

8 September 2008

Tēnā koe

## **REVIEW OF REGULATORY MEASURES AND OTHER MANAGEMENT CONTROLS FOR 1 JUNE 2009**

1. The Ministry of Fisheries (MFish) is currently consulting on several proposals that could result in changes to regulation. If approved these would take effect on 1 June 2009. The Initial Position Paper (IPP) provides you with MFish's initial position on each issue being reviewed. The IPP includes the rationale to support each proposal and for some issues a preliminary recommendation.
2. The purpose of this letter is to provide you with a short summary of each IPP, so that you can choose which issues you would like to examine further, and potentially provide comment on.
3. A copy of the full IPP can be found in the "Consultations" section of the MFish website, [www.fish.govt.nz](http://www.fish.govt.nz), or alternatively you can request a hard copy from Tracey Steel, [tracey.steel@fish.govt.nz](mailto:tracey.steel@fish.govt.nz), or ph: (04) 819 4585.

### ***Exception to minimum net mesh size for the taking of fish species found in freshwater***

4. MFish wishes to consult on:
  - a) Amending 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 finfish<sup>1</sup> found principally in the freshwater environment (100 mm for 'all other species (excluding quinnat salmon)' currently applies);
  - b) Amending 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 finfish<sup>1</sup> found principally in the freshwater environment (100 mm for 'all other species' currently applies).

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<sup>1</sup> As set out in Option 2 of the IPP.

5. 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).
6. 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 life stages 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.
7. 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.
8. 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 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.
9. It is proposed to broaden the range of fish species where an exception 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 exception 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 fish<sup>2</sup>).
10. 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.

### ***Species codes for reporting commercial catch***

11. MFish proposes to amend Part 2 of Schedule 3 of the Fisheries (Reporting) Regulations 2001 (the Reporting Regulations) to add further species codes for statutory reporting purposes for commercial fishing.
12. Regulating further codes for species found in freshwater will assist in monitoring the commercial catch of these species and their inter-relationship with other aquatic life. This will provide a better basis on which to assess future management options. The proposal is confined to the improvement of commercial catch reporting. The proposal does not seek to alter the provisions that authorise the take of these species under other provisions of the Act, and as may be restricted by other legislation or regulation.
13. Regulations to prescribe the information specified in statutory returns<sup>3</sup> may be made under the general regulation making power of the Act (ie, section 297(1)(h)). The key regulatory framework for the reporting of information derived from commercial fishing activities is the Reporting Regulations, and the Schedules of reporting codes contained in those regulations.
14. This paper focuses on the need to specify further codes for a range of species found in freshwater, and to codify these in regulation. These species are either being taken as a bycatch in existing fishing operations, or are subject to some limited interest in target fishing operations for a range of end uses, including live capture.

### ***Review of observer services fees***

15. During late-2007 to early-2008 the Chief Executive of MFish consulted on a range of measures aimed at better managing the risks of foreign charter vessels (FCVs) operating in New Zealand waters. The Chief Executive approved the management measures on 12 June 2008.
16. One of these measures consulted on was the proposal to introduce a risk-based approach to Observer coverage on FCVs<sup>4</sup> i.e. higher Observer coverage, paid for by the FCV operators, for higher risk vessels. Stakeholder submissions to the FCV IPP generally supported this approach. Accordingly, provision needs to be made for these charges in the Regulations. The current charges are no longer a fair reflection of the costs of observers. Consequently, it is also timely to review Observer charges generally.

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<sup>2</sup> 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.

<sup>3</sup> The kinds of statutory returns are defined in regulation 4 of the Fisheries (Reporting) Regulations 2001.

<sup>4</sup> See Appendix 2 of the IPP for description of the risk based approach.

17. The IPP proposes that the Fisheries (Commercial Fishing) Regulations 2001 (the Regulations) be amended to set a new flat daily rate for all Observer services that are not funded through cost recovery levies.
18. The Observer programme is set up under Part 12 of the Fisheries Act (the Act) to collect reliable and accurate information for fisheries research, fisheries management and fisheries enforcement. The costs of the programme are recovered through a mix of cost recovery levies under Part 14 of the Act and transaction fees for specific services.
19. As stated above, the current process has two cost recovery systems: Levy orders and transaction fees. The transaction fees are direct fees payable by the operator of a given vessel receiving an Observer service, of which there are currently three in regulations (supervision of conversion factors, dumping at sea and transshipments), created in 2001.
20. Currently the Regulations set transaction fees for supervision of conversion factors, transshipments and dumping at sea. The listed fees no longer cover the costs for these services and it is proposed that these fees be revised to be more in line with the actual cost of providing the services. The proposal is to move to a flat daily fee.
21. Charges for other Observer services such as coverage for High Seas Fishing including Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and activities authorised by special permits are set as conditions on permits. It is proposed that the provision for all fees for these Observer services be also set out in one place in the Regulations.

### ***Correction of coordinates and description errors in Southland & Sub-Antarctic area regulations***

22. MFish has identified a number of errors in the area descriptions used in fisheries regulations. MFish proposes to redress these historical inaccuracies by amending such incorrect descriptions. The Challenger Fisheries Management Area was the first area to undergo such a review during the last regulatory round and MFish now proposes to review the Southland and Sub-Antarctic Area regulations. This step is being undertaken in conjunction with earlier changes to regulatory drafting procedures that were aimed at ensuring that future area descriptions were fully accurate.
23. In total, 26 errors were identified in the Fisheries (Southland & Sub-Antarctic Areas Amateur Fishing) Regulations 1991 and the Fisheries (Southland & Sub-Antarctic Areas Commercial Fishing) Regulations 1986. The majority of these errors were relatively minor but four errors were deemed significant enough to merit the full consultative process and have, therefore, been included in this IPP. The areas in question are:
  - a) Sprat Point;
  - b) Abut Head;
  - c) Awarua Point;

- d) Long Point and Heretanewha Point.
24. The other errors will also be put forward to the Minister for correction in unison with those being proposed in this paper. Both minor and major changes made to these regulations will be communicated to fishers to ensure that the best and most recent information is readily available.
25. The affected closures and restrictions were previously approved by Cabinet to achieve a desired objective, which has now been compromised by incomplete or inaccurate area descriptions. The current level of uncertainty has resulted in less than optimal management of these areas. The problem is also a threat to the credibility of the fisheries management regime, needlessly hindering the Ministry's strategy of maximising voluntary compliance and maintaining an effective deterrent.

### ***Review of potting definitions***

26. This IPP proposes amending the commercial and amateur fishing regulations to explicitly allow the potting method to be used to take a larger number of species than provided for now. The paper considers two options:
- a) Option 1: Amend the regulations to allow the potting method for taking the following species in addition to those already allowed: octopus, blue cod, paddle crabs, deepwater crabs, and hagfish;
  - b) Option 2: Amend the regulations to allow the potting method to be used to take any species.
27. The regulations already allow commercial and amateur potting for rock lobsters, commercial potting for blue cod in BCO 5, and amateur use of ring pots and pull pots. Potting for other species is not excluded in the regulations, but the definition of a "rock lobster pot" in the regulations is very broad and has been interpreted to apply to pots used to target other species unless a separate pot definition is provided.
28. The rock lobster pot definition is acting as a barrier to the development of potting fisheries and is potentially constraining the ability of fishers to maximise the value they attain from their fishing right. A rock lobster pot is required to have escape gaps, which limits the pot's effectiveness when used to target other species. Potting methods have relatively limited environmental impacts and can also result in a higher quality fish product. These characteristics can increase the value of the fish in the marketplace and the value of the fishing experience for amateur fishers.
29. Additionally, some fishers already use pots to target species like paddle crabs, hagfish and deepwater crabs. These fishers are unaware that the rock lobster pot definition applies to their activity and that their pots are likely to be unlawful.
30. MFish considers the intention of the rock lobster pot regulations was to protect undersize rock lobster and not to constrain the use of pots to take other species. MFish requests input from tangata whenua and stakeholders on the proposed options.

## ***Marine recreational fishing charter vessel registration and reporting***

31. The Ministry of Fisheries (MFish) proposes to introduce regulations that would require all marine recreational charter vessel operators to register their vessels with MFish and report monthly on their fishing activity. For some species in some areas, catch reporting will also be required. The reporting scheme may be phased in around the country over a number of years.
32. A lack of information on the activities and catch of marine amateur fishers is a serious impediment to better management of shared fisheries. Good information is required in the setting of sustainable total allowable catch limits, for allocation of uses between sectors, in spatial planning processes across government, and to enable the possibility of specific management action at a local level – by MFish or by stakeholders themselves.
33. Currently, there is very limited information available on the size and distribution of the marine recreational charter fishing fleet, the amount of fishing activity carried out, species taken or quantities of catch. However, it is evident that the number of charter vessels has increased significantly over the past decade and activities of the fleet have changed. MFish believes that a reporting programme for marine recreational charter vessels will significantly benefit the management of shared fisheries.
34. The proposed regulations would require charter vessel operators to do the following:
  35. Register – Those meeting the definition of a charter vessel operator would be required to register their vessels annually with MFish, providing details of their vessel and business. A fee of \$150 per annum to assist with the administrative costs of the reporting scheme is proposed.
  36. Activity Reporting – Activity would be reported by location (latitude and longitude data), and include the number of fishers, time fished, and main species caught. Information should be recorded at the fishing location on a log-book form provided by MFish.
  37. Catch Reporting – Where catch includes fish of stocks nominated for catch reporting, the number of fish of that stock caught at each location will be required on the reporting form. Weights for large game-fish species could be required on a case by case basis.
  38. Daily reporting forms would be returned to MFish monthly by the 15<sup>th</sup> of the month following the date of fishing. Nil returns will be required if no fishing takes place in a given month.
39. It is proposed that the registration and reporting system is introduced by regulations made under section 297 of the Fisheries Act 1996 (the Act). MFish expects that these regulations will be in place by June 2009. The earliest the registration and reporting requirements will be applied is April 2010.

MFish welcomes written submissions on the proposals contained within the IPP. **Written submissions are due by Wednesday, 22 October 2008** and should be posted to Tracey Steel, Ministry of Fisheries, PO Box 1020, Wellington. Alternatively, electronic submissions can be emailed to [tracey.steel@fish.govt.nz](mailto:tracey.steel@fish.govt.nz).

Finally, we note that all submissions that are received for the purposes of the regulatory measures process are publicly available under the Official Information Act 1982. Should any person or organisation wish for any information contained in their submission to be withheld under the Official Information Act 1982, the grounds for withholding the information must be provided in the submission.

Naku noa na

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