



23 April 2008

Dear High Seas Fishing Permit Holder

HIGH SEAS FISHING PERMIT CONDITIONS CHANGES RELATING TO BOTTOM TRAWLING IN THE SOUTH PACIFIC OCEAN

High seas fishing permits issued with effect from 1 May 2008 will include new conditions relating to bottom trawling on the high seas of the South Pacific Ocean. In advance of this, the new permit conditions can be found attached here for your information ('the new permit conditions'). The purpose of this letter is to provide an explanation of the new permit conditions and outline the basis for my decision on establishing them. In doing so, the letter responds to key concerns raised by stakeholders in response to consultations on the development of the new permit conditions that have been underway since July 2007.

The Issues

There is an urgent need to manage bottom fishing on the high seas of the South Pacific Ocean. As is already the case within the New Zealand Exclusive Economic Zone (EEZ), measures need to be established on the high seas to manage the impact of bottom fisheries on vulnerable marine ecosystems (VMEs), and to better provide for the utilisation of fisheries resources while ensuring sustainability in a manner consistent with the Fisheries Act 1996 and New Zealand's international commitments. International concern on these issues has heightened in recent years, culminating in the calls in 2006 for high seas bottom fishing controls by the United Nations General Assembly (UNGA) in Resolution 61/105.

In one of the responses to the UNGA resolution, in April/May 2007 States, including New Zealand, adopted a set of interim conservation and management measures (attached) as recorded in the Report of the Third International Meeting on the Establishment of a South Pacific Regional Fisheries Management Organisation (SPRFMO). The bottom fisheries elements of these interim measures respond fully to the UNGA Resolution.

While the interim measures are voluntary and not binding as a matter of international law, it was the clear understanding of all participants, as recorded in the interim measures themselves, that participants in the SPRFMO negotiations would give effect to the interim measures through their domestic laws. Accordingly, the Secretary of Foreign Affairs gave notice in the gazette pursuant to section 113C of the Fisheries Act 1996 (the Fisheries (High Seas Fishing Notifications) Notice 2007) that:

- The Report of the Third International Meeting on the Establishment of a South Pacific Regional Fisheries Management Organisation is an 'international arrangement' within the meaning of the definition of that term; and
- The interim measures adopted by the Report are 'international conservation and management measures' within the meaning of the definition of that term.

As you may be aware, section 113K(r) provides the Chief Executive of the Ministry of Fisheries with the authority to issue high seas fishing permits subject to conditions that give effect to international conservation and management measures. This includes all conservation and management measures gazetted in accordance with section 113C.

Officials of the Ministry of Fisheries, together with the Department of Conservation and the Ministry of Foreign Affairs and Trade, have been working with stakeholders to evaluate possible approaches to implementing these conservation and management measures, bearing in mind that the measures were intended to take effect from 30 September 2007.

The consultation process highlighted:

- New Zealand's responsibility to uphold its international commitments;
- the recognition that implementation of the interim measures was a complex and demanding undertaking, particularly within the timeframe envisaged;
- the challenges that implementation of the interim measures would have for the New Zealand industry particularly with respect to limiting access to high seas fishing grounds and to the imposition of controls that would further constrain fishing opportunities;
- the industry's willingness to work with the Ministry, particularly with respect to the assurances it gave that New Zealand vessels were unlikely to undertake bottom trawling on the high seas of the South Pacific until the second quarter of 2008;

- the Ministry's desire to take a step wise approach towards implementing these commitments – initially through permit conditions tailored to the New Zealand context and subsequently through regulations to be made under the Fisheries Act 1996; and
- the Ministry's consideration of the potential economic, environmental, social, and cultural impact of new high seas fishing permit conditions.

My decision on high seas fishing permit conditions

The new permit conditions will be contained in a schedule of the high seas fishing permit. The key elements of the new permit conditions are:

1. Bottom trawling on the high seas area of the South Pacific Ocean is only allowed within designated areas. These areas are defined in Annexes A and B of the schedule and illustrated in the attached map.
2. In approximately half of the area in which bottom trawling is permitted (as defined in Annex B), the 'move on rule' applies: the permit holder must not bottom trawl within 5 nautical miles of the point where evidence of a VME is encountered. Annex C details a process that provides the basis for determining whether 'VME evidence' has been encountered.
3. One observer must be carried on all vessels whenever bottom trawling on the high seas area of the South Pacific Ocean, except when I require two observers to be carried.

The new permits also contain two new definitions: '*Bottom trawling*' and '*South Pacific Ocean*'.

Conservation and Management Measures

The first key element (Point 1) relates to paragraph 2 of the SPRFMO bottom fishing interim measures, which requires States to not expand bottom fishing activities into new regions where such fishing is not currently occurring. In defining the area open to trawling, 2002-2006 was used as the reference period to develop New Zealand's 'footprint' and on the basis of 20 minute trawled grid blocks, as specified in the Interim Benthic Assessment Framework adopted at the fourth round of negotiations on the SPRFMO.

Areas of the footprint were then closed to afford protection to all lightly trawled areas (blocks with 1 - 2 tows over 2002 - 2006); 13 percent of moderately trawled areas (blocks with 3 - 50 tows over 2002 - 2006); and 16 percent of heavily trawled areas (blocks with over 50 tows over 2002 - 2006). The overall result is that 41 percent of the footprint will be closed to bottom trawling. These closed areas accounted for an estimated average 1,411 tonnes of bottom trawl catch per annum, generating NZ\$1 million, in the 2002-2006 period. This equates to 9.3 percent and 8.9 percent of the total historic catch volume and value respectively.

The second key element (Point 2) of the new permit conditions relates to the move on rule. The move on rule only applies to moderately trawled areas, leaving some already impacted heavily trawled areas open to bottom trawling without such move on requirements. In the 2002-2006 period, bottom trawl catch from these move on areas generated 3.1 percent of total catch value (NZ\$0.4 million).

The open/closed areas in point 1 and the move on rule in point 2 collectively implement paragraphs 6 and 7 of the SPRFMO bottom fishing interim measures. My decision on the use and extent of area closures as conservation and management measures to protect VMEs is based on the combination of numerous stakeholder consultations; the SPRFMO interim measures; SPRFMO Science Working Group; FAO and IUCN recommendations/guidelines; and the application of the precautionary approach.

The precautionary approach is set out in Articles 5 and 6 of the United Nations Fish Stocks Agreement, to which New Zealand is a party. Accordingly, New Zealand is required under section 5(a) of the Fisheries Act 1996 to act in a manner consistent with this international obligation.

The Ministry added to the scientific information it had compiled on the known and likely occurrence of VMEs by reviewing, in particular, industry held bathymetric data. Identification of representative closures has accordingly been informed through analysis and consideration of the best available scientific information.

The permit holder is required to determine whether evidence of a VME has been encountered after every tow where hauling of the gear takes place in any open moderately trawled (i.e. move on) block on the basis of the VME Evidence Process. If it is determined that the move on rule was triggered then the person in charge of the vessel must immediately report the result to the Fisheries Communications Centre (FCC), regardless of what action is taken i.e. whether the vessel moves on or not.

Observers will be required to complete the same VME Evidence Process and provide a completed copy to the person in charge of the vessel for each tow conducted in a move on area. This information will be included in the observers' daily reports to the Ministry Observer Programme. Observers will also be required to complete a detailed benthic bycatch form that will take a comprehensive record, on a tow by tow basis, of all benthic bycatch. The detailed return will be completed for every trawl, regardless of whether it was in a heavily or moderately trawled block. It should be noted that the Ministry will review all benthic bycatch information annually and may impose further 20 minute block closures.

Further detail on how New Zealand is implementing the SPRFMO interim measures and how the new permit conditions relate to these obligations, in particular interim measure paragraphs 6 and 7 (conservation and management measures and move on rule requirements), can be found in the attached implementation paper. This paper was reported to the fifth round of negotiations on the SPRFMO in March 2008 in Guayaquil, Ecuador.

Participants offered no suggestions for improvement to the approach. It will be updated with the details of the final open and closed areas for the purposes of reporting and submitting an impact assessment to the SPRFMO negotiations.

Observer Coverage

The third key element (Point 3) of the new permit conditions relating to observer coverage reinforces the Notification of Observer Placement sent to all permit holders on 21 December 2007. The requirement for at least one observer is consistent with paragraph 9 of the SPRFMO interim measures, which requires States to appoint observers to each vessel flying their flag undertaking bottom trawling activities. This was interpreted in the fourth round of negotiations on the SPRFMO to mean 100 percent coverage of bottom trawling activities.

The number of observers required on each vessel will be reviewed when permit holders approach the Ministry for observer coverage to ensure complete monitoring of the impacts of bottom trawling on VMEs, full and effective observing of the move on rule, and the accurate reporting of evidence of VMEs. Primary factors that will be considered include the crewing configuration and physical capacity of vessels. For example, vessels crewed for fishing for more than 12 hours a day are likely to be required to carry two observers, while vessels physically unable to accommodate two observers and crewed for shift work will generally be required to carry only one observer. During the course of fishing operations the permit holder will be required to work with observers to ensure one hundred percent coverage of all fishing activities.

If you are unsure how many observers are likely to be required on your vessel(s), I encourage you to contact the Ministry Observer Programme with details of your planned fishing operations well in advance of departing port.

In line with government policy, Ministry observers must be used and these will be cost recovered. Until 30 June 2008 the cost should be anticipated as being NZ\$525 (+ GST) per observer per 12 hour period, as detailed in the Ministry's Statement of Intent. As of 1 July 2008 this is due to rise to NZ\$555 (+ GST).

Consultation and Changes to the Original Proposal

The new permit conditions have evolved from those originally proposed by the Ministry in October 2007. It was proposed that the new conditions would come into effect from 13 December 2007 with the following key elements ('the proposed permit conditions'):

1. Bottom trawling on the high seas area of the South Pacific Ocean for non-highly migratory species would be prohibited unless authorised by the Chief Executive. An authorisation would be issued on the basis of an environmental impact assessment of intended fishing activities submitted by permit holders. Such an authorisation would restrict fishing to the 2002-2006 trawl footprint.

2. Where authorised, skippers would be required to immediately cease bottom trawling within 5 nautical miles of any site where they encounter evidence of a VME, and subsequently report the encounter to the Ministry of Fisheries.
3. Where authorised, all bottom trawling vessels on the high seas area of the South Pacific Ocean would be required to carry two cost recovered Ministry observers.

The proposed permit conditions also contained four new definitions. They were 'bottom trawling'; 'non-highly migratory species'; 'South Pacific Ocean' and 'vulnerable marine ecosystems'.

As a result of the consultation process on the proposed permit conditions, the new permit conditions differ significantly. The consultation process was also extended beyond that initially planned and in light of fishers' planned fishing activities, implementation has been held back until the 1 May permitting process.

The requirement for an impact assessment prior to fishing in the proposed permit conditions has been removed. This has been replaced with the translation into the new permit conditions of the three tiered spatial management approach, as outlined above. This approach is further elaborated in the attached implementation paper.

The result is that the new permit conditions clearly define the areas in which bottom trawling is permitted as well as the areas in which the move on rule applies. Combined with area closures, the application of the move on rule has been limited to the moderately trawled areas of the trawl footprint.

The basis of the move on rule has also been clarified in the new permit conditions. It is explicitly based on species weights, enabling the permit holder to determine whether a tow has encountered evidence of a VME. When such evidence is encountered the vessel is required to move on accordingly.

Taking into account responses from stakeholders in consultations, I consider that the blanket requirement for two observers may not be appropriate for some vessels. Therefore, each vessel will be assessed on a trip by trip basis, taking into consideration information provided by the permit holder.

I acknowledge that some stakeholders do not support the principle of requiring permit holders to undertake impact assessments of their individual operations. This is an issue that Ministry officials will continue exploring during the course of future consultations. In the short term the Ministry will be requiring information from permit holders on the particulars of vessels and the details of planned fishing operations as part of the high seas permit application process. This information will be used so that New Zealand can begin to fulfil its SPRFMO assessment and reporting obligations, and to assist the Ministry in determining whether to place one or two observers on each high seas bottom trawler. Information provided by the fishing industry will be treated by the Ministry of Fisheries as confidential and commercially sensitive.

I also acknowledge that some in the industry do not accept the appropriateness of the area closures or the thresholds proposed for implementation of the 'move on' rule.

My officials and I have weighed very carefully the comments made by industry with respect to these matters. I have concluded that the new permit conditions with respect to these matters are appropriate, particularly having regard to New Zealand's international commitment to implementation of the SPRFMO interim measures.

Process of implementing the conditions

As noted, high seas fishing permits issued with effect from 1 May 2008 will include the new permit conditions relating to bottom trawling on the high seas of the South Pacific Ocean.

Section 113K(1) and (2) of the Fisheries Act 1996, authorises the Chief Executive of the Ministry of Fisheries to impose, amend, add to, or revoke conditions on high seas fishing permits as I consider appropriate. Furthermore, as I have already noted, notice was given in the Gazette on 20 December 2007 by the Secretary of Foreign Affairs and Trade pursuant to Section 113C of the Fisheries Act 1996 that the SPRFMO interim measures are 'international conservation and management measures' within the meaning of the definition of that term. Accordingly, they fall for consideration under section 113K of the Fisheries Act 1996 when high seas permit conditions are set.

I have carefully considered all relevant available information, and all of the issues raised during the course of consultations. I also gave careful regard to the relevant legislative provisions concerning the imposition of conditions on high seas fishing permits and my obligations under Part II of the Fisheries Act 1996.

Future steps to implement key elements of the SPRFMO interim measures

This implementation approach has been developed through extensive consultations with industry and NGO stakeholders, and discussions with other States. This included cooperating with other States through the SPRFMO negotiations and reporting on New Zealand's implementation within these processes. The outcome takes New Zealand towards fulfilling its international obligations while responding to stakeholder concerns over the practicalities of implementation and the potential divergence in implementation approaches with other States.

As previously detailed in letters to high seas fishing permit holders (5 and 20 July, 15 August, and 15 October), the new permit conditions represent an initial step in implementing key elements of the SPRFMO interim measures. In considering the next steps, Ministry officials will consult stakeholders on additional permit conditions relating to other bottom fishing methods such as bottom line fishing. Consultations will also be held on regulations planned to implement the SPRFMO interim measures more fully, including fisheries management measures such as catch and/or effort restrictions, from 1 April 2009.

The collection and analysis of further data will also enable the review of the interim measures, at both the national and international level. We will review New Zealand's implementation of the move on rule and VME Evidence thresholds at the end of each fishing season, and New Zealand's implementation of the interim measures more fully in 2010. This links with the provision to open new regions of the SPRFMO Area in 2010 on the basis of an assessment (interim measures paragraph 3).

I would like to take this opportunity to note my appreciation of the time and effort taken by all involved to participate directly in consultations to date and provide submissions. The information gained was invaluable in my consideration of the appropriateness of these bottom trawling high seas fishing permit conditions. I encourage you to continue working with the Ministry to manage the effects of bottom fishing on the high seas of the South Pacific Ocean. If you have any further concerns or comments about the permit conditions and how they may affect you, or would like further information, please contact Matthew Hooper, International Policy Manager, Ministry of Fisheries, Tel: +64 4 819 4612, Matthew.Hooper@fish.govt.nz.

Yours sincerely

A handwritten signature in black ink, appearing to be 'W. McNee', written in a cursive style.

Wayne McNee
Chief Executive
Ministry of Fisheries