

CORRECTIONS AND AMENDMENTS TO RETURNS - FINAL ADVICE

Executive Summary

- 1 You are asked to approve an amendment to the Fisheries (Reporting) Regulations 2001 (the regulations) to revoke the requirement for the correction and amendment to Monthly Harvest Returns (MHRs) and Licensed Fish Receiver Returns (LFRRs) to be made on the original returns.
- 2 The proposed amendment is administrative and of a minor and technical nature; it would remove impractical and redundant provisions. There are no negative implications on the public therefore no public consultation has taken place.
- 3 The proposed amendment would remove an impractical and redundant requirement and would thus contribute to the credibility of the regulatory framework. At present, the requirement for permit holders and licensed fish receivers (LFRs) to make corrections or amendments to their returns (MHRs and LFRRs respectively) on the original returns is impractical. It creates enforcement problems as it removes the original returns and is not current administrative practice.
- 4 In making a decision, it is important that you consider the importance of accurate and timely information, collected in MHRs and LFRRs, and how the proposed amendment would contribute to that. The information collected in these returns is particularly relevant for compliance, enforcement and catch balancing activities under the Quota Management System. Your decision is to be made in the context of section 297 of the Fisheries Act 1996 (the Act).

The Issue

- 5 Section 295(3) of the Act stipulates that any return required to be provided shall be deemed not to have been provided until it has been completed and provided in the prescribed form. Consequently, regulation 39 of the regulations indicates that if a person required to provide returns has not provided one in an appropriate manner, he or she may be required to provide a new return in the manner specified. However, regulations 7(6) and 16(5) of the regulations require permit holders and LFRs to make corrections and amendments to their MHRs and LFRRs, respectively, on the original returns. These provisions therefore cause some ambiguity.
- 6 Section 296 of the Act allows the Chief Executive to issue approvals for electronic transmission of returns. At present, approvals are only granted for MHRs and LFRRs. Approximately 57% of all MHRs and 72% of all LFRRs are submitted electronically. Electronic transmission substantially decreases the amount of mistakes and omissions in these returns as the software used validates the information submitted before accepting the return. Nonetheless, mistakes can still be made on certain fields where the validation process

cannot identify errors. If any errors are identified later, a new amendment return is completed electronically. This procedure, although it is logical and efficient, is inconsistent with regulations 7(6) and 16(5) of the regulations.

- 7 Likewise, the requirement for corrections and amendments to MHRs and LFRRs to be made on the original returns is not practical in the case of paper-based returns. First, previous experience shows that getting permit holders and LFRs to comply with the requirements is difficult, time consuming and costly given that most tend to submit a new return when a mistake is detected, rather than amending the original. On occasions the original return has been discarded, lost or concealed, making compliance with the existing requirement impossible. The administrative process required to get the original return amended and re-submitted when a mistake was detected resulted in significant delays in getting the information needed. Consequently, there are delays in final information being available for catch balancing¹ (in the case of MHRs) and other activities that rely on these returns. One of these activities is return analysis for the purpose of detecting possible misreporting offences.
- 8 Second, if a prosecution is taken against a permit holder or LFR, original returns are likely to be key evidence for the court proceedings. If the original return is sent back for correction or amendment, this piece of evidence could be altered or lost.
- 9 Due to these difficulties, the current practice has been to return a copy of the original return when requesting a correction or amendment, which is to be made on a new return. For the period 1 October 2002 to 30 September 2006, 154 MHRs and 22 LFRRs were returned for correction or amendment; in all these cases a new return was submitted, as per regulation 39.
- 10 Therefore, regulations 7(6) and 16(5) do not reflect current administrative practice as these requirements would have negative impacts on enforcement and timely catch balancing. It is thus desirable that you agree to the proposed amendment.

Summary of Options

- 11 MFish recommends that you agree to amend the Fisheries (Reporting) Regulations 2001 to revoke regulations 7(6) and 16(5) which require any amendments or corrections to MHRs and LFRRs to be made on the original returns. This amendment would support the current practice of accepting corrections and amendments on a new return, which is more practical and efficient than the current requirement (**Option 2**).

Rationale for Management Options

- 12 An amendment to the regulations is proposed pursuant to section 297 of the Act, which allows creating regulations for a variety of purposes. In deciding whether it would be desirable to revoke the relevant regulations, as proposed,

¹ An essential activity for the operation of the Quota Management System, when reported catch is balanced against annual catch entitlements.

you should take into account the complexity, ambiguity and redundancy that these create in the context of reporting requirements.

Assessment of Management Options

Option 1 – Status Quo

- 13 The status quo would continue undermining the credibility of the regulatory framework given that the regulations referred to in this proposal are not currently being adhered to and create ambiguity. Additionally, if the current requirements were adhered to, the difficulties created would delay information collected in these returns. These delays would have a negative impact on enforcement activities; access to these returns is essential for detecting potential offending (e.g. misreporting), when conducting investigations and they are often used as evidence in prosecutions. Likewise, catch balancing is likely to be delayed further when mistakes are detected in MHRs if the status quo is maintained. These are significant costs and no benefits are expected to result from the status quo.

Option 2 – Revoke regulations that require corrections and amendments to be made on original returns

- 14 Current procedures have superseded regulations 7(6) and 16(5) of the regulations. By revoking these, current procedures would be consistent with legislation and would allow corrections and amendments to occur on new returns rather than on the originals. This would result in accurate information being received sooner for enforcement and catch balancing purposes. The amendment would not be a significant change from the current practice so there are no foreseeable administrative or compliance costs involved, aside from the administrative costs of the revocation itself, which is negligible. The benefit however, lies in keeping regulation up with current administrative procedures, which is important for the credibility of the fisheries management framework. Fisheries legislation already requires returns to be completed in the manner specified and on time before they are accepted and regulation 39 already sets out the procedure to follow when returns may need amendment or correction.

Statutory Considerations

- 15 In considering the proposed amendment, you are required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- b) **Section 189** outlines the persons required to keep and provide accounts, records, returns and other information required by regulations made under the Act.
 - c) **Section 295(3)** stipulates that any return required to be provided under the Act in a prescribed or approved manner or form shall be deemed not to have been provided until it has been completed and provided in the prescribed or approved manner or form.
 - d) **Section 297(1)(h)** prescribes the power to make regulations outlining the form in which returns are to be kept and provided.

- e) Consequently, the **Fisheries (Reporting) Regulations 2001** specify the details in which these returns are to be completed and provided.
- f) **Regulation 39** indicates that if the Chief Executive considers that a person required to provide returns under these regulations has not completed or provided any return, or part of a return, in an appropriate manner, the Chief Executive may require the person to provide a fresh return in the manner specified.
- g) Furthermore, **section 296** allows the Chief Executive to approve electronic transmission of returns. The majority of MHRs and LFRRs are submitted electronically and it is not possible to make amendments or corrections to these on the original returns.
- h) However, **regulations 7(6) and 16(5)** require amendments and corrections to MHRs and LFRRs, respectively, to be made on the original returns, which as described above is not practical and is inconsistent with current administrative practice. It is in this context, that you are asked to make a decision to revoke these requirements.