

OFFENCE AND PENALTY PROVISIONS FOR BREACHES TO REPORTING REQUIREMENTS – INITIAL POSITION PAPER

Executive Summary

- 1 The Ministry of Fisheries (MFish) is proposing various amendments to the Fisheries (Reporting) Regulations 2001 (the reporting regulations) and the Fisheries (Infringement Offences) Regulations 2001 (the infringement regulations) to correct penalty and offence provisions for breaches to reporting requirements. No increases in existing penalty levels are proposed. By removing existing omissions and inconsistencies in the regulations, the objective of these changes would be to contribute to the credibility of the regulatory and fisheries management framework, ensuring that an adequate deterrent against offending is maintained.
- 2 At present there are various omissions and inconsistencies in the offence and penalty provisions for reporting requirements which may be undermining the integrity of these obligations and their role within the fisheries management framework by creating loopholes. These inconsistencies include:
 - lack of infringement offences for breaches of certain provisions,¹
 - lack of offences and penalties for certain provisions, and
 - existing offences and penalties set at inappropriate and inconsistent levels.
- 3 The changes proposed under Option 2 intend to correct these issues. Subject to the outcomes of consultation and the Minister's approval, the proposed changes would take effect on 1 October 2009.

Regulatory Impact Analysis Requirements

- 4 This IPP required a Regulatory Impact Statement which was reviewed internally by MFish.
- 5 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).

The Issue

- 6 Commercial fishers are required to report on various aspects of their fishing related activity including catch, fishing effort and landings, on different returns. This information is essential for fisheries management

¹ Section 2 of the Fisheries Act 1996 defines an infringement offence as “an offence prescribed as an infringement offence against this Act by regulations made under s 297(1)(na).” Infringement offences allow MFish to issue infringement notices for breaches to certain requirements.

and the operation of the Quota Management System (QMS). The problem this proposal aims to resolve is the presence of various inconsistencies and omissions in the offence and penalty provisions that support these obligations.

- 7 Existing policy approved by Cabinet establishes the principles to be applied in the creation of offences and penalties under fisheries regulations. The penalty levels applicable for different types of offences are derived from these principles. Penalty levels for failing to complete and provide catch, effort and landing information on returns as required are summarised in Table 1.² In this context, ‘low end’ breaches typically have infringement offences and/or summary proceedings offences with a maximum fine on conviction not exceeding \$20,000 (regulation 42(b)). On the other hand, ‘high end’ breaches do not have infringement offences and have summary proceedings offences with a maximum fine on conviction not exceeding \$100,000 (regulation 42(c)).

Table 1 – Penalty levels for breaches to reporting requirements in relation to catch-effort returns and landing returns

Breach	Infringement fee	Summary proceedings offence, maximum fine on conviction
Failure to complete return	\$400	\$20,000
Providing return late but less than a month late	\$400/\$750	\$20,000
Failure to provide return (after one month)	N/A	\$100,000
Failure to provide nil return by due date (applicable to some returns only)	\$400	\$20,000

- 8 The inconsistencies and omissions this proposal aims to address are summarised in Table 2.

Table 2 – Inconsistencies and omissions in the reporting regulations

Return	Regulation*/requirement	Issue
Catch Landing Return	6(2) - completion	- No infringement offence - Offence/penalty set as high end offence
Trawl Catch Effort	11(2)(a) - completion	- No infringement offence

² “Completion” in the context of the reporting regulations and throughout this paper refers to completion of both, individual fields on returns, and completion of the whole return, if and, in the timeframes prescribed by, the regulations. Such timeframes may differ from those applicable to the requirements to “provide” returns.

Processing Return		- Offence/penalty set as high end offence
Lining Catch Effort Return	11A(2)(a-d) - completion	- No offence/penalty for not completing
	11A(2)(a-d), (3) – completion, provision	- No infringement offences
Netting Catch Effort Landing Return	11B(2)(a-f), (4) - completion, provision	- No infringement offences
		- No infringement offence
Squid Jigging Catch Effort Return	12(2)(a) – completion	- Offence/penalty set as high end offence
		- No infringement offence
Tuna Longlining Catch Effort Return	13(2)(a) - completion	- Offence/penalty set as high end offence
		- No infringement offence

**Regulation references from the Fisheries (Reporting) Regulations 2001*

- 9 These inconsistencies and omissions are a drawback to the role of offences and penalties in providing a deterrent against non-compliance with the regulations. By correcting these, the objective of the proposal is to contribute to the credibility of the fisheries management framework, and through that, to fisheries management objectives. A consistent and effective penalty structure would further encourage compliance with the reporting regulations, potentially increasing efficiency in the processing of returns and improving the quality and timeliness of information used for fisheries management.
- 10 During the 2007-08 fishing year MFish issued 296 infringement notices for non-completion or late provision of returns. Since 2003 there have also been 37 prosecutions for these types of offences. Although MFish acknowledges compliance from a significant part of the industry, these numbers show that some members of the industry are failing to adhere to the requirements.
- 11 For this reason, it is essential to review the offence and penalty structure of the reporting regulations to increase its effectiveness as a deterrent. By maintaining the status quo, inconsistencies in the regulations would continue to result in some undeterred non-compliance with the reporting requirements. Nonetheless, it is worth noting that MFish does not propose to increase current penalty levels in the regulations, as summarised in Table 1. The changes proposed would only create infringement and summary proceeding offences and penalties where these are lacking, and reduce existing penalty levels in some cases to better reflect the hierarchy of penalties.

Summary of Options

Option 1 – Status quo

- 12 This option would result in no changes to the regulations. Inconsistencies and omissions in the offence and penalty provisions would continue to exist.

Option 2 – Amendments to offence and penalty provisions – [MFish Preferred]

- 13 This option would result in amendments to the reporting and infringement offence regulations to correct the inconsistencies and omissions identified earlier.³ This is MFish's preferred option because it would meet the objective of making the offence and penalty framework that supports the reporting regulations more consistent and effective.

Rationale for Management Options

- 14 The amendments proposed would be made under sections 297(1)(n), (na) and (nc) of the Act (power to make regulations in respect of offences, penalties and infringements). When considering the options proposed, it is important to take into account the potential loopholes that the status quo is providing and the importance of reporting obligations in the context of the QMS and fisheries management generally.
- 15 Any changes resulting from this proposal would be given effect by amendments to the regulations on 1 October 2009. Interested stakeholders would be notified of the Minister's decision and any changes through the usual procedures (ie. decision letter from the Minister and MFish website).

Assessment of Management Options

Option 1 – Status quo

- 16 The status quo would result in inconsistencies and omissions in the penalty and offence provisions remaining in the regulations. These omissions and inconsistencies may be providing loopholes and decreasing the effectiveness of offences and penalties in encouraging voluntary compliance and providing an effective deterrent. Aside from minor administrative cost-savings from not making amendments, the status quo presents no benefits. Taking into account the importance of compliance with reporting obligations for the operation of the QMS and fisheries management generally, MFish does not consider the status quo to be a desirable option.
- 17 The fact that non-completion of some returns is currently a considered 'high end' serious commercial offence, carrying a fine on summary conviction not exceeding \$100,000, is not desirable. Non-completion of certain returns as a serious commercial offence is inconsistent with equivalent provisions and with the general offence and penalty structure.

³ The proposed amendments to the reporting regulations are the following:

1. Reduce the offence and penalty level for not completing a CLR, TCEPR, SJ CER and TLCER from a 'high end' commercial offence (a maximum fine on summary conviction of \$100,000), to a 'low end' commercial offence (a maximum fine on summary conviction of \$20,000).
2. Create an offence for not completing a LCER, as a 'low end' commercial offence (a maximum fine on summary conviction of \$20,000).

The proposed amendment to the infringement regulations is to create infringement offences for not completing and/or providing late a CLR, TCEPR, LCER, NCEL R, SJ CER and TLCER at the normal \$400/\$750 fee levels.

In comparison to other reporting offences and their impact, such as not providing a return at all, the breach is a less serious offence.

- 18 In spite of that, the lack of an offence for not completing a lining catch effort return (LCER) is a major omission. The requirement to complete returns (including individual fields) at specified times prior to, during or immediately after fishing is to ensure that the best possible information is captured at different stages of the fishing activity and the supply chain for optimal inputs to scientific and management decisions, and allowing for cross-checking and validation. All other forms have offences for failing to complete them when required. The status quo is providing an opportunity for fishers to complete LCERs at their convenience at any time prior to submitting the return which is not desirable and is inconsistent with the rest of the reporting requirements and the intention of the return itself.
- 19 Lack of infringement offences for not completing and/or providing late certain returns is another disadvantage under the status quo. In the absence of infringement offences, the only possible way to enforce these requirements is through summary proceedings which are expensive, resource-intensive, lengthy and more complex to administer. Because of this, not all offences would have resulted in prosecutions; breaches could have been dealt with more efficiently, providing a more immediate and effective deterrent, through infringements, should these have been available.
- 20 In addition, the inconsistencies and omissions under the status quo may affect the quality and timeliness of information received by MFish, which is used in the administration and enforcement of the QMS and fisheries management generally.

Option 2 – Amendments to offence and penalty provisions

- 21 The amendments proposed under Option 2 would make the offence and penalty provisions that support the reporting regulations consistent with each other and with the general offence and penalty framework. The effectiveness of offences and penalties in deterring non-compliance would increase. Likewise, the changes proposed may result in improved quality and timeliness of information collected in returns. All these impacts would benefit the administration and enforcement of the QMS and fisheries management generally.
- 22 There would be some minor administrative costs in making amendments to regulations. There would be no costs to compliant members of the industry, although there may be some additional costs to non-compliant fishers in the form of penalties for detected offending. However, these costs would be necessary as deterrents to encourage compliance with the reporting regulations. Option 2 presents no other risks or costs.
- 23 The main benefits of Option 2 would be to eliminate the problems described under Option 1, contributing to the credibility of the regulatory framework and to fisheries management objectives.

Statutory Considerations

- 24 In considering the proposed amendments, the Minister is required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 25 **Section 8** states that the purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. MFish considers that the amendments proposed further the purpose of the Act by encouraging better compliance with existing regulations and potentially improving the quality and timeliness of information used for managing fishery resources.
- 26 **Section 297(1)(h)** prescribes the power to make regulations outlining the form in which returns are to be kept and provided, including completion and submission of returns to the Ministry.
- 27 **Sections 297(1)(n), (na) and (nc)** prescribe the power to make regulations in relation to offences, penalties and infringements for breaches to regulations, including those for breaching return completion and submission requirements.
- 28 The **Fisheries (Reporting) Regulations 2001** specify offences and penalties (maximum fines on summary conviction) for breaches to reporting requirements for commercial fishers and licensed fish receivers.
- 29 The **Fisheries (Infringement Offences) Regulations 2001** prescribe infringement offences and fees for breaches to certain reporting requirements.

Other Management Issues

- 30 In addition to this proposal, MFish is undertaking other work to improve compliance with reporting regulations and the quality and timeliness of information received. This includes a separate proposal to enable electronic transmission of catch effort returns (CE-EDT), discussions with industry about how to reduce data input errors in returns, and raising awareness about the importance of accurate reporting. MFish would also be proposing various technical amendments to correct minor errors in offence and penalty provisions in other regulations. This proposal reinforces and complements these efforts.

REGULATORY IMPACT STATEMENT

CORRECTIONS TO OFFENCE AND PENALTY PROVISIONS

a) Executive summary

MFish is proposing regulatory amendments to correct and remove omissions from penalty and offence provisions for breaches to various amateur and commercial regulations. No increases in general penalty levels are proposed. The objective of the changes proposed is to contribute to the credibility of the regulatory and fisheries management framework, by removing loopholes. Subject to consultation and Ministerial approval, changes would take effect either on 1 June (those not consulted on) or 1 October 2009 (those consulted on). The proposal does not create any additional requirement on fishers. There are likely to be no costs or other negative impacts to fishers who comply with existing requirements as a result of this proposal. There are likely to be some costs to fishers who fail to meet certain requirements in the form of additional penalties. These costs are necessary as a deterrent to encourage compliance with existing provisions and are not more onerous than existing penalties for equivalent requirements.

b) Adequacy statement

The MFish Regulatory Impact Analysis Review Group has reviewed this statement and has deemed it to be adequate.

c) Status quo and Problem

At present there are various inconsistencies in the offence and penalty provisions for commercial and amateur regulations. These may be threatening the integrity of these obligations and their role within the fisheries management framework by creating loopholes. These inconsistencies include:

- wrong description of offences,
- lack of infringement offences for breaches to certain provisions,
- lack of offences and penalties for breaches to certain provisions, and
- existing offences and penalties set at inappropriate and inconsistent levels.

d) Objectives

The objective of the proposed action is to eliminate opportunities to circumvent existing obligations by making the offence and penalty framework that supports regulations more effective and realistic. The regulations affected are important for the administration and enforcement of the Quota Management System and fisheries management generally. The changes proposed would also potentially increase efficiency in the processing of returns and improve the quality and timeliness of information received by MFish.

Alternative options

Aside from the status quo, there is no alternative option.

e) Preferred option

The preferred option is to make amendments to offence and penalty provisions in the regulations. The changes would be to:

- correct offence descriptions,
- create infringement offences (ie. allow issue of infringement notices for breaches),
- create offences and penalties for existing regulations that lack them, and
- reduce offence and penalty levels to levels consistent with current policy.

The preferred option would not create any additional requirement on fishers. There are likely to be no costs or other negative impacts to fishers who comply with existing requirements as a result of this proposal. There are likely to be some costs to fishers who fail to meet certain requirements in the form of additional penalties. These costs are necessary as a deterrent to encourage compliance with existing provisions and are not more onerous than existing penalties for breaches to equivalent requirements. This is the preferred option because it would eliminate loopholes, inconsistencies and omissions from the regulations, making existing requirements more robust and enforceable. This option would not create any new risks; in fact it would eliminate existing risks in support of current regulations.

f) Implementation and review

Subject to the outcomes of consultation and Ministerial approval, the changes proposed would be given effect on two different dates. The changes that did not require consultation would be given effect on 1 June 2009, stakeholders would not be advised of these changes as they would not negatively affect them or change any of their existing requirements. The changes that did require consultation would be given effect on 1 October 2009 and interested parties, namely some commercial fishers, would be advised of the changes through the MFish website and by letter, although these changes do not create additional requirements on commercial fishers. Although the changes proposed would not require any formal monitoring or evaluation, MFish intends to put in place procedures to eliminate further omissions and inconsistencies from occurring.

g) Consultation

As mentioned above, some of the proposed changes were consulted on, and some were not. The proposed changes not consulted on were either previously consulted on but not given effect as intended or they correct omissions and inconsistencies caused by drafting errors. These changes would take effect on 1 June 2009. The proposed changes that were consulted on relate to the commercial reporting regulations and include changes that were not previously consulted on or that create new offences or penalties.

For the latter group of changes, consultation is due to take place within the MFish regulatory round. This involves a request for submissions in response to publicly available discussion documents sent to relevant parties (ie. representatives of the commercial fishing sector) and posted on the MFish website.