

CORRECTION OF COORDINATES AND DESCRIPTION ERRORS IN CENTRAL AREA REGULATIONS – INITIAL POSITION PAPER

Executive Summary

- 1 The Ministry of Fisheries (MFish) has identified a number of errors in the area descriptions used in fisheries regulations. MFish proposes to redress these historical inaccuracies by amending such incorrect descriptions. The Challenger Fisheries Management Area was the first area to undergo such a review during the October 2008 regulatory round. Since then the Southland & Sub-Antarctic area has also been redressed and MFish now proposes to review the Central Area regulations. This step is being undertaken in conjunction with earlier changes to regulatory drafting procedures that were aimed at ensuring that future area descriptions were fully accurate.
- 2 In total, 35 errors were identified in the Fisheries (Central Area Amateur Fishing) Regulations 1986 and the Fisheries (Central Area Commercial Fishing) Regulations 1986. The majority of these errors were relatively minor but three errors were deemed significant enough to merit the full consultative process and have, therefore, been included in this Initial Position Paper (IPP). The areas in question are:
 1. Cape Kidnappers
 2. North Entrance to Porirua Harbour
 3. Cape Runaway
- 3 The other errors will also be put forward to the Minister for correction in unison with those being proposed in this paper. Any changes made to these regulations will be communicated to fishers to ensure that the best and most recent information is readily available.
- 4 The affected closures and restrictions were previously approved by Cabinet to achieve a desired objective, which has now been compromised by incomplete or inaccurate area descriptions. The current level of uncertainty has resulted in less than optimal management of these areas. The problem is also a threat to the credibility of the fisheries management regime, needlessly hindering the Ministry's strategy of maximising voluntary compliance and maintaining an effective deterrent.
- 5 Two options are being proposed for consideration by the Minister; to retain the status quo or amend the errors identified. Of those two options, only the latter addresses any of the concerns described earlier in a meaningful way.

Regulatory Impact Analysis Requirements

- 6 This IPP has been deemed not significant and has been reviewed by MFish. Therefore, a Regulatory Impact Statement was not necessary.
- 7 A Regulatory Impact Statement on this proposal has been reviewed by MFish. For more information on the Regulatory Impact Analysis Requirements, please refer to the Treasury website (www.treasury.govt.nz/publications/guidance/regulatory).

The Issue

- 8 Coordinates used in many area definitions are incorrect, which is undermining the purpose of the restrictions as approved by Cabinet. The errors have also affected the ability of MFish to enforce these regulations effectively. The restrictions address a number of fisheries management issues from sustainability to allocation.
- 9 The Fisheries (Central Area Amateur Fishing) Regulations 1986 and the Fisheries (Central Area Commercial Fishing) Regulations 1986 contain a total of 26 of these errors. The 35 errors identified vary greatly in size with only three errors deemed significant enough to warrant consultation. The remaining errors have been judged minor and technical in nature and will consequently be amended directly at the Final Advice stage. Any changes, whether significant or minor, will be publicised to keep fishers informed and up to date.
- 10 Correcting these errors will ensure that the individual goals of each affected closure are achieved and the credibility of the overall fisheries management regime is maintained. The affected closures were approved by Cabinet and put in place to address issues relating to sustainability and allocation. The current situation does not allow MFish to properly manage these closures since they inaccurately represent the areas for which regulations were intended. The inconsistencies present in area definitions also create uncertainty and difficulties for prosecutions that involve these areas.
- 11 There are a number of risks involved in allowing the existing situation to remain; primarily those involving deliberate exploitation of a weakness in the regulations. Some of the closures described by the coordinates in question were put in place to protect ecologically sensitive areas that require the full protection of the regulations. Any encroachment has the potential to seriously affect these vulnerable areas.
- 12 Many changes have been made to the Ministry's operational practices to avoid further errors in future regulations and MFish is now seeking the Minister's approval to correct existing faults on an area by area basis. The discussion in this proposal is limited to the three major errors in the Central Area.

Summary of Options

13 The following two options are proposed at this time:

Option 1 – Status Quo

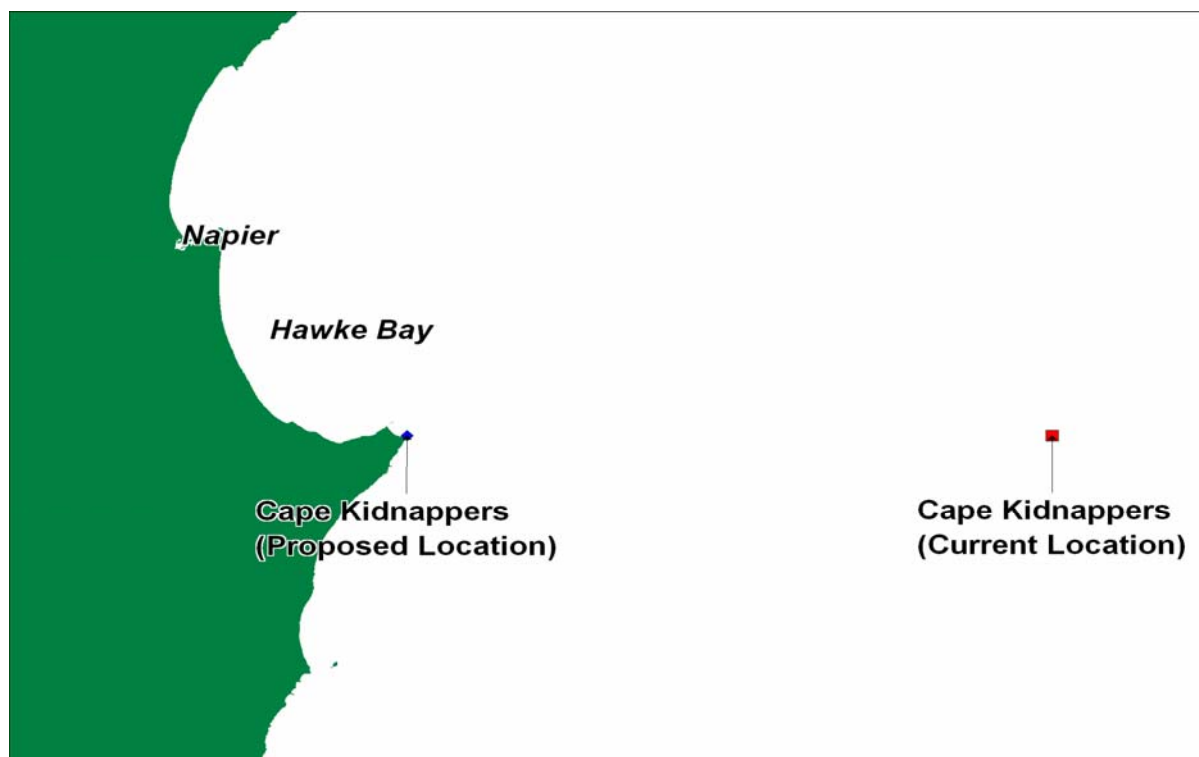
14 Retain the incorrect area descriptions and coordinates as they currently appear in the regulations.

Option 2 – Corrective Action [MFish Preferred Option]

15 Correct the area descriptions that follow:

Cape Kidnappers

16 Regulation 13A(1) of the Fisheries (Central Area Commercial Fishing) Regulations 1986 (the Commercial Regulations), which prohibits the taking of seaweed from certain areas, provides incorrect coordinates to describe Cape Kidnappers at the southern end of Hawke Bay.



17 The current description puts the location over 50km seaward of its true position. The correction will also use the same coordinates as those found in the Land Information New Zealand place names database for Cape Kidnappers. The revised definition follows:

13A Taking seaweed prohibited in certain areas

(1) No commercial fisher shall take or have in possession any seaweed taken from any of the following areas:

(a) Cape Kidnappers: Within a 1 nautical mile radius of Cape Kidnappers (at 39°38.59'S and 177°05.73'E):

North Entrance to Porirua Harbour

- 18 Regulation 13 of the Commercial Regulations incorrectly describes the northern entrance to Porirua harbour. The proposed definition would put the revised northern entrance to Porirua harbour at Te Rewarewa Point, which is 1.6km south of the current location. The coordinates for Te Rewarewa Point were taken from the Land Information New Zealand Place Names Database.



- 19 The revised regulation will read:

13 Taking of Kina prohibited in Wellington area

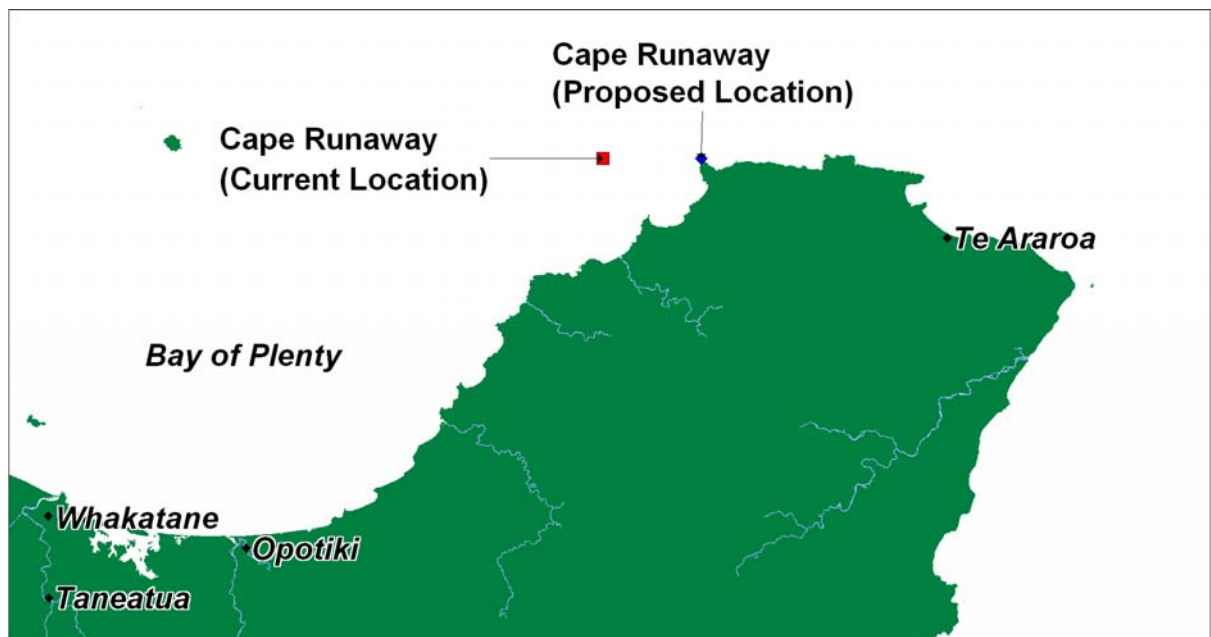
No commercial fisher shall take or have in possession any Kina taken from the following areas:

- (a) Those waters enclosed by a straight line drawn from Paraparaumu Beach (at 40°53.20'S and 174°59.0'E) to the North Point of the entrance to Porirua Harbour (at 41°03.88'S and 174°50.46'E):*
- (b) Those waters enclosed by a straight line drawn from the North Point of the entrance to Porirua Harbour (at 41°03.88'S and 174°50.46'E) to Rock Point (at 41°07.90'S and 174°47.30'E):*
- (c) those waters enclosed by a straight line drawn from Red Rocks (at 41°21.6'S and 174°43.20'E) to Baring Head (at 41°24.60'S and 174°52.20'E) including*

Wellington Harbour.

Cape Runaway

- 20 Regulation 5B of the Fisheries (Central Area Amateur Fishing) Regulations 1986 contains a prohibition on the use of set nets in the area surrounding Cape Runaway in the Bay of Plenty. Cape Runaway, however, has been incorrectly described in the regulation and is currently 13km seaward of its actual location. The proposed correction will also bring the description in line with the coordinates found in the Fisheries Act 1996 to describe the same point.



- 21 The revised regulations will read:

5B Set netting prohibited within defined area of coast adjacent to Cape Runaway

No person shall use any set net within those waters defined by a line-

- (a) commencing at the mean high-water mark at Pitikirua Point (at approximately 37°32.6'S and 178° 4.8'E); then*
- (b) proceeding in a straight line in a northerly direction to a position approximately 2 nautical miles from the point of commencement at 37°30.6'S and 178°4.8'E; then*
- (c) proceeding in a generally westerly direction by a line every point of which is 2 nautical miles from the mean high-water mark to a point approximately 2 nautical miles north of Cape Runaway (at 37°32.30'S and 177°59.00'E); then*
- (d) proceeding in a straight line in a southerly direction to the mean high-water mark at Cape Runaway (at approximately 37°32.3'S and 177°50'E); then*
- (e) proceeding along the line of the mean high-water mark in a generally easterly direction to the point of commencement at Pitikirua Point (at approximately 37°32.6'S and 178°4.8'E).*

Rationale for Management Options

- 22 MFish has made a concerted effort to identify all coordinate or area description errors that currently exist within all Amateur and Commercial Regulations. This was done in conjunction with measures aimed at improving the quality of the process to define future regulated areas. This IPP provides an opportunity for the Minister to address the significant errors found within the Central Area Commercial and Amateur Regulations.
- 23 The Central Area Regulations will be amended with the updated area descriptions in October 2009 if the significant errors identified in this paper are approved for correction. The minor and technical errors not covered within this proposal will be corrected along the same timeline with the updated definitions in place for October 2009.

Assessment of Management Options

Option 1: Status Quo

Impact

- 24 Retaining the status quo does not address the issues of credibility and maximising voluntary compliance that MFish seeks to achieve. It will continue to create uncertainty and the ability to exploit weaknesses around the true location of regulated closures and restrictions. Most importantly, it will continue to undermine the intent of previously approved Cabinet closures and restrictions.
- 25 The ambiguities will continue to create needless hurdles to compliance for users of the relevant areas and the compliance arm of MFish, which is responsible for enforcing these restrictions.

Costs

- 26 There is a risk of breaches against the affected regulations if they are perceived as unenforceable. These risks could increase over time if this perception is allowed to grow and eventually extend to other fisheries regulations. Any reduction in voluntary compliance by fishers will require greater compliance effort and enforcement costs in order to achieve an optimal level of compliance.

Benefits

- 27 There are no benefits associated with maintaining the status quo.

Option 2: Corrective Action

Impact

- 28 Addressing these errors will redress a longstanding deficiency in these regional regulations and complement the congruent work conducted by MFish to improve all area descriptions. The impact to fishers is expected

to be relatively low since this proposal does not introduce new restrictions and only aims to clarify existing ones.

Costs

- 29 There are no direct costs to customary, recreational or commercial fishers from these proposed changes. Fishers will need to be informed of the new area descriptions once these changes have been approved. It is expected that these changes will warrant a low to moderate level of resources from MFish but can be covered within existing processes.

Benefits

- 30 Properly labelling these incorrect areas will increase their management effectiveness and better reflect the original goals behind the restrictions and closures involved. Improved area descriptions will also assist fishers in complying with existing fisheries regulations – increasing voluntary compliance. Accurate area descriptions that are compatible with current navigational technology, such as GPS, will also serve to improve the credibility of our fisheries management regime.
- 31 Correcting all commercial and amateur area descriptions within the Central area simultaneously is more efficient for MFish than the traditional approach of addressing individual errors on an ad hoc basis.

Other Management Controls

- 32 There are no other management controls to consider since this proposal only involves the correction of existing regulations.

Statutory Considerations

- 33 In considering the proposed amendments, the Minister is required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 34 **Sections 5 (a) and (b):** The Minister is required to act in a manner consistent with New Zealand's international obligations relating to fishing, and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. MFish considers that any of the proposed amendments are consistent with these obligations and provisions.
- 35 **Section 8:** The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. Part of ensuring sustainability involves avoiding, remedying or mitigating any adverse effects of fishing on the aquatic life. The closed/restricted areas described in this paper were put in place to control the impacts of fishing on vulnerable areas. The proposed amendments are put forward to ensure that compliance with these restrictions is achieved.
- 36 **Section 9(c):** The Minister is required to protect habitat of particular significance for fisheries management. The proposed amendments will afford greater protection to the habitats of particular significance identified

within these closed/restricted areas by providing added certainty and well-defined boundaries.

- 37 **Section 10:** The Minister is required to take into account information principles in relation to the utilisation of fisheries resources and sustainability. MFish considers that the proposed amendments are based on the best available information and would better reflect current mapping technology.
- 38 **Section 297(1)(a)(ii)** permits regulation of the taking or possession of fish, aquatic life, or seaweed from any area.