

INITIAL POSITION PAPER - CORRECTION OF COORDINATES AND DESCRIPTION ERRORS IN CHALLENGER AREA REGULATIONS

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 address these historical inaccuracies by amending such incorrect descriptions. The Challenger Fisheries Management Area is being proposed as the initial area to undergo such a review. This step will be undertaken in conjunction with earlier changes to regulatory drafting procedures that were aimed at insuring that future area descriptions were fully accurate.
- 2 In total, 27 errors were identified in the Fisheries (Challenger Area Amateur Fishing) Regulations 1986 and the Fisheries (Challenger Area Commercial Fishing) Regulations 1986. The vast majority of these errors were relatively minor but the two involving the Dieffenbach Point and the Farewell Spit Light were deemed significant enough to merit the full consultative process – hence their inclusion in this Initial Position Paper (IPP). The other errors will also be put forward to the Minister for correction in unison with the two being proposed in this paper. Both minor and major changes made to these regulations will be communicated to fishers to ensure that the best and most recent information is readily available.
- 3 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.
- 4 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

- 5 This IPP has been deemed not significant and has been reviewed by MFish. Therefore, a Regulatory Impact Statement was not necessary.
- 6 For more information on the Regulatory Impact Analysis Requirements and the meaning of the word ‘significant’ with reference to an Initial Position Paper, please refer to the Ministry of Economic Development website www.med.govt.nz.

The Issue

- 7 Coordinates used in many area definitions are incorrect, which is undermining the purpose of the closures as approved by Cabinet. The errors have also affected the Ministry of Fisheries' ability to enforce these regulations effectively.
- 8 The Fisheries (Challenger Area Commercial Fishing) Regulations 1986 and the Fisheries (Challenger Area Amateur Fishing) Regulations 1986 contain a total of 27 of these errors. The 27 errors identified vary greatly in size with only two errors deemed significant enough to warrant consultation. The remaining errors have been judged minor and technical in nature and will consequently be amended at the same time. Any changes, whether significant or minor, will be publicised to keep fishers informed and up to date.
- 9 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 restored. 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 to their intended purpose. The inconsistencies present in area definitions also create uncertainty and difficulties for prosecutions that involve these areas.
- 10 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.
- 11 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 two major errors.

Summary of Options

- 12 The following two options are proposed at this time:

Option 1 – Status Quo

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

Option 2 – Corrective Action [MFish Preferred Option]

- 14 Correct the two area descriptions that follow:

Dieffenbach Point

- 15 Regulation 4A of the Fisheries (Challenger Area Amateur Fishing) Regulations 1986 (the Amateur Regulations), which deals with set net

restrictions, provides incorrect coordinates for one of the points used to describe the *Inner Queen Charlotte Sound* area.



- 16 The latitude given is one degree off and has placed the point more than one hundred kilometres from its actual location. The incorrect coordinates (40 degrees 14.0'S and 174 degrees 08.70'E) should read 41° 14.0'S and 174° 08.70'E. The revised definition follows:

[4A Set net prohibition

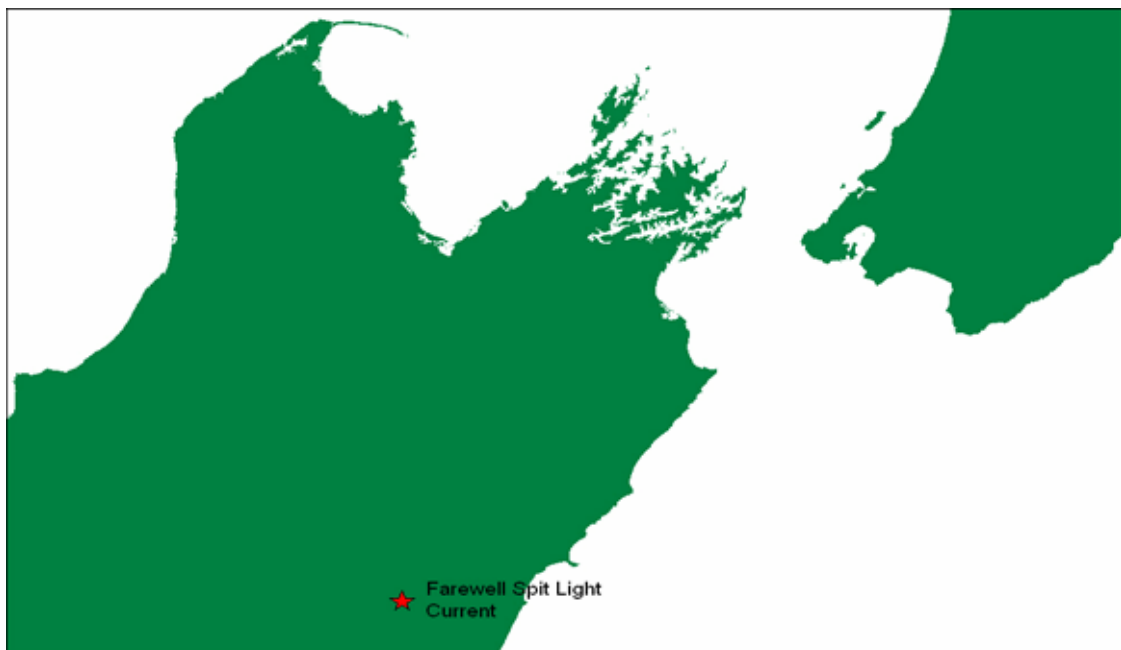
(1) Except as provided for in subclause (2) of this regulation, no person shall use or possess a set net having a mesh size of or greater than 100 mm in the following waters:

(a) Inner Queen Charlotte Sound: The waters inside a line running from *Dieffenbach Point (41 degrees 14.0'S and 174 degrees 08.70'E)* to *West Head Point (41 degrees 13.0'S and 174 degrees 08.60'E)*:



Farewell Spit Light

- 17 The *Interpretation* section (2A) of the Amateur Regulations uses incorrect coordinates to define the location of the Farewell Spit Light in its description of the Challenger (East) Area. This definition is, in turn, applied throughout the Amateur Regulations to assign differentiated bag and size limits to recreational fishers in the area.
- 18 There is a two degree error in the latitude coordinates given for the Farewell Spit Light (given as approximately 42° 32.9'S and approximately 173° 00.6'E) that has placed it hundreds of kilometres away from its actual location.



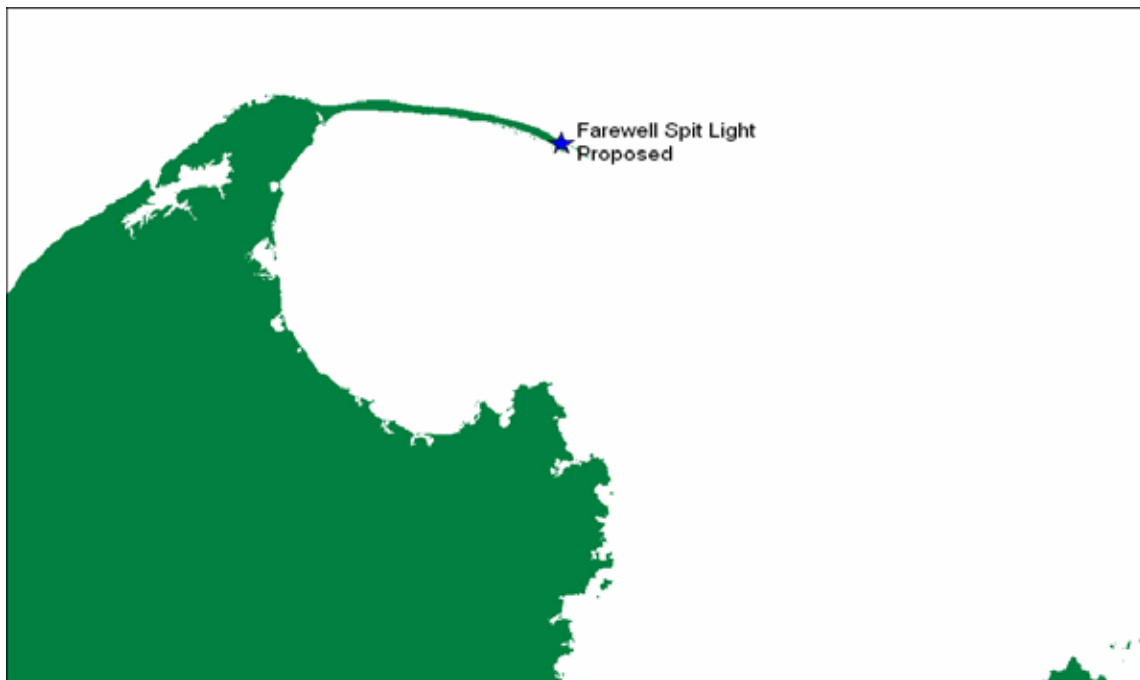
19 The revised definition should read:

[[Challenger (East) Area

(a) means all that area of New Zealand fisheries waters enclosed by a line commencing at Farewell Spit Light (approximately 40° 32.7'S and approximately 173° 00.5'E); then proceeding north along this line of longitude to a point on the boundary of Fisheries Management Area 7 (approximately 39° 38'S and approximately 173° 00.6'E); then proceeding in a generally south-easterly direction directly to a point 40° 32.0'S and 174° 20.0'E; then proceeding in a generally southerly direction to the Brothers Island light (approximately 41° 06.2'S and approximately 174° 26.5'E); then proceeding in a generally southerly direction directly to a point 42° 10.0'S and 174° 42.0'E; then proceeding west along the 42° 10.0'S line of latitude to the mean high-water mark of the South Island near Clarence Point (approximately longitude 173° 56.5'E); then proceeding along the mean high-water mark of the South Island in generally northerly, westerly, and south-westerly directions to the point of commencement; but

(b) does not include the Marlborough Sounds Area.]]

20 This would place the Farewell Spit Light at the point shown below and would coincide with the Land Information New Zealand (LINZ) definition given in the New Zealand List of Lights¹.



Rationale for Management Options

21 MFish has made a concerted effort to identify all coordinate or area description errors that currently exist within the Amateur and Commercial Regulations. This was done in conjunction with measures aimed at improving

¹ <http://www.hydro.linz.govt.nz/lights/index.asp>

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 Challenger Area Amateur Regulations.

- 22 The Challenger Area Regulations will be amended with the updated area descriptions in October 2008 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 2008.

Assessment of Management Options

Option 1: Status Quo

Impact

- 23 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.
- 24 The ambiguities will continue to create needless hurdles to compliance for users of the relevant areas and the compliance arm of the Ministry responsible for enforcing these restrictions.

Costs

- 25 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 will result in greater effort and enforcement costs in order to achieve an optimal level of compliance.

Benefits

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

Option 2: Corrective Action

Impact

- 27 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

- 28 There are no direct costs to industry 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

- 29 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.
- 30 Correcting all commercial and amateur area descriptions within the Challenger area simultaneously is more efficient for MFish than the traditional approach of addressing individual errors on an ad hoc basis.

Other Management Controls

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

Statutory Considerations

- 32 In considering the proposed amendments, the Minister is required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 33 **Section 5 (a) and (b):** There is a wide range of international obligations relating to fishing (including sustainability and utilisation of fish stocks and maintaining biodiversity). MFish considers that any of the recommendations are consistent with issues arising under international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- 34 **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 recommended changes are put forward to ensure that compliance with these restrictions is achieved.
- 35 **Section 9(c):** The recommended changes will afford greater protection to the habitats of particular significance identified within these closed/restricted areas by providing added certainty and well-defined boundaries.
- 36 **Section 10:** MFish considers that the recommendations made are based on the best available information and that the changes would better reflect current mapping technology.
- 37 **Section 297(1)(a)(ii):** The Governor-General may from time to time, by Order in Council, make regulations regulating, authorising, or prohibiting the taking or possession of fish, aquatic life, or seaweed from any area.