

# **Proposed Ministerial Purpose for Issuing a Special Permit**

## **Initial Position Paper**

**26 May 2008**

# PROPOSED MINISTERIAL PURPOSE FOR ISSUING A SPECIAL PERMIT

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## Executive Summary

1 The Ministry of Fisheries (MFish) proposes to seek approval from the Minister of Fisheries (Minister) on a new purpose for special permits under s 97(1)(c) of the Fisheries Act 1996 (the Act).

2 The proposed purpose is:

*“To allow persons or organisations to take fish from stocks with a nominal total allowable catch in conjunction with a research programme that is likely to provide sufficient information to establish commercial catch limits in accordance with statutory requirements.”*

3 Section 97 of the Act authorises the chief executive to issue a special permit for education, investigative research, and eradication of unwanted aquatic life or carrying out of trials, experiments with new fishing equipment or for the benefit of disabled persons. The taking, and disposal, of fish may be subject to such conditions as are specified on the special permit. If an activity considered for a special permit does not fit within these prescribed purposes, the Minister may approve any other purpose under section 97(1)(c) of the Act, after consultation with such persons as he considers are representative of those classes of persons having an interest in the granting of a special permit for such a purpose, including Maori, environmental, commercial, and recreational purposes.

4 In the absence of a developing or exploratory fishing framework, MFish considers that a special permit is preferable to a TAC increase to enable a research and data collection programme where stock information is unavailable or inadequate. This purpose is not captured under the prescribed special permit purposes and MFish considers a new purpose, as approved by the Minister, is needed.

5 On behalf of the Minister, MFish seeks input from tangata whenua and stakeholders on the developing fisheries proposed purpose. In particular, MFish requests comments relating to the applicability of the purpose for specific fisheries, requirements for the exploratory fishing programme, and the special permit application review process.

6 Following consultation, MFish will submit a paper to the Minister summarising submissions and seek a final decision on the proposed purpose. If the Minister approves the proposed purpose, MFish staff will consult with stakeholders, where relevant, on any specific application received under this purpose, as prescribed in the Act.

## The Issue

7 Existing commercial catch limits for some fish stocks prevent development of the fishery by quota owners. In these fisheries, target commercial catches are typically low (or even zero), biological information is limited and the stock status is unknown. MFish

currently lacks an operational framework to enable exploratory or developmental fishing that simultaneously gathers biological information to support future sustainability decisions. This is a problem because commercial fishers and quota owners have recently expressed interest in fishery development for deepwater crabs and deepwater clams (geoducks) and have indicated that current catch limits are insufficient to gather the necessary stock information. MFish considers there are other fisheries for which an exploratory or developmental fishing framework is needed in the future.

8 Similar circumstances apply to fisheries that were closed or severely curtailed by reductions in catch limits. Industry members have expressed interest in undertaking exploratory fishing programmes to determine current stock status, with a view to establishing a sustainable catch limit in the future.

9 MFish considers that it should provide quota owners with reasonable means to develop stocks in the Quota Management System (QMS) as part of achieving the purpose of the Act. This is particularly relevant for fishing rights tendered by the Crown, for which purchasers of tendered quota anticipated that a development mechanism would be available to ‘prove up’ a fishery.

10 In 2001 MFish issued a framework for the development of new and existing fisheries as part of the Adaptive Management Programme (AMP). The original AMP framework was developed as an operational policy tool for cost-effectively obtaining improved information about stocks of commercial interest, through a ‘temporary’ total allowable catch (TAC) increase where there were no robust scientific estimates of stock status and sustainable yield. This policy provided quota owners with opportunities to explore the development potential of new and existing fisheries by providing a structured framework for improving the monitoring and assessment of particular stocks.

11 After more than a decade of AMP management experience MFish determined that the AMP mechanism of increasing commercial catch limits for a limited time period and under specific conditions is problematic because it is difficult to subsequently reduce the TAC if stock information obtained during exploratory fishing is inadequate or insufficient to set a TAC. MFish recently determined that no additional stocks will be considered for management under the AMP framework, and ultimately all existing AMPs will be discontinued. While no previously undeveloped fisheries were investigated under the AMP framework, the new and developing fisheries policy provides a solid foundation for managing developmental fishing activities.

12 MFish considers that in the absence of the AMP framework, it should identify another mechanism to enable fishery development if quota owners are willing to invest in research and data collection that is likely to enable development of a sustainable harvest strategy that meets the requirements of the Act.

## **Rationale for Proposed Purpose**

13 The following mechanisms could be considered to facilitate increased harvest levels in conjunction with an exploratory fishing, research and data collection programme for developing fisheries:

- a) TAC increase

- b) Special permit to take fish

### **TAC increase**

14 MFish considers TAC changes are not the appropriate mechanism to enable fishery development activities. As prescribed in the Act, TAC changes must be based on an estimate of current stock levels in relation to the biomass that supports the maximum sustainable yield. Available information for new and underutilised stocks is unlikely to meet this test so it is unclear under what circumstances and by what amount a TAC can be increased to enable sustainable exploratory fishing. Conversely, even if information is deemed adequate to increase a TAC, the Minister's ability to later reduce the TAC is restricted if the information gathered during exploratory fishing is insufficient to meet the statutory information requirements for a TAC change. A catch limit review is appropriate when fishery development is more advanced and adequate stock assessment information is available.

### **Special permits**

15 Special permits offer a time-bound mechanism for exploratory fishing, research and data collection while potentially providing an opportunity for fishers to recover operational costs. Special permits are issued by the chief executive of the Ministry of Fisheries (chief executive) for a specified period of time and may be revoked if he or she considers the applicant is not achieving the permit objectives. Special permits typically specify detailed conditions under which fish may be taken and disposed of, and the Act states the chief executive may change or revoke these conditions at any time. Common examples of permit conditions include area catch limits or effort restrictions, gear specifications and requirements for periodic reporting to MFish.

16 Section 97 of the Act describes the types of special permits MFish may issue. Of the specified special permit types, the investigative research permit arguably is applicable for developing fisheries activities if fishers carry out a research plan that is likely to enable development of a sustainable harvest strategy that meets the information requirements prescribed in the Act.

17 However, MFish anticipates that in most instances, exploratory fishing programmes are likely inconsistent with the original purpose of investigative research special permits. Investigative research special permits are intended for relatively formal scientific research, such as that carried out by research providers or academics. Information collected under investigative research special permits may have implications for fishery stock assessment or fisheries management, but this outcome is not usually the primary objective.

18 In contrast, research and data collection programmes carried out in conjunction with exploratory fishing are applied research where the objective is to gather the information necessary to determine what catch levels are sustainable and if a commercial fishery is economically viable. Commercial fishers typically would perform survey and data collection work and careful consideration is given to balancing operating costs with economic return. Although the specific research sampling methods and designs may differ across programmes, the objective of increasing commercial value from fisheries is common across all exploratory fishing programmes.

19 Since exploratory fishing programmes would not likely be an obvious fit with the investigative research special permit purpose, MFish considers that a new purpose, as

approved by the Minister, is the best and most appropriate mechanism for enabling fishery development.

## Assessment of Proposed Purpose

20 MFish suggests the proposed purpose is applicable to development activities in two types of commercial QMS fisheries: new fisheries (e.g., never been developed), and ‘closed’ fisheries (developed fishery for which catch limits were reduced to zero or nominal levels). MFish requests comment on whether the proposed purpose is suitable for new and closed fisheries, or if two separate purposes are needed.

New fishery	Closed fishery
<ul style="list-style-type: none"> <li>• Previously unknown stock or known but currently unexploited stock (unfished or lightly fished; excludes exploring new grounds for existing commercially viable stocks)</li> <li>• Zero or nominal TAC</li> <li>• Stock distribution and abundance unknown in specific area</li> <li>• Unknown if commercially harvestable quantities exist and can be caught</li> <li>• Fishery may have moved beyond the initial fishing phase, but commercial fishing may have been exploratory or intermittent</li> <li>• May be relatively new introduction to the QMS or existing QMS stock with low TAC</li> </ul>	<ul style="list-style-type: none"> <li>• Developed commercial fishery that was closed or severely curtailed through reduction in catch limits but may support viable commercial fisheries in the future</li> <li>• The research and management focus would be to determine when the stock has rebuilt and can support a sustainable commercial fishery</li> <li>• Zero or nominal TAC</li> </ul>

21 Within these fishery definitions, MFish recommends limiting consideration of proposed purpose special permits to:

- a) Target fisheries, i.e., bycatch fisheries are not eligible.
- b) Commercial fisheries with zero or nominal recreational and customary allowances, or for which the special permit catch increase would not affect or be opposed by non-commercial fishers.
- c) Fisheries in which all or a majority of quota owners support the harvest increase and scientific research programme.

22 MFish seeks input from stakeholders on the new and closed fishery definitions and

whether the proposed purpose is appropriate in the recommended circumstances. MFish also requests comments on the following issues relating to the proposed purpose for special permits.

### ***Exploratory fishing programme***

23 MFish considers that catch limits associated with the proposed purpose special permits must facilitate information collection while enabling industry to offset the costs of collecting relevant data by selling the harvested fish. The exploratory fishing programme (comprised of commercial fishing activities and the research and data collection plan), must have a reasonable chance of resulting in better understanding of stock structure, status, distribution, or abundance, and will also be a superior basis on which to set a TAC in the future. The MFish chief scientist will review the research and data collection plan included in all special permit applications.

24 Proposed purpose special permit applications should describe:

- a) How the proposed exploratory fishing programme will achieve the stated objectives.
- b) Threats to achieving the stated objectives and possible contingency measures.
- c) Impacts of the exploratory fishing programme on the target stock, interdependent species, non-fish species (including protected species) and the benthic environment.
- d) How quota owners will ensure that all fishing activities carried out under the special permit comply with the exploratory fishing programme.

### ***Application review process***

25 MFish would review all special permit applications to determine whether the exploratory fishing programme is likely to provide improved information for the relevant stock. If the proposed programme is acceptable, MFish would determine the appropriate amount of catch to be allowed under the special permit, identify potential compliance issues, and specify a review period (i.e., a permit for a defined number of years), whereupon the programme results would be reviewed. Exploratory fishing programmes would likely have an annual review requirement, even if the special permit is granted for a multi-year period.

### ***Special permit conditions***

26 MFish recommends that each special permit approved under the proposed purpose specify relevant conditions on fishing, research and data collection activities in order to mitigate risks to fish stocks and the aquatic environment. These conditions may include detailed reporting requirements and measures to control the use of gear, fishing seasons, or areas. Special permit conditions would also be developed to manage compliance risks that are identified during the application review process.

27 MFish would prefer that special permits under this new purpose be issued to an organisation representing a large proportion of quota owners, rather than issuing a special permit to each participating quota owner. This would reduce the administrative complexity and the overall cost to applicants.

28 MFish considers that the majority of quota owners should support (but not necessarily participate in) the special permit activities. However, applications from minority groups of quota holders would also be acceptable if carrying out the proposed research programme would not negatively affect the majority's future rights or interests. In such circumstances, MFish would expect the application from minority quota holders to demonstrate they have discussed the proposal with the majority and considered the effect of the application on their rights.

### ***Withdrawing special permits***

29 Section 97(5) of the Act states that the chief executive may at any time, by notice in writing to the special permit holder, amend, add or revoke any term or condition of a special permit. Section 97(8) of the Act states that the chief executive may at any time revoke any special permit. MFish considers that failure to adhere to any key component (which would be specified in advance) of the approved exploratory fishing programme, or any of the special permit conditions, would provide grounds for MFish to immediately amend or withdraw a special permit. Permits may also be withdrawn if there are indications of fisheries offending by individuals or vessels participating in activities carried out under the special permit.

30 If data collected during the exploratory fishing programme does not provide sufficient information to develop a harvest strategy that meets statutory requirements, MFish would have no obligation to extend the special permit or approve a subsequent special permit application for the same (or similar) research programme.

### ***Impact***

31 Following consultation, the Minister will decide whether to approve or decline the proposed purpose. If the Minister approves the proposed purpose, individuals or organisations would be able to apply for a special permit from MFish immediately.

32 MFish would consider the issues described above, as modified through consultation, when assessing each special permit application. MFish would ensure consistency in the review of special permit applications and issuing of permits. All quota owners would be treated equally and no commitments would be made to grant future benefits to special permit recipients. As the proposed purpose is intended for use only with stocks in the QMS, no future quota allocations would be based on special permit activities.

### ***Costs***

33 MFish notes that special permit applications submitted for the proposed purpose would incur an hourly charge<sup>1</sup> for time spent processing and assessing the application. MFish expects that once processing begins, applications for the proposed purpose may require from a few weeks to one month of staff time to complete (approximately 10 – 160 hours). MFish must ensure that the proposed activities do not pose unacceptable risks to fish stocks, the aquatic environment, or impacted parties, so the cost to the applicant may increase further if MFish requires a high level (in volume and complexity) of information from the applicant.

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<sup>1</sup> The current hourly charge of \$133.88 for special permit applications is stipulated in Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001.

## *Benefits*

34 The proposed purpose special permit would provide a flexible mechanism for managing developing fisheries. The special permit process would enable MFish and industry participants to investigate the development potential of a fishery while assessing and managing the risk associated with development where the available information is inadequate, uncertain or unreliable. The extent of any further development in the fishery and the parameters within which that development is to occur would depend on information collected through the exploratory fishing programme about the potential structure, abundance and distribution of the target stock, the level of fish and non-fish bycatch, and an assessment of the impacts of fishing on the aquatic environment.

## **Statutory Considerations**

35 **Section 5(b)** requires the Act to be interpreted consistently with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. MFish considers that the proposal is consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Providing a mechanism to increase the catch limit for stocks with nominal TACs would increase the value of the Settlement.

36 **Section 8** describes the purpose of the Act as being to provide for the utilisation of fisheries resources while ensuring sustainability. The proposal presented seeks to achieve the purpose of the Act by enabling a flexible management mechanism for exploration and development of commercial fisheries in a manner that maintains the potential of fishery resources to meet future needs. Thorough review of proposed purpose special permit applications by MFish will ensure that fishing activities will avoid, remedy or mitigate any adverse effects of fishing on the aquatic environment.

37 **Section 9** requires the Minister of Fisheries to take into account that associated or dependent species (those that are not harvested) be maintained at or above a level that ensures their long-term viability and that the biological diversity of the aquatic environment should be maintained. Section 9 also requires the Minister to take into account the principle that habitat of particular importance for fisheries management should be protected. MFish considers that the proposed purpose special permit is consistent with the environmental principles of the Act.

38 **Section 10** sets out information principles, which requires that decisions be based on the best available information, taking into account any uncertainty in that information, and applying caution where information is uncertain, unreliable, or inadequate. In accordance with section 10, the absence of information should not be used as a reason to postpone, or fail to take, any measure to achieve the purpose of the Act. MFish considers the special permit is an appropriate management mechanism to obtain information about undeveloped, and therefore likely information-limited, fish stocks.

39 **Section 97(1)(c)** enables the chief executive to issue a special permit for any purpose approved by the Minister following consultation with such persons and organisations as he considers are representative of those classes of persons having an interest in the granting of a special permit for such a purpose, including Maori, environmental, commercial, and recreational interests. This initial position paper describes the proposed purpose and seeks input from interested parties.

40     **Section 97(2)** requires the chief executive to consult with representative persons having an interest that would be affected if the special permit were issued.