

# REVIEW OF THE REGULATION THAT PERMITS STALLING OF NETS IN THE KAIPARA HARBOUR

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## Executive Summary

- 1 Regulation 14 of the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986 permits stalling of nets by commercial fishers in the Kaipara Harbour. The Kaipara Harbour is the only area of New Zealand where the practice is permitted.
- 2 Stalling is the process whereby a net is set in such a manner that any fish enclosed or entangled by the net is left stranded by the falling tide; or is enclosed or entangled in such a manner that at any stage of the tide there is an insufficient depth of water at either end of the net to enable the fish to pass from the waters above the net to the waters below the net.
- 3 Stalling is a fishing practice that causes a significant amount of fish wastage. When fish are left out of the water in stalled nets for too long they deteriorate and become unfit for sale. They are then frequently discarded and not reported. There is no obvious reason to allow stalling of nets in the Kaipara Harbour as a special case above other tidal fishing areas.
- 4 The Ministry of Fisheries (MFish) proposes three options: to a) retain the status quo; b) require attendance at stalled nets in the Kaipara Harbour; or c) prohibit stalling in the Kaipara Harbour.
- 5 Stalling of nets is a practice in fisheries for flatfish, grey mullet and rig in the Kaipara Harbour. There are 50 commercial fishers that currently use set nets in the Kaipara Harbour. However, MFish has no clear information on how much stalling occurs in the harbour, or how much fish is lost due to wastage of fish in stalled nets.
- 6 Prohibiting stalling or requiring attendance at nets should improve the quality of catches and the abundance and availability of fish stocks within the Kaipara Harbour. However, there would be economic costs for commercial fishers who currently stall their set nets as they would need to change their fishing practices.

## Summary of Management Options

- 7 MFish proposes to either:
  - a) **Option 1:** continue to permit stalling of nets in the Kaipara Harbour (status quo); OR
  - b) **Option 2:** require fishers to attend their stalled set nets at all times; OR
  - c) **Option 3:** prohibit stalling in the Kaipara Harbour.

## **Rationale for Management Options**

### ***Set-net stalling***

- 8 Stalling of nets is a fishing practice that causes a significant amount of fish wastage. When fish are left out of the water in stalled nets for too long they deteriorate and become unfit for sale. They are then frequently discarded and not reported. The lack of reporting could lead to stocks being unknowingly fished above the level permitted under the quota management system. Large volumes of fish wastage could reduce the availability and abundance of fish in the Kaipara Harbour. Stalled nets could also attract other animals to predate on fish exposed at low tide which has the potential to cause non-fish bycatch.
- 9 Stalling is defined in regulation as the process whereby a net is set in such a manner that any fish enclosed or entangled by the net is left stranded by the falling tide; or is enclosed or entangled in such a manner that at any stage of the tide there is an insufficient depth of water at either end of the net to enable the fish to pass from the waters above the net to the waters below the net.
- 10 Stalling has been permitted in the Kaipara Harbour to help fishers who were not able to collect their nets easily due to the tidal nature of the harbour. However, other harbours are subject to substantial tidal effects and there is no obvious reason to allow stalling of commercial nets in the Kaipara Harbour as a special case above other tidal fishing areas.

### ***Regulations***

- 11 The Fisheries (General) Regulations 1950 permitted stalling in the Kaipara Harbour on condition that the mesh of the set nets used was not less than 108 mm and that the net was no more than 540 m in length. This legislation was replaced by the Fisheries (Vessel, Gear and Method) Notice 1983 which prohibited stalling everywhere in New Zealand.
- 12 The Kaipara Harbour was re-exempted from the stalling ban through the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986, with a reduced set net mesh size of 100 mm, and a requirement that a 90 metre space was provided between nets.
- 13 Stalling by non-commercial fishers is also prohibited everywhere, including the Kaipara Harbour, through regulation 10 of the Fisheries (Amateur Fishing) Regulations 1986.

### ***Set net fisheries in the Kaipara Harbour***

- 14 Stalling of nets is a practice in flatfish, grey mullet and rig fisheries in the Kaipara Harbour. Snapper, trevally, school shark, and kahawai are also important fisheries in the harbour and can be taken as bycatch in stalled nets.
- 15 When Total Allowable Catch limits for flatfish, grey mullet and rig stocks in the northern half of the North Island were reviewed in 2005, many

stakeholders with interests in the Kaipara Harbour raised concerns about wastage associated with set net stalling.

- 16 At that time the Minister decided not to alter any TACs, but asked MFish to consider possible measures to improve fisheries management of west coast harbours. This review of set net stalling is one of those measures.
- 17 Table 1 shows catch taken of flatfish, grey mullet and rig by commercial set net in the Kaipara Harbour for the last two fishing years. MFish has no information to suggest how much of this catch is taken when using the practice of stalling of set nets, or how much fish might be lost due to wastage.

**Table 1: Number of commercial set net fishers in the Kaipara Harbour and catch taken by commercial set net for the 2004/05 and 2005/06 fishing years.**

		Catch taken by commercial set net (tonnes)		
Fishing year	Number of fishers using set nets	Flatfish	Grey mullet	Rig
2005/06	50	76	81	34
2004/05	54	91	110	65

- 18 MFish has received anecdotal information on set net stalling in the Kaipara Harbour from members of the Kaipara community, from all fishing sectors. They advise that stalling is a fairly regular practice for many commercial flatfish fishers in the Kaipara Harbour, who set nets of up to 540 metres in length. Soakage times vary but can be up to 18 hours which means that the nets can stall more than once before the fish are removed. The lack of MFish information on stalling is partly because these nets are poorly marked and are hard to see from the main channels, so few compliance records exist.

## **Assessment of Management Options**

### ***Option 1: Continue to permit stalling of nets in the Kaipara Harbour (status quo)***

- 19 While it is clear that stalling causes wastage of fish, there is no clear evidence to suggest that stalling affects the sustainability of fish stocks found in the Kaipara Harbour. The extent of stalling and the extent of loss of fish due to wastage are unknown; therefore retaining the status quo is a valid option.
- 20 This option will not require any changes to current fishing practices. However, stalling of set nets causes wastage, dumping of fish and conflicts amongst stakeholders and this option would not resolve these problems.

### ***Option 2: Require fishers in the Kaipara Harbour to attend their stalled set nets at all times***

- 21 If fishers attended their stalled set nets at all times, they could immediately remove all fish that may be exposed by the falling tide and avoid spoilage and wastage. This option should therefore improve the quality of catches by reducing the time fish remain out of the water.
- 22 However, this option is likely to have a direct cost for commercial fishers as they will be required to attend and work the nets. The precise economic impact of this is not known. This option may also be difficult to enforce.
- 23 If this option reduced fish wastage in the Kaipara, it could benefit both commercial and non-commercial fishers as the availability of fish in the harbour should increase.

### ***Option 3: Prohibit stalling in the Kaipara Harbour***

- 24 This option would ensure that fish are not stranded in nets out of the water at low tide. It may therefore benefit commercial fishers by improving the quality of catches. However, if commercial fishers need to stall their nets to be able to fish effectively, this option would reduce the incomes of those commercial fishers. The precise economic impact of this is unknown.
- 25 If this option reduces fish wastage in the Kaipara, it could benefit both commercial and non-commercial fishers as availability of fish in the harbour should increase.
- 26 A total prohibition on the practice of stalling set nets is likely to be much easier to enforce than option 2. As a result, benefits such as improving the quality of the catch are more likely to be realised under this option than under option 2.

## **Other issues**

### ***Compliance and resource considerations***

- 27 MFish would need to inform fishers of any regulation change and the reasons for the change. There will be a cost involved for MFish produce brochures and signs to raise awareness among fishers of any changes.
- 28 Ongoing compliance resources will be required to ensure fishers work within the regulations. If attendance at stalled nets is required, there may need to be regular inspections to ensure that any stalled nets are attended. If there is a total ban of stalling, monitoring will be required to ensure that no stalling takes place.
- 29 Currently the main commercial offences in the Kaipara Harbour include fishers breaching soak times and other netting offences. Monitoring of stalling and attendance could be done in tandem with existing operations and therefore without a significant increase in resources.

## ***Stakeholder views***

- 30 MFish invites stakeholders to submit their views on the options presented in this paper and information about the costs and benefits of each option.
- 31 The Kaipara Harbour Sustainable Fisheries Management Study Group (a group of commercial, recreational and customary fishers and other interested parties from the Kaipara Harbour) has recommended that stalling be permitted only when the fisher is in attendance and actively working their net. In this way the fisher can immediately remove fish that have been stranded in the net.
- 32 Te Uri o Hau and Nga Rima (hapu of the Kaipara area) support prohibiting stalling as it would prevent fish wastage. Stalling is not a practice that their marae or papapakainga use as exposure of fish to the sun between tides damages the quality of the fish. Tangata whenua in general support attendance at nets and customary permits in the Kaipara area require attendance at nets to check when the target quantity of fish is caught.

## ***Statutory considerations***

- 33 MFish considers that the set net stalling provision in the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986 is a sustainability measure under section 11 of the Fisheries Act 1996 (the Act). Any amendment to the set net stalling provision would be made by regulation under section 298(a) of the Act which provides for regulations to implement or vary any sustainability measure set or varied under section 11 of the Act.
- 34 In reviewing the regulation that permits stalling in the Kaipara Harbour, the following statutory considerations under the Act have been taken into account.
  - a) **Section 5(a) and (b)** – MFish is unaware of any international obligation that would be affected by the proposed management options. MFish considers that the options are consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
  - b) **Section 8** – None of the management options are contrary to the purpose of the Act. Prohibiting stalling or requiring attendance at stalled nets should help increase catch efficiency, reduce fish spoilage and allow for bycatch and undersized fish to be returned to the water. This would help to ensure sustainability of stocks in the harbour.
  - c) **Section 9** – Prohibiting stalling or requiring attendance at nets would decrease the level of fish spoilage and wastage of undersized and non-quota bycatch species and may also reduce any incidental bycatch of sea birds and other animals that are attracted to stalled nets to feed on fish. The options will have no impact on habitats of particular significance for fisheries management.
  - d) **Section 10** – MFish considers that the best available information indicates that the benefits of options 2 and 3 outweigh the costs.

- e) **Section 11(1)(a)** – Set net stalling is a fishing practice that causes significant amounts of fish wastage. Options 2 and 3 should therefore reduce the wastage of fish in the Kaipara Harbour.
- f) **Section 11(1)(b)** – Most stocks that are thought to be caught by stalled set nets are managed under the Quota Management System. As stalling can lead to dumping and under-reporting of fish, options 2 and 3 should lead to greater adherence to the Total Allowable Commercial Catch set for the stocks concerned.
- g) **Section 11(1)(c)** – MFish does not consider that the natural variability of the stocks caught by stalled set nets is relevant to the issues outlined in this paper.
- h) **Section 11(2)** – There are no provisions applicable to the coastal marine area known to exist in any policy statement or plan under the Resource Management Act 1991, or any management strategy or plan under the Conservation Act 1987, that are relevant to the setting or varying of any sustainability measure for this stock. The Hauraki Gulf Marine Park Act 2000 is not relevant to the Kaipara Harbour.
- i) **Section 11(2A)** – No conservation services or fisheries services or approved Fisheries Plan exist that are relevant to the Kaipara Harbour stalled set net fishery.

# **REGULATORY IMPACT STATEMENT**

## **Review of the regulation that permits stalling of nets in the Kaipara Harbour**

### **Executive summary**

Regulation 14 of the Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986 permits stalling of nets by commercial fishers in the Kaipara Harbour. Stalling (setting a net in a manner that fish caught are left stranded by the falling tide) is considered to be a particularly wasteful practice. Stalling is prohibited for all fishers everywhere else in New Zealand and for non-commercial fishers in the Kaipara Harbour.

Three options are proposed for consultation. These are:

- a) Option 1: continue to permit stalling of nets in the Kaipara Harbour (status quo); OR
- b) Option 2: require attendance at stalled nets in the Kaipara Harbour; OR
- c) Option 3: prohibit stalling of nets in the Kaipara Harbour.

### **Adequacy statement**

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

### **Status quo and problem**

Stalling is the process whereby a net is set in such a manner that any fish enclosed or entangled by the net is left stranded by the falling tide; or is enclosed or entangled in such a manner that at any stage of the tide there is an insufficient depth of water at either end of the net to enable the fish to pass from the waters above the net to the waters below the net.

Stalling is a fishing practice that causes a significant amount of fish wastage. When fish are left out of the water in stalled nets for too long they deteriorate and become unfit for sale. They are then frequently discarded and not reported. There is no obvious reason to allow stalling of nets in the Kaipara Harbour as a special case above other tidal fishing areas.

The local community have raised concerns that stalling affects sustainability of fish stocks in the Kaipara Harbour and causes conflicts between stakeholders.

Stalling of nets is a practice in commercial fisheries for flounder, grey mullet and rig in the Kaipara Harbour. Snapper, trevally, school shark and kahawai are other important fish stocks in the harbour that may be taken as bycatch in stalled nets. In the 2005/06 fishing year 76 tonnes of flounder were taken by commercial set net in the Kaipara Harbour, 81 tonnes of grey mullet and 34 tonnes of rig. Catches for the previous year (2004/05) were 91, 110 and 65 tonnes respectively.

50 and 54 commercial fishers using set nets reported catches in the harbour in the 2004/05 and 2005/2006 fishing years respectively. MFish does not know how much of this catch is taken when using stalled set nets or how much fish might be lost due to wastage. The Ministry of Fisheries has received anecdotal information on set net stalling in the Kaipara Harbour from members of the Kaipara community, from all fishing sectors. They advise that stalling is a fairly regular practice for many commercial flatfish fishers in the Kaipara Harbour, who set nets of up to 540 metres in length. Soakage times vary but can be up to 18 hours which means that the nets can stall more than once before the fish are removed. The lack of MFish information on stalling is partly because these nets are poorly marked and are hard to see from the main channels, so few compliance records exist.

When the TACs for FLA 1, GMU 1 and SPO 1 were reviewed in 2005, many stakeholders raised concerns about stalling in the Kaipara Harbour. In particular, concerns were raised about wastage associated with the practice, which could affect the sustainability of fish stocks in the harbour.

At that time the Minister decided not to alter the TACs, but considered a package of measures would be necessary to address the various concerns stakeholders had raised during the review. Reviewing the regulation that prohibits stalling in the Kaipara Harbour is one of those measures.

Option 1 (status quo) is to continue to permit the stalling of nets in the Kaipara Harbour. This option will not require any changes to current fishing practices. The extent of stalling and the extent of loss of fish due to wastage are unknown; therefore retaining the status quo is a valid option. However, stalling of set nets causes wastage, dumping of fish and conflicts amongst stakeholders and this option would not resolve these problems.

## **Objectives**

The overall objective of the proposal is to ensure the sustainable utilisation of Kaipara Harbour fisheries resources. The specific objective is to prevent wastage and non-reporting of fish caught in stalled nets.

## **Alternative options**

The alternative to the options proposed is to defer proceeding with the regulation review.

## **Preferred options**

MFish has no strong preference between options 2 and 3 at this stage.

Option 2 requires fishers in the Kaipara Harbour to attend their stalled nets at all times. This would enable the fishers to immediately remove all fish that may be exposed by the falling tide and avoid spoilage and wastage. This option should therefore improve the quality of catches by reducing the time fish remain out of the water. However, this option is likely to have a direct cost for commercial fishers as they will be required to attend and work the nets, although they would still be able to

use stalled nets, unlike in option 3. The precise economic impact of this option is not known.

Option 3 is to prohibit stalling of nets in the Kaipara Harbour. This would ensure that fish are not stranded in nets out of the water at low tide. It may therefore benefit commercial fishers by improving the quality of catches. However, if commercial fishers need to stall their nets to be able to fish effectively, this option would reduce the incomes of those commercial fishers. The precise economic impact of this is unknown. If this option reduces fish wastage in the Kaipara, it could benefit both commercial and non-commercial fishers as availability of fish in the harbour should increase.

Many tangata whenua and stakeholders in the Kaipara Harbour area support amending the regulation to require attendance at nets, or removing the regulation to prohibit stalling.

If current requirements change there is a need to ensure fishers are adequately informed to maximise the potential for voluntary compliance. There is a cost in doing so. Monitoring and enforcement would be carried out within existing resources and involve at-sea inspection programmes.

### **Implementation and review**

The regulation will come into force on 1 April 2008. Information, including new signs and pamphlets would need to be developed and distributed to inform people of the changes.

### **Consultation**

MFish will carry out a consultation process required by section 25 of the Act. That section requires the Minister, before recommending the alteration of any regulation, to consult the persons and organisations considered by the Minister to be representative of those classes of persons having an interest in the relevant fisheries, including Maori, recreational, commercial and environmental interests. Submissions will be invited from stakeholders in the review consultation process. Any submissions will further inform the final advice to the Minister.