

AMATEUR ROCK LOBSTER HARVEST REGULATIONS - FINAL ADVICE

Executive Summary

- 1 MFish recommends that you agree to the amendment of the relevant amateur fishing regulations to:
 - a) allow amateur fishers to use hand-operated lassoes for harvesting rock lobsters in all New Zealand waters; and,
 - b) provide a separate definition for rock lobster holding pots and allow amateur fishers in the Fiordland Marine Area to use one rock lobster holding pot per person or two per vessel when in the area.

Hand-Operated Lassoes

- 2 The Initial Position Paper (IPP), released 23 February 2009, proposed two options regarding amateur fisher use of hand-operated lassoes:
 - a) Option 1, the status quo, proposed retaining current regulations that prevent amateur fishers from using any lasso to harvest rock lobsters in New Zealand waters.
 - b) Option 2 proposed permitting amateur fishers to use hand-operated, but not spring-loaded, lassoes to harvest rock lobsters in New Zealand waters.
- 3 MFish considers Option 2 the best option because:
 - ◆ research suggests the use of hand-operated lassoes may result in fewer injuries to rock lobster than some current permitted methods;
 - ◆ the use of hand-operated lassoes would improve amateur fisher access and utilisation of the rock lobster fishery; and
 - ◆ the fishery and other fishery stakeholders are unlikely to be negatively impacted by permitting amateur fishers to use hand-operated lassoes.
- 4 Seventeen of the twenty submitters on the options supported permitting hand-operated lassoes. Submitters that did not support lassoes expressed concern about the potential removal of lobsters normally out of range for harvesting.

Holding Pot Requirements

- 5 The IPP proposed three options regarding the use of holding pots by amateur rock lobster fishers:
 - a) Option A, the *status quo*, would retain holding pots within current rock lobster pot limits and escape aperture requirements.

- b) Option B would exclude holding pots from general rock lobster pot limits and escape aperture requirements in the Fiordland Marine Area, and institute a separate holding pot definition and limit.
- c) Option C would exclude holding pots from general rock lobster pot limits and escape aperture requirements in all New Zealand waters, and institute a separate holding pot definition and holding pot limit.

6 MFish considers Option B is the best option because:

- ◆ The Fiordland Marine Area is the only area where holding pots are commonly and regularly used.
- ◆ Under current regulations, a pot used for holding lobsters is counted against the rock lobster pot limit, meaning rock lobster fishers using holding pots have fewer pots available to fish with. This issue is exacerbated in Fiordland where the pot limits applying are less than in most other parts of New Zealand.
- ◆ Unrestricted holding pots would pose a risk to sustainable utilisation and fishery values by increasing opportunities for fish thieves to hide illegal behaviour. Rock lobster accumulation limits and accumulated catch labelling requirements that apply in the Fiordland Marine Area reduce the risk of providing greater opportunities for fish thieves.
- ◆ Constraining the number of holding pots that would be permitted would further reduce and constrain the opportunities for fish thieves (posing as amateur fishers) to catch and store rock lobster in excess of daily limits. Based on submissions, MFish recommends providing for one holding pot per person and two per vessel.
- ◆ Removing escape aperture requirements from holding pots would enable amateur fishers to protect their catch from outside predators and improves consistency between amateur and commercial holding pot requirements.
- ◆ Removing holding pots from current harvesting pot limits and escape aperture requirements is unlikely to impact customary and commercial sectors' access or utilisation opportunities of the rock lobster fishery. Daily bag and accumulation limits, harvesting pot limits and escape aperture requirements on harvesting pots that constrain overall amateur harvest are not affected by the current proposal.

7 Nearly all submitters (12 of 14) strongly opposed permitting separate holding pots in all New Zealand waters (Option C) because of the risk of increasing opportunities for fish thieves. Eight submitters supported providing for separate holding pots in the Fiordland Marine Area only (Option B) noting the unique fishing environment and more stringent fishing rules in the area. Three submitters supported retaining the *status quo* because of the risk of increased fish thieving or lack of information.

Issues and Options

Hand-Operated Lassoos

The Issue

- 8 MFish received a request from the New Zealand Recreational Fishing Council (NZRFC) to allow for the use of hand-operated lassoos (also referred to as “cray loops”) for the amateur harvest of rock lobster. The request was supported by stakeholder members of the National Rock Lobster Management Group (NRLMG).
- 9 The key fisheries management objectives for the amateur rock lobster fishery are: (i) to ensure sustainable utilisation; (ii) to achieve the maximum value, and; (iii) the credible management of the fishery. MFish believes reviewing the use of lassoos is consistent with these objectives as the existing regulations may be unnecessarily constraining amateur fishing methods and may not be credible.
- 10 Recent research has concluded that the use of hand-operated lassoos causes significantly fewer injuries than hand collection. Hand collection is a permitted amateur harvesting method for rock lobsters.
- 11 The use of lassoos for the amateur harvest of rock lobster is currently prohibited but the possession of lassoos (hand-operated or spring-loaded) is not. This creates confusion among amateur fishers and makes enforcement challenging because, even when lassoos and lobsters are found together, proof is required that the lasso was used to take the lobster. Reviewing the regulations as they relate to lassoos provides an opportunity to improve both compliance and enforcement of amateur fishing regulations. By defining permitted lassoos and their requirements within the amateur regulations, enforcement of restrictions on non-permitted lasso design would be more effective.

Summary of Options

Initial proposals

- 12 The IPP proposed the following options:
 - a) Option 1, *status quo*, would retain current regulations that prevent amateur fishers from using hand-operated or spring-loaded lassoos to harvest rock lobster in all New Zealand waters. Option 1 would require minor amendments to current regulations that prohibit the use and possession of lassoos in the rock lobster fisheries to resolve certain difficulties in enforcement of the restriction.
 - b) Option 2 would permit amateur fishers to use hand-operated lassoos for the harvesting of rock lobster in all New Zealand waters. The concurrent possession of spring-loaded lassoos (and lassoos that do not comply with the hand-lasso definition) and rock lobster would not be permitted.

Final proposal

- 13 MFish recommends that you agree to amend the Fisheries (Amateur Fishing) Regulations 1986 to:
- i) allow the use of hand-operated lassoes for the amateur harvest of rock lobster in all New Zealand waters, and;
 - ii) prohibit the concurrent possession of spring-loaded lassoes (and lassoes that do not comply with the hand-lasso definition) and rock lobster.

Holding Pot Requirements

The Issue

- 14 MFish has received a request from the Fiordland Marine Guardians (FMG) to exclude amateur rock lobster “holding pots” from the current rock lobster pot limits and escape aperture requirements. The request is supported by stakeholder members of the NRLMG.
- 15 MFish considers reviewing amateur holding pot requirements is consistent with management objectives for the amateur rock lobster fisheries. The existing regulations may unnecessarily restrict the ability of amateur fishers using holding pots to maximise harvesting potential by reducing the number of harvesting pots that are available to them. The regulations have most impact in the Fiordland Marine Area where reduced pot limits and accumulation limits apply and holding pots are commonly used.

Summary of Options

Initial proposals

- 16 The IPP proposed the following options:
- a) Option A, *status quo*, would not change the management of the amateur rock lobster fishery. The use of holding pots would continue to be managed under general rock lobster pot limits and escape aperture requirements in all New Zealand waters.
 - b) Option B would exclude amateur holding pots from general rock lobster pot limits and escape aperture requirements in the Fiordland Marine Area only, and would institute a separate holding pot definition and limit for the area.
 - c) Option C would exclude amateur holding pots from general rock lobster pot limits and escape aperture requirements for all New Zealand waters, and to institute a separate holding pot definition and limit.

Final proposal

- 17 MFish recommends that you agree to amend the Fisheries (Southland and Sub-Antarctic Areas Amateur Fishing) Regulations 1991 to:
- i) exclude holding pots from general rock lobster pot limits and escape aperture requirements in the Fiordland Marine Area, and;
 - ii) institute a separate holding pot definition for the Fiordland Marine Area and impose a holding pot limit of one pot per person or two pots per vessel.

Consultation

- 18 MFish consulted on the options in the IPP on your behalf with fishery stakeholders. The IPP was sent to national and regional stakeholder groups, was published on the MFish website, and was distributed to recreational and iwi forums.

Submissions Received

- 19 MFish received 21 submissions on the IPP. 20 submissions addressed the use of hand-operated lassoes and 14 submissions addressed the use of holding pots. The submitters are listed below:
- Derek Brown (Brown)
 - Liam Callaghan (Callaghan)
 - Andrew Cottle (Cottle)
 - Canterbury – Marlborough Rock Lobster CRA5 Industry Association Incorporated (CRAMAC 5)
 - Bill Hartley (Hartley)
 - John Hindmarsh (Hindmarsh)
 - Mark Hosie (Hosie)
 - Duncan Jones (Jones)
 - Paul Morris (Morris)
 - Bruce Muschamp (Muschamp)
 - North Island South East Regional Recreational Fishing Forum (NISERRFF)
 - New Zealand Recreational Fishing Council (NZRFC)
 - New Zealand Rock Lobster Industry Council (NZRLIC)
 - Piako Underwater Club (PUC)
 - Seafood Industry Council (SeaFIC)
 - South Coast Underwater Club (SCUC)
 - Taranaki Fisheries Liaison Committee (TFLC)

- Tasman and Sounds Recreational Fishers' Association Inc (TASFISH)
- Te Ohu Kaimoana (Te Ohu)
- Top of the South Recreational Forum (TSRF)
- Wellington Recreational Marine Fishers' Association (Inc.) (WRMFA)

MFish Discussion of Submissions

Hand-Operated Lassoos

- 20 Seventeen of the twenty submitters strongly support permitting the use of hand-operated lassoos for the amateur harvest of rock lobster. CRAMAC5 reports commercial fishers in CRA5 observe a large number of legless and damaged lobsters being caught in the pots after a high use dive period in their region. Morris notes that the use of a lasso to harvest crayfish by the tail drastically minimises the chances of breaking rock lobster legs and horns. The NZRFC, NZRLIC and SeaFIC all indicate that permitting the use of hand-operated lassoos appears to reflect current practice in the amateur fishery. Both the NZRFC and TASFISH believe that methods of input control for the amateur rock lobster harvest regulation should be restricted to fish size and bag limits. MFish notes that the majority of submitters endorse the research presented by the NZRFC that shows rock lobster may suffer fewer injuries when harvested under the proper use of hand-operated lassoos compared to hand gathering.
- 21 The NZRLIC would prefer to see the proposed exclusion of spring-operated lassoos to be more rigorous than currently described under both options. It believes that the prohibition should apply to the possession of spring-loaded lassoos in any circumstances. The NZRLIC notes there is no species for which lassoos are used as the primary capture method and for which a hand-operated lasso would be any less effective than a spring-loaded one. MFish is aware that some amateur fishers use spring-loaded lassoos to harvest octopus but is unclear whether this usage is common. Te Ohu recommends that MFish explore opportunities to improve diver awareness around the safe use of lassoos if permitted.
- 22 Morris suggests that any permitted lasso design should have a maximum closing gap to further aid in the prevention of damage to the crayfish once full closed. MFish will consider this in the development of permitted hand-operated lasso design regulations.
- 23 Opposition to the use of hand-operated lassoos focuses on the potential removal of large breeding lobsters that are currently out of range from hand-gathering practices, and that the use of lassoos gives rock lobster very little chance of evading capture. The NISERRFF also expressed concern that the use of lassoos would enable the catch rates to increase in already depleted fisheries. MFish recognises that some lobsters may be less able to evade capture when targeted using hand-operated lassoos, but current permitted methods are not meant to restrict the location or type (e.g. large breeding) of lobsters harvested.

Holding Pot Requirements

- 24 Twelve of the fourteen submitters are strongly against Option C - the exclusion of holding pots from general rock lobster pot limits and escape aperture requirements for all New Zealand waters. These submitters considered the potential for abuse by fish thieves was too great. CRAMAC5 notes MFish Compliance is already under resourced and that the added cost and effort that would be required is not justified. NISERRFF expresses similar concerns and notes the use of amateur holding pots will open the already depleted fisheries to abuse.
- 25 Hosie and SCUC are the only submitters to support Option C. Hosie notes that a holding pot cannot catch crayfish and so should not form part of the “catching” regulations, as it serves the same purpose as a freezer or ice hold.
- 26 Eight submitters support Option B - excluding holding pots from general rock lobster pot limits and escape aperture requirements in the Fiordland Marine Area only (including SCUC who supports Option B if Option C is ‘defeated’). NZRFC and TASFISH support Option B on a trial basis. NZRLIC recommends that there be one holding pot allowed for use by an amateur fisher or amateur vessel in this area, and that the existing accumulation limit should be modified to apply to catches retained in holding pots – that is, at no time should a designated holding pot contain more than fifteen rock lobsters. SCUC recommends allowing vessels to have one or two holding pots in addition to current pot limits. SCUC also suggests that fishers in this area using holding pots have a log kept of the use of that pot for the duration of a trip, particularly where several fishers may be using the same holding pot from the same vessel.
- 27 PUC, TSRF and Te Ohu support Option A, the status quo. Te Ohu notes there is a lack of information available to make robust decisions regarding holding pots, but supports MFish in gathering additional information on how commonly holding pots are currently used, in what locations, and the number of holding pots that would be required per person or vessel if they were permitted. Although PUC supports option A, they request an amendment to exclude holding pots from escape aperture requirements as the crayfish should be legal before being put into the holding pot. TSRF notes the potential for abuse as their reason for retention of the status quo.
- 28 Brown, TFLC and WRMFA do not indicate specific support for any option presented. WRFMA notes that freezers and portable generators are affordable, already used by individuals to keep deer meat fresh, and that all rock lobster should be stored in a freezer, marked with a date and harvester name.

Assessment of Management Options

Hand-Operated Lassoos

Rationale for review

- 29 New information has become available regarding the potential impact of hand-operated lassoos on rock lobster. The research concludes that the use of hand-operated lassoos causes significantly fewer injuries than hand collection to both soft- and hard- shell lobsters (refer Appendix to the IPP for a copy of the research)¹. Hand collection is a permitted amateur method for harvesting rock lobster.
- 30 MFish believes reviewing the use of lassoos is consistent with the fisheries management objectives for the amateur rock lobster fishery as the existing regulations may be unnecessarily constraining amateur fishing methods and may not be credible.

Assessment of option 1 – status quo

Sustainability and Environment

- 31 Maintaining the *status quo* will result in no change to the catching efficiency of amateur fishers using lawful methods, and daily bag limits are in place to restrict overall daily harvest.
- 32 The *status quo* may not provide for the best sustainability outcome as hand gathering has been shown to cause greater damage to rock lobsters during collection than the use of hand-operated lassoos.
- 33 There are no perceived risks or impacts on other marine organisms and the surrounding environment if the current regulations are maintained.

Utilisation Value

- 34 Option 1 does not change current utilisation opportunities of amateur fishers. However, prohibiting the use of hand-operated lassoos by amateur fishers to harvest rock lobster may unnecessarily constrain their ability to maximise utilisation of rock lobster fisheries. Difficulties in accessing rock lobster hidden in deep or narrow rock crevices, unreachable by hand-gathering, would continue. Hand gathering is a labour intensive harvesting method that takes more time and may be less efficient than the use of hand-operated lassoos.
- 35 Maintaining the current regulations is unlikely to impact on the utilisation opportunities or success of either the customary or commercial fishing sectors.

¹ The research presented by the NZRFC (Powrie 2008) has since been published in a peer-reviewed journal. Powrie, W., and G.W. Tempero, 2009. Comparison of injuries to New Zealand rock lobsters (*Jasus edwardsii*) caused by hand versus snare collection. New Zealand Journal of Zoology 36: 83-97.

Credibility and Acceptance

- 36 New information presented by the NZRFC concludes the use of hand-operated lassoes is less damaging than hand-gathering, a current permitted method. The NZRFC believes it is not credible to prohibit a method that has been shown to cause less damage to rock lobster during harvest than already permitted methods.
- 37 Current regulations allow the possession of lassoes when harvesting rock lobster but prevent their use to harvest rock lobster. Enforcement against those using lassoes to harvest rock lobster is difficult unless fishery officers directly observe fishers using the lassoes to take rock lobster. Under option 1, MFish's ability to control (potentially damaging) lasso designs (e.g. spring-loaded) and their possession with rock lobster will continue to be hampered.
- 38 Option 1 would therefore require a minor amendment to the current regulations to prohibit both the concurrent possession of lassoes and rock lobster if lassoes continue to be prohibited as an amateur rock lobster harvesting method.

Assessment of option 2 – permit the use of hand-operated lassoes

Sustainability and Environment

- 39 Research presented by the NZRFC found that hand-operated lassoes caused less damage to both hard- and soft-shell rock lobster than those collected by hand gathering, a current permitted harvesting method. Submitter information generally supports the research findings.
- 40 Allowing the use of hand-operated lassoes may reduce lobster injury during harvest and contribute to the health of the rock lobster fishery, increasing chances of survival if lobsters are returned to the sea. MFish has no information on the quantum of impact because no information on the likely amount of effort transfer from hand-gathering to lassoes is available.
- 41 The information presented by the NZRFC noted that spring-loaded lassoes cause unnecessary damage to rock lobster that could affect stock health, although it did not provide any evidence of this.
- 42 During the 2005 review of amateur rock lobster harvesting methods, some customary and commercial representatives expressed concern that the addition of hand-operated lassoes to amateur harvesting methods could significantly increase total amateur catch (the amount of which is currently unknown). However, in 2008, both customary and commercial representatives within the NRLMG were supportive of the hand-operated lasso request put forward by the NZRFC.
- 43 Daily bag limits are in place to restrict overall harvest in the amateur sector. To date, there is no information to suggest that the use of hand-operated lassoes would result in an increase in total harvest by the recreational sector.

- 44 Hand-operated lassoes are a species-specific target method that is unlikely to affect or impact other marine organisms or the surrounding environment.

Utilisation Value

- 45 Amateur fishers are likely to be positively affected by modifying current regulations.
- 46 Permitting the use of hand-operated lassoes by amateur fishers to harvest rock lobster would increase the range of methods available to fishers to deploy, and may maximise their ability to utilise and access the rock lobster fisheries. Amateur fishers may have improved access and opportunity to harvest rock lobster hiding in deep or narrow rock crevices that are unattainable with currently permitted methods. Amateur fishers using hand-operated lassoes may spend less time diving and searching (using less air), which may make harvesting more efficient.
- 47 Option 2 would not impact on customary fishers as they are not restricted to certain fishing methods. The utilisation opportunities of both customary and commercial fishers may be impacted if the use of hand-operated lassoes significantly increased total amateur catch, reducing available stock for customary and commercial harvest. However, this impact is considered unlikely as there is no information to suggest the use of hand-operated lassoes would drastically change catching efficiency of amateur fishers. Anecdotal evidence suggests that prior to the 2005 review the use of hand-operating lassoes had been steadily increasing since the mid-1990s and was a commonly deployed method. Since the 2005 review, when lassoes were deemed a non-permitted method, there is no information to suggest that a large reduction in the efficiency of amateur harvest of rock lobster has occurred.

Credibility and Acceptance

- 48 The NZRFC has presented new information that concludes the use of hand-operated lassoes is less damaging than hand-gathering, a current permitted method. The NZRFC believes the allowance of a method that has been shown to cause less damage than already permitted methods would be a credible and acceptable management option.
- 49 Prior to the review of rock lobster amateur harvesting method regulations in 2005, hand-operated lassoes were a tool commonly used to harvest rock lobster. Subsequent research has confirmed that a previous commonly used tool has sustainability and utilisation benefits that were not evident at the time. Permitting the use of hand-operated lassoes would enable a previously utilised harvesting method of rock lobster to be legalised.
- 50 Legalising hand-operated lassoes would improve both compliance and enforcement of Amateur Regulations. By defining permitted lassoes and their requirements within the Amateur Regulations enforcement of restrictions on non-permitted lasso design would be more effective. By prohibiting the concurrent possession of non-permitted lassoes (e.g. spring-

loaded) and rock lobster within the Amateur Regulations, fishery officers will be able to provide a clear message on lasso use to amateur fishers.

- 51 The possession of gear that has not been reviewed (e.g. spring-loaded lassoes) can be clearly prohibited and enforced. Best available information suggests spring-loaded lassoes have a detrimental effect on rock lobster during harvest. They are not supported as a harvesting tool by the NZRFC or NRLMG stakeholder members. MFish supports this restriction because there is no current information available that examines the potential impacts spring-loaded lassoes have on rock lobster.

Conclusion

- 52 Based on best available information, MFish considers Option 2 – permitting the use of hand-operated lassoes - the best option because:

- Current information suggests that hand-operated lassoes result in fewer injuries to rock lobster than some current permitted methods.
- The use of hand-operated lassoes would increase the range of methods available to amateur fishers to harvest rock lobster, and enable them to harvest lobster previously inaccessible using current methods (e.g. lobsters located in deep or narrow crevices).
- The use of hand-operated lassoes may increase the efficiency of amateur fishers during harvest, reducing their search and collection times.
- Clear definitions of legal lasso design and the prohibition of non-legal lasso possession with rock lobster would improve compliance and enforcement efforts.
- The use of hand-operated lassoes is unlikely to impact customary and commercial sectors access or utilisation opportunities of the rock lobster fishery.

Recommendation

- 53 MFish recommends that you agree to amend the Fisheries (Amateur Fishing) Regulations 1986 to:

- a) allow the use of hand-operated lassoes for the amateur harvest of rock lobster in all New Zealand waters, and;
- b) prohibit the concurrent possession of spring-loaded lassoes (and lassoes that do not comply with the hand-lasso definition) and rock lobster.

Holding Pot Requirements

Rationale for review

- 54 MFish considers reviewing the amateur holding pot requirements is consistent with management objectives for the amateur rock lobster fisheries. The existing regulations may unnecessarily restrict the ability of amateur fishers using holding pots to maximise harvesting potential by reducing the

number of harvesting pots that are available to them. The regulations have most impact in the Fiordland Marine Area where reduced pot limits and accumulation limits apply.

Assessment of option A – status quo

Sustainability and Environment

- 55 Option A proposes to maintain current rock lobster pot requirements and would have no impact on rock lobster sustainability.
- 56 There are no perceived risks or impacts on other marine organisms and the surrounding environment if current regulations are maintained.

Utilisation Value

- 57 Counting holding pots against the general rock lobster pot limits would not change current utilisation opportunities of amateur fishers. However, this option may unnecessarily restrict the ability of amateur fishers using holding pots to maximise harvesting potential by reducing the number of harvesting pots that are available to them.
- 58 Requiring holding pots to meet escape aperture requirements prevents amateur fishes from protecting their stored catch against predators, such as octopus.
- 59 Maintaining the current regulations will not change the utilisation opportunities or success of either the customary or commercial fishing sectors.

Credibility and Acceptance

- 60 Counting holding pots against the general rock lobster pot limits reduces the number of catching pots available to amateur fishers that also require holding pots to store their catch. However, only fishers that may not land their catch on a daily basis would require holding pots. The extent to which this occurs in the New Zealand amateur rock lobster fishery is unknown, but is considered to be low outside of the Fiordland Marine Area.
- 61 In the Fiordland Marine Area, accumulation limits and holding requirements² mean fishers that want to store rock lobster live in holding pots, must keep their daily catches in separate holding pots, further reducing the number of active pots they have available.
- 62 Preventing amateur fishers from effectively protecting their stored catch against outside predators by requiring holding pots to comply with escape aperture requirements is viewed by amateur fishers as undesirable. Exposure to outside predators with current escape aperture requirements could result in a loss of amateur harvested catch or damage to stored catch. The FMG also view escape aperture requirements as inconsistent when compared with commercial holding pot requirements.

² Fisheries (Southland and Sub-Antarctic Areas Amateur Fishing) Regulations 1991, regulation 7(5).

- 63 Maintaining holding pots within current harvesting pot limits and requirements reduces the opportunities for fish thieves (posing as amateur fishers) to overfish and store/hide excess catch for retrieval at a later time. Pot limits assist fishery officers in the monitoring of gear possessed by individual fishers and allows for easier monitoring of fisher behaviour. Provision for holding pots could enable fish thieves to hide illegal behaviour by landing large quantities of rock lobster and claiming it as accumulated daily bag limits. For example, a fish thief could land 36 lobsters they fished in one day and claim them as accumulated catch over a 6 day period that was stored in their holding pots. In the absence of additional information, a fishery officer would be unable to prove otherwise, which compromises their ability to enforce recreational daily bag limits. Increases in illegal catch impact the sustainability of the fishery, and the utilisation opportunities of all legitimate fishers (customary, recreational and commercial). Any management measure that may exacerbate illegal fishing, either by creating opportunities for fish thieves or by making enforcement difficult should be avoided.

Assessment of option B – exclude holding pots from general rock lobster pot limits and escape aperture requirements in the Fiordland Marine Area, and institute a separate holding pot definition and limit

Sustainability and Environment

- 64 Option B proposes to exclude holding pots from escape aperture requirements and the general rock lobster pot limits, and institute separate holding pot limits in the Fiordland Marine Area.
- 65 This option may increase opportunities for fish thieves, which could pose a significant sustainability risk. However, daily bag limits of 6 rock lobsters per individual within the Fiordland Marine Area, and 3 rock lobsters per individual within the internal waters of Fiordland, and accumulation limits of 15 rock lobsters per individual removed over 3 or more days, are in place in the Fiordland Marine Area to limit overall harvest and constrains potential impact to this area.
- 66 Removal of escape aperture requirements in holding pots is considered unlikely to impact the health and sustainability of the rock lobster fishery. Amateur fishers are still required to comply with minimum sizes of rock lobster when caught, and daily bag and accumulation limits. However, holding pots could be used to store undersize lobster until they moult and can be landed as legal size.
- 67 Removal of escape apertures will allow fishers to protect their catch from outside predators, and prevent other marine organisms from entering into the pot and being retained, reducing potential impacts on other marine organisms.

Utilisation Value

- 68 Amateur fishers in the Fiordland Marine Area are likely to be positively affected by Option B.
- 69 Removing holding pots from applicable harvesting pot limits would allow amateur fishers to maximise harvesting potential by utilising their entire legal harvesting pot limits to catch rock lobsters. Restricting the number of holding pots allowed by each individual or vessel reduces the opportunities for fish thieves (posing as amateur fishers) to overfish and diminish the rock lobster stock available for customary, amateur and commercial sectors. However, removing holding pots from the general rock lobster pot limits may result in an increase in compliance and enforcement costs.
- 70 Removing the escape aperture requirements on holding pots will allow amateur fishers to protect their stored catch from outside predators, thereby improving the quality of their take-home catch, and will benefit users in both the short- and long-terms that adopt this option.
- 71 Modifying the current restrictions on amateur holding pots in the Fiordland Marine Area is unlikely to impact on the utilisation opportunities of the customary and commercial sectors. Although the number of catching pots available to amateur fishers using holding pots would be maximised (enabling them to fulfil their daily bag limits more easily), accumulation limits restrict the quantity of rock lobster taken by an individual or vessel.

Credibility and Acceptance

- 72 Option B removes holding pots from the general rock lobster pot limits and enables amateur fishers in the Fiordland Marine Area to protect their catch from outside predators by removing holding pots from escape aperture requirements. Some amateur fishers may consider this more credible fisheries management because it improves the consistency between holding pot requirements in the commercial and amateur regulations.
- 73 Amateur fishers can choose to possess a holding pot under Option B, but if a holding pot is possessed and not used, the number of active harvesting pots available to utilise would not be affected. The holding pot would be constrained by a separate pot limit restriction aside from rock lobster harvesting pot limits.
- 74 Some fishery stakeholders may not consider Option B credible. Rock lobster catch could be more easily hidden by fish thieves if holding pots are allowed. Accumulation limits and labelling requirements are in place in the Fiordland Marine Area, which make the practice of storing and harvesting catch in excess of daily and accumulated limits more difficult than in other New Zealand waters but the risk of misuse is present.
- 75 If holding pot numbers are not constrained, a number of potential issues for compliance/enforcement may arise:

- From the sea surface holding and catching pots are indistinguishable, requiring each pot to be hauled to determine its use. Unlimited pots would increase time and financial costs of compliance operations, reducing their efficiency.
- Allowing an unlimited number of holding pots could increase the opportunities for fish thieves (posing as amateur fishers) to harvest in excess of daily bag limits by storing rock lobster at sea to retrieve at a later time.

76 Anecdotal evidence suggests that some charter vessels misuse holding pots and land the daily bag limit for every customer even if the rock lobster are not actually caught during that trip. Restricting the number of holding pots that any person or vessel can possess would reduce the risk of such a practice becoming more prevalent.

Assessment of option C – exclude holding pots from general rock lobster pot limits and escape aperture requirements in all New Zealand waters, and institute a separate holding pot definition and limit

Sustainability and Environment

- 77 Option C proposes to exclude holding pots from escape aperture requirements and the general rock lobster pot limits, and institute separate holding pot limits in all New Zealand waters.
- 78 Option C may pose greater risk to the sustainability of the rock lobster fisheries as this option may significantly increase the opportunities for fish thieves (posing as amateur fishers) to hide illegal activity by landing large quantities of rock lobster and claiming it as accumulated daily catch that was stored in a holding pot. This is considered a more significant risk under Option C because accumulation limits do not apply in New Zealand waters outside of the Fiordland Marine Area.
- 79 If holding pot numbers are not limited (outside of current pot regulations), their misuse could make it easier for fish thieves (posing as amateur fishers) to double- (or multiple-) dip their pots to catch and store rock lobster in excess of maximum daily limits.
- 80 Modifying holding pot limits is unlikely to affect other marine organisms and the surrounding environment. Removing escape apertures from holding pots would prevent entry of any other marine organisms and any accidental collection.

Utilisation Value

- 81 Amateur fishers are likely to be positively affected by Option C in terms of utilisation opportunities, but may be negatively impacted if illegal harvest increases.

- 82 Removing holding pots from applicable harvesting pot limits would allow amateur fishers to maximise harvesting potential by utilising their entire legal rock lobster pot limits to catch rock lobster.
- 83 Restricting the number of holding pots allowed by each individual or vessel would reduce, but not eliminate, the risk of fish thieves violating catch limits. However, it would also mean increases to enforcements costs and a greater difficulty in enforcing daily bag limits and proving excess accumulated landings.
- 84 Removing the escape aperture requirements on holding pots will allow amateur fishers to protect their stored catch from outside predators, and increase consistency between amateur and commercial holding pot requirements.
- 85 Modifying the current restrictions on amateur holdings pots may impact the utilisation opportunities of all legitimate fishers (customary, recreational and commercial) if fish thieves land catch in excess of daily bag limits and claim it as accumulated catch in holding pots. Option C maximises the number of catching pots available to fishers that use holding pots, and may improve their catching success (increasing the total amateur catch). However, the use of holding pots in most New Zealand waters is currently not considered common practice. The use of holding pots could also increase the opportunities for fish thieves to poach from amateur fishers' stored catch.
- 86 Illegal rock lobster fishing is already beyond levels acceptable to both stakeholders and managers. Any management measure that may exacerbate it unnecessarily, either by creating opportunities for fish thieves or by making enforcement difficult, is undesirable. An increase in illegal fishing would threaten the utilisation value of all legitimate users.

Credibility and Acceptance

- 87 Some amateur fishers may consider Option C credible. Amateur fishers can choose to possess a holding pot under Option C, but even if a holding pot is possessed and not used, the number of active harvesting pots they have available to utilise is not affected and would instead be constrained by a separate holding pot limit restriction aside from rock lobster harvesting pot limits.
- 88 This option enables fishers to protect their catch from outside predators by removing holding pots from escape aperture requirements. The FMG believe that improving consistency between holding pot requirements in the commercial and amateur regulations would contribute to credible fisheries management.
- 89 Some fishery stakeholders may not consider Option C credible. If holding pots are allowed in all New Zealand waters a number of potential issues for compliance/enforcement may arise:
- From the sea surface holding and catching pots are indistinguishable, requiring each pot to be hauled to determine its use. Unlimited pots would

increase time and financial costs of compliance and enforcement operations, reducing their efficiency.

- Allowing an unlimited number of holding pots could increase the opportunities for fish thieves (posing as amateur fishers) to harvest in excess of daily bag limits by storing rock lobster at sea to retrieve at a later time.
- Allowing holding pots to be used would enable fish thieves (posing as amateur fishers) to take rock lobsters in excess of the daily bag limit and then claim that the catch was actually accumulated over time and was being stored in a holding pot. In the absence of additional information, a fishery officer would be unable to prove otherwise, which compromises their ability to enforce recreational possession limits. There are no accumulation limits for rock lobster in New Zealand waters, except in the Fiordland Marine Area, which makes enforcement against excessive catches even more difficult.
- The lack of accumulation limits in most New Zealand waters in addition to the changes proposed for holding pots could increase the occurrence of some charter vessels to misuse holding pots and land the daily bag limit for every customer even if the rock lobster were not actually caught during that trip.

90 Although commercial fishers are permitted to use unlimited numbers of holding pots, they are also required to report their catch (i.e. whether it is being stored at sea in a holding pot, in a live tank on land or landed at a licensed fisher receiver). This amount is eventually counted towards their annual catch entitlement and the total allowable commercial catch, which enables checks and balances of their commercial activities. Furthermore, commercial fishers are required to land all rock lobster catch alive and the quantities each one of them deals with are significantly greater than the recreational daily bag limit. For this reason, commercial fishers have a legitimate need for using holding pots without escape apertures throughout the country.

91 In comparison, recreational fishers are not required to land rock lobsters alive and the quantities taken by individual fishers are much smaller. Therefore, there does not appear to be a legitimate use for holding pots by recreational fishers, except perhaps in extremely remote areas like the Fiordland Marine Area. The number of recreational fishers in New Zealand waters and the amount of rock lobster caught recreationally are currently unknown. Catches in excess of daily bag limits could be more easily hidden by fish thieves if holding pots are allowed in all New Zealand waters because there is no way to keep track of what is being removed and by how many individuals.

Conclusion

92 MFish considers Option B to be the best option because:

- Amateur fishers in the Fiordland Marine Area that currently use holding pots would not be restricted in their ability to use the maximum number of harvesting pots allowed.
- By constraining the number of holding pots allowed per person or vessel, the opportunities for fish thieves (posing as amateur fishers) to catch and store rock lobster in excess of daily limits is constrained.
- Daily bag and accumulation limits in the Fiordland Marine Area restrict the number of lobsters that can be possessed at any one time. Labelling requirements of accumulated catch enable fishery officers to monitor when and where (e.g. internal waters of Fiordland) the catch was caught on extended fishing trips in the area.
- Removing escape aperture requirements from holding pots enables amateur fishers to protect their catch from outside predators and improves consistency between amateur and commercial holding pot requirements.
- Removing holding pots from current harvesting pot limits and escape aperture requirements is unlikely to impact customary and commercial sectors' access or utilisation opportunities of the rock lobster fishery. Daily bag and accumulation limits, harvesting pot limits and escape aperture requirements on harvesting pots that constrain overall amateur harvest are not affected by the current proposal.

Recommendation

- 93 MFish recommends that you agree to amend the Fisheries (Southland and Sub-Antarctic Areas Amateur Fishing) Regulations 1991 to:
- a) exclude holding pots from general rock lobster pot limits and escape aperture requirements in the Fiordland Marine Area, and;
 - b) institute a separate holding pot definition for the Fiordland Marine Area and impose a holding pot limit of one pot per person or two pots per vessel.

Statutory Considerations

- 94 The following statutory considerations have been taken into account when forming the possible amendments to the amateur fishing regulations.
- 95 **Section 5** of the Fisheries Act 1996 (“the Act”) requires the Minister to act in a manner consistent with New Zealand’s international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The proposed regulatory amendments to the Amateur Regulations do not have implications for, or effects on, MFish’s ability to meet any specific international obligations and do not affect any obligations related to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- 96 **Section 8** of the Act states the purpose of the Act as being able to provide for the utilisation of fisheries resources while ensuring sustainability, and defines the meanings of “utilisation” and “ensuring sustainability”. The management

options presented seek to achieve the purpose of the Act. The Amateur Regulation proposals seek to ensure that any amendments to amateur harvesting regulations are sustainable and take into account the respective costs of management versus utilisation benefits.

97 **Section 9** of the Act requires the Minister to take into account the following environmental principles:

- **Section 9(a)** requires associated or dependent species (i.e. those that are not harvested) to be maintained above a level that ensures their long-term viability. The use of hand-operated lassoes has no by-catch, and the removal of escape apertures from holding pots would remove the potential for other fish species to be caught as by-catch. Therefore there are no concerns for the potential interactions between the fisheries and non-harvested species.
- **Section 9 (b)** requires biological diversity of the aquatic environment to be maintained. The decision to allow hand-operated lassoes for the harvesting of rock lobster, or the removal of holding pots from current pot requirements, does not directly impact on the long term viability and biological diversity within the aquatic environment in harvesting areas.
- **Section 9(c)** requires habitat of particular significance for fisheries management to be protected. MFish is not aware of any such habitats that would be affected by any of the proposed management options.

98 **Section 10** of the Act sets out information principles, which require that decisions be based on the best available information, taking into account any uncertainty in that information, and applying caution when information is uncertain, unreliable, or inadequate. A thorough review of available information has been undertaken and the best available information has been used to evaluate the management options presented. Uncertainties in information make it difficult to accurately quantify costs and benefits to access to the fishery and stakeholder value; these uncertainties are clearly identified and discussed. MFish included matters relating to uncertain information for discussion with fishery stakeholders in the IPP. This was to provide an opportunity for stakeholders to provide additional information and supporting evidence where available.

99 **Section 297 (1)(vii) and (viii)** allows the making of regulations to regulate or prohibit any method of fishing, and regulate or prohibit the possession or use of any kind of gear, equipment, or device used for, or related to, fishing.

100 **Section 297 (1)(xiii)** allows the making of regulations to regulate methods by, or the circumstances under which, fish, aquatic life, or seaweed may be held, stored, conveyed, or identified, including the use of any containers, marks or labels.

101 **Regulation 25B of the Fisheries (Amateur Fishing) Regulations 1986** requires rock lobster pots to meet specific escape aperture requirements (regulation 25B (1-5)) through which undersize rock lobsters are able to escape. Rock lobster pots are defined as any pot, whether baited

or not, that is capable of catching or holding rock lobsters; and includes any other device capable of catching, holding or storing rock lobsters. The use or possession of bobs and ring pots are exempt from the rock lobster pot escape aperture requirements (regulation 25B (6)).

- The addition of hand-operated lassoes as a permitted harvesting method would require hand-operated lassoes (specifically defined) to be included as another method exempt from the escape aperture requirements. The use of spring-loaded lassoes would have to be included as a non-permitted method, and the possession of spring-loaded lassoes concurrently with rock lobster specifically prohibited. The paper fully explores and discusses the costs and benefits of adding hand-operated lassoes as a permitted harvesting tool on fishery stakeholders.
- The removal of escape aperture requirements for rock lobster holding pots would require that regulation 25B allow holding pots that do not have escape apertures if the pots are not capable of being used for taking rock lobsters. This paper fully explores and discusses the costs and benefits of removing escape aperture requirements from amateur holding pots on fishery stakeholders.

102 **Regulation 25C of the Fisheries (Amateur Fishing) Regulations 1986** prevents amateur fishers from using, setting or possessing in New Zealand fisheries waters more than 3 pots per individual (including by an individual who is the only person on a vessel), or 6 pots where 2 or more individuals are using, setting or possessing pots from a vessel. The options proposed in this paper would remove holding pots from harvesting rock lobster pot limits and add an additional clause specifying the number of holding pots allowed per person and per vessel. Holding pots requirements could be modified under regulation 25B, requiring them to have no escape apertures and be unable to capture rock lobster. The paper fully explores and discusses the costs and benefits of removing holding pots from harvesting pots limits on fishery stakeholders.

103 **Regulation 4AAB (1)(c) and (2)(b) of the Fisheries (Southland and Sub-Antarctic Areas Amateur Fishing) Regulations 1991** prevents amateur fishers in the Fiordland Marine Area, including internal waters of Fiordland from using, setting or possessing more than 3 rock lobster pots per person or per vessel on any day. The options proposed in this paper would remove holding pots from harvesting rock lobster pot limits and add an additional clause specifying the number holding pots allowed per person and per vessel. Holding pots requirements could be modified under regulation 25B, requiring them to have no escape apertures and be unable to capture rock lobster. The paper fully explores and discusses the costs and benefits of removing holding pots from harvesting pots limits on fishery stakeholders.

104 **Regulation 5AA (1)(b) of the Fisheries (Southland and Sub-Antarctic Areas Amateur Fishing) Regulations 1991** prevents amateur fishers in Paterson Inlet from using more than 2 rock lobster pots on any day. The options proposed in this paper would remove holding pots from harvesting rock lobster pot limits and add an additional clause specifying the number of

holding pots allowed per person or per vessel. Holding pots requirements could be modified under regulation 25B, requiring them to have no escape apertures and be unable to capture rock lobster. The paper fully explores and discusses the costs and benefits of removing holding pots from harvesting pots limits on fishery stakeholders.

- 105 **Regulation 5 (2)(e) of the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986** prevents amateur fishers in the vicinity of Mimiwhangata Peninsula from using, setting or possessing more than 1 pot per person or per vessel. The options proposed in this paper would remove holding pots from harvesting rock lobster pot limits and add an additional clause specifying the number of holding pots allowed per person or per vessel. Holding pots would be required to have no escape apertures and be unable to capture rock lobster, after modifying regulations 25B. The paper fully explores and discusses the costs and benefits of removing holding pots from harvesting pots limits on fishery stakeholders.