

DAILY COMPLETION OF CERTAIN FIELDS ON TCEPR, SJCER AND TLCER FORMS - FINAL ADVICE

Executive Summary

- 1 You are asked to approve an amendment to the Fisheries (Reporting) Regulations 2001 (the regulations) to remove ambiguity in the current wording that prescribes the timing in which TCEPR, SJCER and TLCER¹ returns are to be completed. The current wording of the regulations that prescribe these returns is not explicit about the requirement to complete certain fields of these returns on a daily basis, as for other returns.
- 2 An Initial Position Paper (IPP), released on 12 March 2008, proposed to amend the regulations, adhering to the original intent for catch and effort information to be completed on a daily (or part-daily) basis on the returns (Option 2). This was the preferred option as it is a one-off, cost-effective way of addressing the problem. Aside from the status quo (Option 1), an alternative option, for the Chief Executive to direct permit holders to complete this information on a daily basis (Option 3), was also included in the IPP.
- 3 Options 1 and 2 proposed in this FAP are the same as those presented in the IPP, Option 3 is no longer proposed, and Option 2 is still the preferred option. The two submissions received support the preferred option. One submitter, however, raised some concerns that are addressed under 'MFish Discussion' below.
- 4 The objective of the proposed amendment is to remove ambiguity in the wording of the regulations and, through that, to remove an opportunity for commercial fishers to misreport. This opportunity arises from the lack of an explicit obligation in the regulations to record catch and effort information in these returns during any one day.

The Issue

- 5 The Quota Management System (QMS) and its integrity rely on accurate, timely and verifiable 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. In some cases the returns themselves, or their explanatory notes, do outline that this information is "to be completed on each day at sea", although the fact that the requirement is not also included in the individual primary regulations creates some ambiguity and makes the requirement legally

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

questionable. This is an unintentional effect of the specific wording of the regulations when first introduced.

- 6 This loophole can be exploited by opportunistic permit holders. It allows them to complete this information at any time up to the time of submitting the return, i.e. by the 15th of the month after the fishing trip, when all parts of the return can be completed together, which is not supposed to happen. This is a disadvantage for the Ministry of Fisheries' (MFish) compliance and enforcement activities as the ambiguity in the wording of the regulations creates an opportunity for misreporting catch. It also undermines the rationale for specific fields in the returns; i.e. to obtain different sets of information on catch and subsequent activities as they occur, allowing for cross-validation and discrepancy analysis².
- 7 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 recording catch information on the return as required (during each day or part-day), it is more difficult to detect possible offending (i.e. misreporting or dumping). This undermines the structure of such compliance measures and their role in contributing to fisheries management objectives.
- 8 If the issue is not resolved, opportunistic permit holders can take advantage of the current situation. Fishery Officers routinely find vessels with incomplete returns. This undermines investigations into misreporting and reduces the potential effectiveness of enforcement resources, particularly during vessel and landing inspections and data discrepancy analyses. Misreporting is occurring in several fisheries for which the returns are to be completed³ and is the subject of historical and current prosecutions. The ambiguity created by the wording of the regulations is already providing an opportunity for this type of offending to occur; and intense investigation resources are required to deal with this type of offending. Misreporting has negative implications for sustainability and legitimate utilisation, and it distorts the quality of the information used in fisheries management decisions.
- 9 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.

² Comparison of information obtained from various sources to detect misreporting of catch 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 return and subsequently against the data reported on a Catch Landing Return, Monthly Harvest Return and Licensed Fish Receiver Return. Inconsistencies and discrepancies may reveal misreporting of catch and other offences.

³ TCEPRs are to be provided for fishing by 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 fishing by squid jigging vessels. TLCERs are to be provided for fishing by tuna longlining vessels.

- 10 From a data collection perspective, the information to be completed should reflect individual activity, e.g. each set of a net in any one day. If catch information is not committed to a statutory return as it is generated, it must then be transposed from another informal record or from memory, potentially reducing accuracy.

Summary of Options

Initial Proposals

- 11 The IPP proposed the following options:
- a) *Option one - status quo*: Make no amendment to the regulations;
 - b) *Option two - Amendment to require daily completion of fields*: Amend the relevant regulations to clarify the wording of the requirement to complete certain fields of the returns on a daily basis (or more frequently), as per the original intent of the regulations (*preferred option*);
 - c) *Option three – Daily completion of fields without amendment*: The Chief Executive could use a provision of the regulations to direct relevant permit holders to complete the necessary fields on a daily basis⁴.

Final Proposal

- 25 MFish recommends that you agree to the amendment of regulations 11(2)(a), 12(2)(a) and 13(2)(a) of the Fisheries (Reporting) Regulations 2001 to clarify the wording of the requirement to complete certain fields of the relevant returns on a daily basis (or more frequently), as per the original intent of the regulations (**Option 2**).

Consultation

- 26 Public consultation on the proposed options was undertaken.

Submissions Received

- 27 Submissions regarding this proposal were received from:

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

MFish Discussion

- 28 Both submitters support the preferred option. SeaFIC however, raised concerns about aspects of the wording of the IPP, suggesting that claims made

⁴ This option would address the problem to some extent, although an ongoing administrative process and cost would be necessary to inform new permit holders. Additionally, the ambiguity in the regulations would continue to exist. The relevant provision of the regulations is for a purpose other than to set the basic reporting framework, as intended 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, and because no submitters supported this approach, this option is no longer proposed.

about current levels of offending are not backed up by any evidence. Likewise, it highlights the lack of an assessment of the risk posed by the problem this proposal aims to resolve. SeaFIC considers the presumption made in the paper, that if more fishers were aware of the legal ambiguity such abuse would become more prevalent, to be unreasonable and unjustified.

- 29 MFish notes that the loophole that the proposal aims to resolve could be exploited to the detriment of sustainable utilisation of the fisheries involved, although there are no verifiable estimates of the levels of offending currently occurring in these fisheries or explicit evidence that the current wording of the regulations actually results in such offending. However, several sources of information such as detected offences, prosecutions, intelligence reports and informant claims clearly indicate that misreporting is occurring and the aforementioned loophole is providing an opportunity for that. General information to this effect has been provided to commercial representatives involved in meetings with MFish, most recently during the review of foreign charter vessel requirements currently being finalised. Nonetheless, MFish has taken into account the points raised and acknowledges submitters' support to remove regulatory ambiguity and to improve information available for fisheries management.
- 30 Given that none of the submissions support Option 3, and that the regulation which would have been used to give effect to that option is intended for other purposes, the option is withdrawn.
- 31 Taking into account that the proposed option simply clarifies existing requirements and removes ambiguity without adding further obligations, there is no negative impact to commercial fishers or other stakeholders.

Rationale for Management Options

- 32 An amendment to the regulations is proposed pursuant to section 297 of the Fisheries Act 1996 (the Act), which allows for the creation of regulations for a variety of purposes. In deciding to clarify the timing of certain reporting requirements, as proposed in Option 2, you 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 could cause. The Ministry believes that these problems are providing an opportunity for misreporting of catch to occur.

Assessment of Management Options

Option 1 – Status Quo

Impact

- 33 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 catch 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. The lack of an explicit legal obligation to complete catch and effort information on a daily basis on certain returns increases the difficulty involved in detecting 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

- 34 The main cost of the status quo would come from maintaining a loophole in the reporting requirements. Considering the impact that misreporting can have on sustainable utilisation of the fisheries involved, this loophole is a concern. Such abuse may become more prevalent if more permit holders become aware of the existing legal ambiguity. This could present risks to the achievement of fisheries management objectives, undermining the sustainability of stocks and the rights of other users of the fisheries for which the returns are to be completed. The opportunity to misreport that the status quo presents could potentially result in high costs as fishers could evade QMS obligations, particularly in relatively high value and/or high volume fisheries for which the returns are to be completed (e.g. orange roughy, tuna, hoki).

Benefits

- 35 The status quo presents no concrete benefits aside from minor cost savings from not making a regulatory amendment.

Option 2 – Amendment for daily completion of fields

Impact

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

Costs

- 37 Option 2 would result in some minor administrative costs necessary for regulatory amendments, including those incurred 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 return and explanatory notes, no additional action or change on their behalf would be necessary. If existing instructions are not being followed fishers will be required to complete certain lines of data on a form more frequently than they currently are.

Benefits

- 38 Option 2 would be an 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 measures, and through that, on its contribution to fisheries management objectives. Additionally, if the return is completed on a daily basis, or more frequently as required, the information is likely to be more accurate than if it was completed several 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 MFish.

Statutory Considerations

- 39 In considering the proposed amendments, you are required to follow relevant statutory criteria contained in the Act. These criteria are set out below.
- 40 **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.
- 41 **Section 189** outlines the persons required to keep and provide accounts, records, returns and other information required by regulations made under the Act.
- 42 **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.
- 43 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 you are asked to make a decision to clarify such obligation in the regulations.