration –

1. *Status quo* – no change; or
2. Amend the Regulations to set a new surf clam dredge bar or bit length of 3.6m; or
3. Exempt the surf clam fishery from the dredge bar or bit length restrictions.

MFish indicates in the IPP that it favours *Option 3,* the exemption.

Comments
Option 1 (status quo) is too restrictive. By limiting dredge size more tows must be made, which has implications for fisher safety. Additionally, disruption to other species is maximised.

Option 2 also is too restrictive. As experimental design work is still proceeding there is no surety that the dredge design finally settled on will have a 3.6m bar. If this option is adopted, a further regulatory amendment may well be required at a later stage if a different dredge design proves more effective.

Te Ohu favours *Option 3*. The surf clam fishery is still developing and operates in very turbulent waters. Both the animals fished and the gear must be robust and the safety of fishers involved must be considered. Use of larger gear, involving fewer tows to achieve the same level of catches, does reduce the risk to fishers and lessens the disruption to other species inhabiting the same sea area. It also allows gear experimentation to continue without regulatory impediment.

Recommendation
Te Ohu supports Mfish Option 3 – Exempt the surf clam fishery from regulation 78 while the gear experiments are continuing and at least until the design has been stabilised.

Review of regulations relating to fishing interactions with marine turtles

Introduction and Problem Definition
Three of the seven species of marine turtle are known to occur in New Zealand waters, although they are rarely caught. Turtles are protected species in New Zealand under the Wildlife Act 1953, but fishing interactions with them are managed under the Fisheries Act. Summarised, the requirements in the Fisheries (Commercial Fishing) Regulations 2001 are –

Reg. 45
- Commercial fishers are not to take or possess marine turtles from NZ waters
- Exemptions to the basic ban apply –
    - If the turtles are accidentally caught in nets; or
    - A valid permit to take is held.

Reg. 46
- Uninjured turtles caught in nets must be immediately returned to the sea.

Reg. 47
- Injured turtles must be delivered to an approved institution for care; or
- Returned to the sea if the necessary DoC/MFish approval is obtained.

Reg. 48
- Dead turtles must be offered to Te Papa; or
- Returned to the sea if the necessary DoC/MFish approval is obtained.

Reg. 49
- Turtle catches (dead or alive) must be logged and reported to MFish within 48 hours of the return to port

- Details to be reported are specified, photographs or measurements can be used as a reporting method, and sightings can also be reported.

It should be noted that these regulatory requirements relate only to sea turtles taken in nets, although turtles periodically are also caught by other fishing gear such as long lines.

The Problem
New Zealand is a member of the Western and Central Pacific Fisheries Commission ("WCPFC") which, in 2005, established guidelines to reduce sea turtle mortalities and required member States to report on sea turtle interactions and mitigation measures taken.

Current New Zealand fisheries regulations, being restricted to net-taken turtles, do not meet the WCPFC resolution requirements. The reporting options in the Regulations also cause some confusion over the data to be reported, while the present 48 hours reporting requirement is difficult to administer and puts an undue burden on commercial fishers.

The Proposal
The IPP proposes the present Regulations be amended to –

- Continue the present ban on taking or possessing marine turtles without a permit;
- Extend the present commercial fishing exemption to cover turtles accidentally taken in any type of commercial fishing gear;
- Continue the present requirement for uninjured turtles to be returned to the sea;
- Continue the present requirement for injured turtles to be delivered to approved institutions for care;
- Continue the present requirement for dead turtles to be offered to Te Papa;
- Remove the present provisions for injured or dead turtles to be returned to the sea with DoC/MFish agreement;
- Update the present reporting requirements, via a new Non-fish/Protected Species Catch Return, to ensure data required by WCPFC is reported;
- Align the reporting period with the Monthly Harvest Return requirements; and
- Clarify what additional data is to be provided for turtles, such as tag details, photographs and measurements, over and above the basic Non-fish/Protected Species Catch Return form requirements.

Comments
Te Ohu agrees that New Zealand should meet its international obligations for marine turtles and that any regulatory changes needed to do so should be implemented. We also agree that standardisation of reporting times is desirable and that clarification of data to be supplied on marine turtle encounters is overdue.

Two points in the existing Regulations and in the proposals cause us some concern though. We consider that the requirements to deliver injured turtles to approved institutions for care and attention and for dead turtles to be offered to Te Papa, inconsistent with other practices associated with non-fish bycatch (e.g. seabirds). In addition keeping injured or dead turtles onboard puts fishers in breach of the Wildlife Act. Furthermore, the practicalities of commercial fishers doing so also need to be considered. Turtles can be quite large and can inflict a nasty bite. Live turtles must also be kept moist and secure while on board fishing vessels and dead turtles must

be stored separate from commercial catch for sale. The vessels, of course, may not be returning to port for some time.

Te Ohu agrees that Regulations should be amended to cover all fishing methods which encounter turtles; to provide the data required by WCPFC; and to clarify for fishers the actions and reporting required of them.

Te Ohu also agrees that a single set of reporting requirements that is consistent with both international and domestic legislation is required. Accordingly, Te Ohu wants this review of the Fisheries (reporting) regulations 2001 aligned with the Wildlife Act (including its proposed amendments) and the proposed new non-fish by catch reporting regulations so that there are neither parallel nor inconsistent reporting requirements.

Container type reporting for Sixth Schedule discards

Introduction and Problem Definition
Under the Sixth Schedule to the Fisheries Act 1996 a number of species taken during commercial fishing activities may be returned to the sea (and the catch concerned not counted against ACE, although it must be reported) provided specified conditions are met. For example, closed seasons apply in the Nelson/Marlborough, Northland and Coromandel scallop seasons. Any commercial fisher who takes scallops in those fisheries out of season must immediately return those scallops to the sea.

There had always been some uncertainty as to how such returns to the sea should be reported in commercial fishing returns and the requirements were clarified in the Fisheries (Reporting) Regulations 2001. One of those clarifications was that, in all cases, the number of containers of returned catch was to be reported. The data to be reported included number, type and content weight for such containers.

The Problem
In practice though, catch returned to the sea in terms of the Sixth Schedule frequently is not put into containers. Often the inappropriate catch is checked on deck or in the fish hold and discarded before packing into containers commences. In such cases fishers have been unable to comply with the 2001 regulatory requirement.

Options
The IPP puts forward two options to correct the position –

1. Remove the requirement to report "container type" details; or
2. Introduce a new "container type" code for Sixth Schedule discards.

The IPP indicates that MFish favours *Option 1.*

Comments
The Sixth Schedule provisions are designed to overcome the ban in s.72(1) of the Fisheries Act on discarding quota species. The Schedule provisions are needed as a number of species have restrictions on catching – such as minimum sizes and closed seasons – which are inconsistent with that basic "no discarding" provision.

If catch is to be returned to the sea, it needs to be in good condition and able to survive. That is frequently best achieved by assessing the catch immediately and returning unsuitable catch with a minimum of handling. Placing such inappropriate catch in containers delays return to the sea and is avoided by fishers as much as possible.

There is no particular reason to record container-type data for sea returns, although it is important that the quantities involved are documented for management purposes. Maintaining an inoperable Regulation makes little sense and MFish is to be congratulated for its stance in the IPP.

Recommendation
Te Ohu supports removal from the Fisheries (Reporting) Regulations 2001 of the requirement for container type data to be reported for Sixth Schedule discards.

Paddle crab: Allowing for return to sea

Introduction and Problem Definition
Paddle crabs entered the QMS from 1 October 2002. They are widespread in NZ waters although the commercial fishery is concentrated in northern North Island and northern South Island waters. The main fishing method is by potting as this method produces the least damage to the crabs but crabs do also get caught accidentally in nets and dredges. Those other fishing methods are normally involved when targeting other species but can result in damaged crabs.

The Problems
The market prefers undamaged crabs of a certain size. Accordingly the practice has developed of fishers returning damaged or unwanted sized crabs to the sea ("high grading"). Paddle crabs are not currently listed on the Sixth Schedule to the Fisheries Act and cannot legally be discarded.

In addition, a minimum legal size for paddle crabs is in place in FMAs 3, 4, 5 and 6, which is a hangover from management measures put in place prior to the species being introduced into the QMS. That minimum size is interfering with the development of the fishery, but does allow accidentally taken small crabs to be returned to the sea in those areas without the need to use ACE or make deemed value payments.

Options
a. Return to sea

(i) *Status quo*, but with increased enforcement activity to prevent high grading; or
(ii) Add paddle crabs to the Sixth Schedule with no capture method restriction; or
(iii) Add pot-caught paddle crabs to the Sixth Schedule.

b. Minimum size

(i) *Status quo;* or
(ii) Remove the minimum size limit applying in FMAs 3, 4, 5 and 6.

No clear MFish preferences are expressed in the IPP.

Comments
Currently none of the established TACCs for paddle crabs are taken and there is no indication that any of the stocks are under stress. High grading does allow fishers to maximise the financial returns from their catches and, provided the returned crabs survive, does not cause harm to the crab population.

Pot-caught crabs are normally in good condition, so high grading is a reasonable practice. Crabs taken by other methods can suffer damage though and their chances of survival if returned to the sea in a damaged state are unknown. Until some information is available on damaged crab survival rates, it is not unreasonable to adopt the more cautious position of only allowing pot-caught crabs to be returned to the sea.

The minimum size constraint in FMAs 3, 4, 5 and 6 is an anachronism which should have been discarded when paddle crabs were introduced into the QMS. Its continuation, whether or not paddle crabs are added to the Sixth Schedule, is unnecessary.

Recommendations
Te Ohu recommends that –

- Pot-caught paddle crabs be added to the Act Sixth Schedule and be able to be returned to the sea if likely to survive
- MFish consider undertaking research to ascertain the survival rates of damaged crabs to allow consideration of a wider Sixth Schedule listing at a later stage
- The present minimum size for paddle crabs applying in FMAs 3, 4, 5 and 6 be removed.

List deepwater crabs on the Sixth Schedule

Introduction and Problem Definition
There is a profitable fishery for deepwater crabs in Alaskan waters, in some cases on the same species as occur in NZ waters. To provide an incentive to NZ fishers to explore the possibilities of a similar crab fishery here, three deepwater crab species - red, giant spider and king - were introduced into the QMS in 2004.

Little was known of the resource sizes in 2004 and exploratory fishing has been underway for some time to assess the feasibility of a commercial fishery. Catches since 2004 have been well below the TACC levels then set but, while the status of the various deepwater crab stocks is unknown, there is little concern for their sustainability at present catch levels.

As is common with crabs and similar species, market returns are greatest for larger crabs and fishers have sought permission to return unwanted crabs to the sea. As in the Alaskan fishery, attempts here to commercialise deepwater crabs have concentrated on capture by potting, but some crabs are also taken accidentally in trawl nets. Pot-caught crabs are seldom damaged, but net-caught crabs can suffer damage. There is no New Zealand information on the survivability of damaged crabs.

Options

a. Status quo

b. Add deepwater crabs taken by any method to the Sixth Schedule and allow return to the sea if the crabs are likely to survive

c. Add deepwater crabs taken by the potting method to the Sixth Schedule and allow return to the sea if the crabs are likely to survive.

No MFish preference is reported in the IPP.

Comments

This is a similar situation as that already discussed for paddle crabs. We have a fishery in the early stages of development with catches well below permissible levels, a market preference for larger crabs, a main fishing method which produces undamaged crabs and an accidental catch method which produces both damaged and undamaged crabs. Again little is known of the survival rate of damaged crabs returned to the sea.

Te Ohu considers a consistent approach should be followed in all such fisheries, by adding the species concerned to the Act Sixth Schedule for the principal fishing method and undertaking research to ascertain if the survival rate of damaged animals returned to the sea is such as to allow an expansion of the Sixth Schedule listing to other catching methods at a later stage.

Recommendations

Te Ohu supports Mfish Option 3 – Add deepwater crabs caught with potting gear to the Sixth Schedule so that unwanted crabs caught in this manner can be discarded at sea if they are likely to survive.

Te Ohu recommends that Mfish consider undertaking research to ascertain the survival rates of damaged crabs to allow consideration of a wider Sixth Schedule listing at a later stage.

Conclusion

Thank you for the opportunity to provide you with our comments on these matters. Should you have any questions please do not hesitate to contact myself or Tania McPherson at this office.

Naku noa, na.

Craig (Laws) Lawson
General Manager Policy and Operations
Te Ohu Kaimoana Trustee Limited

SANFORD LIMITED
SUSTAINABLE SEAFOOD

24 August 2007

Attention: Tracey Steel
Ministry of Fisheries
PO Box 1020
Wellington

Tracey.Steel@fish.govt.nz

Dear Tracey

Review of Regulatory Measures & Other Management Controls for 1 April 2008

Please find below Sanford Limited's (Sanford) submission on the Initial Position Paper (IPP) dated 29 June 2007.

Review of the Regulation that Permits Stalling of Nets in the Kaipara Harbour

Status Quo

1. Sanford support option 1 of the IPP– to continue to permit stalling of set nets in the Kaipara harbour (status quo) for reasons outlined below. Sanford supports sustainable management of fish stocks, and management intervention where proven to be necessary and effective.

2. A significant proportion of the catches from the Kaipara harbour are sold through the Sanford owned and operated Auckland Fish Market. Set net fishers have advised us that without the Kaipara harbour set net stalling provision they would simply be unable to operate on the harbour.

Unsubstantiated Claims

3. The IPP makes significant unsubstantiated statements. Paragraph 8 of the IPP specifically states that "*the practice of stalling causes significant amount of fish wastage….that fish is unfit for sale….that there are frequently discarded and not reported fish….large fish wastage could reduce the availability and abundance of fish in the Kaipara harbour"*.

4. The IPP provides no examination of the stalling method, nor an analysis undertaken to quantify these statements - this is quite unacceptable. In the absence of factual information provided, the IPP presents misleading consequences of set net stalling on the sustainability of many Kaipara harbour fish stocks.

Unclear Rationale for Management Options

5. In analysing the IPP it is difficult for Sanford to determine what the problem definition requiring the IPP management response is. Sanford derive several possible interpretations from the IPP;
   - There are sustainability concerns with the FLA, GMU, SPO, or other Kaipara harbour fish stocks,
   - Stalling reduces availability and abundance of fish stocks in the Kaipara harbour,
   - There is wide spread non-compliance by fishers of the Fisheries Act to land and report catches, and

- The IPP is responding to community perceptions rather than stock sustainability concerns.

All of these possible interpretations lack any supporting evidential substance in the IPP to convince us of the need for a management response.

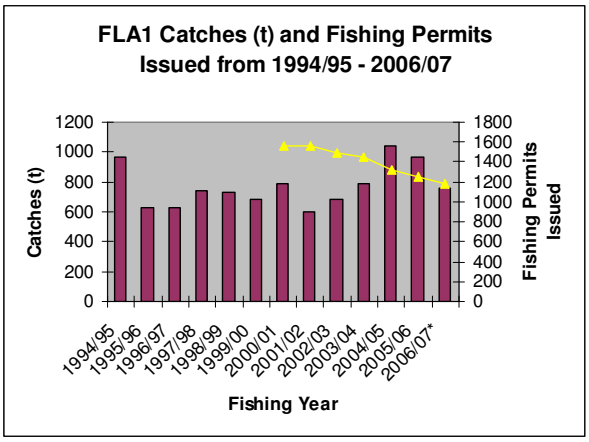
Sustainability

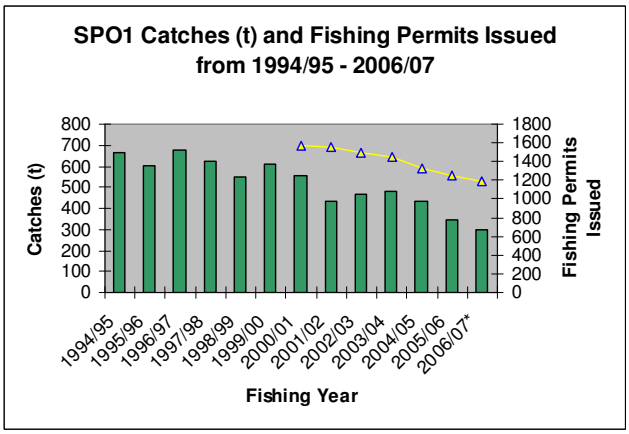
6. There is no information presented in the IPP on the total allowable catches (TACs) for the fish stocks caught in Fisheries Management Area 1 (FMA1), which includes the Kaipara Harbour. In most recent years the commercial catches (TACCs) for FLA, GMU and SPO have been undercaught, with no presented information in the IPP that is triggering sustainability concerns and required management intervention.

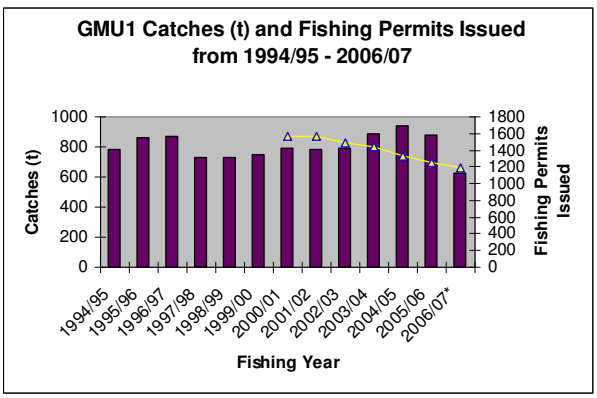
7. Catch levels in these fisheries vary considerably over time, several factors contribute to these. Flatfishes are stocks where abundance is highly variable, and this is reflected in variable commercial catches. Effort has significantly reduced in recent times, as seen in Table 1 below showing the number of fishing permits issued reducing overtime (table shows all fishing permits issued, FishServe data). Increasing fuel prices, and regulatory requirements are all factors contributing to fishers leaving the fishery.

8. Reducing catch rates are a further reflection of these operational and economic challenges, and are not reflective of biomass abundance.

Table 1 Showing the FLA1,SPO1, and GMU1 commercial catches and Fishing Permits issued from 1994/95 – 2006/07







Stakeholder Harvest Estimates

9. It is unknown what recreational and customary catches contribute to the TAC for the fish stocks caught in the Kaipara harbour, and whether they are contributing to any of the

concerns raised in the IPP. The IPP is silent on the contributions of these stakeholders to catches within the TAC of many stocks caught in the Kaipara harbour, and any possible sustainability concerns that may arise.

10. It seems clear that a greater management priority is to collect catch and effort data on recreational and customary take before unnecessarily restricting commercial utilisation by removing the stalling provision.

11. MFish should also be reminded that the Kaipara harbour is just part of the overall catches that are managed at a stock level, or QMA. Any analysis, and management implementations should be considered at a QMA level. Fish stocks are using the harbour for only part of their life cycle, and are entering and exiting the harbour continually. There are significant implications in managing fish stocks as "substocks" and before any consideration is given to doing so, significant information and analysis would be required.

Compliance

12. The IPP implies that there is wide spread non-compliance of the quota management system (QMS) by fishers. Paragraph 8 claims fish are "*frequently discarded and not reported*", but there are no presented examples, nor extent of such non-compliance claims in the IPP. The integrity of the QMS is founded on reporting requirements, which we support unconditionally. Unfounded IPP statements such as "*frequently discarded and not reported*", are not helpful at all.

13. If MFish considers there is a compliance issue regarding, retaining and reporting species as required by the Fisheries Act 1996 in this fishery, it should disclose the extent to which this is occurring in the IPP, and dispatch appropriate compliance methods to remind fishers of their legal obligations, and increase compliance efforts to catch offenders, and prosecute them accordingly.

Maximising Returns from Catches

14. Common sense states that fisher practices will ensure that the maximum value is returned from their catches. The fishing behavior will reflect this, undertaken within the package of regulated measures set by MFish to ensure fish stock sustainability. Paragraph 3 of the IPP states that "*with the use of stalling fish deteriorate and become unfit for sale*". The IPP provides no evidence of this, and makes a very subjective, unquantified statement. Useful information for consideration might be for example the sale price variations for species from stalled versus non-stalled nets. However, even if the fish were "unfit for sale", or fetch a lower economic return to the fisher, it is not a sustainability issue, and therefore not of MFish concern.

15. The Auckland Fish Market is achieving the highest sale prices for these species the market has seen in a long period, enhancing incentives for fishers to land every kilogramme caught, the IPP notion that there is "*frequent discarding*" is further unfounded.

Kaipara Harbour Extreme Conditions

16. The Kaipara harbour is the largest harbour in the Southern Hemisphere. The harbour is subject to extreme weather conditions, which change with little warning. Low tides present navigational challenges within the harbour for small set net vessels, and coupled with extreme weather conditions make it impossible to retrieve nets on the harbour during low tides, or extreme weather conditions. We understand this is the reason why stalling has been permitted to continue in the Kaipara harbour, to provide for utilization of the resource.

Summary

17. Sanford support option 1 of the IPP, status quo. We believe the IPP has not adequately identified the issue requiring management intervention, and has inadequately undertaken a nature and extent analysis of set net stalling in the harbour. In the absence of a robust analysis, many statements in the IPP are misleading, and incorrectly imply that the stalling provision jeopardises the sustainability of various stocks in the harbour. The IPP is absent of the best available information, and options 2 & 3 are inconsistent with the utilization principle of the Fisheries Act 1996 should they be implemented.

18. Sanford are a shareholder of the commercial stakeholder organisation the Northern Fisheries Management Stakeholder Company Limited and we support their submission.

Surf Clam Dredge Size

19. Sanford support the option in the IPP to exempt the surf clam fishery from regulation 78 of the Fisheries (Commercial Fishing) Regulations 2001 to enable commercial surf clam fishers to use a dredge with a bar or bit of any length.

20. We do not believe that this regulation change would create any additional environmental or sustainability concerns, and would allow fishers to utilise catches to meet market demand for larger clams, while minimising mortality of smaller, non-marketable clams.

21. This option will also provide for technological advances to be undertaken to maximise catch per unit effort without requiring cumbersome regulation changes to accommodate these advances.

Container Type Reporting for Schedule Six Discards

22. Sanford supports the correction of the technical problem for recording Six Schedule species discards via the removal of the requirement to report 'container type' details on reporting forms.

List Deepwater Crabs on Schedule Six of the Fisheries Act 1996

23. Sanford support option 2 of the IPP to enable fishers to legally return deepwater crabs to the sea if the crabs are likely to survive after release.

24. A large proportion of these deepwater crabs are currently landed alive when caught incidentally in target Scampi and Squid trawl nets. From our experiences deepwater crabs are very hardy, and many seem likely to survive if released back to the ocean immediately. Given that there is no current viable target fishery in any of these stocks, but investigations are occurring to develop the fishery, Six Schedule inclusion of these stocks would remove the unnecessary landing of deepwater crabs where no current market exists. This would allow the quota owner to decide how best to utilise the quota by either landing the crabs and balancing with ACE, or returning them to the ocean if alive.

25. We believe this would allow operators to return crabs to the sea when markets are not desirable for landing, whilst further ensuring sustainability of the stock.

Identification of Crabs likely to Survive

26. Sanford note the IPP states that survivability of crabs discarded after being caught in the trawl net is unknown, and it would be difficult for the survival rule to be enforced by either

the fisheries officers or fishers. We note this is true of a majority of the stocks included in the Sixth Schedule, however, the hard shells and robustness of the deepwater crabs certainly enhances their chances of survival.

Handling Practices on Board

27. Fishers on Sanford vessels are very experienced, and have the ability to identify crabs that are likely to survive upon release, and would retain all other catches unlikely to survive as required. This is determined by visually assessing factors such as time out of the water, physical condition, and crab liveliness. Similar assessments are made to any of the other Six Schedule species caught. Sanford sees real benefit in developing a robust assessment criteria to guide fishers determining survivability before they are returned to the ocean. This could be lead by the commercial stakeholder organisation, Deepwater Group Limited, which Sanford are a shareholder.

28. As with all Six Schedule species, we would expect that MFish scientific observers would help to refine such survivability assessments and data collection criteria whenever possible on an observed trip, and appropriately include the relevant fishing company and commercial stakeholder organisation.

Thank you for considering our comments and should you require clarification or further information please don't hesitate to contact me.

Kind Regards
SANFORD LIMITED

Andrew Bond
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