

DAILY COMPLETION OF CERTAIN FIELDS ON TCEPR, SJ CER AND TLCER FORMS – INITIAL POSITION PAPER

Executive Summary

- 1 The Ministry of Fisheries is proposing an amendment to the Fisheries (Reporting) Regulations 2001 (the regulations), to remove ambiguity in the current wording that prescribes the timing in which TCEPR, SJ CER and TLCERs¹ are to be completed. The Minister's decision is to be made in the context of section 297 of the Act which prescribes powers for general regulations, including those that set out the manner and form in which returns are to be kept or provided. The objective of the proposed amendment is to remove ambiguity in the wording of the regulations and, through that, to remove an opportunity to misreport. This opportunity arises from the lack of an explicit obligation in the regulations to complete catch and effort information in these returns on a daily basis.
- 2 The Ministry's proposal is to amend the regulations to require catch and effort information to be completed on a daily (or part-daily) basis on the returns (Option 2). This is a one-off, cost-effective way of addressing the problem. Aside from the status quo (Option 1), an alternative option is for the Chief Executive to direct permit holders to complete this information on a daily basis (Option 3). Options 2 and 3 would result in the desired outcome, that is, a clear requirement for permit holders to complete catch and effort data in their forms on a daily basis. Option 3 however, would not address the ambiguity present in the regulations and would demand an ongoing process and cost to inform new permit holders of the particular requirement.
- 3 In making a decision the Minister should consider the importance of timely and accurate reporting to the integrity of the Quota Management System (QMS). The Minister should also take into account that the status quo presents a potential threat to the effective use of surveillance and enforcement resources, and creates an opportunity to offend (ie. to misreport or conceal dumping). The current wording of the regulations undermines the requirement for accurate and timely sets of information about different stages of the fishing activity. The logical solution is to amend the regulations to clarify the timing in which the returns are to be completed. For those fishers who follow the instructions on the returns and their explanatory notes, nothing would change in practice. The proposed changes would only affect opportunistic permit holders who take advantage of the current ambiguity in regulations.

Regulatory Impact Analysis Requirements

- 4 This IPP has been reviewed by MFish and has been deemed not significant as it simply clarifies the wording of the regulations and does not propose a drastic

¹ Trawl Catch Effort Processing Return, Squid Jigging Catch Effort Return and Tuna Longlining Catch Effort Return

change or additional requirement for permit holders. For this reason, this amendment does not warrant a Regulatory Impact Statement.

The Issue

- 5 The QMS and the integrity of its compliance regime rely on accurate and timely reporting of fishing activities and transactions. The current wording of the regulations that prescribe TCEPR, SJCER and TLCERs is not explicit about the requirement to complete catch and effort information during each day or part day of a fishing trip. The regulations require fishers to fill in these details “for” each day, rather than on each day, as required for other returns. Although in some cases the return themselves, or their explanatory notes, do outline that this information is “to be completed on each day at sea”, the fact that the requirement is not also included in the individual regulations creates some ambiguity and makes the requirement legally questionable. This is an unintentional effect of the specific wording of the regulations when they were first introduced.
- 6 This ambiguity can be exploited by permit holders to complete this information at any time up to the time of submitting the return, when all parts of the return can be completed together, which is not supposed to happen. This is a disadvantage for the Ministry’s compliance and enforcement activities as the ambiguity in the wording of the regulations creates an opportunity for misreporting. It also undermines the rationale for specific fields in the returns (ie. to obtain different sets of information on catch and subsequent activities as they occur, allowing for cross-validation and discrepancy analysis²). For example, a Fishery Officer conducting an inspection needs to see catch information recorded on a return in order to compare it to what is being landed or held on board. If the master of the vessel (or other authorised person) is not committing catch information to paper as required (during each day or part-day), it is more difficult to detect possible offending (ie. misreporting or dumping). This undermines the compliance regime and its role in contributing to fisheries management objectives.
- 7 If the issue is not resolved, opportunistic permit holders can continue to take advantage of the situation. This would continue to undermine investigations into misreporting and would reduce the potential effectiveness of enforcement resources (e.g. during vessel and landing inspections). Misreporting is believed to be occurring in several fisheries for which the returns are to be completed³ (particularly those for which TCEPRs are to be completed) and ambiguity created by the wording of the regulations is already providing an opportunity for this type of offending to occur. Misreporting has negative

² Comparison of information obtained from various sources to detect misreporting and other offences. For instance, this may involve comparing the data on the ‘catch’ section of a TCEPR, against the ‘processing’ section of the same form and subsequently against the data reported on a CLR, MHR and LFRR. Inconsistencies and discrepancies may reveal misreporting and other offences.

³ TCEPRs are to be provided for trawlers over 28 metres in overall length, which typically target middle depth and deepwater species such as orange roughy, hoki or southern blue whiting. SJCERs are to be provided for squid jigging vessels, which target squid. TLCERs are to be provided by tuna longlining vessels, which target tuna.

implications for sustainability and legitimate utilisation as it distorts the quality of the information used in fisheries management decisions.

- 8 By clarifying the requirement to complete certain information on a daily basis in the returns, the proposed amendment would allow a more effective use of enforcement and surveillance resources. This would strengthen the role of the compliance regime in contributing to fisheries management objectives. In this context, a decision to amend the regulations as proposed is desirable.

Summary of Options

Option 1 – Status Quo

- 9 Make no amendment to the regulations; the ambiguity in the regulations would continue undermining the reporting requirements, which are an integral component of the QMS.

Option 2 – Amendment for daily completion of fields – Preferred Option

- 10 Amend the relevant regulations (11(2)(a), 12(2)(a) and 13(2)(a)) to clarify the wording of the requirement to complete certain fields of the returns on a daily basis (or more frequently). The benefit of this option would be removing the ambiguity described earlier and creating consistency between different returns with a one-off amendment to the regulations (*preferred option*).

Option 3 – Daily completion of fields without amendment – Alternative Option

- 11 Alternatively, the Chief Executive could use regulation 40 of the regulations to specify different intervals, periods, or dates for completing returns (from those outlined in the regulations). This would allow the Chief Executive to direct relevant permit holders to complete the necessary fields on these returns on a daily basis. Although this option would address the problem to some extent, an ongoing administrative process and cost would be necessary in order to inform new permit holders. Additionally, the ambiguity in the regulations would continue to exist under this option. Regulation 40 is for a purpose other than to set the basic reporting framework, as in this case. That provision is generally for targeted detailed requirements that would apply to individual permit holders only in exceptional circumstances. For these reasons, this is not the preferred option.

Rationale for Management Options

- 12 An amendment to the regulations is proposed under section 297 of the Act, which allows for the creation of regulations for a variety of purposes. In deciding to clarify the timing of certain reporting requirements, the Minister should take into account the role and importance of the reporting requirements in the context of the QMS and the problems that the existing legal ambiguity is causing.

Assessment of Management Options

Option 1 – Status Quo

Impact

- 13 The status quo allows permit holders to complete catch and effort information in the relevant returns up to the time of submitting them. This creates opportunities for misreporting and undermines the rationale for specific fields in the returns, which is to provide different sets of information on catch and subsequent activities for cross-checking and validation. This undermines the intended role of reporting requirements in support of the integrity of the QMS. As there is no explicit legal obligation to complete catch and effort information on a daily basis on certain returns, it could be difficult for a Fishery Officer to detect possible misreporting if the permit holder takes advantage of this loophole. Under the status quo, opportunistic permit holders can continue taking advantage of the situation, undermining investigations into misreporting. Aside from this, the status quo would maintain an inconsistency between the completion timing requirements for different returns, which is not desirable.

Costs

- 14 The main cost of the status quo would come from maintaining a loophole in the reporting requirements which may continue to be abused. Considering the prevalence with which misreporting is believed to occur in certain fisheries, this is a serious concern. Such abuse may become prevalent if more permit holders become aware of the existing legal ambiguity. This could present risks to achieving fisheries management objectives and the sustainability of stocks. The opportunity to misreport that the status quo presents can potentially result in high costs as fishers evade QMS obligations, particularly in relatively high-value fisheries (e.g. orange roughy, tuna).

Benefits

- 15 Aside from not incurring additional regulatory amendment and education costs, the status quo presents no benefits.

Option 2 – Amendment for daily completion of fields

Impact

- 16 Option 2 would clarify the timing of the requirement to complete certain fields on the mentioned returns, making it consistent with other returns and removing the existing ambiguity and opportunity to misreport.

Costs

- 17 Option 2 would result in some minor administrative costs necessary for regulatory amendments, and in costs to inform relevant permit holders of the clarified requirement in the regulations. There would be no additional costs for fishers as the requirement for daily completion of certain fields is consistent with the requirements for other returns and, if fishers have been following

existing instructions on the form and explanatory notes, no additional action or change on their behalf would be necessary.

Benefits

- 18 Option 2 would be a significant improvement from the status quo as it would allow a more effective use of surveillance and enforcement resources; it removes an opportunity for permit holders to conceal illegal activity by clarifying the required timing of completion of catch and effort fields in certain returns. The benefit falls mainly on the effectiveness of the compliance regime, and through that, on its contribution to fisheries management objectives. Additionally, if the form is completed on a daily basis, or more frequently as required, the information is likely to be more accurate than if it was completed days after the fishing activity occurred. The benefit of clarifying the timing of completion therefore also includes an improvement on the quality of information received by the Ministry.

Option 3 – Daily completion of fields without amendment

Impact

- 19 Option 3 would resolve the issue in part by removing the opportunity to misreport as relevant permit holders would be directed by the Chief Executive to complete certain fields on their returns on a daily basis, but would not remove the ambiguity and inconsistency in the wording of the regulations. The provision that allows the Chief Executive to do this is not supposed to set out the basic reporting framework, instead it allows for exceptions to this framework in special circumstances; the requirement should be in the regulations themselves.

Costs

- 20 A cost associated with this option would be maintaining an administrative process to inform relevant new permit holders of the requirement to complete certain fields on a daily basis. This is an unnecessary procedure and cost. No additional costs would be incurred by fishers as this Option would just create consistency with other completion requirements.

Benefits

- 21 As per Option 2, removing an opportunity to misreport and potentially improving the quality of information are also benefits of Option 3. Additionally, the minor savings made from not making a regulatory amendment are also a benefit. This benefit however is believed to be far outweighed by the cost of maintaining a process to inform new permit holders of a directive from the Chief Executive.

Statutory Considerations

- 22 In considering the proposed amendments, the Minister is required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 23 **Section 10** states that the best available information should be taken into account when making decisions that affect utilisation or sustainability of

fishery resources. By clarifying the wording of the regulations that prescribe that returns are to be completed during the day or part of a day in which fishing activity occurs, rather than days later, the proposed amendment would improve the accuracy of information received by the Ministry; information which is later used in decisions that affect utilisation and sustainability.

- 24 **Section 189** outlines the persons required to keep and provide accounts, records, returns (including those mentioned above) and other information required by regulations made under the Act. No additional persons are required to complete returns under this proposal.
- 25 **Section 297(1)(h)** prescribes the power to make regulations outlining the form in which these returns are to be kept and provided, including timing of completion.
- 26 Consequently, the **Fisheries (Reporting) Regulations 2001** specify the timing, among other details, in which these returns are to be completed. For the returns in question, the time of completion of catch and effort information is not explicit. It is in this context, that the Minister is asked to make a decision to clarify such obligation in the regulations.

DAILY COMPLETION OF CERTAIN FIELDS ON TCEPR, SJCER AND TLCER FORMS – SUMMARY OF SUBMISSIONS

1 MFish received submissions on the IPP from:

- Sanford Limited;
- New Zealand Seafood Industry Council (SeaFIC).

General Submissions

2 Both submitters expressed support for the proposed option, an amendment to remove ambiguity in the wording of the relevant regulations that prescribes the time in which catch and effort fields in certain returns are to be completed.

Other Submissions

3 SeaFIC also expressed concern about the wording of the IPP, suggesting that claims made about current levels of offending lacked supporting evidence. Likewise, it highlighted the lack of an assessment of the risk posed by the problem this proposal aims to resolve. SeaFIC considers that the presumption made in the paper, that if more fishers were aware of the legal ambiguity abuse of the loophole would become more prevalent, is unreasonable and unjustified.