

CORRECTION OF COORDINATES AND DESCRIPTION ERRORS IN SOUTHLAND & SUB-ANTARCTIC AREA REGULATIONS

Executive Summary

- 1 The Ministry of Fisheries (MFish) has identified a number of errors in the area descriptions used in fisheries regulations. MFish proposes to redress these historical inaccuracies by amending such incorrect descriptions. The Challenger Fisheries Management Area was the first area to undergo such a review during the last regulatory round and MFish now proposes to review the Southland and Sub-Antarctic Area regulations. This step is being undertaken in conjunction with earlier changes to regulatory drafting procedures that were aimed at ensuring that future area descriptions were fully accurate.
- 2 In total, 26 errors were identified in the Fisheries (Southland & Sub-Antarctic Areas Amateur Fishing) Regulations 1991 and the Fisheries (Southland & Sub-Antarctic Areas Commercial Fishing) Regulations 1986. The majority of these errors were relatively minor but four errors were deemed significant enough to merit the full consultative process and have, therefore, been included in this Initial Position Paper (IPP). The areas in question are:
 - i) Sprat Point
 - ii) Abut Head
 - iii) Awarua Point
 - iv) Long Point and Heretanewha Point
- 3 The other errors will also be put forward to the Minister for correction in unison with those being proposed in this paper. Both minor and major changes made to these regulations will be communicated to fishers to ensure that the best and most recent information is readily available.
- 4 The affected closures and restrictions were previously approved by Cabinet to achieve a desired objective, which has now been compromised by incomplete or inaccurate area descriptions. The current level of uncertainty has resulted in less than optimal management of these areas. The problem is also a threat to the credibility of the fisheries management regime, needlessly hindering the Ministry's strategy of maximising voluntary compliance and maintaining an effective deterrent.
- 5 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.

Regulatory Impact Analysis Requirements

- 6 This IPP has been deemed not significant and has been reviewed by MFish. Therefore, a Regulatory Impact Statement was not necessary.

- 7 For more information on the Regulatory Impact Analysis Requirements and the meaning of the word 'significant' with reference to an Initial Position Paper, please refer to the Ministry of Economic Development website www.med.govt.nz.

The Issue

- 8 Coordinates used in many area definitions are incorrect, which is undermining the purpose of the restrictions as approved by Cabinet. The errors have also affected the Ministry of Fisheries' ability to enforce these regulations effectively. The restrictions address a number of fisheries management issues from sustainability to allocation.
- 9 The Fisheries (Southland & Sub-Antarctic Areas Amateur Fishing) Regulations 1991 and the Fisheries (Southland & Sub-Antarctic Areas Commercial Fishing) Regulations 1986 contain a total of 26 of these errors. The 26 errors identified vary greatly in size with only four errors deemed significant enough to warrant consultation. All of the major errors raised in this IPP belong to the Commercial Regulations. The remaining errors have been judged minor and technical in nature and will consequently be amended directly at the Final Advice stage. Any changes, whether significant or minor, will be publicised to keep fishers informed and up to date.
- 10 Correcting these errors will ensure that the individual goals of each affected closure are achieved and the credibility of the overall fisheries management regime is maintained. The affected closures were approved by Cabinet and put in place to address issues relating to sustainability and allocation. The current situation does not allow MFish to properly manage these closures since they inaccurately represent the areas for which regulations were intended. The inconsistencies present in area definitions also create uncertainty and difficulties for prosecutions that involve these areas.
- 11 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.
- 12 Many changes have been made to the Ministry's operational practices to avoid further errors in future regulations and MFish is now seeking the Minister's approval to correct existing faults on an area by area basis. The discussion in this proposal is limited to the four major errors in the Southland & Sub-Antarctic Areas.

Summary of Options

- 13 The following two options are proposed at this time:

Option 1 – Status Quo

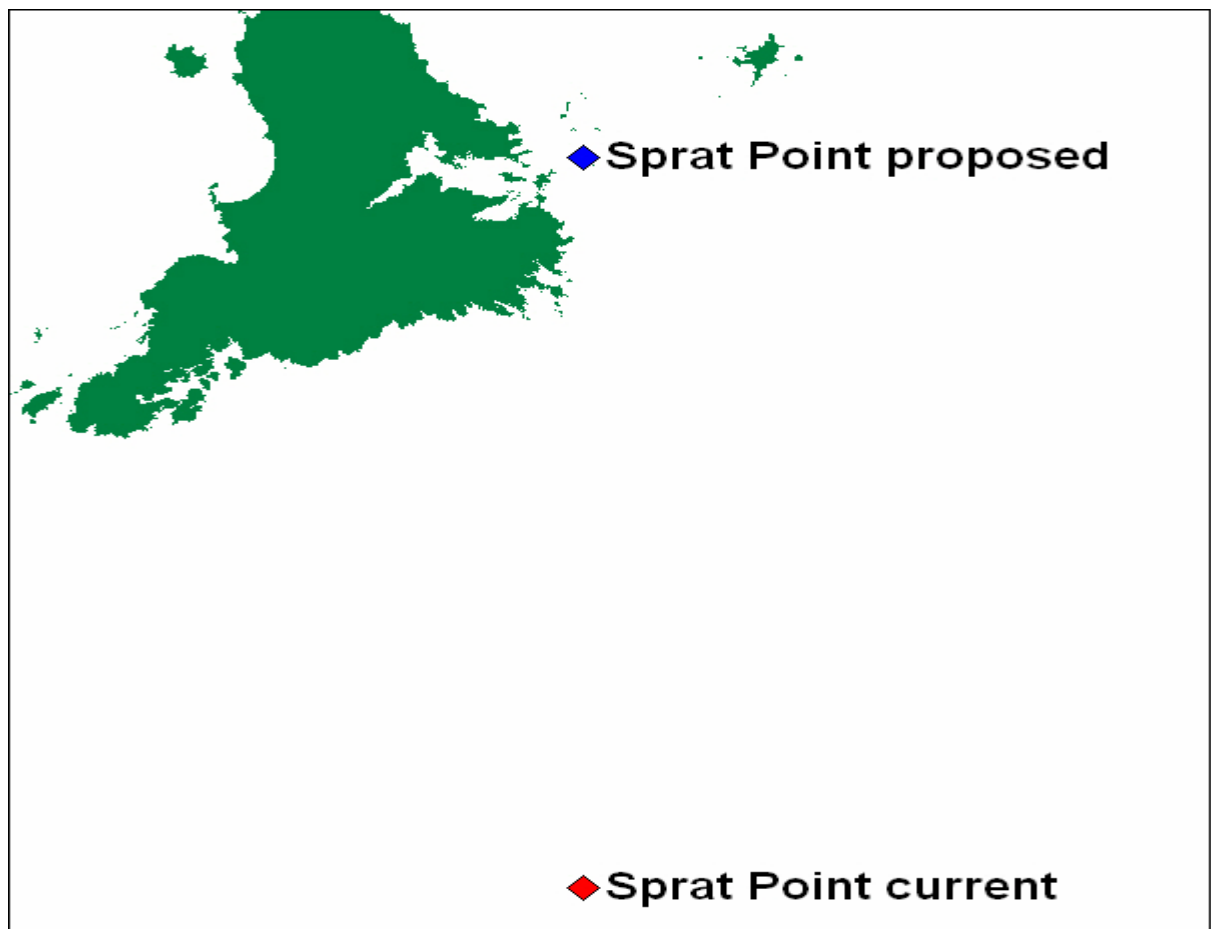
- 14 Retain the incorrect area descriptions and coordinates as they currently appear in the regulations.

Option 2 – Corrective Action [MFish Preferred Option]

- 15 Correct the area descriptions that follow:

Sprat Point

- 16 Regulation 6(b) of the Fisheries (Southland & Sub-Antarctic Areas Commercial Fishing) Regulations 1986 (the Commercial Regulations), which deals with the possession of oysters taken from within the waters of Paterson inlet, provides incorrect coordinates to describe Sprat Point on Bench Island.



- 17 The latitude given is one degree off and has placed the point more than one hundred kilometres from its actual location. The incorrect coordinates (at 47°54.2'S and 168°14.4'E) should read at 46°54.2'S and 168°14.4'E. The revised definition follows:

6 Closed areas

No [[commercial fisher]] shall take any oyster or have in his or her possession any oyster taken from the following waters:

(b) Those waters of Paterson Inlet lying inside a straight line drawn from Ackers Point (at 46°53.80'S and 168°09.80'E) to Sprat Point on Bench Island (at 46°54.20'S and 168°14.40'E); then along the mean high-water mark to the southwesternmost point on Bench Island (at 46°54.90'S and 168°13.60'E); then by straight line to East Cape on Stewart Island (at 47°00.90'S and 168°13.80'E); then along the mean high-water mark to the point of commencement:

Abut Head

18 The interpretation section (regulation 2) of the Commercial Regulations uses incorrect coordinates to define the location of Abut Head in its description of the Southland Concession Area. This definition is, in turn, applied throughout the Commercial Regulations in relation to the concession on undersized female rock lobsters. The current coordinates used in the definition are roughly three kilometres away from the physical location of Abut Head.



19 The revised definition should read:

Southland Concession Area means the southern rock lobster fishery bounded—

(a) By the shoreline commencing in a generally southerly direction from Abut Head (at 43°06.52'S and 170°15.80'E) to Long Point (at 46°34.80'S and 169°35.00'E); and

(b) By a straight line from Long Point on a true compass bearing of 135°; and

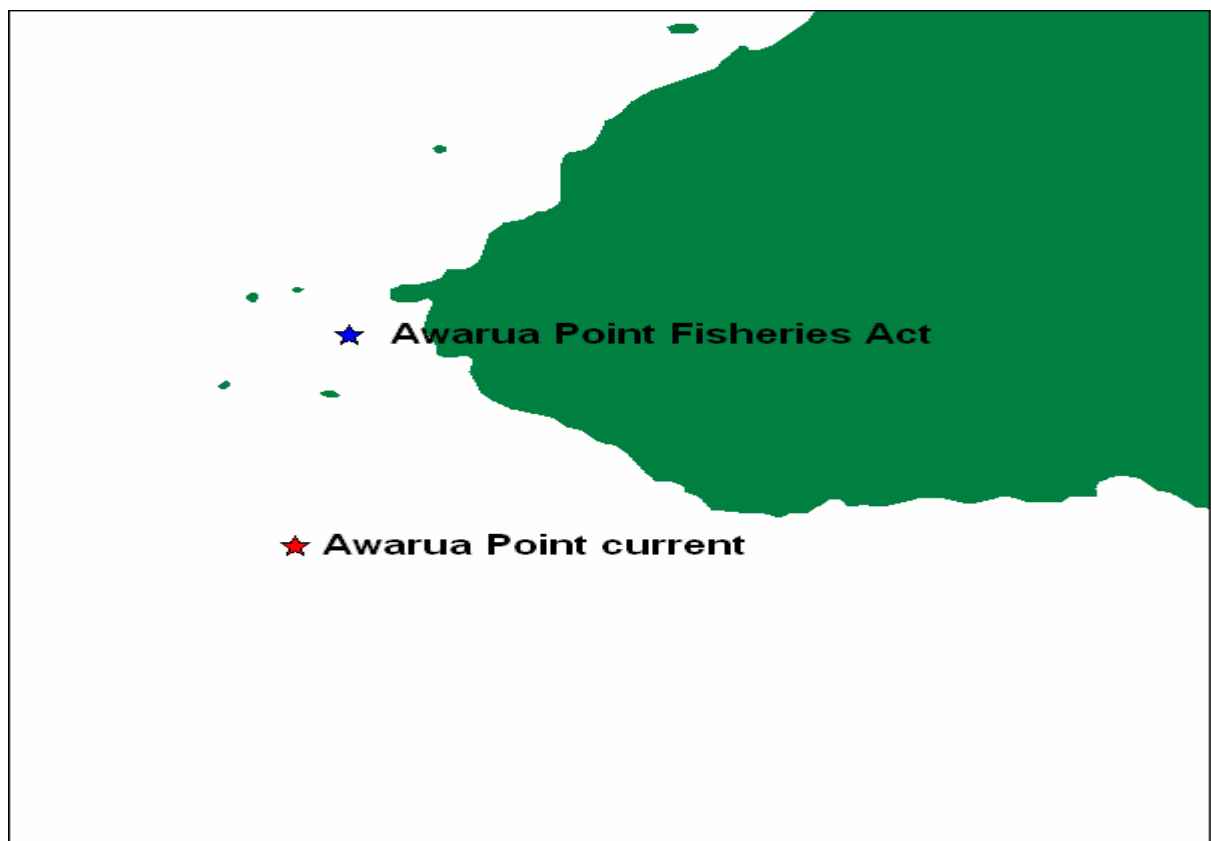
(c) By a straight line from Abut Head on a true compass bearing of 315°; and

(d) By the outer limit of the Exclusive Economic Zone of New Zealand:

- 20 This would place the point closer to its true location and bring the definition in line with the existing description found in the Land Information New Zealand Place Names database.

Awarua Point

- 21 Awarua Point is used to describe the PAU5A quota management area in regulation 3D of the Commercial Regulations but the coordinates given are approximately 1km away from the true location of the point. Awarua Point is also described in the Fisheries Act 1996 in its definition of the Southland Fisheries Management Area and the description provided there is a clear improvement on the current situation. In the interest of consistency and clarity we propose to change the definition in the Commercial Regulations to match those found in the Fisheries Act.



- 22 The revised regulation should read:

3D *Restrictions on fishing in paua quota management areas*

(1) No [[commercial fisher]] shall take paua from more than one of the following quota management areas during the course of any fishing trip:

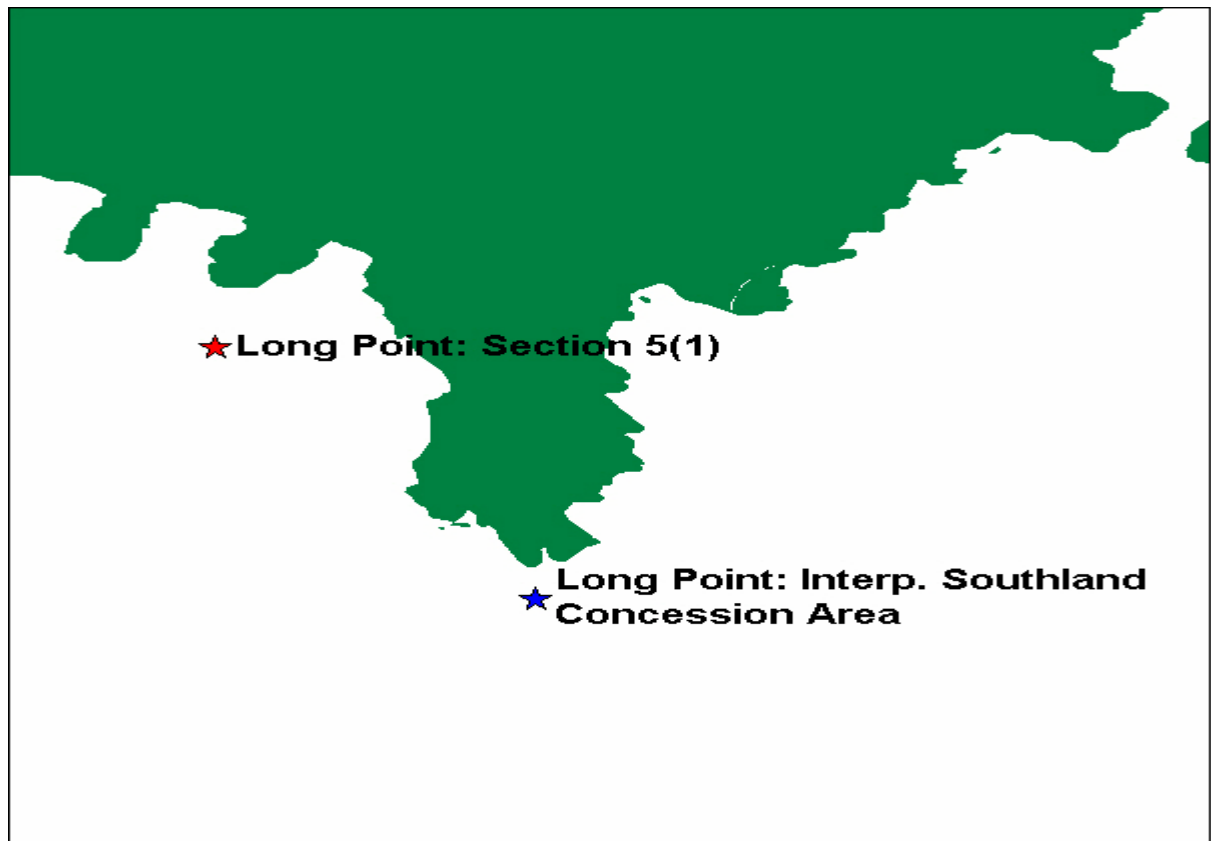
(a) Quota management area PAU 5A—Fiordland: All New Zealand fisheries waters within the Southland Fishery management Area enclosed by a line commencing at Awarua Point on the west coast of the South Island at **44°15.60'S and 168°03.10'E** and proceeding due west to the outer boundary of the exclusive economic zone at a point at 44°16.00'S and 162°13.00'E; then proceeding in a generally southerly direction to a point at 49°00.00'S and 161°28.00'E; then proceeding due east to a point at 49°00.00'S and 166°05.00'E; then proceeding in a general north-easterly direction to the western bank of the Waiau River at 46°11.60'S and 167°36.85'E; then proceeding in a generally westerly and northerly direction along the mean high water mark to the point of commencement.

Long Point and Heretanewha Point

23 The tailing of rock lobsters at sea is permitted within a defined area that uses Long and Heretanewha Points as its primary descriptors. Both these points are over a kilometre away from their actual locations on land.



24 In the case of Long Point, a better description can be found in the definition of the Southland Concession Area of the same Commercial Regulations. Once again in the interest of consistency and clarity we suggest that this definition be used in both regulations.



25 The revised regulations should read:

5 *Tailing at sea permitted in specified area*

(1) Notwithstanding [regulation 42 of the Fisheries (Commercial Fishing) Regulations 2001], it shall be lawful for the holder of a current southern rock lobster controlled fishery licence to tail at sea in the uncooked state any rock lobster taken from that part of the sea lying seaward of the mean high-water mark between a line following a true compass bearing of 135° from Irihuka (Long Point) (at 46°34.66'S and 169°35.10'E) to the outer boundary of the exclusive economic zone; then along that boundary to meet a line following a true compass bearing of 315° from the south of Bruce Bay (Heretanewha Point) at 43°35.36'S and 169°33.38'E to the outer boundary of the exclusive economic zone.

Rationale for Management Options

26 MFish has made a concerted effort to identify all coordinate or area description errors that currently exist within all Amateur and Commercial Regulations. This was done in conjunction with measures aimed at improving the quality of the process to define future regulated areas. This IPP provides an opportunity for the Minister to address the significant errors found within the Southland & Sub-Antarctic Areas Commercial Regulations.

27 The Southland & Sub-Antarctic Areas Regulations will be amended with the updated area descriptions in June 2009 if the significant errors identified in this paper are approved for correction. The minor and technical errors not

covered within this proposal will be corrected along the same timeline with the updated definitions in place for June 2009.

Assessment of Management Options

Option 1: Status Quo

Impact

- 28 Retaining the status quo does not address the issues of credibility and maximising voluntary compliance that MFish seeks to achieve. It will continue to create uncertainty and the ability to exploit weaknesses around the true location of regulated closures and restrictions. Most importantly, it will continue to undermine the intent of previously approved Cabinet closures and restrictions.
- 29 The ambiguities will continue to create needless hurdles to compliance for users of the relevant areas and the compliance arm of MFish, which is responsible for enforcing these restrictions.

Costs

- 30 There is a risk of breaches against the affected regulations if they are perceived as unenforceable. These risks could increase over time if this perception is allowed to grow and eventually extend to other fisheries regulations. Any reduction in voluntary compliance will result in greater effort and enforcement costs in order to achieve an optimal level of compliance.

Benefits

- 31 There are no benefits associated with maintaining the status quo.

Option 2: Corrective Action

Impact

- 32 Addressing these errors will redress a longstanding deficiency in these regional regulations and complement the congruent work conducted by MFish to improve all area descriptions. The impact to fishers is expected to be relatively low since this proposal does not introduce new restrictions and only aims to clarify existing ones.

Costs

- 33 There are no direct costs to industry from these proposed changes. Fishers will need to be informed of the new area descriptions once these changes have been approved. It is expected that these changes will warrant a low to moderate level of resources from MFish but can be covered within existing processes.

Benefits

- 34 Properly labelling these incorrect areas will increase their management effectiveness and better reflect the original goals behind the restrictions and

closures involved. Improved area descriptions will also assist fishers in complying with existing fisheries regulations – increasing voluntary compliance. Accurate area descriptions that are compatible with current navigational technology, such as GPS, will also serve to improve the credibility of our fisheries management regime.

- 35 Correcting all commercial and amateur area descriptions within the Southland & Sub-Antarctic areas simultaneously is more efficient for MFish than the traditional approach of addressing individual errors on an ad hoc basis.

Other Management Controls

- 36 There are no other management controls to consider since this proposal only involves the correction of existing regulations.

Statutory Considerations

- 37 In considering the proposed amendments, the Minister is required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 38 **Section 5 (a) and (b):** There is a wide range of international obligations relating to fishing (including sustainability and utilisation of fish stocks and maintaining biodiversity). MFish considers that any of the recommendations are consistent with issues arising under international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- 39 **Section 8:** The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. Part of ensuring sustainability involves avoiding, remedying or mitigating any adverse effects of fishing on the aquatic life. The closed/restricted areas described in this paper were put in place to control the impacts of fishing on vulnerable areas. The recommended changes are put forward to ensure that compliance with these restrictions is achieved.
- 40 **Section 9(c):** The recommended changes will afford greater protection to the habitats of particular significance identified within these closed/restricted areas by providing added certainty and well-defined boundaries.
- 41 **Section 10:** MFish considers that the recommendations made are based on the best available information and that the changes would better reflect current mapping technology.
- 42 **Section 297(1)(a)(ii):** The Governor-General may from time to time, by Order in Council, make regulations regulating, authorising, or prohibiting the taking or possession of fish, aquatic life, or seaweed from any area.