

# INITIAL POSITION PAPER - REGULATORY MEASURES RELATING TO PROCEDURES FOR WEIGHING FISH PACKED AND FROZEN AT SEA

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## Executive Summary

- 1 The measures detailed in this paper will address concerns that current legislation is not prescriptive about how either fishers or the Ministry of Fisheries (MFish) determine the weight of fish processed and frozen at sea. The lack of prescription means the fishing industry (Industry) has concerns about the absence of a level playing field between operators while MFish has concerns about inaccuracies in reported catch.
- 2 In 2006 MFish sought to give effect to the recommendations of a joint MFish / Industry working group that had been set up to examine issues surrounding the reporting of fish processed and frozen at sea. The working group's recommendations included technical regulatory proposals (for example increased product labelling requirements) as well as a procedure specified in regulation to be used by MFish when determining the weight of a product line.
- 3 The regulated procedure to be used by MFish, if implemented as per the working group's recommendation, would have contained a provision for a product line to be treated as under-reported if the declared greenweight was less than the weight obtained using the procedure. MFish now realises that there is no ability within the Fisheries Act 1996 (the Act) to create a regulation that would presume a person to be guilty of misreporting unless he or she can prove otherwise. There is, however, the ability to regulate the methods to be used for determining the weight of any fish.
- 4 This IPP proposes an amended weighing procedure that is similar to that recommended by the working group but does not contain any provisions relating to presumed under-reporting or misreporting. Under MFish's preferred option the procedure would be specified in regulation but would only be required to be used in the event of doubt or a dispute regarding the reported weight of a product line. MFish would still have to prove that a commercial fisher or licensed fish receiver had made an incorrect declaration of weight.
- 5 The procedure will include specifications relating to:
  - The required sample size depending on the number of containers in a product line;
  - How actual weight of a container of fish is to be determined (deducting container weight from average gross weight);
  - Permitted deductions from the actual weight of a container for ice glaze or polyphosphate solutions;
  - How to determine the actual weight of a product line (average actual weight of the sample times the number of containers in the sample);
  - How to determine the greenweight of a product line (average actual weight of the sample times the number of containers in the sample times the conversion factor).

- 6 MFish proposes that the amended weighing procedure, together with the technical regulatory measures approved by the Minister in 2006, comes into force on 1 October 2008.

## Regulatory Impact Analysis Requirements

- 7 The proposals contained in this IPP will not have a significant potential impact on economic growth and the Regulatory Impact Statement has been reviewed by the Ministry of Fisheries' Regulatory Impact Analysis Review Group.

## The Issue

- 8 In 2004/2005 a joint MFish/Industry working group was convened to address issues surrounding the determination of greenweight of fish packed and frozen at sea. There are inherent difficulties in determining the actual weight of fish that has been packed and frozen at sea and the working group was set up to address those issues. The working group reached an agreed position in March 2005 (*attached* as Appendix 1) that formed the basis of an Initial Position Paper (IPP) released by MFish in April 2005.
- 9 Feedback from Industry representatives indicated that they had significant concerns with certain aspects of MFish's proposals. MFish agreed to review its proposals and subsequently released a revised IPP in December 2005. The IPP from December 2005 is *attached* as Appendix Two.
- 10 A final advice paper (FAP) was provided to the Minister of Fisheries in May 2006 and was signed off by the Minister later that month. It is *attached* as Appendix Three. There were only minor differences between the proposals in the FAP and those in the IPP.
- 11 In June 2006 the Cabinet Economic Development Committee also approved MFish's proposals and MFish started the drafting process in conjunction with Parliamentary Counsel Office (PCO). PCO drafted regulatory amendments relating to all proposals except the one specifying the weighing methodology to be used by Fishery Officers (recommendation i. in the FAP). PCO indicated that they considered the proposal to be *ultra vires* (outside the scope of the regulation-making power provided in the Act).
- 12 PCO's concern was that the proposed provision appeared to alter the usual evidential burden of the prosecuting authority by creating a rebuttable presumption. PCO believed that MFish's proposed regulation would presume a person to be guilty of misreporting unless he or she could prove otherwise, inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA).
- 13 Because of these concerns MFish decided to put all regulatory proposals contained in the May 2006 FAP on hold at that time.
- 14 Having a weighing methodology specified in regulation was a key part of the working group's recommendations (see page 3 of Appendix 1). The regulations, if drafted based on the working group's report, would have specified a procedure for calculating a 99% confidence interval around the sample greenweight. A product line would be treated as under-reported if the declared greenweight was less than the lower limit of a 99% confidence interval around the sample greenweight.
- 15 MFish now realises that it is not possible to make a regulation that gives effect to all aspects of the working group's recommended procedure for how MFish determines

the weight of a product line. In particular it is not possible for a regulation to effectively deem a statement of greenweight to be under-reported.

- 16 Having now reconsidered this issue MFish believes that it is possible however to have a weighing methodology specified in regulation that comprises only procedural matters such as specification of a sample size and deduction of legitimate allowances.
- 17 Giving effect to the overall aims of the joint MFish/Industry working group is still considered as very important by MFish as fish packed and frozen at sea comprises a significant percentage of overall landings from New Zealand fisheries waters. Any issues that create potential inaccuracies in reported catch have the potential to undermine the integrity of the QMS. For this reason MFish proposes implementing the technical regulatory measures agreed to by the Cabinet Economic Development Committee in June 2006 such that they take effect on 1 October 2008.
- 18 The purpose of this paper is to propose an amended weighing methodology that contributes to the overall aims of the working group but does not introduce further issues with the NZBORA. The regulation containing the amended weighing methodology would also take effect on 1 October 2008.
- 19 The combination of technical regulatory measures together with a weighing methodology specified in regulation will contribute significantly to the working group's overall aims of:
- Enabling industry to take a consistent approach to determining the net weight of fish processed and frozen at sea;
  - Increasing certainty about the standards that need to be met to ensure catch is being reported accurately; and
  - Improving the efficiency by which MFish can determine the net weight of fish processed and frozen at sea.

## Summary of Options

### *Option 1 – Status quo*

- 20 The absence of a regulated weighing methodology that specifies legitimate deductions for ice glaze or product additives such as polyphosphate solutions will continue to cause concerns for both MFish and Industry. The working group noted that under the status quo Industry had concerns about the absence of a level playing field between operators, while MFish had concerns about inaccuracies in reporting catch.
- 21 Failing to address these concerns continues to have the potential to undermine the QMS.

### *Option 2 – Regulate for a weighing methodology to be used in the event of doubt or a dispute (MFish preferred option)*

- 22 MFish's preferred option is to regulate for a weighing methodology to be used for the determination of the actual weight of a product line in the event of doubt or a dispute regarding the reported weight of that product line. The draft methodology is detailed in Schedule 1.
- 23 This is MFish's preferred option as it will contribute towards achieving the overall aims of the working group, enhance the integrity of catch balancing and therefore enhance the credibility of the QMS.

### ***Option 3 – Regulate for a weighing methodology to be imposed on all parties***

- 24 An alternative to Option 2 is to regulate for a weighing methodology (such as that detailed in Schedule 1) that all parties would be required to use when determining the weight of a product line.
- 25 An advantage of this option is that it would create a level playing field with all fishing vessel operators and licensed fish receivers (LFRs) knowing exactly what was required to be done. The main disadvantage of this option is that there are a number of methods that LFRs could use to determine the weight of a product line. Requiring them to use one particular method is likely to be inefficient and costly. It is also contrary to the working group's desires for Industry to have discretion about how they determine the weight of a product line.

### ***Option 4 – Impose a weighing methodology to be used by Ministry of Fisheries via a Code of Practice***

- 26 With this option all LFRs and fishing vessel operators would know how MFish would weigh a product line. Disadvantages of a Code of Practice include the lack of regulation status, which would mean that in the event of a prosecution MFish would still be required to call expert evidence in court to validate the use of the methodology. Codes of Practice, while valuable, do not have any enhanced status when viewed by the Courts. All prosecutions based on weighing procedures would still require expert witnesses from both the prosecution and defence.

## **Rationale for Management Options**

- 27 The reason for the establishment of the working group was that the current legislation was not prescriptive about how either fishers or MFish determined the weight of fish processed and frozen at sea. The working group's agreed position sought to create an approved procedure for weighing such fish by specifying in regulation the procedure to be used by MFish to determine the weight of a product line. The group's rationale for wanting the procedure to be specified in regulation and applying only to MFish was that it would give Industry certainty regarding how MFish would be required to determine the weight of a product line (thus allowing Industry to adjust their practices accordingly) while allowing Industry discretion regarding how they determined product line weights.
- 28 MFish still considers that some form of standardised weighing methodology is necessary in order to achieve the working group's aim of increasing certainty about the standards Industry needs to meet in order to ensure catch is being reported accurately. MFish considers that specific aspects of the draft procedure given in Schedule 1, for example the 2% glaze deduction and 4% polyphosphate deductions (where appropriate), will contribute towards that aim.
- 29 The proposed deduction for glazed product (2%) was suggested by the working group in 2005 and is supported by MFish. The proposed deduction for polyphosphate solutions (4%) was proposed by MFish. MFish considers the proposed glaze application and polyphosphate solution ratios accurately represent realistic figures used by the majority of vessels that pack and freeze fish at sea. MFish welcomes submissions on the proposed deductions.

- 30 The minimum sample sizes given in Schedule 1 are based on those recommended by the working group which were, in turn, based on accepted statistical methodology.
- 31 MFish also considers that having the weighing methodology in a regulation is preferable to a Code of Practice as it adds an additional degree of certainty that no other methods will be considered. It also gives it the status of having been approved by Cabinet and, in the event of a prosecution, obviates the need for expert witnesses to attest to the robustness of the methodology. A Code of Practice would still be preferable to the status quo however.
- 32 As noted in paragraph 27 the working group's recommendation was for the regulated procedure to be used by MFish only, thus allowing Industry discretion regarding how they determined product line weights. MFish now considers that the best approach is for the regulation to be non-specific in who it applies to and, additionally, that it is prefaced so that it is only required to be used in the event of doubt or dispute about the reported weight of a product line.
- 33 The rationale for MFish's preferred approach regarding the non-specificity of who the regulated procedure applies to is that it will allow Industry to have discretion regarding how they determine product line weights. It will also allow MFish to carry out its usual procedure of weighing a non-random sample of cartons whilst engaged in casual inspections. The procedure would only be invoked if preliminary inspections resulted in MFish having doubts as to the reported weight of a product line.
- 34 Section 297(1)(a)(xi) of the Act provides for regulations to be made "regulating the methods, equipment, and devices to be used for determining the size or weight of any fish, aquatic life, or seaweed". MFish considers a weighing methodology specified in regulation would be made under this section of the Act and could be placed within the Fisheries (Commercial Fishing) Regulations 2001.
- 35 MFish believes that signalling its intention to have the weighing procedure in place, together with the other related regulations, on 1 October 2008 gives Industry sufficient time to make the necessary changes to their fishing operations. More specific information on the amended regulatory requirements will be made available to the operators of vessels that process and freeze fish at sea prior to the changes coming into force. Submissions are sought on the proposed timing.

## **Assessment of Management Options**

### ***Option 1 – Status Quo***

#### *Impact*

- 36 The status quo, the lack of prescriptive legislation about how fishers or MFish determine the weight of fish processed and frozen at sea, led to the establishment of the MFish/Industry working group in 2004/05. The working group was established after Industry attempts to develop a Code of Conduct to address the matter had failed.
- 37 The reasons for Industry's attempted Code of Conduct and the subsequent establishment of the working group were twofold; Industry had concerns about the absence of a level playing field between operators while MFish was concerned about inaccuracies in reporting catch. All concerns will continue to remain valid until such time as a solution is achieved.

## *Costs*

- 38 The status quo does not provide Industry with the required certainty that they are meeting the standards necessary to ensure catch is reported accurately. It also potentially undermines the integrity of the QMS if catches are not being reported accurately. Because of the overall amount of fish that is processed and frozen at sea inaccurate reporting of catches by only a small percentage may translate into thousands of tonnes of fish per year that is not accurately accounted for.
- 39 Many deepwater stocks (those most likely to be processed and frozen at sea) have had progressive reductions to their total allowable commercial catches (TACCs) in recent years. Operators may seek to offset the reduced TACCs by taking advantage of the lack of standards regarding reporting in order to maximise the annual catch entitlement (ACE) available to them.
- 40 Because of the difficulties in determining the true and provable weight of fish taken MFish has not taken any prosecutions regarding misreporting of fish frozen and packed at sea in recent years

## *Benefits*

- 41 Maintaining the status quo only benefits those vessel operators who may take advantage of the lack of certainty regarding standards necessary to ensure catch is reported accurately. For example operators may make allowances for glaze that MFish considers do not reflect the true amount of glaze on certain product types.

## ***Option 2 – Specify in regulation a weighing methodology to be used in the event of doubt or dispute about the reported weight of a product line (MFish preferred option)***

### *Impact*

- 42 Specifying in regulation a weighing methodology that is to be used in the event of doubt or dispute regarding the reported weight of a product line will make a significant contribution to the aims of the working group (as detailed in paragraph 19).
- 43 It will enable Industry to take a consistent approach to determining the weight of fish processed and frozen at sea because any legitimate deductions, including ice glaze and polyphosphate solutions, will be specified in regulation.
- 44 The procedure will increase certainty about the standards that need to be met to ensure catch is being reported accurately. Although Industry will not be required to use the procedure, it will know that in the event of MFish investigating the reported weight of a product line and having doubt as to that reported weight MFish will be required to use the procedure. The procedure will therefore act as a standard that Industry knows it will have to meet to ensure catch is reported accurately.
- 45 The procedure, in conjunction with the related technical regulatory measures (for example additional labelling requirements), will also improve the efficiency by which MFish can determine the net weight of fish processed and frozen at sea. It will not change the current practice of allowing MFish to perform casual inspections. In the event that casual inspections lead to MFish having doubts as to the reported weight, MFish will be required to use the procedure to obtain an estimate of the reported weight of that product line.

- 46 A key point about having a regulated weighing methodology that consists only of the procedural aspects of determining the weight of a product line is that there are no implications for either MFish or Industry. If invoked by MFish the regulation does not presume the resulting weight to be correct. Neither does it deem a reported weight to be incorrect if it is less than the weight obtained by using the procedure. MFish would still be required to prove that a fisher has provided an incorrect declaration of weight under the existing offence provisions of the Fisheries (Recordkeeping) Regulations 1990 or the Fisheries (Reporting) Regulations 2001.

#### *Costs*

- 47 There are no costs to MFish resulting from implementation of a regulated weighing methodology. There may be costs to some vessel operators who may need to adjust their current practices in order to meet the standard necessary to ensure catch is reported accurately. For most operators however there should be no cost.
- 48 The disadvantage of Option 2 is that it does not require Industry to use the methodology. This has the same risks as the status quo. However MFish considers these risks are mitigated by Option 2 for the reasons explained in paragraphs 44-45.

#### *Benefits*

- 49 MFish considers this option will help to achieve the key aims of the working group around consistency and standards whilst providing flexibility to both Industry and MFish regarding how product line weights are determined.

### ***Option 3 – Impose regulated methodology on all parties***

#### *Impact*

- 50 Under this option both Industry and MFish would be required to use a regulated weighing methodology to determine the weight of product lines. There would be no discretion available to either party.

#### *Costs*

- 51 A weighing method such as that detailed in Schedule 1 implies that the fish must be landed before following the procedure. However it may be easier for operators to weigh fish at sea using a different method. The requirement for Industry to use one method only is therefore likely to impose unnecessary costs as it does not recognise that there are many ways by which accurate weights could be obtained.
- 52 From the MFish perspective the requirement to use the methodology under all circumstances would remove the ability to undertake casual inspections. This would also likely be time consuming and costly. For the reasons described in this and the preceding paragraphs this is not MFish's preferred option.

#### *Benefits*

- 53 The benefit of this option is that it would address the working group's concerns regarding the lack of a level playing field between operators as all parties would be required to use the regulated methodology.

## ***Option 4 – Impose procedure on MFish via Code of Practice***

### *Impact*

- 54 Under this option an internal MFish Code of Practice would require Fishery Officers to use a procedure such as that specified in Schedule 1 whenever conducting investigations into the weight of a product line. MFish would ensure that Industry was aware of the Code of Practice in order to achieve the working group's aims regarding consistency and certainty.

### *Costs*

- 55 As with option 3 this option would remove MFish's ability to undertake casual inspections.
- 56 As stated earlier Codes of Practice do not have any enhanced status when viewed by the Courts, All prosecutions based on weighing procedures would still require expert witnesses from both the prosecution and defence.

### *Benefits*

- 57 A benefit of this option is that it would contribute to the working group's aims of creating Industry consistency and improving the standards Industry needs to meet to ensure accurate reporting of catch; Industry would be aware of the approach MFish would be required to take regarding weighing a product line.

### ***Other Management Controls***

- 58 As detailed in paragraph 11 the weighing methodology was one part of the regulation package approved by the Cabinet Economic Development Committee in June 2006. This IPP only relates to an amended proposal for a specified weighing procedure. MFish does not intend to re-consult on the other regulatory measures, and intends that those other measures come into force on 1 October 2008. The other measures are given below.
- 59 The Fisheries (Commercial Fishing) Regulations 2001 will be amended to require commercial fishers packing and freezing fish at sea to label the containers in which the fish is packed with:
- Species identifier (common name or scientific name or species code);
  - Landed state;
  - Packing date;
  - Net weight; and
  - A vessel identifier (the name or registration number under the Fisheries Act 1996 or the number assigned by the New Zealand Food Safety Authority to limited processing fishing vessels or vessels operating under a registered risk management programme pursuant to the Animal Products Act 1999).
- 60 The requirement above will not apply to fish that are processed at sea but frozen individually such as ling, toothfish or tunas, as there is already an established procedure for identifying and weighing such fish.
- 61 The Fisheries (Recordkeeping) Regulations 1990 will be amended to:

- Require commercial fishers packing and freezing fish at sea to keep records of packaging weights and to produce these on demand to any MFish officer;
- Clarify that ‘naked blocks’ (blocks of fish product without any form of packaging or wrapping) are containers for the purpose of recordkeeping and labelling;
- Require Licensed Fish Receivers to include actual weight of fish, rather than net weight, on unloading dockets (where practicable) and purchase tax invoices;
- Require Licensed Fish Receivers to include container number and type on purchase tax invoices as well as unloading dockets;
- Introduce a definition of ‘product line’ being a set of containers from the same landing, all containing the same net weight of fish and containing fish of the same species and landed state; and
- Allow Licensed Fish Receivers to make deductions for polyphosphate solutions as well as ice.

## Statutory Considerations

62 Section 297(1)(a)(xi) of the Act provides for regulations to be made regulating the methods, equipment, and devices to be used for determining the size or weight of any fish, aquatic life, or seaweed.

63 Section 25(c) of the New Zealand Bill of Rights Act 1990 (BORA) protects the right of an accused to be presumed innocent until proven guilty. Regulations may not be created that are contrary to the rights and freedoms in the BORA unless the enabling Act specifically allows for it. The Fisheries Act 1996 contains no such enabling mechanism.

64 Section 25(c) therefore prevents the imposition of a reverse onus of proof in the absence of an express statutory provision imposing the burden of proof on the accused. All options, including MFish’s preferred option, are consistent with this section.

65 Additionally, in forming the management options the following statutory considerations have been taken into account:

Section 5(a) and (b) – Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992: There is a wide range of international obligations relating to fishing (including sustainability and utilisation of fishstocks and maintaining biodiversity). MFish considers issues arising under international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 are adequately addressed in the management options.

Section 8 – Purpose of Act: MFish considers Options 2, 3 and 4 presented in this paper provide the best options for continuing to provide for utilisation of fishstocks processed and frozen at sea while ensuring sustainability of those stocks.

Section 9 – Environmental principles: None of the proposed options have any implications of section 9 of the Act.

Section 10 – Information principles: The information principles of the Act require 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. MFish considers that the procedure proposed in Schedule 1

represents the best available information in terms of accepted statistical methodology and realistic deductions for ice glaze and polyphosphate solutions.

## **Schedule 1 – Proposed methodology to be specified in regulation for use in determining actual weight of a product line in the event of doubt or a dispute regarding the reported weight of that product line**

The method detailed below is designed to be used only in situations where there is doubt or a dispute regarding the reported weight of a product line. Industry will **not** be obliged to use the method when completing their recordkeeping and reporting obligations. Similarly, Fishery Officers will be able to continue their usual procedure of weighing a non-random sample of cartons whilst engaged in casual inspections.

It is only when doubt or a dispute arises regarding the reported weight of a product line that Fishery Officers would be obliged to use the method. The subsequent weight obtained by using the method below would not have any implications, for example it would not be deemed to be the correct weight. Fishery Officers will still have to prove that a commercial fisher has provided an incorrect declaration of weight.

### **Proposed Regulation A:**

- a) Any person examining any product line of fish packed and frozen at sea for the purpose of determining whether the actual weight or greenweight of that product line has been recorded or reported in accordance with the requirements of the Act shall either select, examine and weigh a sample from the product line or examine and weigh all the containers in that product line.
- b) Where a product line contains the number of containers set out in Column I of Table 1 below, the person electing to take a sample shall select from that product line a number of containers not fewer than the number set out in Column II of Table 1, and the containers selected shall constitute the sample.

#### Comment

*Most testing will be carried out on **samples** in order to determine the actual weight of greenweight of the product line. Persons may take larger samples if this is felt to be necessary, but additional samples should seldom be required.*

- c) The sample must be selected from the product line at random.
- d) The average gross weight of the containers sampled from a product line shall be the gross weight of the sample divided by the number of containers in the sample.

### **Proposed Regulation B:**

- e) The actual weight of a container of fish will be determined by deducting the container weight from the average gross weight. If the container of fish is a naked block no container weight shall be deducted.
- f) If the product line is glazed, and if the appropriate landed state code for this fish product is GRE, GUT, HGU, HGT, HGF, DRE, DSC, DVC or TEN then a further 2% of the weight calculated in B(i) will be deducted from the gross weight of the container.

- g) Any additives in the product are part of the processed state and no deductions will be made from the actual weight of the sample. However, if sodium tripolyphosphate or sodium hexametaphosphate solutions have been added to either fillets or mince, and the product is clearly labelled as containing these additives, then a further 4% of the weight calculated in B(i) shall be deducted from the gross weight of the container.

Comment

*Polyphosphate solutions are sometimes added to fillets and mince and cause a substantial increase in weight of the processed state. It is impossible to determine the amount of polyphosphate added without destructive testing, but an allowance of 4% for added weight would meet current industry practice. Additional labelling is required so that the product which has had a polyphosphate solution added can be identified as such.*

**Proposed Regulation C:**

- h) A person shall determine the actual weight and, where appropriate, the greenweight of a product line by applying the following formulae:

$$\text{Actual weight} = A \times N$$

$$\text{Greenweight} = A \times N \times C$$

Where: A = the average actual weight of the sample

N = the number of containers in the product line

C = the conversion factor specified in the relevant Fisheries (Conversion Factors) Notice or in a certificate issued by the chief executive under section 3A(3) of the Fisheries Act 1983 or section 188 of the Fisheries Act 1996.

Comment

*Note that the Conversion Factors Notice simply provides an official ratio for calculating greenweight and does not apply to all species or to all product states. The wording “where appropriate” is used here to indicate that in circumstances where there is no applicable conversion factor the greenweight formula is not to be used.*

- i) If the product line comprises fish frozen and packed whole, the conversion factor shall be 1.00.

Table 1: Sample size for determination of greenweight and/or actual weight

COLUMN I

COLUMN II

| <b>(a) Number of containers in product line</b> | <b>(b) Minimum sample size</b>               |
|---|--|
| 2-20  | All containers                               |
| 21-128  | One quarter but not fewer than 20 containers |
| 129-4000  | 32   |
| 4001 – 8000                                     | 64   |
| 8001-12000                                      | 96   |
| 12,000 +  | 125  |

## **REPORTING OF FISH PROCESSED AND FROZEN AT SEA**

### **Summary of Agreed Position**

March 2005

#### **Introduction**

This paper provides a summary of the procedure agreed by SeaFIC and the Ministry of Fisheries (the Ministry) to determine net weight of fish processed and frozen at sea.

The absence of an approved procedure for calculating processed weight of fish frozen at sea has created uncertainty and risk of prosecution for operators who otherwise believe they have an acceptable reporting system. Similarly, the absence of an approved procedure increases both cost and difficulties for the Ministry when inspecting catch and determining actual versus reported weights.

The procedure will:

- enable industry to take a consistent approach to determining the net weight of fish processed and frozen at sea
- increase certainty about the standards that need to be met to ensure catch is being reported accurately
- improve the efficiency by which the Ministry can determine the net weight of fish processed and frozen at sea.

#### **Background**

The current legislation is not prescriptive about how either fishers or the Ministry determine the net weight of fish processed and frozen at sea. Industry has concerns about the absence of a level playing field between operators, while the Ministry is concerned about inaccuracies in reporting catch.

Industry attempted to develop a Code of Conduct to address the matter. Although a consensus was not reached for the Code, industry did agree to collaborate with the Ministry to develop a standard.

A working group of SeaFIC (Eric Barratt and Tom Norris) and Ministry of Fisheries (Dave Wood and Stan Crothers) representatives developed a proposal for a new system for calculating processed weight.

The proposal has been discussed with both industry and Ministry staff. SeaFIC engaged Jim Mace as a consultant to take the proposal to industry and develop a response, which was then presented to the Ministry.

Areas of disagreement have been resolved, resulting in broad agreement to a procedure for determining the weight of fish processed and frozen at sea, which is summarised in the subsequent sections.

## Definitions

1. *Product line*: a set of containers from the same landing, all of the same nominal weight and containing processed fish of the same species and processed state. A product line may include more than one size grade.
2. *Gross weight*: the weight of the fish, packaging and other non-fish components.
3. *Net weight*: the weight of the fish in the state to which it has been processed. The net weight of a product line will be determined by deducting legitimate allowances for packaging and other non-fish components from the gross weight.
4. *Greenweight*: the weight of fish prior to any processing or removal of any part of the fish. The greenweight of a product line will be determined by applying the relevant conversion factor to the net weight of the product line.

## Principles and procedures

1. The procedure the Ministry uses to determine the gross, net and greenweights of a product line will be specified in regulation and will be based on the Average Quantity System, as enacted in the Weights and Measures Amendment Regulations 2001. The procedure will be based on weighing a random sample of the product line. The regulations will specify the sample size as follows:

| Number of containers in product line | Minimum sample size |
|--------------------------------------|---------------------|
| 2-10                                 | All                 |
| 11-128                               | 25% or at least 10  |
| 129-4 000                            | 32                  |
| 4 001-8 000                          | 64                  |
| 8 001-12 000                         | 96                  |
| 12 000+                              | 125                 |

Sample size based on the Average Quantity System, as enacted in the Weights and Measures Amendment Regulations 2001.

2. Product can be weighed on or after landing for the purpose of determining gross, net and greenweights.
3. Gross weights will be determined by weighing product in the container.
4. Net weights will be determined by deducting legitimate allowances (as set out in this paper) from gross weights.
5. The greenweight of a product line can be determined according to the following formula: sample mean net weight per container  $\times$  number of containers in product line  $\times$  conversion factor.
6. The regulations will specify a procedure for calculating a 99% confidence interval around the sample greenweight.
7. Industry will have discretion about how they determine gross, net and greenweights of a product line. It is recommended that operators take sample sizes no smaller than that specified for the Ministry.
8. A product line will be treated as under-reported if the declared greenweight is less than the lower limit of a 99% confidence interval around the sample greenweight.

## Permitted deductions

Packaging and, where appropriate, an allowance for non-fish fluids, can be deducted from the gross weight of a product line in order to determine net weight. No other deductions will be permitted.

### **Packaging**

1. Operators will be required to determine the weight of packaging for each product line. Packaging weight can be determined either on the vessel or onshore at the operator's discretion
2. Records of packaging weights are to be maintained, and produced on demand
3. Packaging weights must be reviewed when there is a material change in packaging specification.
4. Where packaging weights vary between size grades within a product line (such as plastic interleaving), packaging weight should be based on the median size grade of that product line.

### **Non-fish fluids**

#### *Allowance for glazing*

Operators may deduct an allowance of a specified percentage of the net weight of the frozen product where the fish has been glazed (usually whole, headed and gutted or dressed product but would not apply to fillet states)<sup>1</sup>.

This allowance will be 2% for glazed product packed in plastic bags and/or cartons.

A different allowance will be deductible for glazed product landed without packaging (primarily squid). Data is currently being collected to enable this allowance to be incorporated in regulation.

In circumstances where glazing levels are materially higher than 2% of the gross weight of the frozen product, operators may apply to the Ministry for a vessel specific deduction for glaze. The process and procedures to support such an application have yet to be determined, but it is proposed to use an abbreviated form of the present individual vessel conversion factor regime.

#### *Polyphosphates*

A small number of vessels apply polyphosphate solution to fillets or fillet block at sea. Operators may make a deduction for polyphosphate added to a product line, provided this deduction is supported by vessel records.

## Marking product

All landed product will be marked with / identifiable by:

1. species;

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<sup>1</sup> The regulations will specify the states where the deduction for glaze is applicable.

2. processed state (standard three letter product code);
3. nominal weight;
4. packing date.

These requirements will be specified in regulation. Labels with this information should minimise the cost, time and disruption of sampling to determine the weight of a product line during MFish inspections.

Operators may use a non-standard product code (for example to meet customers' requirements) providing the package is also marked with the standard code for the product state.

## **Recording landings**

Licensed Fish Receivers will be required to make an accurate count of packages landed and record an accurate, enforceable total on the unloading docket or purchase tax invoice.

## **Implementation**

These procedures will be implemented by regulation, with a target date of 1 October 2005. Formal consultation will be carried out in early 2005.

As an interim measure, the agreed procedures will be implemented by protocol agreed between the Ministry and SeaFIC (on behalf of industry).

## **INITIAL POSITION PAPER - AMENDMENT TO REQUIREMENTS FOR DETERMINING AND RECORDING WEIGHTS OF FISH PACKED AND FROZEN AT SEA (22 DECEMBER 2005)**

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### **Proposal**

- 1 The Ministry of Fisheries (MFish) proposes that the Fisheries (Recordkeeping) Regulations 1990 ('Recordkeeping Regulations'), the Fisheries (Commercial Fishing) Regulations 2001 ('Commercial Fishing Regulations') and the Fisheries (Conversion Factors) Notice 2000 ('Conversion Factors Notice') be amended to:
  - a) Require that all fish packed and frozen at sea is labelled with species name (common name or scientific name or species code), landed state, packing date and net weight of the fish along with the identity of the vessel on which it was packed;
  - b) Ensure that "naked blocks" are classed as containers for the purposes of recordkeeping and labelling;
  - c) Consequentially revoke regulation 19(6) of the Commercial Fishing Regulations, which will be superseded by the proposed amendments;
  - d) Clarify the requirement to record actual weight rather than nominal net weight of fish on purchase tax invoices and unloading dockets;
  - e) Require Licensed Fish Receivers to record the number and type of containers on purchase tax invoices;
  - f) Provide a standard deduction of 2% in weight for ice glaze and provide a mechanism for additional tolerances for certain classes of vessel which employ more than 2% glaze;
  - g) Ensure that additives absorbed by or adsorbed to fish products are treated as part of the landed state for the purpose of reporting weights;
  - h) Require fishermen packing and freezing fish at sea to keep records of packaging weights; and
  - i) Provide a standard method to be used by fishery officers to determine, on landing, the actual weight of fish product packed and frozen at sea.

### **Interpretation**

- 2 The following terms are used in this paper:
  - Greenweight – the weight of fish, aquatic life or seaweed before any processing commences and before any part is removed.
  - Actual weight – the weight of fish in kilograms in its landed state. Actual weight is determined by deducting legitimate allowances for packaging and other non-fish components from the gross weight.
  - Gross weight – the combined weight of fish, packaging and other non-fish components.

- Net weight or nominal net weight – the weight at which the product will be offered for sale.
- 3 The proposals in this paper are intended to apply to fish that is packed and frozen at sea. Fish such as ling, toothfish and tunas, that are processed and frozen individually, but not packed, are not covered by the proposals. As noted above however, “naked blocks” (blocks of frozen fish that have no external covering) will be covered by these proposals.
  - 4 It is envisaged that the majority of fishing vessels that pack and freeze product at sea are those registered as a Limited Processing Fishing Vessel or those that have a Registered Risk Management Programme under the Animal Products Act 1999. Vessels not operating under either regime will not be affected by the proposals, although the chief executive will have the ability to require additional vessels to comply with the requirements.

## Background

- 5 The reporting framework set out in the Fisheries (Reporting) Regulations 2001 (‘the Reporting Regulations’) is a critical tool with which MFish collects information for use in assessing the state of New Zealand’s fishstocks and enforces the rules associated with the utilisation of those fishstocks. The reporting framework is underpinned by the Recordkeeping Regulations which prescribe the required documents on which reporting is based.
- 6 The Reporting Regulations currently require that catch of all species other than scallops and Foveaux Strait dredge oysters be recorded in greenweight kilograms on monthly harvest returns, which are the returns used for catch balancing purposes. Greenweight is the weight of the fish before any processing commences and before any part is removed. It is important for the integrity of the quota management system (‘QMS’) that the reporting of catch is accurate.
- 7 The responsibility for determining the greenweight of any fish rests with the licensed fish receiver (‘LFR’). This is straightforward when fish is landed “green” since the catch has simply to be sorted by species and weighed. However, frozen fish landed by factory vessels is normally processed and packed before landing. The Conversion Factors Notice provides an official ratio for use in converting the weight of processed fish landed to greenweight.
- 8 Aside from providing the conversion factors, the current regulatory framework is not prescriptive about how either LFRs or MFish determine the greenweight of fish packed and frozen at sea. It does not provide guidance on how to allow for the water glaze (applied to the fish to prevent it drying out), packaging, or other additives that form part of the gross weight of the landed catch. The Ministry is concerned about inaccuracies in reporting catch (which may amount to some tonnes of fish per landing), while the industry has concerns about (i) the absence of a level playing field between operators; and (ii) uncertainty over the Ministry’s approach to prosecution for perceived offences.
- 9 Issues surrounding the determination of greenweight for fish packed and frozen at sea have been troublesome for some years. Ways of resolving these issues have been

under discussion by a joint industry/Ministry working party for over a year, and an agreed position was finally reached in March 2005. The proposals below are based on this agreement.

- 10 An initial discussion paper was released in April 2005. Feedback from industry representatives indicated significant concerns with this paper. The Ministry agreed to review its proposals and formally release a revised Initial Position Paper.

## **Problem Definition**

- 11 Fish that is packed and frozen and at sea presents some unusual difficulties for inspecting fishery officers and LFRs. These difficulties are:
- a) It is difficult to pack fish to a predetermined weight, so the weights of cartons of fish are normally quite variable. It is therefore necessary to weigh a large sample of cartons from each product line to determine a reliable average gross weight. The question of how many cartons must be weighed is a matter of frequent dispute;
  - b) It is often difficult in practice to identify the cartons belonging to a particular product line, since most fish cartons look alike. Labelling requirements currently vary depending on the intended destination of the product and the type of vessel. For each carton fishery officers need to know the species, landed state, net weight and packing date of the contents. It is inefficient to have to determine this by opening every carton;
  - c) Further difficulties for identification are introduced when fish are frozen into “naked blocks”. These are rectangular blocks of fish product, usually encased in a layer of ice but without any other form of packaging or wrapping. At present these blocks are not covered by the definition of “container” in the Recordkeeping Regulations and are therefore exempt from labelling requirements;
  - d) Frozen fish is frequently glazed with either seawater or freshwater. This glaze is applied before packing, and serves as a coating to prevent freezer burn. It is not possible to ascertain the amount of glaze applied without thawing the product, which will destroy its export value. Additionally, there is as yet no straightforward means of determining the amount of glaze after landing. Operators often make a deduction for glaze either using a standard allowance or using vessel records; and
  - e) Additionally, some fish products contain additive solutions (anti-oxidants, sodium-tripolyphosphate or gelling agents). These are absorbed into the product, and it is not possible to ascertain by inspection whether they are present, or if so in what quantity. The legislation is currently silent as to whether or not these additives are a part of the landed state for the purpose of calculating greenweight. Practice varies between LFRs, with some making deductions from the gross weight for these additives and others including them in the gross weight.
- 12 Due to the inherent difficulties in determining actual weight of fish that has been packed and frozen at sea, LFRs therefore have difficulties recording and reporting the greenweight of fish received. The greenweight is determined from the actual weight and multiplied by a conversion factor where applicable. Greenweight is the basis for the QMS, where catch is reported and balanced against annual catch entitlement.

- 13 These issues create potential inaccuracies in reported catch, which may undermine the integrity of the QMS.

## **Options for Management Response**

- 14 Non-regulatory options include the “do nothing” option or development of an Industry Code of Practice. Industry recently attempted to develop a Code of Practice, however a consensus could not be reached. Industry did agree however to collaborate with the Ministry on developing a standard.
- 15 MFish therefore considers that several regulatory amendments are necessary to give effect to the industry/Ministry working party agreement. The proposed amendments are:
- a) To amend the Commercial Fishing Regulations to require all commercial fishers packing and freezing fish at sea to mark the containers in which the fish are packed with a species identifier (common name or scientific name or species code), landed state, net weight, packing date and vessel identifier (name or number). References to common name, scientific name, species code, landed state and container type are references to the reporting codes in Schedule 3 of the Reporting Regulation.
  - b) As a consequence regulation 19(6) of the Commercial Fishing Regulations is to be revoked, as it will be superseded by the proposed amendment. These amendments specifically address the problem identified in paragraph 11(b);
  - c) To amend regulation 4 of the Recordkeeping Regulations to require commercial fishers packing and freezing fish at sea to keep records of packaging weights, and to produce these on demand to any fishery officer. This amendment will assist both fishery officers and LFRs to determine actual weight;
  - d) To amend the definition of “container” in regulation 2 of the Recordkeeping Regulations to make it clear that “naked blocks” of frozen fish are containers for the purpose of recordkeeping and labelling. The definition of “naked blocks” will exclude individual fish.
  - e) Labelling of “naked blocks” is not difficult as some vessels currently freeze paper labels into the ice coating of these blocks now. This amendment addresses the problem identified in paragraph 11(c);
  - f) To amend regulations 12 and 13 of the Recordkeeping Regulations to make it clear that actual weight rather than net weight is required to be recorded on purchase tax invoices and unloading dockets;
  - g) To amend regulation 13 of the Recordkeeping Regulations 1990 to ensure that container numbers and type are required to be recorded on purchase tax invoices. Reference to container type is a reference to the reporting codes in Schedule 3 of the Fisheries (Reporting) Regulations 2001;
  - h) To amend regulation 2 of the Recordkeeping Regulations to introduce a definition of the term “product line”, being a set of containers from the same landing, all containing the same net weight of fish and containing fish of the

same species and landed state. This amendment addresses the problem identified in paragraph 11(b);

- i) To amend the Conversion Factors Notice to make it clear that additives and absorbed water are part of the landed state for the purpose of reporting weights. It is also proposed to amend regulation 13 of the Fisheries (Recordkeeping) Regulations 1990 to allow an LFR to deduct any allowance in weight made for added polyphosphate solutions when completing a purchase tax invoice. These amendments addresses the problem identified in paragraph 11(e).

- 16 MFish has considered the issue of allowing vessel specific glaze ratios where more than 2% glaze is used on a particular vessel or class of vessel. However the Fisheries Act 1996 does not currently contain a provision to provide regulatory support for this measure and it would be at least two years before the Act could be amended accordingly. In the interim the Ministry considers the best option may be a classification of vessels into classes, for which appropriate glaze ratios can be specified in regulation. The Ministry welcomes submissions on the potential classification of vessels using different glaze ratios.
- 17 The Ministry also proposes to introduce a new “administrative” regulation to specify how fishery officers will determine the actual weight of a product line of frozen fish. In the absence of proof to the contrary this calculation will be deemed to be correct. The details in the proposal are slightly adapted from the Canadian Consumer Packaging and Labelling regulations. The proposed new regulations are contained in the Appendix to this paper and address the problems identified in paragraphs 11(a) and 11(d).

## **Relationship to Food Safety Authority labelling regulations**

- 18 The New Zealand Food Safety Authority (FSA) is the agency responsible for administering the legislation relating to primary processing of animal products. They are also the controlling authority for imports and exports of food and food-related products. The primary statute is the Animal Products Act 1999 and there are several regulations and notices issued pursuant to that Act that are relevant to fishing vessels that pack and freeze product at sea.
- 19 The Animal Products (Regulated Control Scheme – Limited Processing Fishing Vessels) Regulations 2001 apply to vessels that carry out limited processing operations of fish material at sea [regulation 4(1)] where:
  - Any of the fish material or fish product is intended to be exported for human consumption as New Zealand product;
  - That fish material or fish product is not be delivered to an onshore primary processor, other than solely for storage or transport (or both); and
  - That fish material has been harvested from or is deemed to have been harvested from within New Zealand fisheries waters.
- 20 Fishing vessels covered by these Regulations are required to label product in accordance with the Animal Products (Specifications for Limited Processing Fishing

Vessels) Notice 2005. Clause 38 of that Notice states that labelling must be provided on transportation outers and must state:

- a) The fish material or fish product name or description; and
- b) Storage directions, where necessary to maintain the fish material as suitable for processing or fish product as fit for intended purpose; and
- c) Lot identification (except that this requirement is optional if the application of lot identification to the retail packaging is a mandatory requirement under other legislation and that legislation is complied with); and
- d) The scientific name of the fish as specified by the Director-General in clause 32(3)(d) of the Animal Products (Specifications for Products Intended for Human Consumption) Notice 2004.

21 Vessels that carry out further processing, such as filleting or surimi production must carry out those operations under a registered risk management programme. Vessels operating under a registered risk management programme are subject to the Animal Products (Specifications for Products Intended for Human Consumption) Notice 2004. Part 7 of that Notice deals with labelling and clause 32(3) states that that labelling must be provided on transportation outers and must state:

- a) The animal material or animal product name or description; and
- b) Storage directions, where necessary to maintain the animal material as suitable for processing or animal product as fit for intended purpose; and
- c) Lot identification (except that this requirement is optional if the application of lot identification to the retail packaging is a mandatory requirement under other legislation and that legislation is complied with); and
- d) In the case of fish product, the scientific name of the fish as specified by the Director-General;
- e) In the case of minced fish, surimi, reformed fish, or multi-ingredient fish products that have undergone further processing, the scientific name either on the label of the transportation outer or on the accompanying documentation; or
- f) In the case of shucked paua that is intended for canning and is held at temperatures not exceeding 6°C, that the paua is for canning only in New Zealand.

22 The Australia New Zealand Food Standards Code, which applies to all food sold in New Zealand and Australia, may also be relevant to fishing vessels packing and freezing product at sea. If product is exported or further processed the labelling requirements detailed above cover the requirements of the Food Standards Code. If, however, vessels produce retail packages for sale on the domestic market in New Zealand, those packages would need to meet the labelling requirements of the Food Standards Code. This situation will not be discussed further as the FSA is not aware of any vessels currently doing this.

23 Vessels registered as limited processing fishing vessels or those vessels that have a registered risk management programme are essentially operating under the same labelling requirements. In some cases the requirements overlap with MFish's proposed requirements (e.g. scientific name). However the requirements are not sufficient to enable fishery officers to accurately determine actual weight of a product line. In particular landed state and date of packing are essential to reconcile product with reporting.

## **Preliminary Consultation**

- 24 The proposals described here reflect an agreement reached in March 2005 by a working party established jointly by the Seafood Industry Council and MFish. Prior to this agreement being reached, industry attempted to develop a Code of Conduct to address the reporting of weights, but a consensus was not reached on this.
- 25 Additionally, a meeting was held between Industry and MFish staff on 2 June 2005 to discuss aspects of the IPP. This amended version of the IPP has been produced after consideration of several of the issues raised at that meeting.

## **Costs and Benefits of the Proposal**

- 26 Most vessels packing and freezing fish at sea already meet some of the labelling requirements for containers. Because of the existing requirements to comply with FSA regulations any additional labelling requirements can be met with minimal change. The benefit of the labelling requirements is that all LFRs and fishery officers can easily ascertain which containers need to be weighed in order to determine and report greenweight accurately.
- 27 LFRs are already obliged to determine the actual weight of fish landed in order to complete the LFR return accurately, so requiring actual weight rather than net weights on the source documents should impose no additional cost. The benefit is that purchase tax invoices, catch landing returns and LFR returns should be more easily reconciled if the statement of weight in all these documents is made on the same basis.
- 28 The provision of a standard deduction for ice glaze will reduce costs for both LFRs and MFish since destructive testing of product to determine actual glaze percentages applied will no longer be necessary. Data accuracy is unlikely to be compromised, as in practice many LFRs conduct no or only perfunctory glaze tests now. Methods of glaze testing in use vary widely in reliability. The 2% figure is based on tests conducted at sea, and is a reasonable industry average.
- 29 In most cases, additives (e.g. gelling agents in surimi) are an integral part of the landed state and the existing conversion factors have already taken this into account. However, a small number of vessels add polyphosphate solution to fillets before packing, and the weight of added solution is not always included in the landed state.
- 30 Codification of a standard method for determining greenweight of fish packed and frozen at sea should provide certainty to both Industry and MFish, but should not impose any additional cost on the industry and should simplify enforcement.
- 31 It is not envisaged that any new offences and penalties will be created. However if it is necessary to do so, any new offences and penalties will be of a similar nature to those relating to breaches of the Fisheries (Reporting) Regulations 2001.

## **Administrative Implications**

- 32 Enforcement and administration of the Act will be simplified by altering these regulations.

## Preliminary Recommendations

33 MFish recommends that the Minister:

- a) **Agree** to amend the Fisheries (Commercial Fishing) Regulations 2001 to require all commercial fishers packing and freezing fish at sea to mark the containers in which the fish are packed with a species identifier (common name or scientific name or species code), landed state, net weight and vessel number or name;
- b) **Agree** to amend the Fisheries (Recordkeeping) Regulations 1990 to require commercial fishers packing and freezing fish at sea to keep records of packaging weights, and to produce these on demand to any fishery officer;
- c) **Agree** to amend the Fisheries (Recordkeeping) Regulations 1990 to make it clear that “naked blocks” of frozen fish are containers for the purpose of recordkeeping and labelling;
- d) **Agree** to amend the Fisheries (Recordkeeping) Regulations 1990 to make it clear that actual weight rather than net weight is required to be recorded on purchase tax invoices and unloading dockets.
- e) **Agree** to amend the Fisheries (Recordkeeping) Regulations 1990 to ensure that container number and type is required to be recorded on purchase tax invoices and unloading dockets;
- f) **Agree** to amend the Fisheries (Recordkeeping) Regulations 1990 to introduce a definition of the term “product line”, being a set of containers from the same landing, all containing the same nominal net weight of fish and containing fish of the same species and landed state;
- g) **Agree** to amend the Fisheries (Conversion Factors) Notice 2000 to make it clear that additives and absorbed water are part of the landed state;
- h) **Agree** to amend the Fisheries (Recordkeeping) Regulations 1990 to allow a licensed fish receiver to deduct any allowance in weight made for added polyphosphate solutions when completing a purchase tax invoice;
- i) **Agree** to regulate for a standard procedure for fishery officers to use in determination of actual weight of landed fish.

# ANNEX ONE OF DECEMBER 2005 IPP– DETERMINATION OF ACTUAL WEIGHT OF PRODUCT LINE

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*Note: This is suggested wording only. The final wording is likely to be slightly different*

## 1 Proposed Regulation A is:

- a) A fishery officer examining any product line of fish packed and frozen at sea for the purpose of determining whether the actual weight or greenweight of that product line has been recorded or reported in accordance with the requirements of the Fisheries Act 1996 (the Act) shall proceed by selecting and examining a sample from the product line, and/or by examining all the containers in that product line.
- b) Where a product line contains the number of containers set out in Column I of Table 1 in the Schedule, the fishery officer shall select from that product line a number of containers not less than the number set out in Column II of Table 1 of that schedule, and the containers selected shall constitute the sample. A reserve sample of the same size shall be drawn at the same time.

### *Comment*

*All testing will be carried out on the **samples** to determine compliance of the product line. Fishery officers may take larger samples if this is felt to be necessary, but additional samples should seldom be required. The samples must be selected from the product line at random in accordance with generally accepted statistical sampling practice.*

- c) The fishery officer shall weigh all containers in a sample.
- d) The average gross weight of the containers sampled from a product line shall be the gross weight of the sample divided by the number of containers in the sample.

## 2 Proposed Regulation B is:

- a) The average actual weight of the sample referred to in Regulation A will be determined by deducting the container weight from the average gross weight.
- b) If the product line is glazed, and if the appropriate landed state code for this fish product is GRE, GUT, HGU, HGT, HGF, DRE, DSC, DVC or TEN the average actual weight of the sample shall be deemed to be 98% of the weight calculated in B(a).
- c) Any additives in the product are deemed to be part of the processed state and no deductions may be made from the actual weight of the sample. However, if sodium triphosphate or sodium hexametaphosphate solutions have been added to either fillets or mince (as defined in the Fisheries (Reporting) Regulations 2001), and the product is clearly labelled as containing these

additives, the average actual weight of the sample shall be deemed to be 96% of the weight calculated in B(a).

*Comment*

*Polyphosphate solutions are sometimes added to fillets and mince and cause a substantial increase in weight of the processed state. It is impossible to determine the amount of polyphosphate added without destructive testing, but an allowance of 4% for added weight would meet current industry practice. It is not anticipated that this deduction would be claimed fraudulently since the addition of polyphosphates reduces consumer acceptance of the end product. Additional labelling is required so the fishery officer can identify the product which has had a polyphosphate solution added.*

**3 Proposed Regulation C is:**

- a) A fishery officer shall determine the actual weight, and where appropriate the greenweight, of a product line by applying the following formulae:

$$\text{Actual weight} = A \times N$$

$$\text{Greenweight} = A \times N \times C$$

Where: A = the average actual weight of the sample

N = the number of containers in the product line

C = the conversion factor specified in the Fisheries (Conversion Factors) Notice 2000 or in a certificate issued by the chief executive under section 3A(3) of the Fisheries Act 1983 or section 188 of the Fisheries Act 1996.

*Comment*

*Note that the Conversion Factors Notice simply provides an official ratio for calculating greenweight and does not apply to all species or to all product states. The wording “where appropriate” is used here to indicate that in circumstances where there is no applicable conversion factor the greenweight formula is not to be used.*

- b) If the product line comprises fish frozen and packed whole, the conversion factor shall be 1.00.

**4 Proposed Regulation D is:**

- a) If an actual weight recorded or reported for a product line from which a sample was taken is less than the actual weight calculated from the formula in Regulation C(a) the amount of the deficiency shall be calculated by subtracting the actual weight recorded or reported from the actual weight calculated from the formula in Regulation C(a) .
- b) A statement of actual weight for a product line in a record or return shall be lawfully recorded or reported if and only if the actual weight recorded or

reported is greater than or equal to the actual weight calculated from the formula in Regulation C(a) less the sampling tolerance.

- c) The sampling tolerance shall be calculated from the formula:

$$\text{Sampling tolerance} = N * s(t/\sqrt{n})$$

Where: n = the number of containers in the sample

N = the number of containers in the product line

t = the value determined from Table 2 the Schedule

s = the standard deviation of the sample

- d) The standard deviation of the sample shall be calculated from the formula

$$s = \sqrt{\frac{\sum (x - A)^2}{(n - 1)}}$$

Where: n = the number of containers in the sample

$\sum (x - A)^2$  = the sum of the squared differences between the mean actual weight of the sample and the actual weight of each container in the sample.

- e) However, where all the containers in a product line are weighed no sampling tolerance shall apply.

*Comment*

*A product line is required to contain no more than the declared quantity of fish. The formulae above allow a tolerance to reflect the fact that the actual quantity of fish is being estimated from a sample, and that there is therefore some uncertainty associated with the estimate. When all containers are weighed, there is no uncertainty and no need for a sampling tolerance.*

5 Proposed Regulation E is:

- a) If a statement of greenweight in a purchase tax invoice or any return for a product line from which a sample was taken is less than the greenweight calculated from the formula in Regulation C(a) the amount of deficiency shall be calculated by subtracting the greenweight recorded or reported from the greenweight calculated from the formula in Regulation C(a).

- b) A statement of greenweight for a product line shall be lawfully recorded and reported if and only if the greenweight recorded or reported is greater than or equal to the greenweight calculated from the formula in Regulation C(a) less the sampling tolerance.

- c) The sampling tolerance shall be calculated from the formula:

$$\text{Sampling tolerance} = N * C * s(t/\sqrt{n})$$

Where: n = the number of containers in the sample

N = the number of containers in the product line

t = the value determined from the Table 2 the Schedule  
s = the standard deviation of the sample

C = the conversion factor specified in the Fisheries (Conversion Factors) Notice 2000 or in a certificate issued by the chief executive under section 3A(3) of the Fisheries Act 1983 or section 188 of the Fisheries Act 1996.

d) The standard deviation of the sample shall be calculated from the formula:

$$s = \sqrt{\frac{\sum (x - A)^2}{(n - 1)}}$$

Where: n = the number of containers in the sample

$\sum(x-A)^2$  = the sum of the squared differences between the mean actual weight of the sample and the actual weight of each container in the sample.

e) However, where all the containers in a product line are weighed no sampling tolerance shall apply.

Proposed new Schedule:

**Table 1: Sample size for determination of greenweight and/or actual weight**

| Number of containers in product line | Minimum sample size                          |
|--------------------------------------|--|
| 2-20                                 | All containers                               |
| 21-128                               | One quarter but not fewer than 10 containers |
| 129-4000                             | 32   |
| 4001 – 8000                          | 64   |
| 8001-12000                           | 96   |
| 12,000 +                             | 125  |

**Table 2: Table for values of t**

| Sample size | T     | Sample size | T     | Sample size | T     | Sample size | T     |
|-------------|-------|-------------|-------|-------------|-------|-------------|-------|
| 10          | 2.821 | 23          | 2.508 | 36          | 2.438 | 110         | 2.361 |
| 11          | 2.764 | 24          | 2.500 | 37          | 2.434 | 120         | 2.358 |
| 12          | 2.718 | 25          | 2.492 | 38          | 2.431 | 125         | 2.357 |
| 13          | 2.681 | 26          | 2.485 | 39          | 2.429 | 130         | 2.356 |
| 14          | 2.650 | 27          | 2.479 | 40          | 2.426 | 150         | 2.352 |
| 15          | 2.624 | 28          | 2.473 | 50          | 2.405 | 200         | 2.345 |
| 16          | 2.602 | 29          | 2.467 | 60          | 2.391 | 250         | 2.341 |
| 17          | 2.583 | 30          | 2.462 | 64          | 2.387 | 300         | 2.339 |
| 18          | 2.567 | 31          | 2.457 | 70          | 2.382 | 1000        | 2.330 |
| 19          | 2.552 | 32          | 2.453 | 80          | 2.374 |             |       |
| 20          | 2.539 | 33          | 2.449 | 90          | 2.369 |             |       |
| 21          | 2.528 | 34          | 2.445 | 96          | 2.366 |             |       |

|    |       |    |       |     |       |  |  |
|----|-------|----|-------|-----|-------|--|--|
| 22 | 2.518 | 35 | 2.441 | 100 | 2.365 |  |  |
|----|-------|----|-------|-----|-------|--|--|

### Linear interpolation of t values

Where a sample size is selected that is not listed in Column I of this table, and that sample size lies between 40 and 1000, the value of t will be determined by linear interpolation using the following formula:

$$t = a - \frac{(c - e)(a - b)}{(c - d)}$$

where :

a = the value of t for the closest sample size below the selected sample size in the table

b = the value of t for the closest sample size above the selected sample size

c = the result of 120 divided by the closest sample size below the selected sample size

d = the result of 120 divided by the closest sample size above the selected sample size

e = the result of 120 divided by the selected sample size

## Appendix 3 of March 2008 IPP

# **AMENDMENTS TO REQUIREMENTS FOR DETERMINING AND RECORDING WEIGHTS OF FISH PROCESSED AND/OR PACKED AND FROZEN AT SEA – FINAL ADVICE (MAY 2006)**

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## Background

- 1 The issue of how to determine and report the weight of fish landed by factory vessels has been troublesome for some time. When a vessel lands thousands of containers of frozen fish at a time all parties concerned recognise that it is simply impractical to weigh every single one. To date however, there has been no regulated or Industry-agreed procedure for determining the weight of fish that is packed and frozen at sea.
- 2 In recognition of the issue a working group consisting of Ministry of Fisheries (MFish) and Fishing Industry representatives was established. In March 2005, the working group released its Summary of Agreed Position regarding the determination of weights of fish packed and frozen at sea. Principles of the agreed position included:
  - Specifying a regulated procedure to be used by MFish officials when determining weights of a product line (effectively setting a standard), including a minimum sample size; and
  - Allowing Industry to have discretion about how they determine the weights of a product line.
- 3 Having a regulated procedure to determine the weights of fish packed and frozen at sea will:
  - Enable Industry to take a consistent approach to determining the weight of fish packed and frozen at sea;
  - Increase certainty about the standards Industry need to meet to ensure catch is being reported accurately; and
  - Improve the efficiency by which MFish can determine the weight of fish packed and frozen at sea.
- 4 To give effect to the working group's recommendations, MFish developed and released an Initial Position Paper (IPP) in April 2005. After Industry indicated that they had significant concerns with some of MFish's proposals, a revised IPP was released for consultation in December 2005.

## MFish's Initial Proposal

5 In the IPP MFish proposed to amend the Fisheries (Recordkeeping) Regulations 1990, the Fisheries (Commercial Fishing) Regulations 2001 and the Fisheries (Conversion Factors) Notice 2000. The proposals, as well as their rationale (in italics), were to:

- a) Require that all fish processed and/or packed and frozen at sea is labelled with species name (common name or scientific name or species code), landed state, packing date and net weight of the fish along with the identity of the vessel on which it was packed;

*Requiring all containers of frozen fish to be labelled appropriately will assist fishery officers when determining the actual weight of a product line. There will be no need for them to open containers in order to ascertain their contents.*

- b) Ensure that “naked blocks” are classed as containers for the purposes of recordkeeping and labelling;

*“Naked blocks” (blocks of fish product without any packaging or wrapping) are technically exempt from labelling requirements, which are intended to apply to all landed product.*

- c) Consequentially revoke regulation 19(6) of the Fisheries (Commercial Fishing) Regulations 2001, which will be superseded by the proposed amendments;

*This labelling regulation only applies to containers of frozen fish that are being transhipped. Once all containers are required to be labelled, the regulation will become redundant.*

- d) Clarify the requirement in the Fisheries (Recordkeeping) Regulations 1990 to record actual weight rather than nominal net weight of fish on purchase tax invoices and unloading dockets;

*Net weight (the weight at which the product will be sold) is different from the actual weight (the weight of fish in its landed state). Actual weight is used to determine greenweight, which is what MFish's statutory reporting regime is based on. Requiring actual weight to be used in the context of purchase tax invoices and unloading dockets will ensure that information used for recordkeeping and reporting processes is consistent.*

- e) Require Licensed Fish Receivers to record the number and type of containers on purchase tax invoices;

*This requirement will ensure that the final and most accurate count of containers is the number that appears in the key recordkeeping document.*

- f) Provide a standard deduction of 2% in weight for ice glaze and provide a mechanism for additional tolerances for certain classes of vessel that employ more than 2% glaze;

*Providing a standard deduction for fish product that is glazed (coated with water to prevent freezer burn) will remove the need for destructive sampling when fishery officers are determining the actual weight of a product line and will provide consistency for both fishery officers and Industry.*

*For some vessels the 2% deduction may be inadequate. Future regulatory amendments involving classifying vessels into classes and specifying appropriate glaze ratios for those classes will provide a mechanism for those vessels.*

- g) Ensure that additives absorbed by or adsorbed to fish products are treated as part of the landed state for the purpose of reporting weights;

*This amendment will clarify that licensed fish receivers may not make further deductions for additives (such as wash water) that have already been taken into account when calculating the conversion factor of a particular landed state.*

- h) Require commercial fishers packing and freezing fish at sea to keep records of packaging weights;

*Actual weight is calculated by deducting legitimate allowances for components such as packaging from the gross weight. A record of packaging weight will be necessary for both fishery officers and licensed fish receivers when determining the actual weight of a product line.*

- i) Provide a standard method to be used by fishery officers to determine, on landing, the actual weight of fish product processed, packed and frozen at sea.

*The key recommendation of the working group's report was to create a regulated procedure to be used by fishery officers when determining the actual weight of a product line. It effectively sets a minimum standard for measurement and calculation of weights in these circumstances. When passed, Industry can rely on this regulated procedure as the approved method by which weights are measured.*

- 6 The proposed amendments will provide consistency for both MFish and the fishing industry when determining the weight of fish that is processed and/or packed and frozen at sea. There will be a level playing field for operators and the proposals will also enhance the integrity of the Quota Management System (QMS).

## Submissions

- 7 A full list of submissions is detailed in Appendix One for your information. A copy of all submissions is also attached as Appendix Two.
- 8 Five submissions were received in total. The overall tone of the submissions was one of qualified support for the intent of the proposal (to implement the working group's agreement) but concern that MFish had gone beyond the original brief with technical aspects of some of the proposed regulatory amendments.
- 9 MFish acknowledges that in making the transition from Summary of Agreed Position to IPP, additional proposals appear to have been introduced that go beyond what was contained in the working group's report. However MFish considers that all proposals, including those not addressed directly in the Summary of Agreed Position, are necessary to give effect to the working group's report and will improve the overall process of determining the actual weight of fish. MFish does not view any of the additional proposals as onerous or unnecessary.

## Key Stakeholder Issues

- 10 Appendix One contains a detailed analysis of the extensive range of issues raised in submissions. Most issues are technical in nature. The issues raised by stakeholders that MFish considers to be the key concerns are detailed below.

### *Time required for completion of records*

- 11 A key feature of the working group's report was that Industry would have flexibility to weigh product after landing for the purpose of determining actual weight. Submissions expressed concern that the proposals would create a regime where this flexibility was removed, and vessel operators would be required to record all weights upon landing, noting the inherent difficulties of weighing product at sea.
- 12 MFish wishes to emphasise that there will continue to be flexibility to weigh product after landing.

### *Proposed labelling requirements*

- 13 The working group's report recommended that all landed product be labelled with species, processed state, nominal weight and packing date. In the IPP MFish additionally proposed that all landed product be labelled with a vessel identifier (name or number) in order to assist fishery officers in determining the weight of a product line landed from a particular vessel.
- 14 Submissions commented that MFish's proposal went beyond the working group's report and would significantly increase labelling obligations. Sanford Limited pointed out that the vessels that MFish intends to capture under the proposals as a whole are already required to label product with a vessel identifier under New Zealand Food Safety Authority (NZFSA) regulations.

- 15 MFish agrees that requiring a vessel identifier on container labels was not in the working group's report but believes that it will assist fishery officers with determining the actual weight of a product line. MFish also considers that the identifier required by NZFSA regulations is more than adequate for MFish purposes and will amend the vessel identifier proposal accordingly.

### *Risk of prosecution*

- 16 Submissions noted that vessel operators would be deemed to be committing offences for breaching certain aspects of MFish's proposals e.g. if labels fell off naked blocks or if they appeared to have under-reported certain product lines.
- 17 MFish notes that there are no "deeming provisions" in any of the proposed amendments. Fishers will continue to have statutory defences available to them, for example taking reasonable precautions and exercising due diligence to avoid a contravention of a regulation.
- 18 Additionally, the decision to prosecute or not is a serious one. The merits of each case are carefully considered before a prosecution decision is made. It is unlikely that such a prosecution would be undertaken if there was proof that, for example, a label merely "fell off" a naked block.

### **Timing**

- 19 Should you agree with the recommendations contained in this paper, MFish will prepare a paper to be considered by the Cabinet Economic Development Committee to seek its approval of the relevant regulatory amendments.
- 20 Should Cabinet approve the new regulations, MFish proposes that they take effect on 1 October 2006. This will give fishing companies and licensed fish receivers sufficient time to make the necessary adjustments.

### **Offences and Penalties**

- 21 No submissions commented on proposed offences and penalties. Should you agree with the recommendations contained in this paper and in the event that it is necessary to create any new offences, the corresponding penalties will be set in line with existing policy. Specifically:
- Offences committed pursuant to the Fisheries (Commercial Fishing) Regulations 2001 will be liable on summary conviction of a fine not exceeding \$100,000; and
  - Offences committed pursuant to the Fisheries (Recordkeeping) Regulations 1990 will be liable on summary conviction of a fine not exceeding \$100,000;

### **Conclusion**

- 22 Many of the issues raised in the submissions relate to relatively minor or technical aspects of the initial proposals. They highlight situations that may affect a very small percentage of containers discharged from a vessel (e.g.

naked blocks whose labels have fallen off or under-reporting of small product lines); outcomes that are statistically possible but very unlikely; or apparent inflexibility in the proposed regulations.

- 23 A submission from Sanford Limited suggested that the number issued by NZFSA to limited processing fishing vessels or vessels operating under a registered risk management plan could be used as a unique identifier on container labels instead of vessel name or registration number. MFish agrees with this suggestion and has amended the proposed labelling requirements accordingly.
- 24 Aside from the submission mentioned in the paragraph above, and two technical points relating to statistical aspects of the weight-determining procedure (paragraphs 34 and 36 of Appendix One), MFish does not consider that other submissions necessitate amending the initial proposals. MFish considers that the proposals will give effect to the March 2005 joint Industry / MFish agreement regarding reporting of fish processed and/or packed and frozen at sea.

## Final Recommendations

- 25 MFish recommends that you:
- a) **Agree** that the Fisheries (Commercial Fishing) Regulations 2001 should be amended to require all commercial fishers processing and/or packing and freezing fish at sea to mark the containers in which the fish are packed with species identifier (common name or scientific name or species code), landed state, net weight, packing date and vessel identifier (name or registration number under the Fisheries Act 1996 or number assigned by New Zealand Food Safety Authority to limited processing fishing vessels or vessels operating under a registered risk management programme pursuant to the Animal Products Act 1999);
  - b) **Agree** that the Fisheries (Recordkeeping) Regulations 1990 should be amended to require commercial fishers processing and/or packing and freezing fish at sea to keep records of packaging weights, and to produce these on demand to any fishery officer;
  - c) **Agree** that the Fisheries (Recordkeeping) Regulations 1990 should be amended to make it clear that “naked blocks” of frozen fish are containers for the purpose of recordkeeping and labelling;
  - d) **Agree** that the Fisheries (Recordkeeping) Regulations 1990 should be amended to make it clear that actual weight rather than net weight is required to be recorded on unloading dockets (where practicable) and purchase tax invoices;
  - e) **Agree** that the Fisheries (Recordkeeping) Regulations 1990 should be amended to ensure that container number and type is required to be recorded on purchase tax invoices and unloading dockets;
  - f) **Agree** that the Fisheries (Recordkeeping) Regulations 1990 should be amended to introduce a definition of the term “product line”, which is

considered to be a set of containers from the same landing, all containing the same net weight of fish and containing fish of the same species and landed state;

- g) **Agree** that the Fisheries (Conversion Factors) Notice 2005 should be amended to make it clear that additives and absorbed water are part of the landed state;
- h) **Agree** that the Fisheries (Recordkeeping) Regulations 1990 should be amended to allow a licensed fish receiver to deduct any allowance in weight made for added polyphosphate solutions when completing a purchase tax invoice;
- i) **Agree** that the Fisheries (Commercial Fishing) Regulations 2001 should be amended to provide regulatory support for a standard procedure to be used by fishery officers in the determination of actual weight of fish landed by commercial fishers;
- j) **Direct** MFish to prepare a paper for the Cabinet Economic Development Committee to seek its approval to progress the required regulatory amendments; and
- k) **Agree** that the Ministry consult with the New Zealand Seafood Industry Council Limited regarding the draft regulations.

Russell Burnard  
for Chief Executive

AGREED / NOT AGREED / AGREED AS AMENDED

Hon Jim Anderton  
**Minister of Fisheries**

/ /2006

## APPENDIX ONE OF MAY 2006 FAP – SUBMISSIONS AND MFISH RESPONSES

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- 1 After the initial release of the IPP in April 2005, submissions commenting on these proposals were received from:
  - New Zealand Seafood Industry Council Ltd
  - Sanford Ltd
  - United Fisheries Ltd
- 2 After the release of the revised version of the IPP in December 2005, submissions were received from:
  - New Zealand Seafood Industry Council Ltd
  - Sanford Limited
- 3 A summary of the key points raised in the submissions is provided below for your consideration. Submissions will be dealt with concurrently. Aspects of the earlier submissions that were addressed in the revised IPP do not need to be considered in this final advice paper.

### *Requirement to record actual weight on purchase tax invoices and unloading dockets*

- 4 **The New Zealand Seafood Industry Council Limited (SeaFIC), Sanford Limited (Sanford) and United Fisheries Ltd (United)** all expressed concerns regarding the proposal to create a requirement to record actual weight on purchase tax invoices and unloading dockets.
- 5 United submits that any amended regulation requiring weight to be included in unloading dockets should retain the phrase “where practicable”. Sanford also expresses concern that if the intent of the proposal is to remove the word “where practicable” from the provision relating to unloading dockets and effectively require weight to be recorded on landing, this will create significant cost implications.
- 6 SeaFIC submits that the proposal to record actual weight on unloading dockets should be removed, and points out the inherent difficulties in weighing fish at sea should MFish require actual weight to be recorded immediately on landing.
- 7 Sanford notes that the definition of “weight” in the Fisheries (Recordkeeping) Regulations 1990 (the Recordkeeping Regulations) refers to net weight in kilograms and questions whether this may need to be amended.

### *MFish response*

- 8 MFish notes that it is not proposed to remove the words “where practicable” from regulation 12(2)(f) of the Recordkeeping Regulations. This means fishers

will have the option of recording actual weight on unloading dockets if that information is available from onboard weighing systems. However if that information is not available, actual weight will not be required on unloading dockets.

- 9 Although regulation 13 of the Recordkeeping Regulations can require purchase invoices to be completed immediately on receipt of the fish by the licensed fish receiver (LFR), MFish believes there is sufficient flexibility within regulations 12 and 13 of the Recordkeeping Regulations to give the LFR adequate time to weigh fish before completing the document.
- 10 When containers are unloaded from a factory trawler, MFish envisages an unloading docket being completed, with the exception of the actual weight section of that docket. In situations where an unloading docket has been completed a purchase invoice is required to be completed “as soon as is reasonably practicable after receipt of the fish”. The term “as soon as is reasonably practicable” allows LFRs to continue with the current practice of weighing all product lines unloaded from the vessel. MFish recognises that this process may take several days.
- 11 MFish agrees that the definition of weight in the Recordkeeping Regulations will have to be amended so that the definition relates to actual weight, being the weight of fish in kilograms in its landed state.

***Requirement to record the number and type of containers on both unloading dockets and purchase tax invoices***

- 12 Sanford questions the proposal to require the number and type of containers on purchase tax invoices given the existing requirement to record that information on unloading dockets. They state that it seems an unnecessary administration burden to require this information to be repeated.

***MFish response***

- 13 The rationale for requiring the number and type of containers to be recorded on purchase tax invoices as well as unloading dockets is that the figure recorded on an unloading docket is often an estimate of the number of containers unloaded from a vessel. The final number will not be known until coolstore staff have counted all the containers and collated the data. MFish believes that requiring the number of containers to be recorded on purchase tax invoices provides for more accurate information to be recorded. MFish does not view this proposal as onerous.

***Completion of unloading dockets and purchase invoices where the commercial fisher, the permit holder and the licensed fish receiver are the same legal person***

- 14 Sanford submits that there is no requirement or obligation as an LFR to complete purchase invoices when receiving fish caught under jurisdiction of the commercial fisher permit i.e. when the commercial fisher, the permit holder and the LFR are the same entity. Sanford cites a High Court decision in

support of this argument (*Matijevich v Ministry of Agriculture and Fisheries*, 8/3/96, HC Auckland AP14/95 Blanchard J).

*MFish response*

15 The High Court decision cited by Sanford was given at a time when the Fisheries Act 1983 was in force. The Fisheries Act 1996 (the Act) is now in force and contains a provision that imposes an obligation on an LFR to complete purchase invoices when receiving fish caught when the permit holder and the LFR are the same person.

16 Section 192 of the Act 1996 states that:

*“(2) No licensed fish receiver shall purchase or otherwise acquire or be in possession of any fish, aquatic life or seaweed for the purpose of sale unless the fish, aquatic life or seaweed was-...*

*(b) Lawfully taken by that person for the purpose of sale in the person’s capacity as a commercial fisher, where that person has lawfully kept and completed all records, returns, and other documents required under this Act as if the commercial fisher and the licensed fish receiver had been separate persons;”*

17 There is a clear statutory obligation for an LFR to complete unloading dockets and purchase invoices when the commercial fisher from whom the fish is received and the LFR are the same entity.

*Allowances for of ice glaze and polyphosphate*

18 United submits that the proposed standard glaze deduction of 2% is too low. They believe it should be around 3-4% based on tests that they conducted recently. SeaFIC mention that there may be a need to periodically update the allowances for ice glaze and polyphosphate (2% and 4% respectively). They also question the data upon which the standard allowances are based.

19 SeaFIC make a further point that the variability in the standard deductions is not considered and that they are treated as exact values in the calculations, like conversion factors. They also note the possibility of over-declaration of catch, which would provide inaccurate data for stock assessment purposes.

*MFish response*

20 At this stage MFish does not intend to amend the proposed standard deduction of 2%. As detailed in the IPP, a mechanism may be able to be created whereby vessels that employ more than 2% glaze will be able to obtain different standard deductions. The mechanism would involve the classification of vessels into classes and specifying appropriate glaze ratios for those classes by way of separate regulatory amendment.

21 MFish agrees with SeaFIC regarding updates. If data becomes available indicating that these figures are no longer the best available information, they should be amended. The proposed 2% glaze allowance was specified in the working group’s report while the 4% allowance for polyphosphate solutions

was provided by MFish's compliance investigation services unit. Both allowances represent the best available information.

- 22 MFish also recognises that, like conversion factors, the allowances will be treated as exact figures when in reality there will almost certainly be variability. The main reasons for having conversion factors and standard allowances are to provide certainty to both Industry and MFish, and to improve the efficacy of the process by which all parties determine weights. Like conversion factors, standard allowances will be able to be amended if they are found to no longer be the best available information.

### *Definition of "product line"*

- 23 United are concerned about the proposed definition of "product line", being a set of containers from the same landing, all containing the same net weight of fish and containing processed fish of the same species and landed state. They mention their concern with containers that are packed to different weights from the nominal net weight (termed "various weight" containers) and submit that the definition of a product line and/or a regulation which specifies the method to be used to determine actual weight must make provision for "various weight" containers in a line of the same species and landed state, so that a more accurate actual weight is arrived at.
- 24 SeaFIC submits that the definition of the term "product line" should read ".....a set of containers from the same landing, all containing *approximately* the same net weight of the fish...."

### *MFish response*

- 25 With regard to United's concern, MFish believes that the proposed procedure for determining actual weight recognises that the weight of containers is inherently variable and that an appropriate sample size is necessary to provide a statistically valid determination of the actual weight of a product line. United's existing methodology for determining actual weights should also take the natural variability of container weights into account and should not be based solely on net weights.
- 26 MFish does not agree with SeaFIC's suggestion to amend the proposed definition of "product line" to include the word "approximately". The term "net weight" (the weight at which the product will be offered for sale) is the minimum amount of product that is likely to be in a container. MFish understands that container weights are variable, but adding the word "approximately" to the proposed definition that also includes the term "net weight" is not necessary, as the net weight is a fixed amount in this context.

### *Labelling of naked blocks*

- 27 SeaFIC believes that labelling of naked blocks (blocks of fish product without any packaging or wrapping) is not always successful and that labels often fall off as they are only held on by a thin layer of ice. They submit that naked blocks should not be included in the definition of container or, if they are, it should not be an offence if labels become detached.

*MFish response*

- 28 MFish understands the inherent difficulties with ensuring labels are successfully attached to naked blocks. However the joint Industry / MFish working group agreement stated that all landed product would be labelled and MFish sees no reason to create any exemptions to that part of the agreement.
- 29 If, as MFish currently proposes, a regulation is created requiring all containers including naked blocks to be labelled, a corresponding offence will also be created. However in the event that a fishery officer encounters naked blocks without the requisite labels, the officer will have to make a determination as to whether an attempt had been made to label the blocks or not. Fishers have statutory defences available to them (for example taking reasonable precautions and exercising due diligence to avoid a contravention), and the merits of each individual case are relevant to any consideration of whether to initiate prosecution action.

*Sampling tolerance for product lines of less than 20 containers*

- 30 SeaFIC state their concern with MFish's proposal for there to be no sampling tolerance where a product line consists of fewer than 20 containers. They submit that due to the large number of product lines potentially unloaded from a vessel it may be very difficult to weigh all containers in all product lines and request a tolerance for such product lines.
- 31 Discussions between SeaFIC and MFish have also highlighted SeaFIC's belief that there is likely to be greater variability between weights of containers in small product lines than in large product lines. They feel that this greater variability adds justification to their belief that there should be a sampling tolerance for small product lines. SeaFIC is also concerned that fishers will be committing an offence if a fishery officer weighs a small product line and determines a weight greater than that reported by the fisher.

*MFish response*

- 32 MFish does not propose to introduce a sampling tolerance for product lines consisting of 20 containers or less. Estimates of weight based on a sample are an approximation, and a sampling tolerance is appropriate to reflect the statistical uncertainty. However, where all the containers in a product line are weighed by a fishery officer there is no statistical uncertainty, and no need for a sampling tolerance. SeaFIC are effectively requesting a dispensation to record and report inaccurate weights for small lines of product. MFish policy remains that LFRs are required to report the weight of all lines of product accurately. This is a fundamental tenet of the current self-reporting regime established. Dispensations to this fundamental rule would threaten the integrity of this self-reporting model.

*Statistical aspects of procedure used to determine actual weights of a product line*

- 33 SeaFIC and Sanford raise various concerns about statistical aspects of the proposed method for determining actual weight of a product line. In particular, they raise technical concerns about the interpolation formula provided in the

schedule; ask that the random sampling procedure to be used by fishery officers be codified; and note that a change to the minimum sample size in Table 1 of the schedule has not been reflected by a change to the text of the proposed regulations.

### *MFish response*

- 34 The t value is one of the parameters used to calculate the sampling tolerance. The concern raised by SeaFIC regarding the interpolation formula used for determining critical values of the t distribution is accepted, and the formula to be contained in the final regulation will be revised to accommodate large sample sizes. Interpolation formulae are necessarily a simplification and cannot be expected to give exactly the same result as a computer programme. They are designed to be useful for people working in the field with calculators.
- 35 A random sample is one where every container in a product line has an equal chance of being selected, and there are several different ways in which such a sample could be drawn. MFish's view is that codification of a random sampling procedure is, on balance, undesirable. The main benefit of a codified procedure is that this would avert the need to call expert statistical evidence on the sampling protocol used in any prosecution. The downside is that situations vary, and fishery officers will often have to choose or adapt a sampling protocol to suit the situation. The validity or otherwise of the sampling protocol employed by any fishery officer can be challenged by the vessel operator if any prosecution is undertaken. Specification of, and rigid adherence to a codified sampling protocol, would greatly increase both the time required during some inspections and the inconvenience caused to vessel, coldstore and packhouse operators.
- 36 SeaFIC's note regarding an apparent error in Table 1 of the schedule is correct. The discrepancy between the text and the numbers is a typographical error. MFish is grateful that this has been drawn to our attention. The table will be revised accordingly.

### *Standards and prosecution decision-making*

- 37 The SeaFIC submission expresses a general unease about the concept of using an estimate based on a random sample to determine the weight of a product line, and would like more detail specified on how the estimate will be used. The submission also claims that the flexibility to take a larger sample fails to provide a minimum standard for industry to meet or exceed since the boundaries of the sampling tolerance are affected by sample size.

### *MFish response*

- 38 The requisite standard for Industry to meet or exceed is unchanged by this proposal. The requirement is, and always has been, to report the weight of the fish product accurately. The standard has always been that if MFish staff weigh all the containers of a product line then the weight obtained should be the same as or less than the weight recorded or reported. In deciding whether to initiate prosecution action where this is not the case, a discretion is exercised depending on consideration of the merits of each individual case.

39 The submissions are correct in noting that a sample from a product line that has been accurately recorded or reported will occasionally fail the test by chance. Identifying a prima facie breach of the regulations is only one aspect of the situation as a whole, and other considerations are likely to also be taken into account before a decision as made as to whether prosecution action should follow. An accurate declaration of weight is unlikely to fail the test at all, and if it does, the failure will be by a small margin.

### *Proposed labelling requirements*

40 Sanford has significant concerns with MFish's proposal to require all containers of fish packed and frozen at sea to be labelled with species name (common name, scientific name or species code), landed state, packing date, net weight and a vessel identifier (name or number). Sanford claims that the proposed requirements duplicate many existing regulations and that the increased labelling obligations will create additional costs.

41 In particular Sanford state that:

- Regulation 23 of the Recordkeeping Regulations, relating to fish stored on an LFR's premises, already requires LFRs to keep records of, amongst other things, species, state and net weight of the fish.
- If fish is packaged in containers on the LFR's premises, those containers are required to be labelled in accordance with regulation 19 of the Recordkeeping Regulations (which require common or scientific name of the fish, date of packaging, and either the name of the LFR or the person or undertaking on whose behalf the fish was processed and packaged).
- The drafted regulations need to reflect that they relate only to vessels that process and freeze product at sea.
- Containers are already required to be labelled with a Pack House number, which is unique to every vessel. They believe this number could be used as a vessel identifier instead of name or registration number.

42 Sanford is also concerned with MFish's proposal to revoke regulation 19(6) of the Fisheries (Commercial Fishing) Regulations 2001, which relates to labelling of containers that are to be transhipped.

### *MFish response*

43 MFish agrees that the proposals will marginally increase fishers' obligations to label containers of fish frozen at sea. However one of the main purposes of the joint Industry / MFish working group was to establish a procedure that will improve the efficiency by which fishery officers can determine the weight of fish processed and frozen at sea. The agreement specified that all landed product would be marked with / identifiable by: species, processed state, nominal weight and packing date. MFish's proposal for containers to also be labelled with a vessel identifier will simply improve the efficiency of the procedure for determining weights.

- 44 MFish concurs with Sanford's statements regarding regulations 23 and 19 of the Recordkeeping Regulations, but does not believe they are relevant given the Industry / MFish agreement.
- 45 MFish will ensure that the any regulations relating to product labelling will only be applicable to those vessels that process and/or pack and freeze product at sea, i.e. the same vessels that have labelling obligations under the Animal Products Act 1999.
- 46 MFish also agrees in part with Sanford's claim that containers are already required to be labelled with a Pack House number. Fish or fish product intended for export must be labelled in accordance with Overseas Market Access Requirement Notification (OMAR) 02.67. The Notification applies to both limited processing vessels and vessels operating under a registered risk management programme. The specifications in turn require that fish or fish product intended for export must be labelled in accordance with the New Zealand Fishing Industry Agreed Implementation Standards (IAIS) 004.1 (any markets other than Australia) or 004.2 (any markets including Australia).
- 47 IAIS 004.2 only deals with fish names, however IAIS 004.1 requires outer containers and retail packs to be labelled with the "official number of the premises which processed and/or packed the product". The official number is readily obtained from the New Zealand Food Safety Authority (NZFSA) website and is unique to every limited processing vessel or vessel operating under a registered risk management programme.
- 48 For MFish's purposes, the official number assigned by NZFSA to limited processing vessel or vessels operating under a registered risk management programme serves the same function as vessel name or registration number in acting as a vessel identifier. MFish therefore proposes that containers of fish packed and frozen at sea be labelled with the following: species identifier (common name or scientific name or species code), landed state, net weight, packing date, and vessel identifier (name or registration number under the Fisheries Act 1996 *or* number assigned by New Zealand Food Safety Authority to limited processing fishing vessels or vessels operating under a registered risk management programme).
- 49 MFish believes that there will be no need to retain regulation 19(6) of the Fisheries (Commercial Fishing) Regulations 2001, which requires all containers containing fish being transhipped to be labelled in accordance with IAIS 004.1. If that fish is intended for export to any market other than Australia, fishers will still be required to label containers pursuant to that Standard but under the Animal Products Act 1999 rather than the Fisheries Act 1996.

### *Drafting of regulations*

- 50 SeaFIC raise a general concern that although the IPP gives the intent of the proposed regulatory amendments, the absence of the draft text of the regulation means that it is difficult to ascertain whether the proposed regulation has unintended consequences.

*MFish response*

- 51 MFish notes SeaFIC's concern and will be careful to ensure that the policy intent of the proposals is reflected in the subsequent regulation.
- 52 The process of drafting regulations is generally confidential. However, because of the technical nature of the proposals MFish believes that it is appropriate for SeaFIC to be consulted during the drafting process. MFish proposes that the Minister agree for MFish to consult SeaFIC during the course of regulation drafting.

# **REGULATORY IMPACT STATEMENT**

## **Regulatory measures relating to procedures for weighing fish packed and frozen at sea**

### **Executive summary**

Aside from conversion factors, the current regulatory framework is not prescriptive about how either licensed fish receivers or the Ministry of Fisheries (MFish) determine the greenweight of fish packed and frozen at sea. There is no guidance on how to allow for ice glaze, packaging, or other additives that form part of the gross weight of the landed catch.

The lack of guidance led to the establishment of a joint MFish / Industry working group in 2004. The working group was set up to develop a proposal for a new system for calculating the weight of fish processed and frozen at sea.

One of the working group's key recommendations was for a weighing procedure to be specified in regulation for MFish to use to determine the weight of a product line. That regulation would also contain provision for reported weights to be treated as under-reported if less than the weight obtained using the weighing procedure. The Fisheries Act 1996 does not contain a provision enabling reported weights to be treated as, or deemed to be, under-reported. MFish's preferred option is to have a weighing procedure specified in regulation that provides guidance on how to allow for all components of the gross weight of containers of fish that are packed and frozen at sea but does not contain any deeming provisions. MFish proposes that the procedure would only be required to be used in the event of doubt or a dispute regarding the reported weight of a product line.

### **Adequacy statement**

This Regulatory Impact Statement has been reviewed by MFish's Regulatory Impact Analysis Review Committee and is considered adequate according to the criteria agreed by Cabinet.

### **Status quo and problem**

The current legislation is not prescriptive about how either Industry or MFish determines the weight of fish packed and frozen at sea.

Issues surrounding the determination of greenweight of fish packed and frozen at sea have been troublesome for some years. The lack of legislative guidance has led to Industry having concerns about the absence of a level playing field between operators and MFish has become increasingly concerned about inaccuracies in reported catch. Industry also has concerns regarding uncertainty over MFish's approach to prosecution for perceived offences.

MFish considers that the potential for inaccuracies in reported catch could undermine the integrity of the quota management system (QMS), which relies on accurate reported information in order to make decisions regarding sustainability. Although inaccuracies in reported catch may only be marginal, the overall amount of catch reported incorrectly may be significant due to the volume of fish that is processed and frozen at sea.

## **Objectives**

The objectives that the options are measured against are those articulated under section 8 of the Fisheries Act 1996: “the purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability”.

More specifically, the objectives of the proposed regulation are: i) to ensure that landings of fish processed and frozen at sea are reported accurately in an efficient and cost-effective manner; and ii) to provide certainty to both the fishing industry and MFish regarding the rules to be followed when calculating the greenweight of fish that has been processed and frozen at sea.

## **Alternative options**

Two alternative options to the preferred approach were considered. These were:

- To require that a weighing procedure specified in regulation be used by all parties when determining the weight of a product line; and
- To require MFish to use a specified procedure for determining the weight of a product line by detailing it in a Code of Practice and ensuring Industry was widely aware of the existence of the Code of Practice.

The first alternative option, the imposition of a regulated weighing procedure on all parties, is not MFish’s preferred option as there are a number of ways for operators to determine the weight of a product line; requiring the use of just one is likely to be costly and inefficient. Additionally, MFish would never be able to prove or disprove the assertion that the procedure had been used or not.

The second alternative option, specifying the method to be used by MFish via a Code of Practice, is not preferred either. Codes of Practice, while valuable, do not have any enhanced status when viewed by the Courts.

## **Preferred option**

The preferred option is to have a weighing procedure, specified in regulation, which would be required to be used in the event of doubt or a dispute between parties about the reported weight of a product line. In reality MFish envisages that parties would almost inevitably be MFish and a licensed fish receiver or permit holder.

The procedure would enable industry to take a consistent approach to determining the weight of fish packed and frozen at sea by providing guidance on how to allow for the components that make up the gross weight of a carton of fish. The procedure would also increase certainty about the standards that Industry would need to meet to ensure catch is reported accurately as Industry will be able to rely on the fact that MFish will use the procedure in the event of having doubt as to the reported weight of a product line. The preferred option is also likely to impose the least cost on Industry.

Requiring that the procedure only be used in the event of doubt or a dispute will allow MFish to continue their usual practice of weighing a non-random sample of cartons whilst engaged in casual inspections. It will also allow Industry to use any method they want to weigh cartons of fish, provided that a particular method allows the weight to be reported accurately.

The proposed regulation will simply set out a methodology for weighing cartons. It will not declare the weight obtained by using the methodology to be correct. Additionally it will not explicitly or implicitly deem a reported weight to be incorrect as this is contrary to the New Zealand Bill of Rights Act 1990. In such an event, any prosecution for misreporting would be taken under existing regulations.

Having the procedure specified in regulation is also consistent with the working group's recommendations.

### **Implementation and review**

The proposal will likely be given effect by an amendment to the Fisheries (Commercial Fishing) Regulations 2001. If approved by Cabinet the regulatory amendment would come into force on 1 October 2008.

The implementation of the weighing methodology specified in regulation will not require specific measures to be taken by Industry in order to comply with that regulation. However, it is envisaged that the weighing methodology will form part of a wider package of related measures that will also come into force on 1 October 2008. Some of those regulatory amendments are likely to require changes to processes on board vessels that pack and freeze fish at sea. MFish intends to inform all vessel operators likely to be affected by the proposals of the new requirements once Cabinet has made a decision on this proposal. This timeframe will give vessel operators sufficient time to make any necessary changes.

MFish intends to monitor the effectiveness of the package of regulations dealing with fish packed and frozen at sea and will also ensure that compliance resources are allocated to this area. The regulations can be reassessed if necessary.

### **Consultation**

The proposal resulted from a joint MFish / fishing industry working group that was set up to examine the issues relating to fish packed and frozen at sea. Development of the proposal has been ongoing for three years. During the development of the current proposal, as well as the wider packaged of related regulations, MFish has continued to have direct consultation with members of the working group as well as the New Zealand Seafood Industry Council Limited and representatives of commercial fishing companies.

MFish has also undertaken two wider consultation processes with fisheries stakeholders during the preceding three years. Stakeholder comments have been taken into account regarding the implementation of a weighing methodology as well as the wider package of related regulations.

MFish has consulted with departments during earlier phases of this process. Preliminary consultation regarding the current proposal has been undertaken with the Ministry of Justice. The Ministry of Justice indicated that they believed the proposal would not be inconsistent with the New Zealand Bill of Rights Act 1990.