

EXEMPTION TO MINIMUM NET MESH SIZE FOR THE TAKING OF FISH SPECIES FOUND IN FRESH WATER – INITIAL POSITION PAPER

Executive Summary

- 1 The Ministry of Fisheries (MFish) proposes to:
 - a) amend regulation 6 of the Fisheries (Amateur Fishing) Regulations 1986 (Amateur Regulations) to provide that no minimum net mesh size is specified for the taking of particular finfish¹ found principally in the freshwater environment (100 mm for ‘all other species (excluding quinnat salmon)’ currently applies);
 - b) amend regulation 31 of the Fisheries (Commercial Fishing) Regulations 2001 (Commercial Regulations) to provide that no minimum net mesh size is specified for the taking of particular finfish¹ found principally in the freshwater environment (100 mm for ‘all other species’ currently applies).
- 2 The minimum net mesh size has been prescribed for certain species with the intent that juvenile fish could avoid capture. As a general approach, a minimum net mesh size of 100 mm for all non-specified fish species was adopted for both recreational and commercial fishers. Only a few species of fish found principally in freshwater had specific net mesh minima specified (e.g., eel species, koi and brown bullhead catfish).
- 3 At the time the current regulations were introduced, the minimum net mesh specification for all other fish species (ie, 100 mm) recognised that most netting activities were generally carried out in the marine environment. The general specification recognised that the use of finer net mesh may result in the undesirable capture of the juvenile lifestages of popular marine species. However, the current general minimum net mesh sizes do not adequately recognise that fine mesh nets can enable people to take several fish species found principally in freshwater. These fish species are generally of a smaller size at maturity. The 100 mm minimum net mesh size unnecessarily limits the range of methods that can be used to effectively catch such fish species.
- 4 The use of a fine meshed net is not typically intended to entangle or ensnare the fish, but to surround the catch, in the same way as a fish trap. Fish traps are not encompassed by the definition of a net, and therefore can be used presently without reference to minimum net mesh specifications.
- 5 The level of existing and predicted commercial and recreational use of fish species found principally in freshwater is relatively low. Similarly, the taking of fish species for customary Maori purposes (e.g., hui, tangi) is considered low. Sustainability concerns are not expected to arise where more netting

¹ As set out in Option 2 of this paper.

methods appropriate to the fish species in question are made available. There are other tools in the Fisheries Act 1996 (the Act) that can be applied to ensure sustainability, but they are unlikely to be required as a consequence of the proposals in this paper.

- 6 It is proposed to broaden the range of fish species where an exemption from the 100 mm minimum net mesh specification is provided. A general exemption is not proposed. The factors taken into account in nominating species for the exemption include:
- a) the relative size of the fish species in question;
 - b) the likelihood of catching the species in associated fisheries;
 - c) whether the species is found in adjacent estuarine and marine environments;
 - d) the effectiveness of other fishing methods used to take the species (e.g., fish traps);
 - e) whether there is interest in harvesting the species by one or more sectors;
 - f) whether the harvest of the species may contribute a threat to its sustainability or alternatively its recovery;
 - g) whether the harvest of the species may be beneficial to the aquatic environment; and,
 - h) any particular legal status of the species (e.g., sports fish²)
- 7 Regulations for the purpose of specifying how or what fishing methods are used to take aquatic life may be made under the general regulation making powers of the Act.

Regulatory Impact Analysis Requirements

- 8 This Initial Position Paper (IPP) required a Regulatory Impact Statement which was reviewed internally by MFish.
- 9 For more information on the Regulatory Impact Analysis requirements and the meaning of the word 'significant' with reference to an IPP, please refer to the Ministry of Economic Development website, www.med.govt.nz.

The Issue

- 10 MFish considers that the current restrictions on set net mesh size are not suitable for the utilisation, as appropriate, of many freshwater fish species. In general, the practice of netting as a fishing method has focused on popular fish species of a reasonably large size found in the marine or estuarine environment. Minimum net mesh requirements are specified for people who wish to fish for such species using a net.

² Species of freshwater fish may be declared sports fish. Schedule 1 of the Freshwater Fisheries Regulations 1983 lists sports fish as trout and salmon species, rudd (Auckland Acclimatisation District only), tench, and perch.

- 11 The minimum net mesh size for the taking of finfish with a net is set out in:
- a) regulation 6 of the Amateur Regulations; and,
 - b) regulation 31 of the Commercial Regulations³.
- 12 The net mesh minimum specified for the amateur fishing of fish species within the 'all others (excluding quinnat salmon)' category is 100 mm, whereas for commercial fishing it is 100 mm in the 'all others' category. In addition, regulation 3B of the Fisheries (South-East Area Commercial Fishing) Regulations 1986 (South-East Area Commercial Regulations) provides that Stokell's smelt⁴ may be taken from the eastern South Island using a whitebait net⁵.
- 13 The minimum net mesh size for 'all other' fish species was set at a time when the predominant species of harvest interest were found in the marine environment. Further, individual measures were prescribed in regulation for popular species of harvest interest (e.g., eels, grey mullet). The minimum net mesh specification for 'all other' fish species allows for the escape of smaller sized fish to varying degrees depending on the maximum size attained. As a result, smaller fish would generally reach a size where they would breed before being able to be taken.
- 14 The minimum net mesh specification for 'all other' fish species may have been appropriate for popular fish species taken in past decades. However, its application to a range of other fish species of harvest interest in freshwater environments needs to be more closely assessed. The methods of fishing for these fish species, of generally a small size, are presently limited by the current regulatory provisions.
- 15 The main issue for commercial fishers is the bycatch of other fish species taken when fishing for eels, catfish or koi. Commercial eel fishers use fine meshed nets, and no minimum net mesh size applies when taking eels⁶. Commercial fishers taking catfish and koi may use a fyke net with a minimum net mesh size of 12 mm, but for other forms of net the minimum net mesh size reverts to 100 mm.
- 16 Where a commercial fisher is fishing for eels, catfish or koi using fine meshed nets, it is possible that other species might be caught as bycatch, some of which may be subject to the quota management system (QMS). Examples of QMS species found in freshwater and estuarine environments include flatfish, grey mullet, and yellow-eyed mullet. Even though an illegal mesh size was used in the capture of QMS species, such catch must be landed and counted against Annual Catch Entitlement (ACE) for the particular fish stock (unless such catch may be returned to the water alive in accordance with the Sixth

³ See Appendix to view the relevant amateur and commercial regulations noted.

⁴ Stokell's smelt is not a 'whitebait' species.

⁵ A whitebait net is defined in the Whitebait Fishing Regulations 1994 and the Whitebait Fishing (West Coast) Regulations 1994. Net mesh is not prescribed in the definition.

⁶ Commercial eel fishers are required to have two escapement tubes inserted in their fyke nets to allow small fish to escape.

Schedule to the Act). This ensures that the catch of any quota fish stock is undertaken within the sustainable limit determined for each stock.

- 17 In contrast, where a commercial fisher is fishing for eels, catfish or koi using fine meshed nets, the bycatch of non-QMS fish species (e.g., common bully) must be released and appropriate reporting undertaken. However, these same bycatch species may be retained if a 'fish trap' is used (other than sports fish etc). A fish trap is not encompassed by the legal definition of a net.
- 18 The current minimum net mesh specification for most fish species (i.e., 100 mm) creates a high likelihood that offences against provisions of the Act would be committed, when using a net to take eels, catfish or koi. MFish suggests that the present broad coverage of the minimum net mesh specification for 'all other' fish species may not allow for the appropriate use of other fish species when netting methods are used.
- 19 Further, commercial fishers in the upper North Island have recently commenced some small scale target fishing of 'other' fish species found in freshwater. These operations are presently confined to the use of fish traps (e.g., G-minnow traps), rather than nets. These interests have expressed an interest in being able to use some small scale netting methods (e.g., dip nets) that might be more appropriate than trapping methods for some species found in freshwater. Sometimes more active fishing methods are required to catch fish more effectively when compared to passive trapping techniques. The present regulatory provision for net mesh size does not provide this opportunity.
- 20 For customary fishing, the main issue for most tangata whenua is that, currently, a kaitiaki will need to provide an authorisation to anyone wishing to use a fine meshed net to catch the relevant species. This will involve some additional administrative work. This may or may not be considered the best use of their time given that several of the fish species can be fished using fish traps that do not require a specific customary authorisation.

Summary of Options

Option 1 – Status Quo

- 21 Retaining the current management settings will mean that both recreational and commercial fishers will not be able to take small sized fish species found principally in the freshwater environment with a net having a net mesh of less than 100 mm. Both sectors may continue to use fish traps, typically having a weave of less than 100 mm, which are not legally encompassed by the definition of a net.

Option 2 – Specifying species of fish where minimum net mesh size does not apply

- 22 MFish considers that an amendment to Regulation 6 of the Amateur Regulations and regulation 31 of the Commercial Regulations is appropriate. The amendments would enable the use of a net with a minimum net mesh size of less than 100 mm, for specified species of fish found in freshwater.

Specifically, for the relevant species noted in the table that follows, it is proposed to allow a net to be used of any mesh size. This will broaden the methods available for both recreational and commercial fishing of the listed species.

- 23 One aspect of the proposed amendment would be to revoke regulation 31(3) of the Commercial Regulations. This provision only allows commercial fishers to take catfish and koi by a fyke net with a minimum net mesh of 12 mm when using a fyke net. The proposal in this paper is to allow commercial fishers to take catfish and koi with a net, including a fyke net, without any minimum net mesh size prescribed.

List of proposed fish species where exemption to 100 mm minimum net mesh requirement could be provided

| Common name (other common name) | Scientific Name | Application to commercial sector⁷ | Application to recreational sector |
|--|--------------------------------|---|---|
| Alpine galaxias | <i>Galaxias paucispondylus</i> | ✓ | ✓ |
| Banded kokopu | <i>Galaxias fasciatus</i> | ✓ | ✓ |
| Black mudfish | <i>Neochanna diversus</i> | ✓ | ✓ |
| Bluegill bully | <i>Gobiomorphus hubbsi</i> | ✓ | ✓ |
| Brown bullhead catfish | <i>Ameiurus nebulosus</i> | ✓ | ✓ ⁸ |
| Brown mudfish | <i>Neochanna apoda</i> | ✓ | ✓ |
| Canterbury galaxias | <i>Galaxias vulgaris</i> | ✓ | ✓ |
| Common bully | <i>Gobiomorphus cotidianus</i> | ✓ | ✓ |
| Common smelt | <i>Retropinna retropinna</i> | ✓ | ✓ |
| Cran's bully | <i>Gobiomorphus basalis</i> | ✓ | ✓ |
| Dune lakes galaxias | <i>Galaxias gracilis</i> | ✓ | ✓ |
| Dwarf galaxias | <i>Galaxias divergens</i> | ✓ | ✓ |
| Estuary stargazer | <i>Leptoscopus macropygus</i> | ✓ | ✓ |
| Estuarine triplefin (Cockabully) | <i>Grahamina nigripenne</i> | ✓ | ✓ |
| Giant bully | <i>Gobiomorphus</i> | ✓ | ✓ |

⁷ Inclusion in this column does not automatically imply that commercial interests can target the species in question. However, commercial fishers may then be able to legally take the species as a bycatch (other than those where it is otherwise prohibited or further restricted by other legislation (eg, sportsfish)).

⁸ Only commercial fishers may presently take catfish and koi using a fyke net with 12 mm minimum net mesh size. The provision does not extend to recreational fishers at present.

| | <i>gobioides</i> | | |
|---|------------------------------------|-----------------|-----------------|
| Giant kokopu | <i>Galaxias argenteus</i> | ✓ | ✓ |
| Goldfish | <i>Carassius auratus</i> | ✓ | ✓ |
| Grass carp ⁹ | <i>Ctenopharyngodon idella</i> | ✓ | ✓ |
| Inanga | <i>Galxias maculatus</i> | ✓ | ✓ |
| Koaro | <i>Galaxias brevipinnis</i> | ✓ | ✓ |
| Koi | <i>Cyprinus carpio</i> | ✓ | ✓ ¹⁰ |
| Lamprey | <i>Geotria australis</i> | ✓ | ✓ |
| Otago roundhead galaxias (Roundhead galaxias) | <i>Galaxias anomalus</i> | ✓ | ✓ |
| Quinnat salmon (Chinook salmon) | <i>Oncorhynchus tshawytscha</i> | ✓ | ✓ |
| Redfin bully | <i>Gobiomorphus huttoni</i> | ✓ | ✓ |
| Rudd ¹¹ | <i>Scardinius erythrophthalmus</i> | ✓ | ✓ |
| Sailfin molly | <i>Peocilia latipinna</i> | ✓ | ✓ |
| Short-jawed kokopu | <i>Galaxias postvectis</i> | ✓ | ✓ |
| Silver carp | <i>Hypophthalmichthys molitrix</i> | ✓ | ✓ |
| Stokell's smelt | <i>Stokellia anisodon</i> | ✓ ¹² | ✓ |
| Torrentfish | <i>Cheimarrichthys fosteri</i> | ✓ | ✓ |
| Upland bully | <i>Gobiomorphus breviceps</i> | ✓ | ✓ |
| Upland longjaw galaxias (Longjaw galaxias) | <i>Galaxias prognathus</i> | ✓ | ✓ |

⁹ A person currently requires the approval of the Minister of Conservation to possess live grass carp or live silver carp under s 26ZQA of the Conservation Act 1987.

¹⁰ Only commercial fishers may presently take catfish and koi using a fyke net with 12 mm minimum net mesh size. The provision does not extend to recreational fishers at present.

¹¹ Rudd is a sports fish within the Auckland/Waikato Fish and Game area, but elsewhere it is a noxious species, as declared under the Freshwater Fisheries Regulations 1983.

¹² Regulation 3B of the South-East Area Commercial Regulations already provides an authority to take Stokell's smelt commercially when using a 'whitebait net', which is not included within the definition of 'net' under fisheries legislation.

Rationale for Management Options

Recreational fishing

- 24 A 'net' is defined in the Amateur Regulations to mean 'any net or part of a net used or capable of being used to take fish; but does not include a bob, ring pot, or whitebait net'.
- 25 Recreational fishers have historically taken particular fish species found in freshwater as part of an aquarium and conservation hobby, as well as for food. This group of recreational fishers use various forms of nets, such as dip nets or hand nets, which are made of fine net mesh of typically 1 or 2 mm. The net acts to encircle the fish, rather than ensnare or entangle, in order to take the fish in a live state. Recreational fishers are limited to hand retrieval of nets.
- 26 The use of appropriate fishing methods to capture some freshwater fish species should be provided for within the regulatory framework. Some recreational netting methods used in the freshwater differ from those used in the estuarine or marine environment. This reflects the different species available for capture and the physical environment where fishing is being undertaken. Recreational fishers also use fish trapping methods such as G minnow traps or hinaki. The 100 mm net mesh minima does not apply to use of a fish trap.

Commercial fishing

- 27 A 'net' is defined in the Commercial Regulations to mean 'a net or part of a net used, or capable of being used, to take fish; but does not include a whitebait net'.
- 28 Commercial fishers take a range of fish species found in freshwater. Historically this has been for fisheries for principally eels, catfish and koi. More recently, a range of fish species targeted have not been typically taken before. The market for the latter group of species is the ornamental fish trade, fish farming, and breeding programmes for enhancement programmes (e.g., following habitat disturbance such as road-works).
- 29 Since October 2004 commercial fishers have been able to use nets to take eels without a minimum net mesh size (previously a 12 mm minimum was in place). Some liberalisation of net mesh size was provided in order to reduce net marking on the nose and tail of eels taken for live sale. The assessment at the time noted that few other indigenous species were caught in association with eels. Furthermore, the tubes within fyke nets provided an opportunity for smaller fish, typically the indigenous species, to escape before the net was checked by the fisher. The current net mesh minima specified for catfish and koi is 12 mm when using a fyke net.
- 30 In general, the bycatch of non-QMS fish species other than eels, catfish and koi, is unable to be retained for landing. This is because such catch is taken with a net mesh of less than 100 mm. However, it may be reasonable to allow commercial fishers to take fish species using a broader range of net fishing methods in certain circumstances.

- 31 In addressing a comparable issue with the application of the 100 mm minimum net mesh size, an exemption was provided for certain species of pelagic fish when purse seine and lampara netting methods were used. The exemption is set out in regulation 31(2) of the Commercial Regulations. Purse seine or lampara nets are not designed to entangle or ensnare, but act to surround fish. The species involved in the earlier regulatory exemption are albacore, anchovy, blue mackerel, jack mackerel, garfish, kahawai, koheru, pilchard, saury, skipjack tuna, trevally, or yellowfin tuna.
- 32 In a similar way, it is proposed to exempt specified fish species found in freshwater from the general requirement to use nets with 100 mm minimum mesh. The exemption recognises that most commercial fishing operations for a broader range of fish species found in freshwater are unlikely to involve entangling or enmeshing of the catch, and that the species involved are typically of a smaller size.
- 33 MFish does not consider that providing this kind of exemption would lead to the use of inappropriate fishing methods in the freshwater environment. Regulation 63 of the Commercial Regulations currently prohibits commercial fishers from using in rivers, streams, lakes, lagoons, or estuaries, the following fishing methods: Danish seine nets, trawl nets, box or teichi nets, trammel nets, purse seine nets, or lampara nets.

Proposed approach to enable use of smaller net mesh minima

- 34 Fishing in the freshwater environment is physically constrained by characteristics such as depth, water flow, and channel width etc. Fishers will in most instances choose netting methods appropriate to the species in question. Similarly, fishers will consider how selective the methods proposed for use are, and consider the effectiveness of that method in the habitat of the particular species of interest. MFish does not propose to qualify the exemption further to the use of particular netting methods for the species in question. Regulatory measures already prohibit several large scale netting methods from use in most freshwater environments.
- 35 MFish proposes that the exemption would apply to the same fish species for both recreational and commercial fishers. The scope of the species considered for the exemption is reasonably broad. However, a general exemption for all fish species found in freshwater is not appropriate having considered the differing approaches to the management of some species. Further, the range of some species extends into marine waters (where other net mesh minima apply), and the boundary between these saline environments is not always clear.
- 36 The factors taken into account in nominating species for the exemption include:
- a) the relative size of the fish species;
 - b) the likelihood of catching the species in associated fisheries;
 - c) whether the species is found in adjacent estuarine and marine environments;

- d) the effectiveness of other fishing methods able to be used to take the species (e.g., fish traps);
- e) whether there is interest in harvesting the species for a broad range of potential outcomes (e.g., pest management, enhancement programmes) by one or more fishery sectors;
- f) whether the harvest of the species using a further fishing method may contribute either a threat to its sustainability or alternatively its recovery;
- g) whether the harvest of the species may be beneficial to the aquatic environment; and,
- h) any particular legal status of the species (e.g., sports fish).

Implementation steps

- 37 Regulations to prescribe how or what fishing methods may be used to take aquatic life may be made under the general regulation making power of the Act (ie, section 297(1)(a)). Should the Minister of Fisheries (the Minister) agree to amend any regulatory measures to exempt recreational and commercial fishers from using a net with a minimum net mesh of 100 mm for specified fish species, any such changes would be scheduled for implementation by June 2009. Affected parties would be notified through existing pathways including the external MFish website, or in the case of specialist interests, through other known avenues (e.g., club magazines).

Assessment of Management Options

Option 1 – Status Quo

Impact

Recreational use

- 38 Recreational fishers, including aquarium hobbyists, will continue to be legally constrained to the use of traps, and there may be on-going illegal use of fine meshed nets, when undertaking fishing activities. Fish species taken as a bycatch need to be returned to the water¹³ when either:
- a) using a net for eels (no minimum net mesh applies); or,
 - b) using fyke nets of no less than 12 mm, when taking catfish and koi.
- 39 Where the status quo is maintained, MFish's enforcement strategy would involve increasing relationships with the affected fishing interests and ensuring that they are aware of the existing regulatory measures for net mesh when taking various species.

Commercial use

- 40 The primary legislative requirement (section 72 of the Act) for a commercial fisher is to generally retain fish managed under the QMS (of a legal size etc).

¹³ Regulation 28 of the Amateur Regulations provides that persons undertaking amateur fishing shall immediately return aquatic life that is unlawfully taken into the waters from which it was taken.

Unless listed on the Sixth Schedule to the Act, any such catch of quota species needs to be landed and counted against ACE. At this time, only a few species found in freshwater are managed within the QMS, but further introductions are conceivable to ensure sustainable use over the longer term.

- 41 Commercial fishers taking non-QMS fish species found in freshwater would continue to return such catch to the water, where they were taken with an illegal net mesh. The taking of fish using illegal methods constitutes an offence against the Act. Some commercial fishing operations using a fine meshed net may find it difficult to actively avoid the capture of some bycatch species.
- 42 Commercial fishers will still be required to return any quinnat salmon to the water, even if an exemption from the 100 mm net mesh size specified under fisheries legislation was applied. This is on the basis that a person may not possess a sports fish without the relevant authority¹⁴. Maintaining the ability for commercial fishers to take quinnat salmon without any reference to a minimum net mesh size will enable them to avoid committing an offence specifically under fisheries legislation.
- 43 Commercial fishers wishing to target the broader range of fish species found in freshwater under the status quo management settings would only be able to do this effectively using fishing methods such as fish traps. This may suffice in terms of the ability of these methods to catch such species.

Customary use

- 44 A person wishing to take many of the nominated species for a customary purpose using a fine meshed net (eg, hui, tangi) would continue to need an authorisation from a kaitiaki under the legislative framework for customary fishing. Alternatively, they may continue to use other fishing methods that would not require a specific authorisation.

Costs

- 45 Recreational and commercial interests would not be able to legally use a range of fishing methods that may be considered reasonable for the capture of the fish species in question. If the status quo is maintained, recreational interests taking these species as a bycatch in netting operations would need to return any unlawfully taken fish.
- 46 Commercial interests would not be able to maximise the economic return of bycatch taken when fishing for species such as eel, catfish or koi, and may be limited to certain fishing methods when targeting a range of other species.
- 47 A kaitiaki would continue to issue authorisations for the use of otherwise illegal fine meshed nets when customary fishing activities were proposed.

¹⁴ Section 26ZI of the Conservation Act 1987.

Benefits

- 48 Limiting the legal methods of fishing made available for recreational use may be appropriate. MFish does not envisage that the existing use of such fisheries resources will materially change. The existing fishing methods may suffice in meeting utilisation outcomes for the fish species in question. Further, the potential risks associated with this approach are not considered to be of consequence. Fishers may still successfully catch a reasonable range of fish species using trapping methods, although additional time and effort may be required.
- 49 Commercial fishing of most species of aquatic life is undertaken under the authority of a fishing permit¹⁵. Other statutory measures are then provided by the Act and its associated regulations that set out how that species is able to be used. The existing restrictions on fishing methods may indirectly restrict the level of use. Such limitations may be reasonable while more appropriate management settings are considered to directly address sustainable use (e.g., QMS introduction). In the case of target fishing, the use of trapping methods may meet the immediate utilisation needs of commercial fishers.

Option 2 – Specifying species of fish where minimum net mesh size does not apply – MFish Preferred Option

Impact

General outcomes

- 50 Providing an ability to use fine meshed nets for the taking of small sized fish species found in freshwater will enable recreational and commercial fishers to achieve outcomes consistent with providing for their social, economic and cultural wellbeing. The use of particular netting methods may be more effective and efficient in certain circumstances, and provide some further flexibility in enabling fishing opportunities.
- 51 At present, the unintentional or intentional taking of other fish species using a net with less than 100 mm is an offence against the Act. Providing an exemption for a range of fish species found in freshwater from this requirement will better focus the policy objective of this measure on its application to generally fish species of a larger size, and those typically found in the marine environment. Accordingly, the level of non-compliance with the current regulations is expected to decrease.
- 52 An increased range of bycatch species taken will be able to be retained and used, or legally discarded as part of a fisher's obligations under other provisions of fisheries legislation. Similarly, both recreational and commercial fishers will be able to use a wider range of fishing methods to catch the species of interest. There are other fisheries regulations already in place that limit the use of inappropriate fishing methods by either sector in the freshwater environment.

¹⁵ For example, some species may not be taken on a commercial basis given other legislative provisions e.g., sports fish, or may be commercially taken through the application of other regulations e.g., whitebait.

- 53 In the case of fishing for customary purposes, a kaitiaki will not need to write out authorisations for the use of fine meshed nets which might otherwise be seen as an administrative burden when fish traps can be used for the same species.
- 54 Fishery interests are invited to provide relevant information on the fish species considered for exemption from the minimum net mesh size restriction.

Sustainability considerations

- 55 MFish does not foresee any sustainability issues arising from the use of nets for the species considered in this paper. The current use of these species is not considered a risk. The quantity taken is usually small in the case of those species typically held in aquaria. The possible use of netting methods using fine mesh nets is unlikely to significantly increase the overall capture of the species considered in this paper.
- 56 The number of people with an interest in most of the species listed in the Table is small, and any such fishing effort is unlikely to be concentrated around any one area. Not all parts of a species range are typically accessible to fishers given that access to most waterways is not easily achieved (eg, private land). Nevertheless, having a wider range of netting methods available should assist use strategies to reduce those introduced species considered undesirable.
- 57 Facilitating the use of some of the listed species may contribute to recovery programmes and enhancement ventures. Commercial interests have expressed an interest in breeding particular indigenous fish species taken that are considered uncommon. The capture of these species is possible at present where legal methods are used (eg, fish traps).

Utilisation considerations

- 58 Commercial access to target most of the species encompassed by the review has been limited in the years 1992 through to 2004 as a result of a moratorium on the issue of fishing permits for non-QMS species. The permitting moratorium preventing the targeting of lamprey in the South Island continues to apply, in recognition of the non-commercial values of this fish species by Ngai Tahu¹⁶. More generally, the specific tools provided by fisheries legislation can be readily applied to most other species to ensure sustainability as required. Little interest in the commercial use of the fish species found principally in freshwater has been shown since 2004. Recent interest has been expressed in the upper North Island.
- 59 MFish does not envisage that the potential increased use of netting methods will result in increased catch of grey mullet, yellow eyed mullet, sports fish, or whitebait. Any increased catch of grey mullet and yellow eyed mullet or other such species managed under the QMS would be constrained by the need to balance such catch against the catch limits set for the relevant stock. Furthermore, these species or species life-stages are largely taken in the lower reaches of rivers and lagoons, and the level of existing interaction between

¹⁶ Section 306 of the Ngai Tahu Claims Settlement Act 1998.

fishers targeting the proposed exempted species and these latter species is unlikely to change as a result of this proposal.

Species declared sports fish, and whitebait

- 60 Fishers would be required to return sports fish given provisions in other legislation that directly relate to the management of such species. Amateur fishing of sports fish species is undertaken in accordance with a licence issued under regulations deemed to have been made under conservation legislation. Under conservation legislation, a person may not take sports fish without a licence. Further, the commercial use of sports fish is limited to the sale of sports fish between Fish and Game Councils, or between a Fish and Game Council and the Crown, following the rearing of such fish at hatcheries.
- 61 The current definition of 'net' under both recreational and commercial regulations administered under fisheries legislation does not encompass whitebait nets. Accordingly, any changes affecting the use of a 'net' are unlikely to affect the use of a 'whitebait net'.
- 62 Stokell's smelt is included in the proposed list of species where an exemption should be provided from the use of 100 mm net mesh. Regulation 3B of the South-East Area Commercial Regulations 1986 provides that it is lawful to take Stokell's smelt from the eastern South Island (i.e., quota management area 3) when using a whitebait net. However, the ability to take Stokell's smelt similarly needs to apply to other types of net, as defined by fisheries legislation. The ability to take any catch of Stokell's smelt using a net should also be reflected in the provisions applicable to recreational fishers.

Customary values

- 63 The Minister of Fisheries has a number of Fisheries Protocols with iwi who have Treaty settlements with the Crown. The protocols generally recognise that aquatic life within the Protocol areas are considered taonga to the iwi concerned. Some of these expressions of special association between iwi and taonga species are also recognised in settlement legislation. The protocols and/or legislative provisions for such species generally set out how the Minister should be satisfied that customary non-commercial interests are not adversely affected when these species are used, while recognising the association of the iwi with the taonga concerned.
- 64 Lamprey is the only fish species specifically identified in both protocols and/or legislative provisions for some iwi, and the table for the current proposal. The proposed regulatory change to enable the use of fine meshed nets to take lamprey is unlikely to affect the customary non-commercial interests of the relevant iwi. Legislative provisions prevent the targeting of lamprey on a commercial basis in many areas. The recreational use of this species is generally low, and is unlikely to change in future.
- 65 Amending the Amateur and Commercial Regulations as proposed will not have a bearing on the use of the Te Arawa Lakes (Fisheries) Regulations 2006 once implemented. These latter regulations stem from the Te Arawa Lakes Settlement Act 2006, and reflect the specific recognition of fishing rights held

by Te Arawa. Once these specific regulations are implemented, any customary and recreational fishing activities within the Te Arawa Lakes area for included species administered under fisheries legislation can only be done in accordance with the authority provided by the provisions of the regulations. Commercial fishing within the waters of the Te Arawa lakes is initially prohibited.

- 66 Similarly, the proposed amendments will not affect the application of the Lake Taupo Fishery Regulations 2004, as they relate to the fishing of most indigenous species by people of Tuwharetoa descent. It would however affect non-indigenous species of fisheries resources administered under fisheries legislation (e.g. brown bullhead catfish, goldfish).

Costs

Compliance and Information

- 67 Recreational and commercial fishers will need to be advised of the exemptions to the net mesh minima applying to the affected species. This is most effectively done by updating brochures and MFish website information, as well as through articles in specialist magazines. These updates or production of sector group articles are undertaken periodically, and will not involve additional or significant cost. In addition, key commercial interests can be advised through Commercial Stakeholder Organisations, while other forums can be used to note any changes made.
- 68 Potential costs include the need to better assess the nature and extent of customary, recreational and commercial use of fish species found in freshwater. Some assessment of the use of these fisheries resources will be required over the longer term, irrespective of the current management measures in place. In the initial time period, some of the resource assessments may be qualitative in nature, working in cooperation with fishery interests, and may include analysis of information obtained from various sources. As the proposal largely recognises existing levels of use, additional resource assessments are probably unjustified in the short term.

Future reviews

- 69 Over time, the proposed exemption for small sized fish species found in freshwater may need to be amended to include additional fish species that are taken, depending on what might be considered to be the most appropriate means to allow for the use of such species. The list of fish species in this paper includes those species currently being fished as well as those expected to be fished in the short to medium term.
- 70 The aim of the present proposal is to better recognise in fisheries regulations that certain fishing methods are used for particular species found in freshwater. Should the regulations be amended to better recognise that use, and the level of fishing interest in some of these other species increases, a review of the management settings in place to ensure sustainability will need to be taken.

Undesirable species

- 71 Koi were thought to have been released in New Zealand as a result of being confused with juvenile goldfish. Enabling the take of smaller sized fish may also result in the taking of juvenile koi from the wild. This outcome is desirable where the koi is recognised as such, and killed on capture. However, it may also give rise to some risk that juvenile lifestages of undesirable species are then released back into the water, usually at the point of capture. This risk is already apparent given the use of other fishing methods. The issue is of more consequence where such undesirable species are moved to other regions where it does not already occur.
- 72 There are provisions in conservation legislation prohibiting the release of freshwater aquatic life into waterways without authority. MFish does not consider that the use of fine mesh nets would change the risks of unintentional capture and transfer of other undesirable species such as aquatic plants (eg, hornwort), *Didymo*, or mosquitofish. MFish and other fishery interests will continue to work with other agencies in providing education material on minimising these risks. This includes the desired practice of ensuring that fishing equipment is clean and dry before being used in new areas.

Benefits

- 73 MFish considers that the benefits outweigh the costs for this option. Providing the exemption will enable an appropriate net mesh to be used when fishing for particular fish species found in freshwater. The level of current and expected medium term use does not raise concerns from a sustainability perspective. Similarly, the nature of these fishing activities is not likely to cause significant management problems with inter-related fisheries resources or particular interests groups. There are other avenues to address such concerns, including resolving any potential problems directly with the interest concerned.
- 74 Where the taking of the species using a fine meshed net is encompassed within the regulatory framework for recreational fishing, this would have an added advantage as it relates to customary fishing activities. Kaitiaki would not need to issue customary authorisations to overcome the net mesh minima of 100 mm for all other relevant fish species when undertaking fishing under the Amateur Regulations.
- 75 Commercial fishers will be able to retain a wider range of fish when using a net in freshwater, such that opportunities for efficiencies of capture can be made. Similarly, the likelihood of a commercial or recreational fisher committing an offence of taking species other than those exempted will significantly reduce. Offences will then be more clearly related to the inappropriate use of fisheries resources, and the management settings in place will have more credibility.
- 76 Adjusting the minimum net mesh size for various fish species will have the secondary benefit of increasing awareness of the sustainable use of these fisheries resources, and the potential to adjust management settings in place under fisheries legislation for this purpose. This may assist future MFish

initiatives focusing on better identification of fisheries management outcomes for people interested in the use of these fisheries resources.

Other Management Controls

- 77 MFish does not envisage that the nature and extent of the existing use of nets by recreational fishers will significantly change as a result of these proposals. The objectives for the use of freshwater fisheries resources by this fishery interest will be better defined over the medium term.
- 78 Commercial fishers taking species proposed for inclusion in the exemption will be able to better report that catch, whether as bycatch or as target, as a result of the related regulatory proposal on additional species codes for statutory reporting in this IPP volume. Having the ability to report catch taken will enable a more informed basis from which future management settings can be proposed. The ability to report catch illegally taken is also one aspect of meeting a legislative obligation if a defence needs to be claimed.

Statutory Considerations

- 79 For a discussion of the relevant statutory considerations see the Appendix. The Minister of Fisheries may recommend the making of relevant regulations under section 297 of the Act.
- 80 Making adjustment to the fishing methods that may be used does not alter the fact that there may be other legislative provisions that restrict or prohibit the targeting of individual species for certain purposes (e.g., taonga species).

Other Management Issues

- 81 The proposals do not affect restrictions that may otherwise be in place to prohibit or restrict the commercial or recreational use of some fish species found in freshwater. For example, in the case of brown bullhead catfish, fishers are not allowed to retain this species in a live state¹⁷. A further example is that sports fish may not be sold under provisions of the Conservation Act 1987.
- 82 The proposals in this paper relate to a 'net', but not a 'whitebait net', as defined in the Whitebait Fishing Regulations 1994 and the Whitebait Fishing (West Coast) Regulations 1994. 'Whitebait' is the young or fry of five galaxiid species and common smelt. The taking of older life stages of these galaxiid species and common smelt is encompassed under fisheries legislation and the proposals in this paper regarding net use apply. As it is relatively straight forward to identify whether the galaxiid and common smelt species taken are either in a translucent (whitebait) or pigmented older lifestage, it is correspondingly easy to determine what regulatory framework applies for the taking of these species.

¹⁷ The Amateur Regulations require that all recreational fishers must kill catfish on capture, and the Commercial Regulations require that all commercial fishers must kill catfish before being sold to a licenced fish receiver.

- 83 If the Minister of Fisheries agrees to implement the proposals in this paper, then there will be no difference in the minimum net mesh size applying to either whitebait or the older lifestages of the these six species. This level of consistency may be desirable in the longer term, where the aspirations of sustainable use of all lifestages of these species are considered together.

Appendix

Statutory Considerations

84 In forming the management options discussed in this paper, the following statutory considerations were taken into account:

- a) **Section 5(a) and (b) – Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:** New Zealand has many international obligations relating to fishing (including obligations relating to sustainability and utilisation of fishstocks and maintaining biodiversity). MFish considers that the proposal is consistent with international obligations relating to fishing and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- b) **Section 8 – Purpose:** The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. MFish considers that the proposal would better provide for the purpose of the Act. MFish considers that exempting recreational and commercial fishers from the requirement to comply with minimum 100 mm net mesh size for particular fish species found in freshwater will better enable people to provide for their social, economic and cultural wellbeing. The present regulatory provision for minimum net mesh size is considered unnecessarily restrictive in preventing the retention of catch of fish species found in freshwater, unless non-netting methods are used. Further, MFish considers that based on the available information, some additional fishing activity could be made available without creating sustainability concerns.
- c) **Section 9 – Environmental principles:** MFish considers that the proposal will facilitate the use of a range of fish species when netting methods are used. The methods of netting employed are either already in use, or would typically be of a sufficiently small scale bearing in mind the physical limitations of fishing in some freshwater bodies. MFish considers that the current proposal in itself will not affect the longer term viability of associated and dependent species, the maintenance of biological diversity of the aquatic environment, or the protection of habitat of particular significance for fisheries management.
- d) **Section 10 – Information principles:** The extent of fishing activities undertaken if the size restrictions for certain species were removed is not known with certainty. However, MFish considers that sustainability concerns are not presented by the proposed measures. The view is supported by the relatively low level of current interest in fishing these species with legal methods. MFish considers that the best available information in this case is the assessment of the implications of the regulatory framework to the attainment of the Act's purpose. The Minister should be cautious when information is uncertain, unreliable, or inadequate; and the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act.

- e) **Section 297 – General Regulations:** The Governor-General may make regulations for the wide range of purposes set out in that section. One purpose includes the regulating or controlling of fishing and the possession, processing, and disposal of fish, aquatic life, or seaweed including regulating or prohibiting any method of fishing (section 297(1)(a)(vii)).

Extract of regulations under review

Regulation 6 of the Fisheries (Amateur Fishing) Regulations 1986

6. Minimum net mesh size...

(1) A person must not use a net to take a species of fish specified in the following table unless the net mesh size used is at least the minimum net mesh size specified for the species of fish in the following table:

| Species of fish | Minimum net mesh size (mm) |
|--|-----------------------------------|
| Blue cod | — |
| Blue moki | 115 |
| Butterfish | 108 |
| Eels | 12 |
| Elephant fish | 150 |
| Flatfish | 100 |
| Garfish (piper) | 25 |
| Hapuku/bass | — |
| Herrings | 25 |
| Kahawai | 85 |
| Kingfish | 100 |
| Mullet | 85 |
| Pilchard | 25 |
| Red cod | 100 |
| Red moki | 115 |
| Rig | 150 |
| Snapper | 100 |
| Tarakihi | 100 |
| Trevally | 100 |
| <i>All others (excluding quinnat salmon)</i> | <i>100</i> |

Regulation 31 of the Fisheries (Commercial Fishing) Regulations 2001

31. Minimum finfish ... net mesh size

(1) Commercial fishers must not use or possess nets whose mesh size is smaller than that specified for each species in the table in subclause (6), measured in accordance with the requirements of Part 2 of Schedule 3.

(2) The restriction in subclause (1) does not apply if purse seine or lampara nets are used by commercial fishers to take albacore, anchovy, blue mackerel,

jack mackerel, garfish, kahawai, koheru, pilchard, saury, skipjack tuna, trevally, or yellowfin tuna.

(3) Despite subclause (1), commercial fishers may take koi or brown bullhead catfish with fyke nets, so long as the mesh of the nets is not less than 12 mm.

...

(5) No person may sell, possess for sale, or process for sale finfish or eels less than the length or weight respectively specified for those species.

(6) Commercial fishers must not take or possess finfish that are smaller than the length specified in the following table for each species:

| Species of fish | Minimum net mesh size (mm) |
|-----------------------------------|----------------------------|
| Blue cod | - |
| Blue moki | 115 |
| Butterfish | 108 |
| Eels | |
| Elephant fish | 150 |
| Flatfishes (except sand flounder) | 100 |
| Garfish (piper) | 25 |
| Kahawai | 85 |
| Kingfish | 100 |
| Mullet | 85 |
| Pilchard | 25 |
| Red cod | 100 |
| Red moki | 115 |
| Rig | 150 |
| Sand flounder | 100 |
| Snapper | 100 |
| Tarakihi | 100 |
| Trevally | 100 |
| Yellow-eyed mullet | 25 |
| <i>All others</i> | <i>100</i> |

REGULATORY IMPACT STATEMENT – EXCEPTION TO MINIMUM NET MESH FOR TAKING OF FISH SPECIES

Executive Summary

- 1 The Ministry of Fisheries (MFish) proposes to amend national recreational and commercial fishing regulations to exempt fishers from needing to use 100 mm net mesh for the taking of specified fish species found predominantly in freshwater.

Adequacy Statement

- 2 This Regulatory Impact Statement has been reviewed by the Ministry of Fisheries (MFish) Regulatory Impact Analysis Review Committee and is considered to meet the criteria agreed by Cabinet.

Status Quo and Problem

The Current Situation

- 3 The minimum net mesh size for the 'all other' category of fish species was originally set at a time where the predominant species of harvest interest were found in the marine environment, and/or the species of specific harvest interest had individual measures set out in regulation (eg, eels, grey mullet). The net mesh minima specified for species within the 'all others' category for amateur fishing is 100 mm, as well as in the 'all others (excluding quinnat salmon)' for commercial fishing.

Why Government Action is Needed

- 4 The management objective is to recognise that some existing methods of fishing for smaller sized fish species found in freshwater is presently restricted, and the use of such methods may in fact be quite reasonable. Current fishing activities by some recreational interests using fine mesh nets for some fish species are technically illegal.
- 5 Commercial fishers may take some fish species as a bycatch of existing fishing activities for eels, catfish or koi, using fine meshed nets. The current minimum net mesh specification (ie, 100 mm) for the catch of other fish species creates a high likelihood that offences against provisions of the Act would be committed. Given the species expected to be caught in the freshwater environment, it is unlikely that a reasonable defence about accidental and unintentional catch could be claimed by either a recreational or a commercial fisher in any Court proceeding.
- 6 1 October 2004, commercial access to fisheries resources not managed under the QMS was liberalised with the lifting of a moratorium on the issuing of fishing permits. Some commercial fishers have expressed an interest in the commercial fishing of species not previously fished. Given the current

regulatory provision on minimum net mesh sizes, target fishing for these species is limited to fish traps, which are not encompassed by the definition of a net.

Objectives

- 7 The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. Similarly, decision makers must take account of a number of environmental and information principles in exercising or performing functions etc under the Act. The proposal aims to better recognise the recreational and commercial netting methods used to catch relatively small sized fish species found predominantly in freshwater.

Alternative options

- 8 No alternative options have been identified.

Preferred option

- 9 MFish's preferred option (other than the status quo) is to amend national recreational and commercial fishing regulations to enable the use of a net with a minimum net mesh size of less than 100 mm, for specified species of fish found in freshwater.

Impacts

- 10 The regulatory amendment will set out an exception from the general requirement to comply with a minimum net mesh of 100 mm for the taking of 'all other' fish species. The list of species proposed for inclusion in the exception are generally those of small size, and where the methods of capture typically involve surrounding the catch so that they are taken in a live state.
- 11 The proposal will result in a reduction of technical offences made by both recreational and commercial fishers carrying out reasonable fishing activities for species found in the freshwater. This will reduce the compliance costs associated with the otherwise legitimate recreational and commercial use of fisheries resources found predominantly in freshwater.
- 12 The proposal will also remove the current exception applying to the recreational use of a fyke net, having a minimum of 12 mm net mesh, for the purpose of taking catfish and koi, and applying the exception more generally to the use of a net of any net mesh size for these species. This outcome would be consistent with the present arrangements for the commercial sector.
- 13 The proposal also seeks to extend the exception applying to the commercial taking of Stokell's smelt using a 'whitebait net' (as defined under separate legislation) to a 'net' (as defined under fisheries legislation), and similarly apply the exception for this species to recreational fishers. These minor amendments will seek to standardise and simplify the application of the exception to both sectors and for all relevant species and methods of fishing used.

Benefits

- 14 Providing the exception will legalise some recreational target netting of fish species found predominantly in freshwater. Commercial fishers will be able to retain a wider range of fish when using a net in freshwater, such that opportunities for efficiencies of capture can be made. Similarly, the likelihood of a commercial or recreational fisher committing an offence of taking species other than those exempted will significantly reduce. Offences will then be more clearly related to the inappropriate use of fisheries resources. The management settings in place will therefore have more credibility, and fishers will be more inclined to take steps to avoid committing offences related to inappropriate netting activities for fish found in freshwater.

Costs

- 15 The aim of the present proposal is to better recognise in fisheries regulations that certain fishing methods are used for particular species found in freshwater. Should the regulations be amended to better recognise that use, and over time the level of fishing interest in some of these other species increase, a review of the management settings in place to ensure sustainability will need to be taken.

Implementation and review

- 16 MFish proposes that the amendments to the national recreational and commercial fishing regulations, if approved, will come into effect in June 2009.
- 17 Affected parties will be notified of changes through the MFish external website, and through contact with relevant Commercial Stakeholder Organisations and representative commercial fishers.
- 18 MFish will periodically monitor the use of fish species taken by commercial fishers through their statutory returns to assess whether the regulatory amendment is serving its purpose, in addition to addressing any potential risk of increased use. Similarly, over the medium term, MFish will contact recreational interests to assess whether the management settings are allowing their reasonable harvesting aspirations to be met.

Consultation

- 19 Representatives of tangata whenua, commercial, recreational and environmental interests were consulted during September 2008. The issue has previously been discussed in general terms with representatives of commercial fishing interests who have a particular interest in freshwater issues.
- 20 Staff from the Department of Conservation and representative Fish and Game Councils has been advised of the proposal.

