

REPORTING OF NON-DEFINED PROCESSED STATES – FINAL ADVICE

Executive Summary

- 1 The Ministry of Fisheries (MFish) proposed in the Initial Position Paper (IPP) to amend the Fisheries (Reporting) Regulations 2001 to require that fishers landing fillets in processed states that are not listed in Schedule 3 of Part 3 of the Fisheries (Reporting) Regulations 2001 and/or described in the Fisheries (Conversion Factors) Notice 2005, apply a conversion factor (CF) to each of the constituent parts of that fillet to obtain a cumulative greenweight.
- 2 The management objective of this proposal is to attain the most accurate measure possible of greenweight of non-defined processed states.
- 3 This management objective is being threatened by the on-processing of fillet product at sea into non-defined processed states. Processed states that are specified by a portion size or weight, ie, non-defined processed states, cannot be administered under a conversion factor regime because they do not have a constant recovery rate; the actual recovery rate will vary according to the size distribution of the catch.
- 4 MFish and the fishing industry are agreed on the general principles of the proposed changes. These are to:
 - Allow for the application of greenweight (and therefore a CF) to multiple principal landed states, rather than just the one that has the greatest actual weight as is the case at the moment; and
 - To apply in cases where fillets are produced and then further processed into non-defined processed states.
- 5 This is MFish's preferred option because it will allow for a more accurate estimation of the greenweight of non-defined processed states. MFish's preferred long-term option is to introduce greenweight weighing at sea, which would render obsolete the problems presented by non-defined processed states. However, a pragmatic short-term fix to the issue of reporting of non-defined processed states is desirable.
- 6 MFish and industry differ on issues surrounding the implementation of the proposal. In order to allow sufficient time to work through these issues, MFish proposes that you agree to the principles of the proposed regulatory amendment, and note that the implementation will be discussed with Industry over the next six months, with a view to having the new system come into effect on 1 April 2009.

The Issue

- 7 The fisheries management objectives for this process are to attain the most accurate greenweight in order to measure removals from the fishery for stock assessment purposes.

- 8 Non-defined processed states are those states not defined in Notice or regulation, and are usually specified by weight or size. These products, derived principally from hoki, are most commonly called “steaks” and “loins”. The Fisheries (Conversion Factors) Notice 2005 only provides for processed states that are a more or less constant proportion of the fish. Processed states that are specified by a portion size or weight, ie, non-defined processed states, cannot be administered under a conversion factor regime because they do not have a constant recovery rate. The actual recovery rate will vary according to the size distribution of the catch.
- 9 There are also variations between companies and vessels in the reporting of non-defined processed states, and these variations affect the accuracy of greenweight reporting.
- 10 The Fisheries (Reporting) Regulations 2001 need to be clarified to specify one consistent procedure for reporting of non-defined processed states in such a way that captures greenweight as accurately as possible.
- 11 The likely consequence of maintaining the status quo is a continuation of the situation whereby there may be significant under-reporting of greenweight of non-defined processed states and no consistency in how these products are reported.
- 12 The rationale behind the proposed change is to provide vessels filleting fish at sea with a pragmatic short-term solution for reporting non-defined processed states as accurately as possible, while MFish investigates alternative systems such as greenweight weighing at sea.
- 13 MFish believes the Minister needs to make a decision to ensure that the management objective of attaining an accurate measure of greenweight of fish is met.

Summary of Options

Initial Proposal

- 14 The IPP proposed the following options:
 - a) *Option one* – the status quo;
 - b) *Option two* – MFish’s preferred option requiring fishers to establish the greenweight of a non-defined processed state by applying a CF to the processed states derived from a defined fillet state; and
 - c) *Option three* – MFish’s preferred long-term option of introducing greenweight weighing at sea, which would render obsolete the problems presented by non-defined processed states.

Final Proposal

- 15 MFish recommends that you:
 - a) **Note** that MFish and Industry agree on the general principles for reporting of non-defined processed states;

- b) **Note** that MFish's proposal (option 2A) would only affect those vessels that process non-defined product states from hoki fillets;
- c) **Note** that Industry have proposed an alternative option (Option 2B) that would impose a reporting regime on all hoki fillet product processed at sea;
- d) **Agree** to the principles underlying this proposal, ie, to amend the Fisheries (Reporting) Regulations 2001 to allow for the application of greenweight to multiple principal landed states, rather than the just the one that has the greatest actual weight as is the case at the moment, and that this should apply in cases where fillets are further processed into non-defined landed states;
- e) **Note** that the proposal will be deferred until 1 April 2009 to allow sufficient time to work through implementation issues with fishing industry representatives.

Consultation

- 16 MFish consulted with stakeholders on the options set out in the IPP and received three submissions (see below).
- 17 Section 297(1)(b) of the Fisheries Act 1996 (the 1996 Act) provides a regulation making power for the purpose of prescribing the manner and form of records and returns and information that any person may be required to provide under Part X of the 1996 Act. MFish propose that the recommended regulations be made pursuant to section 297(1)(b) of the 1996 Act.

Submissions Received

- 18 Submissions regarding this proposal were received from:
 - Industry representatives on the Conversion Factors Working Group (CFWG);
 - New Zealand Seafood Industry Council Ltd (SeaFIC); and
 - Sanford Ltd.

MFish Discussion

- 19 There is general agreement between MFish and stakeholders on the principles involved in this proposal, ie, to amend the Fisheries (Reporting) Regulations 2001 to:
 - a) Allow for the application of greenweight (and therefore a CF) to multiple principal landed states, rather than just the one that has the greatest actual weight as is the case at the moment;
 - b) That (a) above apply in cases where fillets are produced and then further processed into non-defined processed states.
- 20 MFish and Industry have differing approaches on how these principles should be put into practice. These views may be summarised as follows:

MFish

- 21 MFish proposes that if a skin-off trimmed fillet (TSK), skin-on untrimmed fillet (UTF), or skin-on trimmed fillet (TRF) is processed into smaller portions, and none of those portions comply with the processed state definition for either UTF, TRF or TSK, then –
- a) NDA is the state code for any non-homogeneous product (e.g., steaks, loins) derived from those portions;
 - b) NDZ is the state code for mince derived from those portions; and
 - c) NDM is the state code for meal derived from those portions.
- 22 MFish proposes separate reporting codes for meal and mince product derived from non-defined states, due to the different recovery rates likely for meal and mince.
- 23 This proposal differs from the concept outlined in the IPP, which involved determining a ‘base state’ (which was proposed to be a skin-off trimmed fillet (TSK) state) and then applying a CF to all the non-defined processed states produced from that base state. MFish believes that the approach in (a) - (c) above is a simpler way of reporting non-defined landed states. It recognises that non-defined states such as steak and loins may be derived, or may be reported as having been derived, from a range of fillet product. Differentiating between homogeneous (ie, meal and mince) and non-homogeneous states allows for the possibility that each might have a different conversion factor.
- 24 Once the determination has been made that the product falls into either the “NDA”, “NDZ” or “NDM” categories, a conversion factor would be applied to each of the product types, but not to genuine “additional landed states”, such as heads, guts etc, consistent with current practice.
- 25 The conversion factors to be applied to NDA, NDZ and NDM products will be determined in consultation with Industry in the Conversion Factors Working Group. As stated in the IPP, the conversion factors will need to take account of:
- a) Weight loss during further processing of the TSK product into non-defined processed states;
 - b) The imperative of not providing any incentive to mis-declare product in order to attract a lower CF. A key element in the overall proposal is to define product more precisely than is the case at present, to minimise incentives to mis-declare product.
- 26 For illustrative purposes only, the products would be reported as follows:

<u>Species</u> Wgt	Landed State Code	CF	Greenweight	Proc
HOK kgs	NDA	TBD	y kgs	x

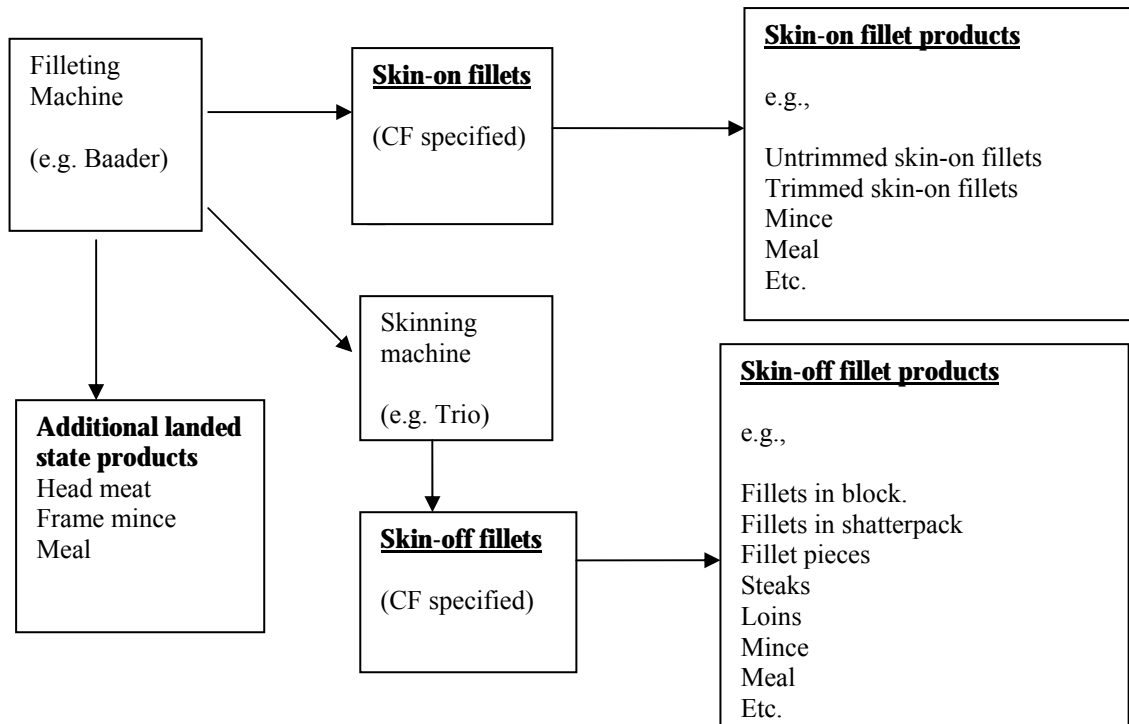
kgs NDZ TBD y kgs x

- 27 Regulatory amendments that will be required to implement this option are:
- a) An amendment to Regulation 36(2) of the Fisheries (Reporting) Regulations 2001 defining that, for certain fillet hoki states processed into non-defined processed states, those states may be landed in two or more principal landed states;
 - b) An amendment to Part III of the Second Schedule to the Fisheries (Reporting) Regulations 2001 to insert new landed state codes (e.g., NDA);
 - c) An amendment to the Fisheries (Conversion Factors) Notice 2005 to insert interpretations of homogeneous and non-homogeneous product derived from TSK, TRF or UTF product; and
 - d) An amendment to the Fisheries (Conversion Factors) Notice 2005 to insert conversion factors for NDA, NDZ and NDM product.

Industry

- 28 Industry proposes a system for reporting all hoki fillet products. Figure 1 illustrates this system in relation to typical product flow on a fillet vessel.

Figure 1: Industry proposal for reporting of hoki fillet product



MFish understands the Industry system would work as follows:

- Fillets from the filleting machine would be separated into skin-on fillets and skin-off fillets product streams;
 - The greenweight equivalent of all products derived from skin-on fillets would be reported by multiplying the total processed weight of those products by a conversion factor specified for skin-on fillets; and
 - The greenweight equivalent of all products derived from skin-off fillets would be reported by multiplying the total processed weight of those products by a conversion factor specified for skin-off fillets.
- 29 The Industry proposal is similar in principle to the non-defined states regime proposed in the IPP and MFish’s revised proposal. Both proposals would require permit holders, in specified circumstances, to report greenweight according to a process that dispenses with the requirement to report one principal landed state (see R.36(2)(a) of the Fisheries (Reporting) Regulations 2001), and instead substitutes a requirement to report all the landed states derived from a specified processed state.
- 30 Industry recommends that the non-defined states proposal be delayed pending more work on the regulatory changes.
- 31 MFish accepts that the Industry proposal merits further consideration. It does appear to offer Industry a simpler process for reporting hoki fillet products. However, there are a number of reasons why it would be difficult to progress in the short term:

- The MFish IPP proposal is intended to provide vessels filleting at sea with a system of accurately reporting non-defined fillet states. The Industry proposal would impose a new reporting regime on all hoki fillet vessels and all processed-at-sea hoki fillet products, and would therefore apply to a much greater volume of catch than the non-defined states regime. Best practice suggests that MFish should re-consult with stakeholders if we agreed to pursue this concept as a formal regulatory proposal;
- Interested MFish business groups will need to be consulted before it is decided whether to formally pursue the Industry proposal. MFish Compliance in particular would need to make a thorough assessment of the compliance risks;
- The Industry proposal would probably require more extensive regulatory change than the proposed non-defined states regime. For instance, MFish reporting forms (ie, Catch Landing Returns and Trawl Catch Effort and Processing Returns) would need to be amended. This is potentially a lengthy process.

Rationale for Management Options

- 32 As noted above, MFish and Industry agree upon the general principles of the proposed amendment. MFish and Industry differ on the implementation of the change - MFish's revised preferred option would only affect those vessels actually producing non-defined states, while the Industry proposal would impose a new reporting regime on fillet vessels irrespective of whether they are producing non-defined fillet states or not.
- 33 MFish believes that the proposed approach is the simplest way of reporting non-defined landed states. It recognises that non-defined states such as steak and loins may be derived, or may be reported as having been derived, from a range of fillet product. Differentiating between homogeneous and non-homogeneous states allows for the possibility that each might have a different conversion factor.
- 34 Both approaches would impact on the same fleet (8 fillet vessels currently); the difference is in the volume of catch that the approaches would apply to. Under the MFish proposal, if companies are not producing non-defined states such as loins and steaks, there is no change to reporting. Under the proposed Industry system, all hoki fillet product would be affected, whether it is on-processed to steaks, loins etc or not.
- 35 At present, there appears to be minimal production of non-defined processed states such as steaks and loins, although this may well change depending upon market demand. However, if MFish is to get a reliable estimate of the production of these processed states over time, it will need to implement a system whereby these products are clearly identified in the reporting system (which is not the case at present). The MFish proposal is designed to do so; the Industry proposal would not, although Industry would argue that non-defined

states would be a moot issue if all greenweight was captured at the stage of the skin-on and skin-off fillet.

- 36 Industry has suggested as an interim step an amendment to Part II of the Third Schedule to the Fisheries (Reporting) Regulations 2001, providing that in the case of hoki there can be more than one principal landed state. MFish understands that Industry have proposed this as an initial step in the implementation of their proposal. MFish have proposed this as part of a package of amendments to implement its proposal, but would not support this amendment as a stand-alone measure without putting in place reporting requirements around how non-defined fillet product is reported, whether it is the MFish or Industry proposal. The proposed amendment, if implemented in isolation, would, in MFish's view, further confuse an already inconsistent and unclear situation. The proposal would need to be implemented as part of a package of amendments or not at all.

Assessment of Management Options

Option 1 – Status Quo

Impact

- 37 The status quo would result in a continuation of the situation whereby there may be significant under-reporting of greenweight of non-defined processed states and no consistency in how these products are reported.

Costs

- 38 It is not possible to precisely estimate the costs of greenweight under-reporting, but Compliance research indicates that it is likely to be substantial. MFish notes that the quantity of non-defined product states currently being produced at present appears to be relatively small, based on Industry's submissions, although it is not possible to independently verify that.

Benefits

- 39 From MFish's perspective, there are no benefits associated with a continuation of the status quo.

Option 2A – MFish Preferred Option

Impact

- 40 MFish's preferred option would be promulgated by an amendment to the Fisheries (Reporting) Regulations 2001, pursuant to s 297(1)(h) of the 1996 Act, and would take effect from 1 June 2009.
- 41 The proposed new regime would be subject to the same offences and penalties provisions under the Fisheries (Reporting) Regulations 2005 as apply to other relevant requirements for completing fisheries catch effort returns.
- 42 The proposed new system for reporting non-defined processed states will form part of the existing conversion factor regime. There will be consequential

amendments required to the Fisheries (Conversion Factors) Notice 2005, some of which involve deleting existing provisions.

- 43 MFish Compliance will monitor Industry compliance with the new regime. MFish Observers will also collect information on vessels processing on vessels processing non-defined processed states to feed into the annual CF review process.

Costs

- 44 Currently, there are 8 fillet vessels operating in New Zealand waters – 3 owned by Amaltal Fishing Co Ltd, 1 owned by Sealord, 2 owned by Sanford Ltd, and 2 chartered by Independent Fisheries Ltd. MFish has no way of determining from catch and effort or landing records the quantity of non-defined states that are being processed or landed. The companies concerned state that the quantities of steaks, loins etc that are being processed at present are minimal (although it was certainly higher in the past). This may vary over time, however, depending on market demand. The point of the proposal is to provide a more transparent and robust means of reporting these products and thus have a better idea of the quantity being landed.
- 45 Industry argues that the costs of the change may outweigh any benefit and that the costs of its implementation will be recovered from Industry, possibly negating any benefit.
- 46 MFish expects that administrative costs will be minimal, as those operators that are currently endeavouring to report non-defined states in compliance with the intent of the legislation and thus keeping the necessary records.

Benefits

- 47 The benefits of this proposed approach are:
- It will implement a consistent reporting approach across all sectors of Industry, whereas at the moment there are differing approaches depending upon interpretation of the legislation. All four operators represented on the CFWG (Amaltal, Sanford, Sealord, and Independent) state that they are currently applying the fillet CF to each of the component parts (except mince from trimmings), so they believe there is no undermining of the QMS in this respect. Industry recognise that as written in the regulations, the system could be open to abuse should another fisher enter the industry with a fillet vessel and use the rules to create an advantage;
 - It will allow for a more accurate estimation of greenweight;
 - It recognises that non-defined states such as steak and loins may be derived, or may be reported as having been derived, from a range of fillet product;
 - Differentiating between homogeneous and non-homogeneous states allows for the possibility that each might have a different conversion factor.

- 48 In short, MFish sees the proposal as a pragmatic short-term fix to address the present unsatisfactory situation. As noted in the IPP, MFish also wishes to explore long-term options such as greenweight weighing at sea and full-time Observer coverage.
- 49 MFish acknowledges that there are a number of issues yet to be worked through with the fishing industry in regard to the proposal. These issues include:
- a) The differing approaches by MFish and industry to implementation; and
 - b) The conversion factors to be applied to NDA, NDZ and NDM product.
- 50 MFish would prefer to work through these issues in a collaborative manner with Industry and believes that it will be difficult to do so in the time available to implement the regulatory changes by 1 October 2008, as is currently proposed. Accordingly, MFish proposes that you agree in principle to the proposed regulatory changes, but agree to defer the implementation to 1 June 2009. In the meantime, MFish will consult with fishing industry representatives further on the details surrounding the implementation.

Option 2B – Industry Preferred Option

Impact

- 51 Industry's proposed system is a variant on the MFish proposal that would impose a new reporting regime on all hoki fillet vessels (not just those processing non-defined processed states) and would therefore apply to a much greater volume of catch than the non-defined states regime.
- 52 Industry have recommended that the MFish proposal be delayed pending more work on the regulatory changes along the lines recommended by Industry, as it is a lengthy and expensive process requiring significant consultation.

Costs

- 53 The proposal will probably require more extensive regulatory change than the non-defined landed states regime. For instance, MFish reporting forms (ie, Catch effort and Landing Returns and Trawl Catch Effort and Processing Returns) would need to be amended. This in itself is a potentially lengthy process and would entail greater transaction costs than the MFish proposal.

Benefits

- 54 Industry's proposal appears to offer Industry a simpler process for reporting hoki fillet product. However, MFish will need to thoroughly review all of the implications of the proposal, in particular the compliance risks.

Option 3 – Greenweight weighing

Impact

- 55 The impacts of adopting option 3 would be as follows:

- a) A more accurate means of determining greenweight for vessels producing non-defined product states;
- b) A less complex and ambiguous regime;
- c) From Industry's perspective, there would be increased freedom of action and reduced risk. Operators could do what they like with their catch once the greenweight is accurately captured;
- d) MFish is currently finalising a desktop study of the feasibility of greenweight weighing. It is premature at this stage to discuss possible enforcement strategies and changes to existing rules.

Costs

- 56 The costs and relative disadvantages and risks associated with greenweight weighing at sea are being addressed as part of the desktop study and will also be discussed with industry.

Benefits

- 57 The benefits of this option are outlined above.

Other Management Controls

- 58 Another proposed management control in the 1 October 2008 'package' to be considered is that relating to procedures for weighing fish packed and frozen at sea. Specifically, this is in relation to the labelling of cartons that may potentially contain more than one landed state. MFish is considering ways to ensure that the two proposals are consistent.

Other Management Issues

Environmental considerations

- 59 MFish does not consider that the proposal has any implications in relation to associated or dependent species, biological diversity of the aquatic environment, or habitats of particular significance for fisheries management (section 9 of the Fisheries Act 1996).

Compliance considerations

- 60 MFish Compliance wishes to prevent scenarios whereby product may be diverted from principal to additional landed states, with the consequence that greenweight is under-declared. Auditing and enforcing the proposed regime will require careful thought.

Statutory Considerations

- 61 In forming the proposal, the following statutory considerations under the Fisheries Act 1996 have been taken into account.
- 62 **Section 5(a) and (b)** require the Act to be interpreted consistently with New Zealand's international obligations with respect to fishing and with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Provisions of general international instruments such as the United Nations

Convention on the Law of the Sea (UNCLOS) and the Fishstocks Agreement have been implemented through the provisions of the Fisheries Act 1996. MFish considers that the proposal is consistent with both New Zealand's international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

- 63 **Section 8** describes the purpose of the Act as being to provide for the utilisation of fisheries resources while ensuring sustainability, and defines sustainability and utilisation. The management option presented in the IPP seeks to achieve the purpose of the Act. In order to provide for sustainability and utilisation, it is necessary to have accurate and robust information on the level of removals from the fishery. The proposal is intended to ensure that there is a more accurate estimation of the greenweight derived from certain fillet states in the deepwater fishery.
- 64 **Section 9(a) and (b)** 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. MFish notes that the proposal does not have any direct impact on associated or dependent species.
- 65 **Section 9(c)** requires you to take into account the principle that habitat of particular importance for fisheries management should be protected. The proposal is unlikely to have any impact on species habitats.
- 66 **Section 10** sets out the information principles, which requires 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. In accordance with s 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. On balance, MFish considers that the proposal is derived from the best available information and covers an appropriate range of caution in relation to the uncertainty in that information.
- 67 **Section 188(1)** provides a power to set conversion factors by notice in the *Gazette*.
- 68 **Section 297(1)(b)** provides a regulation making power for the purpose of prescribing the manner and form of records and returns and information that any person may be required to provide under part X of the Act. The Ministry of Fisheries propose that the recommended regulations be made pursuant to section 297(1)(b).