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## ***Regulatory Impact and Business Compliance Cost Statement***

### ***Amendments to the Fisheries Act 1996 for the management of Highly Migratory Species (HMS)***

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#### ***Statement of the nature and magnitude of the problem and the need for government action***

New Zealand has recently ratified the Convention on the Conservation of Southern Bluefin Tuna (CCSBT) and will soon ratify the Western and Central Pacific Fisheries Convention (WCPFC). These Conventions are regional fisheries management agreements on the management of HMS (chiefly tuna species). The aim of these conventions is to ensure that the species covered by them are harvested in a sustainable fashion, thus ensuring that the resource is available into the future for the benefit of both the nations in the region and other 'Distant Water Fishing Nations' such as South Korea that conduct fishing operations in the area. These conventions place obligations upon New Zealand as a party state regarding the management of New Zealand flagged fishing vessels, New Zealand fishers and the amount of HMS being harvested by New Zealanders.

New Zealand must ratify these Conventions in order to 'have a say' in the management of the HMS covered by the Conventions. New Zealand's ability to fish for the relevant species outside the New Zealand exclusive economic zone (EEZ) (New Zealand's EEZ is the area of ocean extending from the boundary of the 12 nautical mile territorial sea to 200 nautical miles from the New Zealand coastline, over which New Zealand has jurisdiction), within the Convention areas would be affected if New Zealand did not ratify the Conventions. Non-member states may be severely constrained or excluded from fishing in the convention area, both on the high seas (the area of ocean outside the EEZ of any state) and especially in the EEZs of other states.

Last year New Zealand exported approximately 8,000 tonnes of the tuna species covered by the WCPFC with a value of over NZ\$30 million. In addition, New Zealand flagged purse seine vessels operating on the high seas and in other countries' EEZs in the WCPFC area caught an additional 20,000 tonnes of skipjack and yellowfin tuna that was landed at ports in the region (figures on the value of this catch landed overseas are not available). Last year New Zealand fishers landed approximately 420 tonnes of southern bluefin tuna, (which is covered by the CCSBT) with a value to the New Zealand fishing industry of approximately NZ\$9.2 million.

Under section 18 of the Fisheries Act 1996 (the Act) the Minister of Fisheries may declare any species or stock of fish, aquatic life or seaweed to be subject to the quota management system (QMS) by giving notice to that effect in the *Gazette*. The QMS is a fisheries management tool that controls catch by allocating fishers a permanent, transferable property right (quota) expressed as shares in the fishery. Quota generates an entitlement (annual catch entitlement) to take a certain amount of fish each year. The Minister of Fisheries has decided that the most effective way to manage New Zealand's HMS harvest is by applying the QMS, however, under the current provisions of the Act, the QMS does not apply outside the New Zealand EEZ for species other than southern bluefin tuna.

#### ***Statement of the public policy objective***

To ensure that the ongoing utilisation of highly migratory fish species outside the New Zealand exclusive economic zone is sustainable and that New Zealand meets its' international obligations under regional fisheries management organisations (RFMOs).

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### *Statement of feasible options (regulatory and/or non-regulatory for achieving the desired objective(s))*

#### **Status Quo**

The following features of the status quo that apply to the problem are:

- The QMS (and therefore quota allocation) is available within the New Zealand EEZ for all species and for southern bluefin tuna in high seas areas.
- New Zealand flagged fishing vessels targeting HMS on the high seas can be managed effectively using the existing high seas fishing permit regime under the Act. The high seas permitting regime is the tool used to ensure that New Zealand complies with its international obligations to control New Zealand fishing vessels on the high seas. Under the high seas permitting regime, no person may use a fishing vessel that flies the New Zealand flag to take fish on the high seas without holding a high seas permit. As a standard condition of high seas permits, all permit holders must report details of their catch and fishing activities to New Zealand authorities using the New Zealand 'high seas fishing returns'. New Zealand fishers operating in the EEZ of other states are required to report their catch to the state in whose EEZ they are fishing.
- The QMS requirements to report catch and balance catch against annual catch entitlement holdings apply to all species managed under the QMS within the New Zealand EEZ and extend into the high seas for southern bluefin tuna.

#### **Extending current legislation – Preferred Option**

The preferred option is to extend the coverage of the QMS to areas outside the New Zealand EEZ by amending the Fisheries Act 1996.

The Act will be amended to;

- Create mechanisms for the allocation of quota and to recognise catch history outside the New Zealand EEZ for HMS other than southern bluefin tuna.
- Create requirements for fishers catching HMS that are subject to the QMS in the EEZs of other states and on the high seas to furnish catch effort returns and balance catch against annual catch entitlement holdings.
- Define HMS under the Act by reference to a new Schedule to the Act including all species that due to their biological characteristics and/or range are considered to be highly migratory. This Schedule will be based on the United Nations Convention on the Law of the Sea (UNCLOS) which defines HMS by reference to a list of species in Annex 1 of that Convention. The UNCLOS list includes several tuna species, frigate mackerel, pomfrets, marlins, sailfishes, sauries, dolphins, oceanic sharks, and cetaceans. For the purposes of the Act the UNCLOS list will be updated to reflect current taxonomy and will exclude marine mammals as they are not managed under fisheries legislation in New Zealand.
- Extend the definition of a 'commercial fisher' to include New Zealand fishers using New Zealand fishing vessels on the high seas and in the fisheries jurisdiction of other states in respect of the taking of HMS subject to the QMS, to enable the Act's balancing regime to function.
- Enable the management of New Zealand fishers operating in the EEZ of other coastal states by establishing a presumption that a New Zealand vessel operating in a foreign states' EEZ is fishing against New Zealand quota unless the fisher provides proof to the contrary. The policy on what will constitute acceptable proof will be formulated closer to implementation and after consultation with the fishing industry.

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- Manage foreign licensed fishing access to the New Zealand EEZ by giving the Minister of Fisheries discretion to grant, with or without conditions, or decline foreign licensed access to HMS stocks in the New Zealand EEZ based upon optimum utilisation of those fishstocks.

### *Statement of the net benefit of proposal, including the total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal and other feasible options*

**Government:** The proposal will ensure that New Zealand is complying with the obligations of international agreements on the management of HMS to which New Zealand is a party. There will be some administrative costs to the government. These costs arise from the process of calculating each fishers 'catch history' and the amount of quota that will subsequently be allocated to each fisher. There will also be administration costs involved in assessing and processing the catch effort returns that each fisher provides, these costs will be cost recovered in line with the Ministry of Fisheries' current cost recovery levy regime.

**Fishers:** Fishers will benefit from the fact that HMS fisheries will be healthy and available for harvest in future years by reducing the risk of over-fishing. This benefit is dependent upon other states complying with the conventions' management measures. This proposal will provide fishers operational flexibility by not having to rush to catch as much as possible before the catch limit is reached and grant security of access to the fish stocks. Fishers will also benefit by being granted quota, a valuable property right asset that may be sold on the open market and can also act as security on loans, enabling fishers to raise finance.

There will be costs to New Zealand fishers who operate solely in the EEZs of other countries as they may be required to report catch to New Zealand authorities as well as to the authorities of the jurisdiction in which they are fishing. There will also be potential administrative costs to fishers from ensuring that all catch is balanced against annual catch entitlement holdings. These additional costs cannot be reliably quantified at this time and will depend on the current reporting requirements and location of each fisher. The extra costs are anticipated to be minimal and will be greatly outweighed by the value of the quota asset that fishers will be granted. The administrative costs incurred by the government from extending the QMS and the corresponding increased administrative functions will be cost recovered in line with the Ministry's current cost recovery regime. The level of cost recovery is not available at present, the level of cost recovery to be charged is calculated at the start of every year and prescribed in regulations. Given that the introduction into the QMS of most HMS will not be for some years, these calculations have not been made and are impossible to predict at this stage. There may be costs to fishers if they are allocated quota which entitles them to catch less fish than they are currently catching. There is no way of knowing if this will occur until national allocations are finalised at the relevant RFMO which may be some years away.

**Society and environment:** Ensuring the sustainability of the HMS fisheries resources will mean these resources and profits that result from harvesting the resources are available to society and to future generations. These benefits are heavily dependant upon other states adopting and complying with the management measures agreed upon by the conventions. There are no costs anticipated.

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## *Statement of Consultation undertaken*

All non-aquaculture related commercial fisheries stakeholder organisations, environmental and recreational stakeholder groups were consulted. Concerns regarding compliance costs were raised by fishing industry stakeholders during the consultation process. These concerns centred on the administration and application of the catch balancing and catch reporting requirements of the QMS. In order to be allocated quota these requirements are unavoidable and the value of the quota asset that will be allocated to fishers will significantly outweigh any potential costs in terms of reporting and balancing.

In the development of these proposals the Ministry for the Environment, Treasury, Te Puni Kokiri, Ministry of Justice, Department of Conservation, Maritime Safety Authority and Ministry of Foreign Affairs and Trade have been consulted. The Ministry of Foreign Affairs and Trade raised some technical concerns with some of the proposals. These concerns have been addressed.

## **Business compliance cost statement**

There will be costs involved with balancing catch against annual catch entitlement holdings and reporting catch to New Zealand authorities. These costs will arise from gathering and analysing relevant information, and the time taken to fill in forms such as catch effort returns, should fishers be required to fill in these returns (this depends upon the reporting requirements that individual fishers are already operating under). There will also be costs involved with the time required to become familiar with the requirements of the QMS.

New Zealand nationals operating New Zealand flagged fishing vessels outside the New Zealand EEZ will be affected by this proposal. It will be the approximately 20 fishers who operate in the EEZ of other coastal states that will be most affected. The majority of these fishers are small tuna long-line vessels with average crews of 3-6. Three large New Zealand commercial fishing companies operate a total of four large-scale purse-seine vessels with crews of approximately 20 that fish in the region.

The extent of the reporting costs cannot be reliably quantified at this time as they depend on the location and nature of the fishing operations and the reporting requirements under which each fisher currently operates. These requirements are different for each individual vessel and may vary depending upon the area being fished at any given time. Some of the vessels affected are operated by companies that also have operations in the New Zealand EEZ, these companies will already be familiar with the reporting framework and the returns themselves. Other fishers will not be familiar with the New Zealand reporting regime and will need to become familiar with the new requirements and the new forms, if they are required to use the New Zealand returns.

Compliance costs will be minimised by allowing reports provided to other states to be provided to New Zealand, subject to approval, to reduce the burden of potential 'double reporting'. The Ministry has established an internal review which is investigating the possibility of returns being filed electronically, either by facsimile or online.

The introduction of species into the QMS will only be after notification at least one year in advance. Fishers will be notified of the changes by publication in Ministry of Fisheries and also FishServe (Commercial Fisheries Services Ltd, the agency that performs certain administrative functions under contract) newsletters and websites as well as through New Zealand diplomatic posts in the region.

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