

REGULATORY IMPACT STATEMENT

Offences and Penalties for Breaches to Reporting Requirements

a. Executive Summary

The Ministry of Fisheries (MFish) is proposing regulatory amendments to correct and remove omissions from penalty and offence provisions for breaches to the Fisheries (Reporting) Regulations 2001 (the reporting regulations). No increases in general penalty levels are proposed. The objective of the changes proposed is to contribute to the credibility of the regulatory and fisheries management framework, by removing loopholes. Changes would take effect 1 October 2009. The proposal does not create any additional requirement on fishers. There are likely to be no costs or other negative impacts to fishers who comply with existing requirements as a result of this proposal. There are likely to be some costs to fishers who fail to meet certain requirements in the form of additional penalties. These costs are necessary as a deterrent to encourage compliance with existing provisions and are not more onerous than existing penalties for equivalent requirements.

b. Adequacy Statement

This Regulatory Impact Statement has been approved by the MFish's Regulatory Impact Analysis Review Group and is considered adequate according to the criteria agreed by Cabinet.

c. Status Quo and Problem

At present there are various inconsistencies in the offence and penalty provisions for reporting regulations, which prescribe how commercial fishers must report on various aspects of fishing activities. These may be threatening the integrity of these obligations and their role within the fisheries management framework by creating loopholes. These inconsistencies, summarised in detail in Table 1, include:

- Lack of infringement offences for breaches to certain provisions;
- Lack of offences and penalties for breaches to certain provisions; and
- Existing offences and penalties set at inappropriate and inconsistent levels.

Table 1 – Inconsistencies and omissions in the reporting regulations

| Return | Regulation * - Requirement | Problem |
|--------------------------------------|--|--|
| Catch Landing Return | 6(2) - completion | - No infringement offence - Offence/penalty set as high level offence |
| Trawl Catch Effort Processing Return | 11(2)(a) - completion | - No infringement offence - Offence/penalty set as high level offence |
| Lining Catch Effort Return | 11A(2)(a-d) - completion | - No offence/penalty for not completing |
| | 11A(2)(a-d), (3) – completion, provision | - No infringement offences |
| Netting Catch Effort Landing Return | 11B(2)(a-f), (4) - completion, provision | - No infringement offences |
| Squid Jigging Catch Effort Return | 12(2)(a) – completion | - No infringement offence - Offence/penalty set as high level offence |
| Tuna Longlining Catch Effort Return | 13(2)(a) - completion | - No infringement offence - Offence/penalty set as high level offence |

*Regulation references from the Fisheries (Reporting) Regulations 2001

d. Objectives

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

e. Alternative Options

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

f. Preferred Option

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

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

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

g. Implementation and Review

Subject to the outcomes of the consultation and Ministerial approval; the changes will be given effect on 1 October 2009. Although the changes proposed will not require any formal monitoring or evaluation, MFish intends to put in place procedures to eliminate further omissions and inconsistencies from occurring.

h. Consultation

MFish consulted with all persons and organisations having an interest in correcting inconsistencies and omissions in offences and penalties that support commercial reporting obligations. There were two submissions, both of which were in favour of the proposal.