Review of Sustainability Measures and Other Management Controls for the 2006–07 (01 April) Fishing Year

Final Advice Paper

9 March 2006

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INTRODUCTION

- This paper provides you with the Ministry of Fisheries' (MFish) initial position and final advice and recommendations on those sustainability measures and other management controls reviewed for the April 2006 fishing year.
- The paper has been structured so that the Initial Position Paper (IPP) for each issue is followed immediately by the Final Advice Paper (FAP) for that issue.

Initial Position Paper

The IPP was developed for the purpose of consultation as required under the Fisheries Act 1996 and it contained MFish's initial position on the fishstocks and deemed values it had identified for review and proposed amendments to fisheries regulations. MFish emphasised that the views and recommendations outlined in the paper were preliminary and provided as a basis for consultation with stakeholders.

Consultation

- 4 On or about 22 December 2005, MFish provided copies of the IPP to stakeholders and iwi.
- 5 Stakeholders and iwi were asked to provide written submissions on the IPP by 17 February 2006. A copy of each submission received has been given to you in a separate document.

Final Advice Paper

- This paper contains MFish's final advice and recommendations to you on the regulatory proposals and deemed values included in the review of sustainability measures and other management controls for the April 2006 fishing year.
- Each FAP section contains a summary of the views of stakeholders, MFish discussion (which contains an analysis of your legislative obligations in relation to each proposal) and recommendations for the April 2006 fishing year. MFish recommends that you regard the complete document (comprising both the IPP and FAP sections) as a single advice paper.
- A copy of this advice paper will be made available to iwi and stakeholders who submitted a submission on these proposals.

Implementation of Decisions

9 Following your final decision, officials will provide you with a draft letter to stakeholders outlining your decisions.

10	In addition, s 12(2) of the Fisheries Act 1996 requires that after setting or varying any sustainability measure, you are to, as soon as practicable, write to sector groups advising them of the reasons for your final decisions.

STATUTORY OBLIGATIONS AND POLICY GUIDELINES

Purpose of the Fisheries Act 1996

- The purpose statement of the 1996 Act describes its overriding objective of providing for the utilisation of fisheries resources while ensuring sustainability. The 1996 Act defines "ensuring sustainability" as to "maintain the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment". Management of a specific stock must be consistent with these dual requirements in order that sustainability of the stock can be ensured.
- 2 "Utilisation" of fisheries resources is defined as "conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing." Within the parameters of these sustainability standards, there is a positive obligation to provide for the use of fisheries resources.
- The extent of management measures required to achieve the purpose of the 1996 Act will produce a continuum of potential outcomes. Utilisation may be provided for at different levels, and the extent of such use should be considered on a case-by-case basis. Where there is a significant threat to the sustainability of a fishstock, the measures adopted to achieve sustainability are likely to be more stringent than where there is a lesser threat.
- Consideration of social, economic, and cultural wellbeing (in conjunction with other considerations consistent with the purpose and principles of the 1996 Act) may influence how measures to ensure sustainability are implemented. Hence, providing for utilisation while ensuring sustainability may be achieved in different ways, and the objective may be reached over time. Consideration of the purpose of utilisation may be relevant in determining which is the most appropriate approach.

Setting a Total Allowable Catch

Below the level of the purpose statement, the 1996 Act contains a number of specific provisions relating to ensuring a stock is managed sustainably. A key measure is the setting of a TAC for a QMS stock. The Minister is required to set a TAC for each QMS stock. The 1996 Act contains a number of different options in terms of the intended target level able to be implemented for a QMS stock. All of the options are consistent with the purpose of "ensuring sustainability," but each option provides for a fundamentally different management outcome.

Maximum Sustainable Yield (s 13)

6 Section 13 represents the default management option that is to be applied when setting a TAC for a stock within the QMS, unless that stock qualifies under criteria for management under ss 14 or 14A.

- Under s 13 there is a requirement to maintain the biomass of a fishstock at a target stock level, being at, or above, a level that can produce the MSY, having regard to the interdependence of stocks. MSY is defined, in relation to any fishstock, as being the greatest yield that can be achieved over time while maintaining the stock's productive capacity, having regard to the population dynamics of the stock and any environmental factors that influence the stock. A requirement to maintain stocks at a level that is capable of producing the MSY is generally recognised internationally as being an appropriate fishstock target, although there is some international support for MSY representing a minimum fishstock threshold level.
- If a stock is currently below the target stock level, there is a requirement pursuant to s 13(2)(b) to set a TAC that will result in the stock being restored to the target stock level (ie, at or above a biomass that will support MSY) and in a way and rate which has regard to the interdependence of stocks and within a period appropriate to the stock, and having regard to the stock's biological characteristics and any environmental conditions affecting the stock. If the stock is above a target stock level, there is a requirement to set a TAC that will result in the stock moving towards the target stock level, or alternatively remain above the target stock level, having regard to the interdependence of stocks (s 13(2)(c)). In determining the way in which, and rate at which, a stock is altered to achieve the target stock level, the Minister is to have regard to such social, cultural, and economic factors as he or she considers relevant (s 13(3)). Section 13(3) makes it explicit that such factors are relevant in the determination of the way and rate of progress to the target level, rather than in the determination of the target stock level itself.
- There is no set rate, or time frame, within which a rebuild or a "fishing down" of a stock must be achieved. However, the progress of moving towards the target stock level must be suitable to the fishery in question, having also considered those matters specified in s 13 of the 1996 Act. Hence, a TAC should be viewed as a tool for moving a stock towards the target stock level. Other measures may be adopted in conjunction with a change in the TAC. However any additional measures should not be relied on in place of the TAC.
- Additional flexibility is encompassed within s 13 by the capacity to provide for an inseason adjustment to the TAC for certain stocks. Any TAC that is set or varied has effect on and from the first day of the next fishing year for the stock concerned. An exception applies to those stocks listed on the Second Schedule to the 1996 Act. This Schedule can apply to any stock with a highly variable abundance. For such stocks in years of high abundance, the TAC may be increased in-season, and the Minister may allocate all or part of that increase as Annual Catch Entitlements (ACE) to commercial fishers. At the commencement of the next fishing year the TAC reverts to the level set at the commencement of the previous fishing year. This means that commercial catch levels, not property rights in the form of individual transferable quota, are increased during the fishing year.
- An in-season TAC increase may be distributed between commercial, customary and recreational fishers, and an allowance made for other sources of mortality to the stock. The increase allocated to commercial fishers does not result in an increase to the TACC during the fishing year.
- The fundamental objective of an in-season adjustment is to manage a stock at or above the level that can produce the MSY. Information about what is the desirable

level of the TAC that can produce the MSY is available at such a time that a decision is made after the start of the fishing year. However, at the end of the fishing year, the TAC reverts to the level that was applicable at the start of the fishing year.

No specified target stock level (s 14)

- Section 14 of the 1996 Act prescribes an exception to the target stock level based on an assessment of the MSY for those stocks where:
 - a) It is not possible to estimate MSY because of the biological characteristics of the species; or
 - b) A catch limit for New Zealand has been determined as part of an international agreement; or
 - c) The stock is managed on a rotational or enhanced basis; or
 - d) The stock comprises one or more highly migratory species.
- For stocks that meet the above criteria, and as a result are listed on the Third Schedule of the 1996 Act, a TAC may be set other than in accordance with the requirements in respect of target stock levels stated in s 13, provided the TAC better achieves the purpose of the 1996 Act.
- While any TAC must be set in a way that ensures use of the stock is sustainable, there is no requirement to take into account or be guided by the need to manage in accordance with MSY. In contrast to s 13, s 14 provides significant flexibility as to the target stock level set for a stock. The rationale for that flexibility is different for each of the categories of stocks eligible for listing on the Third Schedule.
- The biological characteristics of some stocks mean that it is not possible or necessary to estimate the MSY to ensure the sustainability of the stock. For example, squid is a short-lived species. There is currently no ability to estimate the available abundance either before or within the fishing season. The extent of catch taken from the available biomass will not affect future recruitment or abundance of the species. For this reason, the TACs set for squid stocks have not been significantly changed during the last decade, but the actual catch levels have fluctuated markedly within that time.
- 17 Under an international agreement, a catch limit for a species may be set and allocated between individual fishing nations, eg, southern bluefin tuna. Typically such international agreements relate to highly migratory species or species that straddle national boundaries. The overall catch limit set for the species must be consistent with international fisheries management law; hence, the catch limit would need to ensure the sustainability of the species. There is no requirement that New Zealand separately manages that portion of the species it is allocated at MSY.
- The third category relates to those stocks managed on a rotational or enhanced basis. The effect of rotational fishing or fisheries enhancement is that MSY may no longer be the appropriate target level (eg, scallops in area 7 (SCA 7)). Enhancement is designed to increase the level of abundance. While enhancement of the stock may not need to be consistently maintained, the ability to intervene to increase abundance

- means that the sustainability of the stock can be ensured. The available yield will change over time.
- Rotational harvesting involves selective harvesting of a portion of the stock. Rotational harvesting is best suited to sedentary species or stocks with established fishing grounds. The yield taken in any one year may not be the MSY available for the stock overall. The ability to successfully manage a stock on a rotational basis may be dependent upon the biological characteristics of the stock.
- A combination of rotational harvesting and enhancement may result in greater flexibility in setting a TAC that will ensure the sustainability of the stock. Enhancement may enable rotationally harvested areas to be restocked at a level above that which could be naturally produced. Enhancement may also provide an ability to maximise catch from each area as it is rotationally fished. Areas closed to fishing allow both enhanced and wild stocks to contribute to the spawning biomass and reach harvestable size before being subjected to commercial fishing. Area closures may protect sufficient adult stocks to ensure adequate recruitment to the fishery.
- As with s 13, s 14 provides for an in-season increase to the TAC for stocks listed on the Third Schedule. The purpose of an in-season increase under s 14 is to take advantage of the available yield beyond any pre-determined target stock level. However, the level of the in-season increase must be consistent with the objective of ensuring sustainability of the stock.
- An in-season TAC increase may be distributed between commercial, customary and recreational fishers, and an allowance made for other sources of mortality to the stock. Additional ACE is generated during the fishing year in respect of the increase in the TAC allocated to commercial fishers. At the close of the fishing year the TAC reverts to the level set at the beginning of that fishing year.

Above level of long term viability (s 14B)

- A further exception to setting a TAC in accordance with the MSY is the management of a stock under s 14B of the 1996 Act. A TAC is to be set at a level that ensures the stock is maintained above the level that ensures its long-term viability. However, the Minister must be satisfied that the purpose of the 1996 Act would be better achieved by setting a TAC other than in accordance with s 13 (ie, at or above MSY). Maintaining a stock above the level that ensures its long-term viability is consistent with the purpose of the 1996 Act in relation to meeting the reasonably foreseeable needs of future generations.
- The purpose of s 14B is to enable other related stocks to be fully harvested. The stock in question must be taken primarily as an incidental catch during the taking of one or more other stocks and must constitute only a small proportion of the combined catch taken. The 1996 Act does not prescribe a level that is deemed to be above that which ensures the long-term viability of a stock. That determination is required on a case-by-case basis, subject to the requirement that the TAC must be set at a level no greater than what is required to allow for the taking of another stock in accordance with its own TAC and TACC. Quota owners are required to take all reasonable steps to minimise the catch of the stock managed below the biomass that will support the MSY ($B_{\rm MSY}$).

- Section 14B addresses the difficulty of managing stocks within a mixed fishery to B_{MSY} without forgoing some economic return. In some mixed species fisheries the TACs of minor bycatch species limit the ability of fishers to catch their entitlement of the target species and could result in closure of the target fisheries.
- Section 14A specifies a number of significant tests apply in order to mitigate the risk of managing a stock below B_{MSY} . First, the stock must be able to be maintained above a level that ensures its long-term viability. Secondly, the Minister is required to consider the need to: (1) commission appropriate research to assess the impact of reducing the stock below B_{MSY} ; (2) implement measures to improve the quality of information about the stock; (3) close areas to commercial fishing to reduce any sustainability risk to the stock; and (4) avoid any significant adverse effects on the aquatic environment of which the stock is a component. Hence, the setting of a TAC under s 14B to allow for the taking of another stock may need to be balanced by the closure of areas to fishing to ensure the stock is maintained above a level that ensures its long-term viability. Consideration of significant adverse effects of fishing could have potential implications for the aquatic ecosystem as a result of reducing the biomass of the stock.
- Consideration also needs to be given to the social, cultural and economic implications of managing a stock below $B_{\rm MSY}$. The setting of a TAC above the level that ensures the stock's long-term variability must have the support of quota owners who hold 95% of the shares in the stock. Arrangements need to be in place to address the concerns of those quota owners who do not support the setting of a TAC under s 14B. The total benefits of managing the stock at a level other than that permitted under s 13 must outweigh the total costs. Managing the stock in a manner other than s 13 must have no detrimental effects on non-commercial fishing interests in the stock.
- A final important check and balance when setting a TAC under s 14B is that the Minister for the Environment is required to concur with a proposal to enable a TAC to be set for a stock above the level that ensures it long-term viability.
- The ability to set a TAC under s 14B is triggered by the submission of a proposal from quota owners to the Minister of Fisheries to manage the stock in this way. An Order in Council (ie, a regulation) must be made specifying the application of s 14B for the named stock.

Other statutory obligations applicable when setting a TAC

When setting a TAC, a number of generic provisions of the 1996 Act need to be taken into account – in particular, the purpose of the Act (s 8), the environmental and information principles (outlined in ss 9 and 10 respectively), factors to be taken into account when setting sustainability measures (s 11), and the application of international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (s 5).

Information principles

The nature of the data and assumptions used to generate fisheries assessments and the results produced contain inherent variation and uncertainty. The 1996 Act specifies, in s 10, the information principles to use when information is uncertain. Decisions

should be based on the best available information that, in the particular circumstances, is available without incurring unreasonable cost, effort, or time. Decision makers should consider any uncertainty in the information available and be cautious when information is uncertain, unreliable, or inadequate. However, the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the 1996 Act.

Environmental principles

- The 1996 Act prescribes three environmental principles that the Minister must take into account when exercising powers in relation to utilising fisheries resources and ensuring sustainability. First, associated or dependent species (including non-fish by catch) should be maintained above a level that ensures their long-term viability. Secondly, biological diversity of the aquatic environment should be maintained (ie, the variability of living organisms, including diversity within species, between species, and of ecosystems). Lastly, habitat of particular significance for fisheries management should be protected.
- 33 The 1996 Act defines associated and dependent species as any non-harvested species taken or otherwise affected by the taking of a harvested species. The term "long-term viability" is defined in the 1996 Act as a low risk of collapse of the stock or species, and the stock or species has the potential to recover to a higher biomass level. Long-term viability may be considered in the context of the natural dynamics of populations. At one level the concept implies the need to ensure the continuing existence of species in the sense of maintaining populations in a condition that ensures a particular level of reproductive success. At another level, long-term viability implies an ability to maintain populations at a level that ensures the maintenance of biodiversity. Long-term viability could be achieved at very low levels of population size, depending on associated risks, such as recruitment failure at low population sizes. Long-term viability also needs to be considered with respect to utilisation by different sector groups. Equally, where fishing is affecting the viability of associated and dependent species, there is an obligation to take appropriate measures, such as method restrictions, area closures, and potentially adjustments to the TAC.
- 34 "Biological diversity" includes the variability among living organisms, including diversity within species, between species, and of ecosystems. The aquatic environment is of broad scope and encompasses:
 - a) The natural and biological resource comprising any aquatic ecosystem; and
 - b) All aquatic life and all places where aquatic life exists.
- The maintenance of biodiversity needs to be considered in the context of the purpose of the 1996 Act that assumes that, where possible, a resource should be used to the extent that sustainability is not compromised. Determination of the extent of fishing or the impacts of fishing that can occur requires an assessment of the risk that fishing might cause a species to become extinct or biodiversity is reduced to an unacceptable level. In the absence of information to undertake a detailed assessment, the information principles specified in the 1996 Act provide guidance for decision makers on the approach to be adopted.

Habitat can be defined as "the place or type of area in which an organism naturally occurs" (NZ Biodiversity Strategy). The Magnuson-Stevens Fishery Conservation and Management Act (USA) defines "essential fish habitat" as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity". The maintenance of healthy fishstocks requires the mitigation of threats to fish habitat. However, the source of the threats may not be confined solely to the activity of fishing. A range of terrestrial activities may impact on fisheries habitats. Habitats that assist in the reproductive and productive process of a fishery, hence are of special significance, should be protected. Adverse effects on such areas are to be avoided, remedied, or mitigated.

International obligations (s 5(a))

- There is a range of international obligations that relate to fishing. The two key pieces of international law relating to fishing, and to which New Zealand is a party, are the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and the United Nations Convention on Biological Diversity 1992 (the Biodiversity Convention). It is MFish's view that the provisions of the 1996 Act, and the proposed exercise of powers under the legislation are consistent with New Zealand's international obligations.
- The 1996 Act is to be interpreted, and all persons exercising or performing functions, duties, or powers under the Act are required to act, in a manner consistent with New Zealand's international obligations relating to fishing. As a general principle, where there is a choice in the interpretation of the 1996 Act or the exercise of discretion, the decision maker must choose the option that is consistent with New Zealand's international obligations relating to fishing (s 5(a) of the Act).
- MFish is involved in a number of initiatives relating to the management of stocks within New Zealand fisheries waters that are consistent with its international obligations. MFish seeks to give effect to those obligations on a generic basis. Application of generic policies, such as the Marine Protected Area Strategy and MFish's Environmental Management Strategy, to the management of specific stocks will follow in due course.

Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (s 5(b))

The 1996 Act is to be interpreted, and all persons exercising or performing functions, duties, or powers under the Act, are required to act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (s 5(b)). This requirement is intended to further the agreements expressed in the Deed of Settlement referred to in the Preamble to the Settlement Act. In particular, Mäori non-commercial fishing rights continue to give rise to Treaty obligations on the Crown.

Additional factors to be taken into account (s 11)

- Before setting or varying any sustainability measure (including a TAC) the following factors must be considered:
 - a) Any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991 and any management strategy or management plan under the Conservation Act 1987 that apply to the coastal marine area and which the Minister considers to be relevant;
 - b) Any effects of fishing on the stock and the aquatic environment;
 - c) Any existing controls that apply to the stock or area concerned;
 - d) The natural variability of the stock concerned;
 - e) Any conservation services or fisheries services;
 - f) Any relevant fisheries plan approved under this Part; and
 - g) Any decisions not to require conservation services or fisheries services.
- 42 Consideration also needs to be given to the most effective way of achieving the desired outcome of a sustainability measure. An important factor in supporting the use of non-statutory measures is the degree of support for the measure and the nature of the monitoring and enforcement regime proposed to support the measure.

Analysis of TAC options

An analysis of different potential TAC options is undertaken in respect of each stock where there are viable alternatives. Where more than one statutory TAC option is available (ie, ss 13, 14 or 14A) an assessment of relevant information is provided. An important consideration is the respective trade-offs between different TAC options in terms of potential economic return, information levels (current and future), and sustainability concerns (stock specific and general environmental). The purpose is to indicate the relative weighting assigned to different factors for each TAC option. In most instances only a relatively subjective qualitative assessment can be undertaken.

Low Knowledge By-catch Framework

Two of the fishstocks under review in this paper (SCH2, SPO2) fall into the category of low-knowledge by-catch fishstocks. Following is a discussion of the rationale, context, criteria and on-going management under this framework.

Rationale for framework

Adaptive management plans provide the opportunity for increases to TACs where information is limited (no stock assessment is available). Historically TAC increases under the AMP have been limited to species where monitoring is likely to provide beneficial information on the stock which would eventually lead to a stock assessment. However, for a number of stocks the characteristics of the fishery (by catch, size of increase) may make monitoring impractical or not cost effective. In some of these fisheries the risk to legislative obligations resulting from a TAC increase may be low. Utilisation of a stock may be unnecessarily restricted if the

TAC for a stock cannot be increased, where risk of that increase is low, because the stock cannot meet the requirements of the AMP.

Low knowledge by-catch framework context

- Currently there are a number of low knowledge by catch fishstocks where the TAC has been exceeded for a number of years. In the majority of cases there is little or no stock assessment information for these stocks but no known sustainability concerns. The TACs for these stocks have been set at historic catch level because there was little or no information available on which to determine sustainable yields prior to introduction to the QMS. In addition, catch reporting in the non-QMS environment has been historically poor, particularly for low value by catch species, which has meant that catch limits set on historical catch at the time of introduction are often lower than catch levels in the fishery.
- In recognition of this problem, in some fisheries (i.e those introduced into the QMS in 1998) MFish has operated a more lenient deemed value regime that has enabled fishers to land catch in excess of their available ACE/quota but not face excessive deemed value payments. In addition, fishers have also utilised the by catch trade off scheme to manage their overcatch. The by catch trade off scheme ceased operation from 1 October 2001 with introduction of ACE and the revised balancing regime contained in the Fisheries Act 1996.
- The new balancing regime has placed increased focus on the TACs for a number of by catch stocks because fishers will face increased penalties associated with the level of overcatch.

Low knowledge by-catch assessment criteria

- Stocks are assessed against the following criteria to determine their suitability for assessment for TAC adjustment under the low knowledge framework:
 - Stocks are managed under s 13 of the Act;
 - There is no stock assessment information available to determine an appropriate sustainable yield for the stock;
 - There are no known sustainability concerns. Information on catch relative to anecdotal information on abundance or the biology of species would suggest that the stock is likely to be close to virgin biomass or above Bmsy (or some proxy);
 - Catch has exceeded the TACC by 20% or more for at least the last three fishing years (1999–00, 2000–01, 2001–02); and
 - There has been no TACC increase for the stock for at least three years as a result of review of management controls.
- MFish recognizes that the over catch criteria may be an issue following implementation of 1996 Act balancing regime in 2001. However, if the criteria are widened to allow increases after a shorter period of overcatch the risk of environmental perturbations, short term changes in effort or market conditions driving adjustment to TACs; and incentivising fishers to overcatch is heightened.

If a TAC is misaligned with other fisheries or abundance has increased, and fishers are not dumping, then overcatch will continue until behaviour of fishers changes or the TAC is altered. Considering adjustment to the TACC after three years of overcatch will further create incentive for fishers not to dump.

Balancing risk

- Management under s 13 imposes a level of risk due to the requirement to manage at or above Bmsy when considering TAC options in the absence of information on status of current biomass relative to target levels. For all stocks proposed for consideration under this framework there is no information on Bmsy. Information on current biomass is also likely to be absent or highly uncertain. This lack of information makes assessment of risk to the stock of any increase to catch limits difficult. However, the level of risk to the stock must be balanced against the available information, in particular, consideration of the biology of stock, suitable habitat in the management area and the effect of historical fishing activity.
- In the absence of information to suggest sustainability concerns or potential increased impact on the aquatic environment MFish believes that consideration should be given to utilization opportunity. Development of the options for alternative levels of utilisation will have regard to the dual purpose of the Act, to provide for utilization whilst ensuring sustainability. Caution is justified in the absence of information, but caution should be balanced against the possible risk to the stock and the environmental impacts.
- The extent of utilisation provided for needs to be assessed on a stock by stock basis having regard to risk based on the following factors:
 - Information on sustainability risk to the stock;
 - Biology of the stock, including potential for localised depletion;
 - Information on historical catch (ie if the stock has been lightly fished and biomass is likely to be close to virgin or at least above B_{MSY});
 - Likely impacts of fishing on the aquatic environment;
 - Socio-economic and cultural issues; and
 - Anecdotal information on abundance, including consideration of the size of suitable habitat in the management area.
- When this analysis is linked to ongoing monitoring proposed under this framework (outlined in a later section of this paper) assessment of TACs in the manner proposed under s 13 is consistent with the Minister's legislative obligations.

Ongoing management under this framework

Stocks that have their TACs are adjusted under this framework would be subject to a decision rule which would require reassessment of the TAC if catch was markedly below the TAC/TACC for three years. Reassessment would involve investigation into the reason for the undercatch and possibly include consideration of CPUE information if this was appropriate for the species and fishing method. If it was apparent that decline in catch was not the result of fishery independent factors (ie

marketing) then MFish would propose a reduction to a lower level (to be determined after assessment of available information) or, having regard to risk to the stock, agreement to maintain the current TAC in return for industry agreeing that further monitoring or research be undertaken.

- Stocks that have had their TACs altered under this framework could not be reconsidered for a TAC increase under the framework for three years. Although this does not preclude additional increases if the fishery entered the AMP programme, or a fisheries plan is developed which incorporates additional reporting and information gathering requirements similar to those required under the AMP.
- MFish propose that stocks whose TACs are adjusted under this programme have their deemed value reassessed to ensure that they act as an appropriate disincentive to overcatch of the revised TACC.

Allocation of TAC

- The Minister is required to make allowances for different fishing interests under the Act. The Minister must have regard to the TAC and allow for:
 - a) Customary Mäori;
 - b) Recreational fishers;
 - c) All other sources of mortality to the stock caused by fishing; and
 - d) The TACC.
- In the absence of other information TACs may be set at levels based on consideration of known or estimated levels of recreational, Mäori customary, and commercial catch and all other sources of fishing related mortality. The information about the catch of each sector group informs the subsequent allocation of the TAC but that, in itself, will not be determinative of that exercise. The Minister makes a separate decision about allocation after setting the TAC.

Factors determining allocation

- The Fisheries Act does not expressly state the manner in which, or the factors to be taken into account, when the Minister allows for non-commercial interests in a fishery and apportions the TAC between stakeholders. The allocation of the TAC is a matter for the Minister's assessment taking into account all relevant considerations.
- No explicit statutory mechanism provides guidance as to the apportionment of the TAC between sector groups either in terms of a quantitative measure or prioritisation of allocation. MFish considers that a number of provisions in the Fisheries Act provide some guidance on allocation of the TAC between the respective interests to be allowed for.
- In terms of those considerations to be taken into account, MFish notes that s 8 of the Fisheries Act 1996, in the context of utilisation of fisheries resources, refers explicitly to the Act enabling people to provide for their social, economic, and cultural wellbeing. Further, s 13(3) states that regard is to be had to such social, economic, and

cultural factors as the Minister's considers relevant when considering the way and rate at which a stock is moved towards, or above, a level that can produce the MSY. It is implicit that in considering such factors when setting or varying a TAC in accordance with s 13(3), such factors are also integral to the decision of apportioning allocation of a stock between stakeholders.

- MFish considers that those factors which may be relevant to the exercise of the Minister's discretion, in addition to the principles specified in s 5 (international law and Settlement Act obligations), s 8 (purpose statement), s 9 (environmental principles), and s 10 (information principles) of the Act, include:
 - a) Current status of stock
 - b) Existing allocations;
 - c) Current catch levels;
 - d) Previous decisions:
 - e) Equity of allocation notion of "shared pain" when stock declines / "shared benefit" when stock rebuilds;
 - f) Participation levels and importance of the resource, including customary values:
 - g) Population trends;
 - h) Assessment of relative value of resource to respective sectors;
 - i) Current and past fishing practices (including overfishing, voluntary shelving or closures by a stakeholder);
 - j) Investment and initiatives undertaken to develop or enhance the resource;
 - k) Impact on ability of sector to take allocation provided;
 - l) Economic impact of allocative decisions; and
 - m) Social and cultural impact of decisions.
- Information about the current status of the stock relative to the statutory target level, existing catch levels, existing allowances and catch levels, plus previous decisions may be informative of the actions that need to be taken.
- The customary fishing regulations do not provide for the Crown to place limitations on customary fishing, apart from ensuring the sustainability of a particular stock. Customary take is regulated through the authorisation system in the customary regulations which require that all customary fishing is to be undertaken in accordance with tikanga and the overall sustainability of the fishery. In determining the extent of customary take, the Minister is required to provide for the input and participation of tangata whenua and are to have particular regard to kaitiakitanga (s 12(1)(b)).
- Where the TACC, or in the absence of a TAC/TACC then current commercial catch, is reduced for sustainability/conservation purposes there is a direct relationship between managing recreational catch and reducing current catch, and vice versa. From a purely legal perspective there is no obligation to undertake a proportional reduction between recreational and commercial interests where the TAC (or the current catch level) or an individual stakeholder allocation is reduced for

conservation/sustainability purposes. Both law and common sense dictate that where commercial catch is reduced for conservation reasons, reasonable steps should be taken to avoid the reduction being rendered futile through increased recreational fishing.

- However, subject to this consideration, there is no legal requirement that a decrease or increase in the allocation of the recreational allocation is to result in a corresponding proportional adjustment of commercial catch, and vice versa. MFish notes that the Fisheries Act assigns no priority between commercial and recreational interests. The Act is directed at both commercial and non-commercial fishing. Within that duality the Act permits the preference of one sector to the disadvantage of another; for example to provide for greater allowance for recreational interests in proportion to the commercial allocation. Any reallocation of catch from the commercial fishers to non-commercial may be subject to claims for compensation to commercial fishers under s 308 of the Act, except at the time of introduction.
- Notwithstanding the Minister's discretion to allocate catch, case law also considers that it is not unreasonable for commercial and recreational fishers to share some of the "pain" from a reduction in the TAC. There is no requirement that the interests of recreational or commercial fishers must be fully provided for. MFish considers in situations where there is an absence of information about the relative benefits (i.e. utility) to be derived from allocating a stock to one or other sector then it is equitable for both commercial and recreational fishers to ensure the sustainability of the stock through a reduction in the TACC and recreational allowance (along with the implementation of commensurate measures to effect a reduction in catch such as bag limit reductions). (The issue of utility is discussed in more detail in the following section.) Equally, commercial and recreational fishers should derive shared benefit from the rebuild of a fishery in terms of the allocation provided to the respective sectors, all other things being equal.
- Consideration should also be given to the ability of a sector to take the allocation provided. Impediments may exist that preclude the sector from exercising the full extent of its entitlement. Tools are available in the Act that enhance the ability of different sectors to exercise their right to fish. As well as implementing specific measures in support of allocative decisions, caution should be taken to ensure that a decision does not result in a sector being precluded from being able to take the allowance allocated.
- Logically those parties who are responsible for the enhancement of a resource should receive the benefit of the activity. However, the ability to ascertain the increased yield from a fishery as a result of enhancement activities and hence the extent of the allocation provided to the sector is problematic. The development of a fishery resource involves demonstrating through research and/or monitoring that an increase of catch from existing and new fisheries is sustainable. It is generally assumed that the development will occur as a result of a structured deliberate initiative. Arguably any one sector could seek to develop a fishery. It is arguable that the sector that undertakes the development of a fishery should be entitled to be allocated the benefits of that development.
- Population trends are reflected in the level of recreational fishing undertaken, both on a national and regional scale. The growth of urban centres, in particular Auckland,

has a significant impact on particular fisheries. An allowance for the recreational interest and the corresponding management controls for a stock could take into account existing population distribution and growth. Hence where a greater recreational demand arises the Minister is not precluded by any proportional rule from providing an increased allowance to the recreational entitlement subject to weighing all competing demands on the TAC (see *New Zealand Fishing Industry Association (Inc) and Ors v Minister of Fisheries and Ors* (CA82/97, 22/7/97) page 18).

- Certain fisheries are considered to be of particular importance to certain fishers. In considering the extent of the recreational and Mäori customary allowance it is appropriate to consider the nature of the species and the importance of the species to fishers. The value attributed to a resource is not limited solely to economic value but may also include the aesthetic value and non-market value. For example, while snapper is a medium to high value commercial fish species, it is also an important recreational target species. Certain species may be valuable to particular sector groups, for example, charter boats, and may have significance for tourism by contributing to New Zealand's popularity as a tourist destination. The abundance of a species and the availability of particular size fish for a specific stakeholder group may be factors relevant to the Minister's decision.
- Stakeholders may elect to exercise their fishing rights in a manner, which results in their allocation in a fishery being undercaught. Voluntary closures and shelving of allocation may be undertaken as a means of improving the abundance of a species and the availability of certain sized fish. Such methods may improve recruitment. In the absence of explicit shares in a fishery, any subsequent increase in the TAC as a result of such methods would be available to all stakeholders. Stakeholders are not immune from any subsequent decrease in the TAC for sustainability purposes simply on the basis of the previous undercatch of their allowance.
- The Act does explicitly recognise underfishing rights of commercial fishers. Where the person holding annual catch entitlement for a stock (not the owner of the ITQ) undercatches the extent of their entitlement, the person may carry forward the extent of the undercatch to the second fishing year up to a maximum of 10% of the total Annual Catch Entitlement (ACE) they held in the first fishing year. The carry forward of underfishing rights does not apply when the TACC is reduced in the second fishing year (s 67A(2)(b)).
- Setting of the TAC and the manner in which the TAC is allocated may have significant social, cultural, and economic implications for stakeholders and consequential downstream economic activity. In *New Zealand Fishing Industry Association (Inc) and Ors v Minister of Fisheries and Ors* (CA82/97, 22/7/97) it was held that there was a clear obligation to move a stock towards B_{MSY} and when deciding upon the time frame and the ways to achieve that statutory objective the Minister is to consider all relevant social, cultural and economic factors.
- The Court of Appeal suggested that a careful cost-benefit analysis needs to be undertaken to support a particular decision to reduce the TACC and in respect of a reasonable range of options available to the Minister in moving a fishery toward B_{MSY} . Where a decision with major economic impact is considered necessary the rationale for that decision should be clearly transparent. Those affected ought to be able to establish that all other reasonable possibilities were analysed and that the

decision adopted was the preferable option. The general principles noted by the Court of Appeal appear equally applicable to allocative decisions on introduction of a stock into the QMS.

- The economic factors referred to in s 13(3) need not be confined to matters directly affecting the fishing industry. Wider considerations affecting the national economic interest are capable of being regarded as relevant. MSY can be interpreted as being directed at the national interests as well as sectional interests (see *New Zealand Fishing Industry Association (Inc) and Ors v Minister of Fisheries and Ors* (CA82/97, 22/7/97) p 15).
- In setting and reducing a TACC consideration is required of the economic impact of any such action on individual quota owners, those fishers dependent on obtaining annual catch entitlement and on the QMS generally. However, the reduction of the current commercial catch or a TACC is not rendered unlawful simply on the basis that the decision adversely impacts the property right inherent in the QMS. In the context of fisheries legislation, a property right constitutes a right to harvest, which is subject to the exercise of the Crown's statutory powers. Accordingly, MFish considers that financial security of a property right is a valid but not irrefutable consideration in the context of the Minster's TAC / allocative decisions.
- The actual financial costs associated with allocative decisions are to be assessed according to the nature of the fishery. A decline in the commercial allocation may impact on quota and lease price, thus impacting on potential new entrants and existing quota holders and owners. The setting of a TAC, and allocative decisions in a general context, impact on economic investment in terms of upgrading of plant and fleet structure.
- Downstream impacts may result as a consequence of allocative decisions made in respect of both recreational and commercial stakeholders. In addition to the commercial harvesting and processing sector a significant number of service industries are linked to fishing, including charter operators, sale of fishing gear, repair, and transport related services. Decisions may also impact on particular communities where the fishing and fishing related services provide a significant contribution to a local economy.
- The impact on individual fishers may be difficult to assess and will be dependent on a range of factors, including the extent of any reduction in catch; the level of debt; the species mix of quota held; and the ability of individual fishers to adapt.
- It is not entirely clear as to the nature and extent of any cost benefit analysis required to be undertaken in any given situation. A cost benefit analysis may be in the form of an analysis of the economic impact to stakeholders and fishing related sectors of the economy. Equally it could include the factoring of environmental and social costs and benefits. The Court of Appeal stated that when considering any reduction in the TACC the economic impact of that action must be carefully weighed. Later in the same judgment the Court referred to a cost-benefit analysis in the context of implementing a decision of major economic impact.
- A cost benefit analysis is designed to act as a tool for deriving the most efficient and productive solution. In itself such an analysis is not intended to impose a barrier to

implementing measures considered necessary for fisheries management purposes. In many instances MFish is not in possession of the information necessary for a detailed cost benefit analysis to be undertaken. Invariably it is the stakeholders concerned who hold the relevant information. MFish has requested that stakeholders provide relevant information in the course of their submissions on management proposals. MFish considers that in all instances it is impractical and unnecessarily burdensome for the Crown to undertake an exercise for all fisheries. MFish considers that a balance ought to be adopted between the magnitude of the impact of the proposed decision, the information currently available and information readily obtainable, and the requirement to provide an analysis of the economic implications of the proposed solution.

- Social impacts may include the affect of decisions on individuals and communities. There is no restriction on the nature of the social factors that may be taken into account. There is no explicit relationship in the Act between those classes of persons having an interest in a stock or the effects of fishing on the aquatic environment and the factors, which the Minister may consider pursuant to s 13(3). The latter may be considered to be significantly wider in scope than the former. Non-extractive uses, social values and expectations, and political imperatives may therefore all constitute relevant considerations in the course of the Minister's decisions as to the setting of TACs and allocation of the TAC between fishing interests.
- Reference to cultural factors in s 13(3) can be interpreted as encompassing both those provisions of the Act relating to the interests of Mäori and tangata whenua but also cultural practices and values. The precise nature of those practices and values are to be determined by tangata whenua.

Allocation models

The various factors identified above essentially fall within one or other of two key approaches that can be adopted for purposes of allocating the TAC - a claims based allocation and an utility based allocation. For example factors relating to a claims based allocation include existing allocations, current catch levels, equity of allocation, participation levels, and importance of the resource to one or more sectors. Factors relating to a utility based allocation, include population trends, assessment of relative value to respective sectors, investment and level of development or enhancement, ability of sector to take allocation provided, and the social, cultural and economic impact of allocative decisions. An explanation and application of the two approaches are outlined below.

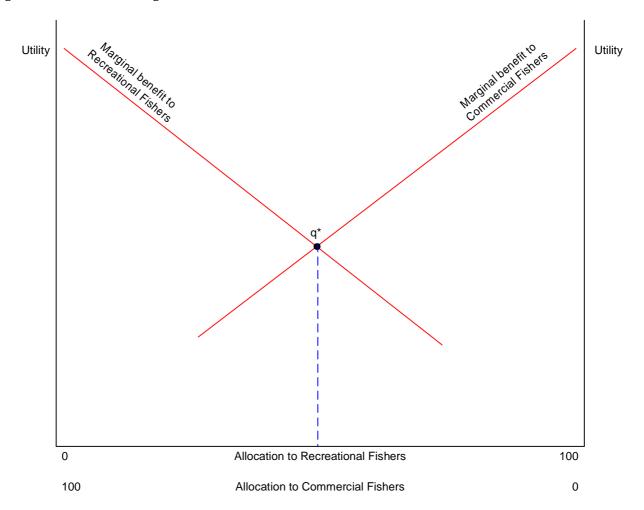
Claims based allocation

The term "Claims based allocations" describes a situation where allocations are made on the basis of a consideration of the legitimacy of claims to the resource. Generally these claims are based on some form of present or historical association with the resource, giving rise to expectations on the part of fishers (or classes of fishers) with respect to on-going future involvement. The claims based approach does not generally focus on future management opportunities or best value that could be derived from the fishery.

Utility based allocation

- The term "Utility based allocation" describes a situation where allocations are based on the utility (or quantum of well-being) that would flow from a particular allocation. This method tends to favour allocations to those who value the resource most (downplaying the importance of past associations with the resource). As such it tends to have a focus on the future rather than the past. Within New Zealand fisheries management, the most obvious example of the utility based allocation approach is the on-going trading of Individual Transferable Quota that occurs under the QMS.
- 90 Under the utility based approach it is possible to conceptualise the allocation problem as one of determining the point at which it is not possible to reallocate the resource (amongst recreational and commercial fishers) without reducing the total quantum of utility that would flow from the resource. The concept is illustrated in Figure 1 below with respect to allocations between the commercial and recreational sectors. Assuming a (typical) downward sloping demand curve for both recreational and commercial fishers, the optimal point of allocation is given by q*. For any point to the left of q*, there is benefit in allocating more of the resource to recreational users (as the benefit to recreational fishers of an extra quantum of catch is greater than the benefit to commercial fishers foregone). Similarly, for any point to the right of q*, there is greater benefit in allocating more to commercial fishers.
- 91 Undertaking this kind of utility comparison is in practice difficult. In particular, comparing the two marginal benefit curves is made problematic by both an absence of information and the lack of a readily available basis for making value comparisons between recreational and commercial fishers.
- Determining an estimate of marginal benefit to commercial fishers tends to be the most straightforward part of the task. If the fishery is in the Quota Management System, quota values provide a readily available proxy valuation of a kilogram of fish to the commercial sector. If the fishery is not in the QMS, estimates of value can be made by, for example, considering quota value of like fisheries already in the QMS.

Figure 1: Determining the allocation between commercial and recreational fishers



- However, determining an estimate of the value of a fishery to recreational fishers is, in contrast, much more difficult. There are no readily available indicators of value, at least not of a form that would allow a comparison between recreational and commercial fishers. (Note while indicators such as the number of recreational fishers or their expenditure on recreational fishing may provide some preliminary insights in this area, they do not provide a suitable basis for value comparison).
- In response to this problem, non-market valuation techniques are sometimes brought to bear. Non-market valuation techniques use surveys or observations of behaviour coupled with sophisticated analytical methods to develop estimates of value sufficient to provide a basis for comparison with the value estimates available for the commercial fisheries. Analytical techniques of this type, however, and the results they generate need to be treated with a degree of caution. For example, survey respondents may seek to bias the results so as to produce outcomes in their favour (e.g. the allocation of a greater share of a fishery to recreational users).
- Note, the figure above reflects a *static* approach to the allocation problem in the sense that it provides an estimate of optimal allocation at a single point in time. However, in reality the optimal allocation point will change over time in response to changing social, cultural and economic factors. A *dynamic* allocation framework would automatically respond to those changing factors with continual reallocations -

in the same way as quota and ACE are continually reallocated amongst commercial fishers via quota and ACE trades. A feature of an efficient dynamic allocation system (such as the on-going reallocation of quota) is the absence of any decision maker intervening to make allocation decisions on behalf of individuals. Changes in allocation reflect choices made by individuals, who are able to make independent decisions about use of the resource with a greater sense of certainty.

- In order for a dynamic allocation system to operate effectively a single tradable right is essential. All participants would have the same type of right and make their own decisions about their involvement in a fishery (reflecting the utility consequences of the options available to them). However, there is no single right that is common across all sectors involved in NZ fisheries. As a consequence, the Government, by default, makes the decision for all sectors. In the future there is the potential that fisheries plans can provide a framework within which stakeholders can make their own collective decisions about allocation of a resource.
- Currently there is an absence of a suitable dynamic allocation framework and only limited information on utility is available to decision makers to assist with allocation matters. At best, techniques such as the non-market valuation methods mentioned above can only suggest whether reallocation might be considered on utility grounds by indicating a utility benefit from reallocation away from the status quo. However, there may be no assessment of the extent of the re-allocation required to achieve the optimal allocation point. Furthermore, the insights provided by the non-market valuation work can become outdated in the period between the survey work being undertaken and the time at which the allocation decision is to be made. The potential for information to become outdated is not unique to non-market valuation surveys. The same can be said for stock assessments.
- The decision maker (Government) is required to make an estimate of the optimal allocation point based on imperfect information. In this situation, allocations by Government will inevitably be sub-optimal and result in dissatisfaction from (at least some) stakeholders. Furthermore, commercial fishers could not plan with any degree of certainty in the face of an ongoing opportunity for Government intervention on allocation decisions. The use of thresholds could be developed in order to assess priority for reassessment and define trigger points or decision rules as to when decision makers should consider reallocation within a fishery. While the use of such thresholds and trigger points may remove some degree of the uncertainty about Government intervention, such a system still does not allow individuals to give effect to their own assessment about the value of the resource.

Other Management Controls

The TAC is invariably supported by a number of management controls that collectively ensure the sustainability of the stock and provide for utilisation within accepted limits. The 1996 Act explicitly provides for the setting of sustainability measures relating to size limits, biological state, fishing seasons, methods restrictions, closed areas, plus measures such as overfishing thresholds and bag limits.

Regulatory framework

The intent of the QMS is to provide a broad management framework that provides the opportunity to maximise efficient utilisation of fishing resources while ensuring sustainability. The introduction of a species into the QMS requires that a TAC and other management controls are set in order to ensure overall sustainability of the species. Certain controls in place for these species will no longer be required following implementation of QMS management measures.

DEEMED VALUES FOR 1 APRIL 2006 FISHSTOCKS – INITIAL POSITION PAPER

Proposal

The Ministry of Fisheries (MFish) invites comment from stakeholders on its intention to subject all fishstocks with a 1 April fishing year start date to a 12.5% increase in deemed value rates.

Background

- Section 75 of the Fisheries Act 1996 (the 1996 Act) establishes the basis for setting interim and annual deemed value rates. Interim and annual deemed values must be set for all fishstocks in the Quota Management System (QMS). Deemed values are charged on a monthly (interim deemed values) and annual (annual deemed values) basis for any catch of QMS stocks in excess of a person's annual catch entitlement (ACE) holding.
- During the main 2005 sustainability review for 1 October fishstocks, the Minister of Fisheries (the Minister) agreed to increase deemed value rates by 12.5% for all QMS stocks with a fishing year start date of 1 October. This decision arose from the High Court decision *Pacific Trawling Ltd v The Chief Executive of the Ministry of Fisheries* relating to Goods and Services Tax (GST) on deemed values. This decision meant that the deemed value rate included GST, and hence commercial fishers now receive a GST invoice, allowing them to claim back the GST portion of the payment. This had the effect of lowering the deemed value rate invoiced to fishers by 12.5%.
- Under s 75 of the 1996 Act, the Minister must set interim and annual deemed value rates at a level that provides an incentive for every fisher to acquire sufficient Annual Catch Entitlement (ACE) to cover catch. All QMS stocks with a fishing year start date of 1 October 2005 are now subject to a 12.5% increase in order to ensure that commercial fishers have this incentive.
- MFish intends that deemed value rates for QMS stocks with a fishing year commencing on 1 April will also be subject to a 12.5% increase. This will be effective from 1 April 2006. This will then bring the 1 April stocks in line with the decision on 1 October stocks, and will ensure that the deemed value rates for the 1 April fishing year stocks provide an incentive for commercial fishers to balance their catch against ACE. The deemed value rates in the Fisheries (Interim and Annual Deemed Values) Notice 2003 will be GST exclusive. All invoices issued to commercial fishers by FishServe for the 1 April stocks will, from the fishing year commencing 1 April 2006, contain a GST component.
- 6 Seventeen species have a 1 April fishing year start date, including species of shellfish (eg, frilled venus shell, large trough shell), spiny rock lobster, packhorse rock lobster and scallops.

MFish seeks comment from stakeholders on its intention to subject 1 April stocks to a 12.5% increase in deemed value rates.

Preliminary Recommendation

MFish proposes that the Minister of Fisheries agree that deemed value rates for those fishstocks for which a 1 April fishing year applies will be subject to a 12.5% increase and that all figures in the Gazette Notice will be GST exclusive.

DEEMED VALUES FOR 1 APRIL 2006 FISHSTOCKS – FINAL ADVICE

Initial Proposal

The Ministry of Fisheries (MFish) invited comment from stakeholders on its intention to subject all fishstocks with a 1 April fishing year start date to a 12.5% increase in deemed value rates and that all figures in the Fisheries (Interim and Annual Deemed Values) Notice 2003 will be GST exclusive.

Submissions

2 A submission regarding this proposal was received from the New Zealand Seafood Industry Council (SeaFIC).

Management Measures

- 3 SeaFIC note that the proposal is a technical adjustment to the May 2005 High Court decision that deemed values are a taxable supply, and has already been implemented for the 1 October fishing year stocks from October 2005.
- However, SeaFIC believes the wording of the proposal is somewhat confusing. SeaFIC states that it is not clear whether the intent is to give effect to the 12.5% increase through invoicing (ie, adding a GST component) or amending the regulated deemed value rates in the Notice. SeaFIC supports the proposal if it is solely a change in the way deemed values are invoiced. SeaFIC does not support an increase in the GST-exclusive regulated rates by 12.5%.

MFish Discussion

In response to SeaFIC's request for clarification of MFish's intentions, MFish notes that in order to ensure that the level of the deemed value continues to provide an incentive for every fisher to acquire sufficient ACE to cover catch (as required by the 1996 Act), Quota Management System (QMS) stocks with a 1 April 2006 fishing year start will be subject to a 12.5% increase (as was the case with stocks with a 1 October and 1 February fishing year start date). It will not be necessary to increase the deemed values figures in the *Gazette* Notice. Rather, they will be made GST exclusive, so that any fisher paying deemed values will be issued with a GST invoice, which has the same effect as increasing the deemed value by 12.5%.

Conclusion

MFish recommends that the Minister of Fisheries agree that deemed value rates for those fishstocks for which a 1 April fishing year applies will be subject to a 12.5% GST increase and that all figures in the *Gazette* Notice will be GST exclusive.

Recommendations

- 7 MFish recommends that you:
 - a) Agree that all fishstocks with a 1 April 2006 fishing year start date will be subject to a 12.5% increase in GST;
 - b) Agree that all deemed value rates for 1 April stocks in the Fisheries (Interim and Annual Deemed Values) Notice 2003 will be GST exclusive; and
 - c) Note that any fisher paying deemed values for 1 April stocks will be issued with a GST invoice.

NEW LANDED STATE CODE – SKATE WINGS – INITIAL POSITION PAPER

Proposal

The Ministry of Fisheries (MFish) proposes to amend the Fisheries (Reporting) Regulations 2001 to clarify the reporting of skates in the 'wings' processed state.

Background

- A 'principal landed state' means, in the case of fish landed in 2 or more states, the landed state that has the greatest actual weight. Principal landed states are defined in the Fisheries (Conversion Factors) Notice 2005, while landed state codes are specified in Part 3 of Schedule 3 of the Fisheries (Reporting) Regulations 2001.
- The principal landed state of "wings" for skates and rays is defined in the Fisheries (Conversion Factors) Notice 2005 as meaning the pectoral fins severed from the body by a cut no further back than the spiracle, proceeding parallel to the edge of the gill openings, then proceeding down the side of the gut cavity, and exiting at the joint between the pectoral fin (being the wing flap) and the pelvic fin (being the next lobe on the body), and the skin on.

Statement of the Problem and Need for Action

- Historically, the state of wings has been included within the definition of "fillets", with the associated landed state code of FIL. During the recent review of landed state definitions in 2004-05, Industry stated that this arrangement had caused considerable confusion among fishers and consequent incorrect reporting. This confusion is further accentuated because there is an additional landed state code of 'WIN', although this only relates to squid wings.
- For these reasons, MFish and Industry agreed during the review of principal landed state definitions that it would be preferable to amend Part 3 of Schedule 3 of the Fisheries (Reporting) Regulations 2001 so that wings is specified as a separate principal landed state with a corresponding landed state code of WRS, ie, wings for rays and skates.
- MFish does not propose to revise the wording of the definition of "wings" for skates and rays as it is currently set out in the Fisheries (Conversion Factors) Notice 2005.

Preliminary Consultation

Industry representatives on the Conversion Factors Working Group first raised this matter during the review of principal landed state definitions in 2004-05.

Options for Management Response

Non-regulatory Measures

One possible non-regulatory option is to educate fishers about the use of the fillets (FIL) code in relation to skate and rays. However, this arrangement has been in place since 1991 and no amount of education has significantly improved matters. In addition, the existence of a WIN additional landed state code has further muddied the issue. There is a risk of continued confusion among fishers and associated incorrect reporting of skate wings as discussed in paragraph 4 if a regulatory option is not pursued.

Regulatory Measures

9 If the problems with incorrect reporting of skate wings are to be addressed, it is necessary to amend Part 3 of Schedule 3 of the Fisheries (Reporting) Regulations 2001 to specify a sole or principal landed state of wings and a corresponding landed state code of WRS.

Statement of the Net Benefits and Costs of the Proposal

Benefits

The proposed amendment should clarify the reporting of skate wings and lead to a decrease in errors on fishing returns. Accurate reporting is important for sustainable management and compliance. This should also reduce administrative costs for MFish.

Costs

11 There are no significant one-off or on-going costs associated with systems, reporting and implementation to either MFish or stakeholders.

Conclusion

MFish proposes to amend the Fisheries (Reporting) Regulations 2001 in order to introduce a new principal landed state of wings and a corresponding landed state code of WRS. This change will serve to clarify the reporting by fishers of skates and rays in the wings principal landed state.

Preliminary Recommendation

MFish's preliminary recommendation is that the Minister of Fisheries agree to amend Part 3 of Schedule 3 of the Fisheries (Reporting) Regulations 2001 to introduce a new principal landed state of wings for rays and skates and a corresponding landed state code of WRS.

NEW LANDED STATE CODE – SKATE WINGS – FINAL ADVICE

Initial Proposal

The Ministry of Fisheries (MFish) proposed to amend the Fisheries (Reporting) Regulations 2001 to clarify the reporting of skates and rays in the 'wings' state.

Submissions

- 2 Submissions regarding this proposal were received from:
 - a) New Zealand Seafood Industry Council (SeaFIC); and
 - b) Sanford Ltd (Sanford).

Management Measures

Both SeaFIC and Sanford support the recommendation to introduce a new principal landed state of wings for skates and rays.

Conclusion

MFish recommends that the Minister of Fisheries agree to amend the Fisheries (Reporting) Regulations 2001 in order to introduce a new principal landed state of wings and a corresponding landed state code of WRS. This amendment will serve to clarify the reporting by fishers of skates and rays in the wings principal landed state code.

Recommendations

- 5 MFish recommends that you:
 - a) Agree to amend the Fisheries (Reporting) Regulations 2001 to introduce a new principal landed state of wings for rays and skates and a corresponding landed state code of WRS.

NETTING CATCH, EFFORT AND LANDING RETURN (NCELR) – INITIAL POSITION PAPER

Executive Summary

- The reporting framework set out in the Fisheries (Reporting) Regulations 2001 (the Regulations) is a critical tool to enable the Ministry of Fisheries (MFish) to collect information to assess the state of New Zealand's fishstocks, and administer and enforce the rules associated with the use of those fishstocks.
- The Regulations currently require fishers using the methods set netting, inshore drift netting or pair set netting to record fishing information on Catch Effort and Landing Returns (CELRs).
- The information currently collected on CELRs for these methods does not adequately reflect the information needs for the fisheries. Additionally, the generic nature of the current CELR is not optimised for use by passive net fishers.
- A new form has been developed to replace the CELR for vessels 6m or over using the methods set netting, inshore drift netting or pair set netting. The new form will provide a means to collect high quality policy, science, fisheries operations, research and compliance information where this is needed to manage the fisheries successfully. The new form will also be simpler and more intuitive for fishers to complete.

Proposal

- 5 MFish proposes that the Regulations be amended to introduce a new Netting Catch Effort Landing Return (NCELR) for reporting passive net fishing.
- The new NCELR will collect data from vessels 6m or over in overall length, about fishing using the methods set netting, inshore drift netting or pair set netting (these methods will be referred to as passive netting for the purpose of this paper).
- Fishers using vessels less than 6m in overall length will continue to report set netting, inshore drift netting or pair set netting on the CELR at this stage.
- Fishers who routinely use several different methods (passive netting plus one or more other methods) during one fishing trip will be eligible to apply for an exemption under regulation 41 of the Regulations to allow them to continue to report fishing information on the existing CELR.

Background

The reporting framework set out in the Regulations is a critical tool with which MFish collects commercial fishing information used in assessing the state of New Zealand's fishstocks. The information collected is also essential for administering and enforcing the rules associated with the use of those fishstocks.

- The Regulations currently specify nine different commercial fishing catch effort returns. Five of the returns collect catch and effort data, two collect landing data and two collect catch, effort and landing data. The Regulations currently require fishers using set netting, inshore drift netting or pair set netting to record fishing information on CELRs.
- The CELR was introduced in 1989 and is a multi-purpose form used to capture information about a number of different fishing methods. The form was designed for use with cardboard templates that are overlaid on the form for different types of fishing methods. There are currently seven different templates, and as they need to be overlaid on each form they are not attached to the book of returns.
- 12 Vessels using passive netting methods range in overall length from 2 24 metres. There are about 400 vessels and almost 50% of them are 6m or over in overall length. Approximately 90% of the passive netting catch is taken by vessels 6m or over. Fishing trips using these methods are generally only 1 2 days long, but may be up to 10 days. Some fishers may use several different methods on any one trip (approximately 4% of all trips reported on the CELR use multiple methods).

Problem Definition

- The information currently collected about passive net fishing does not adequately reflect the information needs for the fisheries. Additionally, the CELR is generic in nature and is not optimised for use by passive net fishers.
- One of the problems with the CELR is the use of templates. The templates are often lost and this has led to confusion among fishers and variation in the way the forms are completed. Another problem is that templates may be incorrectly placed on the form or may move while in use, resulting in information being incorrectly entered on the return.
- The CELR was designed in an era when less information was available about good form design principles. An obvious issue with the CELR from a form design perspective is that data requirements are not clearly specified on the form.
- The CELR collects very limited data for each day of fishing and does not collect data for each unit of fishing effort (e.g. each set of a net). The form attempts to capture data about many different fishing methods and to provide an overview of fishing activity rather than specifically meeting the data needs of each fishery. Changes in both fishing and fisheries management practices also mean that additional information is now required that was not put on the forms originally.
- These issues need to be resolved to aid in the successful management of passive netting fisheries. A new purpose designed reporting form is required to collect high quality policy, science, fisheries operations, research and compliance information where this information is needed in order to manage the fisheries successfully.
- 18 The new reporting form will capture more detailed information about each unit of fishing effort. It will include fine scale fishing position data (latitude and longitude) and more rows to report each species caught.

- At this time, MFish does not believe it is reasonable to require very small vessels to provide very detailed information about their fishing activities. Very small vessels often do not have a covered area in which to store the returns book, and they generally fish close to shore without a GPS. Therefore it would be unreasonable to expect them to have the same reporting requirements as much larger vessels.
- It is difficult to determine the exact size range at which the requirements of the new form become reasonable. One guideline is that the Maritime Safety Authority require vessels 6.1m and over to carry vessel documentation and additional safety equipment. So it is likely that vessels of about 6m would have the facilities to complete and store paperwork on board.
- Field trials of prototype forms also indicated that vessels below 6m would have difficulty providing more detailed information at this time (e.g. latitude and longitude of fishing positions). It is possible that future developments in technology will make it easier for smaller vessels to use the new form.
- If the arbitrary 6m and over vessel size threshold proves to be set incorrectly, it is possible that it could be revised in future.
- For fishers who commonly use multiple methods on a trip, changing to a passive netting form would be problematic. The proposed netting return would require these fishers to carry multiple books of returns and this would have additional problems regarding separation of catch caught using different methods for reporting purposes.
- The new form will need to be larger in size than other existing catch effort returns (A3 instead of A4). A significant amount of time has been spent designing and trialing prototype netting forms and it has not been possible to meet all of the required specifications for information and form design standards while retaining the A4 form size.
- The A3 size will allow for more detailed reporting without the need for fishers to duplicate information or carry separate books for effort and landing information. It will also ensure that standards for the appearance of forms and the size of answer spaces can be met. The books of forms will be printed so that they are folded into A4 size for ease of use and storage.

Preliminary Consultation

- The Fisheries Data Working Group recommended development of a new form. A project team was set up to develop a new Netting Catch Effort Landing Return.
- 27 The project team included representatives from the following groups:
 - Fishing Industry representatives from netting fisheries;
 - Researchers NIWA and SeaFIC:
 - Science Ministry of Fisheries;
 - Fisheries Operations Ministry of Fisheries;
 - Compliance Ministry of Fisheries;

- Research Data Management Ministry of Fisheries.
- 28 The form design process was as follows:
 - Project team established.
 - Initial consultation carried out with project team.
 - Information needs analyses carried out through consultation with project teams and analysis of existing catch effort data.
 - A set of requirements for the new forms established.
 - Prototype forms were designed.
 - Forms redesigned several times after consultation with the project team.
 - Field trials run where prototype forms were tested with fishers, revised and then tested again.
- Members of the project team were encouraged to consult with others in their area and to keep their members informed about progress.
- Feedback from fishers has been mixed, with some liking the new form and some not. None of the fishers was particularly keen to move to A3 forms but preferred that option to needing to complete two separate returns for each trip.
- 31 Some fishers are also resistant to changing to fine scale position reporting. Again, feedback was mixed. Some fishers recognised and understood the need for this information and were happy to provide it, whereas other fishers were very reluctant to provide more detailed information.

Options for Management Response

- Non-regulatory options are not available to address the problems outlined above. Commercial fishers are required to provide information about their fishing activities in the format specified in the Regulations. If the new netting return is not introduced, fishing using passive netting methods will continue to be reported on the current CELR and the problems outlined in this document will continue.
- If these matters are to be addressed, MFish considers it necessary to amend the Regulations under section 297 of the Fisheries Act 1996, to introduce a new Netting Catch Effort Landing Return (NCELR). A copy of the draft form is attached to this proposal.
- 34 The following provisions will apply:
 - a) The new form will be used to report fishing using the methods set netting, inshore drift netting or pair set netting by vessels 6m or over in overall length.
 - b) Fishers using vessels less than 6m in overall length will continue to report set netting, inshore drift netting or pair set netting on the CELR at this stage.

- c) Fishers who routinely use several different methods during one fishing trip will be eligible to apply for an exemption under regulation 41 of the Regulations to allow them to continue to report fishing on the CELR.
- MFish recognises that introducing the new NCELR is likely to result in an increase in the reporting obligations of passive netting fishers. This is due to the requirement for more detailed information about these fisheries. This increase will be offset by the improved design of the form, making it simpler and more intuitive for fishers to complete.

Statement of Net Benefits and Costs of the Proposal

Benefits

- The information principles in section 10 of the Fisheries Act 1996, state that decisions should be based on the best available information. The new NCELR will contribute to this by collecting high quality policy, science, fisheries operations, research and compliance information where this information is needed in order to manage the fisheries successfully.
- 37 The new reporting form will capture more detailed information about each unit of fishing effort. It will include fine scale fishing position data (latitude and longitude) and more rows to report each species caught.
- 38 The design of the new form will also be simpler and more intuitive for fishers to complete. It is hoped that this will lead to fewer errors, which will reduce the amount of time and effort needed to ensure that good quality information is available.

Costs

- 39 MFish estimates the costs to implement a new NCELR (including developing the printing template, printing new books of returns and doing a mass mail out to all affected fishers) will total approximately \$7 500.
- The cost of printing the new books will be more expensive than usual due to the larger size of the new NCELR. However, these costs are offset by the fact that fewer of the current CELR books will be printed. Also, as the new NCELR has more space for reporting, fishers may be less likely to use multiple pages for a trip, so books may last longer.
- Ongoing operational costs resulting from introduction of the NCELR have not yet been assessed. However, these costs are likely to be offset by a reduction in the numbers of CELRs requiring processing.

Administrative implications

There are administrative implications associated with implementing a new form. Resources will be needed to make the required changes to the MFish catch effort computer system and to write explanatory notes to accompany the form. There are also resource implications associated with raising fisher awareness of the new reporting requirements.

Conclusion

A new NCELR will ensure that good quality information is available to manage passive netting fisheries successfully. The new form will capture information from 50% of passive netting vessels and about 90% of the catch. This will represent a huge improvement in the data available for these methods.

Preliminary Recommendation

MFish recommends that the Minister of Fisheries agree to amend the Fisheries (Reporting) Regulations 2001 to introduce a new Netting Catch Effort Landing Return. The new return will be used to report fishing using the methods set netting, inshore drift netting or pair set netting by vessels 6m and over in overall length.

NETTING CATCH, EFFORT AND LANDING RETURN (NCELR) – FINAL ADVICE

Initial Proposal

The Ministry of Fisheries (MFish) proposed to amend the Fisheries (Reporting) Regulations 2001 to introduce a new Netting Catch Effort Landing Return (NCELR) for reporting passive net fishing.

Submissions

- 2 Submissions regarding this proposal were received from:
 - a) New Zealand Seafood Industry Council (SeaFIC); and
 - b) Challenger Finfisheries Management Company Limited (Challenger).

Management Measures

- 3 SeaFIC supports gathering of higher resolution catch and effort data than that provided by the generic Catch Effort Landing Return (CELR), and therefore welcomes the change to the NCELR.
- SeaFIC notes that from a scientific/stock assessment viewpoint the 6 m minimum size limit for vessels to use the NCELR is unfortunate. SeaFIC argues that although the majority (90%) of the passive netting catch is taken by larger vessels, the activities of half the vessels deploying this gear will still not be captured at high spatial resolution.
- SeaFIC notes that the vessel size limit on the requirement to use the NCELR implies that analyses of stocks taken via passive netting will either have to omit the data collected on CELRs, degrade the resolution of the NCELR data to merge with the CELR data, or work with two separate (i.e. CELR and NCELR) data series.
- SeaFIC accepts that the proposed 6 m lower limit is largely for practical purposes. However SeaFIC notes that portable global positioning system (GPS) units are now widely available at low cost. Furthermore, with appropriate regulations (e.g. allowing intermediate recording of required data on a waterproof template and transfer to paper once ashore) the problem of paper forms on a small boat would be lessened.
- SeaFIC also suggests that electronic recording using waterproof devices should become an increasingly viable option for small boats, and recommend that the introduction of mechanisms to allow electronic reporting be given high priority.
- If the 6 m lower size limit cannot be removed, then SeaFIC suggests that MFish encourages fishers using smaller vessels to use the NCELR form in place of the CELR form whenever possible.
- 9 SeaFIC notes that the draft NCELR form made available already includes a row for declaration of non-fish incidental catch on a per set basis.

- The draft form only allows recording of a single mesh size and net height per set. However, the definition of a "set" as all nets fishing within 2 nautical miles of the first net set potentially includes nets of a variety of mesh sizes and heights. SeaFIC would prefer that the definition of a set is altered to encompass only those nets with a single mesh size (i.e. recording of a new set would begin if mesh size changed, even if this is within the 2 nautical mile limit). Alternatively, SeaFIC suggests that the instructions ask the fisher to record the predominant mesh size within a set.
- SeaFIC submits that there is incomplete analysis of the costs of this proposal, in that the initial position paper (IPP) covers solely government costs without any assessment of compliance costs for industry.
- Finally, for avoidance of doubt, SeaFIC seeks confirmation that this form will not apply to eel fishing.
- 13 Challenger accepts that the current information collected on CELRs does not adequately reflect the information needs for fisheries.
- However, Challenger does not agree with the A3 size form folded down to A4 size. Challenger submits that small vessels are restricted not only to storage space but also available working space in the wheelhouse, and therefore they recommend that the present A4 size of the CELR is retained.
- 15 Challenger notes that the decision to limit the use of the NCELR for vessels larger than 6m is acceptable but it is not appropriate to suggest that "if the arbitrary 6m and over vessel size threshold proves to be set incorrectly, it is possible that it could be revised in future." Challenger feels that this type of indecision costs the fishing industry on every occasion.
- 16 Challenger submits that there is inadequate cost and benefit analysis presented in the IPP. While costs due to the introduction are listed, the costs due to compliance and redesign (if necessary) are not. Challenger would like to see these costs listed before agreeing on the introduction of this form.
- 17 Challenger would also like to have clarification of the reference made to the "use of several different methods in one trip". While this may occur, Challenger do not believe that this should limit the introduction of this form to those users or allow the ability to apply for an exemption.
- 18 Challenger does not see how the costs are offset by fewer CELR books being printed, when clearly the CELR forms will still be used by a number of other fishers with other fishing methods in addition to the new NCELR.

MFish Discussion

MFish welcomes the support of SeaFIC for the proposal to introduce a new NCELR, and expresses appreciation to Industry representatives for their very constructive and helpful participation in the working groups which considered this issue. MFish also appreciates the feedback received from Challenger.

- 20 MFish makes the following comments on the specific issues raised by SeaFIC:
 - a) MFish notes SeaFIC's concern about the 6m minimum size limit for vessels using the NCELR and the problems this may cause for data analyses. MFish acknowledges that this is not an ideal outcome, but considers that it is not reasonable in the current circumstances to require very small vessels to provide such detailed information about their fishing activities. If widespread use of GPS means that it becomes reasonable in the future, the 6m lower size limit could be revised. However, it is important to note that GPS is not the only relevant issue here and in time it may be more appropriate to work towards a separate form that is more suited to their situation.
 - b) MFish notes SeaFIC's suggestion that electronic recording using waterproof devices should become a viable option. MFish has already carried out some work on the feasibility of allowing electronic provision of catch returns. The biggest obstacle identified to date is finding an electronic equivalent to legally signing the form. MFish plans to do more work on this issue in the future. While MFish acknowledges that electronic provision of catch returns is likely to occur in future, MFish does not consider their use is feasible at this point in time.
 - c) MFish notes that SeaFIC raised several questions with regard to completion of parts of the NCELR (e.g. definition of a set, mesh size and net height). MFish intends to use the explanatory notes provided with the form to explain and elaborate on the requirements of the Fisheries (Reporting) Regulations 2001 and to help fishers to complete the NCELR. The explanatory notes will contain more detailed information about how and when to complete each field on the form.
 - d) SeaFIC sought confirmation that the NCELR would not apply to eel fishing. MFish confirms that the existing Freshwater Eel Catch Effort Returns will continue to be used to report fishing targeting freshwater eels.
- 21 MFish makes the following comments on substantive points raised in Challenger's submission
 - a) MFish notes that Challenger accept that the information currently collected on the CELR is inadequate, but do not agree with the proposed change to an A3 reporting form. Challenger would prefer to see a new A4 form. MFish chose the A3 option after investigating many others. MFish has spent a considerable amount of time designing and trialling prototype netting forms. It proved to be impossible to meet all of the required specifications for information and form design (including a sensible minimum font size) while retaining the A4 form size. The option of using two A4 forms was also considered, but all of the fishers interviewed during the form design phase preferred the folded A3 option.
 - b) MFish notes that Challenger agrees with the decision to limit the use of the NCELR to vessels larger than 6m. However, Challenger does not think it is appropriate to suggest that "if the arbitrary 6m and over vessel size threshold proves to be set incorrectly, it is possible that it could be revised in future." Challenger feels that this type of indecision costs the fishing industry on every occasion. MFish believes that it is not currently reasonable to require very

small vessels to provide such detailed information about their fishing activities. If fishing practices, technology or information requirements significantly alter in future, it may become reasonable to expect very small vessels to provide this information. MFish considers it very unlikely that the 6m threshold would be raised in future, but it is possible that it could be lowered.

- MFish notes that Challenger would like clarification of the reference made to c) the "use of several different methods in one trip". MFish proposed that fishers who routinely use several different methods during one trip would be eligible to apply for an exemption, which if granted, would allow them to continue to report fishing on the CELR. Challenger does not believe that multiple method trips should limit the introduction of this form to those users or allow the ability to apply for an exemption. MFish has analysed existing data, and at present, approximately 4% of all trips reported on the CELR use multiple methods. If fishers are required to report passive netting on the NCELR while on a multiple method trip, it may be confusing and onerous for them to meet their reporting requirements. They would need to complete separate forms for the different methods and would potentially need to keep the fish caught by the different methods separate for landing purposes. However, MFish considers it preferable that as much passive net fishing as possible be reported on the NCELR. Therefore, it is likely that any exemptions granted would only be valid for those trips that actually use multiple methods.
- SeaFIC and Challenger both submit that there is incomplete analysis of the costs of this proposal. MFish acknowledges that the IPP covers solely government costs without any assessment of compliance costs for industry. MFish's view is that additional costs are unlikely to be high. Although a new form will be used, the requirement for fishers to report their fishing activity already exists. It may take fishers some time to adjust to the new form and the new data requirements. More information is required from fishers, which may result in a slight increase in the amount of time needed to complete forms. However, form tests show that the form is simple and easy for fishers to complete. MFish does not expect the new form to result in any significant changes in processes, and the forms will still be completed and sent in as usual. MFish envisage that fishers without a GPS can use charts to determine their fishing position, rather than needing to purchase a GPS.

Conclusion

- MFish recommends regulatory amendments to the Fisheries (Reporting) Regulations 2001 to introduce a new NCELR for reporting passive net fishing. The new NCELR will collect data from vessels 6m or over in overall length, about fishing using the methods set netting, inshore drift netting or pair set netting.
- Development of a new form was recommended by the Fisheries Data Working Group and has had support and involvement from industry. The new NCELR will provide a means to collect high quality policy, science, fisheries management, research and compliance information where this is needed in order to manage fisheries successfully. The design of the new form will also be simpler and more intuitive for fishers to complete.

Recommendations

- 25 MFish recommends that you:
 - a) Agree to amend the Fisheries (Reporting) Regulations 2001 to introduce a new Netting Catch Effort Landing Return (NCELR) for reporting passive net fishing;
 - b) Note that the new NCELR will collect data from vessels 6m or over in overall length, about fishing using the methods set netting, inshore drift netting or pair set netting;
 - c) Note that fishers using vessels less than 6m in overall length will continue to report set netting, inshore drift netting or pair set netting on the CELR at this stage;
 - d) Note that fishers who routinely use several different methods (passive netting plus one or more other methods) during one fishing trip will be eligible to apply for an exemption under regulation 41 of the Fisheries (Reporting) Regulations 2001 to allow them to report fishing from multiple method trips on a CELR.

REGULATION OF NON-FISH INCIDENTAL CATCH **RETURN - INITIAL POSITION PAPER**

Proposal

1 The Ministry of Fisheries (MFish) proposes to amend the Fisheries (Reporting) Regulations 2001 to regulate the reporting of non-fish¹ incidental catch.

Executive Summary

- 2 MFish has identified three options for the reporting of non-fish incidental catch –
 - a) Regulate the fields of information required to be reported, but not a specific return;
 - b) Amend the catch effort returns to incorporate non-fish incidental catch information; and
 - **c**) Regulate the non-fish incidental catch return and amend the existing catch effort returns to include a declaration about whether or not non-fish incidental catch occurred.
- 3 MFish's preferred option is (c). Regulating non-fish incidental catch returns will ensure a standard means of reporting catch of non-fish aquatic species and contribute to MFish's understanding of the effects of fishing on the aquatic environment.

Background

- The Marine Mammals Protection Act 1978 (s 16) states that "Where any person in the 4 course of fishing pursuant to any licence, permit, or permission granted or given under the Fisheries Act 1996 accidentally or incidentally kills or injures a marine mammal he shall, if fishing from a vessel, record the event in the vessel's log and report the event in writing ... not later than 48 hours after the arrival of the vessel in port."
- 5 The Wildlife Act 1953 (s 63B) similarly requires that "If any person, in the course of fishing pursuant to a permit, licence, authority, or approval issued, granted, or given under the Fisheries Act 1996, accidentally or incidentally kills or injures marine wildlife he or she shall, if fishing from a vessel, record the event in the vessel's log and report the event in writing ... not later than 48 hours after the arrival of the vessel in port."
- 6 The information gained from the above legislative requirements is of interest to MFish, as it can potentially inform fisheries management decision-making on the effects of fishing on non-fish species. As a matter of practice, fishers have traditionally sent non-fish reports to MFish rather than to the Department of Conservation. Prior to 1996 there was no systematic means of reporting – reports to

¹ Non-fish incidental catch includes corals, sponges, bryozoans, seabirds, marine mammals, and marine reptiles.

MFish were received by fax, telex, e-mail or mailed in various formats of Industry's devising. However, inconsistent format and varying information meant MFish could do little with the reports.

In 1996, MFish and the then Fishing Industry Board initiated a project to consolidate reporting of non-fish incidental catch. A draft non-fish incidental catch reporting form was produced and consulted on. The form was released to Industry in late 1996/early 1997.

Management Rationale

- 8 MFish's rationale for collecting incidental non-fish data is
 - a) To collect data relevant to the environmental aspects of the Fisheries Act 1996 (the 1996 Act) and policy. This will serve to:
 - i) Contribute to MFish's understanding of the effects of fishing on the aquatic environment
 - ii) Provide baseline information to assess whether a particular fishery or method has a by-catch problem
 - b) To standardise the reporting needed as a statutory defence under the Marine Mammals Protection Act 1978 and the Wildlife Act 1953 if they catch protected species
 - c) To comply with minimum or default reporting required under the National Plan of Action for seabirds and various Industry Codes of Practice.
- The 2005 Strategy for Managing the Environmental Effects of Fishing sets out a standards-based approach by which MFish will manage environmental effects. These standards will require MFish to identify those species and habitats on which fishing activities are having an adverse effect.

Problem Definition

- MFish has identified a number of shortcomings with the current non-fish incidental catch reporting form
 - a) There is no legal requirement under the Wildlife Act 1953 or the Marine Mammals Protection Act 1978 to complete the current non-fish by-catch form, or any other specific form;
 - b) There is no legal requirement to report nil catches, so there is no information on whether failure to report any non-fish incidental catch means that nothing was caught during a particular fishing event;
 - c) There is no legal requirement under the 1996 Act to report non-fish incidental catch:
 - d) Data collection is not consistent or across all fisheries. There is a lack of knowledge about the existence of the current form by some fishery sectors. The current form is used mainly by large companies. There is a lack of

- education for fishers of their obligations with respect to reporting non-fish incidental catch and use of the form;
- e) Current data cannot be used to extrapolate total catch of non-fish incidental catch, nor to explore factors affecting captures of non-fish species because the dataset is considered to be incomplete;
- f) The current form only covers seabirds and marine mammals, whereas the Wildlife Act 1953 requirements also include marine reptiles and some species of coral;
- g) Instructions for completing the form are not as clear as they could be;
- h) Uncertainty exists as to which authority (MFish or the Department of Conservation) data should be reported to;
- i) The current form requires fishers to duplicate some information that is also reported on their catch effort returns;
- j) There is no easy way to determine which catch effort return describes the fishery in which the reported seabird or marine mammal was caught.

Options for Management Response

- Before discussing the following options, it is important to clarify whether the MFish Chief Executive has the legal mandate under the 1996 Act to require reporting of non-fish incidental catch. To date, reporting of non-fish by-catch has been under the MMPA and the Wildlife Act. However, the 1996 Act contains provisions that provide the MFish Chief Executive with the power to require non-fish reporting. Section 297(1)(d)(ii) of the 1996 Act states that the MFish Chief Executive may make regulations requiring fishers to provide to the chief executive such information as may reasonably be required for the purpose of the 1996 Act.
- Section 8 of the 1996 Act states that the purpose of the Act is to provide for the utilisation of fisheries resources, while ensuring sustainability. "Ensuring sustainability" is defined to mean "... (b) avoiding, remedying or mitigating any adverse effects of fishing on the aquatic environment." The interpretation section of the 1996 Act (s 2) defines "aquatic environment" as including all aquatic life and "aquatic life" to mean any animal that must inhabit water, including seabirds (whether or not in the aquatic environment).
- MFish has identified three options for collecting the required information
 - a) Regulate the fields but not the return itself;
 - b) Amend the catch effort returns to incorporate non-fish incidental catch information:
 - c) Regulate the non-fish incidental catch return and amend the existing catch effort returns to include a declaration about whether or not non-fish incidental catch occurred.
- Regardless of which of these options are chosen, MFish proposes that the information collected will cover the following species of aquatic life seabirds, marine mammals (ie, all species of dolphins, sealion, fur seal and whale), turtles and corals. The

reporting does not apply to "fish" (all species of finfish and shellfish, at any stage of their life history, whether living or dead), which must be reported on catch effort returns.

- All three options would require varying amendments to the Fisheries (Reporting) Regulations 2001, eg, the addition of a new part to Schedule 2 for a prescribed non-fish incidental catch return. The Interpretations section of the Reporting Regulations will also need to be amended to define certain terms, such as "coral". The explanatory notes will specify the reporting codes to be used in completing the returns. Due to difficulties identifying some species (particularly birds), group codes (eg, albatross, petrel and shearwater) will be created, rather than requiring individual species codes.
- There is also an inconsistency between the reporting timeframe for submission of nonfish reports under the Marine Mammals Protection Act 1978 and the Wildlife Act 1953 (ie, within 48 hours of landing) and MFish's requirements for most catch effort returns (ie, within 15 days from either the end of the trip or the last day of the month in which the trip ended, depending on the return type). MFish is currently discussing this issue with the Department of Conservation. In the meantime, MFish would welcome stakeholders' views on the reporting timeframe for submission of non-fish returns.
- 17 The advantages and disadvantages of the alternative approaches are discussed below.

Regulating the fields but not the return itself

- This approach involves specifying in regulations the fields of information that must be reported but allowing Industry groups to design forms for their particular fisheries.
- This approach has the advantage of allowing fisheries with additional commitments, such as the NPOA Seabirds, the Sea Lion (SQU6T) Operational Plan or the Marine Stewardship Council, to design one form that would meet all of their environmental reporting needs, rather than having to fill in a non-fish incidental catch form plus one or more additional forms to meet their other needs.
- There are several disadvantages with this approach. It would be far more complicated to enter and store the data into a database. It would also become more complicated and confusing for fishers not actively involved in an industry group. This option also represents a step backwards to pre-1996 when fishers reported non-fish incidental catch in a myriad of different ways.

Amending the catch-effort returns to incorporate non-fish incidental catch information

- This approach has the advantage of attracting a higher likelihood of compliance, as fishers are already required under the Reporting Regulations to complete catch-effort returns, and levels of compliance are high.
- However, due to the competition for space on catch effort returns, incorporating the incidental catch component would be difficult and it would not be possible to include all of the desirable information. Alternatively, catch-effort forms could become larger

than their current A4 size to incorporate new information. However, this would require significant changes to the systems that are currently operating.

Regulating the non-fish incidental catch return

- The advantage of regulating a revised non-fish incidental catch form is that it would allow for the capture of more detailed information than would be the case by revising the catch and effort forms. Additionally, as reporting is a statutory defence, it would be preferable for a standard form to be used, and it would not be advisable to go back to the previous "open slather" system.
- In terms of possible disadvantages, there are some costs to Government associated with the proposal (see paragraphs 31-35). In addition, the level of compliance may be lower than would be the case if the catch-effort returns were amended to incorporate non-fish incidental catch information. Fishers generally would prefer fewer rather than more forms to complete (although reporting of non-fish incidental catch is already required in any event).
- On balance, MFish's preferred option is that a non-fish incidental catch return (NFICR) be regulated as a standard form.
- If a standard return is regulated, the existing catch effort returns would also need to be amended to include a declaration about whether or not non-fish incidental catch occurred. This could be in the form of an "incidental catch yes/no" tick box or field. This would allow data users to know when to expect a NFICR and to be confident that when no NFICR is present, no incidental captures occurred. It should also be noted that MFish may take the opportunity to make other minor and technical amendments to the catch effort returns if the proposed tick box or field proceeds. A list of proposed changes to catch effort returns to incorporate a non-fish incidental catch declaration is attached as Appendix I.
- If this option were to be adopted, one generic return is proposed, rather than a number of different returns to encompass different types of captures and species. The NFICR includes fields to ensure that non-fish incidental catch events and catch effort data can be linked (the lack of which is a major short-coming of the current form), while minimising duplication of reporting requirements for fishers. MFish Effort data relevant to the non-fish incidental catch event will be able to be accessed through the link to the relevant catch effort data.
- MFish also considered whether, if this option proceeds, to integrate the non-fish returns into the catch effort return book to increase the likelihood of compliance, or to produce them in a stand-alone book. At least initially, the forms will be provided in a stand-alone book until MFish is able to more accurately determine the number of non-fish forms that would need to be provided with the catch effort return book. In due course, it may be preferable to integrate the forms into the catch effort book. MFish considers the costs of either option to be not dissimilar. MFish invites stakeholder views on this issue.
- 29 A template for the proposed NFICR is attached as Appendix II.

Statement of the Net Benefits and Costs of the Preferred Option

Benefits

- 30 The benefits of regulating the non-fish incidental catch reporting form are as follows
 - a) Will allow for fishers to report a wider range of aquatic species, eg, coral to measure benthic impacts;
 - b) Contribute to MFish's understanding of the effects of fishing on the aquatic environment through provision of relevant high quality information;
 - c) Provide an initial indication of which fisheries may have a problem with incidental catch of non-fish aquatic species;
 - d) All fishers will furnish a generic standardised non-fish return;
 - e) The design of the new return will be simpler and more intuitive for fishers to complete and will reduce the amount of duplication between returns; and
 - f) Will ensure that non-fish incidental catch data and catch effort data can be linked.

Costs

- The one-off cost to Government associated with producing the new non-fish form booklets is estimated to be approximately \$13,600. This cost includes creating the printing template, the initial printing of the booklets, a mail-out to all vessel owners, and writing the explanatory notes to accompany the forms. Copies of these books will initially be sent to all relevant permit holders. Other fishers, eg, potting fishers, with a very low likelihood of non-fish captures may be sent only a letter explaining the requirements.
- 32 The costs associated with incorporating an incidental catch declaration on all types of catch effort returns is expected to be in the region of \$1500 to \$2500. MFish will run down stocks of the current forms in anticipation of the introduction of the new forms.
- As it is not possible at this stage to estimate the number of forms to be received and actioned by FishServe, MFish is only able to provide an estimate of the costs. These costs are estimated to be in the range of \$10,000 to \$40,000, although most likely at the lower end of that range, for 2006-07.
- 34 There will be some direct MFish costs associated with the required developments to the database in order to store and retrieve the information gathered. These costs are estimated at approximately \$50,000.
- Experience suggests that compliance by the inshore fleet may be negligible without constant reminder and education. MFish is committed to ensuring that completion of these revised forms is publicised and enforced.

Penalty provisions

MFish is considering the appropriate type of penalty provisions applicable to the proposed amendments and has identified two options for the maximum fine for any offences against the reporting of non-fish incidental catch in fisheries returns. These two options are a maximum fine of either \$20,000 or \$100,000. An offence carrying a maximum penalty of \$100,000 would mean that property used in the commission of an offence is automatically forfeit (including the vessel itself). Relevant considerations for MFish when deciding upon which of these options to adopt include the importance of the reporting requirements, the compliance requirements (detection and rate of compliance required) and the deterrence value (along with any other relevant considerations).

Preliminary Consultation

- A working group of MFish, the Department of Conservation and Industry representatives has met to discuss approaches to the non-fish incidental catch reporting issues. The working group representatives have reviewed draft templates of the NFICR. As part of the form design process, field trials were run where prototype forms were tested with fishers, revised and then tested again.
- 38 MFish understands that there is some initial Industry support, as expressed by the NZ Seafood Industry Council, for regulating the forms at the earliest opportunity.

Conclusion

- 39 MFish has identified three options for the reporting of non-fish incidental catch
 - a) Regulate the fields but not the return itself;
 - b) Amend the catch effort returns to incorporate non-fish incidental catch information; and
 - c) Regulate the non-fish incidental catch return and amend the existing catch effort returns to include a declaration about whether or not non-fish incidental catch occurred.
- MFish's preferred option is (c). Regulating non-fish incidental catch returns will ensure a standard means of reporting catch of non-fish aquatic species and contribute to MFish's understanding of the effects of fishing on the aquatic environment.

Preliminary Recommendation

MFish's preliminary recommendation is that the Minister of Fisheries agree to amend the Fisheries (Reporting) Regulations 2001 to prescribe a non-fish incidental catch reporting return, and to amend catch effort returns to include a non-fish incidental catch declaration.

ANNEX ONE

Proposed Catch Effort Return changes to incorporate a "Non-fish incidental catch" declaration

Form type	Proposed change	Information loss
Catch Effort Landing Return	Option 1: Reduce the "Effort data" section to the columns: "Time", "A", "B" and "C" only. The space where effort column "D" is located will be replaced by a "Non-fish incidental catch" yes/no tick box or field	Option 1: The only template to use effort Column "D" is the "Seining" template. On this template the instruction reads: "Sea surface temperature (C°) Purse seine only". If this column is to be replaced by a "Non-fish incidental catch" yes/no tick box or field, the only information that would be lost is sea surface temperature on purse
	Option 2: Reduce the width of the "Target species", "Total (kg)" and "Species code", "Weight (kg)" columns to provide extra space for a "Non-fish incidental catch" yes/no tick box or field.	seine sets. Option 2: No information will be lost, as extra space will be created to accommodate the "Non-fish incidental catch" yes/no tick box or field.
Trawl, Catch, Effort and Processing Return	The "Target species" column heading will be moved to the blank box under the column heading: "Trawling speed". The space once used for recording "Target species" will be replaced by a "Non-fish incidental catch" yes/no tick box or field.	No information would be lost, as the box under "Trawling speed" is currently blank.
Squid Jigging Catch, Effort Return	Under the "Catch" section, the last line of the "Other species", "Total catch (kg)" section will be removed and replaced with a "Non-fish Incidental Catch" yes/no tick box or field section.	Some information may be lost, but currently fishers are only utilising one line of the "Other species" section.
Tuna Longlining Catch, Effort Return	The lines available to record "Catch kept" (section 4.) will be reduced from 20 to 17 lines. The space made available will then be used for a "Non-fish incidental catch" yes/no tick box or field.	In one set, if a fisher reports more than 17 species of fish caught and kept, they would be forced to write additional species on a new return. This inconvenience may discourage some fishers from fully meeting their reporting

		requirements.			
Lining Catch, Effort Return	Option 1: The lines available to record "estimated greenweight" of	Option 1: In one set, if a fisher reports more than 8 species of fish caught, they			
	each species will be reduced from 8 to 7 lines. The space made available will then be used for a "Non-fish incidental	would need to report the 8 th species as part of "Weight of all other species caught this set". The separate identification and			
	catch" yes/no tick box or field. This new section will be positioned under "Weight of all other species caught this set".	quantification of the 8 th species would be lost.			
	Option 2: The "Target species" section will be incorporated into the "Set number (since start of trip)" section. The space made available, would then allow the other effort sections to move up the form so that a "Non-fish incidental catch" yes/no tick box or field section can be positioned on the line above the "estimated greenweight" section.	Option 2: Changing the current meaning of a line to incorporate 2 different sections, may cause some additional confusion to fishers.			

Non-fish Incidental Catch Return

NFI 1234567

- 1. Complete separate returns for each fishing trip where non-fish incidental catch occurs. Non-fish incidental catch includes corals, sponges, bryozoans, seabirds, marine mammals and marine reptiles.
- 2. Non-fish incidental catch

Complete a separate row for each non-fish species caught in a fishing event.

Date tow / set Time tow / began set began (dd/mm/yy) (24-hr clock)		Form number from	Non-fish	Estimated	Seabirds/Mammals/Reptiles			
			catch effort return	species code	weight of corals, sponges or bryozoans (kg)	alive	Number alive, injured	Number dead
/	/	:			.0kg			
/	/	:			.0kg			
/	1	:			.0kg			
1	1	:			.0kg			
1	/	:			.0kg			
/	1	:			.0kg			
1	/	:			.0kg			
/	1	:			.0kg			
1	/	:			.0kg			
/	/	:			Okg			
/	/	:			.0kg			
1	/	:			Okg			
/	1	:			.0kg			
1	1	:			.0kg			
/	/	:			0kg			
1	1	:			.0kg			
1	/	:			Okg			
/	/	:			.0kg			

Use additional pages if yo	ou run out of space to record non-fish incidental catch from this trip.						
3. Enter a cross in one of the circles to show the MFish catch effort form type used during the trip.							
TCEPR CELR LCER TLCER	NCELR ○ Other ○ → If other, enter the form type used						
4. Permit holder and vessel details							
Name of permit holder	I declare that the information I have given on this return is correct and complete, and that I have read and understood the explanatory notes supplied with this return.						
Client number of permit holder	Signature of permit holder or						
Name of vessel	authorised person						
Registration number of vessel	Send completed returns to PO Box 297, Wellington (NZ).						

REGULATION OF NON-FISH INCIDENTAL CATCH RETURN – FINAL ADVICE

Initial Proposal

The Ministry of Fisheries (MFish) initially proposed to amend the Fisheries (Reporting) Regulations 2001 to regulate the reporting of non-fish incidental catch.

Submissions

- 43 Submissions regarding this proposal were received from:
 - a) New Zealand Seafood Industry Council (SeaFIC); and
 - b) Sanford Ltd (Sanford).

Management Measures

- SeaFIC welcomes the regulation of the reporting of non-fish incidental catch, as it believes that information on incidental catch is important in meeting the environmental requirements of the Fisheries Act 1996.
- SeaFIC notes that without appropriate data, not only is the scientific assessment of the effects of incidental catch (and the determination of an appropriate management response) difficult, but the fishing industry is left open to broad-brush criticism of its environmental performance without recourse to appropriate data.
- SeaFIC believes that current non-fish incidental catch data are pitiful. SeaFIC notes that although some industry groups have worked to ensure that incidental catch is reported voluntarily to MFish via the existing non-fish by-catch form, reporting by this mechanism has not been uniform. SeaFIC states that management of the data has been similarly patchy, with no entry of null returns (and so no way of distinguishing a nil return from no return for a given day/fishing event). SeaFIC believes that current observer coverage is inadequate to allow the characterisation of non-fish incidental catch across all NZ fisheries.
- SeaFIC considers that a uniform minimum level of non-fish incidental catch reporting must be implemented across NZ fisheries, and that this can only be achieved via a regulated form. When fully implemented, SeaFIC believes that the NFICR should allow a basic level of incidental catch reporting across all NZ fisheries, and better placement of observer coverage when more detailed information is required.
- SeaFIC note that there is support for the rapid introduction of regulated reporting of non-fish incidental catch from a number of industry bodies and welcome the progress made on the development of the draft NFICR form via a small MFish/DoC/SeaFIC working group.

- In response to the request for feedback on the timeframe for the submission of the NFICR (paragraph 16), SeaFIC considers that this should match the reporting timescale for the associated catch-effort returns.
- SeaFIC notes that this reporting timetable, and the establishment of the NFICR as the sole reporting mechanism for the incidental catch of protected species in the course of a fishing operation, will require amendments to the Wildlife and Marine Mammal Protection Acts.
- SeaFIC consider that the introduction of the NFICR form as a parallel reporting system (i.e. in addition to the Wildlife Act requirements), while potentially feasible, would be most undesirable, even in the short term. SeaFIC state that not only would this require duplication of effort on the part of fishers, but additional Wildlife Act requirements would very likely undermine the rapid acceptance of the NFICR reporting requirements.
- SeaFIC encourages MFish to work with the Department of Conservation to achieve the required amendments on a timescale that allows the early adoption of the NFICR. SeaFIC note that an interim solution may be required in the short term.
- SeaFIC welcomes the fact that the draft NFICR potentially allows reporting of nonfish incidental catch at a variety of taxonomic levels, from the species through to much broader groupings. SeaFIC recommends that the regulated reporting of incidental catch should only require reporting at the broadest taxonomic level, but should encourage reporting at a more detailed level where possible.
- SeaFIC states that this approach recognises the difficulty in sorting and reliably identifying all non-fish incidental catch to species level, and should facilitate a more rapid acceptance of the form than might otherwise be the case.
- Although SeaFIC supports the MFish position that a specific NFICR form is required, rather than simply regulation of the required fields, SeaFIC notes that some fisheries will require more detailed reporting. SeaFIC notes that some of these requirements can be met via the proposed NFICR form by voluntarily requiring reporting at a more detailed taxonomic level than the default NFICR form would require. However, SeaFIC believes that some additional reporting commitments (e.g. prescribed by an industry Code of Practice) may require the reporting of additional fields either on a tow by tow basis, or whenever incidental catch occurs.
- SeaFIC notes that a general principle of both required and voluntary reporting should be the minimisation of different forms, and a minimisation of duplication of data between forms. Nevertheless SeaFIC accepts that the timely introduction of regulated non-fish incidental catch reporting can only be achieved via a separate NFICR return rather than the incorporation of this data on to existing catch-effort forms.
- SeaFIC states that it is essential that information on non-fish incidental catch (or the lack thereof) should be linked to catch-effort data at the fishing event level. SeaFIC believes that the introduction of the "incidental catch yes/no" fields onto all catcheffort returns is an essential part of this process.

- Although altering of existing catch-effort forms (beyond the introduction of the "incidental catch yes/no" field) to capture the data reported via the proposed NFICR is not a viable option at this stage, SeaFIC recommends that the Fisheries Data Working Group considers the possibility of integrating the NFICR data into future catch-effort returns where possible.
- Furthermore, SeaFIC suggests that the production of regulated forms could be made flexible enough to allow for the incorporation of additional fields where this is required to meet the environmental reporting requirements of particular fisheries. SeaFIC states that the most flexible mechanism to achieve this would be via electronic reporting systems, and recommends that MFish give a high priority to the introduction of mechanisms that allow electronic reporting.
- SeaFIC notes that at paragraph 31, it is suggested that participants in fisheries where incidental catch is known to be low may only be sent a letter regarding the new form, rather than the form itself. SeaFIC recommends that all fishers should be sent copies of the form initially, to ensure that lack of the required form is not an inhibition to the widespread adoption of the NFICR where required.
- SeaFIC welcomes MFish's commitment to ensuring that adequate education and compliance efforts accompany the introduction of a regulated NFICR form.
- With respect to the proposed changes to the existing catch-effort forms outlined in Annex One (other than the proposed NCELR form as noted above), SeaFIC notes that draft revised catch-effort forms, which supersede the suggestions in Annex One of the IPP, were circulated at the NFICR working group meeting on Wednesday 1 February 2006. SeaFIC's comments below relate to those proposed drafts. On a form by form basis:
 - a) CELR form: SeaFIC supports the proposed solution (equivalent to option 2 in the IPP Annex One) of reducing the width of some fields to accommodate a new "Non-fish incidental catch yes/no" field. SeaFIC understand that the narrower fields are considered acceptable from a form design and data entry standpoint.
 - b) TCEPR form: SeaFIC state that the solution proposed in Annex One, and illustrated in the draft circulated on 1 February, seems acceptable.
 - SJCER form: SeaFIC note that this form has an abundance of space available. The draft circulated at the meeting of 1 February seems largely acceptable. SeaFIC note that this draft does (as suggested in the IPP) delete the third line of the "Other species" catch box, but understand that this line is never used. seaFIC suggest that the "Non-fish incidental catch yes/no" field might be more appropriately placed as the last box in the catch section (i.e. on the right of the form) rather than the first (i.e. central on the form).
 - d) TLCER form: SeaFIC understand that the maximum number of species reported on a TLCER form in the period 1/10/04 to 31/12/05 was 15, and that only on one occasion. Therefore SeaFIC agree that the proposed solution of reducing the number of catch kept lines to 17 to make space for the "Non-fish incidental catch yes/no" field is appropriate.

- e) LCER form: SeaFIC states that the draft circulated at the meeting on 1 February 2006 representing option 2 in the IPP Annex One seems to be an acceptable solution. SeaFIC agree that the changed meaning of a line may cause some confusion initially, but note that the introduction of the new "Nonfish incidental catch yes/no" field is likely to require a short-term increase in the number of forms requiring corrections in any case.
- f) For avoidance of doubt, SeaFIC seek reassurance from MFish that fishers will be required to fill out a NFICR form only if they had a non-fish incidental catch event, i.e. no NFICR form will be required if they declared "no" on the (appropriate) catch-effort return.
- Finally SeaFIC note that the analysis of the costs of this proposal is incomplete. The IPP covers solely government costs without any assessment of compliance costs for industry.
- Sanford does not support the notion that the term 'aquatic environment' under the Fisheries Act 1996 extends to the responsibility of regulating for protected species such as seabirds and marine mammals. Sanford submit that the Wildlife Act and the Marine Mammals Act are the legislative statutes that these species are administered under, and that linking these protective species to the Fisheries Act is extending the definition of aquatic environment further than we believe is intended.
- However, Sanford conditionally support the introduction of the use of the non-fish incidental catch return as the company believes that the accurate collection of protected species interaction data is critical in meeting environmental requirements of commercial fishing.
- Sanford support a consistent reporting mechanism for non-fish incidental catch data. Sanford does not believe that the current Wildlife Act and Marine Mammal Protection Act reporting mechanisms are currently adequate for analysis purposes.
- The collection of accurate data is critical to Sanford as the company believes this data will provide a better basis for future observer allocations within fisheries, which equates to more accurate monitoring of protected species using voluntary industry Codes of Practices, and monitoring the efficacy of the mitigation measures they contain.
- Sanford is strongly concerned that MFish are considering a penalty provision applicable to the use of the non-fish incidental catch returns. Sanford opposes any penalty provision related to the use, non-use, or incorrect use of the non-fish incidental catch return.
- Sanford states that there will be situations when interactions occur between protected species and commercial fishers, outside the control of all fair and reasonable measures taken. Sanford cites as an examples a protected seabird striking the side of the vessel when steaming back to port, and the skipper and crew unaware of the interaction, however on inspection of the vessel by a fisheries officer the protected species is found, and the skipper has failed to report this interaction on the return and an offence has occurred and a fine incurred (or possibly the permit suspended, or automatic forfeit of vessel).

- Sanford reiterate that it does not believe that the Fisheries Act has jurisdiction for protected species, under the definition of aquatic environment, and to propose to do so, and put in place penalty provisions for offenders is outside the provisions of the Fisheries Act.
- Sanford notes that the SeaFIC submission has provided some useful comments on the implementation of the new form, and rather than repeat those comments Sanford refers to their submission.

MFish Discussion

- MFish welcomes the support of SeaFIC and Sanford for the proposal to regulate nonfish forms and also expresses appreciation to Industry representatives for their very constructive and helpful participation in the working group considering this issue.
- MFish notes and agrees with SeaFIC's rationale for support for the NFICR, particularly that the proposed reporting system will allow a basic level of incidental catch reporting across all NZ fisheries for the purposes of scientific assessment of incidental catch and placement of Observer coverage.
- MFish has the following comments on the specific issues raised by SeaFIC:

Reporting timeframe

- a) MFish notes SeaFIC's belief that the reporting timeframe for non-fish returns should match the reporting timescale for associated catch effort returns, ie, within 15 days from either the end of the trip or the last day of the month in which the trip ended, depending on the return type. MFish supports this reporting timeframe, and is currently discussing the issue with the Department of Conservation with a view to reconciling that timeframe with the one under the Wildlife Act and the Marine Mammals Protection Act (within 48 hours of landing). The proposal will not proceed to the Economic Development Committee until the matter has been satisfactorily resolved between departments.
- b) MFish agrees with SeaFIC that it would undesirable to have parallel reporting systems in place (ie, the NFICR and the current Wildlife Act and Marine Mammals Protection Act requirements) due to the confusion that would ensue. MFish and the Department of Conservation are working to ensure that this does not eventuate.

Reporting codes

c) MFish notes SeaFIC's support for the NFICR allowing reporting of non-fish incidental catch at a variety of taxonomic levels. MFish agrees with SeaFIC that the regulated reporting of incidental catch should only require reporting of incidental catch at the broadest taxonomic level, but should encourage reporting at a more detailed level where possible.

Additional fields

d) SeaFIC proposes that some additional reporting commitments (eg., prescribed by an Industry Code of Practice) may require the reporting of additional fields, either on a tow-by-tow basis, or whenever incidental catch occurs. MFish notes that the IPP considered the possibility of specifying the fields of information that must be reported but allowing Industry groups to design forms for their particular fisheries. MFish did not favour this approach, because it would be far more complicated to enter and store the data into a database and would be more complicated and confusing for fishers not actively involved in an Industry group. This option also represents a step backwards to the pre-1996 situation when fishers reported non-fish incidental catch in a myriad of different ways. Notwithstanding, however, Industry are welcome to implement separate reporting systems for their own purposes (as with vessels reporting sealion catches to SeaFIC during the summer squid fishery), as long as fishers also fulfil their legal obligations to report non-fish catch on NFICR forms.

Linking field to catch effort returns

e) MFish notes SeaFIC's support of a linking incidental catch field on all catch effort returns. SeaFIC recommends that the Fisheries Data Working Group consider the possibility of integrating NFICR data into future catch effort returns where possible. MFish believes that, such is the competition for space on catch effort returns, the possibility of being able feasibly to include NFICR data is highly unlikely. However, MFish is willing to discuss this matter further in the Working Group, which is scheduled to meet again shortly.

Electronic reporting

f) SeaFIC also recommends that the forms could be made flexible enough to allow for the incorporation of additional fields where this is required to meet the environmental reporting requirements of particular fisheries. SeaFIC has recommended electronic reporting systems as being the most flexible mechanism to do so. MFish notes SeaFIC's suggestion that electronic recording using waterproof devices should become a viable option. MFish has already carried out some work on the feasibility of allowing electronic provision of catch returns. The biggest obstacle identified to date is finding an electronic equivalent to legally signing the form. MFish plans to do more work on this issue in the future. While MFish acknowledges that electronic provision of catch returns is likely to occur in future, MFish does not consider their use is feasible at this point in time.

Mail-out of forms

g) SeaFIC recommends that all fishers should be sent copies of the form initially, to ensure that lack of the required form is not an inhibition to the widespread adoption of the NFICR where required. MFish notes that there seems little point in going to the expense of sending forms to fishers in such fisheries as eels and paua where incidental non-fish catch will be non-existent, and would prefer to send them an explanatory letter instead.

Changes to catch effort forms

h) MFish thanks SeaFIC for its detailed comments on the proposed changes to the catch effort forms. MFish will contact SeaFIC to discuss its suggestions in detail.

Industry compliance costs

SeaFIC notes that analysis of compliance costs for Industry is missing from the IPP. MFish acknowledges that the IPP solely covers costs to government. MFish's view is that additional costs to industry are unlikely to be high. Although a new return is proposed, fishers are already required under statute to report non-fish incidental catch and most use the non-regulated non-fish form. It may take some fishers time to adjust to the new form, although we note that fishers were able to complete the proposed forms quickly and easily during trial testing.

Scope of Fisheries Act

Sanford has queried whether the term 'aquatic environment' under the Fisheries Act 1996 extends to the responsibility of regulating for protected species such as seabirds and marine mammals. As noted in the Initial Position Paper (IPP), the interpretation section of the 1996 Act (s 2) defines 'aquatic environment' as including all aquatic life and 'aquatic life' to mean any animal that must inhabit water, including seabirds (whether or not in the aquatic environment). MFish is satisfied that the MFish Chief Executive has the legal authority to require non-fish reporting under s 297(1)(d)(ii) for the purpose of the 1996 Act.

Offences and Penalties

- In the IPP, MFish requested comment on the most appropriate type of penalty provision applicable to the proposed amendments. MFish identified two options for the maximum fine for any offences against the reporting of non-fish incidental catch in fisheries returns. These two options were a maximum fine of either \$20,000 or \$100,000. The only comment provided by stakeholders was from Sanford, objecting to the imposition of any penalty provisions at all in regard to filing NFICR forms.
- MFish notes Sanford's concerns, but must consider the deterrent effect on fishers failing to comply with the proposed regulation, and omitting any penalty provision would render the new form "toothless" in the extreme. MFish notes the scenario outlined by Sanford in its submission, but it is important to emphasise that MFish would need to carefully weigh the circumstances of the case and the likelihood of a successful prosecution before taking any action against a fisher.
- After careful consideration, MFish proposes to replicate the offences and penalties provisions relating to catch effort returns for the NFICR. These include:
 - a) A failure to provide a return required to provided to the MFish Chief Executive within the relevant time:
 - b) A failure to comply with a request by a Fishery Officer to produce a return for inspection or to allow copies to be taken of the return;
 - c) Making a false or misleading statement on a return; and

- d) A scale of penalties for those offences from fines not exceeding \$20,000 to \$100,000.
- The above offences and penalties will serve to emphasise that the NFICR will carry the same weight and status as catch effort returns, and the penalty provisions will provide the appropriate disincentive for offences against the regulations.

Miscellaneous

- 81 The Department of Conservation requested clarification on a number of miscellaneous issues
 - a) Whether there is sufficient latitude on the template for the NFICR to include fish species that are now or may in future be added to the list of protected species under the Wildlife Act, possibly by the inclusion of an "others" column. MFish notes that the return is intended for reporting of non-fish incidental catch (seabirds, marine mammals, corals etc) and that there is already considerable competition for space on the draft template for the return as it is. However, MFish recognises that there is a need to clarify how fishers should report incidental catch of protected fish species and will discuss this further with DoC.
 - b) A statement (at paragraph 10(a)) that there is no legal requirement under the Wildlife Act 1953 or the Marine Mammals Protection Act 1978 to complete the current non-fish by-catch form, or any other specific form. MFish notes that reporting of marine mammal or seabird incidental catch is a statutory responsibility under those Acts. However, the manner and form of the written report is not specified in legislation the current non-regulated non-fish return is simply a means of applying some consistency in reporting.
 - c) A statement (at paragraph 10(h)) that uncertainty exists as to which authority (MFish or the Department of Conservation) data should be reported to. MFish notes that the legislation states that reporting is to be to DoC, although in practice most (if not all) reports are submitted by fishers to MFish.

Conclusion

- MFish recommends that you agree in principle to regulate a non-fish incidental catch return, and to amend the catch effort returns to include a non-fish incidental catch declaration. Regulating non-fish incidental catch returns will ensure a standard means of reporting catch of non-fish aquatic species and contribute to MFish's understanding of the effects of fishing on the aquatic environment.
- MFish is currently discussing with the Department of Conservation reconciling the reporting timeframe for catch effort returns under the Fisheries Act 1996 with the one under the Wildlife Act and the Marine Mammals Protection Act. The proposal will not proceed to the Economic Development Committee until the matter has been satisfactorily resolved between departments. At present, however, MFish intends to submit the proposal to Cabinet Economic Development Committee in late April with a view to having it in effect by early July 2006.

Recommendations

- MFish recommends that you:
 - a) Agree in principle to prescribe a Non-Fish Incidental Catch Return in regulation;
 - b) Agree in principle to amend the following regulations in the Fisheries (Reporting) Regulations 2001 in order to:
 - i) Define certain terms such as coral, seabirds and marine mammals;
 - ii) Add a new regulation setting out the persons who are required to provide Non-Fish Incidental Catch Returns, and the times or periods by or for which they must be completed and provided;
 - iii) Add a prescribed template for the new Non-Fish Incidental Catch Return;
 - iv) Amend the templates for five catch effort returns to include a non-fish incidental catch declaration;
 - v) Prescribe reporting codes for species of birds, marine mammals, reptiles, corals, sponges and bryozoans;
 - vi) Replicate the offences and penalties applying to catch effort returns to the proposed Non-fish Incidental Catch Return; and
 - c) Note that the proposed amendments will not proceed to Cabinet Economic Development Committee until MFish and the Department of Conservation have reconciled differing reporting timeframes in their respective legislation.

REGULATIONS TO ALLOW COMMERCIAL FISHING FOR ROCK LOBSTER AND PADDLE CRAB IN TE KAITIAKI A MOREMORE MATAITAI RESERVE – INITIAL POSITION PAPER

Key Issues to be Considered

- 1 The key issues to be considered are:
 - a) The Fisheries (Kaimoana Customary Fishing) Regulations 1998 (the Regulations) prohibit commercial fishing in a mätaitai reserve. However, the Regulations provide for the making of regulations to allow commercial fishing for specific species by quantity or time period.
 - b) The Tangata Kaitiaki/Tiaki (Kaitiaki) of the Moremore Mätaitai Reserve (the Mätaitai Reserve) consider that rock lobster and paddle crab is abundant enough to allow commercial fishing of these species in the Mätaitai Reserve.
 - c) The Kaitiaki have under r 27(3) of the Regulations requested the Minister of Fisheries (the Minister) to recommend the making of regulations that allow commercial fishers to harvest rock lobster and paddle crab within the Mätaitai Reserve subject to time period conditions. The Kaitiaki have not requested a quantity limit for either species.
 - d) Other than r 27(3), the Regulations do not provide guidance on what must be considered when deciding whether or not to allow commercial fishing in a mätaitai reserve. However, the basis for a decision must be consistent with:
 - i) The purpose and principles of the Fisheries Act 1996 (the Act);
 - ii) The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
 - iii) The Fisheries (Kaimoana Customary Fishing) Regulations 1998.
 - e) The Mataitai Reserve came into effect on 12 August 2005 and commercial fishing within the reserve has been prohibited since then. At the time the Mataitai Reserve was declared, there were no sustainability concerns for paddle crab or rock lobster.
 - f) Allowing commercial fishing for rock lobster and paddle crab in the Mätaitai Reserve will not impact on the ability of tangata whenua to manage their customary fishery.
 - g) The Kaitiaki request is consistent with the provisions of r 27(3). The request is also generally consistent with the criteria described in r 23(1)(e) of the Regulations, which the Minister considered when deciding to declare the area a Mätaitai Reserve, and with the management aims of the Mataitai Reserve although not a mandatory consideration, these criteria are relevant to the current decision.
 - h) Should commercial fishing for rock lobster and paddle crab be allowed in the Mätaitai Reserve, it must be conducted in accordance with the provisions of

the Act and the relevant commercial fishing regulations applying under the Act (as per r 27(5) of the Regulations).

Background

- The Regulations provide for the establishment of mätaitai reserves. Mataitai reserves are areas of special significance to tangata whenua for customary food gathering purposes. Kaitiaki appointed to manage the customary food gathering area/rohe moana under r 9 of the Regulations, and the tangata whenua who appointed those Kaitiaki, may apply to the Minister for the declaration of a mätaitai reserve. The Minister must approve an application and declare the mätaitai reserve, if the application satisfies the criteria prescribed by r 20 of the Regulations. Once the Minister has declared the mätaitai reserve he must also appoint the Kaitiaki nominated by the tangata whenua to manage the mätaitai reserve.
- Commercial fishing is prohibited within mätaitai reserves by r 27(2) of the Regulations. Amateur fishers remain unaffected by the declaration of a mätaitai reserve and normal amateur fishing rules apply, unless bylaws are made under r 28 of the Regulations. Kaitiaki may make bylaws that apply generally to all persons fishing in a mätaitai reserve, and place additional restrictions or prohibitions on fishing activity in a mätaitai reserve, subject to the Minister's approval.
- In addition, Kaitiaki may request the Minister to recommend the making of regulations that allow for commercial fishing within a mätaitai reserve, subject to certain conditions. The requested regulations must relate to the taking of specified species of fisheries resources by quantity or time period within the mätaitai reserve. Aside from these conditions, the Regulations provide that commercial fishing, once permitted, must be conducted in accordance with the provisions of the Act and the relevant applicable commercial fishing regulations. Any commercial fisher with a fishing permit for the species specified may then take that species within the mätaitai reserve. However, MFish retains the responsibility to manage commercial fishing within the reserve.

Te Kaitiaki a Moremore mätaitai reserve

The Moremore Mätaitai Reserve was established by Gazette notice on 12 August 2005². The Mätaitai Reserve encompasses two disjunct areas at Moremore in Napier (Figure 1 below).

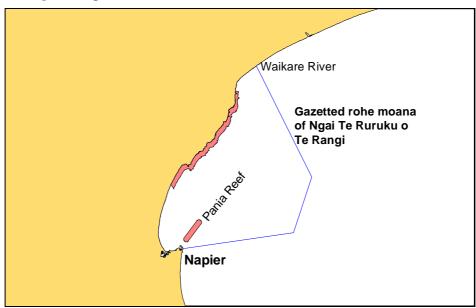
- Rangi Spooner and Te Aranui Boyce Spooner are the Kaitiaki appointed to manage the Mätaitai Reserve, having also previously been confirmed as the Kaitiaki to manage customary food gathering (in the rohe moana described in Figure 1) under the Regulations.
- Commercial fishing has been prohibited within the Mätaitai Reserve since it was declared. There are currently no bylaws placing additional restrictions or prohibitions on fishing activity within the Mataitai Reserve. However, the Kaitiaki have established a Mataitai Reserve Management Committee inclusive of commercial

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² No name for the Mätaitai Reserve was prescribed in the Gazette notice so the term "Moremore Mataitai Reserve" is used in this paper to describe both areas that make up the Mätaitai Reserve.

and non-commercial local fishery stakeholders – to facilitate cooperative management in the mätaitai reserve.

Figure 1: Map showing boundaries of Te Kaitiaki a Moremore (mätaitai reserves shaded).



Proposal

- The Kaitiaki have requested that the Minister recommends the making of regulations that allow certain commercial fishing within the Mätaitai Reserve. Specifically, the Kaitiaki have requested that:
 - a) Commercial rock lobster fishing be allowed from 1 April to 30 September each year;
 - b) Commercial paddle crab fishing be allowed for a time period of five years; and
 - c) Existing input controls relating to rock lobster and paddle crabs are retained within the relevant quota management areas (QMAs), CRA 4 and PAD 2 respectively.
- 9 MFish notes that with regard to c) the input controls within the relevant QMAs will apply anyway through the operation of r 27(5) of the Regulations.

Assessment

Sustainability and utilisation

Paddle crab

- The Mätaitai Reserve is within the area that encompasses the PAD 2 paddle crab fishery. The PAD 2 QMA is equivalent to the standard fisheries management area (FMA) 2. The Total Allowable Catch (TAC) is 125 tonnes and the allowances are as follows:
 - a) Total Allowable Commercial Catch (TACC) 110 tonnes;

- b) Recreational allowance 10 tonnes; and
- c) Customary allowance 5 tonnes.
- Estimates of current and reference biomass are not available. However, landings have fluctuated, most probably due to market variations paddle crab is abundant throughout most of its range and information indicates the fishery is only lightly exploited. Landings from PAD 2 peaked close to 200 tonnes in the 1998-99 fishing year but since then have been relatively stable between 20 and 53 tonnes.
- MFish is satisfied that commercial paddle crab fishing in the Mätaitai Reserve, under the provisions of the Act and associated commercial fishing regulations, will not introduce any sustainability risks to the paddle crab fishery, associated and dependent species, or the aquatic environment.
- 13 Commercial fishers target paddle crab with crab pots this is a relatively benign fishing method with little bycatch. Trawl, set net and dredge fisheries occasionally catch paddle crab as bycatch, but fishers do not use these methods in the target paddle crab fishery. Therefore it is unlikely fishers will use these methods that might potentially result in bycatch and habitat destruction issues in the Mätaitai Reserve.
- In addition, MFish notes that utilisation of paddle crab for all stakeholders is already provided over the wider PAD 2 but that allowing commercial fishers to recommence harvesting in the Mätaitai Reserve will further allow people to provide for their social, economic and cultural well-being.

Rock lobster

- The Mätaitai Reserve is within the area that encompasses the CRA 4 Wellington/Hawkes Bay rock lobster fishery. CRA 4 extends from the Wairoa River mouth on the east coast of the North Island, southwards along the Hawkes Bay, Wairarapa and Wellington coasts, through Cook Strait and north to the Manawatu River. The TAC for CRA 4 is 771 tonnes and the allowances are as follows:
 - a) TACC 577 tonnes;
 - b) Recreational allowance 85 tonnes;
 - c) Customary allowance 35 tonnes; and
 - d) Other mortality 75 tonnes.
- The CRA 4 TACC has been almost fully caught every year since 1995 and the most recent CRA 4 stock assessment shows that the biomass is above target reference levels. Biomass is moving towards target reference levels, but MFish does not consider that allowing commercial rock lobster fishing in the Mätaitai Reserve will significantly increase sustainability risks to the rock lobster fishery, associated and dependent species, and the aquatic environment.
- 17 Commercial fishers target rock lobster with cray pots this is also a relatively benign fishing method with low bycatch of octopus and some finfish species, and no adverse effects on the benthic environment. MFish does not consider that allowing commercial rock lobster fishing in the Mätaitai Reserve will impact on the sustainability of octopus in the Mataitai Reserve, or over the wider CRA 4 QMA.

In addition, MFish notes that utilisation of rock lobster – for all stakeholders – is already provided over the wider CRA 4, but that allowing commercial fishers to recommence harvesting in the Mätaitai Reserve will further allow people to provide for their social, economic, and cultural well-being.

Non-commercial customary fishing

- 19 Under the Deed of Settlement, the Crown recognises that traditional fisheries are of importance to Maori. The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act) was enacted to give effect to the agreements expressed in the Deed of Settlement.
- Under section 10(c) of the Settlement Act, the Minister shall recommend the making of regulations "to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mätaitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade".
- Under s 186 of the Fisheries Act 1996, the Crown has enacted two sets of regulations consistent with section 10(c) of the Settlement Act: the Fisheries (Kaimoana Customary Fishing) Regulations 1998, and the Fisheries (South Island Customary Fishing) Regulations 1999 these regulations help fulfil the commitment given by the Crown in the Settlement Act.

Fisheries (Kaimoana Customary Fishing) Regulations 1998

Regulation 27(3)

- Regulation 27(3) of the Regulations states that "Despite subclause (2) [that prohibits commercial fishing in a mätaitai reserve] the Tangata Kaitiaki/Tiaki of the Mataitai Reserve may request the Minister to recommend the making of regulations to allow the commercial taking of specified species of fisheries resources by quantity or time period within that Mataitai Reserve".
- The request satisfies the conditions of r 27(3). The Kaitiaki have specified which species may be taken commercially rock lobster and paddle crab and have stated the time period commercial fishers can access the fisheries 1 April to 30 September for rock lobster and a five year time period for paddle crab. With regard to paddle crab, MFish notes that, should regulations be made to give effect to the Kaitiaki request, the standard 1 October to 30 September fishing year will apply for the requested five year period.

Management aims

- MFish considers that the aims stated in the application for the declaration of the Mataitai Reserve are of general relevance to the Minister's decision on whether or not to recommend that regulations be made. After giving consideration to these aims, MFish is satisfied the Kaitiaki request is generally consistent with the stated aims of management for the Mataitai Reserve. These aims are:
 - a) To ensure the sustainability of the fisheries resources and the environment;

- b) To conduct a comprehensive survey of the quantities and variety of species currently inhabiting the mätaitai reserves (provided funding can be obtained);
- c) Due to depletion through over-fishing, to introduce bylaws that will help the restoration and enhancement of all species;
- d) To monitor fish stocks on a regular basis; and
- e) To investigate fish stock enhancement techniques and reseeding programmes in order to determine suitability.
- 25 The Minister has already agreed on approving the Mätaitai Reserve that these general aims of management are consistent with sustainable utilisation.

Regulation 23(1)(e)

- With regard to amateur and commercial fishers, MFish considers the criteria described in r 23(1)(e) of the Regulations are generally relevant to the Minister's decision on whether or not to recommend that the requested regulations be made. Regulation 23(1)(e) states that, before declaring a mätaitai reserve, the Minister must be satisfied the proposed mätaitai reserve will not:
 - a) Unreasonably affect the ability of the local community to take fish, aquatic life, or seaweed for non-commercial purposes; or
 - b) Prevent persons with a commercial interest in a species taking their quota entitlement or annual catch entitlement (where applicable) within the quota management area for that species; or
 - c) Unreasonably prevent persons with a commercial fishing permit for a nonquota management species exercising their right to take fisheries resources under their permit within the area for which that permit has been issued; or
 - d) Unreasonably prevent persons taking fish, aquatic life, or seaweed for noncommercial purposes within the fisheries management area or quota management area to which the Mataitai Reserve relates.
- The actual relevance of the criteria will depend on the particular request. MFish has no information to suggest that the proposals in the Kaitiaki request for regulations for the Mätaitai Reserve will result in any of the circumstances listed in r 23(1)(e) occurring.

Options for Management Response

Non-regulatory

There are no non-regulatory mechanisms available to allow commercial fishing for rock lobster and paddle crab in the Mätaitai Reserve.

Regulatory

The request from the Kaitiaki to allow commercial fishing for rock lobster and paddle crab in the Mätaitai Reserve requires a regulatory response. The authority and process to respond is outlined above and described in r 27 of the Regulations.

Benefits

Allowing commercial fishing for rock lobster and paddle crab in the Mätaitai Reserve will allow commercial fishers to access parts of CRA 4 and PAD 2 within which commercial fishing was prohibited when the Mätaitai Reserve was declared. This approach might also facilitate further collaboration between the Kaitiaki and fisheries stakeholders in the area.

Costs

The resumption of limited commercial fishing in the Mataitai Reserve means there is the potential to be less rock lobster and paddle crab available for non-commercial fishers. MFish considers that this effect will be minimal and notes that the effects on non-commercial fishers from commercial fishing for rock lobster and paddle crab in the Mataitai Reserve did not form part of the Minister's decision to declare the Mataitai Reserve. The Mataitai Reserve was declared to provide for and recognise customary non-commercial fishing rights and to allow the tangata whenua to exercise further rangatiratanga over a traditional fishery.

Administrative Implications

Aside from the standard costs associated with developing and administering regulations, MFish foresees no extraordinary costs associated with progressing the Kaitiaki request.

Compliance implications

- 33 Potential compliance implications include:
 - a) Demands on MFish Compliance to check commercial fishers are only targeting rock lobster or paddle crab within the permitted time periods; and
 - b) Commercial fishers incidentally catching other species while targeting rock lobster or paddle crab.
- MFish considers that the Compliance resources required to enforce commercial fishing and input controls within the Mataitai Reserve are no more than is currently required to enforce commercial fishing in other general areas.

Statutory Considerations

In assessing the Kaitiaki proposal for the purposes of this IPP the following statutory considerations have been taken into account.

Provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

36 MFish considers issues arising under the provisions of the Settlement Act are adequately addressed in its assessment of the Kaitiaki request. Management of non-commercial customary fishing is still provided for and managed by the Kaitiaki,

- despite the recommendation to allow commercial fishing in the Mätaitai Reserve subject to certain conditions. *Fisheries Act 1996 Purpose*
- The Kaitiaki proposal seeks to make available fisheries resources for commercial use. This is consistent with providing for utilisation that enables people to provide for their social, economic and cultural well-being.
- MFish is satisfied the proposal does not present a sustainability risk. Until recently the Mätaitai Reserve was part of the wider QMAs fished commercially. There were no significant sustainability concerns for rock lobster or paddle crab when the Mätaitai Reserve was declared and MFish has no information to indicate that the reintroduction of commercial fishing will present any sustainability risk, providing the relevant conditions indicated in this paper are satisfied. MFish and fisheries stakeholders address sustainability risks over the wider QMAs and FMAs.
- In addition, MFish is satisfied that the general aims of management the Kaitiaki have for the Mätaitai Reserve are consistent with sustainable utilisation. The Kaitiaki have undertaken a commitment to monitor fisheries resources in the mätaitai reserve, and this undertaking will help identify potential or emerging sustainability risks.

Fisheries Act 1996 - Environmental principles

- MFish is confident the default sustainability measures and management controls that will apply if commercial fishing is allowed in the Mätaitai Reserve are sufficient to mitigate any potential risks to associated or dependent species, and to the biological diversity of the aquatic environment.
- In addition, the fishing methods (potting) used to harvest rock lobster and paddle crab are benign and MFish considers it unlikely they would have a demonstrable adverse effect on habitats of significance for rock lobster and paddle crab fisheries management.

Fisheries Act 1996 – Information principles

In assessing the Kaitiaki proposal, MFish has considered the best available information and concluded that information uncertainty is not relevant to this assessment. MFish seeks any further information from stakeholders that is relevant to this IPP.

Preliminary consultation

The Kaitiaki and Mataitai Reserve Management Committee have discussed the Kaitiaki request with representatives of the commercial CRA 4 and PAD 2 fisheries.

Future Management

If the Kaitiaki request is approved, and regulations are passed to give effect to the request, the Kaitiaki have undertaken to:

- a) Consult annually with commercial fishing representatives to ensure sustainable utilisation of the resource:
- b) Continue to work closely with MFish, particularly in regard to the evaluation of survey data; and
- c) Instigate and develop, with the commercial sector, a voluntary reporting system for all rock lobster captured (ie to include lobster captured but returned to the sea) in order to monitor the fish stock abundance within the Mataitai Reserves on a regular basis.
- These undertakings (should regulations be made), will require significant time and effort on the part of the Kaitiaki in order to implement the measure above. MFish recognises the potential value in these undertakings and acknowledges the benefit that they will bring, and the effort on the part of the Kaitiaki.
- MFish notes that it retains the responsibility to manage commercial fishing in the Mätaitai Reserve.

Conclusion

The Kaitiaki of the Moremore Mätaitai Reserve have requested that the Minister recommends the making of regulations to allow commercial fishing for rock lobster and paddle crab in the Mätaitai Reserve. MFish is satisfied the request conforms to the requirements of the Regulations and that allowing commercial fishing will not adversely impact on sustainability of both target species and bycatch species and the aquatic environment.

Preliminary Recommendations

- MFish proposes that:
 - d) The Minister of Fisheries recommends the making of regulations allowing commercial fishing for rock lobster and paddle crab within the Moremore Mätaitai Reserve, with the following conditions:
 - i) Commercial rock lobster fishing be permitted only between 1 April to 30 September;
 - ii) Commercial paddle crab fishing be permitted for a time period of five years.

REGULATIONS TO ALLOW COMMERCIAL FISHING FOR ROCK LOBSTER AND PADDLE CRAB IN TE KAITIAKI A MOREMORE MATAITAI RESERVE – FINAL ADVICE

Purpose

- This paper is the final advice to the Minister of Fisheries (the Minister) on the request from the Kaitiaki of the Moremore Mataitai Reserve to allow commercial rock lobster and paddle crab fishing in the Moremore Mataitai Reserve.
- The Ministry of Fisheries (MFish) has considered submitters' comments on the preliminary recommendation in the initial position paper (IPP). MFish recommends the Minister agrees to recommend regulations that provide for commercial rock lobster and paddle crab fishing in the Moremore Mataitai Reserve under conditions requested by the Kaitiaki.
- MFish notes that this is the first time Kaitiaki have requested the Minister recommend regulations to allow commercial fishing in a mätaitai reserve, and some submitters have raised issues outside the scope of the assessment necessary to inform the Minister's current decision. MFish discusses these issues that are mainly about the mätaitai reserve application and approval process where appropriate if they provide context for the current decision.

Background

- 4 Commercial fishing is initially excluded from mätaitai reserves. However, r 27(3) of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (the Regulations) provides that the Kaitiaki of a mätaitai reserve may request the Minister to recommend the making of regulations to allow the commercial taking of specified species of fisheries resources by quantity or time period within the mätaitai reserve.
- In December 2005 the Kaitiaki of the Moremore Mataitai Reserve requested that the Minister recommend the making of regulations that allow commercial fishers to:
 - a) Harvest rock lobster in the Moremore Mataitai Reserve from 1 April to 30 September each year; and,
 - b) Harvest paddle crab in the Moremore Mataitai Reserve for a time period of five years.
- In the IPP MFish considered that the request is consistent with r 27(3) the Kaitiaki have specified the species and a time period.

- Other than r 27(3), the Regulations provide limited guidance on what the Minister must consider when deciding whether or not to agree to the request. However, the decision must be consistent with:
 - a) The purpose and provisions of the Regulations;
 - b) The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act); and
 - c) The purpose and principles of the Fisheries Act 1996 (the Act).
- 8 MFish is satisfied the request is consistent with (a) to (c) above.

Submissions

- 9 MFish's initial position attracted four submissions from:
 - a) The New Zealand Rock Lobster Industry Council (NZRLIC) on behalf of the CRA 4 industry including individual transferable quota (ITQ) owners, annual catch entitlement (ACE) holders, and the processing and exporting companies dependent on the CRA 4 fishery;
 - b) The New Zealand Seafood Industry Council Ltd (SeaFIC);
 - c) The Paua Industry Council Ltd (PICL); and
 - d) The Mahia Coastal Marine Strategy (MCMS).
- The NZRLIC *does not support* the Kaitiaki request to allow a six month commercial rock lobster season inside the Moremore Mataitai Reserve. The NZRLIC adds that by supporting the request it would be endorsing the MFish process and operational policy in relation to mätaitai reserve applications it does not support either. The NZRLIC submits that the MFish analysis and evaluation of the Kaitiaki request is superficial and completely unprincipled in the context of the Regulations in the first instance, and the Act in the second.
- SeaFIC *neither supports nor opposes* the Kaitiaki request. However, SeaFIC considers the proposal clearly illustrates the inherent weaknesses in MFish's administration of the application process for, and the declaration of, mätaitai reserves. SeaFIC also submits that the analysis of the Kaitiaki request is superficial.
- The PICL requests that MFish recommends the Minister *rejects the proposal* to reinstate commercial fishing (for any species) in the Moremore Mataitai Reserve. The PICL believes MFish has the whole process of establishing mätaitai reserves wrong and that MFish misinterprets customary fishing regulations and has produced dangerously flawed policy and process standards.
- The MCMS notes its submission is written to provide an effective pathway to endure *in support* of Te Kaitiaki a Moremore Mataitai Reserve.

General comment on submissions

Submitters have for the most part submitted comments more relevant to the administration of the application process for, and the declaration of, mätaitai reserves.

These considerations are not immediately relevant to the Minister's decision on the Kaitiaki request to allow commercial rock lobster and paddle crab fishing in the Moremore Mataitai Reserve. In this paper MFish will respond to these comments, where appropriate, if they provide context for the current decision.

- MFish disagrees with submitters that its assessment of the Kaitiaki request in the IPP is superficial and unprincipled. MFish reiterates that the basis for the Minister's decision on the Kaitiaki request must be consistent with:
 - a) The purpose and provisions of the Regulations; and,
 - b) The Settlement Act; and,
 - c) The purpose and principles of the Act.
- MFish has assessed the Kaitiaki request in the context of these mandatory considerations.

Purpose and provisions of the Regulations and the Settlement Act

Submissions

- No submitter challenged the initial MFish position that the Kaitiaki request was consistent with the requirements of r 27(3) of the Regulations the Kaitiaki specified the species and timeframes.
- The NZRLIC argues against the constraints requested by the Kaitiaki, stating "the full restoration of commercial fishing rights is the only option supported by the NZRLIC". And SeaFIC comments that "... the decision whether or not commercial fishing for these two species should be reinstated by regulation in the mätaitai reserve must be made by the commercial property rights holders".
- SeaFIC and the NZRLIC also submit that r 27(3) confers an authority to the Kaitiaki to manage commercial fishing within the Mataitai Reserve. SeaFIC states "it would be inappropriate (and presumptuous) for non-customary interests to dictate to the Kaitiaki how they should exercise their customary fishing rights. Equally though, we do not consider it appropriate for customary rights holders to dictate how commercial property rights should be exercised. In stipulating quantity or time periods, the Kaitiaki (and regulations) are in effect replacing the commercial rights holders' decision ... on these matters". The NZRLIC, repeating part of earlier submission, states "... industry will not accept that the continuing exercise of the long established commercial property rights held by rock lobster fishermen is in any way dependent on a concession from other rights holders in the fishery". And questioning the rationale behind the Kaitiaki request the NZRLIC also notes that "it is a fundamental tenet of property rights that owners/holders make the decisions as to how best to utilise them".
- The NZRLIC submits that MFish needs to consider the rationale behind the Kaitiaki request in general, and specifically to restrict rock lobster fishing to a six month period in the Moremore Mataitai Reserve. The MCMS, supporting the Kaitiaki request, adds that it would have been beneficial for MFish to discuss the conclusions the Kaitiaki used to determine the fishing time frames it requested for rock lobster and paddle crab. The MCMS submits that this information would allow stakeholder

- groups and the fishing industry to understand the decisions made by Te Kaitiaki a Moremore Mataitai Reserve.
- The PICL submits that reinstating commercial fishing under the Regulations will undermine the value of the commercial property right because access to the resource relies on the Kaitiaki. The PICL considers that this erosion of property rights severely undermines the Quota Management System (QMS).

MFish discussion

MFish considers submitters' comments above relate to the purpose and provisions of the Regulations and Settlement Act. No submitter commented that the Kaitiaki request was inconsistent with the requirements of r 27(3), but some submitters have challenged the broad basis for the request under the Regulations. Below, MFish outlines the context of the r 27(3) enabling provision and mätaitai reserves in general under the Regulations. In addition MFish will, in this discussion, respond to comments about the impact of this regulation on the exercise of commercial property rights.

The context for mätaitai reserves

- Mätaitai reserves are identified traditional fishing grounds. The Regulations that allow creation of mätaitai reserves recognise and provide for customary food gathering and the special relationship between the tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mätaitai). Mätaitai reserves allow tangata whenua and their Kaitiaki to exercise a degree of control over customary use and management practices in an area, and this inevitably impacts on commercial fishing rights.
- Property rights conferred under the QMS do not exist in a vacuum. They exist alongside, and in certain circumstances must be balanced with, customary fishing rights. The recognition and provision for customary fishing was a critical component of the 1992 Fisheries Deed of Settlement (the Deed) that secured the legitimacy of the QMS and settled treaty claims relating to fisheries. Failure to provide the redress required by the Deed and the Settlement Act (which legislated the Deed) has the potential to undermine both the Deed and the QMS on which the interests of all fishers depend. The Regulations and the Fisheries (South Island Customary Fishing) Regulations 1999 reflect and express the intention of the Settlement Act to recognise and provide for customary food gathering by Mäori and the special relationship between tangata whenua and places of spiritual and cultural importance in taking fisheries resources for customary food gathering purposes from New Zealand fisheries waters.

Commercial fishing in a mätaitai reserve

- The Regulations do not enable MFish to entertain requests from commercial property rights holders to allow commercial fishing in a mataital reserve or requests for "full restoration" of commercial fishing.
- Regulation 27(3) only enables the Kaitiaki of a mätaitai reserve to request commercial fishing be allowed in a mätaitai reserve. However, the Regulations do not give

Kaitiaki the flexibility to request "full restoration" of commercial fishing. Regulation 27(3) requires the Kaitiaki to specify the species, and quantity or timeframe. The Regulations only provide for *limited* commercial fishing in mätaitai reserves – as determined by the Kaitiaki – because mätaitai reserves are first and foremost areas for customary use and management.

- MFish notes that the Minister is not required to assess the customary management rationale behind a request under r 27(3), other than to ensure his decision on the request is consistent with the Regulations and the Act. If the request is not consistent, the Minister cannot recommend it be regulated.
- MFish also notes that, aside from the ability to request commercial fishing of specified species by quantity or time period be allowed, Kaitiaki are not able to determine how commercial fishers exercise their fishing rights within a mätaitai reserve. Kaitiaki are unable to determine where commercial fishing can occur in a mätaitai reserve, nor allocate the resource amongst commercial fishers.

Impact on commercial and non-commercial fishing rights

- MFish acknowledges that if commercial fishers want to harvest inside Moremore Mataitai Reserve they will need to comply with any regulations promulgated as a result of the request by the Kaitiaki under r 27(3) of the Regulations. As noted above, mätaitai reserves are supposed to exercise a degree of control over customary use and management practices in an area, and this inevitably impacts on commercial fishing rights.
- The Regulations recognise the importance of protecting commercial fishing rights through r 23(1)(e)(ii), where the Minister is required to ensure that a mätaitai reserve will not prevent persons with a commercial interest in a species taking their quota entitlement or annual catch entitlement (where applicable) within the QMA for that species. The Minister considered this criterion for the Moremore Mataitai Reserve when he approved it in 2005.
- MFish is of the view that such an assessment is unlikely to change if the Minister approves the Kaitiaki request to allow commercial rock lobster and paddle crab fishing in the Moremore Mataitai Reserve. MFish considers that persons with a commercial interest in rock lobster and paddle crab will still be able to access their entitlement within the respective QMAs for those species.
- MFish also notes that submitters have not provided any information to suggest that the Kaitiaki request to allow commercial rock lobster and paddle crab fishing in Moremore Mätaitai Reserve will result in any of the other circumstances listed in r 23(1)(e) occurring. Regulation 23(1)(e) lists the criteria the Minister must consider before deciding whether to approve or decline a mätaitai reserve application, and seeks to ensure fishers are not unreasonably prevented from taking fisheries resources from the area. As discussed in the IPP, MFish considers these criteria relevant to the current decision.

Sustainability and utilisation

Submissions

- No submitter challenged the initial MFish position that commercial paddle crab and rock lobster fishing in the Moremore Mätaitai Reserve, under the provisions of the Act and associated commercial fishing regulations, will not introduce any sustainability risks to these fisheries, associated and dependent species, or the aquatic environment.
- The NZRLIC and SeaFIC submit that the Moremore Mataitai Reserve application was based on the assertion that stocks in the area were depleted. These submitters go on to suggest that by approving the application, MFish and the Minister also agreed the Kaitiaki will be managing customary food gathering in an area where species have been depleted. The NZRLIC states that "... a large area [the Moremore Mataitai Reserve] was closed to commercial fishing to enable tangata whenua to manage it to enable and sustain customary food gathering". SeaFIC states that "to enable them [the Kaitiaki] to meet the aims of the application, commercial fishing was excluded."
- Both submitters question why exclusion of commercial fishing was necessary given that the Kaitiaki and MFish now consider commercial rock lobster and paddle crab fishing can be sustained. The NZRLIC states "If taking rock lobsters and paddle crabs is not detracting from the quality and quantity of customary fishing, why was the mätaitai necessary in the first place?". SeaFIC questions why the passage of regulations reinstating commercial fishing was not a condition of the Moremore Mataitai Reserve application, and also notes that "the Regulations by default provide a blanket exclusion of commercial fishing unless it is reinstated by subsequent regulation. It would appear that such exclusion (as this proposal seems to indicate) may not always be necessary or appropriate."
- No submitter challenged the initial MFish position that allowing commercial fishers to harvest in the Moremore Mätaitai Reserve will further allow people to provide for their social, economic and cultural well-being.

MFish discussion

- Mätaitai reserves are not tools available to the Minister to manage sustainability problems they are tools available to tangata whenua that enable exercise of customary use and management practices. The Minister can only approve a mätaitai reserve application if he is satisfied the management aims for the area are consistent with the sustainable utilisation of the fishery to which the application applies. This does not mean, as the submitters suggest, that approving the Moremore Mataitai Reserve was necessary to achieve sustainable utilisation in the area. Mätaitai reserves (including the exclusion of commercial fishing) are fundamental components of the Regulations developed to give effect to the Deed.
- The key consideration for the current proposal is that MFish is satisfied the Kaitiaki request does not present an undue sustainability risk. In the IPP MFish stated "there were no significant sustainability concerns for rock lobster or paddle crab when the [Moremore] Mätaitai Reserve was declared". MFish has received no new information to change that assessment.

Until it was recently gazetted, the Moremore Mätaitai Reserve was part of the wider rock lobster and paddle crab QMAs and was fished by commercial operators. MFish has no information to suggest commercial rock lobster and paddle crab harvesting under the conditions requested by the Kaitiaki will pose any undue sustainability risk to fisheries resources inside the Moremore Mataitai Reserve. MFish adds that commercial fishers operating inside the Moremore Mataitai Reserve will be required to operate in accordance with the conditions of the Act and relevant commercial fishing regulations.

Other comments on assessment

Bycatch

The NZRLIC submits that it is not feasible to allow commercial rock lobster fishing inside the Mataitai Reserve in isolation from consideration over the status of incidental catches of other QMS species. The NZRLIC goes on to state that MFish cannot "inflict" a contingent criminality/liability on commercial fisherman by limiting the scope of the proposed regulations. SeaFIC has similar concerns, suggesting that "should this proposal proceed, we recommend that the regulation be amended to include all known QMS and non-QMS bycatch species in the rock lobster and paddle crab fisheries".

MFish discussion

MFish acknowledges the NZRLIC and SeaFIC concerns that fishers could be penalised if they catch species other than rock lobster and paddle crab inside the Mataitai Reserve in the course of their lawful fishing activities. MFish clarifies that a person in this situation would have a defence providing they complied with r 45 of the Regulations. Regulation 45 provides that:

It is a defence in any proceedings where any person took fish, aquatic life, or seaweed contrary to these regulations or to any authority given under these regulations, if the person can show that:

- a) The fish, aquatic life, or seaweed were taken as an inevitable consequence of the lawful taking of other fisheries resources; and
- b) The defendant took reasonable precautions and exercised due diligence to avoid the contravention; and
- c) The defendant advised the Tangata Kaitiaki/Tiaki in writing as soon as practicable after the fish, aquatic life, or seaweed were taken as an inevitable consequence of the lawful taking of other fish, aquatic life, or seaweed; and
- d) The defendant disposed of the fish, aquatic life, or seaweed taken as an inevitable consequence of the lawful taking of other fish, aquatic life, or seaweed in accordance with any direction from the Tangata Kaitiaki/Tiaki.
- Regulation 45(c) does not exempt commercial fishers from completing statutory catch reports required by the Act and relevant commercial fishing regulations. MFish recognises r 45(c) is potentially onerous on commercial fishers. Should the Minister recommend to regulate the Kaitiaki request, MFish would encourage the Kaitiaki and

commercial fishers to agree to a reasonable and workable approach to reporting bycatch that meets the requirements of r 45(c).

Reporting

SeaFIC questions the MFish assessment of the voluntary reporting system the Kaitiaki propose to develop with the commercial sector. SeaFIC states "MFish does not seem to be concerned with the potential imposition of another layer of compliance. ... We doubt the Kaitiaki have the power to compel commercial fishers. The consequences of commercial fishers not participating in a voluntary reporting system are not clear".

MFish discussion

The voluntary reporting system proposed by the Kaitiaki is not a relevant consideration for the Minister. MFish suggests that, should the Minister agree to the Kaitiaki request, the Kaitiaki and commercial fishers agree to a reasonable and workable approach to non-statutory reporting.

Options for management response

- The NZRLIC considers that an industry deal developed with the Kaitiaki several years ago would have satisfied the needs of the CRA 4 industry and the Kaitiaki.
- SeaFIC is critical of MFish's IPP comment that allowing commercial fishing for paddle crab and rock lobster might facilitate further collaboration between the Kaitiaki and fisheries stakeholders in the area. SeaFIC states "it appears that when the commercial rights holders attempted to negotiate and collaborate with the tangata whenua in 2003 (offering voluntary closures), MFish's preference was for the applicants to engage with the commercial sector only after the mätaitai had been declared and the commercial sector excluded from the area".
- SeaFIC stresses that more satisfactory outcomes with respect to mätaitai reserves could be achieved if the applicants and commercial stakeholders engaged in dialogue in the pre-application stages. SeaFIC also considers that MFish should actively promote the use of application "conditions" relating to reinstatement of commercial fishing via regulation in order to provide greater certainty to customary and commercial rights holders.

MFish discussion

- MFish acknowledges the potential for fisheries rights holders to negotiate outcomes independent of MFish involvement. However, MFish has a statutory role to process mätaitai reserve applications and is required to perform this role on receiving an application. MFish rejects the claim that it offered a preference that the Moremore Mataitai Reserve applicants engage with the commercial sector only after the Moremore Mataitai Reserve had been declared, as suggested by SeaFIC.
- 49 MFish does not agree with SeaFIC that it should actively promote application conditions relating to the reinstatement of commercial fishing via regulation. Where the Minister considers conditions are necessary to address issues in submissions on a

mätaitai reserve application, the Minister can discuss such conditions with the applicant tangata whenua. In the event that clear commercial fishing concerns in relation to certain species are raised at the submission stage, it may be appropriate for the Minister to discuss conditions relating to the consideration of a request for the reinstatement of commercial fishing for a specified species. MFish notes in any event such conditions could not bind the Minister to pre-determine a future regulatory decision on the reinstatement of commercial fishing.

Mataitai Reserve proposal assessment process

The PICL submits that should reinstatement of commercial fishing become the norm in mätaitai reserves, the "prevent test" [r 23(1)(e)(ii) of the Regulations] will never be triggered. The PICL believes this means there is the potential for an "endless plethora" of mätaitai reserves requiring significant engagement from the commercial sector. The NZRLIC is also concerned that if any future mätaitai reserve application is accompanied by a commitment to reinstate commercial fishing, the current MFish operational policy ensures that the application will be approved. The impact of a network of mätaitai reserves under the authority of separate "Kaitiaki committees" and operating under separate conditions concerns the NZRLIC to the extent that it cannot support or encourage such an outcome.

MFish discussion

- MFish clarifies that the Minister considers the r 23(1)(e)(ii) criterion under the assumption that all commercial fishing will be excluded from the proposed mätaitai reserve. Where the Minister considers that commercial fishers will be prevented from taking their quota entitlement or annual catch entitlement (where applicable) within the QMA for that species, the Minister may discuss conditions with the applicant tangata whenua that may mitigate that prevention. Even if a condition relating to the reinstatement of commercial fishing for a specified species is agreed to, the Minister must still be satisfied in each case that the criterion in r 23(1)(e) is fulfilled.
- In addition, the Minister will take into account any other mätaitai reserves within a QMA when the potential effects of any new proposal are assessed. So while the first proposals for mätaitai reserves within a particular QMA may be approved, later applications may be more difficult because of the cumulative impact on commercial fishing caused by all the mätaitai reserves and any other areas that restrict or prohibit fishing for particular species.

Conclusion

- The Minister's decision on whether or not to recommend the Kaitiaki request to allow commercial rock lobster and paddle crab fishing in Moremore Mataitai Reserve be regulated must be consistent with:
 - a) The purpose and provisions of the Regulations;
 - b) The Settlement Act; and
 - c) The purpose and principles of the Act.

- MFish is satisfied the request is consistent with (a) to (c) above. The request meets the requirements of r 27(3) of the Regulations and is consistent with r 23(1)(e) in that it does not impact on the fundamental criteria the Minister considered when he approved the Moremore Mataitai Reserve application.
- MFish acknowledges submitters' concerns over the Kaitiaki request. MFish reiterates that mätaitai reserves are designed to allow tangata whenua to exercise a degree of control over customary use and management practices in an area, and this inevitably impacts on commercial fishing rights.
- MFish also concludes that it has no available information to suggest that commercial rock lobster and paddle crab fishing in the Moremore Mataitai Reserve as requested by the Kaitiaki, and if conducted in accordance with the Act and relevant commercial fishing regulations will introduce sustainability concerns.

Final recommendations

- 57 MFish recommends that you:
 - a) Agree to recommend, under r 27(4) of the Regulations, the making of regulations providing for commercial rock lobster and paddle crab fishing in the Moremore Mataitai Reserve, with the following conditions:
 - i) Commercial rock lobster fishing be permitted only between 1 April and 30 September; and
 - ii) Commercial paddle crab fishing be permitted for a time period of five years.

SUMMARY OF RECOMMENDATIONS

Deemed values for 1 April 2006 fishstocks

- 1 MFish recommends that you:
 - a) Agree that all fishstocks with a 1 April 2006 fishing year start date will be subject to a 12.5% increase in GST;
 - b) Agree that all deemed value rates for 1 April stocks in the Fisheries (Interim and Annual Deemed Values) Notice 2003 will be GST exclusive; and
 - c) Note that any fisher paying deemed values for 1 April stocks will be issued with a GST invoice.

New landed state code - skate wings

- 2 MFish recommends that you:
 - a) Agree to amend the Fisheries (Reporting) Regulations 2001 to introduce a new principal landed state of wings for rays and skates and a corresponding landed state code of WRS.

Netting catch, effort and landing return (NCELR)

- 3 MFish recommends that you:
 - a) Agree to amend the Fisheries (Reporting) Regulations 2001 to introduce a new Netting Catch Effort Landing Return (NCELR) for reporting passive net fishing;
 - b) Note that the new NCELR will collect data from vessels 6m or over in overall length, about fishing using the methods set netting, inshore drift netting or pair set netting;
 - c) Note that fishers using vessels less than 6m in overall length will continue to report set netting, inshore drift netting or pair set netting on the CELR at this stage;
 - d) Note that fishers who routinely use several different methods (passive netting plus one or more other methods) during one fishing trip will be eligible to apply for an exemption under regulation 41 of the Fisheries (Reporting) Regulations 2001 to allow them to report fishing from multiple method trips on a CELR.

Regulation of non-fish incidental catch return

- 4 MFish recommends that you:
 - a) Agree in principle to prescribe a Non-Fish Incidental Catch Return in regulation;

- b) Agree in principle to amend the following regulations in the Fisheries (Reporting) Regulations 2001 in order to:
 - i) Define certain terms such as coral, seabirds and marine mammals:
 - ii) Add a new regulation setting out the persons who are required to provide Non-Fish Incidental Catch Returns, and the times or periods by or for which they must be completed and provided;
 - iii) Add a prescribed template for the new Non-Fish Incidental Catch Return;
 - iv) Amend the templates for five catch effort returns to include a non-fish incidental catch declaration;
 - v) Prescribe reporting codes for species of birds, marine mammals, reptiles, corals, sponges and bryozoans;
 - vi) Replicate the offences and penalties applying to catch effort returns to the proposed Non-fish Incidental Catch Return; and
- c) Note that the proposed amendments will not proceed to Cabinet Economic Development Committee until MFish and the Department of Conservation have reconciled differing reporting timeframes in their respective legislation.

Regulations to allow commercial fishing for rock lobster and paddle crab in te kaitiaki a moremore Mataitai Reserve

- 5 MFish recommends that you:
 - a) Agree to recommend, under r 27(4) of the Regulations, the making of regulations providing for commercial rock lobster and paddle crab fishing in the Moremore Mataitai Reserve, with the following conditions:
 - i) Commercial rock lobster fishing be permitted only between 1 April and 30 September; and
 - ii) Commercial paddle crab fishing be permitted for a time period of five years.

Jonathan Peacey for Chief Executive

APPROVED / NOT APPROVED / APPROVED AS AMENDED

Hon Jim Anderton Minister of Fisheries

/ /2006