

PROPOSAL TO SHORTEN THE CLOSED SEASON FOR COMMERCIAL FISHING IN THE CRA 7 OTAGO ROCK LOBSTER FISHERY - INITIAL POSITION PAPER

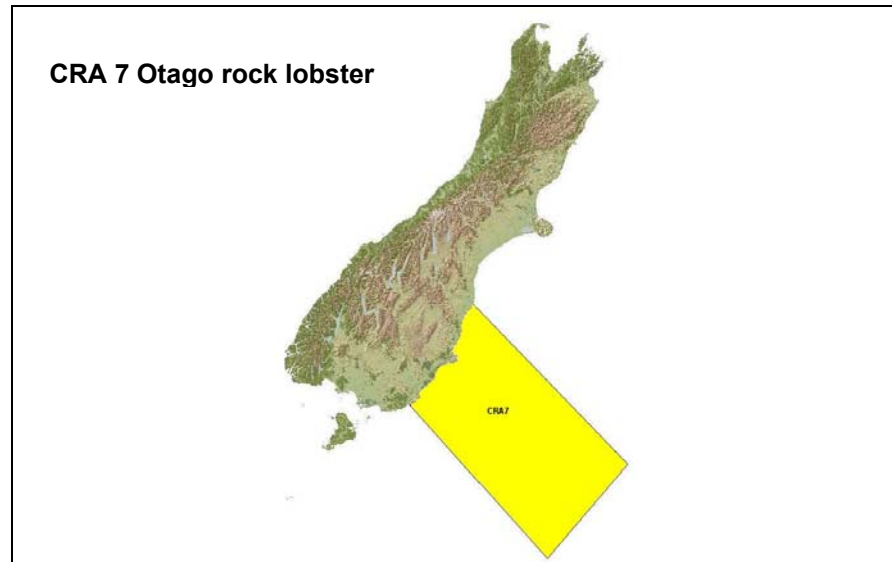


Figure 1: Map showing the CRA 7 Otago rock lobster fishery.

Executive Summary

- 1 The Ministry of Fisheries (MFish) is seeking tangata whenua and stakeholder views on a request to shorten the closed season for commercial fishing in the CRA 7 Otago rock lobster (CRA 7) fishery – refer Figure 1. MFish received the request from the Otago Rock Lobster Industry Association (ORLIA).
- 2 Currently, CRA 7 is closed to commercial fishers for seven months (from 20 November to 20 June inclusive of both days). ORLIA have asked that the closed season be reduced to four and a half months (from 20 November through to 31 March inclusive of both days).
- 3 ORLIA state that shortening the closed season would enable commercial stakeholders to maximise the value obtained from the harvest of CRA 7 rock lobster. A longer fishing season would provide commercial fishers with more opportunities to target their fishing effort towards times when rock lobster return high market prices.
- 4 A shorter closed season is not likely to affect sustainability of CRA 7 as no change to the way sustainable catch limits are set in the fishery are proposed. ORLIA has sought to minimise impacts on customary and recreational fishers by avoiding overlap with the popular non-commercial fishing season, which is thought to be in summer-autumn.

- 5 MFish invites tangata whenua and stakeholders to provide information on the proposal for consideration in developing final advice to the Minister of Fisheries. In particular, MFish invites customary and recreational fishers to provide information on the effect, if any, of shortening the closed season on customary and recreational fishing values.

Regulatory Impact Analysis Requirements

- 6 This initial position paper required a regulatory impact statement which was reviewed internally by MFish.
- 7 For more information on the Regulatory Impact Analysis Requirements and the meaning of the word 'significant' with reference to an IPP, please refer to the Treasury website, www.treasury.govt.nz.

Summary of Options

- 8 This paper seeks comments on the following management options:

Option	Description
Option 1	Retain the existing seven month closed season for commercial fishing in CRA 7 (status quo)
Option 2	Shorten the closed season for commercial fishing in CRA 7 to approximately four and a half months

Option 1: Retain the existing seven month closed season for commercial fishing in CRA 7 (status quo)

- 9 Regulation 8 of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 provides that no commercial fisher shall take or possess any rock lobster from the waters of the Otago Concession Area, or fish using any rock lobster pot in these waters for the period from 20 November to 20 June, inclusive of both days.
- 10 Option 1 would not change the management of rock lobster in CRA 7. The duration of the existing commercial closed season would be retained.

Option 2: Shorten the closed season for commercial fishing in CRA 7 to four and a half months

- 11 Under Option 2, an amendment would be made to Regulation 8 of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 to shorten the commercial closed season by two and a half months.
- 12 The amendment would shorten the closed season from the existing seven months (20 November to 20 June, both days inclusive) to approximately four and a half months (20 November through to 31 March both days inclusive). This means commercial fishers would be able to take and possess rock lobster using any rock lobster pot in the waters of the Otago Concession Area from 1 April to 19 November, inclusive of both days.

Management Options

The Management Problem

- 13 ORLIA report that the current commercial closed season is preventing commercial stakeholders from maximising the value they receive from harvesting rock lobster in CRA 7. Prices paid to commercial fishers fluctuate throughout the fishing year. The problem for commercial stakeholders is the current five month commercial fishing season does not always coincide with times when rock lobsters command high prices.

Rationale for Management Options

- 14 MFish believe management intervention is appropriate because the proposal is about maximising the value New Zealanders achieve from the CRA 7 fishery.

Rationale for Option 1: Retain the existing seven month closed season for commercial fishing in CRA 7 (status quo)

- 15 Available information on the impact shortening the commercial closed season would have on customary and recreational fishing values is limited. Retaining the existing seven month closed season would be appropriate if stakeholder feedback showed that a shorter closed season would result in a significant value-cost to other fishery values (eg, customary, recreational or environmental values).

Rationale for Option 2: Shorten the closed season for commercial fishing in CRA 7 to four and a half months

- 16 Shortening the closed season may increase the value achieved by commercial stakeholders from the sustainable harvest of rock lobsters. Shortening the closed season would enable commercial fishers to target their fishing effort to times when rock lobsters return high market prices. Shortening the closed season would be appropriate if this increased value is not offset by a corresponding value-cost to other fishery stakeholders.

Other Management Options Looked At

Removing commercial closed season

- 17 In 2007 the ORLIA submitted a proposal to the MFish prioritisation and planning committee to remove the commercial closed season in its entirety from CRA 7. The proposal did not progress because ORLIA had not addressed the value-costs to non-commercial stakeholders of removing the closed season.

Additional Matters

Review of concession rock lobster fisheries

- 18 MFish is undertaking a review of concession fisheries. Although the concession minimum legal size (MLS) is part of the current CRA 7 management framework, the closed season and the concession MLS were applied in CRA 7 to address separate management problems. MFish

therefore considers the proposal to shorten the closed season can be undertaken in isolation from the review of concession rock lobster fisheries.

Assessment of Management Options

Option 1: Retain the existing seven month closed season for commercial fishing in CRA 7 (status quo)

Impact

- 19 Option 1 would retain the existing management framework for CRA 7. Commercial fishers would not be able to take and possess rock lobster from CRA 7 from 20 November to 20 June inclusive of both days.
- 20 Consideration for retaining the existing management framework would be appropriate if stakeholder feedback reveals widespread agreement among customary and recreational fishers that access to, and harvest of, rock lobster from CRA 7 would be severely constrained by shortening the closed season.

Benefits

- 21 Of the two options presented, Option 1 has the lowest implementation cost (nil additional costs) as no change to the CRA 7 management framework will result.
- 22 There may be value-costs to customary and recreational fishers of shortening the closed season. In their proposal, ORLIA sought to avoid overlap with what is assumed (from anecdotal information) to be the important summer-autumn non-commercial fishing season. Independent information to confirm the distribution of fishing effort throughout the year is scarce. The NRLMG recreational representatives undertook initial consultation with local fishers and reported recreational fishers were reluctant to either support or oppose the ORLIA proposal. Customary and recreational stakeholder members of the NRLMG supported the proposal being released for consultation to gather additional information.

Costs

- 23 Option 1 may pose a risk to the commercial value of harvesting CRA 7 rock lobster. The status quo would not provide commercial fishers with the same degree of flexibility to target their fishing effort toward maximising value of rock lobster. Retaining the closed season means commercial fishers have to rely on periods of settled weather later in the commercial fishing season to target the more valuable rock lobster after the winter moult period.
- 24 The NRLMG is proposing a 65 tonne increase in the TAC/TACC for the fishing year beginning 1 April 2009 due to increased abundance in the fishery. ORLIA believe increasing the TACC will place added pressure on commercial fishers to harvest more rock lobster in the existing 21 June to 19 November commercial fishing season. Commercial fishers are concerned increasing the TACC may result in an overall decrease in the quality, and therefore average value, of each rock lobster harvested from CRA 7.

- 25 The main moulting period for CRA 7 rock lobsters is thought to be between June and August¹ (known as the winter moult). The winter moult, and the following period when rock lobsters are in soft-shell, coincides with the time when commercial fishers are harvesting rock lobsters in CRA 7. Option 1 does not provide an opportunity to reduce the rate of handling related mortality of post-moult rock lobsters caught in commercial rock lobster pots. Under Schedule 6 of the Fisheries Act 1996 and the commercial regulations, any soft-shelled rock lobster caught by commercial fishers must be immediately returned to the waters it was taken from. Excess handling of soft-shelled rock lobsters may result in unnecessary mortality.
- 26 Option 1 may not be credible to commercial fishers. Commercial fishers believe the closed season was introduced at a time when the management of rock lobster fisheries focused on an egg per recruit approach (ie, protecting the large male and female breeding stock during the breeding season). Because the egg per recruit approach is no longer part of the CRA 7 management framework, commercial stakeholders claim the rationale for retaining the closed season is no longer applicable.

Option 2: Shorten the closed season for commercial fishing in CRA 7 to four and a half months

Impact

- 27 Option 2 would shorten the closed season in CRA 7 to four and a half months. Commercial fishers would not be able to take and possess rock lobster from CRA 7 from 20 November to 31 March inclusive of both days.

Benefits

- 28 Shortening the closed season would put commercial stakeholders in a better position to maximise the value obtained from harvesting rock lobster from CRA 7. An increased fishing season provides more flexibility for commercial fishers to target their fishing effort at catching rock lobster during times when certain grades of rock lobster return high market prices. An increase in fishing days may also provide an additional safe-guard against unseasonable periods of inclement weather.
- 29 Anecdotal evidence from commercial fishers suggests shortening the closed season to end on 31 March may assist to reduce handling related mortality in CRA 7 by reducing the intensity of fishing before the main winter moult period. Reducing handling related mortality is beneficial to the health of the fishery, and therefore to all fishers.
- 30 Option 2 would be more credible to commercial fishers than retaining the existing closed season. Commercial fishers note the rationale for the closed season is no longer applicable. If the outcome of the existing closed season

¹ Annala, J. H.; Bycroft B. L. 1988: Growth of rock lobsters (*Jasus edwardsii*) in Fiordland, New Zealand. *New Zealand Journal of Marine and Freshwater Research*, 1988, Vol. 22: 29-41

is no longer consistent with the CRA 7 management framework, shortening the closed season from seven months to four and a half months may increase the overall value of the fishery to stakeholders..

Costs

- 31 An unintended outcome of the closed season is to reduce spatial overlap of commercial and customary/recreational fishing effort in the CRA 7 fishery. Shortening the closed season would reduce the length of time customary and recreational fishers have sole access to CRA 7. MFish has limited information on the value customary and recreational fishers derive from harvesting CRA 7 rock lobster. Because MFish has no way of measuring the impact on non-commercial values, customary and recreational fishers may not find Option 2 credible.
- 32 Option 2 would result in administrative costs to undertake regulatory amendments and education costs to inform fishery stakeholders of the new shortened closed season.

Conclusion

- 33 The best available information at this time, suggests Option 2 is the best approach because:
 - a. shortening the closed season would allow commercial fishers more flexibility to target their fishing effort to times when market prices for rock lobster are higher;
 - b. providing more commercial fishing days allows commercial fishers to avoid the June-August winter moult period, and could reduce the rate of handling related mortality of rock lobster; and
 - c. customary and recreational fishers would retain sole access to CRA 7 over the December to April (summer-autumn) period when sea temperatures are warmer, and the weather is more settled.
- 34 MFish has limited information to determine how, if any, shortening the closed season to commercial fishing –extending the number of commercial fishing days into April, May and the first half of June– would affect the ability of customary and recreational fishers to catch rock lobster.
- 35 MFish invites stakeholders to provide additional information for consideration in developing final advice to the Minister of Fisheries. In particular, MFish invites information on:
 - i. the value-costs, if any, to customary and recreational fishers of shortening the closed season in CRA 7; and
 - ii. when during the calendar year do customary and recreational fishers catch most of their rock lobster.

Statutory Considerations

- 36 In forming the options for reducing the closed season for CRA 7, the following statutory considerations under the Fisheries Act 1996 have been taken into account.
- a. **Section 5(a)** of the Act requires the Minister to act in a manner consistent with New Zealand's international obligations relating to fishing. MFish is unaware of any international obligations relating to fishing that would be affected by the management options proposed in this paper.
 - b. **Section 5(b)** of the Act requires the Minister to act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. MFish considers the management options proposed in this paper are consistent with these provisions. None of the options considered negatively impact the availability of, or access to, rock lobster from CRA 7 for customary purposes. The actual and potential impacts of each management option on customary stakeholders, (including Maori commercial stakeholders) have been explored and the consultation process provides the opportunity to gather more information.
 - c. **Section 8(1)** of the Act states the purpose of the Act as being to provide for the utilisation of fisheries resources while ensuring sustainability. None of the management options proposed in this paper are contrary to the purpose of the Act, which is to provide for utilisation of fisheries resources whilst ensuring sustainability. Option 2 is likely to improve the value of rock lobster harvested by commercial fishers by providing more flexibility for commercial fishers to target their fishing effort to maximise returns when market conditions for certain grades of rock lobster are favourable.
 - d. **Section 9** of the Act requires the Minister to take into account the following environmental principles:
 - **Section 9(a)** requires associated or dependent species to be maintained above a level that ensures their long-term viability.
 - **Section 9(b)** requires biological diversity of the aquatic environment to be maintained.
MFish has identified interactions between species (eg, predator-prey relationships). None of the management options proposed in this paper would materially affect these interactions.
 - **Section 9(c)** requires habitat of particular significance for fisheries management to be protected. None of the management options proposed in this paper would impact on habitats of particular significance for fisheries management. Fishing methods used to target rock lobster, particularly UBA-based non-commercial and commercial potting methods, have a relatively low environmental impact. The non-commercial and commercial fishing methods for rock lobster will not change as a result of the options proposed in this paper.
 - e. **Section 10** of the Act sets out information principles which require decisions to 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. The best available information is incorporated into the assessment of management options proposed in this paper. Uncertainties in information held by MFish make it difficult to accurately quantify costs and benefits to access to the fishery and stakeholder value. Any uncertainties in information held by MFish are clearly identified and discussed. MFish has included matters relating to uncertain information for discussion with fishery stakeholders. This is to provide an opportunity for stakeholders to provide additional information and supporting evidence where available.

f. **Section 11** of the Act sets out matters the Minister must take into account when modifying fishing methods in CRA 7.

- **Section 11(1)(a)** requires the Minister to take into account any effects of fishing on any stock and the aquatic environment. MFish considers the options presented in this paper will not contribute or detract from the sustainability of CRA 7. The potential environmental impacts of rock lobster fishing methods on the aquatic environment are considered. The non-commercial and commercial fishing methods for rock lobster will not change as a result of the options proposed in this paper.
- **Section 11(1)(b)** requires the Minister to take into account any existing controls under the Act that apply to the stock or area concerned. The options presented in this paper will not contribute or detract from the sustainability of CRA 7. All matters relating to the closed season for commercial fishers in CRA 7 are considered and discussed in the paper. Other regulations comprising the CRA 7 management framework, including the concession MLS for CRA 7 rock lobster, and the Otago Concession Area, are discussed in the paper.
- **Section 11(1)(c)** requires the Minister to take into account the natural viability of the stock concerned. The options presented in this paper will not contribute or detract from the sustainability of CRA 7. The natural variability of the CRA 7 stock is considered in the paper.
- **Section 11(2)(a)** requires the Minister to have regard to regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991. The options presented in this paper will not contribute or detract from the sustainability of CRA 7. There are no provisions applicable to the coastal marine area known to exist in any policy statement or plan under the Resource Management Act 1991.
- **Section 11(2)(b)** requires the Minister to have regard to any management strategy or management plan under the Conservation Act 1987. There are no management strategies or plans under the Conservation Act 1987 that are relevant to the management options proposed.

- **Section 11(2)(c)** requires the Minister to have regard to sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000. None of the options in this proposal will have any effect on these provisions.
 - **Sections 11(2A)(a) and (c)** require the Minister to take into account any conservation services or fisheries services, and any decisions not to require conservation services or fisheries services. The options presented in this paper will not contribute or detract from the sustainability of CRA 7. The management options proposed in this paper will not be affected by, or require conservation or fisheries services.
- g. **Sections 297(1)(a)(ii) and (iii)** allows the making of regulations to regulate, authorise or prohibit the taking or possession of fish, aquatic life or seaweed from any area, at any time, or for any period. The options proposed in this paper may reduce the duration of the closed season for commercial fishing in CRA 7. The paper fully explores and discusses the costs and benefits of shortening the closed season on fishery stakeholders.
- h. **Regulation 8 of the Fisheries (South-East Area Commercial Fishing) Regulations 1986** provides that no commercial fisher shall take or possess any rock lobster from the waters of the Otago Concession Area, or fish using any rock lobster pot in these waters for the period from 20 November to 20 June, inclusive of both days. The options proposed in this paper may reduce the duration of the closed season for commercial fishing in CRA 7. The paper fully explores and discusses the costs and benefits of shortening the closed season on fishery stakeholders.

REGULATORY IMPACT STATEMENT

Shorten the Closed Season for Commercial Fishing in the CRA 7 Otago Rock Lobster Fishery

a) Executive summary

MFish proposes shortening the closed season for commercial fishing in the Otago (CRA 7) rock lobster fishery from seven months to four and a half months.

Commercial stakeholders report that shortening the closed season would place commercial fishers in a better position to maximise the value obtained from harvesting CRA 7 rock lobster.

Available information suggests the impact on other fishery stakeholders would be low because the proposal does not affect sustainability of the fishery and the extension to the commercial fishing season would not impact on with what is thought (anecdotally) to be the main non-commercial fishing season in summer-autumn.

b) Adequacy statement

This Regulatory Impact Statement has been reviewed by the Ministry of Fisheries' RIA Review Group and is considered adequate according to the criteria agreed by Cabinet.

c) Status quo and Problem

The Otago Rock Lobster Industry Association (ORLIA) report the existing closed season from 20 November to 20 June (inclusive of both days) is preventing commercial stakeholders from maximising the value they receive from harvesting CRA 7 rock lobster. Prices paid to commercial fishers fluctuate throughout the fishing year. The problem for commercial stakeholders is the current five month commercial fishing season does not always coincide with demand for rock lobster that command high prices.

d) Objectives

The key fisheries management objectives for the CRA 7 fishery are:

- **the sustainable utilisation of the CRA 7 rock lobster resource;**
- **the value of the CRA 7 rock lobster resource is maximised; and**
- **management of the CRA 7 rock lobster resource is credible.**

e) Preferred option

The preferred option is to shorten the current closed season to four and a half months (20 November to 31 March).

Shortening the closed season has the following benefits:

1. Commercial stakeholders are better able to maximise the value of CRA 7 rock lobster by having more opportunities to target fishing effort to when the market conditions are favourable;
2. May reduce handling related mortality of rock lobster by reducing the intensity of fishing during and after the main

winter moulting period;

3. Provide commercial fishers with additional safe-guards against periods of inclement weather by increasing the number of fishing days;
4. Viewed by commercial fishers as being a more credible option than retaining the status quo because is consistent with the current CRA 7 management approach; and
5. No adverse impact on sustainable utilisation as commercial harvest of CRA 7 rock lobsters is still constrained to the TACC.

Shortening the closed season has the following costs:

6. May not be a credible option to customary and recreational fishers because shortening the closed season reduces the time non-commercial fishers have sole access to the CRA 7 fishery; and
7. Low administrative costs of amending Fisheries (South-East Commercial Fishing) Regulations 1986, and education costs to inform fishery stakeholders of the new shortened closed season.

Shortening the closed season requires amendments to regulation 8 of the Fisheries (South-East Commercial Fishing) Regulations 1986. No other regulations would be affected by this option.

f) Alternative option

The alternative option is to retain the current closed season of seven months (20 November to 20 June).

Retaining the existing closed season (the status quo) has the following benefits:

8. Low implementation cost (nil additional costs) as no change to the management framework will result;
9. Some customary and recreational fishers may see the status quo as the more credible option because it maximises time non-commercial fishers have sole access to the CRA 7 fishery.

Retaining the existing closed season (the status quo) has the following costs:

10. Commercial stakeholders are constrained in their ability to maximise value;
11. May not be seen as credible by commercial stakeholders because the closed season was introduced as part of an egg per recruit approach to management, which is now redundant;
12. Will not provide opportunities to reduce handling related

mortality of rock lobsters.

g) Implementation and review

It is proposed amendments to regulation 8 of the Fisheries (South-East Commercial Fishing) Regulations 1986 would come into force on 1 October 2009.

Non-commercial and commercial fishers will be notified of changes via Ngai Tahu tangata-kaitaki forum, Southern South Island regional recreational forum, the Otago Rock Lobster Industry Association (ORLIA), stakeholders on the National Rock Lobster Management Group (NRLMG), by notice from Fishserve, material posted on the MFish external website and through contact with MFish Fisheries Surveillance Officers and Fisheries Operations staff.

h) Consultation

MFish will consult with all persons and organisations who have an interest in shortening the closed season for commercial fishing in the CRA 7 fishery. This will include (but is not limited to) regional and national tangata whenua, commercial and recreational fishing sector organisations, and environmental organisations with an interest in the CRA 7 fishery.

Once feedback from the above consultation has been reviewed and final advice drafted and considered by the Minister of Fisheries, MFish will also seek feedback from relevant government departments.