

12 March 2008

Dear Stakeholder

REVIEW OF REGULATORY MEASURES AND OTHER MANAGEMENT CONTROLS FOR 1 OCTOBER 2008

The Ministry of Fisheries (MFish) is currently consulting on several proposals that could result in changes to regulation. If approved these would take effect on 1 October 2008. The Initial Position Paper (IPP) provides you with MFish's initial position on each issue being reviewed. The IPP includes the rationale to support each proposal and for some issues a preliminary recommendation.

The purpose of this letter is to provide you with a short summary of each IPP, so that you can choose which issues you would like to examine further, and potentially provide comment on.

The proposals considered in the IPP include:

Daily completion of TCEPR SJCER and TLC forms

1. There is some ambiguity in the wording of certain sections of the Fisheries (Reporting) Regulations 2001 that prescribe the timing in which various catch and effort forms (TCEPR, SJCER and TLCERs) are to be completed. The regulations require fishers to fill in catch and effort information "for" each day, rather than "on" each day, as required for other returns. Although in some cases the return themselves, or their explanatory notes, do outline that this information is "to be completed on each day at sea", the fact that the requirement is not also included in the individual regulations creates some ambiguity. This is an unintentional effect of the specific wording of the regulations when they were first introduced.
2. The objective of the proposed amendment is to remove ambiguity in the wording of the regulations and, through that, to remove an opportunity to misreport. This opportunity arises from the lack of an explicit obligation in the regulations to complete certain fields on the returns on a daily basis, and some fishers taking advantage of that by completing the relevant fields up to the time the return is to be submitted. Timely and accurate reporting is essential to the integrity of the Quota Management System. The status quo presents a potential threat to the effective use of surveillance and enforcement resources, and creates an opportunity to offend (ie. to misreport or conceal dumping).

The current wording of the regulations undermines the requirement for accurate and timely sets of information about different stages of the fishing activity.

3. MFish's proposal is to amend the regulations to require catch and effort information to be completed on a daily (or part-daily) basis. The benefit of the amendment would be eliminating a loophole in the wording of the regulations and eliminating a particular opportunity to misreport. Given the fisheries for which these returns are to be completed (e.g. tuna, orange roughy, southern blue whiting, among others), a reduction in the opportunity to misreport is a significant benefit. There would be no cost to fishers who follow explanatory notes and return instructions as the amendment would just clarify existing requirements.
4. Aside from the status quo (Option 1), the options included in the IPP are an amendment to make the requirement to complete catch and effort information on a daily basis explicit (Option 2 – the preferred option), or to use a direction from the Chief Executive to specify the timing of completion (Option 3). Because the latter is generally used to provide exemptions to the basic reporting framework, not to clarify it, Option 3 is not preferred.

Correction of coordinates and description errors in Challenger Area Regulations

5. MFish has identified a number of errors in the area descriptions used in fisheries regulations. These errors are being rectified on an area by area basis with the Challenger being the initial region to undergo the change. Both the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 and the Fisheries (Challenger Area Amateur Fishing) Regulations 1986 have been reviewed in this process.
6. A total of 27 errors were discovered with two of these deemed significant enough to warrant the full consultative process afforded by the IPP. All other errors are considered minor and technical in nature and will be dealt with outside of the IPP but will be put forward for correction in conjunction with the two areas described here.
7. Regulation 4A of the Fisheries (Challenger Area Amateur Fishing) Regulations 1986 (the Amateur Regulations), which deals with set net restrictions, provides incorrect coordinates for one of the points used to describe the *Inner Queen Charlotte Sound* area. The latitude given is one degree off and has placed the point more than one hundred kilometres from its actual location.
8. There is also a two degree error in the latitude coordinates given for the Farewell Spit Light in regulation 2A of the Amateur Regulations that has placed it hundreds of kilometres away from its actual location.
9. There are a number of risks involved in allowing the existing situation to remain; primarily those involving deliberate exploitation of a weakness in the

regulations. Some of the closures described by the coordinates in question were put in place to protect ecologically sensitive areas that require the full protection of the regulations. Any encroachment has the potential to seriously affect these vulnerable areas.

10. Two options are being proposed for consideration by the Minister; to retain the status quo or amend the errors identified. Of those two options, only the latter addresses any of the concerns described earlier in a meaningful way.

Proposal to list prawn killer on the Sixth Schedule of the Fisheries Act 1996

11. Following the introduction of prawn killer to the QMS in October 2007, commercial fishers are required to land all prawn killer caught and either balance the catch with ACE or pay the deemed value.
12. The majority of prawn killer currently being landed are taken as bycatch in the scampi fishery. While there has been previous interest for a target fishery for prawn killer, this has yet to be developed, and the market for prawn killer is currently limited. MFish has received a request from the fishing industry to list prawn killer under the Sixth Schedule of the Act, allowing prawn killer to be returned to the sea if likely to survive.
13. MFish proposes two options: a) retain the status quo or b) list prawn killer on the Sixth Schedule of the Fisheries Act 1996 to enable commercial fishers to legally return prawn killer to the water if they are likely to survive and are reported.
14. MFish acknowledges information on prawn killer is limited and invites stakeholders to provide information on prawn killer survivability, the likely benefits that the proposed increase in operational flexibility may provide to the industry, and any other views in relation to either management option.

Review of Regulatory Measures and Other Management Controls for blue cod in the Marlborough Sounds

15. Recent information on blue cod from the 2007 biomass survey shows a continued decline of blue cod abundance throughout the Marlborough Sounds. All areas recorded the lowest numbers of juveniles from a time-series of surveys since 1995. There was an average decline of 57% of juveniles from the 2004 survey - with the inner Queen Charlotte Sound reporting no blue cod (both adults and juveniles). Only the very outer areas of the Marlborough Sounds recorded a reasonable number of adult blue cod.
16. The serial depletion of blue cod is consistent with a high level of recreational fishing pressure in the Marlborough Sounds. This is the overriding and immediate factor impacting on localised blue cod abundance.
17. MFish proposes a suite of new measures for the recreational blue cod fishery to reduce both harvest levels and incidental fishing mortality to allow populations to rebuild. The proposed measures include the following:

- a. Temporary closure of parts of the Queen Charlotte Sound and/or Pelorus Sound to all finfishing with hook and line.
 - b. The daily bag limit is reduced from three to two blue cod per person and a limit of six blue cod per boat.
 - c. Possession of only one day's bag limit on multi-day trips.
 - d. Blue cod must be landed whole or gutted.
 - e. Fishers to retain all blue cod at or above MLS.
18. MFish also proposes to strengthen the existing voluntary agreement to prevent commercial fishers from targeting blue cod within large areas of the Queen Charlotte Sound and Pelorus Sound.
 19. The review includes proposals by the Marlborough Sounds multi-sector group *SoundFish* to require boat fishers to use one hook per line and large hooks (6/0 or greater) and amend the Marlborough Sounds Area boundary.
 20. The proposed area closures will have greatest impact on the recreational sector by requiring fishers to travel further to open areas (ie, outer areas of the Marlborough Sounds). The proposed daily bag limit adjustments will have less impact, as many fishers have already experienced a reduction in catch levels through the depletion of local blue cod populations. MFish is uncertain to what degree the proposed boat limit assists with the reduction in recreational catch but welcomes the communities' comments on the proposal's desirability.

Local depletion of Hapuku/Bass in the Central Fisheries Management Area

21. MFish has received multiple reports from non-commercial fishing stakeholders of localised depletion of hāpuku/bass in the Central Fisheries Management Area (CFMA). Specifically, non-commercial stakeholders report a decline in non-commercial hāpuku/bass catch rates and in the size ranges of hāpuku/bass caught in popular non-commercial fishing areas.
22. The reports from non-commercial stakeholders cite increased recreational fishing as causing the localised depletion. However, reports differ in the nature of the increase in effort. Some reports cite an "across the board" increase in recreational fishing as the problem whilst others cite increased fishing by recreational charter vessels only.
23. MFish considers more discussion is necessary to confirm if an increase in recreational fishing effort is the cause of reported localised depletion of hāpuku/bass, and what effect reported localised depletion of hāpuku/bass is having on recreational fishing values.
24. MFish has put forward four options to manage recreational catch of hāpuku/bass in the CFMA for discussion:
 - retain the status quo combined maximum daily bag limit of up to five hāpuku/bass (with no more than three kingfish);

- introduce a new maximum daily bag limit of three hāpuku/bass;
 - introduce a new maximum boat limit of 15 hāpuku/bass;
 - introduce a new accumulation limit of one daily bag of hāpuku/bass.
25. Based on the best available information at this time, MFish's considers introducing a new maximum daily limit of three hāpuku/bass per person in the CFMA would be the most effective method of addressing reported localised depletion in popular non-commercial fishing areas.
26. MFish invites stakeholders to provide more information to determine if there is widespread agreement that reported localised depletion is occurring, where it occurs and the impact of the different management approaches on recreational value.

Identification of containers holding freshwater eels

27. Aside from Lake Ellesmere eels, there is currently no requirement to label containers holding freshwater eels (e.g. holding bags). The lack of a catch labelling requirement is a significant problem in the freshwater eel fishery. It is common for some commercial eel fishers to leave full holding bags unattended for several days prior to collection and transportation to a Licensed Fish Receiver. Commercial eel fishers operate over large geographical 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. A requirement to label holding bags containing eels would simplify the Fishery Officers' 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.
28. Regulation 53 of the Fisheries (Commercial Fishing) Regulations 2001 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 details. This requirement allows Fishery Officers to identify legitimate commercial activities, isolating those which are not. The requirement however, does not include containers holding freshwater eels. An amendment to the regulations is proposed to require commercial fishers to label containers holding eels (e.g. holding bags). This would make the identification of catch in this fishery, as being related to legitimate commercial activity, much easier.
29. The objective of the proposed amendment is to allow MFish to better protect legitimate fishing interests. Commercial catch identification in this context would benefit commercial fishers as they would no longer run the risk of losing their catch because it had been misidentified. Likewise, by eliminating

an opportunity to conceal illegal catch inside unidentified holding bags, the proposed requirement would also protect the interests of legitimate commercial, recreational and customary fishers. It is worth noting that the cost of the proposed amendment to commercial eel fishers would be minimal as it would simply imply labelling holding bags just as other containers and gear are currently required to be labelled. Aside from the status quo (Option 1), the only amendment proposed in the IPP is to extend container labelling requirements to those holding freshwater eels (Option 2 – MFish preferred option).

Review of regulations relating to non-defined processed states

30. In recent years, deepwater vessels have been processing species (principally hoki) into states that are not defined in Notice or Regulation, but are instead specified by weight or size. These products are most commonly called “loins”, “steaks” or “centros”. Products and terminology vary between companies as well as between different vessels fishing for the same company. For the purpose of this proposal, they are referred to as non-defined processed states.
31. These products are not compatible with a conversion factor regime, which requires that a processed state represents a constant proportion of the whole fish. There is currently no consistency between companies and vessels in the reporting of non-defined processed states, and these variations affect the accuracy of greenweight reporting. The practice also presents other problems, such as the difficulty in MFish monitoring the various components during processing and the potential diversion of product such as meal and mince from a principal to an additional landed state.
32. While MFish would prefer a system of greenweight weighing (which would render obsolete the problems presented by non-defined landed states), this is most likely a long-term option to implement. As a pragmatic short-term solution, MFish proposes to amend the Fisheries (Reporting) Regulations 2001 to allow for the application of greenweight (and therefore a Conversion Factor) to multiple principal landed states, rather than just the one that has the greatest actual weight as is the case at the moment. Consequential amendments will also be required to the Fisheries (Conversion Factors) Notice 2005.

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

33. Current legislation is not prescriptive about how either fishers or MFish determine the weight of fish processed and frozen at sea on factory vessels. 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.
34. MFish proposes that a weighing procedure be specified in regulations that would be used in the event of doubt or a dispute regarding the reported weight of a product line of fish processed and frozen at sea. The procedure will

specify requirements including sample size and permitted deductions for ice glaze or polyphosphate solutions.

35. Both Industry and MFish require certainty regarding rules to be followed when calculating greenweight. The provision for the regulated weighing procedure to be used only under certain circumstances is likely to be the most cost-effective method of creating the required level of certainty.
36. In the event of the regulated weighing procedure being invoked by MFish and a subsequent decision to prosecute, the prosecution would be taken under existing regulations. This is because Fisheries Act 1996 does not contain a provision providing for the result obtained from the weighing procedure to be deemed to be correct.
37. The primary objective of having a weighing procedure specified in regulation is provide certainty to both Industry and MFish regarding the rules to be followed when calculating the greenweight of fish that has been processed and frozen at sea.

Tagging scheme for Southern Bluefin Tuna

38. New Zealand is a Member of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT). CCSBT is developing a catch documentation scheme so that individual fish can be tracked from point of capture to market, in order to deter illegal, unreported and unregulated fishing.
39. MFish proposes to establish regulations requiring commercial fishers to tag, measure, record and report individual southern bluefin tuna that they catch. The management objectives are to:
 - Increase the precision of estimates of total catches;
 - provide a tool to identify unlawful catch on the international market; and
 - provide length and weight information for individual fish for the CCSBT science process.
40. Putting the requirement in place in advance of a formal international agreement from the CCSBT would signal New Zealand's commitment to developing a full catch documentation scheme, and enable rapid implementation of any CCSBT decision (or unilateral implementation in the absence of an agreed CCSBT-wide scheme). It would also allow for fine tuning of the system, as well as collection of more complete data for stock assessment. Other countries that are members of CCSBT have already implemented or are trialling tagging.
41. Options for a tagging system include requiring commercial fishers to weigh and measure fish at sea, or allowing for this to occur at Licensed Fish Receivers. MFish considers the latter option is more practical, and this is MFish's preferred option. However, other countries that are members of CCSBT consider weighing and measuring should occur at sea, so this option is provided for consideration. Under either option, provision needs to be made

for vessels that catch southern bluefin tuna as an occasional bycatch. In such instances, tagging would need to occur upon landing, rather than at sea.

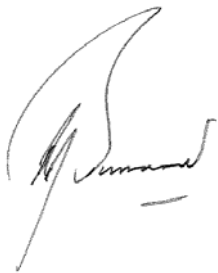
42. Regulations allowing for commercial fishers to tag southern bluefin tuna would be put in place for 1 October 2008. MFish proposes that the regulations include a general requirement for fishers to tag, accompanied by more detailed instructions to be issued by the Chief Executive by gazette notice from time to time as required. Initial instructions would be in place for 1 October 2008, and would be consulted on before implementation. Changes to the specific instructions would be made as required, for example if CCSBT makes a resolution on a catch documentation scheme, or if New Zealand decides to modify its scheme, for example as a result of feedback from fishers on the initial scheme, or in order to coordinate with other members of the Commission.

Review of High Seas Fishing permits

43. A High Seas Fishing Permits (HSFP) is a mechanism for managing New Zealand vessels fishing and the effects of those vessels fishing on the aquatic environment of the High Seas. Any fishing and transporting of fish undertaken pursuant to a HSFP must comply with the conditions of that fishing permit and with relevant regulations.
44. While the use of HSFP is a flexible and effective means of implementing controls on the High Seas, the number of permit conditions has increased substantially and is becoming unwieldy. This is due to the Crown signing up to an increasing number of Regional Fishery Management Organisation (RFMO) agreements pertaining to the High Seas. The HSFP is becoming inefficient and cumbersome to administer, lacks clarity and therefore may also lack certainty for fishers as to what the permit conditions are.
45. In addition to this, New Zealand is entering into an increasing number of Regional Fisheries Management Organisation (RFMO) agreements, and international conservation and management measures which have implications for New Zealand vessels on the High Seas. As a result of this, there needs to be both a generic set of HSFP conditions and appropriate conditions to implement relevant RFMO measures in New Zealand.
46. The IPP contains MFish's initial position on the most appropriate options to simplify the administration of High Seas fishing by New Zealand nationals, provide greater certainty to permit holders and ensure that New Zealand's international obligations on the High Seas continue to be met.

47. MFish welcomes written submissions on the proposals contained within the IPP. **Written submissions are due by Wednesday, 23 April 2008** and should be posted to Tracey Steel, Ministry of Fisheries, PO Box 1020, Wellington. Alternatively, electronic submissions can be emailed to tracey.steel@fish.govt.nz.
48. Finally, we note that all submissions that are received for the purposes of the regulatory measures process are publicly available under the Official Information Act 1982. Should any person or organisation wish for any information contained in their submission to be withheld under the Official Information Act 1982, the grounds for withholding the information must be provided in the submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Russell Burnard', with a horizontal line underneath the name.

Russell Burnard
Manager Regulatory and Information