

AMENDMENT TO THE RECREATIONAL SCALLOP SEASON IN FISHERIES MANAGEMENT AREA 9 - FINAL ADVICE

Executive Summary

- 1 You are asked to decide on the opening and closing dates of the recreational scallop season in Fisheries Management Area (FMA) 9 – the area of the north-west coast of the North Island between Tirua Point and North Cape. In doing this, you will effectively be deciding on the length of the recreational scallop season. This will not have any direct effect on customary or commercial fishing for scallops in FMA 9.
- 2 In FMA 9, as in most areas of New Zealand, recreational fishers may only fish for scallops between 15 July and 14 February each year (both days inclusive).
- 3 An Initial Position Paper (IPP), released 29 June 2007, proposed to either:
 - a) maintain the existing scallop season in FMA 9; or
 - b) open the scallop season later to reduce the take of scallops in poor condition; and/or
 - c) close the scallop season earlier to reduce the take of undersized scallops.
- 4 The consultation responses revealed a split of opinion. Commercial and recreational stakeholder organisations argued that there was insufficient information on the fishery to make a decision on changing the season. In contrast, an Honorary Fishery Officer (HFO) and local hapu and community groups believe that scallop beds in the harbours are being depleted through fishing and a shorter season is needed to protect the beds.
- 5 The Ministry of Fisheries (MFish) recommends that you make no change to the opening and closing dates of the recreational scallop season in FMA 9.
- 6 Shortening the season is not an effective response to sustainability concerns in the FMA 9 scallop fishery. The availability of scallops is strongly affected by natural variability in recruitment. In years of good recruitment, there will be large scallops available until the end of the season. In years of poor abundance, there can be very few available. In the years of poor abundance sustainability concerns are at their highest, but in those years there will be fewer legal sized scallops and therefore the effect on the fishery of a shorter season will be the least (as the size limit will restrict fishing activity).
- 7 While a later opening may reduce the take of poor condition scallops, this is not a sustainability issue and it is open to fishers to wait until the scallops' condition improves later in the season.
- 8 While an earlier closing day could reduce the take of undersized scallops, MFish considers that the taking of undersized scallops is best dealt with

through enforcement and education. Shortening the season due to the take of undersized scallops would restrict access to the fishery for all due to the illegal actions of a few; MFish does not believe that would be appropriate.

- 9 The opening and closing of the scallop season is provided for under Regulation 24 of the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations). Should you decide to make changes to the length of the scallop season in FMA 9 an amendment to the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 will be required. That amendment would be made under section 297 of the Fisheries Act 1996 (FA96).

The Issue

- 10 You are asked to decide on what the opening and closing dates, and therefore the length, of the recreational scallop season in FMA 9 should be. You should consider which dates, and which season length, would provide optimum utilisation and sustainability outcomes in the fishery.

Summary of Options

Initial Proposals

- 11 The IPP proposed the following options:
- a) *Option one*: status quo (no action). Make no change to the existing scallop season.

OR

- b) *Option two*: open the season later by either:
- a) 4 weeks (making the new opening day 15 August); or
- b) 7 weeks (making the new opening day 1 September)

AND/OR

- c) *Option three*: close the season earlier by either:
- a) 3 weeks (making the new closing day 24 January); or
- b) 6 weeks (making the new closing day 1 January).

Final Proposal

- 12 MFish recommends that you make no change to the recreational scallop season in FMA 9 (Option 1 from the IPP).

Consultation

- 13 If you decide to make changes to the length of the recreational scallop season in FMA 9, that would be a decision to make a regulation under section 297 of the Fisheries Act 1996.
- 14 In addition to the standard written consultation, of which approximately 300 stakeholders were notified by letter, analysts from MFish's Auckland office presented the IPP on the FMA 9 recreational scallop season at meetings of Te Hiku o Te Ika (Far North Regional Iwi Forum), Nga Hapu o Te Uru (western Tainui Regional Iwi Forum) and the West Coast North Island Recreational Fishing Forum. The issue was also discussed prior to the release of the IPP with members of the Kaipara Harbour Sustainable Fisheries Management Study Group, which includes tangata whenua of the Kaipara Harbour. These presentations provided members of the forums with the opportunity to discuss these issues with MFish staff and to lodge a submission if they felt it necessary.
- 15 One recreational respondent argued that there was no information in the IPP to indicate that MFish or you, as Minister of Fisheries, had met the consultation obligations to tangata whenua under section 12 of the Fisheries Act 1996 and called on MFish to take steps to meet these obligations before making any changes. Another recreational respondent thought MFish had had little or no consultation with the recreational sector on the proposals.
- 16 MFish considers that the consultation process that was undertaken to review the length of the recreational scallop season in FMA 9 was appropriate. You, as Minister in your 2006 decision letter, had directed MFish to review the FMA 9 recreational scallop season in 2007.

Submissions Received

- 17 Submissions regarding this proposal were received from:
 - Trevor Collings, HFO
 - Kaipara Harbour Sustainable Fisheries Management Study Group (Kaipara Study Group)
 - New Zealand Recreational Fishing Council (NZRFC)
 - Nga Hapu o Te Uru (Te Uru)
 - option4
 - New Zealand Seafood Industry Council Ltd (SeaFIC)
 - Te Ohu Kai Moana Trustee Ltd (TOKM)
 - Te Runanga o Te Rarawa (Te Rarawa)

- Te Uri o Hau
- West Coast North Island Recreational Fishing Forum (West Coast Recreational Forum) (oral submission)
- Lewis White (oral submission).

Rationale for Management Options

Scallop season and minimum legal size in New Zealand

- 18 Recreational scallop fisheries in New Zealand are subject to a seasonal closure. In most areas of New Zealand, recreational fishers can only take scallops between 15 July and 14 February (both days inclusive). This closure is provided for under Regulation 24 of the Fisheries (Amateur Fishing) Regulations 1986. Different scallop seasons are in place for FMA 1 (1 September to 31 March) and in Southland (1 October to 15 March).
- 19 The closed season for the recreational scallop fishery is intended to protect scallops by limiting fishing effort to a part of the year only. The open season is the time when scallops spawn and is meant to allow for the harvest of scallops in peak condition.
- 20 A scallop minimum legal size (MLS) of 100mm applies to recreational fishers. As most scallops become sexually mature at around 60mm, the MLS generally ensures they have at least one spawning season before reaching the MLS. Given the high level of variability in scallop abundance, the MLS is the key method of ensuring sustainability in the fishery while providing for utilisation. Effectively, the MLS allows higher catches in good years (where there are more scallops available above the MLS) and restricts catches in poor years (where there are few scallops available above the MLS).

FMA 9 scallop fishery

- 21 There is no significant commercial scallop fishing in FMA 9 – the TACC for scallops in FMA 9 south of Ninety Mile Beach is 1 tonne – and commercial scallop fishing has been banned from the west coast harbours since the 1970s.
- 22 The non-commercial fishery for scallops is concentrated in the harbours from Kawhia to the Kaipara. The main fishing method used is dredging although there is some hand-gathering where people walk out onto mud flats and collect scallops at low tide and some diving where tidal conditions are suitable.
- 23 Scallop (tupa) is an important food source for recreational and customary fishers. One recreational respondent thought that shortening the season would reduce people's ability to provide for their wellbeing by fishing for scallops. MFish believes that shortening the season would reduce the amount of time in which fishers can target scallops, which may impact on their wellbeing.
- 24 Scallop fishing in the Kaipara Harbour was historically significant but has declined in recent years. Due to concerns about a decline in scallop abundance, scallop fishing was prohibited in the harbour from July 2005 until

July 2007. This prohibition has recently been re-introduced for one year from 14 September 2007 (under the Fisheries (Kaipara Harbour Temporary Closure) Notice 2007, which was made under section 186A of FA96). As a result, your decision on the scallop season for FMA 9 will have no effect on scallop fishing in the Kaipara Harbour until 14 September 2008.

Quality of information on the FMA 9 scallop fishery

- 25 The issue which most submissions focused on was the information available about the scallop stocks in FMA 9 and the level of the recreational harvest. In the IPP, MFish noted that it had anecdotal information about the fishery in the Kaipara and Manukau Harbours but nothing more. Commercial and recreational stakeholder organisations commented that MFish should gather more and better information about the scallop stocks and the recreational harvest before shortening the season.
- 26 Stakeholders have reported to MFish that scallops are undersized at the end of the season in the Manukau and Kaipara Harbours, probably due to high levels of fishing pressure over the summer. Other stakeholders have advised that scallop availability in the Hokianga Harbour is minimal due to conditions and the beds in Kawhia, Aotea and Raglan Harbours are depleted due to recreational fishing pressure during the summer.
- 27 MFish agrees that better knowledge about the fishery would be beneficial. However, the anecdotal information provided by stakeholders about the harbours from Kawhia to Hokianga, plus MFish's own understanding about the fishery, form the best available information.
- 28 Also, since the IPP was released, a survey has been completed on the scallop stock in the Kaipara Harbour. The preliminary report of this survey found that the scallop population in the Kaipara Harbour is largely restricted to two main beds at Shelley Beach and at Tinopai, that most scallops are of the minimum legal size (100mm) or larger, and that there are limited numbers of juveniles, suggesting there has been no widespread recruitment recently. This report is a draft and has not yet been subject to peer review.

Assessment of Management Options

Conclusion

- 29 MFish recommends that you make no change to the opening and closing dates of the recreational scallop season in FMA 9.

Opening date of the season

- 30 Three respondents in favour of opening the season later argued that scallops at the start of the season are generally in poor condition and if they were taken later then they would be in better condition for fishers. One respondent argued that scallops are highly variable and the quality of scallops harvested depends on environmental conditions.
- 31 MFish does not consider that the condition of scallops at the start of the season is a strong reason for opening the season later as there is no sustainability

concern with the harvesting of poor condition scallops. Ultimately it is a matter for fishers to decide if they wish to target “skinny” scallops in often poor weather conditions in July and August or wait until the scallop and weather conditions improve from September.

Closing date of the season

- 32 Respondents from both the Kaipara and Manukau Harbours have argued that the scallop beds in their harbours cannot sustain the level of harvesting pressure experienced during the summer and by January/February there are no, or very few, legal sized scallops left to be harvested. A customary respondent from the Kawhia, Aotea and Raglan Harbours advises that beds in those harbours have been depleted due to recreational fishing pressure during the summer months. Other respondents argued that this is an enforcement issue which should be dealt with by education of fishers and more compliance effort.
- 33 MFish agrees that the take of undersized scallops is an enforcement issue rather than one which should be addressed by shortening the season.
- 34 Further, MFish does not consider that shortening the season would be an effective response to sustainability concerns in the FMA 9 scallop fishery. The availability of scallops is strongly affected by natural variability in recruitment. In years of good recruitment, there will be significant numbers of large scallops available until the end of the season. In years of poor abundance, there can be very few available. It is in the years of poor abundance that sustainability concerns are at their highest, but in those years there will be few legal sized scallops and therefore the effect on the fishery of a shorter season will be the least (as the size limit will restrict fishing activity). In the years of high abundance, the sustainability concerns will be less but the impact on the fishery of a shorter season would be greater.
- 35 Closing the season earlier would reduce access to the fishery at a time when weather conditions, and therefore access, are good. This could reduce fishers’ ability to obtain value from the fishery. Closing the season earlier would also mean there were four different recreational scallop seasons in place across New Zealand, which could create confusion for fishers and cause difficulties for compliance.

Alternative Options

Align the scallop season in FMA 9 with FMA 1

- 36 Most recreational respondents thought that the scallop season in FMA 9 should be aligned with the scallop season in FMA 1, which runs from 1 September to 31 March.
- 37 MFish consulted last year on proposals to change the scallop season around New Zealand to 1 September - 31 March. This was in response to a request from the recreational sector who advised that shifting the season so it opened and closed a few weeks later each year would improve the ability of fishers to access good quality scallops. This change was only made in FMA 1 due to

opposition from stakeholders elsewhere in New Zealand. Therefore consultation respondents in FMA 9 have already considered a season of 1 September - 31 March and a small majority (3 out of 4 respondents from FMA 9) rejected the option last year, mainly due to sustainability concerns.

- 38 As this proposal was not supported by stakeholders in last year's consultation and was not the focus of this year's consultation, MFish does not recommend this option.

Dredging restrictions

- 39 Recreational respondents suggested that MFish either ban night dredging altogether or consider controls on night dredging. Night dredging is seen as a method which leads to illegal fishing that is difficult to detect. One customary respondent called for a ban on dredging in the Kawhia, Aotea and Raglan Harbours.
- 40 MFish considers that dredge restrictions would not resolve the issues which this final advice paper focuses on, namely the take of scallops that are in poor condition at the start of the season or that are undersized at the end of the season. Also, there are no known sustainability issues associated with night dredging that would justify such a ban.

Other Management Issues

Resource implications

- 41 There will be no resource implications if you do not change the scallop season. If you agree to change the scallop season, some effort, such as developing and distributing new signs and pamphlets, would be needed to ensure the public are made aware of any change. This would carry a cost and would need to be done within budgets and timetables of existing reprint and sign maintenance programmes.

Compliance implications

- 42 If you agree not to change the scallop season, compliance issues will not change from those that already exist in the fishery.
- 43 If you decide to change the dates of the recreational scallop season, MFish's aim would be to ensure there was as much voluntary compliance with the changes as possible. MFish would provide as much information as possible to affected people and make sure that as many people as possible were aware of the changes. Closing the season early would reduce the amount of time compliance would need to enforce the regulations on the size and number of scallops that can be harvested, so this could reduce pressure on compliance. It is thought that there are relatively few offences involving recreational fishers taking scallops outside of the season.

Inappropriate use of the regulation-making process

- 44 One commercial respondent considered that the proposals in the IPP arose from MFish seeking to manage stakeholder perceptions of fisheries

management and that this was an inappropriate use of the regulation-making process. They would like to see the regulatory process clarified to ensure all stakeholders have sufficient understanding of and realistic expectations about regulatory change.

- 45 MFish does not agree that the proposal to shorten the recreational scallop season was put forward with the purpose of managing stakeholder expectations. MFish would not want to prevent stakeholders from making suggestions for changes to fisheries regulations in the future.

Statutory Considerations

- 46 Currently the opening and closing of the scallop season is provided for under Regulation 24 of the Fisheries (Amateur Fishing) Regulations 1986. Should you decide to make changes to the length of the scallop season an amendment to the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 will be required. That amendment would be made under section 297 of the FA96.
- 47 Statutory considerations are discussed in the Appendix.

Appendix

Statutory Considerations

48 In considering all the management options discussed in this paper, you are required to follow the relevant statutory criteria contained in the FA96. These criteria are set out below:

- a) **Sections 5(a) and 5(b): *Application of International Obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:*** A wide range of international obligations relate to fishing. MFish is unaware of any international obligation that would be affected by the management options. Scallops (tupa) are an important customary species, and Maori customary fishing would continue to be provided for under the options.
- b) **Section 8: *Purpose of the Act:*** The management options are not contrary to the purpose of the FA96, which is to provide for the utilisation of fisheries resources while ensuring sustainability. MFish does not consider that the options present a sustainability risk to the scallop fisheries. MFish considers that the options would provide for a reasonable level of utilisation of the scallop resource.
- c) **Section 9: *Environmental principles:*** The management options are not likely to have any significant impact on associated and dependent species, biological diversity, or habitats of particular significance to fisheries management. However, a shortened season may reduce the amount of dredging for scallops which takes place and this could have a positive effect on the aquatic environment.
- d) **Section 10: *Information Principles:*** The information principles of the FA96 require that decisions be based on the best available information, taking into account any uncertainty in that information, and applying caution when information is uncertain, unreliable, or inadequate. Section 10 of the FA96 also requires that you take into account the principle that the absence or uncertainty of information should not be used as a reason to postpone, or fail to take, any measure to achieve the purpose of the FA96. MFish considers that the information used to support the scallop season proposals is the best currently available.
- e) **Section 297: *General Regulations:*** empowers the Governor General to make regulations for certain purposes. This includes under section 297(1)(a) of the FA96: Regulating or controlling fishing and the possession, processing and disposal of fish, aquatic life, or seaweed including any of the following:
 - i) Regulating, authorising, or prohibiting the taking or possession of any fish, aquatic life, or seaweed of any stock or species;
 - ii) Regulating, authorising or prohibiting the taking or possession of any fish, aquatic life, or seaweed from any area;
 - iii) Regulating or prohibiting the taking or possession of fish, aquatic life or seaweed at any time, for any period.