

# PAUA ACCUMULATION AND PERSONAL EXPORT LIMITS - INITIAL POSITION PAPER

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## Executive Summary

- 1 There is a large amount of paua illegally harvested each year in New Zealand that severely threatens the sustainability of paua stocks.
- 2 Any paua that is not taken using a commercial permit or a customary authorisation is, by default, subject to the legislation governing the amateur harvest of paua. The amateur harvest of paua is restricted to a maximum daily number of 10 per person by regulation 19(1) of the Fisheries (Amateur Fishing) Regulations 1986 (Amateur Regulations).
- 3 Regulation 29(3) of the Amateur Regulations provides a defence that a person can be in possession of more than the daily bag limit if they can satisfy the court that the paua were legally taken over a number of fishing days. This accumulation defence provides a mechanism that people involved in illegally harvesting paua can exploit.
- 4 The Ministry of Fisheries (MFish) preferred option is to set an accumulation limit on the amount of paua that one person can have in their possession at any one time, and work with Customs to restrict the personal export of paua to a specified number of daily bag limits or equivalent weight of paua.
- 5 MFish's information on paua offending indicates that fishers who take greater than 3 times the daily limit of paua comprise the largest proportion of the illegal harvest. Consequently, the compliance and enforcement strategy for paua needs to include a focus on improving deterrence and reducing opportunities to hide serious deliberate offending.
- 6 MFish has a strong preference for the accumulation limit to be set at 3 daily bag limits or less, or an equivalent processed weight (for paua not found whole). MFish considers this provides an effective mechanism to combat instances of excessive illegal harvesting, especially those breaches above 3 times the daily limit, which the law treats as serious non-commercial offending.
- 7 MFish is proposing to limit the personal export of paua to the accumulation limit or to one daily bag limit. The intention of this restriction is to limit the amount of illegally harvested paua being exported from New Zealand, but not to stop all personal export.
- 8 MFish is seeking submissions from tangata whenua and stakeholders on the number of paua they consider is appropriate for the (i) accumulation limit, and the (ii) personal export limit.
- 9 Setting an accumulation limit and restricting personal export of paua will assist in more effective monitoring and enforcement, with appropriate action

able to be taken against the serious deliberate offending that is the major threat to the sustainability of the paua resource.

- 10 MFish is aware that the proposal does impact on legitimate fishers wanting to collect or export paua, collected over a number of days, for special occasions.
- 11 Customary authorisations for taking paua will not be effected by the accumulation limit or the personal export limit provided the current requirement to have the authorisation accompanying the fish is met. The personal export restriction will not apply to commercially-caught paua.

## **Regulatory Impact Analysis Requirements**

- 12 A Regulatory Impact Statement on this proposal has been reviewed by MFish. For more information on the Regulatory Impact Analysis Requirements, please refer to the Treasury website, [www.treasury.govt.nz/publications/guidance/regulatory](http://www.treasury.govt.nz/publications/guidance/regulatory).

## **The Issue**

- 13 Illegally harvested paua is considered by MFish to be threatening the sustainability of paua stocks in New Zealand. MFish considers the illegal harvest has been considerable in recent years, but the quantity is unknown.
- 14 The Total Allowable Commercial Catch for all paua fishstocks<sup>1</sup> combined is 1,058 tonnes in New Zealand fisheries waters. This level of harvest is considered to be sustainable by MFish.
- 15 The majority of the illegally harvested paua is believed to be used either by the poaching and black market (PBM) trade within New Zealand e.g. in restaurants, or it is exported offshore, primarily to Asia. PBM activities have been identified to be the key risk to the paua fishery.
- 16 Any paua that is not taken using a commercial permit or a customary authorisation is, by default, subject to the legislation governing the amateur harvest of paua. The amateur harvest of paua is restricted to a maximum daily number of 10 per person by regulation 19(1) of the Amateur Regulations.
- 17 Under the Amateur Regulations, initial offences incur infringement fees and are ramped according to the size of the offence. For repeated or serious offending, a person commits an offence and is liable for prosecution and, if convicted, for fines not exceeding:
  - \$10,000 if they possess more than the daily limit, but not more than 3 times the daily limit [regulation 19(2)],
  - \$20,000 if they possess more than 3 times the daily limit. They are deemed to have committed a serious non-commercial offence [regulation 19(3)].

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<sup>1</sup> Total Allowable Catches have only been set in three of the ten paua fishstocks.

- 18 There is a defence available in the Amateur Regulations, regulation 29(3), that a person can be in possession of more than the daily limit if they can satisfy the court that the paua were legally taken over a number of fishing days.

*“In the case of any person charged with being unlawfully in possession of more than the maximum number of any species of finfish, shellfish, or aquatic life to which the person is entitled, it is a defence if that person satisfies the court that the number of finfish, shellfish, or aquatic life in excess of the maximum was not taken in breach of these regulations.”*

- 19 This defence allows a fisher to prove that their catch was taken over multiple days and therefore not in breach of daily bag limits, for example.
- 20 Currently, there are no specific restrictions on the export of paua. PBM activity can exploit the current export situation to aid their illegal activities. Customs officers can however, under section 175C(1)(b)(iii) of the Customs and Excise Act 1996, seize and detain goods if they have cause to suspect on “reasonable grounds” there has been an offence committed under sections 232 or 233 of the Fisheries Act 1996 (the Act). There is also the ability to place a short term limit on the export of paua using a Customs Export Prohibition Order<sup>2</sup>. Such mechanisms can be used to support the accumulation limit. Once any paua is detained by Customs, a fishery officer will still have to investigate whether any excess paua were taken in breach of the Act.
- 21 The illegal take severely threatens the sustainability of paua stocks in New Zealand. There are stocks around the world that are prone to black market and poaching activity, for example the South African abalone fishery, that have largely collapsed.
- 22 Effective management and enforcement frameworks are needed to deter and restrict further illegal harvesting and trade of paua. In order to address these issues of excessive taking of paua, MFish is considering proposals to:
- Set an accumulation limit on the amount and an equivalent processed weight of paua that one person can have in their possession at any one time; and
  - Work with Customs to restrict the personal export of paua to a specified number or equivalent weight of paua<sup>3</sup>.
- 23 MFish’s information on paua offending indicates that fishers who take greater than 3 times the daily limit of paua comprise the largest proportion of the illegal harvest.
- 24 An option to assist in addressing these serious breaches is to set an amateur accumulation limit for paua at a specified maximum number of daily bag limits, for example, at 1, 2, or 3 times the daily bag limit. With this option, amateur fishers will still have to comply with the daily bag limit of 10 paua

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<sup>2</sup> Customs Export Prohibition Orders need to be renewed every three years.

<sup>3</sup> MFish and Customs are currently working on how this will be achieved. This issue will be resolved before the IPP goes out for external consultation.

per day, but will only be able to accumulate up to the specified maximum number of daily bag limits or an equivalent processed weight over several days of fishing. One benefit of setting an accumulation limit is that it provides a mechanism for curbing the ability to accumulate excessive amounts of illegally harvested paua.

- 25 Further supporting the accumulation limit is a proposal to limit the personal export of paua. The purpose of this proposal is to reduce the amount of illegally harvested paua being exported, not to stop all personal export.
- 26 MFish is considering options for restricting the personal export of paua to support the accumulation limit. Options under consideration are to restrict the personal export of paua to the:
- (i) Agreed accumulation limit or the equivalent weight of paua per person<sup>4</sup>;  
or
  - (ii) Daily bag limit or the equivalent weight of paua per person.
- 27 The proposed measures will assist in ensuring that more effective monitoring and enforcement, with appropriate action able to be taken against serious deliberate offending associated with the paua fishery.

## **Summary of Options**

### ***Option 1 – Status Quo***

- 28 Under this option, the existing management controls would continue. The existing daily limit will still apply, and there will be no limit on the amount of paua that one person can accumulate in their possession at any one time.
- 29 The illegal take will continue to severely threaten the sustainability of paua stocks in New Zealand.

### ***Option 2 – Accumulation and Personal Export Limits- MFish Preferred Option***

- 30 In order to address issues of excessive possession of paua, MFish's preferred option is to:
- Set an accumulation limit on the amount or equivalent processed weight of paua that one person can have in their possession at any one time; and
  - Work with Customs to restrict the personal export to the accumulation limit or the daily bag limit.
- 31 MFish has a strong preference for the accumulation limit to be set at 3 daily bag limits or less. The available information suggests offences involving the taking of more than 3 times the daily bag limit of paua comprise the major component of the total illegal harvest. MFish considers it appropriate to

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<sup>4</sup> Personal export limits need to be described in numbers and weight as many people export minced paua where the number of paua can not be determined.

provide an effective mechanism to combat instances of excessive illegal harvesting, especially those breaches above 3 times the daily bag limit.

- 32 Setting an accumulation limit and restricting personal export of paua will assist in ensuring that more effective monitoring, enforcement and appropriate action can be taken against serious deliberate offending that is the major threat to the sustainability of the paua resource.

## **Rationale for Management Options**

- 33 This proposal relates to making regulations under section 297(1) (a) of the Act, as the measures proposed are to regulate the taking and possession of paua to assist in ensuring the sustainability of all paua stocks.
- 34 The rationale for setting an accumulation limit is to provide a mechanism for curbing illegal harvesting of paua, especially in limiting the ability to store and transport large amounts of paua.
- 35 The rationale for supporting the accumulation limit with a restriction on the personal export of paua is to reduce the amount of illegally harvested paua being exported from New Zealand.
- 36 Notification of any new requirements arising from these proposals will be made by written and verbal communications with:
- MFish customary and recreational fisheries forums;
  - Commercial paua industry through the Paua Industry Council (PIC);
  - Public advertising in the major newspapers and regional radio stations;
  - Production and distribution of pamphlets through MFish offices and sporting goods stores; and
  - MFish Website.
- 37 MFish is seeking submissions from tangata whenua and stakeholders on the different impacts on them if the:
- a) Accumulation limit for paua were set at 1, 2, or 3 times the daily bag limit of paua, and
  - b) Personal export limits were set at the agreed accumulation limit, or set at 1 times the daily bag limit.

## **Assessment of Management Options**

### ***Option 1 – Status Quo***

#### ***Impact***

- 38 The *status quo* does not address illegal harvesting of paua as effectively as is needed, and consequently threatens the sustainability of the paua fishery.

- 39 The current compliance strategy is not able to meet the management objective of having sustainable harvesting of paua resources.

#### *Costs*

- 40 The availability of the amateur accumulation defence means there is currently no effective limit on the amount of paua people can have in their possession at any one time.
- 41 Currently, there is no limit on the amount of paua people can take out of the country other than customs officers being able to seize significant quantities of paua if they suspect the quantity breaches section 232 and section 233 of the Act<sup>5</sup>.
- 42 If the *status quo* continues, there is an exceedingly high risk that paua resources will decline as has happened in other countries. The decline in availability of paua will inevitably result in increased public pressure to provide sufficient resources to effectively combat the illegal harvest of paua.

#### *Benefits*

- 43 The current accumulation defence allows for legitimate recreational fishers to legally collect more than 10 paua over a number of days.
- 44 Similarly, the current accumulation defence allows legitimate recreational fishers to legally export more than one daily bag limit of paua when they travel overseas.

### ***Option 2 – Accumulation and Personal Export Limits***

#### *Impact*

- 45 MFish has a strong preference for the accumulation limit to be set at 3 daily bag limits or less. The available information suggests that offences involving the taking of more than 3 daily bag limits of paua comprise the major component of the total illegal harvest. MFish considers it appropriate to provide an effective mechanism to combat instances of excessive illegal harvesting, especially those breaches above 3 times the daily limit.
- 46 If a fisher is caught with more than 3 times the daily bag limit, they can be charged with a serious non-commercial offence under regulation 19(3) of the Amateur Regulations. If an accumulation limit was set at 3 times the daily bag limit, this would align the current serious non-commercial offences regime with the proposed accumulation limit.
- 47 Arguments can be advanced for setting the accumulation level lower than 3 times the daily bag limit. But, the lower the accumulation limit, the greater the impact on fishers. If the accumulation limit was set at 1 times the daily bag limit, effectively no accumulation would be permitted. A ‘no accumulation’ limit would be the simplest and most effective for fishery

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<sup>5</sup> Section 232 relates to buying selling, or possessing fish contrary to the Fisheries Act, and s 233 is about knowingly acting in contravention of the Fisheries Act to obtain a benefit.

officers to operate. However, the lower the accumulation limit, the greater the impact on legitimate recreational fishers of being able to legally collect more than 1 daily bag limit of paua over a number of days.

- 48 If the option is accepted to impose a personal export restriction, MFish will work with Customs, using existing working relationships, to support this restriction.
- 49 Restricting personal export of paua was one of the high priority recommendations to the previous Minister of Fisheries from Joint Paua Fishery Working Group<sup>6</sup> (the Working Group) in 2005. The previous Minister established the Working Group as a result of concerns about paua poaching. The Working Group proposed restricting personal export of paua, unless people can prove the paua have been legitimately sourced from a commercial source. The previous Minister accepted a recommendation that consultation be undertaken on this issue.
- 50 The Paua Industry Council (PIC) has requested that MFish action the recommendation concerning the personal export of paua. PIC support the limit being set at 1 times the daily limit.
- 51 A discussion document was prepared and circulated to MFish customary and recreational fishing forums during 2008 on paua accumulation limits and personal export. The document informed these groups that MFish was considering taking some action on this subject, and forum members' views were sought. The forums suggested various accumulation limits, ranging between 1 times the daily bag limit and 5 times the daily bag limit. On the personal export limit, views ranged from no personal export to 3 times the daily bag limit. There was strong feedback acknowledging that customary authorisations should not be affected by any accumulation or export limit.
- 52 The setting of an accumulation limit is a new measure that will apply throughout New Zealand fisheries waters for paua, with the exception of the Fiordland Marine Area where a 'no accumulation' limit (i.e. an accumulation limit of 10 paua) already applies.
- 53 If a personal export limit was implemented, paua would only be able to be exported in two states; whole paua (with or without shell, but not processed any further), or processed meat weight.
- 54 Monitoring and enforcement of the personal export limit will be handled cooperatively between Customs and MFish. Such arrangements already exist between the two agencies.
- 55 As current amateur regulations stand, initial offences incur infringement fees and are ramped according to the size of the offence. For repeat offending a person commits an offence and is liable for prosecution and, if convicted, for fines not exceeding:

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<sup>6</sup> A joint working group of commercial industry and MFish representatives.

- \$10,000 if they possess more than the daily limit, but not more than 3 times the daily limit [regulation 19(2)],
- \$20,000 if they possess more than 3 times the daily limit. They are deemed to have committed a serious non-commercial offence [regulation 19(3)].

56 These offences and penalties for breaching daily bag limits would still apply to fishers for each day of fishing regardless of whether an accumulation limit was in place. Once fishers breach the agreed accumulation limit, an offence would be committed and the fisher would be liable for prosecution. If convicted, they would be liable for the current penalties depending on how many excess paua they possess.

### *Costs*

57 In order to address serious offending, an accumulation limit of 3 daily bag limits or less of paua is sought. MFish acknowledges an accumulation limit at this level will impact on the harvesting activity of many legitimate non-commercial fishers.

58 Depending on the number of paua at which the accumulation limit is set, the limit may generate undesirable outcomes, such as fishers acting illegally to bypass the limit.

### *Benefits*

59 The implementation of an accumulation limit is likely to have a significant impact on illegal harvesting of paua, and prevent people from accumulating large quantities of paua at any one time. This would enable MFish to focus effort on other parts of illegal activity involving paua and efficiently deal with breaches of the agreed accumulation limit.

60 The main benefit of restricting the personal export of paua is to limit a major exit point that can be used for PBM activity. This option should make the export of paua by poachers more difficult, that may potentially result in some poachers ceasing to send paua offshore, or being forced to use alternative, higher risk methods for exporting.

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

61 New regulations for establishing the accumulation limit and possibly for the export limit (depending on the arrangements finalised with Customs) will need to be introduced. If a person breaches these limits, existing penalties will apply for how many excess paua the person possesses.

### **Statutory Considerations**

62 Section 8 of the Act describes the purpose of the act as being “*to provide for utilisation of fisheries resources while ensuring sustainability*”. Ensuring sustainability means “*maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations*”. Providing for utilisation means “*conserving, using, enhancing, and developing fisheries to enable people to provide for their social, economic, and cultural wellbeing*”.

- 63 The *status quo* option meets neither the utilisation nor the sustainability requirement of Section 8. If illegal harvesting continues at the current rate, unabated, the inevitable result will be that the Minister will have to make further TAC reductions in order to try to achieve sustainability and, ultimately, as has occurred in other countries, may be forced to close the paua fishery. A series of TAC reductions and/or closure of the paua fishery will ensure that neither the utilisation or the sustainability requirements are being achieved to meet the needs of future generations.
- 64 Section 10 requires that “decisions should be based on the best available information: decision makers should consider any uncertainty in the information available, decision makers should be cautious when information is uncertain, unreliable, or inadequate”, and “the absence of, or uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act”.
- 65 There is uncertainty in the quantities of illegally harvested paua. The illegal nature of this activity means that there is no official documentation of catches. MFish, therefore, has to estimate the size of the illegal harvest. MFish considers that the illegal harvest has been reduced in recent years as a result of MFish prioritising resources to combat illegal harvesting. MFish considers that, while there is some uncertainty over the actual quantities taken, the scale of illegal harvest is of sufficient size to threaten sustainability of paua stocks, and so justifies taking management actions to curb this illegal activity.
- 66 A further uncertainty in the information is whether the proportion of the different types of daily limit offences detected reflects the actual trends in offending. MFish considers a reasonably high weighting can be given to the indications that breaches in excess of 3 times the daily limit contribute a major proportion of the total illegal harvest of paua.
- 67 In considering the setting of sustainability measures, there is an obligation under Section 12 to undertake consultation. MFish will be consulting Maori, environmental, commercial and recreational interests on the proposals in this IPP. MFish has discussed the issues outlined in this IPP with MFish customary and recreational forums, and with the Paua Industry Council representing commercial paua interests. This pre-consultation has helped shape the options presented here.
- 68 The proposals set out in this IPP have the greatest effect on recreational fishers. Measures within this document do not propose to alter or affect customary fishing rights as noted below in this paper.
- 69 Regulation 7(4) of the Fisheries (Southland and Sub-Antarctic Areas Amateur Fishing) Regulations 1986 provides a ‘no accumulation’ limit for paua taken from within the Fiordland (Te Moana o Atawhenua) Marine Area. The proposals in this paper do not propose to change the no accumulation limit in the Fiordland Marine Area but, nevertheless, MFish will consult the Guardians about these proposals. Section 26 of the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005 requires MFish to “take into account” any such advice or recommendations from the Guardians.

## **Other Management Issues**

- 70 Customary authorisations under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, Fisheries (South Island Customary Fishing) Regulations 1999, or Regulation 27A of the Amateur Regulations will not be effected by the accumulation limit. Tangata Tiaki/Kaitiaki will be able to issue authorisations for non-commercial customary taking of paua as they currently do. These customary authorisations were developed to give effect to the Crown's obligations to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- 71 Tangata whenua regard paua as a taonga species and as an important gift when visiting relatives overseas. The personal export restriction will not apply to paua collected under a customary authorisation that is accompanied by the customary authorisation when it is being exported. However, any paua taken by tangata whenua under amateur fishing regulations will be effected by the accumulation limit and personal export proposals.
- 72 The personal export restriction will not apply to commercially-caught paua being exported, subject to the provisions of the Fish Export Processing Regulations 1995. When it is being personally exported, commercially-caught paua must be accompanied by a purchase receipt from a legitimate fish processor.

## Appendices

### *Statutory Considerations*

- 73 Central to the proposed obligations are the legal requirements of the Fisheries Act 1996.
- 74 **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 for the paua stocks.
- 75 Customary authorisations under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, Fisheries (South Island Customary Fishing) Regulations 1999, or Regulation 27A of the Amateur Regulations will not be effected by the accumulation limit or the personal export limit.
- 76 **Section 8 – Purpose:** The purpose of the Act is “to provide for the utilisation of fisheries resources while ensuring sustainability”. This is a core obligation to heed when considering the management options. This obligation in relation to the management proposals for the paua fisheries is addressed in the main body of the paper.
- 77 **Section 9 – Environmental Principles:** Section 9 has a number of environmental principles that have to be taken into account by decision makers:
- (a) Associated or dependent species should be maintained above a level that ensures their long-term viability;
  - (b) Biological diversity of the aquatic environment should be maintained;
  - (c) Habitat of particular significance for fisheries management should be protected.
- 78 Paua are taken by fishers gathering paua by hand, usually involving diving. This targeted fishing means that there is usually no incidental bycatch, or non-harvested species taken or affected by paua fishing. Biological diversity is affected in the paua fishery by the removal of paua. The management options proposed in this IPP seek to ensure the sustainability of paua stocks; this should ensure biological diversity is maintained. Again, because of the hand fishing method used in this fishery, there are usually minimal adverse effects on benthic habitats of significance for fisheries management.
- 79 **Section 10 – Information Principles:** The adequacy, reliability, and certainty of the information on illegal harvest and the weighting given to the effects of the different types of daily limit breaches on sustainability of paua stocks is addressed in the main body of the paper.
- 80 **Section 11 – Sustainability Measures:** The Act requires consideration of the implications of any sustainability measure on the management strategy for the coastal area in general. Before setting or varying any sustainability measure the Minister must, under section 11(2), have regard to:

- 81 Any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991; and
- 82 Any management strategy or management plan under the Conservation Act 1987 that applies to the coastal marine area; and
- 83 Sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000.
- 84 Regional Councils are responsible for preparing regional policy statements and resource management plans that relate to the coastal area. Additionally, the Department of Conservation has a conservation management strategy that applies across the paua fishery. MFish is not aware of any relevant provisions in the plans or statements that are contravened by the current fisheries management regime for paua.
- 85 MFish considers that the paua proposals in this IPP are consistent with sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000, and will contribute to good management of the paua resources within the Marine Park.
- 86 Before setting or varying any sustainability measure under this Part or making any decision or recommendation under this Act to regulate or control fishing, the Minister must, under Section 11(2A), take into account-
- 87 Any conservation services or fisheries services; and
- 88 Any relevant fisheries plan approved under this Part; and
- 89 Any decisions not to require conservation services or fisheries services.
- 90 Conservation and fisheries services and any decisions to not require such services are adequately dealt with in the body of the paper. There are no fisheries plans in force yet for paua fisheries.
- 91 **Section 12 – Consultation:** In considering the setting of sustainability measures, there is an obligation under section 12 to undertake consultation. MFish will be consulting Maori, environmental, commercial and recreational interests on the proposals in this IPP. The effect of the proposed measures on customary and recreational fishers, and Fiordland Marine Guardians has been addressed in the body of the paper.
- 92 **Section 297 – General Regulations:** Section 297(1) (a) of the Fisheries Act 1996 allows the making of regulations:
- (i) Regulating, authorising, or prohibiting the taking or possession of any fish, aquatic life, or seaweed of any stock or species:
  - (ii) Regulating, authorising, or prohibiting the taking or possession of any fish, aquatic life, or seaweed from any area:
  - (x) Regulating the number or weight of any fish, aquatic life, or seaweed that may be taken or possessed, whether by reference to any period or any other basis whatever; and prohibiting the taking or possession of any number or weight of fish, aquatic life, or seaweed that exceeds the specified maximum number or weight:
- 93 **Fisheries (Amateur Fishing) Regulations 1986** – These are the main regulations that control amateur fishing in paua fisheries. Any new measures the Minister decides upon will be put in place by amendment to these regulations.

# **REGULATORY IMPACT STATEMENT**

## **Paua Accumulation and Personal Export Limits**

### **a) Executive summary**

There is a large amount of paua illegally harvested each year in New Zealand that severely threatens the sustainability of paua stocks. There is a defence available in the regulations that a person can be in possession of more than the daily limit if they can satisfy the court that the paua were legally taken over a number of fishing days. This accumulation defence provides a mechanism that people involved in illegally harvesting paua could exploit. MFish's preferred option is to set an accumulation limit on the amount of paua that one person can have in their possession at any one time; and work with Customs to restrict the personal export of paua to a specified number or equivalent weight of paua. The preferred option provides an effective mechanism to assist in minimising large scale poaching and black market (PBM) activity. But the proposal does impact on legitimate fishers wanting to collect or export paua, collected over a number of days.

### **b) Adequacy statement**

This RIS has been approved by MFish's Regulatory Impact Analysis Steering Committee.

### **c) Status quo and Problem**

There is a defence available in the fisheries regulations that a person can be in possession of more than the daily limit if they can satisfy the court that the paua were legally taken over a number of fishing days.

This defence provides a mechanism that people involved in large scale PBM activities exploit, and consequently threaten the sustainability of paua resources.

Action is required to restrict avenues that allow PBM activity, and to increase opportunities to prevent or identify illegal fishing.

### **d) Objectives**

The key fisheries management objectives for paua stocks are:

- Sustainable utilisation of the paua resource;
- Management of the resource is credible.

The proposal seeks to minimise PBM harvest and possession of paua that threatens the sustainable utilisation of the paua resource. The current arrangements do not minimise illegal harvest, and therefore are not providing credible management of the resource.

### **e) Preferred option**

MFish's preferred option is to set an accumulation limit on the amount of paua that a person can have in their possession at any one time; and work with Customs to support this by restricting the personal export of paua to a specified number or equivalent weight of paua.

Implementation of an accumulation limit will more clearly identify legitimate amateur catches of paua from those belonging to PBM activity. The accumulation limit is likely to have a significant impact on PBM activity involving possession (during storage, transportation, and export) of paua.

The main benefit of restricting the personal export of paua is to constrain the removal of paua from New Zealand and provide an additional monitoring point on the movement of paua.

The accumulation limit will impact on fishers who legitimately accumulate paua for personal use. The accumulation limit has the risk of driving fishers to act illegally and adopt practices like re-labelling of catches with other family or fishing party names to bypass the accumulation limit. Mitigation of this risk will be sought by setting an accumulation limit that most fishers will view as being reasonable.

#### **f) Implementation and review**

The proposal will be given effect by introduction of new regulations setting an accumulation limit, and possibly for the personal export limit (depending on the arrangements finalised with Customs) for paua. Monitoring and enforcement of the personal export limit will be handled cooperatively between Customs and MFish. MFish and Customs are currently working on how the personal export limit will be best achieved.

Notification of any new requirements arising from these proposals will be made by communications with: MFish customary and recreational fisheries forums; commercial paua industry; public advertising in the major newspapers and regional radio stations; and distribution of pamphlets through MFish offices and sporting goods stores.

#### **g) Consultation**

Restricting personal export of paua was one of the high priority recommendations to the previous Minister of Fisheries from Joint Paua Fishery Working Group<sup>7</sup> (the Working Group) in 2005. The Working Group proposed restricting personal export of paua, unless people can prove the paua have been legitimately sourced from a commercial source. The previous Minister accepted a recommendation that consultation be undertaken on this issue. The Paua Industry Council (PIC) has requested that MFish action the recommendation concerning the personal export of paua.

A discussion document was prepared and circulated to MFish customary and recreational fishing forums during 2008 on paua accumulation limits and personal export. The forums suggested various levels of restrictions for an accumulation limit and personal export, and these comments help shape the options under consideration.

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<sup>7</sup> A joint working group of commercial industry and MFish representatives.

# PAUA ACCUMULATION AND PERSONAL EXPORT LIMITS - SUMMARY OF SUBMISSIONS

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## Submissions Received

- 94 Submissions regarding this proposal were received from:
- Bill Hartley, recreational fisher (Mr Hartley);
  - Paua Industry Council Limited (PIC);
  - PauaMac4 Industry Association Incorporated (PauaMac4);
  - New Zealand Recreational Fishing Council (RFC);
  - New Zealand Rock Lobster Industry Council (RLIC);
  - Seafood Industry Council (SeaFIC);
  - Tasman and Sounds Recreational Fishers' Association (Tasfish);
  - Te Ohu Kai Moana Trustee Limited (Te Ohu); and
  - Top of the South Recreational Forum (TSRF).
- 95 Submissions at a pre-consultation stage in developing this proposal were received from MFish customary and recreational fishing forums:
- Northland Recreational Forum;
  - West Coast (North Island) Regional Forum;
  - South-East Coast (North Island) Recreational Forum;
  - Waihao Customary Forum;
  - South Recreational Forum;
  - Araiteuru Customary Forum; and
  - Murihiku Customary Forum.

## MFish Discussion

### *Accumulation limit*

- 96 All submitters support MFish's preferred option of setting an accumulation limit (Option 2).

- 97 Submissions from recreational interests favour setting the accumulation limit higher than 1 times the daily limit. RFC, Tasfish, and Mr Hartley support setting the accumulation limit at 3 times the daily limit per person. RFC also support setting an equivalent processed weight for paua not found whole. They consider that setting the accumulation limit at this level allows for amateur fishers to store paua for future use while not allowing for abuse of the right to harvest.
- 98 The customary and recreational forums suggested various limits, starting at 2 times the daily limit and higher for the accumulation limit, but generally they provide no specific reasons for the various limits suggested, apart from that they considered the suggested level to be fair and reasonable.
- 99 Te Ohu recommends setting the accumulation limit at 3 times the daily limit, or an equivalent meat weight of paua.
- 100 Commercial industry submissions support setting both the accumulation and personal export limits at 1 times the daily limit. As amateur fishers themselves, they consider this quantity is reasonable and will satisfy most amateur fishers. If more paua are required for some reason, the fisher only need take along a few more family members or friends on any day to be able to take more paua so long as they all assist in the harvesting. Or on special occasions, when larger quantities of paua are required, they consider an amateur fisher is entitled to approach a local kaitiaki to ask for a customary authorisation to cover the proposed catch.
- 101 Industry opinion, in light of the current economic climate, is that there are increased incentives for people to turn to paua poaching to supplement their income. Industry also submitted that recent enforcement successes show that there has been a shift to providing illegal product in the local domestic market, and they suspect that this is resulting in smaller but more frequent paua poaching operations.
- 102 In the IPP, MFish's preference was for an accumulation limit of 3 times the daily limit, or less, as the available information suggests that offences involving the taking of more than 3 times the daily limit of paua comprise the major component of the total illegal harvest. In many instances, the illegal take is far in excess of 3 times the daily limit. MFish acknowledges that the declining economic climate and improved enforcement activity may result in a shift in PBM activity towards lower catch levels.
- 103 On the other hand, the lower the accumulation limit, the greater the impact is on the ability of legitimate recreational fishers to collect more than 1 times the daily limit of paua over a number of days. A balance has to be made between restricting PBM activity and being unreasonable to legitimate recreational fishers. It is apparent from the customary and recreational submissions that they consider an accumulation limit set at 1 times the daily limit is unreasonable. Having too low a limit also creates incentives for people who are normally law-abiding to adopt undesirable practices, such as re-labelling of catches with other family members names even though they were not involved in taking the paua.

- 104 MFish does not favour setting the accumulation limit at 3 times the daily limit. Regulation 29(2) of the Amateur Regulations creates a serious non commercial offence for a person who, on any day, takes or possesses more than 3 times the daily limit of paua. The industry support a tiered scale of offending to be applied to the accumulation limit, whereby the penalty is ramped according to the seriousness of the breach of the accumulation limit.
- 105 MFish considers setting the accumulation limit in terms of daily limits is more straightforward for fishers to understand and remember.
- 106 MFish considers, in light of submissions received, that a balance between combating PBM activity and allowing for legitimate recreational fishing is achieved by setting the accumulation limit at 2 times the daily limit.
- 107 In the IPP, MFish advocated setting both the accumulation and the personal export limits in terms of an equivalent processed meat weight of paua. RFC support setting an equivalent processed weight (for paua not found whole). Industry suggested using the conversion factor of 2.5 meat weight to green (whole paua) weight. However, recreational fishers are not required to weigh their catches (unlike commercial fishers), and there is little available information on average weights of recreational catches to be able to apply conversion factors. MFish considers that an appropriate level, equivalent to 2 times the daily limit, is 2.5 kilograms meat weight of paua. This weight has been developed for the intent of addressing scenarios when people process their paua, for example, by slicing or mincing. The weight limit is not intended for product that has been 'treated' further such as being dried. If a person is found with 2.5 kilograms of dried paua in their possession, further action will rely on scientific rationale and evidence as to whether that paua would have originally weighed 2.5 kilograms before being dried.
- 108 RFC, TSRF, and industry submissions note the potential for amateur fishers to use customary authorisations for special occasions. RFC requested MFish to amend the customary regulations so that all New Zealanders have the ability to take advantage of this system. As noted in the IPP, customary authorisations under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, Fisheries (South Island Customary Fishing) Regulations 1999, or Regulation 27A of the Amateur Regulations were developed to give effect to the Crown's obligations to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Tangata Tiaki/Kaitiaki may authorise any individual to take fish for customary food gathering. But Tangata Tiaki/Kaitiaki are the arbiters of who and what they authorise. MFish does not consider it is appropriate to seek to amend this Treaty settlement.

### *Personal export*

- 109 RFC and Tasfish support a limit on personal export of paua of 1 times the daily limit. RFC support this limit as they recognise that personal export of paua is an avenue PBM have exploited. Mr Hartley supports setting the personal export limit at 2 kg. The customary and recreational forums proposed other limits, with one forum recommending that there be no personal export.

- 110 Industry submitted that the limit on accumulation and personal export of paua should be set at the same level for simplicity and to avoid confusion for amateur fishers. MFish agrees that it is desirable for the accumulation limit and the personal export of paua to be at the same level.
- 111 As noted in the IPP, MFish has had discussions with Customs about the most appropriate way to implement an export restriction. Customs and MFish have agreed that there is no need for a personal export limit to be set in the Amateur Regulations. Under s 175C(1)(b)(iii) of the C&E Act, a customs officer may seize and detain goods – in this instance, paua – if he or she has cause to suspect on reasonable grounds that the goods are evidence of the commission of an offence under s 232 or s 233 of the Act – including offences under the Amateur Regulations. A customs officer’s powers under s 175C(1)(b)(iii) will apply to a breach of an accumulation limit set in the Amateur Regulations. In such circumstances, the customs officer must, as soon as practicable, deliver the paua into the custody of a fishery officer under s 175C(2) of the C&E Act. It follows that MFish will be responsible for undertaking further investigation into the alleged offending.
- 112 Mr Hartley and the South Recreational Forum submitted that the export of amateur caught paua should be restricted to New Zealand citizens holding a New Zealand passport. The Amateur Regulations and s 175C of the C&E Act apply in respect of all persons and are not restricted to New Zealand citizens. MFish does not consider it is appropriate to restrict the export of paua to New Zealand citizens.