

# CORRECTION OF COORDINATES AND DESCRIPTION ERRORS IN CHALLENGER AREA REGULATIONS - FINAL ADVICE

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## Executive Summary

- 1 The Ministry of Fisheries (MFish) seeks your approval to amend a number of area descriptions and coordinates found in the Challenger Area Regulations.
- 2 An Initial Position Paper (IPP), released on the 7<sup>th</sup> of March 2008 proposed to remedy all coordinate and description errors found in the Fisheries (Challenger Area Amateur Fishing) Regulations 1986 and Fisheries (Challenger Area Commercial Fishing) Regulations 1986 and went on to describe two errors that would require significant changes.
- 3 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 is being proposed as the initial area to undergo such a review. This step is undertaken in conjunction with earlier changes to regulatory drafting procedures that were aimed at ensuring that future area descriptions were fully accurate.
- 4 In total, there were 27 regulations that were found to contain errors in the Fisheries (Challenger Area Amateur Fishing) Regulations 1986 and the Fisheries (Challenger Area Commercial Fishing) Regulations 1986. The vast majority of these errors were relatively minor but the two involving the Dieffenbach Point and the Farewell Spit Light were deemed significant enough to merit the full consultative process of the IPP. The other errors are also being put forward in this Final Advice Paper (FAP) to you for correction in unison with the two that were proposed in the IPP. 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.
- 5 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.
- 6 Two options are being proposed for your consideration; to retain the status quo or amend the errors identified. Of those two options, only the latter addresses any of the concerns described earlier in a meaningful way.

## The Issue

- 7 Coordinates used in many area definitions are incorrect, which is undermining the purpose of the closures as approved by Cabinet. The errors have also

affected the Ministry of Fisheries' ability to enforce these regulations effectively.

- 8 Correcting these errors will ensure that the individual goals of each affected closure are achieved and the credibility of the overall fisheries management regime is maintained. The affected closures were approved by Cabinet and put in place to address issues relating to sustainability and allocation. The current situation does not allow MFish to properly manage these closures to their intended purpose. The inconsistencies present in area definitions also create uncertainty and difficulties for prosecutions that involve these areas.
- 9 There are a number of risks involved in allowing the existing situation to remain; primarily those involving deliberate exploitation of a weakness in the regulations. Some of the closures described by the coordinates in question were put in place to protect ecologically sensitive areas that require the full protection of the regulations. Any encroachment has the potential to seriously affect these vulnerable areas.
- 10 Many changes have been made to the Ministry's operational practices to avoid further errors in future regulations and MFish is now seeking the Minister's approval to correct existing faults on an area by area basis. The corrections proposed in this paper are part of that process.

## Summary of Options

### *Initial Proposals*

- 11 The IPP proposed the following options:
  - a) *Option one - status quo* (no action): Retain the incorrect area descriptions and coordinates as they currently appear in the regulations;
  - b) *Option two*: Correct the area descriptions identified. *MFish preferred option.*

### *Final Proposal*

- 12 MFish recommends that you agree to amend the Fisheries (Challenger Area Amateur Fishing) Regulations 1986 and the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 with the revised area definitions and coordinates.

## Submissions Received

- 13 The New Zealand Seafood Industry Council Ltd. (SeaFIC) was the only group to put forward a submission on this proposal.

## MFish Discussion

- 14 SeaFIC supports Option 2 – i.e., the correction of the identified errors. They have noted that consultation is occurring only on 2 of the most significant identified errors in the amateur and commercial regulations. In the interests of

completeness, they suggested that a list of the other errors that are being corrected be included.

- 15 The lone submission is a reflection of the fact that the proposal is unlikely to impact on either commercial or recreational fishers in a significant way. MFish has included the full list of corrections as an appendix to this FAP but did not feel it was appropriate or necessary to include these minor changes in the initial consultation.

## **Rationale for Management Options**

- 16 MFish has made a concerted effort to identify all coordinate or area description errors that currently exist within the amateur and commercial regulations. This was done in conjunction with measures aimed at improving the quality of the process to define future regulated areas. This FAP provides an opportunity for you to address the errors found within the Challenger Area Amateur Regulations.

## **Assessment of Management Options**

### ***Option 1: Status Quo***

#### *Impact*

- 17 Retaining the status quo does not address the issues of credibility and maximising voluntary compliance that MFish seeks to achieve. It will continue to create uncertainty and the ability to exploit weaknesses around the true location of regulated closures and restrictions. Most importantly, it will continue to undermine the intent of previously approved Cabinet closures and restrictions.
- 18 The ambiguities will continue to create needless hurdles to compliance for users of the relevant areas and the compliance arm of the Ministry responsible for enforcing these restrictions.

#### *Costs*

- 19 There is a risk of breaches against the affected regulations if they are perceived as unenforceable. These risks could increase over time if this perception is allowed to grow and eventually extend to other fisheries regulations. Any reduction in voluntary compliance will result in greater effort and enforcement costs in order to achieve an optimal level of compliance.

#### *Benefits*

- 20 There are no benefits associated with maintaining the status quo.

### ***Option 2: Amendments to correct errors in regulations***

#### *Impact*

- 21 Addressing these errors will redress a longstanding deficiency in these regional regulations and will complement the congruent work being done by MFish to improve all area descriptions. The impact to fishers is expected to be

relatively low since this proposal does not introduce new restrictions and only aims to clarify existing ones.

### *Costs*

- 22 There are no direct costs to industry from these proposed changes. Fishers will need to be informed of the new area descriptions once these changes have been approved. It is expected that these changes will warrant a low to moderate level of resources from MFish but can be covered within existing processes.

### *Benefits*

- 23 Properly labelling these incorrect areas will increase their management effectiveness and better reflect the original goals behind the restrictions and closures involved. Improved area descriptions will also assist fishers in complying with existing fisheries regulations – increasing voluntary compliance. Accurate area descriptions that are compatible with current navigational technology, such as GPS, will also serve to improve the credibility of our fisheries management regime.
- 24 Correcting all commercial and amateur area descriptions within the Challenger area simultaneously is more efficient for MFish than the traditional approach of addressing individual errors on an ad hoc basis.

## Statutory Considerations

- 25 In considering the proposed amendments, you are required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 26 **Section 5 (a) and (b):** There is a wide range of international obligations relating to fishing (including sustainability and utilisation of fish stocks and maintaining biodiversity). MFish considers that any of the recommendations are consistent with issues arising under international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- 27 **Section 8:** The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. Part of ensuring sustainability involves avoiding, remedying or mitigating any adverse effects of fishing on the aquatic life. The closed/restricted areas described in this paper were put in place to control the impacts of fishing on vulnerable areas. The recommended changes are put forward to ensure that compliance with these restrictions is achieved.
- 28 **Section 9(c):** The recommended changes will afford greater protection to the habitats of particular significance identified within these closed/restricted areas by providing added certainty and well-defined boundaries.
- 29 **Section 10:** MFish considers that the recommendations made are based on the best available information and that the changes would better reflect current mapping technology.
- 30 **Section 297(1)(a)(ii):** The Governor-General may from time to time, by Order in Council, make regulations regulating, authorising, or prohibiting the taking or possession of fish, aquatic life, or seaweed from any area.