

INITIAL POSITION PAPER - IDENTIFICATION OF CONTAINERS HOLDING FRESHWATER EELS

Executive Summary

- 1 The Ministry of Fisheries (MFish) is proposing to amend the Fisheries (Commercial Fishing) Regulations 2001 ('the regulations') to extend container labelling requirements to freshwater eels. The regulations currently stipulate that commercial fishers must identify containers holding rock lobsters and shellfish. Container identification requirements do not currently apply to eels (e.g. eel holding bags)¹.
- 2 There is currently no requirement for commercial fishers to label eel holding bags. Fishery Officers have no way of identifying the legality of any catch found in such containers when they are left unattended. Some commercial eel fishers transfer eels from fyke nets to holding bags, in which they may be stored for several days, before a licensed fish receiver (LFR) collects them, or the accumulated catch is taken to the premises of a LFR. Eel fishers work across large areas, thus it is hard to identify the fishers responsible when holding bags are located without any labels on them.
- 3 The proposal is to amend the regulations to include freshwater eels within the requirement for commercial fishers to label fish containers.

Regulatory Impact Analysis Requirements

- 4 A Regulatory Impact Statement for this issue has been completed because the proposal is to introduce a new requirement.

The Issue

- 5 Regulations 53 requires commercial fishers to label fish containers containing cockle, kina, mussels, octopus, oyster, paddle crab, paua, pipi, scallop, tuatua, rock lobster, or rock lobster tails with various details². These requirements allow Fishery Officers to identify legitimate commercial activities, isolating those which are not. The requirement however, does not include containers holding freshwater eels. This is inconvenient in the eel fishery given the

¹ Except for regulation 11P of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 which requires containers holding eels taken from Lake Ellesmere (Te Waihora) to be labelled.

² If operating from a vessel, the label must include: (a) the name and registered number of the fishing vessel from which the shellfish were taken; (b) the date on which the shellfish were taken; (c) except in the case of rock lobsters, the area from which the shellfish were taken; (d) the signature of the operator, notified user, or master of the vessel from which the shellfish were taken; and (e) the client name and number of the permit holder under whose permit the shellfish were taken. If not operating from a vessel, the label must include: (a) the permit holder's initials and surname; (b) the permit holder's fishing permit number; (c) the date on which the shellfish were taken; (d) except in the case of rock lobsters, the area from which the shellfish were taken; and (e) the permit holder's signature.

practice by some commercial fishers of leaving full holdings bags unattended for several days prior to collection.

- 6 Commercial eel fishers often transfer eels to holding bags from which these are collected by, or transported to, LFRs. Eels may be stored in holding bags for several days before this occurs. Commercial eel fishers operate over large areas and can be very hard to locate while fishing. In the event that a Fishery Officer locates a holding bag, and the commercial fisher is not present at the time to confirm that it is his or her catch, it is important to be able to distinguish between legitimate and illegitimate catch. At present it is not possible to do this. The requirement to label containers holding eels would simplify the Fishery Officer's task of monitoring commercial fishers' activities and catch. Lack of identification in this context may affect legitimate commercial fishers as their catch could be misidentified (by Fishery Officers, other fishers or the public) and may be lost, but may also provide an opportunity for illegal fishers to conceal their activity.
- 7 The regulations do not currently provide for a requirement to label containers holding eels. An amendment to the regulations is proposed to require commercial fishers to label containers holding eels. This would address the issues described above and would allow the identification of eel holdings bags, as being related to legitimate commercial activity.
- 8 There currently are no specific container labelling requirements for non-commercial eel fishers either. This however is not believed to be a problem given the practices of non-commercial fishers and other requirements³. For this reason, no additional requirements are proposed for non-commercial fishers.

Summary of Options

Option 1 – Status quo

- 9 Make no amendment to the regulations; commercial fishers are not required to label containers holding freshwater eels.

Option 2 – Amend the regulations to include freshwater eels within container labelling requirements

- 10 An amendment to the regulations to include freshwater eels (*Anguilla dieffenbachia*, *Anguilla australis* and *Anguilla reinhardtii*) within container labelling requirements (*preferred option*)⁴.

Rationale for Management Options

- 11 An amendment to the regulations is proposed under section 297 of the Fisheries Act 1996 (the Act), which allows the creation of regulations for a

³ For instance, recreational daily bag limit, customary authorisations valid for limited periods of time, record of authorisations available to Fishery Officers, commercial and customary catch taken in the same trip to be differentiated and labelled accordingly.

⁴ This would imply amending regulation 53 of the Fisheries (Commercial Fishing) Regulations 2001 by adding 'freshwater eels' to the species listed under 53(1) and 53(2).

variety of purposes, including the use of any gear, equipment, or devices used for, or related to, fishing. In making a decision, the Minister should take into account the risks that the status quo presents (ie. inability to identify the content of holding bags as the product of legitimate commercial activities) and the potential benefit of the amendment to the effectiveness of compliance activities and legitimate fishing interests.

Assessment of Management Options

Option 1 – Status Quo

Impact

- 12 Option 1 would continue preventing Fishery Officers from identifying catch in eel holding bags as related to legitimate commercial activities, as these would continue to be excluded from container labelling requirements.

Costs

- 13 The cost of maintaining the status quo would primarily be the inability for Fishery Officers to distinguish between legitimate and illegitimate catch when inspecting eel holding bags. This is a cost to legitimate commercial fishers given that misidentification of their catch (by Fishery Officers, other fishers or the public) could result in their catch being lost. A cost to all legitimate fishing interests (commercial, recreational and customary) also exists if the opportunity to conceal illegal catch is created by the lack of an identification requirement for eel holding bags.

Benefits

- 14 Aside from minor cost savings from not making regulatory amendments and communicating changes and new requirements to commercial fishers, the status quo presents no benefits.

Option 2 – Amend the regulations to include eels within container labelling requirements

Impact

- 15 Option 2 would enable Fishery Officers (and other fishery interests) to identify the ownership of eel holding bags, and in that way confirm that the catch is the product of legitimate activity, allowing illegal catch to be dealt with and thereby acting as a deterrent.

Costs

- 16 Option 2 would result in minor administrative costs to fulfil regulatory amendments and communicating the new requirements to commercial fishers. The costs for commercial fishers would be minimal as all this amendment requires is for commercial fishers to label containers holding eels in the same manner as other gear and containers holding other species are currently labelled.

Benefits

- 17 The proposed amendment would improve the ability of Fishery Officers to identify legitimate catch when coming across eel holding bags. For commercial fishers, the benefit includes a reduction in catch losses resulting from misidentified holding bags. A benefit to other legitimate fishing interests also exists by reducing the opportunity for illegal fishers to conceal unlabelled catch under legitimate activities. These benefits are believed to outweigh the costs described above.

Statutory Considerations

- 18 In considering the proposed amendments, the Minister is required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 19 **Section 5** outlines the application of international obligations and of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 within the context of the Act. The amendment proposed is consistent with, and reinforces, international obligations and obligations set out in the Settlement Act. In relation to eel fisheries, the proposed amendment would reduce opportunities to conceal illegal catch, which affects legitimate fishing interests such as those of tangata whenua. Likewise, New Zealand has obligations under international agreements to manage catadromous species such as eels. The proposed amendment is consistent with that obligation.
- 20 **Sections 8, 9 and 10** set out the purpose, environmental principles and information principles of the Act respectively. The proposed amendment is consistent with, and reinforces, this purpose and these principles.
- 21 **Section 297 (1)(viii)** prescribes the power to regulate or prohibit the possession or use of any kind of gear, equipment, or device used for, or related to, fishing, including container labelling requirements.
- 22 Consequently, **regulation 53** of the Fisheries (Commercial Fishing) Regulations 2001 require containers holding cockle, kina, mussels, octopus, oyster, paddle crab, paua, pipi, scallop, tuatua, rock lobster, or rock lobster tails to be labelled. The requirement however does not include containers holding freshwater eels, such as holdings bags. The Minister is asked to make a decision in this context.
- 23 **Regulation 11P** of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 establishes a requirement to label containers holding eels taken from Lake Ellesmere (Te Waihora), among other provisions. There are particular requirements in relation to eels taken from that area therefore the amendment proposed would not imply revoking regulation 11P. If the Minister agrees to the amendment proposed, it would not result in conflicting requirements as regional regulations take precedence over general regulations.

Other Management Issues

- 24 During the development of this IPP, MFish considered proposing changes to the information required in current labelling and marking requirements for

gear and containers (e.g. the 'client number of the permit holder' as opposed to the 'permit number'). It was decided to not propose any changes for that purpose at this stage given that the issue is beyond the scope of this paper. Regardless of this, MFish would appreciate input from stakeholders on this issue within submissions, particularly with regards to any inconveniences caused by current labelling and marking requirements for gear and fish containers.

REGULATORY IMPACT STATEMENT

Identification of containers holding freshwater eels

Executive Summary

Commercial fishers are required to identify containers holding rock lobsters and shellfish, but not containers holding freshwater eels⁵. Fishery Officers have no way of identifying the legality of catch found in eel holding bags when they are left unattended. This is a significant problem in the commercial eel fishery due to the common practice of storing eels in unattended holding bags for several days. This can provide an opportunity to conceal illegal fishing activities but may also affect commercial fishers as they risk losing their catch if holding bags are misidentified. The preferred option is to amend the regulations to include freshwater eels within container identification requirements for commercial fishers. The main impact of the proposal would be to allow effective identification of unattended catch and placing an additional requirement on commercial eel fishers. The proposal does not present unmanageable risks and is not believed to cause any conflicts with existing legislation.

Adequacy Statement

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

Status quo and Problem

The Fisheries (Commercial Fishing) Regulations 2001 stipulate that commercial fishers must label containers holding cockles, kina, mussels, octopus, oyster, paddle crab, paua, pipi, scallop, tuatua, rock lobster, or rock lobster tails with various details. Freshwater eels are not included within these requirements.

Commercially taken freshwater eels are often stored in holding bags for several days before they are collected and transported to the premises of a Licensed Fish Receiver. Commercial eel fishers operate over large areas and can be very hard to locate while fishing. In the event that a Fishery Officer locates a holding bag, and the commercial fisher is not present at the time to confirm that it is his or her catch, it is important to be able to distinguish between legitimate and illegitimate catch. Fishery Officers have no way of identifying the legality of any catch found in eel holding bags when they are left unattended. The inability to identify responsibility for eel holding bags provides an opportunity to conceal illegal activities (e.g. fishing for commercial purposes without a fishing permit), which undermines the interests of legitimate commercial, recreational and customary fishers. Legitimate commercial fishers may also be disadvantaged by the lack of identification requirements given that they risk losing their catch if it is misidentified by Fishery Officers, other fishers or the public.

⁵ Unless taken from Lake Ellesmere, as outlined by regulation 11P of the Fisheries (South-East Area Commercial Fishing) Regulations 1986

The status quo, therefore, presents no benefits, and several disadvantages mentioned above. Introducing a new requirement in this context would allow a more effective protection of legitimate fishing interests and would deter illegal fishing activities.

There currently are no specific container labelling requirements for non-commercial eel fishers either. This however is not believed to be a problem given the practices of these fishers and other requirements that apply to them, which would generally discourage or prevent eel holding bags from being left unattended for extended periods. These requirements include the recreational limit of six freshwater eels per person per day, the specified period of time within which customary fishing under an authorisation may occur and the records of customary authorisations issued being available to Fishery Officers. Additionally, in the event that commercial and customary freshwater eels are taken in the same fishing trip, there are specific provisions for the catch to be labelled and differentiated. For this reason, no additional requirements are proposed for non-commercial fishers.

Objectives

The objective sought with the proposal is to better protect the value obtained from freshwater eel fisheries by legitimate commercial, recreational and customary fishers by reducing an opportunity to conceal illegal catch arising from the lack of container labelling requirements for commercial fishers.

Alternative Options

No viable alternative options to address the problem have been identified.

Preferred Option

The preferred option is to amend the Fisheries (Commercial Fishing) Regulations 2001 to include freshwater eels within container labelling requirements. This is the preferred option because it would significantly reduce the problem of not being able to identify the legality of eels left unattended in holding bags. Furthermore, commercial eel fishers would benefit from the removal of the risk of losing their catch if it is misidentified. By deterring illegal activities, the amendment proposed would allow a more effective protection of legitimate fishing interests. Aside from the administrative cost of implementing the regulatory amendment, another cost resulting from the proposal would be the cost to commercial eel fishers to label their containers. The proposal would not result in significant costs to commercial eel fishers, the Ministry of Fisheries or other parties.

A risk arising from the proposed amendment is non-compliance with the requirement. The provision of timely information to affected stakeholders would be the main way to manage this risk. This information would highlight the benefit to commercial fishers of complying with the requirement. Additionally, monitoring of compliance with the requirement would be performed within existing monitoring and surveillance activities performed by the Ministry of Fisheries. A deterrent to non-compliance with the requirement, which already exists, is the risk of losing catch if it is misidentified. In the event of significant non-compliance, offences and penalties are set out within the relevant regulations to deter such behaviour also.

This proposal is an addition to existing regulations and works in conjunction with the requirement for containers holding rock lobsters or shellfish to be labelled. This would result in additional species for which container labelling is required. The proposal does not conflict with existing legislation and does not require other regulations, aside from those mentioned above, to be amended or revoked.

Implementation and Review

If approved, this proposal would be given effect on 1 October 2008. Once the Minister has made a decision, commercial fishers would be notified by a letter from the Minister and the change would be announced on the Ministry of Fisheries website. Fishery Officers would be aware of the requirement and would be able to inform commercial fishers who may have additional queries. Monitoring of the requirement would be undertaken by Fishery Officers through existing surveillance and monitoring activities taking place across relevant fisheries.

Consultation

Stakeholders will be consulted on this proposal as part of the Ministry of Fisheries Regulatory Round consultation process; a document which includes all proposed regulatory amendments was circulated to relevant parties and posted on the Ministry of Fisheries website.

