Review of Sustainability Measures and Other Management Controls for the 2007/08 (1 April) Fishing Year

Volume 1: Final Advice Paper

SCHEDULE 5 SPECIES (45% AGGREGATION) – FINAL ADVICE

Executive Summary

1 This FAP reviews all Quota Management System (QMS) species (except paua, rock lobster and bluenose) to determine if a quota aggregation limit of 45% is warranted.

2 A 45% limit should be applied to those species in which enterprises catching those species are required or would benefit from holding enough quota to achieve economies of scale. In these cases, the risks of unacceptable effects of quota aggregation must be low. Quota aggregation of up to 45% is permitted for species listed on Schedule 5 of the Fisheries Act 1996 (the Act).

3 The Ministry of Fisheries (MFish) has developed an analytical process to assess the suitability of individual species for inclusion on the Schedule. Each QMS species is assessed to determine if they fit into one of three categories:

- substantial investment is required to harvest or process;
- substantial science investment is required; or
- economies of scale is required to compete in an export-oriented market.

4 Species that fit into one of these three categories are then examined to evaluate if unwanted consequences are likely: anti-competitive behaviour, and/or disadvantage to small fishing operations in those fisheries in which access is easier. The end result is a recommendation either to list the species on the 5th Schedule, or to leave the aggregation at the default 35%. Appendix 1 provides the assessment for each species.

5 MFish proposes that 43 species be listed on Schedule 5, including the 14 species currently listed. MFish further proposes to use the analytical process developed in this paper to assess all future QMS species.

Summary of Options

6 MFish's recommendation is to:

a. Maintain the following species on the Schedule:

BAR Barracouta	LIN Ling	SKI Gemfish
BYX Alfonsino	OEO Oreos	SQU Arrow squid
HAK Hake	ORH Orange Roughy	SWA Silver warehou

HOK Hoki	PHC Packhorse rock lobster	WAR Common (blue) warehou
JMA Jack mackerel	RCO Red cod	

b. Recommend to the Governor General that the following species be added to the Schedule:

ANC Anchovy	GSP Pale ghost shark	QSC Queen scallop
BYA Frilled venus shell	HOR Horse mussel	RBY Rubyfish
CDL Cardinalfish	KIC King Crab	RIB Ribaldo
CHC Red crab	KWH Knobbed whelk	SAE Triangle shell
DAN Ringed dosinia	LDO Lookdown dory	SBW Southern blue whiting
DSU Silky dosinia	MDI Trough Shell	SCI Scampi
EMA Blue (English) mackerel	MMI Large Trough shell	SPR Sprats
FRO Frostfish	PDO Deepwater tuatua	SSK Smooth Skate
GSC Giant spider crab	PIL Pilchard	WWA White warehou
GSH Ghost shark	PZL Deepwater king clam	

c. Apply the analytical process in this paper to assess future QMS species for suitability for the 5th Schedule.

Submissions Received

- M. Hardyment
- Independent Fisheries Limited (**Independent**)
- New Zealand Rock Lobster Industry Council (**NZRLIC**)
- Sanford Limited (**Sanford**)
- Seafood Industry Council Limited (**SeaFIC**)
- Talley's Fisheries Limited (**Talley's**)
- Te Ohu Kai Moana Trustee Limited (**Te Ohu**)

Rationale for Management Options

7 Appropriate aggregation limits give industry the discretion to arrange business affairs to suit the realities of fishing, while inhibiting monopolistic behaviour. The Commerce Act 1986, which is enforced by the Commerce Commission (refer to Appendix 2), also protects against anti-competitive behaviour.

8 The 'default' aggregation limit for the majority of species is 35%. Species listed on Schedule 5 of the Act are subject to a 45% aggregation limit. No new species have been added to the Schedule since 1996 – during the course

of QMS introductions since that time, no consideration was given to the appropriateness of Schedule 5 listing.

9 Aggregation limits do not apply to Annual Catch Entitlement (ACE), nor do they prevent aggregation at the stock level (except with respect to rock lobster and paua).

10 A quota aggregation limit of 45% should be applied to those species in which enterprises are required or would benefit from holding enough quota to achieve economies of scale (refer to paragraphs 25 to 34). This level of aggregation is generally warranted when substantial investment is required or success in the international market requires sizeable quota holdings.

11 A number of submitters discussed the purpose of aggregation limits given the progressive relaxation of those limits, its exclusion of limits on ACE and individual stocks, the existence of the Commerce Commission and the exclusion of some quota holders from the limits. MFish has previously advised that the relevance of limiting quota aggregation, and Parliament's rationale behind proscribing limits (limiting market power and the protection of small quota holders) is considerably less than it was at the time limits were first introduced – in particular as a result of the creation of the Commerce Commission and the introduction of the catch balancing regime.

12 A discussion on the purpose of aggregation limits is a matter that should be addressed in the context of legislative amendment. Parliament did build flexibility into the application of aggregation limits by allowing for species to be added or removed from Schedule 5 on recommendation by the Minister of Fisheries. This paper considers whether a 45% accumulation of quota is warranted for QMS stocks. The paper creates a transparent analytical framework and policy guidelines for the listing of species on Schedule 5, without debating the merits of section 59.

Effects of Quota Aggregation

13 There are generic arguments in favour of aggregation, and the consequential improvements in efficiency in the industry associated with increasing economies of scale. The more efficient use of the capital invested in the fishing fleet of a large operator can lower harvesting costs. The additional supply of fish derived from increased quota holdings may in turn increase market or brand penetration and increase returns. Processing capacity may be better used.

14 Increased aggregation benefits the firm seeking greater quota holdings, by providing greater flexibility for that company to manage its business affairs. Increased aggregation could also benefit other stakeholders in the fishery by improving incentives for collective action in stock management and product marketing.

15 The greater the degree of aggregation of quota ownership in a fishery, the more one can expect the larger owners to take an interest in the management of the stock. Thus, other things being equal, a dominant owner will likely take

a greater interest in identifying new populations and investing in a better understanding of the information needed to access the stock. The benefits of this improved incentive structure accrue to all stakeholders in the fishery, not just the dominant quota owner.

16 Similarly, greater aggregation leads to an increased incentive on the dominant owner to develop the branding and marketing of the product. As with the incentives for improved stock management, some of the benefits may flow through to the minority quota holders. Conversely, greater aggregation could restrict the ability of minority quota holders to take advantage of higher value niche markets that do not require significant investment in harvesting or processing.

17 Increased aggregation of quota could increase the potential for anti-competitive behaviour by dominant quota holders. This could happen through:

- a monopolisation of the supply of ACE required to cover bycatch in related fisheries (refer to paragraph 35 to 38);
- the diminishment of a possible entry point into the business of fishing generally (refer to paragraph 39 to 42); and
- a reduction of the pool of competitive buyers for the fishing rights of those minority stakeholders in a particular fishery who may choose to exit the fishery in the future, or who depend on the sale of ACE (refer to paragraph 43 to 48).

Analytical Process

18 Species should be listed on Schedule 5 if significant quota holdings are required to achieve economies of scale, and these economies of scale increase the viability or efficiency of the fishing industry. The risks must be low that unacceptable effects could emerge, including anti-competitive behaviour, and disadvantage to small fishing enterprises in those fisheries in which access is easier.

19 There are three circumstances identified by MFish in which such economies of scale would be most beneficial, and hence warrant increased aggregation limits. These are the three categories under which a species would be added to the Schedule:

- extraction or processing requires substantial investment;
- substantial science investment is required to demonstrate the viability of a fishery or extraction method; or
- competitiveness in the international market requires concentration of quota ownership.

20 SeaFIC has argued that a fourth category be included: fisheries that are small and specialised, and are not likely to support a large number of players. MFish considers that the quota market can address such concerns irrespective of whether the aggregation limit is 35% or 45%. At either limit, at least three quota owners are required; all that is affected is the relative size of the dominant owner(s), the benefits and risks of which are adequately addressed by the other steps.

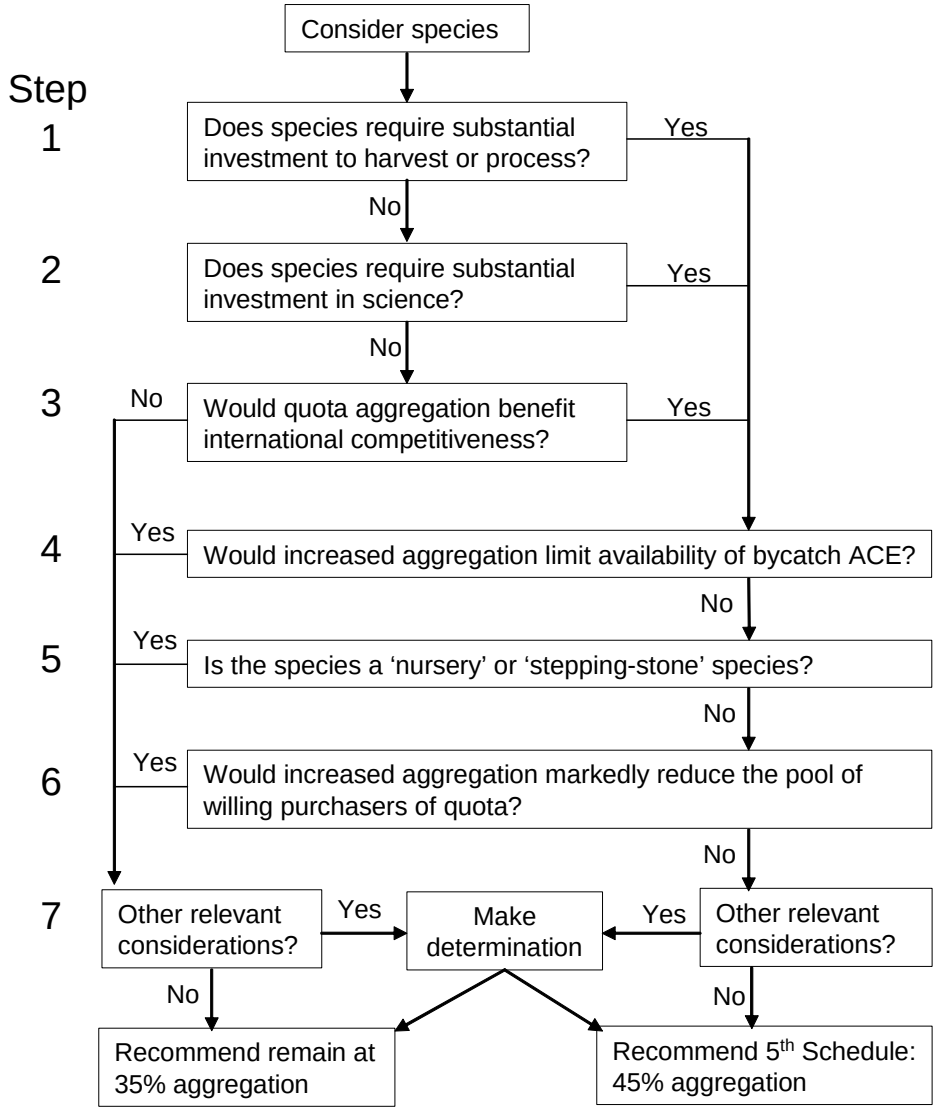
21 MFish has developed an analytical process to assess the suitability of individual species for inclusion on the Schedule. Although this analytical process is undertaken for each species, MFish acknowledges that each case must be considered on its own facts and considerations given other relevant circumstances or information where appropriate. MFish notes the evaluation is largely qualitative and therefore subjective, and the conclusions on some species are equivocal

22 Several submitters reject or question the framework given its subjective nature. MFish considers that there is no way to objectively make an assessment of this kind (e.g. to objectively determine if substantial investment is required to harvest or process the species). As much as possible, MFish provides objective indicators to inform the decision, but balancing and weighing of information must still occur. These indicators provide insight to the degree of confidence in the analysis.

23 Each species is assessed to determine if they fit into one of the three categories (step 1, 2 and 3), and then examined to ensure that unwanted consequences are unlikely (step 4, 5 and 6). Step 7 ensures that any other relevant information or circumstances are considered before making a final recommendation. Appendix 1 summarises the assessment for each species. SeaFIC does not support using steps 4, 5 or 6 because the risks of the unwanted consequences do not increase as a result of moving from 35 to 45% aggregation. MFish considers it appropriate to explicitly consider the potential for increased risk. Where the risk is similar at 35% and 45% it will be stated as such, and would not be grounds for preventing listing on the Schedule.

24 The end result of the analytical process is a recommendation either to list the species on the 5th Schedule, or to leave the aggregation at the default 35%. Species with lower aggregation limits (paua, rock lobster and bluenose) are not considered, as the limits for these species are separately established in section 59 of the Act. The process is summarised in Figure 1; the numbers 1 to 6 on the left refer to individual steps that are discussed in the text below.

Figure 1: Analytical process to assess species for Schedule 5



Step 1: Substantial Investment for Harvesting or Processing

25 Significant investment (in gear, vessels or training) may be required to successfully participate in commercial fishing for some species. Given the sunk costs of fishing for some species, a higher aggregation limit may be required to ensure a return on investment. In some cases, the incremental increase in the aggregation limit could facilitate the increased revenue that makes a fishery profitable.

26 In the IPP, MFish had suggested that species with a substantial recreational or customary catch was likely not to require substantial commercial investment to catch significant quantities. SeaFIC and Sanford submitted that levels of catch that are substantial for the non-commercial sectors bears no reflection on the commercial investment required to successfully participate in a fishery.

27 MFish agrees. To clarify, 'successfully participate' means that a viable business opportunity requires significant investment to catch fish in sufficient quantities, not simply the ability to catch fish using simple gear or fishing in accessible areas. There are a number of fish species that are occasionally caught in operations not requiring significant investment, but do require such investment to ensure the profitability and viability of the operation. The jack mackerel fishery is an example.

28 Such investment is typical of middle depth and deepwater species. Some inshore species may also fit the category if the fishery or species has one or more of the following characteristics:

- a low unit cost;
- bulk fishing method (e.g. purse seine) as standard practice;
- the need to use specialised gear or training for harvesting or processing to extract full value; or
- the fishery depends on catching large volumes in a short period of time (e.g. fishing on spawning aggregations).

Species are considered on a case-by-case basis to evaluate the specific circumstances.

Step 2: Substantial Investment for Science

29 Many species now being introduced into the QMS are new or exploratory1 fisheries. The catch limits for these stocks (usually reflecting the absence of historical catch) are low, pending additional research to demonstrate sustainable viability. Under these scenarios, the opportunity to control a greater proportion of a species' future catch limit may be required to warrant the investment costs in research required to access the stock. In the absence of that certainty, the risks inherent in exploratory work may not be economically viable.

30 M Hardyment submitted that the information required to 'prove up' fisheries comes from having many participants in the fishery. MFish does not support this view; information is produced by having participants interested in making the investment, not the number of participants. As argued above, having a greater share in the future catch limit may increase the participants' incentive to invest in information gathering.

31 General indicators of the investment required would be those species with nominal TACs/TACCs and/or little current catch. These species would likely also not be considered by the stock assessment Working Group/ Plenary process (or if they are, only to say that no information is available). MFish therefore proposes to recommend for listing on the Schedule all species with nominal catch levels and/or little current catch (subject to the analysis in Step 4, 5 and 6), where an investment in science is required to increase the fishery. For example:

[1] The fisheries resources themselves, or a market into which they are sold, have not been developed or 'proven'.

- One of the surf clams, ringed dosinia (DAN) has a TACC of 112 tonnes, but no more than 2 tonnes have ever been reported as landed. A TACC of that size may not be 'nominal', but catch levels are low. In setting the TACC on QMS introduction, the Minister wrote: "While there is likely to be opportunity for further development of the surf clam fishery, development will need to be supported by new research on the stocks and environmental impacts."

- For deepwater red crab (CHC), there is no information on stock structure, recruitment patterns, or other biological characteristics. Low TACCs (48 tonnes, with no more than 10 tonnes in any one QMA) were set to allow for further exploration in this fishery.

Step 3: International Competitiveness

32 Some species are export products requiring some investment in (or access to) overseas marketing infrastructure if the full value is to be extracted from the fishery. The fixed investment in marketing infrastructure suggests the benefits of economies of scale. The export market may be niche (requiring specialised product development and cultivation of export markets) or bulk (a non-distinguished product that operates as part of a global market with competing sources). In the case of bulk products, New Zealand producers may be competing with enterprises operating overseas that have access to subsidies, lower labour costs, reduced transportation costs or other advantages that reduce the per unit cost of production. In both instances, the ability to harvest a greater proportion of a species may be required to cover the investment costs.

33 The analysis is rarely clear-cut. Some niche market products, for instance, command premium prices, but enjoy established international markets and brands. Niche market produces would not require large economies of scale to access the market, and therefore smaller enterprises can be profitable.

34 General indicators of international competitiveness would be species with an export focus, or an export species with a domestic market that cannot produce similar economic returns. These products may either be a specialised niche product (e.g. scampi), or a bulk product with a global network of suppliers (e.g. southern blue whiting).

Step 4: Monopolising the Supply of Bycatch ACE

35 At the extreme, a dominant owner of quota of a stock commonly caught as bycatch in another target fishery could extract considerable value from that target fishery. For example, if target species A inevitably caught bycatch species B, controlling the quota for B to some extent controls the value of quota for A. However, there are a number of checks on the extent to which this could adversely affect other fishers.

36 First, an aggregation limit at any level means that the dominant owner can never be the sole source of ACE for those requiring it to cover bycatch. Furthermore, as quota is transferred from Te Ohu Kai Moana to iwi (who are then unable to on-sell that quota), further ACE may become available as iwi

look to maximise revenue generated from their quota asset. This would be particularly the case in fisheries where quota is distributed to iwi on a population basis, meaning that there will be many small packages of quota that are uneconomic as individual holdings.

37 Second, the potential for a dominant player to benefit from its dominance is limited by the deemed value (DV). The DV is a substitute for ACE – a fisher who takes the stock as a bycatch has the option of paying DVs. Therefore, the DV rate limits the ability of a dominant quota holder to use ACE to extract value from a bycatch fishery. A quota owner selling ACE would be limited to the DV rate – should ACE price rise above the DV, then fishers would simply pay the DV and choose not to acquire ACE.

38 Given this concern, MFish proposes that no species be listed on the 5th Schedule that is considered to be a significant bycatch species only (not itself a significant target fishery that otherwise falls into one of the three categories), or is one target species in a multi-species target fishery, unless in either instance all major species in the catch mix are included on the Schedule. The analysis in this step would assess the candidate species, and reject inclusion on the Schedule if it matched these characteristics.

Step 5: Reduced Opportunity to Enter into the Fishery

39 Increased aggregation should not remove an important entry point for new fishers getting into the business of fishing generally. If this was the case, the aggregation of quota ownership could affect the vibrancy of competition and the efficiency of the fishing industry. In this regard it is worth noting that the Select Committee in its consideration of the Fisheries Bill (which became the 1996 Act) recommended a regime with lower aggregation limits for species that could be "nursery fisheries where new fishers can enter the industry", or "the stepping-stone part of the fishing industry for many people".

40 In general, MFish considers 'nursery' or 'stepping-stone' fisheries are those that require a relatively low initial investment. They are therefore likely to be characterised by being inshore, or for relatively sedentary species, or are pelagic but do not require significant investment to enter. 'Stepping stone' fisheries are generally well established and do not require substantial science investment to 'prove up'. Generally, fishers in these fisheries do not require economies of scale and have a readily available local market for product distribution (or established and easily accessible export network).

41 The cost of acquiring quota is often a significant component of the initial investment required. Therefore, those species with a particularly high cost of quota cannot be considered 'nursery' or 'stepping-stone' fisheries, as it is this cost that removes an entry point for new fishers getting into the business.

42 MFish proposes that no species be listed on the 5th Schedule that is considered to be a 'nursery' or 'stepping-stone' fishery. These are established fisheries characterised by relatively lower input costs (including quota/ACE price), coupled with established markets for products readily accessible by new entrants. The analysis in this step would assess the candidate species, and

reject inclusion on the Schedule if it was considered to be a 'nursery' or 'stepping-stone' fishery.

Step 6: Reducing the Pool of Competitive Buyers

43 Aggregation of ownership may affect the dynamics of the quota and ACE markets with respect to those choosing to exit the fishery, those wishing to sell a portion of their quota holdings, or those quota owners who don't fish and instead sell ACE. This could occur in two ways.

44 First, if the ownership in the fishery becomes concentrated to the extent that it is difficult for others to build a commercially viable stake in the fishery, it may be difficult for minority quota holders or the ACE seller to find a selection of prospective buyers.

45 Second, the absence of any viable prospective purchasers could provide the opportunity for the dominant owner to exercise market power at the time minor players choose to leave the fishery. In particular, the minor quota owners may have no alternative but to sell at below market prices to the dominant owner of quota in the fishery.

46 Both circumstances illustrate where a lack of competition for quota/ACE may make it difficult for smaller quota or ACE sellers to get fair market value for their fishing rights.

47 However, there are also mitigating factors. First, if the highly aggregated stock is a bycatch species, then there will always be some demand for fishing rights outside the target fishery itself. (However, if the bycatch requirements are small, then the market for ACE to cover bycatch requirements may be small, and therefore the pool of potential buyers may be limited). Second, aggregation limits still apply, limiting the ability of a dominant owner to exploit its position as a buyer of additional quota.

48 The analysis in this step assesses the candidate species, and rejects inclusion on the Schedule if an increase of aggregation from 35% to 45% at the species level would result in a markedly reduced pool of willing purchasers. In this regard, the appropriate assessment is whether an aggregation of 45% is materially different from aggregation at 35%.

Step 7: Other considerations

49 For any given species, there may be relevant information that would not otherwise be identified at steps 1 to 6. Step 7 provides an explicit opportunity to consider such information.

50 SeaFIC, Talley's and Sanford submit that no species should be removed from the Schedule. MFish accepts that industry may have made business decisions on the assumption that quota aggregation would remain at the 45% level, even if holdings of individual companies were below the 35% level. Industry would have had no way of knowing that MFish would consider recommending a decrease in the aggregation limit following many years on the Schedule. Therefore, the reasons to propose removal of a species should be compelling.

51 MFish has evaluated all species (except paua, rock lobster and bluenose) using the same analytical framework, regardless of whether they are on the Schedule or not. However, for those species currently on the Schedule, the evaluation only looks at the risk of unwanted consequences (step 4, 5 and 6) – no case need be made that they fit Category 1, 2 or 3. Following an evaluation, MFish has found no significant reason at step 4, 5, or 6 to propose removal of any of the species currently listed on the Schedule.

Other Management Issues

52 MFish proposes to use this analytical framework to assess all new QMS species for suitability for the Schedule at the time of introduction. This proposal is supported by SeaFIC (provided steps 4, 5 and 6 are removed), and rejected by NZRLIC. On balance, MFish believes that the framework is a useful mechanism to assess new QMS species.

Statutory Considerations

53 Under s 59(7) of the Fisheries Act, the Governor-General may, on the recommendation of the Minister of Fisheries, add or delete any species to the Fifth Schedule of the Act, following consultation with such persons or organisations who are representative of those classes of persons the Minister considers have an interest.

54 The Initial Position Paper was sent to all stakeholders on the sustainability round distribution list, and feedback was received from the list of stakeholders listed at page 2. All submissions from stakeholders are summarised in the accompanying volume.

55 Apart from the requirements set out in s59(7), and the general consideration set out in part 1 and 2 of the Act, there is little statutory guidance on what is to be considered by the Minister when recommending an addition or deletion to the Schedule.

Appendix 1: Candidate Species

56 MFish has applied the analytical process to examine all QMS species (except paua, rock lobster and bluenose), and to select those suitable for inclusion on the Schedule.

Code	Species	Commentary	Sch. 5?
ANC	Anchovy	Category 1. Substantial investment likely needed to make commercially viable operation, although some scope for a small scale purse seine/ lampara fishery. Therefore possibility of concern at step 5. No concerns at step 4 or 6. The submission of M Hardyment opposes the inclusion of anchovy due to concerns at step 5.	**Yes**
ANG	Freshwater Eel	Does not fit category 1, 2 or 3. Significant recreational and customary interest.	**No**
BAR	Barracouta	Possible fit to category 1. Considerable bycatch in many fisheries, not all species of which are proposed for the Schedule. Occasionally targeted by established middle and inner shelf trawl fishery. Currently on Schedule and there is no evidence of unwanted consequences. SeaFIC, Talley's, NZRLIC and Sanford submitted in favour of retaining barracouta.	**Yes**
BCO	Blue Cod	Does not fit category 1, 2 or 3. Significant recreational and customary interest.	**No**
BIG	Bigeye Tuna	Does not fit category 1, 2 or 3.	**No**
BUT	Butterfish	Does not fit category 1, 2 or 3.	**No**
BWS	Blue Shark	Does not fit category 1, 2 or 3.	**No**
BYA	Frilled Venus Shell	Category 2. Undeveloped sedentary shellfish. No concerns at step 4, 5 or 6.	**Yes**
BYX	Alfonsino	Category 1. Currently listed on Schedule. No concerns at step 4, 5 or 6. Primarily target species. Although a minor bycatch species, all major species in complex proposed for Schedule 5.	**Yes**
CDL	Cardinal Fish	Category 1. No concerns at step 4, 5 or 6. Although a bycatch species as well as target, all major species in complex proposed for Schedule 5.	**Yes**
CHC	Red Crab	Category 2. No concerns at step 4, 5 or 6.	**Yes**

COC	Cockle	Does not fit category 1, 2 or 3.	**No**
DAN	Ringed Dosinia	Category 2. Undeveloped sedentary shellfish. No concerns at step 4, 5 or 6.	**Yes**
DSU	Silky Dosinia	Category 2. Undeveloped sedentary shellfish. No concerns at step 4, 5 or 6.	**Yes**
ELE	Elephant Fish	Does not fit category 1, 2 or 3.	**No**
EMA	Blue Mackerel	Category 1. Although caught by variety of methods (including many low cost such as beach seine), substantial investment to make commercially viable operation in primary method of purse seine and midwater trawl. Step 4, 5: primarily a target, and in bycatch of jack mackerel (which is proposed for Schedule 5). Step 6: there are 89 quota holders, and in addition to the dominant holder there are 3 other quota owners who own more than 10%. Therefore no concerns at step 4, 5 or 6.	**Yes**
FLA	Flatfish	Does not fit category 1, 2 or 3.	**No**
FRO	Frostfish	Category 1. Although a bycatch species, all major species in complex proposed for Schedule 5. Very little non-commercial catch. No concerns at step 4, 5 or 6.	**Yes**
GAR	Garfish	Does not fit category 1, 2 or 3.	**No**
GLM	Green-lipped Mussel	Does not fit category 1, 2 or 3.	**No**
GMU	Grey Mullet	Does not fit category 1, 2 or 3.	**No**
GSC	Giant Spider Crab	Category 1, 2. No concerns at step 4, 5 or 6.	**Yes**
GSH	Ghost Shark	Category 1. Step 4: ghost sharks are common bycatch, but relatively minor, so risk is low that aggregation would limit ACE. Most of complex is proposed for Schedule. No concerns at step 5 or 6.	**Yes**
GSP	Pale Ghost Shark	Category 1. No concerns at step 4, 5 or 6.	**Yes**
GUR	Gurnard	Does not fit category 1, 2 or 3.	**No**
HAK	Hake	Category 1,3. Currently listed on Schedule. Although a bycatch species as well as target, all major species in complex proposed for Schedule 5 so risk is low that aggregation would limit ACE. No concerns at step 4, 5 or 6.	**Yes**

HOK	Hoki	Category 1,3. Currently listed on Schedule. All major species in complex proposed for Schedule 5. No concerns at step 4, 5 or 6.	**Yes**
HOR	Horse Mussel	Category 2. Step 4: horse mussels are taken as a bycatch in trawl, Danish seine, and dredge fisheries targeting more valuable species, but sufficient ACE is likely to be available. Step 5: horse mussels are widespread throughout the lowest intertidal and subtidal shallows of sheltered waters, so could be considered stepping stone fishery. On balance, risk of unwanted consequences assessed to be low.	**Yes**
HPB	Hapuku	Does not fit category 1, 2 or 3.	**No**
JDO	John Dory	Does not fit category 1, 2 or 3.	**No**
JMA	Jack Mackerel	Category 1. Currently listed on Schedule. Primarily purse seine and trawl. Primarily a target, although some bycatch; all major species in complex proposed for Schedule 5. No concerns at step 4, 5 or 6.	**Yes**
KAH	Kahawai	SeaFIC and Sanford argues fit to category 1, as part of the purse seine fishery. MFish agrees that increased commercial aggregation is not likely to adversely affect recreational interests, **unless** bycatch kahawai are discarded for lack of ACE. MFish considers this a strong possibility: TACs and TACCs have been reduced, leading to a decrease in targeting; kahawai is increasingly a commercial bycatch fishery. MFish considers the risk at Step 4 to be high, although this assessment may need to be revisited in future years as the fishery evolves.	**No**
KIC	King Crab	Category 2. No concerns at step 4, 5 or 6.	**Yes**
KIN	Kingfish	Does not fit category 1, 2 or 3. Significant recreational species.	**No**
KWH	Knobbed Whelk	Category 2. No concerns at step 4, 5 or 6.	**Yes**
LDO	Lookdown Dory	Category 1. Primarily a bycatch (although some target); all major species in complex proposed for Schedule 5. No concerns at step 4, 5 or 6.	**Yes**
LEA	Leatherjacket	Does not fit category 1, 2 or 3	**No**
LFE	Long-finned Eel	Does not fit category 1, 2 or 3	**No**
LIN	Ling	Category 1. Currently listed on Schedule. Although a bycatch species as well as target, all major species in	**Yes**

		complex proposed for Schedule 5 so risk is low that aggregation would limit ACE. No concerns at step 4, 5 or 6.	
MAK	Mako Shark	Does not fit category 1, 2 or 3. Bycatch of tuna fishery.	**No**
MDI	Trough Shell	Category 2. Undeveloped sedentary shellfish. No concerns at step 4, 5 or 6.	**Yes**
MMI	Large Trough Shell	Category 2. Undeveloped sedentary shellfish. No concerns at step 4, 5 or 6.	**Yes**
MOK	Moki	Does not fit category 1, 2 or 3.	**No**
MOO	Moonfish	Does not fit category 1, 2 or 3. Bycatch of tuna fishery.	**No**
OEO	Oreos	Category 1, 3. Currently listed on Schedule. Although a bycatch species as well as target, all major species in complex proposed for Schedule 5 so risk is low that aggregation would limit ACE. No concerns at step 4, 5 or 6.	**Yes**
ORH	Orange Roughy	Category 1, 3. Currently listed on Schedule. All major species in complex proposed for Schedule 5. No concerns at step 4, 5 or 6.	**Yes**
OYS	Oysters Dredge	Does not fit category 1, 2 or 3.	**No**
OYU	Oysters Dredge (Foveaux Strait)	Does not fit category 1, 2 or 3.	**No**
PAD	Paddle Crab	Does not fit category 1, 2 or 3	**No**
PAR	Parore	Does not fit category 1, 2 or 3	**No**
PDO	Deepwater Tuatua	Category 2. Undeveloped sedentary shellfish. No concerns at step 4, 5 or 6.	**Yes**
PHC	Packhorse Rock Lobster	Currently on Schedule, although does not fit category 1, 2 or 3. SeaFIC and NZRLIC submit that packhorse be retained. No concerns at step 4, 5 or 6.	**Yes**
PIL	Pilchard	Category 1. Although caught by variety of methods (including the low cost beach seine), substantial investment to make commercially viable operation in primary method of purse seine. Primarily a target; bycatch in jack mackerel, which is proposed for Schedule 5. Some recreational interest, but seldom targeted. Therefore, no concerns at step 4 or 6. Some	**Yes**

		scope for a small scale purse seine/ lampara fishery, therefore possibility of concern at step 5. The submission of M Hardyment opposes the inclusion of pilchard due to concerns at step 5.	
POR	Porae	Does not fit category 1, 2 or 3.	**No**
POS	Porbeagle Shark	Does not fit category 1, 2 or 3. Bycatch of tuna fishery.	**No**
PPI	Pipi	Does not fit category 1, 2 or 3.	**No**
PZL	Deepwater Clam	Category 2. No concerns at step 4, 5 or 6.	**Yes**
QSC	Queen Scallop	Category 1. No concerns at step 4, 5 or 6.	**Yes**
RBM	Rays Bream	Does not fit category 1, 2 or 3. Bycatch of tuna fishery.	**No**
RBY	Rubyfish	Category 1. Although a bycatch species as well as target, all major species in complex proposed for Schedule 5 so risk is low that aggregation would limit ACE. No concerns at step 4, 5 or 6.	**Yes**
RCO	Red Cod	Possible fit to category 1 or 2. Currently on Schedule. SeaFIC, Talley's, NZRLIC and Sanford submitted in favour of retaining red cod. Step 4: red cod quota and ACE is readily available for bycatch. Step 5: some concern, as red cod quota may be used as an entry point for the southern inshore fishery. Step 6: evidence suggests a pool of willing purchasers is available. On balance there is no evidence of unwanted consequences	**Yes**
RIB	Ribaldo	Category 1. Caught as bycatch; all major species in complex proposed for Schedule 5 so risk is low that aggregation would limit ACE. No concerns at step 4, 5 or 6.	**Yes**
RSK	Rough Skate	Category 1, 3. SeaFIC agrees that rough skate fits category 1 and 3. Step 4: skate is a common bycatch. Although relatively minor, it is caught in most inshore trawl fisheries, so there is some risk that aggregation would limit ACE. Sufficient concern to withhold from Schedule. SeaFIC did not comment on concerns at step 4. Step 5: no concern, as most skate is caught in bottom trawls and longliners. Step 6: since RSK is a bycatch in many fisheries, there is likely to be demand for quota. Quota is currently reasonably disaggregated, with 178 owners, of which 6 own more than 5%. No reason to suggest reduction in	**No**

		pool of purchasers. No concern at step 6.	
RSN	Red Snapper	Does not fit category 1, 2 or 3.	**No**
SAE	Triangle Shell	Category 2. Undeveloped sedentary shellfish. No concerns at step 4, 5 or 6.	**Yes**
SBW	Southern Blue Whiting	Category 1, 3. No concerns at step 4, 5 or 6.	**Yes**
SCA	Scallop	Does not fit category 1, 2 or 3.	**No**
SCC	Sea Cucumber	Category 2. No estimates of current or reference biomass, or any yield estimates, are available. Investment from quota owners is required. Step 4: While sea cucumber is targeted by diving, it is commonly taken as a bycatch in some dredge and inshore trawl fisheries. Step 5: although fishery is unproven, the primary method for targeting sea cucumber is handgathering while diving, therefore access does not require investment.	**No**
SCH	School Shark	Does not fit category 1, 2 or 3.	**No**
SCI	Scampi	Category 1, 3. No concerns at step 4, 5 or 6. Sanford submitted in favour of adding scampi.	**Yes**
SFE	Short-finned Freshwater Eel	Does not fit category 1, 2 or 3.	**No**
SKI	Gemfish	Category 1. Currently listed on Schedule. Step 4: bycatch in hoki and squid, both of which are proposed for Schedule, so no concern. Step 5: coastal fish, down to about 550 m, with catch primarily by trawlers. Therefore some concern but not sufficient to withhold from Schedule. Step 6: 103 quota holders, or which 5 own more than 5% (each) of quota. Top 6 owners control 75% of TACC. Suggests little concern at step 6.	**Yes**
SNA	Snapper	Does not fit category 1, 2 or 3. Significant recreational species.	**No**
SPD	Spiny Dogfish	Possible fit to category 2 or 3: under current market conditions spiny dogfish are a low value fishery and would benefit from marketing and processing specialisation, which may result from increased aggregation. Sanford supports the inclusion of spiny dogfish in the basis of category 1 and 3. However, considerable risk at step 4: SPD is common bycatch in trawl, long-line and set net fisheries (inshore, midwater and deepwater). Sanford submission did	**No**

		not address concerns at step 4.	
SPE	Sea Perch	Does not fit category 1, 2 or 3.	**No**
SPO	Rig	Does not fit category 1, 2 or 3.	**No**
SPR	Sprats	Possible fit to category 1. Although caught by variety of methods (including low cost methods), substantial investment to prove up a commercially viable operation. Some concern at step 5. The submission of M Hardyment opposes the inclusion of sprats due to concerns at step 5. Crown owns the majority of quota, with few bids at the February 2006 tender round. Therefore no concern at step 4 or 6.	**Yes**
SQU	Arrow Squid	Category 1, 3. Currently listed on Schedule. No concerns at step 4, 5 or 6.	**Yes**
SSK	Smooth Skate	Category 1, 3. Step 4: smooth skate is a common bycatch, but relatively minor, so risk is low that aggregation would limit ACE. Step 5: no concern, as most skate is caught in bottom trawls and longliners. Step 6: quota is currently reasonably disaggregated, with 190 owners, of which 4 own more than 5%. No reason to suggest reduction in pool of purchasers.	**Yes**
STA	Giant Stargazer	Does not fit category 1, 2 or 3.	**No**
STN	Southern Bluefin Tuna	Possible fit to category 1. Sanford submits that southern bluefin tuna be added on the basis of category 1. Most southern bluefin tuna are caught by medium to larger longline vessels. Given importance of this fishery, its links to the swordfishery and its importance to a number of smaller ports, the issue should be discussed further with the full range of stakeholders before adding to the schedule.No concerns at step 4, 5 or 6. Sanford submits that southern bluefin tuna be added on the basis of category 1.	**No**
SUR	Kina	Does not fit category 1, 2 or 3.	**No**
SWA	Silver Warehou	Category 1. Step 4: common bycatch, but most of complex is proposed for Schedule, so no concern. No concerns at step 5 or 6.	**Yes**
SWO	Swordfish	Does not fit category 1, 2 or 3. Bycatch of tuna fishery.	**No**
TAR	Tarakihi	Does not fit category 1, 2 or 3.	**No**
TOR	Pacific	Does not fit category 1, 2 or 3.	**No**

	Bluefin Tuna		
TRE	Trevally	Does not fit category 1, 2 or 3.	**No**
TRU	Trumpeter	Does not fit category 1, 2 or 3.	**No**
TUA	Tuatua	Does not fit category 1, 2 or 3.	**No**
WAR	Common (Blue) Warehou	Category 1. Step 4: Common inshore trawl bycatch; not all of which are proposed for Schedule 5 so there is risk that aggregation would limit ACE. Currently on schedule and there is no evidence of unwanted consequences. SeaFIC, Talley's, NZRLIC and Sanford submitted in favour of retaining common warehou. No concerns at step 5 or 6.	**Yes**
WWA	White Warehou	Category 1. Common bycatch; all major species in complex proposed for Schedule 5 so risk is low that aggregation would limit ACE. No concerns at step 4, 5 or 6.	**Yes**
YEM	Yellow-eyed Mullet	Does not fit category 1, 2 or 3.	**No**
YFN	Yellowfin Tuna	Does not fit category 1, 2 or 3.	**No**

Appendix 2: Commerce Commission

57 Quota aggregation of 45% permitted under the Act does not preclude the Commerce Commission (the Commission) investigating market issues. The Commerce Act 1986, which is administered by the Commerce Commission, exists to protect against anti-competitive behaviour.

58 The Commission, in it its merger guidelines, defines 'safe harbours' that reflect a market position in which dominance is not likely to be created or strengthened following a merger or acquisition. Therefore, should an entity fall within a 'safe harbour', it would generally not attract the attention of the Commission. 'Safe harbours' exist when an entity controls less than 40% of the market, or if the entity controls less than 60% of the market, but at least one other participant controls 15% of the market. The 'safe harbour' test does not determine unacceptable levels of market power, but merely the trigger for further examination.

59 The Commission is an arms-length compliance organisation established to protect the competitive process, not individual competitors. The Commerce Act 1986 examines the degree of competition in the market, and does not address how a practice or industry structure may adversely affect a particular competitor.

RESTRICTION ON THE POSSESSION AND DISPOSAL OF LIVE BROWN BULLHEAD CATFISH – FINAL ADVICE

Executive Summary

1. Freshwater environments have undergone significant ecological changes as a result of the introduction of species not indigenous to New Zealand. The presence of introduced species in waterways has increased the risks of harmful changes in the freshwater environment and to the natural distribution and abundance of native species.

2. Brown bullhead catfish (catfish) were introduced into New Zealand waters in 1877 and since then their distribution and population size has extended significantly throughout the North Island. One known population also exists on the West Coast of the South Island. Catfish are considered to be an undesirable species because of their adverse effects on other freshwater (native) species and on the aquatic environment.

3. Commercial and non-commercial fishers take catfish either by targeting them, or as a bycatch whilst fishing for a range of freshwater species, principally eels. Because fishers at present are allowed to retain live catfish, there is an elevated risk of new populations being established in waterways that were previously free of any catfish.

4. The Fisheries Act 1996 (the Act) contains obligations to manage a species like catfish in a way that ensures that the effects of fishing do not detract from other values associated with the use of fisheries resources. The Ministry of Fisheries' (MFish) proposal to apply controls on the use of catfish is intended to ensure that the sustainability of other freshwater species is not compromised, while still allowing ongoing utilisation opportunities for catfish. Management measures are proposed to mitigate the risks to the aquatic environment associated with the use of the catfish resource, particularly where catfish taken are disposed of inappropriately.

5. Introducing regulatory controls for the possession and disposal of live catfish is also intended to raise the awareness of the risks associated with the use of the catfish resource. The public profile of catfish will become more obvious as an 'undesirable' species. This in turn should encourage people to change the way they handle live catfish to more desirable practices.

6. A formal initial position paper (IPP) was released for stakeholder consultation in September 2004. The IPP sought submissions, by 30 November 2004, on two alternative options:

    a. Option 1 - prohibiting the possession and disposal of live catfish by amateur and commercial fishers;

    b. Option 2 - prohibiting the sale of live catfish by commercial fishers, and prohibiting the possession and disposal of live catfish by amateur fishers;

c. Both options involved a complementary proposal to develop a code of practice for amateur and commercial fishers on handling catfish.

7. Environmental and conservation groups as well as two Regional Councils and the Department of Conservation (DOC) made submissions on the proposal. Submitters favoured the implementation of further controls on the handling of live catfish, with the majority of submitters in support of Option 1 of the initial proposals, as it provides for the highest level of regulatory control. DOC preferred Option 2 of the proposals outlined in the IPP. A late submission was received in August 2006 from the New Zealand Eel Processing Company Limited.

8. MFish has considered the submissions received and the potential impacts on the users of the catfish resource. MFish retains the intention signalled in the IPP options to tighten control on the distribution of live catfish. MFish is proposing a final option based on initial proposals, impacts to users of the catfish resource, and submissions received.

9. The final proposal is consistent with the intent of Option 2, in that commercial fishers will continue to have flexibility to possess live catfish but such fish must be killed on sale, prior to the licensed fisher receiver (LFR) taking possession of the fish. The final proposal also seeks to prohibit the possession and disposal of live catfish by amateur fishers. The development of a code of practice will be encouraged for commercial and non-commercial fishers, with the intent of adding further precautionary measures to mitigate the risks associated with live catfish.

10. Should you agree to the proposed regulatory amendment, MFish will prepare a paper seeking approval from the Cabinet Economic Development Committee.

Summary of Options

Initial Proposals

11. Under the initial proposals MFish recommended that you:

EITHER

Option 1:

a. Amend the Fisheries (Commercial Fishing) Regulations 2001 to prohibit the *possession and disposal* of live catfish;

b. Amend the Fisheries (Amateur Fishing) Regulations 1986 to prohibit the *possession and disposal* of live catfish;

c. Agree to support a code of practice to:

i. clean fishing gear in salt baths;

ii. ensure boats and boat trailers are inspected adequately before leaving boat ramps.

OR

Option 2:

d. Amend the Fisheries (Commercial Fishing) Regulations 2001 to prohibit the *sale* of live catfish;

e. Amend the Fisheries (Amateur Fishing) Regulations 1986 to prohibit the *possession and disposal* of live catfish;

f. Agree to support a code of practice:

   i. to clean fishing gear in salt baths;

   ii. to ensure that boats and boat trailers are inspected adequately before leaving boat ramps;

   iii. for commercial fishers, to kill all catfish caught before disposing of them.

Final Recommendations

12. MFish recommends that you:

a. Amend the Fisheries (Commercial Fishing) Regulations 2001 to prohibit the sale of live catfish by commercial fishers;

b. Support the development of a code of practice for commercial fishers:

   i. to clean fishing gear, used in freshwater environments, in salt baths;

   ii. to ensure boats and boat trailers are inspected adequately before leaving boat ramps, with the aim of removing aquatic life of potential or known concern;

   iii. to encourage the killing of catfish caught that are not destined for sale, prior to returning such fish to the water from which it was taken.

c. Amend the Fisheries (Amateur Fishing) Regulations 1986 to prohibit the possession of live catfish, and require any live catfish taken to be killed immediately.

d. Support the development of a code of practice for non-commercial fishers:

   i. to periodically clean fishing gear, used in freshwater environments, in salt baths;

   ii. to ensure fishing gear, boats and boat trailers are inspected adequately before leaving boat ramps, with the aim of removing aquatic life of potential or known concern.

Submissions Received

- Auckland Conservation Board
- Auckland Regional Council
- Department of Conservation (DOC)
- East Coast Hawke's Bay Conservation Board

- Bay of Plenty Regional Council (Environment Bay of Plenty)
- Fish & Game New Zealand (Fish & Game)
- Jonathan Harness (former Ranger, Department of Conservation)
- New Zealand Conservation Authority (NZCA)
- Northland Conservation Board
- New Zealand Eel Processing Co Ltd
- Taranaki-Wanganui Conservation Board
- Wellington Conservation Board

Rationale for Management Options

Background

13. Catfish, *Ameiurus nebulosus*, are considered an undesirable fish species. The species was introduced into New Zealand waters around Auckland in 1877 and since then its distribution has extended significantly. Catfish are now present in a large number of waterways in the northern and central North Island and one confirmed population exists on the West Coast of the South Island.

14. Catfish populations have increased in some areas to levels where it is the dominant fish species. There are a number of risks involved if live catfish are transferred to new waterways. Catfish are likely to compete with native fish for food, and adults can prey on koura and native fish. The foraging habit of catfish is also likely to have a negative effect on water quality by re-suspending sediments and increasing turbidity. Improved management measures are needed to prevent such impacts and to reduce the probability of their distribution extending.

15. Catfish are a hardy species and can survive out of the water for extended periods. This characteristic increases the probability of new populations becoming established. The species may be accidentally transferred to other waterways when non-commercial and commercial fishers do not clean their nets, boats or boat trailers before using them in another area. Catfish may also be intentionally released alive by non-commercial fishers, or consumers who no longer want them.

16. There is only one known commercial fisher that specifically targets catfish. However, commercial eel fishers catch many tonnes of catfish annually as bycatch using fyke nets or hīnaki (pots). There is a small domestic market for catfish within New Zealand based on the small proportion of the catfish catch that is landed. Consumers often prefer to purchase the fish in a live state. These consumers, mainly Asian immigrants living in major metropolitan centres, have increased their use of catfish over the last 15-20 years. Live catfish are available for sale at retail and market outlets, particularly in the Auckland and occasionally in the Wellington regions.

17. Some non-commercial fishers or consumers may unintentionally or deliberately release live catfish into the water. This may occur because their catch or purchases either exceed their consumption requirements, the health of the catfish deteriorates before being eaten, or they may be released as ornamental fish. A more extreme example of use and associated risk was the detection of live catfish about to be taken to Christchurch as hand luggage on a domestic flight.

Legislative Framework

18. The Act contains obligations to consider the effects of fishing on the aquatic environment to ensure sustainable resource utilisation. This includes a requirement to avoid, remedy or mitigate any adverse effects of fishing on the aquatic environment as specified by section 8(2)(b) of the Act. The Act also obliges decision makers to maintain the biological diversity of the aquatic environment, protect habitats of significance for fisheries management and maintain the long term viability of associated or dependent species as specified by the environmental principles (section 9). Providing controls on a species that may have an impact on these values and statutory obligations, is consistent with the purpose of the Act.

19. Transfers or releases of live aquatic life into any freshwater environment require an approval under section 26ZM of the Conservation Act 1987. However, public awareness of this requirement is limited. One reason for this is that the measure is not part of the fisheries regulatory framework to which fishers are more likely to refer. Restricting or prohibiting the possession of live catfish will complement the existing law on transfers or releases of live aquatic life, under the Conservation Act 1987. It will help to control the further spread of catfish populations, and act to ensure that management settings under different legislation are synchronised and working consistent within a wider government approach.

20. There is some uncertainty associated with the risks that catfish pose to the aquatic environment. In reaching the recommendation made, MFish has weighed up the costs and benefits of addressing an appreciable level of risk associated with the use of the catfish resource.

21. MFish has taken the best available information into account in proposing management measures to mitigate risks with the possession and disposal of live catfish to the aquatic environment. However, more information would be desirable to assess the greater extent of all risks associated with live catfish on the environment. In accordance with section 10 of the Act, the absence of any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act. In the case of catfish, it is likely to be much more cost effective to apply measures to manage the risk of them extending their range than managing their eradication or control after this happens.

Previous Consultation

22. In 2003 MFish carried out preliminary consultation and distributed available information on catfish to fishery interest groups. Twenty submissions from a broad range of fishery interests were received, with the majority of submissions supporting the implementation of regulatory controls to prevent the risk of further spread of catfish as a result of activities related to the use of this species. It has

been concluded that maintaining status quo management measures is not sufficient to mitigate the risks associated with the use of this species.

23. Some commercial fishers expressed concern that a ban on the possession of live catfish may negatively impact on the catfish market. To alleviate the risk of accidental transfer of catfish into other waterways, there was support for a voluntary code of practice, encouraging fishers to thoroughly clean their fishing gear before leaving boat ramps.

24. Following formal consultation in September 2004, submissions were received from a number of conservation and environmental groups, as well as DOC and two Regional Councils. All submissions received were in support of applying some level of regulatory control to the catfish fishery, as well as establishing a code of practice.

25. As a result of MFish informing stakeholders of the items to be included in the review of sustainability and regulatory measures for the 2006-07 fishing year (including the completion of a final advice paper (FAP) on the catfish IPP), a late submission on the catfish proposal was received. The submission, received from the Waikato-based New Zealand Eel Processing Company Ltd, outlined current and potential future uses of catfish and a suggested approach towards establishing a code of practice for this fishery. This late submission has been considered in preparing this final advice.

26. The IPP released in September 2004 for stakeholder consultation was separate to the normal timetable for sustainability and regulatory rounds. There has been a delay with the production of the FAP, as the catfish proposal had to be prioritised against other competing tasks within MFish. However, MFish has had ongoing and recent dialogue with commercial fishers involved in this fishery and they are aware of the recommendation as now presented to you.

Assessment of Management Options

Extent of Use and Risk Assessment

27. Submitters generally supported MFish's assessment of the use and associated risks of catfish and support MFish's efforts to restrict the spread and establishment of catfish populations in new areas. Submitters also raised concerns with the availability of live catfish at retail and market outlets and the possibility of catfish being transferred to other waterways, where they may establish new populations.

28. MFish is aware of the interests of recreational anglers in catching catfish and taking the fish home in a live state. Efforts to educate fishers about the risks associated with catfish have not necessarily resulted in behavioural changes to minimise these risks. This may be because the people using the resource are not actually being successfully targeted through public awareness campaigns. MFish considers that the actions of some non-commercial fishers in keeping live catfish further supports the need to apply some controls to the amateur fishing sector.

29. MFish notes that a regulatory control to prohibit the possession of live catfish, as well as producing education material for a wide range of freshwater environment resource users, would help mitigate further risks that arise from the fishing of this

species. In addition, MFish will also target non-commercial fishers and consumers, through fishing clubs and retail outlets, with education material. Providing more specific information focussed on catfish, rather than several other undesirable species, should further raise the awareness and profile of catfish. These measures should prove more effective in guiding behavioural changes amongst fishers than previous attempts.

30. One submitter suggested that MFish should be putting efforts into eradication programmes. MFish responsibilities do not extend to the eradication of introduced species. Within the context of the Act, use of the catfish resource has some potential benefits. However the utilisation benefits must be balanced against sustainability concerns. Applying restrictions on the possession and disposal of catfish, while still allowing fishers to catch catfish, will provide a level of control on the numbers found in some areas, and help sustain other species and the values associated with the fisheries environment. This may further assist in controlling the extension of the range of catfish.

31. MFish agrees that the best available information suggests that catfish is a species of concern, particularly given that its range has extended over recent decades. However, MFish's view is that this information is not as clear as it could be when used as a basis for forming management decisions. Nonetheless, MFish notes that a cautious approach is appropriate and consistent with its statutory obligations under the Act as it relates to the use of such a fisheries resource.

Existing Mechanisms

32. Submitters raised concerns regarding the lifting of the moratorium on fishing permits issued under the Act for non-QMS species. This occurred on 1 October 2004. MFish recognises that this change allowed other commercial fishers to target catfish. However, it is important to realise that the application of the moratorium in previous years did not prevent catfish from being taken as a bycatch of other fishing activities for other species. The lifting of the moratorium has not resulted in an increase in the number of commercial fishers targeting, or taking, catfish for sale in a live state. The lifting of the fishing permit moratorium for non-QMS species has been of no consequence to the risks associated with the commercial use of catfish.

33. Submitters queried whether catfish could be added onto other legislative categories covering freshwater species requiring specialised management. Some species of freshwater fish, other than sports fish, have been classified into different legislative management categories. Some of these categories are historic in nature and were developed to address perceived concerns about a particular species at a particular time. These categories include:

    a. Prohibited organism – Hazardous Substances and New Organisms Act 1996;

    b. Unwanted organism – Biosecurity Act 1993;

    c. Noxious fish – Freshwater Fisheries Regulations 1983, now made pursuant to the Conservation Act 1987;

    d. Pest fish - Resource Management Act 1991;

e. Restricted fish – s26ZQA Conservation Act 1987.

34. In general only a few species are classified in the above categories. MFish notes that adding a species to any of these lists above would not necessarily simplify the management objectives for a species. To date, the adding of species to these other legislative categories has resulted in operational difficulties for fishery interests and fishery managers. These difficulties have mainly been in determining how management actions are applied amongst the alternative legislative frameworks. The on-going utility of some of these categories is questionable for the longer term. The purpose and principles of the Act provide an appropriate and relevant context for applying controls on catfish. This is because the use of most fisheries resources is managed directly under fisheries legislation, and the risks of that use can be internalised within the legislative framework.

Approach to Commercial Sector

35. MFish notes a prohibition on the possession and disposal of live catfish by commercial fishers (as outlined under initial Option 1), would remove economic opportunity and incentive for commercial fishers to fish for catfish. Commercial fishers have previously noted that killing all catfish immediately on capture could have a negative impact on the economic value of catfish. Consumers prefer to purchase the fish in a live or freshly killed state.

36. Similarly, requiring commercial fishers to kill all catfish on capture (initial Option 1) would be a difficult and time consuming task, particularly for commercial eel fishers, as large quantities of catfish can be caught as bycatch in one night's fishing. This requirement may only lead to commercial eel fishers avoiding areas known to have a relatively high abundance of catfish (e.g. some Waikato lakes), and consequently for catfish numbers to increase in such localities. This may have negative impacts on the ability of other species (e.g. eels, koura) to successfully grow and compete with catfish populations within discrete areas. For example there is an increasing awareness of the poor condition of eels in areas where catfish abundance is high (e.g. Lake Waikare).

37. Allowing commercial fishers to possess live catfish up until the point of sale provides for some economic value to be retained. This is because commercial fishers can elect to kill catfish just prior to sale, rather than immediately on capture if a prohibition on possession of live catfish was in place. In addition, any initiative to remove catfish as an approach to control the species would involve costs. These costs may not be able to be recouped if there was a prohibition on the possession and disposal of live catfish.

38. A key Te Kauwhata based catfish commercial fisher has noted that the quantity of catfish sold would decrease for a period of time while LFRs and dealers-in-fish become accustomed to purchasing and on-selling dead catfish. At present about 15% of the commercial catch is sold in a dead state. However, the commercial fisher notes that at present some LFRs and dealers-in-fish do not appear too concerned if the fish is about to die at the time of sale. Dealers-in-fish are also comfortable selling the fish if the fish has retained its colour, freshness and overall appeal for the consumer.

39. Some consumers may initially be resistant to purchasing dead catfish. However, MFish considers that consumers are likely to adjust to this change over the medium term. The key catfish commercial fisher has noted that he would need to make two trips, instead of one trip to the Auckland market each week with smaller quantities of fish that meet the purchasing needs of LFRs and in turn, dealers-in-fish. This would ensure the fish was as fresh as possible at the point of sale to the consumer. Consumers may also appreciate that the measure provides a level of environmental protection.

40. The values associated with the possession of live catfish relate to consumers having some assurance that the fish is fresh. However, these values are relatively short-lived, and the risks to the environment of retaining this flexibility outweigh any benefit to users of this resource. Typically consumers will kill catfish within a few hours of purchasing the fish. If the market dictates that the fish is as fresh as possible commercial fishers may need to develop efficient methods for killing catfish and bringing these to the market. The key catfish commercial fisher may electrocute the fish. This would ensure that the fish dies quickly, retains its colour and therefore overall appeal for the consumer.

41. Adopting the recommended measure (reflecting Option 2) would have some impact on the one commercial fisher who presently targets this species. This individual's income is largely based on the sale of catfish, a large proportion of which are currently in a live state. The commercial fisher is already considering how he would need to adjust his operations to meet the recommendations of this FAP. In addition to investigating new products e.g. burley, the commercial fisher is already investigating efficient means to kill catfish prior to sale, as noted in the preceding paragraph.

42. Submitters sought more clarification about when commercial fishers would be required to kill catfish. MFish notes that commercial fishers will be required to kill catfish at the point of sale. This includes sales to LFRs and 'wharf sales' – the only means by which fish can be sold to someone other than an LFR. 'Wharf sales' are limited to specific places and very small quantities of fish within any 24 hour period. MFish does not consider that there is any real risk associated with the transport of live catfish to an LFRs premises, given existing characteristics of use.

43. MFish already has the ability to monitor the supply chain between commercial fishers, LFRs and, to a reasonable degree, dealers-in-fish within the recordkeeping and reporting processes set up under the regulatory framework for commercial fisheries use. MFish considers that its ability to monitor the presence of live catfish is enhanced by the relatively small number of commercial fishers and LFRs involved in the market for this species. In addition, compliance staff can investigate any allegations of catfish being sold in a live state where sufficient information is available.

44. One submitter asked who was going to police the proposed regulations for the catfish fishery. MFish notes that compliance staff carry out inspections of commercial fishers, LFRs and dealers-in-fish, and can examine statutory returns, records and other documentation, irrespective of the fishery. Work programmes

already accommodate the need to ensure compliance in the eel fishery and can include catfish as typically the same participants are involved.

45. Proposed offences and penalties need to be consistent with the principles and categorisation of offences and penalties for regulations developed under the Act. These principles and categories were approved by the Cabinet Finance, Infrastructure and Environment Committee (FIN Min (01) 15/4) in July 2001.

46. The proposed offence is the sale of live catfish by a commercial fisher. Commercial offending of this nature should attract a Category 3 type of offence (up to a maximum of $20,000), on the basis that offending of this nature is not suitable for an infringement offence. Infringement offences for commercial fishers are typically used for 'administrative' type offences.

Code of Practice

47. As a result of previous consultation there was strong support from commercial fishers to establish a code of practice in the catfish fishery. Submitters to the formal consultation strongly supported the establishment of a code of practice, but concerns were raised as to how it would operate.

48. The commercial sector for catfish includes target and bycatch fishers who are readily identifiable. MFish can work with the commercial sector to establish a code of practice for the fishery, with a view to having it operational by 1 October 2007. MFish recognises that commercial fishers are aware of the risks involved with catfish getting into other waterways and is aware that commercial fishers wish to prevent this from occurring.

49. The New Zealand Eel Processing Company Ltd submitted a proposed risk management plan and outlined suggestions to consider within the plan or proposed code of practice. The company's proposal included an option for MFish to issue special permits (s 97 of the Act) for commercial fishers to be authorised to take and sell live catfish. The motivation for this suggestion seems to be as a way to easily identify and limit participants in the fishery.

50. There is no current constraint on the taking of catfish in a live state and therefore a special permit authorisation would not be required. Furthermore, MFish does not consider the administrative costs in processing applications for special permits, and the need to develop access policies for catfish under a special permit framework, to be an appropriate priority for the use of its resources. MFish also notes that restricting commercial take to those commercial fishers with special permits may limit the use and therefore the ability to control catfish. MFish notes that other useful suggestions made by the Company can be discussed further when relevant fishery interest groups meet to establish a code of practice for the catfish fishery.

51. MFish recognises that the proposed code of practice is a starting point in establishing best practice methods to minimise the risks of catfish use on the aquatic environment. A voluntary code of practice should be established by stakeholders in this fishery. However, MFish is willing to work with fishery interests, including Regional Councils and DOC, in establishing and adopting a code of practice for the catfish fishery. A commercial stakeholder company, the

Eel Enhancement Company Ltd, already exists and may provide an appropriate vehicle to assist in developing such a code of practice.

52. The key elements that MFish envisages being contained within the proposed code of practice, for commercial fishers, are:

    a. To clean fishing gear (e.g. fyke nets and hīnaki), used in freshwater environments, in salt baths;

    b. To ensure boats and boat trailers are inspected adequately before leaving boat ramps, with the aim of removing aquatic life of potential concern;

    c. To encourage the killing of catfish caught that are not destined for sale.

53. The code of practice will be established to minimise the risks of catfish being accidentally taken and transferred to other waterways. Catfish may be taken as an unintentional bycatch when fishing for other species. Alternatively, small juvenile catfish may be unintentionally retained in nets once the targeted catch of large catfish has been cleared from the net.

Approach to Non-Commercial Sector

54. No submissions were received in relation to any issues with prohibiting the possession and disposal of live catfish by non-commercial fishers. The nature and extent of the non-commercial sector for the catfish fishery is unknown, however MFish is aware of the uses and risks of catfish associated with this sector. The possible risks of catfish can include accidental or deliberate releases of this species into freshwater environments where there were previously no catfish. Such releases can occur when fishing gear is not cleaned or inspected thoroughly before being used in other freshwater areas. Catfish may also be disposed of, when the health of the fish deteriorates before being eaten, or they may be released as ornamental fish.

55. As a general rule, regulations will be more effective in ensuring compliance among fishers who take catfish on a non-commercial basis. Compliance with a code of practice is not mandatory, as it would be with a regulation. A regulation provides a stronger deterrent, particularly aimed at intentional actions that may result in live catfish being released into areas where they are not presently found. Regulatory measures are required to control the risks associated with non-commercial fishers taking catfish.

56. Compliance resources directed towards the associated eel fishery can be used to promote compliance with the proposed measures for the catfish fishery. MFish is also likely to receive support from other statutory agencies in identifying possible breaches of the proposed regulation, and in identifying opportunities to inform non-commercial fishery interests of any regulatory change made. MFish would also ensure Kaitiaki are provided with relevant information should they consider access to the catfish resource for customary Maori fishing purposes.

57. Proposed offences and penalties need to be consistent with the principles and categorisation of offences and penalties for regulations developed under the Act. The proposed offence is the possession and disposal of live catfish by a non-commercial fisher. Non-commercial offending of this nature will attract a

Category 1 type of offence (an infringement offence, with a proposed penalty of $500), on the basis that this offending is categorised as a serious non-commercial offence and is not likely to have any aggravating features based on the present risk assessment for this sector.

Code of Practice

58. Submitters noted that a public education and awareness campaign would need to be developed and targeted at non-commercial fishers to improve their knowledge and awareness of the risks involved with the possession and disposal of live catfish.

59. A voluntary code of practice would be less likely to be adhered to by the non-commercial sector, than within the commercial sector. However, a public education and awareness campaign, as suggested by submitters, would appropriately raise the profile of the risks associated with live catfish and should encourage non-commercial fishers to adopt measures within a code of practice. MFish intends to support a public education and awareness campaign by producing education material to be distributed to parties identified as using fisheries resources within the freshwater environment. Some small costs will be involved with the production of a pamphlet for the code of practice.

60. The inspection of fishing gear used in freshwater environments is likely to be an accepted practice by non-commercial fishers, as they should be cleaning their boats and checking for foreign organisms such as aquatic weeds. However, non-commercial fishers may not typically be checking for fish species at present. A code of practice focussed on catfish will encourage additional checks and provide further precautionary measures to mitigate the risks associated with live catfish. Other benefits of checking for catfish potentially include the detection of other undesirable species.

61. The key elements that MFish envisages being contained within the proposed code of practice, for non-commercial fishers, are:

    a. To periodically clean fishing gear (e.g. fyke nets and hīnaki), used in freshwater environments, in salt baths;

    b. To ensure fishing gear, boats and boat trailers are inspected adequately before leaving boat ramps, with the aim of removing aquatic life of potential or known concern.

62. The code of practice will be established to minimise the risks of catfish being accidentally taken, regardless of whether or not the non-commercial fisher is fishing for catfish or other freshwater species.

63. MFish proposes to carry out the development of a code of practice as soon as possible to assist with promoting knowledge and understanding of these new requirements for both commercial and non-commercial fishers. MFish would involve fishery interests, including Regional Councils and DOC, in contributing to this process so that all key messages are consistently provided to the commercial and non-commercial sectors through an easy single-source document. MFish envisages that a code of practice will be established no later than 1 October 2007.

Statutory Considerations

64. In forming the management options the following statutory considerations under the Act have been taken into account.

65. **Section 5(a)** – There is a wide range of international obligations relating to fishing (including sustainability and utilisation of fishstocks and maintaining biodiversity). MFish considers issues arising under international obligations are adequately addressed in the management option proposed for the possession and disposal of catfish.

66. **Section 5(b)** – MFish is aware that Maori have a particular affinity to the aquatic environment and to the management of fisheries resources. The course of action for catfish recommended in this paper appropriately balances the utilisation opportunities with the overriding interest to ensure that the values of the aquatic environment are not further compromised. MFish considers that the management measures proposed are consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. MFish notes its on-going obligation to ensure that customary Maori interests are provided for in subsequent review of management measures.

67. **Section 8** – Catfish, to date, have been able to be used without any controls. The recommended course of action will apply some degree of control and ensure sustainability outcomes for other species are not compromised, while still allowing appropriate utilisation opportunities. The controls seek to mitigate the adverse effects of fishing of catfish on the aquatic environment, should these fish be intentionally or accidentally disposed of in a live state.

68. The economic well-being derived from the use of catfish is qualified as a result of the final proposal, in that live catfish may be possessed by a commercial fisher but may only be sold in a dead state. This qualification is consistent with the purpose of the Act, in that the economic opportunities have been weighed up against the risks to the use and values of other species. MFish notes that the economic loss from the recommended approach for commercial fishers should be less than an outright prohibition on the possession and disposal of live catfish by that sector.

69. **Section 9** – The Act provides a framework where the taking of a particular species may be subject to particular controls. Those controls extend to how a species is disposed of once taken as set out in the regulation making powers in the Act. Such controls may assist in the sustainable use of the species in question or, as in this case, maintain the long term viability of associated or dependent species, maintain biological diversity of the aquatic environment, and protect habitats of significance for fisheries management. MFish considers that the management measures proposed in this paper adequately address the risks associated with the possession and disposal of live catfish at this time, in regard to the above section 9 considerations. Catfish are known to disturb the benthic environment through their foraging habit and affect other freshwater fish populations through either competitive interactions or as a predator.

70. **Section 10** – MFish considers that further scientific information about the interaction of catfish with other species would strengthen this proposal. However,

such information is not readily available, and based on the best available information postponing management action is not warranted. This proposal has been developed informally, through the pre-consultation stage, and then formally, through the IPP, to allow for fishery interests to carefully consider the available options to assist with the control of catfish.

71. **Section 11(1)(a)** – The effects of fishing on catfish, and other stocks, and the aquatic environment have been taken into account in the management measures proposed in this paper. There are some positive implications for the aquatic environment where the proposed measure lowers the risk of catfish being disposed of in a live state in waterways where it is not presently found. Conversely, there could be potentially negative short to medium term implications for the aquatic environment where the recommended approach results in commercial fishers no longer taking the species for sale in the same quantities as they could when live catfish could be sold.

72. **Section 11(1)(b) and (c)** – There are no existing controls under the Act that apply to catfish. Catfish are typically not subject to significant variability in their abundance and the management measures proposed allow fishing for this species to continue to assist in controlling their relative distribution and abundance.

73. **Section 11(2)(a) and (b)** – The Minister is required to have regard to any provisions in any policy statement or plan under the Resource Management Act 1991, or any management strategy or plan under the Conservation Act 1987, as they apply to the coastal marine area. Catfish are not typically found in coastal marine areas. However, it is possible that catfish may be found in estuarine areas that form part of the coastal marine area.

74. MFish notes that Regional Councils throughout New Zealand operate a Regional Pest Management Strategy (RPMS). The RPMS for each region generally lists species of plants and animals that are considered pests and sets out management programmes for these pests in order to protect the environment. The Bay of Plenty Regional Council has an operative Regional Pest Management Strategy that lists catfish as an eradication pest animal. Catfish is listed as a species identified for management intervention or exclusion on the RPMS within some other Councils e.g. Environment Waikato, Wellington Regional Council and Environment Southland. MFish considers that the management measures proposed in this paper are consistent with the risks identified within the operative RPMS of Regional Councils.

75. **Section 11(2)(c)** – MFish considers that the management measures in this proposal are consistent with the objectives of the Hauraki Gulf Marine Park Act 2000 to protect and maintain the natural resources of the Hauraki Gulf, as a matter of national importance.

76. **Section 11(2A) –** Before setting any sustainability measure the Minister must also take into account any conservation services or fisheries services, any relevant fish plan approved under the Act, and any decisions not to require conservation services or fisheries services. No fisheries plan exists for catfish. A fisheries plan is proposed for freshwater species, however, this is yet to be developed. No services have been sought relevant to the catfish resource.

77. **Section 12(1)(a) and (b)** – MFish provided an IPP prior to the development of this FAP, for the purposes of consulting with those who have an interest in the management or use of catfish. MFish is required to provide for input and participation of tangata whenua having a non-commercial interest in a stock when measures (such as the possession and disposal of a species) are being considered. MFish is also required to have particular regard to kaitiakitanga when making decisions regarding the sustainability of fisheries.

SCHEDULE 6 NEW SPECIES – (OTAGO COCKLES (COC 3) AND SURF CLAMS) – FINAL ADVICE

Executive Summary

1. Inclusion on the Sixth Schedule of the Fisheries Act 1996 (the Act) enables QMS species to be legally returned to the sea subject to certain conditions, principally, that they are likely to survive on return to the sea.

2. Commercial fishers within both the surf clam and cockle fisheries find that a percentage of the shellfish they harvest are either too large or too small (juveniles) and are outside the market size range. Without the option of returning these shellfish to the seabed, this catch is wasted while still needing to be counted against ACE.

3. Surf clams (a fishery complex of seven species being *Bassina yatei, Dosina anus, Dosinia subrosea, Mactra discors, Mactra murchisoni, Paphies donacina* and *Spisula aequilatera*) and cockles are all robust animals that are likely to survive if returned to the sea after harvest.

4. Due to harvesting damage in the early surf clam fishery, and a technical oversight in the case of Otago cockles (COC 3), these fisheries were not added to the Sixth Schedule when they were put into the QMS. As improved harvesting technology has largely eliminated harvest damage in the surf clam fishery, and the Otago cockle exclusion is an anomaly, there is no justification for these fisheries to not be added to the Sixth Schedule.

5. Adding surf clams and Otago cockles to the Sixth Schedule will enable improved value to be obtained from these fisheries. The addition to the Sixth Schedule will eliminate waste and allow fishers to improve the value they obtain from their ACE and is consistent with the rationale to be put on to the Sixth Schedule. Therefore, MFish considers that the addition of surf clams and Otago cockles to the Sixth Schedule will be consistent with the purpose of the Act.

6. MFish recommends that these fisheries are put on the Sixth Schedule of the Act.

Summary of Options

Initial Proposals

7. The initial position paper (IPP) proposed the following options for the addition of Otago cockles and surf clams to the Sixth Schedule of the Fisheries Act 1996. The Sixth Schedule provides a specific and conditional exemption to the overriding requirement of s72 of the Act that all QMS species of legal size taken by commercial fishers must be retained.

Otago cockles (COC 3)

8. MFish's initial position was that, under section 72(7) of the Fisheries Act 1996, the Sixth Schedule be amended so Otago cockles (COC 3) can be returned to the

seabed after capture, contingent upon the existing criteria, currently contained on the Sixth Schedule, for the return of commercially harvested cockles to the sea.

Surf clams

9. MFish's initial position was that, under section 72(7) of the Fisheries Act 1996, the surf clam stocks of *Bassina yatei, Dosinia anus, Dosinia subrosea, Mactra murchisoni, Mactra discors, Spisula aequilatera,* and *Paphies donacina* be added to the Sixth Schedule of the Fisheries Act 1996.

10. The wording of the requirements of the Sixth Schedule for surf clams was proposed to be;

    A commercial fisher may return any surf clam to the seabed from which it was taken if-]

    a. that surf clam is likely to survive on return; and
    b. that return takes place as soon as practical after the surf clam is taken.

11. MFish sought submissions from harvesters as to the level of use and future up-take of harvesting technology that reduces the post-harvest mortality of surf clams.

Final Recommendations

12. MFish recommends that you:

    a. Agree that the Sixth Schedule of the Fisheries Act 1996 be amended so Otago cockles (COC 3) can be returned to the seabed after capture, contingent upon the existing criteria, currently contained on the Sixth Schedule, for the return of all other commercially harvested cockles to the sea.
    b. Agree that the surf clam stocks of *Bassina yatei, Dosinia anus, Dosinia subrosea, Mactra murchisoni, Mactra discors, Spisula aequilatera,* and *Paphies donacina* be added to the Sixth Schedule of the Fisheries Act 1996.
    c. Agree the wording of the requirements of the Sixth Schedule for surf clams be;

       A commercial fisher may return any surf clam to the seabed from which it was taken if:
       i. that surf clam is likely to survive on return; and
       ii. that return takes place as soon as practical after the surf clam is taken;

    d. Note the recommendation to include surf clams on the Sixth Schedule is a change to MFish recommendations in previous years and is based on improved harvesting technology that increases survival rates of surf clams post harvest. The information MFish is relying on in making its recommendations is the best available information at this time; and

e. Note MFish will monitor the actual uptake of the use of this technology across all surf clam fisheries.

Submissions Received

13. Three submissions were received regarding the proposal to add COC 3 and surf clams to the Sixth Schedule.

- **Aotearoa Fisheries Limited** submits it supports the addition of both Otago cockles and surf clams onto the Sixth Schedule.

- **Dr. H.J. Cranfield of Seabed Processes Consultancy**, on behalf of Surfco Limited, Kai Moana Ltd and Aotearoa Fisheries Ltd, submits that there is significant benefit for the development of the surf clam fishery from addition to the Sixth Schedule and that economic efficiency, plus the potential for reducing environmental impact, are compelling reasons for the less damaging technology to be taken up by the entire New Zealand surf clam fishery.

- **Seafood Industry Council (SeaFIC)** supports the addition of COC 3 and surf clam stocks to the Sixth Schedule. SeaFIC submits that the omission of COC 3 from the Sixth Schedule was an oversight rather than a considered management decision. Inconsistencies in basic management settings among the various cockle stocks should be removed in order to facilitate stakeholder management initiatives. In the surf clam fishery, the development of improved harvesting technology (the hydraulic clam rake) is a positive industry initiative that has reduced post-harvest surf clam mortality to a level at which inclusion on the Sixth Schedule is appropriate.

Rationale for Management Options

Otago Cockles COC 3

14. There is significant advantage, in both eliminating waste and increasing the value obtained from the COC 3 fishery, by adding this fishery to the Sixth Schedule.

15. There is an issue of equity across cockle stocks as, had COC 3 not been delayed by the quota allocation being contested in the Court but proceeded along with the other stocks to be added to the QMS, it would be on the Sixth Schedule (see IPP para 11-13).

Surf Clams

16. Commercial surf clam fishers see significant advantages to being able to legally return a non-saleable component of their catch back to the seabed, especially as the majority of that component will be juveniles. Without the option of being returned to the seabed, this catch is wasted while still needing to be counted against ACE.

17. When surf clams were put into the QMS in 2004, they were not included on the Sixth Schedule because of concern that the style of dredge being used could damage the clams and, therefore, reduce the potential to survive if returned to the

seabed. Fishers were advised that the issue could be revisited if a method of harvesting could be developed that overcame this problem of damaged shellfish.

18. Through research, fishers have developed a dredge style and technique that significantly reduces damage to clams during the catching process.

Assessment of Management Options

19. Two courses of action are available to you. Either maintain the *status quo* or agree to add the Otago cockle fishery and the surf clam fisheries to the Sixth Schedule.

Status quo

20. Under the *status quo* there is a lack of consistency between cockle fisheries which disadvantages the Otago cockle fishery. MFish is not aware of any information with which to justify this inconsistency.

21. ACE holders in both the Otago cockle and the surf clam fisheries will have a non-saleable component of the catch that will be wasted. The un-used portion of the harvest will be counted against ACE. Therefore, fishers will not be able to obtain the best commercial return from ACE. This situation could be rectified at no sustainability cost to the fishery while improving the value of the fishery.

22. Assuming the value that could be obtained by addition to the Sixth Schedule, the administrative costs of implementing any management change, as well as the availability and use of MFish resources, are the main considerations. The financial costs and resources associated with the implementation are not large.

Otago Cockles COC 3

23. The exclusion of COC 3 from the Sixth Schedule is an artefact of process and has no justification in fact.

24. Cockles are robust shellfish adapted to inter-tidal exposure and are, therefore, likely to survive if they are harvested but subsequently returned to the inter-tidal environment.

25. Addition of COC 3 to the Sixth Schedule offers opportunity to improve the efficient use and the value received from the resource.

Surf Clams

26. Species currently listed on the Sixth Schedule are species that are expected to be able to survive upon return to sea following capture. At the time surf clams were put into the QMS, observed post-harvest mortality was at least 40 – 60%, a level considered unacceptable for inclusion on the Sixth Schedule.

27. Surf clam dredges trialled in the past not only damaged the foot of many clams but frequently damaged the shell and also filled the mantle cavity with sand. Surf clams caught by this method generally suffered high mortality when held in tanks. Furthermore, this damage is not immediately obvious when sorting catch.

28. The high post-harvest mortality is attributed to the pressure of the water used to expose the surf clams for collection by the dredge.

29. Submitters point out that through their research they have developed improved harvesting technology where post-harvest mortality is now less than 5%. This hydraulic clam rake limits damage to surf clams and, as well, minimises damage to the few species of other macrofauna captured.

30. Harvesters submit that surf clams harvested using this technology can be stored for weeks in tanks of running seawater and can be shipped alive to distant markets allowing the full export potential of the fishery to be realised.

31. The lack of damage to surf clams, of all sizes, harvested by this hydraulic clam rake will result in returned clams being able to rebury and survive return to the seafloor.

32. MFish accepts that undamaged surf clams are likely to survive if returned to the seabed. However, the key to realising the advantages of surf clams being put on the Sixth Schedule will be the level of uptake of the improved harvesting technology across all surf clam fisheries.

33. MFish understands that Surfco Limited has been established as a vehicle for the efficient and co-ordinated development of surf clam fisheries, beginning with QMA 2. MFish also understands that Surfco Limited is a comprehensive body of the quota holders in the surf clam fishery and that it is Surfco Limited's intention to use the improved dredge technology in all of the surf clam fisheries as they are developed.

34. MFish also notes Dr Cranfield's submission that economic efficiency, plus the potential for reducing environmental impact, are compelling reasons for the less damaging technology to be taken up by the entire New Zealand surf clam fishery.

35. MFish appreciates that, economically, the industry is sensitive to the post-harvest survival of surf clams and that use of this type of technology is a logical development across the fishery. MFish accepts the assurances on the level of up-take of the improved dredging technology, however, MFish will monitor the actual level of up-take of this harvesting technology across all surf clam QMAs.

36. MFish accepts that there is an acknowledged level of mortality. MFish will seek to revisit this issue at the time of any TAC review, or should the catch achieve the level of the TACC.

Statutory Considerations

37. Statutory considerations are addressed in the IPP.(see para's 37-41 & 45-52)

CRA 8 ROCK LOBSTER FISHERY– PROPOSAL TO ALLOW THE SALE OF SOUTHLAND CONCESSION AREA ROCK LOBSTER IN NEW ZEALAND

Executive Summary

1. The CRA 8 Management Committee Incorporated has asked for an amendment to the Fisheries (Southland and Sub-Antarctic Areas Commercial Fishing) Regulations 1986 (the Regulations) to enable the domestic sale of concession-size rock lobsters (lobsters) harvested from the Southland Concession Area. The Committee considers removing the ban on domestic sales would provide industry with the ability to seek higher prices for concession-size lobsters.

2. Concession-size lobsters are smaller than the national minimum legal size (MLS). The domestic market is the main outlet for illegally taken lobster, and the ban on domestic sale of concession-size lobster was put in place to limit opportunities for fish thieves to move and sell (traffic) undersize lobsters on the domestic market. MFish considers removing the ban would exacerbate risks relating to illegal take of lobsters in all lobster fisheries by providing more opportunities for fish thieves to traffic undersize lobsters in New Zealand (NZ). These opportunities would likely be at the dealer-in-fish point in the supply chain, which is of significant concern because detecting illegal activity among dealers-in-fish is difficult.

3. The Initial Position Paper (IPP) presented two management options. Option 1 retained the ban on domestic sales (*status quo*), thereby keeping compliance risks relating to illegal take of lobsters at current levels. Option 2 amended the Regulations to enable the domestic sale of concession-size lobsters and sought to manage increased risks of illegal take of lobsters by imposing appropriate tracking requirements on the concession-size lobster, including packaging and documentation requirements.

4. MFish received four submissions on the IPP. Three of the submissions support Option 2. The submitters consider the additional compliance risk created by allowing the domestic sale of Southland concession-size lobsters negligible, but support additional recordkeeping and packaging measures to avoid, remedy or mitigate the added risk. The fourth submission also supports Option 2, but only in conjunction with a phasing out of the Southland concession provision. The submitter (Te Ohu Kai Moana Trustee Limited) notes the purpose of the concession was to give commercial fishers time to adjust to a change in the measuring systems and considers commercial operators have had plenty of time to adjust. It believes a condition of any access to the domestic market should be the phasing out of the concession provision.

5. Any decision to phase out the Southland concession area would need to be consulted on. However, given the Southland Concession Area was put in place as an interim measure in 1989, MFish considers TOKM's point is valid and a review of the ongoing need for the concession provision is justified. Consequently, this paper proposes a third option (Option 3) which retains the ban on domestic sales for the time being, but revisits the proposal as part of a wider review of the Southland Concession Area provision. Option 3 is MFish's preferred option because it could accommodate other proposals CRA 8 fishers have informally put to MFish and may well provide a basis for identifying a regime that could more effectively, but with less risk, allow commercial fishers to maximise their economic returns.

Management Issue Identified

6. The CRA 8 Committee has asked MFish to amend r 5E(1) of the Regulations to allow the sale of concession-size lobsters on the NZ domestic market. Currently, r 5E(1) requires the export of all Southland concession-size lobsters. The CRA 8 Committee contends the ban on domestic sales limits the commercial sector's ability to maximise economic returns from the CRA 8 fishery; concession-size lobsters must be exported even when the export price for lobster is lower than the NZ price, and a concession-size lobster not up to export standard cannot be sold at all.

Summary of Options

7. MFish recommends that you:

EITHER

Option 1:

a. Retain the provision in the Regulations preventing the sale of Southland concession-size lobster within NZ (*status quo*).

OR

Option 2:

b. Remove the provision in the Regulations preventing the sale of Southland concession-size lobster within NZ; and

c. Insert a provision in the Regulations requiring Southland concession-size lobster sold in NZ to be subject to appropriate tracking requirements including packaging, reporting and documentation requirements (to be developed in consultation with CRA 8 industry stakeholders).

OR

Option 3:

d. Defer consideration of the provision in the Regulations preventing the sale of Southland concession-size lobster until it can be considered as part of a wider review of the Southland Concession Area provision.

e. Option 3 is MFish preferred option.

Submissions received

8. MFish received four submissions on the CRA 8 IPP from:

   a. CRA 8 Management Committee Incorporated (the **CRA 8 Committee**)

   b. New Zealand Rock Lobster Industry Council (**NZRLIC**)

   c. Seafood Industry Council (**SeaFIC**)

   d. Te Ohu Kai Moana Trustee Limited (**TOKM**)

Rationale for Management Options

Background

Rock lobster concession areas

9. Concession-size lobsters are smaller than the national MLS for rock lobster. Commercial fishers are able to take concession-size lobsters in three concession areas located in Southland, Otago and Gisborne. Each concession area has a different history and purpose. The intent of the Southland concession area, and the current Otago concession area, was to give commercial fishers time to adjust to a change in the measuring system for rock lobster introduced in 1989. The Gisborne concession area was put in place in 1992 as part of a rebuild strategy for the CRA 3 fishery – the concession sought to reduce the economic impact of a significant cut to the commercial catch limit in CRA 3.

The ban on domestic sale of concession-size rock lobsters

10. Regulations currently prohibit the sale of Southland and Gisborne concession-size lobsters on the domestic market. This ban does not apply to Otago concession-size lobsters, probably because the Otago concession area is the only concession area that predates (in some form) the introduction of the national MLS.

11. The ban on domestic sales of concession-size lobster is the key measure put in place to maintain the integrity of the national MLS; the ban acts to limit opportunities for fish thieves to move and sell undersize lobsters on the domestic market by limiting the availability of legal undersize fish in the marketplace. Rock lobsters are vulnerable to illegal fishing because they are highly valuable, easily accessed, and much sought after by domestic consumers. Increasing opportunities for trafficking of lobster is undesirable because illegal catch directly impacts on the fishing opportunities of legitimate fishers and, if significant in quantity, can affect the sustainability of a fishery. Increasing opportunities for trafficking in *undersize* lobster is particularly undesirable because the MLS is set at a level that enables the fish to mature and breed before becoming available to the fishery.

12. MFish directs a significant amount of compliance resource at reducing illegal take of rock lobster. The domestic market is the main outlet for illegally taken rock lobster and the majority of illegal lobster sold goes into restaurants. Detecting and prosecuting illegal activity at the dealers-in-fish (eg, restaurants) point of the supply chain is extremely difficult because they are not well captured by the current record keeping and reporting framework.

Management Options

13. The IPP presented two options in considering the CRA 8 Committee's request to allow the domestic sale of Southland concession-size lobsters. Option 1 would retain the ban on domestic sale (*status quo*). Option 2 would remove this ban, enabling commercial fishers to sell concession-size lobsters on the domestic market subject to appropriate tracking requirements including packaging, reporting and documentation requirements.

14. The rationale for retaining the ban on domestic sale (Option 1) was to avoid increasing the compliance risks relating to illegal take of by maintaining the integrity of the MLS framework at current levels.

15. The rationale for removing the ban on domestic sale (Option 2) was to provide industry with greater ability to achieve highest prices for concession lobsters by providing access to both domestic and overseas markets.

16. TOKM put forward an alternative approach to the options considered in the IPP. TOKM suggests that any decision to remove the ban on domestic sale should be contingent on phasing out the Southland concession area provision within a three-year timeframe. It notes that the provision was an interim measure and commercial fishers have had plenty of time to adjust to a change in the measurement system for lobster.

17. Any decision to phase out the Southland concession area would need to be consulted on. However, given the Southland concession area was put in place as an interim measure in 1989, MFish considers TOKM's point is valid and a review of the ongoing need for the concession provision is justified. Consequently, this paper proposes a third option (Option 3) which retains the ban on domestic sales for the time being, but revisits the proposal as part of a wider review of the Southland concession area provision.

Assessment of Management Options

18. The current ban on domestic sales of Southland concession-size lobster limits industry's ability to maximise economic returns from the CRA 8 fishery because concession-size lobsters must be exported even when the export price for lobster is lower than the domestic price, and a concession-size lobster not up to export standard cannot be sold at all. All submissions agree with this evaluation. One submitter also considers the ban outdated not reflective of current industry practice.

19. MFish considers the ban is still relevant as a mechanism to maintain the integrity of the national MLS. Removing the ban on domestic sales would exacerbate risks relating to illegal take of lobsters, by providing more opportunities for fish thieves to traffic undersize lobsters within NZ. Trafficking in legal- and under-size lobsters is already an issue nationally, and is already the target of significant MFish compliance resource. Any consideration of whether to remove the ban should therefore balance the opportunity for CRA 8 commercial stakeholders to maximise value from the CRA 8 fishery with the additional compliance risk to all NZ lobster fisheries posed by removing the ban.

20. TOKM submits that around 15-20% of the current CRA 8 catch is concession-size lobster, while the remainder is of national MLS size or larger. The opportunity to improve economic returns therefore applies to a small proportion of the CRA 8 catch, although MFish acknowledges this represents a significant tonnage of catch (100-150 tonnes (t)) because CRA 8 is a large fishery.

21. MFish notes any economic gains to CRA 8 industry stakeholders could be offset by increased compliance costs if managing the increased compliance risk requires the application of more compliance resources. The IPP noted there was little information to determine the increase in illegal activity likely to occur as a result of removing the ban, but considered the increase would likely be small to moderate. Some submitters disagree with this view, noting the absence of information presented in the IPP to support the assessment. The CRA 8 Committee states any additional compliance risk is likely to be negligible because the number of outlets (wholesale and retail) that deal in lobster is limited and unlikely to increase in response to the opportunity to sell Southland concession lobsters on the domestic market.

22. MFish accepts there is an absence of quantitative information to guide an assessment of the increase in compliance risk if the ban is removed. Nevertheless, MFish considers the ability to sell Southland concession-size lobsters on the local market will exacerbate the compliance risk by providing more opportunities for the sale of illegal undersize lobsters both within NZ. The main market for illegal lobsters is the domestic market and, as noted above, the majority of illegal lobster sold in NZ goes to dealers-in-fish such as restaurants. The number of dealers-in-fish in NZ is very large.

23. Opportunities to traffic in undersize lobsters do already exist as Otago concession-size lobsters can be sold on the domestic market. Nevertheless, opportunities are likely to be increased with removal of the ban because of the size of the Southland CRA 8 fishery (TACC is 755.2 t) compared with the Otago CRA 7 fishery (120.2 t). About 15-20% of the current CRA 8 catch (100-150 t) is concession-size lobsters, whereas around 65-75% (80-90 t) of the current CRA 7 catch is concession-size lobsters. MFish acknowledges that imported 'undersize' lobsters are also available in NZ. Imported lobsters do not cause significant compliance concerns as the entry to markets is through limit points supported by customs and importation requirements.

24. Some submitters felt MFish's compliance services should be designed to prevent the operations of fish thieves (and therefore support the objectives of both the CRA 8 quota owners and MFish) regardless of whether Southland concession-size lobsters are sold domestically or exported. Compliance services come at a cost and MFish notes that an appropriate rules framework is critical, both to minimising and managing compliance risks and to keeping the cost of compliance services to manageable levels. A key focus for MFish compliance services is preventing the operation of fish thieves in support of the compliance goals of maximising compliance and deterring offending.

25. All submissions support adopting measures, such as the packaging and documentation requirements used for Otago concession-size lobsters, to manage

increased compliance risk if the ban on domestic sale is removed. The CRA 8 Committee proposes that:

- all Southland concession-size lobsters are recorded separately on all transactions; and

- all Southland concession-size lobsters are packed separately from other lobsters including outer packing readily identifying Southland Concession lobsters (including all stages of sale).

26. MFish considers mitigation measures need careful consideration to ensure actual points of risk are addressed. The measures proposed by the CRA 8 Committee do not necessarily address the dealer in fish point of the supply chain, which is a key area of concern. MFish notes some submitters express a desire to discuss appropriate packaging and documentation requirements further with MFish prior to implementation. Should you decide to accept Option 2, MFish would work with affected stakeholders to develop workable and effective tracking measures including packaging, reporting and documentation measures.

27. In line with TOKM's submission (refer paras 16-17), MFish believes consideration should be given to deferring a decision to ban the domestic sale of Southland concession-size lobsters until it can be considered as part of a wider review of the Southland Concession Area provision (Option 3). Given the Southland concession area provision was put in place as an interim measure in 1989, MFish considers a review of the ongoing need for the concession provision is justified.

28. Such a review would be advantageous as it could potentially accommodate other proposals CRA 8 fishers have informally proposed to MFish and may well provide a basis for identifying a regime that could more effectively, but with less risk, allow commercial fishers to maximise their economic returns. Consequently, Option 3 is MFish's preferred option.

29. Should you decide to accept Option 3, MFish would initially commence the review by undertaking discussions with your primary advisors on lobster, the National Rock Lobster Management Group, at the next available opportunity. MFish notes that a fisheries plan, developed in collaboration with all stakeholders, may be an appropriate mechanism to progress the review.

30. MFish notes some submitters suggest the ban can be removed because it is not required for sustainability of the CRA 8 fishery. Rules applying to fisheries do not only address sustainability issues, but also work to, for example, ensure access opportunities for all sectors and minimise the environmental impacts of fishing. MFish notes any increase in illegal harvesting of lobsters impacts on the fishing opportunities of all legitimate fishers and, if significant in quantity, can affect the sustainability of a fishery. Additionally, the risk posed in removing the domestic sales ban on Southland concession-size lobsters is not limited to CRA 8; it affects all NZ lobster fisheries because removing the ban increases the opportunities for trafficking in undersize fish taken from any part of the country.

Statutory Considerations

31. The management options proposed relate to the sale of Southland Concession Area lobster. They do not set or vary catch limits (s 13 and s 21) or sustainability measures (s11), or seek to regulate or control fishing (s 11(2A)) in either the Southland Concession Area or within the CRA 8 fishery. In forming the management options, the following statutory considerations have been taken into account.

    a. **Section 8:** None of the management options are contrary to the purpose of the Act, which is to provide for the utilisation of fisheries resources while ensuring sustainability. There is a potential under Option 2 and Option 3 to increase trafficking in undersize, illegal lobster and this could affect sustainability, and utilisation of lobster fisheries by legitimate rights holders. Option 2 and Option 3 provide mechanisms to consider and develop mitigation measures that would seek to address potential impacts.

    b. **Section 9:** None of the management options would immediately change commercial fishing behaviour. Consequently, no impacts on associated and dependent species, biological diversity and habitats of particular significance would arise. The review proposed under Option 3 could result in changes to fishing behaviour, for example a decision was made to phase out the Southland concession provision. Ensuing impacts would be considered as part of the review.

    c. **Section 10:** MFish considers best available information has been used to support the options in this advice. Little quantitative information exists to guide an assessment of the increase in compliance risk if the ban on domestic sales is removed. Consequently, qualitative information gathered by experienced compliance analysts as part of the normal delivery of compliance services to lobster fisheries is used. MFish also sought additional information from submitters through the IPP, and has considered the information provided in this paper (refer para 21-22).

    d. **Section 5 (a):** A wide range of international obligations relate to fishing. MFish believes the provisions of general international instruments such as the United Nations Convention on the Law of the Sea and the United Nations Fish Stocks Agreement have been implemented through the provisions of the Act and given effect to under all management options. MFish is unaware of any specific international obligations that are applicable to CRA 8.

    e. **Section 5 (b):** Lobster (koura) is an important taonga species. As already noted, a potential impact of Option 2 and Option 3 is increased trafficking in undersize, illegal lobster. Illegal trafficking could affect utilisation of lobster fisheries by legitimate rights holders, including customary fishers. Option 2 and Option 3 provide mechanisms to consider and develop mitigation measures that would seek to address potential impacts.

Other management issues

32. The CRA 8 Committee notes support for mandatory telson clipping of lobsters in all non-commercial fisheries to reduce illegal fishing activities. It notes the NZ Recreational Fishing Council recently passed a remit in support of this measure.

33. Telson clipping is the practice of cutting a section out of the lobster tail fan (telson) on harvest. Mandatory telson clipping of recreational catch is used successfully in some countries to constrain illegal take, as it clearly identifies the lobster as recreational catch and therefore not for sale.

34. The NZ Recreational Fishing Council members are currently discussing and testing support for telson clipping in a variety of forums, including fishing clubs, MFish regional recreational and customary forums, and the National Rock Lobster Management Group. An assessment of mandatory telson clipping is outside the scope of this paper.

Recommendations

35. MFish recommends that you:

EITHER

a. **Agree** to retain the ban on the domestic sale of Southland concession-size rock lobster (Option 1)

OR

b. **Agree** to remove the ban on the domestic sale of Southland concession-size rock lobster, subject to appropriate tracking measures, including packaging, reporting and documentation requirements (Option 2)

AND/OR

c. **Agree** to defer consideration of the provision in the Regulations preventing the sale of Southland Concession Area lobster until it can be considered as part of a wider review of the Southland Concession Area provision. (Option 3 – MFish preferred option)

d. **Note** if you choose Option 2:

   i. MFish will develop, in consultation with CRA 8 industry stakeholders, appropriate tracking measures, including packaging, reporting and documentation requirements and will report back on these measures before you seek cabinet approval

   ii. If measures cannot be agreed with industry, MFish will seek your agreement to defer implementation of the decision until the next fishing year.

e. **Note** if you choose Option 3, MFish will initiate a review of the Southland concession provision in collaboration with your primary advisors on rock lobster issues, the National Rock Lobster Management Group.

RECREATIONAL ISSUES RELATED TO TAKING BAG LIMITS – FINAL ADVICE

Executive Summary

1. "Taking" is defined in the Fisheries Act 1996 (the Act) as "fishing", and "fishing" is defined as the catching, taking, or harvesting of fish, aquatic life, or seaweed. As a result of this broad definition and the regulations that govern the recreational harvest of fish (i.e. bag limits and size limits), it is becoming increasingly apparent that some existing recreational activities may not be permitted under the current management framework.

2. The New Zealand Recreational Fishing Council (NZRFC) requested that the Ministry of Fisheries (MFish) review three existing activities and resolve any issues where the activities may not be permitted by relevant fishing legislation. These three activities are:

    a. Not counting undersize fish as part of the daily bag limit; and

    b. Only counting fish that are actually kept as part of the daily bag limit; and

    c. Not counting tagged and released fish as part of the daily bag limit.

3. The Initial Position Paper (IPP) presented a variety of options for managing these activities. In total, twenty eight submissions were received from fishing clubs, stakeholder organisations, and individual fishers throughout the country. MFish's consideration of the views of submitters and final recommendations are summarised below.

A. Undersize fish and the daily bag limit

4. The Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) require that all illegal fish, for example undersize fish, be returned to the sea. Consequently, MFish has previously applied the Regulations so that undersize fish do not form a part of the daily bag limit. However, this interpretation is not explicit in the Regulations. MFish therefore recommends that the status quo be confirmed by clarifying that undersize fish do not count towards the daily bag limit if they are released immediately. All submissions supported the adoption of this option.

B. Releasing fish above the minimum legal size

5. When anglers return a fish to the sea alive, they generally don't count it towards their daily bag limit. This is particularly apparent where people operate under self-imposed size limits, or fishing club size limits, that are larger than those set out in the Regulations. There is a widely held view amongst recreational fishers that returning live fish to the water helps to conserve the resource and protects breeding stock for the future. However, if a bag limit applies to a species, the Regulations require that every fish caught

counts against the bag limit, even if it is released alive. The only exception is illegal fish, such as undersized fish, that must be returned to the sea.

6. Three options were consulted on for managing this activity: i) specifying that the daily bag limit relates to retained fish only; or ii) issuing special permits; or iii) retaining the status quo. The first option essentially confirms the current and historical practice of most recreational fishers and the clear majority of submissions received on the issue supported the adoption of this option. There is a risk that this option will further encourage fishers to catch and release fish, potentially increasing associated fishing-related mortality. However, MFish considers that this risk can be managed through improved education (e.g. fish handling guidelines) and will seek to monitor the risk where possible.

7. Some submissions were also concerned about the risk of encouraging high grading. MFish does not consider that the option will increase or encourage high grading, but it will create a framework that permits high grading. To counter this, if recreational fishers are to return legal size fish to the sea that are not to count against their bag limit then the return must be immediate and can only occur if the fish is alive and likely to survive. MFish therefore recommends that you agree to adopt a revised Option One, in that the Regulations are amended to clarify that the daily bag limit does not apply to finfish returned immediately to the waters from which they were taken and that are likely to survive. The status quo will be maintained for shellfish. That is, any shellfish taken of legal size must count towards the daily bag limit.

8. If you do not agree that the revised Option One is appropriate however, it is MFish's view that retaining the status quo (Option Three) would be the most appropriate alternative. This is because a special permit regime (Option Two) will be costly to participate in and to administer. An extensive awareness campaign will be required with the status quo option however, to better inform recreational fishers about the law as it is clear that most fishers are not aware that all fish count. MFish notes that very few submissions were received in support of either Option Two or Option Three.

C. Tagging and releasing fish for research purposes

9. Under the Regulations, the maximum number of fish that can be tagged and released on any day is the bag limit that applies to that fish. However, many fishers either tag and release more than their daily bag limit entitles them to, or tag and release some fish while retaining their full daily bag. Recreational fishers feel strongly that this current practice should be provided for in the regulations, as tag and release programmes significantly contribute to our understanding of fish stocks. Further, MFish has actively encouraged and supported these types of programmes.

10. Three management options were consulted on: i) creating a tag and release defence; or ii) issuing special permits; or iii) retaining the status quo. If you decide to clarify that the bag limit does not apply to finfish returned immediately (Issue B above) no management response will be required. If you decide not to make this clarification, MFish recommends that you agree to adopt Option One, creating a defence for tagging and releasing certain stocks

or species. Further work will be required to define and consult on a list of stocks to which this option would apply. This option received the greatest level of support in the submissions.

11. Option Two, the issuing of special permits, would be a cumbersome and costly alternative. While there is precedent for this option in the South Island where it has been used for shark species, expansion to northern areas and additional species would impose a considerable administrative burden. Option Three, retaining and confirming the status quo is a valid alternative but does not have the continued research and knowledge benefits associated with Option One.

Summary of Options

Undersize fish and the daily bag limit

12. MFish recommends that you:

    a. Clarify that undersize fish do not count towards the recreational daily bag limit if released immediately

Releasing fish above the minimum legal size

13. MFish recommends that you:

EITHER

Option 1:

a) Clarify that the daily bag limit does not apply to finfish returned immediately to the waters from which they were taken and that are likely to survive; and

b) Develop and distribute fish handling guidelines to mitigate the potential mortality associated with releasing fish.

c) Option 1 is MFish preferred option

OR

Option 2:

d) Provide for special permits to be considered for recreational fishers to release fish of legal size over and above the daily bag entitlement for a specific stock or species and/or occasion.

OR

Option 3:

e) Maintain the status quo and confirm that any fish taken of legal size must count towards the daily bag limit; and

f) Undertake an awareness campaign to improve understanding of the rules surrounding the taking of bag limits.

Tagging and releasing fish for research purposes

14. If you do not approve Option One for *Releasing fish above minimum legal size* then MFish recommends you:

EITHER

Option 1:

a) Provide a defence for tagging and releasing certain stocks or species in the Regulations; and

b) Consult on the list of stocks to be included in the defence provision.

c) Option 1 is MFish preferred option

OR

Option 2:

d) Provide for special permits to be considered for recreational fishers to release fish of legal size over and above the daily bag entitlement for a specific stock or species.

OR

Option 3:

e) Retain the status quo and confirm that the maximum number of fish that can be tagged and released on any day is the daily bag limit that applies to that particular fish.

Submissions Received

15. MFish received twenty eight submissions on the bag limit IPP from:

- Akaroa Harbour Recreational Fishing Club
- B. A. Jamieson
- Bill Hartley
- Brian Dean
- G. A. O'Rourke
- Hilton Leith
- John Robertson
- Kaikoura Boating Club
- Keith Ingram

- Marlborough Combined Divers Association
- Marlborough Recreational Fishers Association
- Murray Little
- Ngati Whatua Fisheries Limited
- Option4 & the NZ Big Game Fishing Council
- Pelorus Boat Club
- Peter Saul
- Piako Underwater Club
- Raglan Sport Fishing Club
- South Recreational Fishers Advisory Committee
- South Taranaki Underwater Club
- Steve Hornby
- Tasman and Sounds Fishers Association (TASFISH)
- Te Runanga O Ngati Whatua
- The North Island-South East Regional Recreational Forum
- The North Island-South West Regional Recreational Forum
- The Top of the South Regional Recreational Forum
- The Seafood Industry Council (SeaFIC)
- Wanderers Surfcasting and Angling Club

Background and Legislative Framework

16. Currently, "taking" is defined in the Act as "fishing", and "fishing" is defined broadly as the catching, taking, or harvesting of fish, aquatic life, or seaweed. It includes:

    a. Any activity that may reasonably be expected to result in the catching, taking, or harvesting of fish, aquatic life, or seaweed; and

    b. Any operation in support of or in preparation for any activities described in this definition.

17. In some submissions, stakeholders have expressed concern about this definition of take in the Act and recent legal interpretations. Some submitters consider these to be inconsistent with current and historic recreational fishing

practice. They also consider that fishing is very different to taking for most people, and have requested that the definition be amended or that a new definition of take apply specifically for recreational fishers.

18. MFish recognises that the definition of take in the Act creates a very broad framework. However, the definition is important because "take" has a whole range of applications across all sectors and has a wider impact on other aspects of the non-commercial framework than just bag limits. This definition in the Act was also derived from the previous definition in the Fisheries Act 1983. It has been considered and applied in various courts, including the Court of Appeal, with the resulting case law providing important parameters and direction on how "take" is to be interpreted. Any change to this framework would likely have serious downstream implications across a range of sectors and activities. For these reasons, MFish does not propose to amend the definition of "take" in the Act or provide an alternative definition of "take" for recreational fishers in the Regulations at this time.

Undersize Fish and the Recreational Daily Bag Limit

Rationale for Management Options

19. Where a minimum legal size (MLS) applies to a species or stock, r 28 of the Regulations requires any fish that is smaller than this legal size to be returned to the water immediately. As the Regulations require undersize fish to be returned to the sea, MFish has previously applied the Regulations so that undersize fish do not form a part of the daily bag limit. However, this intention is not explicit in the amateur regulations.

20. In order to ensure that the intent of the Regulations is more explicit, and to remove any uncertainty in the recreational sector, MFish proposed in the IPP to clarify that the recreational daily bag limit only applies to fish taken of legal size.

Assessment of Management Options

21. MFish notes that 18 submissions were received in support of the proposal, with no submissions received in opposition. No information in addition to that provided in the IPP was submitted for consideration.

22. No risks associated with the proposal to clarify that undersize fish do not count towards the daily bag limit have been identified. This is because the clarification will simply be confirming the status quo legal interpretation adopted by MFish and the intent of the Regulations. The clarification will, however, reduce the current level of confusion that exists amongst recreational fishers.

Conclusion

23. MFish recommends that the status quo be confirmed by clarifying that undersize fish do not count towards the daily bag limit if they are released immediately.

Releasing Fish Larger than the Minimum Legal Size

Rationale for Management Options

24. When anglers return fish to the sea that are a legal size, they generally do not count this catch towards their daily bag limit. However, where a bag limit exists, all fish caught must be counted, even if they are returned to the sea alive. This is because once a fish is caught, it is considered to be taken (by legal definition) and only a specified number of fish may be taken each day. An exception to this rule is where a fish is undersize and must be returned to the sea.

25. The situation also applies to species for which there is no MLS, but where a daily bag limit has been set. In this case, fish that are released because they may be of an impractical or undesirable size are considered to count in the daily bag limit.

26. Imposing best practice size limits that are larger than MLS limits defined in Regulations is a relatively common practice. Recreational fishers consider this to be an important tool that enables them to self-manage fisheries in their own area. It is also a widely held view that the practice results in significant recruitment and yield benefits that would otherwise not be achieved under the existing regulatory regime.

27. In this respect, there is a discrepancy between the existing regulatory framework and current fishing practices. The NZRFC therefore requested that the use of these types of self imposed size limits be permitted in the Regulations. Three options were consulted on in the IPP:

    a. Specify that the daily bag limit relates to retained fish only; or

    b. Issue special permits for the release of legal sized fish; or

    c. Retain the status quo.

Assessment of Management Options

Option One: Specify that the daily bag limit relates to retained fish only.

28. An option to recognise current fishing practice and provide for the use of self imposed size limits is to specify that the daily bag limit relates to the number of fish that are actually *retained.* Qualifying the daily bag limit in this way will require an amendment of the Regulations and possibly the associated regional amateur fishing regulations.

29. 18 submissions were received in support of this option. It was clearly the preferred option to resolve the regulatory compliance issues associated with releasing fish of a legal size over and above any bag limit that applies.

30. Submitters assert that the majority of recreational fishers only count fish that are actually retained as part of the daily bag limit. Many submitters expressed surprise and disbelief that this activity is not, in fact, permitted. In particular, many fishers are of the view that returning healthy fish to the water helps to

conserve the resource and protects breeding stock to ensure future sustainability.

31. MFish recognises that the implementation of voluntary best practice size limits that are bigger than those specified in regulation is a relatively common practice. MFish also considers that any change in the Regulations to recognise this practice would have a negligible impact in practice. However, several risks associated with this option have been identified and these are discussed below.

High grading

32. In the IPP, MFish outlined concerns that implementing this option might encourage the return of dead or dying fish to the sea if fishers get "bigger and better" fish later on in the day (high grading).

33. Submissions were divided on this issue. Some recreational fishers conceded that there was a risk that high grading would occur as a result of adopting the option. While they advised that education and enforcement would best manage this risk, SeaFIC expressed opposition to the proposal on the basis that potential high grading would present a sustainability risk to fisheries.

34. In contrast, many fishers rejected the implication that their practice of "catch and release" is high grading. They also rejected the suggestion that dead or dying legal sized fish are ever deliberately returned to the sea by legitimate recreational fishers, and that most fishers release fish to contribute to sustainable fisheries. Further, some submitters argued that people who deliberately high grade under the current regime will continue offending whatever rules are put in place.

35. MFish agrees that deliberate offenders will likely offend regardless of the options proposed by MFish to address this issue. MFish also believes that providing for the daily bag limit to apply to retained fish only is unlikely to encourage people to actively high grade. Critically however, adopting the option could provide a framework that actually permits high grading.

36. MFish considers it is imperative that high grading is not permitted in the Regulations, and if recreational fishers are to return legal size fish to the sea that are not to count against their bag limit then the return must be immediate and can only occur if the fish is alive and likely to survive. As a result, the option consulted on in the IPP has been revised to incorporate this requirement. Rather than clarify that the bag limit applies only to fish that are retained, the option has been revised to clarify that the daily bag limit does not apply to finfish returned immediately to the waters from which they were taken and that are likely to survive.

37. Revising the option in this way will provide for the immediate return of finfish to the sea if they are alive and likely to survive, and it will ensure these returned finfish do not count towards the bag limit. It will also mean that any finfish returned to the sea dead, or unlikely to survive will count towards the bag limit.

38. It is important to note that the option is restricted to finfish as it was the practice of catching and releasing finfish that led to the call for the review by NZRFC. It is also important to note that the option will therefore maintain the status quo for shellfish, whereby any shellfish taken of legal size must count towards the daily bag limit. Broadening the option to include shellfish would create significant practical enforcement issues in the way in which "immediate" and "likely to survive" could be determined by Fishery Officers inspecting non-commercial fishers.

Increased fishing-related mortality

39. In the IPP, MFish also identified that there was a risk of increasing fishing-related mortality with this option, as there is always a level of mortality associated with returning fish to the sea. In fact, one submitter contends that 25% of line caught snapper do not survive when they are released. SeaFIC in particular raised concerns that allowing fishers to return legal size fish back to the sea may have implications on the ability of MFish to adequately estimate and allow for any associated fishing-related mortality.

40. While MFish recognises that the option will essentially permit an existing recreational fishing practice, it may also prompt fishers to implement their own voluntary size limits and return legal size but not large fish to the water. This may result in a level of increased fishing-related mortality.

41. In recognition of the mortality associated with releasing fish, several submitters requested that if this option was agreed to, MFish should develop guidelines to educate fishers on proper fish handling practices that will mitigate the risk of mortality. MFish agrees that this would help support recreational fishers in their activities. Further, MLS regimes assume that despite any mortality associated with releasing undersize fish, there will be a net benefit to the stock. Given correct handling practices, MFish considers that the release of some species of fish at sizes above the MLS will continue to have net benefits that mitigate this concern.

42. Providing fishers with the flexibility to implement their own increased size limits has clear benefits in most cases – it encourages participation in the management of the resource and it can have stock benefits for certain species. It is also evident that most recreational fishers do this anyway and that, by exercising a choice over which fish they retain, they perceive that they are enhancing their fisheries.

Option Two: Issue special permits

43. Rather than amend the Regulations, thereby avoiding any risks this might raise, a potential way for recreational fishers to release fish larger than the MLS yet still retain their full bag limit is to issue special permits for this purpose. Two submissions were received in support of this option. It is SeaFIC's view that the option allows MFish to retain a degree of control over the release of fish larger than MLS, and will also enable the gathering of information through requiring that all fish released are recorded.

44. MFish agrees that a special permit process has the benefit of allowing an assessment to be made of why a size limit needs to be different to that specified in the Regulations on a case by case basis, as well as identifying exactly who will participate in fishing this different size limit.

45. However, this option fails to recognise that operating self imposed size limits, and releasing legal size fish back to the water, is already common practice. Most fishers consider it to be a normal part of their fishing routine, as highlighted in the majority of submissions. The application process for special permits includes a fee as well as a lengthy administrative component. Recreational fishers are unlikely to see the imposition of new costs and effort for what is already an established practice, as fair or reasonable. The option may also place a significant administrative burden on MFish, and additional resources will be required to meet all new processing requirements.

Option Three: Retain the status quo

46. The final option consulted on was retaining the status quo. That is, if clubs or other organisations set size limits above those set out in the Regulations, they are required to count any fish below this size against their bag limit. Only two submissions were received in support of this option, with one submitter extremely concerned about the high rates of mortality associated with releasing fish. This submitter advised that rather than accommodate "recreational high grading", MFish should better enforce the existing regulations and ensure fishers know that every fish counts.

47. In principle, retaining the status quo has the benefit of retaining an unambiguous management framework and provides a level of clarity for enforcement purposes. That is, if a fisher takes a fish of legal size it counts against the bag limit and any risks of high grading are minimised. Size limits that have been defined in regulation are generally based on the best available biological and fishery information. If it is apparent that a limit is not functioning effectively, MFish is able to adjust it if required. Further, recreational fishers can still actively target bigger fish if they choose, through the use of measures such as alternative gear types, fishing locations and fishing times.

48. However, it is clear from submissions that the existing regulatory framework does not accord with current fishing practices and recreational fishers on the whole consider that implementing self imposed size limits is actually an important way to conserve and enhance fisheries resources.

49. Should you decide to retain the status quo, MFish advises that an extensive education campaign will be required to:

    a. Explain how the rules apply to catching and releasing fish; and
    b. Inform fishers of the need to account for fishing-related mortality; and
    c. Encourage better line fishing and fish handling practices.

50. It is important to note that implementing such an education campaign will involve significant costs which have not been accounted for.

Conclusion

51. MFish recommends that you agree to adopt revised Option One, in that the Regulations are amended to clarify that the daily bag limit does not apply to finfish returned immediately to the waters from which they were taken and that are likely to survive. This option essentially confirms the current and historical practice of most recreational fishers. MFish considers that any risk of increased mortality can be managed through improved education (e.g. fish handling guidelines). MFish also does not consider that the option will increase or encourage high grading, provided that finfish are immediately returned to the sea and are likely to survive.

52. If you agree to adopt revised Option One, the status quo will be maintained for shellfish. That is, any shellfish taken of legal size must count towards the daily bag limit.

Tagging and Releasing Fish for Research Purposes

Rationale for Management Options

53. Under the existing Regulations, there are no specific provisions for the tag and release of fish for research purposes by recreational fishers. However, the relevant bag limits for specific stocks do apply, so that the maximum number of fish that can be tagged and released on any day is the bag limit that applies to that fish.

54. MFish encourages and actively supports stakeholder initiatives to better manage their fisheries, including tag and release programmes. It is recognised that for some species, particularly sports fish, tagging and releasing fish is an important part of the recreational experience and helps to contribute to our knowledge of fishstocks.

55. Currently, many fishers either tag and release more than their daily bag limit entitles them to, or tag and release some fish while retaining their full daily bag. MFish is aware that recreational fishers feel very strongly that they should be permitted to participate in tag and release programmes to a greater extent than is provided under the general bag limits. In response, the following options were consulted on to manage the activity:

    a. Create a tag and release defence for certain stocks or species; or

    b. Issue special permits to permit the tag and release over and above the daily bag limit; or

    c. Retain the status quo.

56. It is important to note that if you agree to amend the regulations to clarify that the daily bag limit does not apply to finfish returned to the sea immediately (see recreational issue above), a management response will not be required in this instance. This is because such an amendment would provide for the release of legal size fish (if likely to survive), including those that have been tagged.

Assessment of Management Options

Option One: Create a tag and release defence

57. Submissions noted that MFish has actively promoted the tag and release of certain species for research purposes for many years. MFish acknowledges that it has not been made apparent to everyone involved in these programmes that tagged fish count towards the bag limit. Despite this, the regulations are clear that the maximum number of fish that can be tagged and released on any day is the bag limit that applies to that species.

58. Seven submissions were received in support of this option, with no submissions opposed to the option. It is noted however, that most submitters would prefer that the bag limit apply to retained fish only which negates the need for management intervention in this instance.

59. MFish recognises that tagging and releasing activities by recreational fishers have significantly contributed to our understanding of many fisheries. Providing a defence for the release of certain stocks or species where bag limits apply would allow this important activity to continue in the way it is has in the past. MFish considers that there are no risks or costs associated with this option, although additional regulatory amendments may be required in the future if a stock or species was to be added to the defence. MFish would also initiate consultation on the choice of stocks to be specified in an initial defence provision.

Option Two: Issue special permits

60. Only one submission, from SeaFIC, was received in support of issuing special permits to recreational fishers wishing to tag and release fish over and above the daily bag limit. It is SeaFIC's view that special permits would encourage better management of the tag and release practice by recreational fishers.

61. MFish acknowledges that a significant benefit of this option is that each programme can be thoroughly assessed on a case by case basis. Applicants will be required to detail why the work needs to be done and what the outcomes of the work might be. It will also be consistent with the requirements of other contracted research.

62. There are special permits in existence for a related purpose in Fisheries Management Areas 3, 4, & 5 where there is a bag limit of 1 for a number of shark species including four of the recognised big game species (blue, mako, porbeagle, and thresher sharks). The basic intent is to allow fishers in southern waters to compete on an equal footing with those in northern waters where there are no limits. These permits occur under a Ministerial purpose to "allow club members to take, possess and convey sharks in excess of current amateur daily limits during NZ Big Game Fishing Council's national competition and inter-provincial competitions". Members can take a maximum of 5 sharks/species per day. They have to notify the local District Compliance Manager 24 hours prior to each competition, and they have to provide a report within 1 month of how much is taken, when, where, and numbers of club members fishing. About five clubs have these special

permits. Generally, members have not exceeded the bag limits with retained fish, but there has been quite a lot of tag and release particularly of blue sharks.

63. While this precedent exists, MFish considers that expansion of this option to northern areas and to a range of stocks could result in a considerable administrative burden both to stakeholders and to MFish. This is unlikely to be considered reasonable for what has been, up to now, a common and actively encouraged practice.

Option Three: Retain the status quo

64. No submissions were received in support of this option. MFish considers that retaining the status quo is still valid option however. This is because recreational tag and release programmes could still be undertaken, but within the bag limit.

65. However, it is recognised that in some instances, small bag limits for certain stocks, such as kingfish, will deter recreational fishers from participating in tagging programmes. Tag and release programmes contribute to the knowledge and sustainable management of fish stocks and to lose this would be a disappointing outcome.

Conclusion

66. If you decide not to clarify that the daily bag limit does not apply to finfish returned to the sea immediately (which would negate the need for a management response in this instance), MFish recommends that you agree to adopting Option One, creating a defence for tagging and releasing certain stocks or species. Further work will be required to define and consult on a list of stocks to which this option would apply.

Statutory Considerations

67. MFish is satisfied that these proposals are consistent with the relevant statutory obligations under the Fisheries Act 1996 (the Act). MFish considers that all of the proposals will further the purpose of the Act, in providing for utilisation while ensuring sustainability (section 8). The environmental and information principles set out in sections 9 and 10 of the Act have also been taken in account in developing the proposals and, other than those specific concerns discussed in this paper, MFish is unaware of any concerns here relating to those principles. Similarly, MFish believes the proposals raise no concerns in relation to New Zealand's international obligations and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (section 5).

REMOVAL OF SOUTH ISLAND FRESHWATER EEL STOCKS FROM THE SECOND SCHEDULE – FINAL ADVICE

Executive Summary

1. The South Island freshwater eel fishery was introduced into the quota management system (QMS) on 1 October 2000. Two species (shortfin and longfin eels) were combined under fishstock code ANG. As part of the QMS introduction, all South Island eel stocks (ANG 11 to ANG 16) were listed on the Second Schedule. The original intent however was to list only Lake Ellesmere (ANG 13) on this Schedule.

2. The Second Schedule of the Fisheries Act 1996 (the Act) lists species whose abundance is highly variable. Section 13(7) of the Act allows for in-season increases to the total allowable catch (TAC) for stocks listed on the Second Schedule to take account of changes in abundance that occur within a fishing year. The TAC in turn reverts to its original level at the end of the fishing year.

3. The Ministry of Fisheries (MFish) released an initial position paper (IPP) on 3 July 2006. The IPP consulted on the proposal to remove all South Island freshwater eel stocks from the Second Schedule of the Act.

4. MFish received three submissions. One submission supported the removal of all South Island eel stocks from the Second Schedule. A verbal submission was received to retain the ANG 13 eel stock on the Second Schedule until further management reviews are carried out. One submission stated that it did not have any concerns with the proposal.

5. MFish has considered the submissions, as well as the purpose of the Second Schedule and recommends you agree to remove South Island freshwater eel stocks, except ANG 13 (Lake Ellesmere), from this Schedule. Further review of ANG 13 can be carried out in future management reviews once relevant fishery interests have considered future management directions for the stock.

Summary of Options

Initial Proposals

6. MFish proposed that either:

    a. South Island freshwater eel stocks, with the exception of the Lake Ellesmere fishery, should be removed from the Second Schedule of the Fisheries Act 1996; or

    b. All South Island freshwater eel stocks should be removed from the Second Schedule of the Fisheries Act 1996.

Final Recommendations

7. MFish recommends that you:

a. Remove South Island freshwater eel stocks ANG 11, ANG 12 and ANG 14 – ANG 16 from the Second Schedule of the Fisheries Act 1996.

Submissions Received

- Canterbury Customary Fisheries Regional Forum
- Te Ohu Kai Moana Trustee Limited (Te Ohu)
- The New Zealand Seafood Industry Council Limited (SeaFIC)

Rationale for Management Options

General

8. The Second Schedule lists stocks whose abundance is highly variable and allows you to consider an in-season increase to the TAC for a stock. In-season TAC increases, to take account of current annual biomass, occur frequently and are characteristic of the most effective management approach for some of these fisheries e.g. scallop.

9. All South Island freshwater eel stocks were listed on the Second Schedule on their introduction into the QMS in 2000. The original intent was to list only ANG 13 on this Schedule, due to the special characteristics of Lake Ellesmere. The Chatham Island freshwater eel stocks were introduced into the QMS on 1 October 2003, followed by the North Island freshwater eel stocks on 1 October 2004. No North or Chatham Island eel stocks were listed on the Second Schedule, as the biology of eels in general, are not highly variable in their abundance.

10. The eel fishery is based on species that have a long lifespan (maximum recorded age is 60 years for shortfins and 106 years for longfins) and there are many age classes within the fishery. Growth rates are generally slow, although these can be variable in more productive northern waters. However, the variability of growth rates for eel stocks is not so significant that the abundance of the stock is highly variable within one season. As eel stocks are not highly variable in their abundance, in-season TAC increases are not necessary. The Lake Ellesmere eel fishery has some differences which initially suggested a different approach to its management as part of the QMS introduction of this stock.

Lake Ellesmere

11. The Lake Ellesmere eel fishery is largely made up of migratory male shortfin eels and also includes a small portion of non-migratory feeding eels. Male shortfin eels are caught in considerable numbers as they make their way from the lake across the bar to the sea during their spawning migration in February to March. The catch of migrant shortfin eels can vary from year to year depending on growth and recruitment. Studies also indicate that the annual recruitment of eels into Lake Ellesmere is highly variable and linked with the duration and timing of the lake opening to the sea.

12. The original intent of listing ANG 13 on the Second Schedule was to account for the variable quantity of migratory shortfin eels within the fishing year. Second Schedule listing would allow for in-season TAC increases to the ANG 13 stock,

based on a fishing year starting on 1 October. Following a review of the Lake Ellesmere fishery in 2001, the start of the fishing year for the ANG 13 stock was changed from 1 October to 1 February. This change came into effect on 1 February 2002.

13. The change in the start of the fishing year recognised that the harvest of migratory shortfin males in February and March was the main use of the stock and therefore created greater flexibility in how commercial fishers took their annual catch. Commercial fishers can now harvest the variable quantity of migratory eels at the start of the fishing year and have more certainty about the quantity of catch entitlements available for non-migratory eels over the rest of the year.

Assessment of Management Options

General

14. There was strong support from one submitter to remove all South Island freshwater eel stocks from the Second Schedule (Option 2 of the MFish IPP). The submitter notes that eels are long-lived species, only spawning once at the end of their lives and therefore do not fit the conditions of the Second Schedule.

15. MFish notes there are six freshwater eel stocks in the South Island (ANG 11 to ANG 16). With the exception of ANG 13 (Lake Ellesmere), freshwater eel stocks are not highly variable in their abundance within a fishing year, or from year to year.

Lake Ellesmere

16. MFish reaffirms that the original intent was to list only ANG 13 on the Second Schedule because of the variability in this stock caused by migratory runs of eels. This variability was addressed by a change in fishing year start date to 1 February which came into effect on 1 February 2002. However, the Canterbury Customary Fisheries Regional Forum have requested that there be no change to the current management settings for the Lake Ellesmere fishery other than through a review of the Fisheries Plan for the area. This would allow for further consideration and buy-in to the management measures by all stakeholders before changes occur.

17. MFish notes that the basis for keeping the ANG 13 fishery on the Second Schedule is now questionable. MFish notes the change to the fishing year, to 1 February, for ANG 13 has addressed the variability of this stock in part. However, MFish acknowledges the customary concerns regarding the application or review of management measures within the Lake Ellesmere fishery. These concerns relate to allowing enough time for all stakeholders to fully consider any changes to management measures in the context of the overall management of the fishery. The Customary Forum notes that there would be value in reviewing current research initiatives in conjunction with any proposed changes.

18. MFish proposes to keep the ANG 13 fishery on the Second Schedule until customary groups have had the opportunity to further consider management options for this fishery. MFish considers that management measures will be reviewed as part of the fisheries plan process for freshwater eels. Such a delay in considering ANG 13 has no implications for the sustainability of this stock.

Statutory Considerations

19. Section 13(9) of the Act enables the Governor-General to remove any stock from the Second Schedule by Order in Council. There is no set criteria set out in the Act that must be considered in order for stocks to be removed. MFish notes that its original intent was to list only the ANG 13 stock on the Second Schedule when it was subject to a fishing year commencing on 1 October.

20. An Order in Council will need to be made to remove most South Island eel stocks from the Second Schedule of the Act.

MAXIMUM SIZE LIMIT FOR FRESHWATER EELS IN THE NORTH ISLAND AND CHATHAM ISLANDS – FINAL ADVICE

Executive Summary

1. There is no maximum size limit for commercially fished eels in the North Island or Chatham Islands. However, a 4 kg maximum size limit for commercial fishing of eels has been in place in the South Island since 1995. A maximum size limit of 4 kg is particularly important in protecting large longfin female eels. The longfin female eel tends to grow larger than the shortfin eel and the male longfin eel. A maximum size limit should help ensure that eels (particularly large longfin female eels) are able to migrate to their spawning grounds.

2. Studies about longfin eel stocks indicate that the longfin eel population is depleted in comparison to historical accounts of the relative abundance of the species. Over the past eight years, monitoring at four key sampling sites around New Zealand show that the numbers of elvers are lower than that observed in the 1970s. The relatively low number of elvers observed at present suggests that there may be inadequate spawning escapement and insufficient recruitment in some areas to maintain or rebuild longfin stocks.

3. Biological characteristics help to explain the unique challenges faced by eels. For example, fishers target eels before they escape to spawn which occurs once at the end of their life. This means that eels are often fished before they reach maturity and prior to spawning or in some circumstances during their spawning migration. Female longfin eels are also more susceptible to fishing because they live longer and there is a greater chance of being caught.

4. In 2004 North Island freshwater eels were introduced into the quota management system (QMS). Chatham Islands freshwater eels were introduced in 2003. In addition to setting catch limits at this time (which were lower than previous levels of catch), commercial fishing was also prohibited in particular catchments to ensure that some eel populations were able to mature and spawn without being vulnerable to commercial fishing at some stage of their life. These management measures are intended to increase the spawning population, and therefore improve the sustainability of eels.

5. A commercial maximum size limit of 4 kg for the North Island and Chatham Islands was also proposed at the time of QMS introduction for similar reasons, noting that this measure was already in place in the South Island. There were mixed views on the proposal at that time: industry groups opposed the proposal while customary Maori interests and most conservation groups submitted their support. Final advice concluded that a broader review of adequate spawning escapement required further evaluation before adopting a maximum size limit. Since that time there has been an increasing acceptance that a maximum size limit is desirable and will form part of the measures required to achieve adequate spawning.

6. The Initial Position Paper (IPP) released on 3 July 2006 consulted on implementing a maximum size limit of 4 kg for commercial fishing of eels in the North Island and Chatham Islands. Submissions were received from a number of groups, with the majority of submitters in support of the proposal.

7. Two submissions received were in support of implementing a maximum size limit, but at a lower size than was proposed in the IPP. Both of these submitters also requested that consideration be given to extending the maximum size limit to include the non-commercial sector. In addition to the maximum size limit, one submitter further requested a decrease in commercial harvest levels and an increase in area closures to protect longfin eels.

8. Before setting or varying sustainability measures you must take into account the factors listed in section 11 of the Fisheries Act 1996. The extension of the maximum size limit for commercial fishing to the North Island and Chatham Islands will not conflict with existing measures in place for the management of eels. Adoption of the maximum size limit for commercial fishing will provide a level of protection to large eels that may otherwise continue to be vulnerable to commercial fishing before they can escape to spawn. The proposal will ensure consistency with the maximum size limit already in place in the South Island.

9. The Ministry of Fisheries (MFish) has considered the views of submitters and recommends that you agree to the proposed measure.

Summary of Options

10. MFish's Initial Position Paper (IPP) recommended that regulation 50 of the Fisheries (Commercial Fishing) Regulations 2001 be amended, such that a commercial fisher may not take or possess a freshwater eel of more than 4 kg from any New Zealand fisheries waters. Currently the regulation only applies in the South Island.

11. MFish recommends that you:

    a. Amend regulation 50 of the Fisheries (Commercial Fishing) Regulations 2001 such that a commercial fisher may not take or possess a freshwater eel of more than 4 kg in weight from any New Zealand fisheries waters.

Submissions Received

- Aotearoa Fisheries Limited (AFL)
- Aotea Moana Kaitiaki (King Country)
- Department of Conservation (DOC)
- Eel Enhancement Company Limited (EECo)
- Motakotako Marae (King Country)
- NZ Eel Processing Company Limited (NZEel)

- New Zealand Seafood Industry Council Limited (SeaFIC)
- Te Ohu Kai Moana Trustee Limited (Te Ohu)
- Wellington Conservation Board (WCB)

Rationale for Management Options

12. Fishery interests have indicated that they have a desire to improve the status of the eel fishery using a variety of management measures including further refinement of the catch restrictions initially set when the eel fishery was introduced into the QMS. One way to improve the eel fishery is to ensure that a greater number of adult eels in spawning condition are able to undertake migration to spawning grounds. A commercial maximum size limit will assist in achieving this goal.

Assessment of Management Options

Maximum size limit

13. The majority of submissions were in favour of the maximum size limit of 4 kg. DOC and the WCB agreed in principle to a nationally consistent maximum size limit, however they opposed setting the maximum size limit at 4 kg. They have instead opted for a more conservative maximum size limit and have proposed alternative sizes (3 kg or less) to ensure that a far more precautionary management approach is taken.

14. In response to concerns that the eel fishery is at a high risk of collapsing, MFish notes that in 2002 the longfin eel fishery was classified by DOC to be in a "gradual decline", the lowest threat ranking, where there is no threat to extinction. This classification was reviewed in 2004 and the threat status has not changed. Since MFish introduced North Island eel stocks into the QMS in 2004 (and Chatham Islands in 2003), factors that have contributed to the threat status of the longfin eel have decreased.

15. Of particular note, commercial catch has been significantly reduced as a result of QMS introduction, and several catchments have been set aside from commercial fishing for the purposes of increasing future spawning escapement. In addition, MFish now has the ability to adjust catch limits readily as a result of the stocks being included in the QMS.

16. Other significant steps have been taken to improve management of the eel fishery. In 2004 MFish, in addition to closing catchments to commercial fishing, closed discrete areas to commercial fishing to recognise and provide for customary food gathering by Māori. Such areas included the Taharoa Lakes, the Whakaki Lagoon, Lake Poukawa and the Pencarrow lakes and its two tributaries. Some of these areas may also contribute to spawning escapement where the level of non-commercial harvest continues to be relatively low.

17. MFish has taken the initiative to propose a management strategy for the eel fishery "to improve the stock structure and abundance over the medium term while bringing to a halt any decline in the fishery over the short term". MFish believes that a staged approach is important as it will allow fishery interests to

adjust to any new measures, and is consistent with a collaborative approach. MFish intends to develop a fisheries plan with the involvement of tāngata whenua and stakeholders to determine how the eel fishery can be best managed.

18. MFish realises that the impacts of these measures will take time to materialise. MFish is mindful of the need to continue with implementing management measures for the longer term to ensure short-term objectives are met. MFish continues to play a key role in organising and funding research to ensure information about the eel fishery is obtained to improve management of eel populations.

19. DOC and the WCB suggest that the proposed maximum size limit of 4 kg should be reduced further. Should a lower maximum size limit be adopted, the size range available for harvest would change (e.g. 220g – 2 kg rather than size classes within a greater range of 220 g – 4 kg). This could lead to relatively more individuals being taken per unit weight of annual catch entitlement. There is a balance to be made between minimum and maximum weights and the tonnage harvested relative to the number of eels involved.

20. The relationship between the various sustainability measures is not empirically known, and considering them in isolation may be simplistic. Applying a maximum size limit should provide some contribution to spawning escapement, although MFish considers that adjustments to catch limits will have a far greater bearing on the sustainability of longfin eels. The introduction of eel stocks into the QMS resulted in commercial catch being constrained for the first time.

21. DOC is concerned that a maximum size limit will lead to a 'bimodal or unnatural' eel population structure potentially leading to higher rates of cannibalism of eels. They also submit that commercial fishers consider that one of the 'benefits' of harvesting large eels is minimising cannibalism. MFish notes that cannibalism is a natural feature of eel ecology and that large eels are known to be naturally cannibalistic feeders. However, MFish considers that any impacts of increased cannibalism will be balanced by the clear benefits that a maximum size limit will have on spawning stocks.

22. MFish also notes that some commercial fishers believe that removing large eels from the population can lead to negative consequences for their fishing success. In some eel populations in the lower Waikato River, dense populations of small eels compete with each other to such a degree that their growth becomes stunted. The presence of large eels can potentially influence the size and growth structure of a population in a beneficial way.

23. DOC submits that a lower maximum size limit could help to protect male eels. However, shortfin male eels regularly migrate near the minimum size limit, such that a proportion of male eels may have already migrated before reaching 220g in weight. The age at which males become mature is significantly less than female eels. Therefore, males are not subject to fishing pressure for as long a period as females. In addition, males typically do not grow to a large size suggesting a maximum size limit may not effectively protect male eels.

24. The WCB are concerned about other anthropogenic impacts on eel populations (e.g. drainage and hydro dams) and support the growing need for local government and MFish to work together. In 2004, MFish commissioned a project with an aim of assessing non-fishing mortality from hydro-electric turbines and other structures such as, dams, culverts and drain clearances. MFish has forwarded the final research report to three key councils: Selwyn District (Canterbury), Environment Waikato and Environment Southland who are responsible for administration of a significant percentage of the drainage areas found throughout the country. MFish notes that other organisations also have a key responsibility for maintaining eel habitat and that improvement could be made in the context of meeting the aims of the Resource Management Act 1991.

Application of maximum size limit to non-commercial fishers

25. DOC and the WCB are concerned that eels over 4 kg will continue to be accessible to non-commercial fishers. Te Ohu notes that customary interests tend to favour the harvesting of larger eels.

26. In 2004 MFish proposed extending the application of a maximum size limit to all commercial eel fishing across the country, and also queried whether non-commercial fishing should also be subject to this type of measure. MFish did not formally propose a maximum size limit for non-commercial fishers at that time because it did not obtain any substantive views from that sector. In addition, during the 2004 consultations, some customary Maori interests indicated their desire to maintain their ability to take large eels for customary purposes.

27. MFish considers that it is appropriate to get a clear view from non-commercial fishers on extending the maximum size limit to non-commercial fishers, rather than taking a unilateral approach. Furthermore, there are a number of issues with non-commercial eel fishing that MFish will need to canvass, and it may be better to consider these in the context of a broader review for that sector.

28. Reviewing a maximum size limit within the next 12 months for the non-commercial sector is not currently a priority for MFish in consideration of the scale of issues related to eel management. MFish would prefer to focus efforts towards progressing fisheries plans for eels, such that the broader objectives for the fishery can be further canvassed.

29. DOC and the WCB are concerned that the impacts of non-commercial fishing on eels have been underestimated. The WCB in particular, are not convinced that non-commercial fishers take fewer eels than commercial fishers. MFish advises that during the 2004-05 fishing year the total commercial landing for eels was 713.3 tonnes. MFish believes that non-commercial harvest is insignificant in comparison to this level of harvest. MFish also notes that non-commercial fishers do not have unlimited access to the resource as a maximum bag limit of six eels per person per day has been in place since 1994.

Other management measures

30. DOC submits the introduction of a 4 kg maximum size limit should be complemented by a reduction in harvest levels and a greater number of

catchments should be set aside from fishing in both the North Island and South Island for complete protection and escapement of longfin eels.

31. During QMS introduction MFish instigated catchment closures and catch limits for eel stocks throughout New Zealand and further proposals for catchment closures were also signalled at that time. MFish is waiting to assess a research project involving GIS modelling to further develop the population model for longfin eels before considering future management options for the longfin eel fishery, including the possibility of additional catchment closures. Further, there are a number of considerations to take into account before proposing such measures, not least of which is the effect and implications of where catchment closures are placed. These require attention to ensure that the suggested options are fair and effective.

32. DOC notes that although at present the smaller waterways tend not to be fished due to their size or inaccessibility, these same waterways may become subject to greater attention as the eel fishery decreases. DOC further notes the probability of capture in small systems is high in comparison to large waterways. MFish advises that commercial fishing depends on economic viability and accessibility. In general, it is typically the lower part of catchments that are likely to be subject to greater fishing pressure given the ease of access, the ability to use small boats, and the fact that such water is in the public domain. MFish does not share the view of DOC that the eel fishery will decrease in future. The management actions taken in the last decade are designed to halt any decline, and reverse the previous trends. Adjustment to management settings, such as the present proposal, further indicates that changes can be made to meet the rebuild strategy for the fishery.

33. MFish will continue to further refine other management measures over the short and medium term as noted in the IPP for this proposal. MFish reiterates that the fishery is in a state of transition, and management actions are being staged to ensure that the best possible outcomes are achieved.

Offences and penalties

34. Proposed offences and penalties need to be consistent with the principles and categorisation of offences and penalties for regulations developed under the Fisheries Act 1996. These principles and categories were approved by the Cabinet Finance, Infrastructure and Environment Committee (FIN Min (01) 15/4) in July 2001.

    a. The proposed offence is:

        i. the commercial take or possession of any shortfinned or longfinned eel weighing more than 4 kg taken from New Zealand fisheries waters; and

        ii. the sale, possession for sale, or process for sale of any shortfinned or longfinned eel weighing more than 4 kg taken from New Zealand fisheries waters.

35. Commercial offending of this nature should attract a Category 4 type of offence (up to a maximum of $100,000) on the basis that the biology of eels is unique and such management measures are essential for ensuring sustainability. This is

consistent with the maximum size limit penalty that currently applies to prevent eels from being illegally taken from South Island fisheries waters.

Statutory Considerations

36. Appendix 1 contains the statutory considerations.

APPENDIX 1: STATUTORY CONSIDERATIONS

37. The following statutory considerations under the Fisheries Act 1996 have been taken into account.

38. **Section 5(a)** – There are no specific international obligations in place for eels. The specific proposal is consistent with more generic obligations to ensure that a fishery is sustainably managed. MFish notes that the shortfin eel fishery is shared with Australia and the Pacific Islands. Longfin eel is endemic to New Zealand.

39. **Section 5(b)** – MFish considers that the proposal for a maximum size limit for commercial eel fishing is consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. MFish notes its on-going obligation to ensure that customary Māori interests are provided for in any subsequent review of management settings.

40. **Section 8 –** In addition to other management measures, like catchment closures and catch limits, setting a maximum size limit should help to improve the population structure and abundance of eels (mainly longfin eels) over the medium term. A maximum size limit for commercial fishing should contribute to ensuring that the fishery is sustainable and the relationship with interdependent stocks is also improved.

41. On balance, a maximum size limit for all New Zealand eel stocks is likely to better enable people to provide for their social, cultural and economic needs, although the benefits to some stocks may take time to materialise given the longevity of eels in general. Enabling people to provide for their social and cultural aspirations are of particular importance for this fishery. The eel fishery is one of the most important fisheries for Māori on a cultural basis, as it forms a key element of their customs, and is considered a taonga or treasure. This value extends to social considerations, as the species is taken on a non-commercial basis as a source of food. Eel fishing is also a leisure activity enjoyed by outdoor enthusiasts. Setting a commercial fishing maximum size limit for eels nationally will also serve to provide a greater degree of certainty for commercial fishers, in terms of long term yield.

42. In 2004, the North Island eel fishery was introduced into the Quota Management System (QMS). The eel fishery in the North Island is a moderately sized commercial fishery that provides direct employment for approximately forty commercial fishers. The Chatham Islands eel fishery is relatively small and provides direct employment for approximately one commercial fisher.

43. **Section 9(a) and (b)** – Putting in place a maximum size limit may increase the proportion of large eels in the overall population. This may have impacts on predator-prey relationships as large eels typically feed on fish rather than a variety of insects and snails. In a natural state eel populations would typically have a wider size range than presently found. Accordingly, given the present size structure in eel populations, setting a maximum size limit for commercial fishing is unlikely to give rise to any major concerns for associated and dependent species, and biological diversity. Ultimately, implementation of the proposed measure should benefit these values. Information on these relationships could be

acquired over time to assist with the assessment of these environmental considerations. Some research work may be available through FoRST funding in the next year or two.

44. **Section 9(c)** – The setting of a national maximum size limit for commercial fishing is not likely to have implications for habitats of particular significance for fisheries management.

45. **Section 10** – MFish considers that further information would strengthen this proposal. However, such information is not readily available, and should not postpone management action. In terms of sustainability outcomes, adoption of this measure at this time would be acting in a more cautious manner than continuing without a maximum size for commercial fishing in the North and Chatham Islands.

46. Research findings, although not necessarily conclusive in all cases, or representative of all areas, are suggesting that trends in recruitment, population size structure, sex ratios, and spawning escapement are of concern and/or warrant particular consideration in forming recommendations for the future management of the fishery. This is particularly so for longfin stocks.

47. While actions have been taken to halt or reverse these trends in recent years, consideration of the maximum size limit was not advanced in 2004 when previously proposed. MFish considers that the best available information indicates that the benefits of the current proposal outweigh the costs, particularly over the medium term as other management measures are refined.

48. **Section 11(1)(a)** – The effects of fishing on any North Island or Chatham Islands stock and the aquatic environment are not significant. The quantity of eels greater than 4 kg eels landed to licensed fish receivers within these areas is relatively small at present.

49. **Section 11(1)(b)** – Freshwater eels are managed under the QMS for the purposes of ensuring sustainability. The extension of the maximum size limit for commercial fishing to the North Island and Chatham Islands will not conflict with existing measures in place for the management of eels. The proposal aims to compliment the existing measures, particularly as a maximum size limit is already in place in the South Island.

50. **Section 11(1)(c)** – Eel fisheries are typically not subject to significant natural variability in their biomass to the extent that stocks become susceptible to over fishing on this basis alone. This is the case for all North Island and Chatham Islands eel stocks. Eels are relatively long-lived and have relatively slow growth rates. Adoption of the maximum size limit for commercial fishing will provide a level of protection to large eels that may otherwise continue to be vulnerable to commercial fishing before they can escape to spawn.

51. **Section 11(2)(a) and (b)** – There are no specific provisions applicable to the coastal marine area known to exist in any policy statement or plan under the Resource Management Act 1991, or any management strategy or plan under the

Conservation Act 1987, that are relevant to the proposal to extend the maximum size limit for commercial fishing nationwide.

52. **Section 11(2)(c)** – The Hauraki Gulf is defined in the Fisheries Act 1996 to include all coastal waters and offshore islands from near Te Arai Point (south of Mangawhai) offshore to the Moko Hinau Islands, and south to Homunga Point (north of Waihi Beach). Protecting and maintaining the natural resources of the Hauraki Gulf as a matter of national importance. The setting of maximum size limits for commercial fishing across the biological stock for eels, which includes the Hauraki Gulf, will further the objectives set out in s 7 and s 8 of the Hauraki Gulf Marine Park Act 2000 Act, and ensure that the range of values associated with the use of the eel resource are enhanced for the people and communities in the area.

53. **Section 11(2A)** – The proposal to extend the maximum size limit for commercial fishing nationwide is not considered to warrant an immediate need to generate additional fisheries or conservation services. The medium term research plan for the national eel fishery outlines research directions already adopted by MFish. An existing project sets out to periodically monitor the size structure of the commercial fishery.

54. No fisheries plans under s11A of the Fisheries Act 1996 exist for any eel stocks. However, some fishery interests throughout the country have shown some desire to identify and implement management objective consistent with strategy to improve spawning escapement.

55. **Section 12(1)(a) and (b)** – MFish has provided this Initial Position Paper (IPP) for the purposes of consulting with those who have an interest in the management of eels. MFish is required to provide for input and participation of tangata whenua having a non-commercial interest in a stock when sustainability measures (such as a maximum size limit) are being considered. MFish is also required to have particular regard to kaitiakitanga when making decisions regarding the sustainability of fisheries. Individual iwi settlements also contain specific protocols about eels that MFish needs to consider.

RED GURNARD (GUR), TRUMPETER (TRU) AND BLUE COD (BCO) RECREATIONAL SIZE LIMITS – FINAL ADVICE

Executive Summary

1. The Ministry of Fisheries (MFish) consulted on options to introduce recreational minimum legal size limits (MLS) of 25cm for red gurnard, and 45cm for trumpeter. MFish also consulted on an option to decrease the existing blue cod recreational MLS in the North Island from 33cm to 30cm.

2. Currently there is no MLS for red gurnard or trumpeter. Recreational fishers have raised concerns about the small size of both species being taken. The New Zealand Recreational Fishing Council (NZRFC) requested that MFish review and consult on options to introduce a national MLS for both species.

3. There is currently a national MLS of 33 cm for blue cod, except in parts of the Challenger Fisheries Management Area (the Marlborough Sounds) and the South-East Fisheries Management Area, where the MLS is 30 cm. The analysis supporting the MLS of 33cm was specific to South Island fisheries and the NZRFC consider the MLS to be too high in the North Island. The NZRFC requested MFish review and consult on an option to reduce the blue cod recreational MLS to 30 cm in the North Island.

Red Gurnard

4. Information on the effect of setting a MLS for red gurnard is equivocal. While recreational fishers are concerned at the number of small red gurnard they observe being landed, 98% of the length data of red gurnard collected at boat ramp surveys is above the suggested 25 cm MLS.

5. While a MLS is used to protect and enhance fish populations by allowing fish to live long enough for them to breed at least once, they can also increase the quality of fishing by preventing the harvest of smaller individuals and thus allowing a greater number of fish to survive to a bigger size before entry to the fishery.

6. From a biological perspective a MLS of 25 cm would be appropriate.

7. Twenty one of twenty five submitters support setting a recreational MLS of 25 cm for red gurnard and perceive this will be beneficial to their fishery. At the local level, especially in predominantly recreational fishery areas a MLS may well contribute to an improved quality of fishing but the degree of improvement will be contingent upon post release survival.

8. There is no hard data available to estimate the survival of released red gurnard. Recreational fishers submit that, if released in good condition, small red gurnard are likely to survive when returned to the sea. In the absence of data on post release survival, MFish considers the widely corroborated assessment by

experienced recreational fishers to be the best available information. On balance, MFish considers that the benefits to be gained from a MLS of 25cm will outweigh any yield loss generated through release-related mortality. This is the MFish preferred option.

Trumpeter

9. Of the twenty submissions received, seven supported setting a 45 cm MLS, nine supported setting a MLS less than 45 cm (seven recommended 35 cm) and four did not support setting a MLS for trumpeter.

10. When setting a MLS for sustainability reasons, the size used is generally above the size of age at maturity for the species concerned, as this allows the fish to spawn at least once before entering the fishery. The best available information indicates that for trumpeter, this is likely to be around 45 cm.

11. The largest category of submitters is those requesting a MLS less than the 45 cm figure consulted on in the IPP. Of these seven identified 35 cm as a compromise length. These submitters considered that a MLS of 45 cm would effectively exclude them from access to the trumpeter fishery. MFish agrees that a MLS of 45 cm would effectively exclude the majority of recreational fishers from the trumpeter fishery.

12. MFish considers that a further option be put forward for your consideration; that is a recreational MLS of 35 cm could be set until more reliable information on size at maturity is available for New Zealand stocks. Such a measure would allay the concerns of recreational fishers about 10-15 cm fish being taken, maintain reasonable access for recreational inshore fishers to the trumpeter fishery, improve the yield per fish and could be reviewed at a later date when the results of the research on the biological characteristics of trumpeter became available. This is the MFish preferred option.

Blue Cod

13. In 1993 the national MLS for blue cod was increased from 30 to 33 cm. This adjustment was based on data obtained from the South Island blue cod fishery. The NZRFC believes that the MLS of 33 cm is too high in the north and recreational fishers would like to see the limit revert to 30cm.

14. Information from submissions indicates that this problem is largely centred on BCO 1. (a map of the BCO management areas is at the end of the IPP) The clear majority of submitters from the lower North Island do not want a smaller MLS for blue cod, while the clear majority of submitters from the upper North Island support a lower MLS.

15. Within this context, MFish considers that an alternative management option would be to retain the current MLS of 33 cm in BCO 2, BCO 8 and BCO 10, and, to reduce the MLS from 33 cm to 30 cm in BCO 1. MFish believes that the probable absence of recreational fishing for blue cod from BCO 10 (Kermadec) means that an adjustment for this quota management area would not be necessary. This is the MFish preferred option.

16. MFish notes that an MLS set for sustainability purposes should be set above the average size at maturity for the species. Size at age at maturity of Northland blue cod is known to be 10-19 cm total length (TL) at an age of two years, whilst in the Marlborough Sounds it is reached at 21–26 cm (TL) at three to six years. In Southland, fish become sexually mature at 26–28 cm (TL) at an age of four to five years. A MLS of 30 cm would be biologically appropriate.

17. Recreational blue cod fishers from northern New Zealand clearly feel that the quality of the blue cod recreational fishery would be enhanced by setting a MLS at 30 cm.

Summary of Options

Initial Proposals

Red Gurnard

18. With respect to *establishing a recreational MLS for red gurnard*, this paper considers the following management options:

    a) Set a recreational MLS of 25 cm for red gurnard in the Fisheries (Amateur Fishing) Regulations 1986 (MFish preferred option); or

    b) Retain the status quo and set no minimum legal size for the species.

Trumpeter

19. With respect to *establishing a recreational MLS for trumpeter* this paper considers the following management options:

    c) Set a recreational MLS of 45cm for trumpeter in the Fisheries (Amateur Fishing) Regulations 1986; or

    d) Set a recreational MLS of 35 cm for trumpeter in the Fisheries (Amateur Fishing) Regulations (MFish preferred option); or

    e) Retain the status quo and set no minimum legal size for the species.

North Island Blue Cod

20. With respect to *lowering the recreational MLS for North Island blue cod*, this paper considers the following management options:

    f) Amend relevant regional amateur fishing regulations to decrease the blue cod recreational MLS from 33cm to 30cm in the North Island; or

    g) Amend relevant regional amateur fishing regulations to decrease the blue cod recreational MLS from 33cm to 30cm in BCO 1 only (north of the North Island) (MFish preferred option); or

    h) Retain the 33cm blue cod recreational MLS in the North Island.

Final Recommendations

Red Gurnard

21. MFish recommends that you:

EITHER

Option 1:

a. Agree to specify a national recreational MLS of 25 cm for red gurnard in the Fisheries (Amateur Fishing) Regulations 1986;

b. Option 1 is MFish preferred option;

OR

Option 2:

b) Retain the status quo and set no MLS for the species.

Trumpeter

22. MFish recommends that you:

EITHER

Option 1:

a) Agree to specify a recreational MLS of 45 cm for trumpeter in the Fisheries (Amateur Fishing) Regulations 1986;

OR

Option 2:

b) Agree to specify a recreational MLS of 35 cm for trumpeter in the Fisheries (Amateur Fishing) Regulations (MFish preferred option);

c) Note that option 2 has not been consulted on.

d) Option 2 is MFish preferred option;

OR

Option 3:

e) Retain the *status quo* and set no MLS for the species.

North Island Blue Cod

23. MFish recommends that you

EITHER

Option 1:

i) Agree to amend relevant regional amateur fishing regulations to decrease the blue cod recreational MLS from 33cm to 30cm in the North Island;

OR

Option 2:

j) Agree to amend the relevant regional amateur fishing regulations to decrease the blue cod recreational MLS from 33cm to 30cm in BCO 1 only (north of the North Island);

k) Option 2 is MFish preferred option;

OR

Option 3:

l) Retain the 33 cm MLS for North Island blue cod MLS.

Submissions Received

Red Gurnard (25)

- Akaroa Harbour Recreational Fishing Club
- Denis Petty (ProDive NZ)
- Garry Workman
- Hartley Family
- Hilton Leith
- John Forrest / Wanders Surfcasting and Anglers Club
- John Robertson
- K.B. Turner
- Kaikoura Boating Club (Inc)
- Keith Ingram
- Mark Iggo
- Marlborough Combined Divers Association (Inc)
- Marlborough Recreational Fishers' Association
- New Zealand Seafood Industry Council Ltd
- Ngati Whatua Fisheries Limited
- North Island South-East Regional Recreational Forum
- North Island South-West Regional Recreational Forum
- Pelorus Boat Club

- Piako Underwater Club
- Raglan Sports Fishing Club
- South Taranaki Underwater Club (Inc)
- Tasman and Sounds Fishers Association (Inc)
- Te Runanga o Ngati Whatua
- The New Zealand Big Game Fishing Council (Inc) and option4
- Tim Hornby

Trumpeter (20)

- Akaroa Harbour Recreational Fishing Club
- Brian Dean
- G.A. O'Rourke
- Hartley Family
- Hilton Leith
- John Robertson
- Kaikoura Boating Club (Inc)
- Keith Ingram
- Mark Iggo
- Marlborough Combined Divers Association (Inc)
- Marlborough Recreational Fishers' Association
- New Zealand Seafood Industry Council Ltd
- Ngati Whatua Fisheries Limited
- North Island South-East Regional Recreational Forum
- North Island South-West Regional Recreational Forum
- Raglan Sports Fishing Club
- Tasman and Sounds Fishers Association (Inc)
- Te Runanga o Ngati Whatua

- The New Zealand Big Game Fishing Council (Inc) and option4
- The South Marine Recreational Fishers Advisory Committee

North Island Blue Cod (21)

- Hilton Leith
- John Forrest / Wanders Surfcasting and Anglers Club
- John Robertson
- K.B. Turner
- Keith Ingram
- Marlborough Combined Divers Association (Inc)
- Marlborough Recreational Fishers' Association
- New Zealand Seafood Industry Council Ltd
- Ngati Whatua Fisheries Limited
- Ngawi Sports Fishing Club)
- North Island South-East Regional Recreational Forum
- North Island South-West Regional Recreational Forum
- Pelorus Boat Club
- Raglan Sports Fishing Club
- South Taranaki Underwater Club (Inc)
- Stuart Marsh
- Tasman and Sounds Fishers Association (Inc)
- Te Runanga o Ngati Whatua
- The New Zealand Big Game Fishing Council (Inc) and option4
- The Top of the South/West Coat Regional Recreational Forum
- Tim Hornby

Red Gurnard

Background

24. Currently there is no recreational MLS in place for red gurnard. A MLS is used to protect and enhance fish populations by allowing fish to live long enough for them to breed at least once. They are also an effective way to provide quality fishing by preventing the harvest of smaller individuals and thus allowing a greater number of fish to survive to a bigger size before entry to the fishery.

25. The NZRFC has advised MFish that there are growing concerns from recreational fishers about the small size of red gurnard regularly being taken. They have received reports that fish as small as 10cm are being landed. This is causing concern about the impact on future recruitment into the fishery, and on the availability of larger fish.

26. MFish consulted on whether or not recreational fishers support a MLS for red gurnard.

27. MFish has no particular concerns about the current sustainability of red gurnard.

Assessment of Management Options

28. Twenty five submissions were received concerning setting a national recreational MLS for red gurnard.

29. Of these, twenty one submissions were in general agreement that a MLS would be appropriate for red gurnard. The points raised to support setting a MLS for red gurnard concerned the following themes:

    - Personal observation of small fish being taken and that this is a wasteful practice given the small size of fillet able to be obtained from small fish.

    - The need to obtain a quality fishing experience by moving harvesting toward the best yield by species.

    - Support for promoting take above the breeding size as a principle for best management.

    - That if released in good condition, small red gurnard are likely to survive when returned to the sea.

30. Four submissions considered setting a national recreational MLS for red gurnard would not achieve any worthwhile result or would be counter-productive. The points raised to support the *status quo* concerned the following themes:

    - The available data suggests that no problem exists.

    - There is insufficient information upon which to determine the best management response as to why small fish are being landed.

- The focus should be on well targeted regulations aimed at ensuring sustainability rather than on measures that may, or may not, provide for utilization.

- Setting a MLS will lead to greater waste from high grading and post release mortality.

- That the recreational catch is already poorly monitored and that the allowance made for recreational catch is likely to be impacted by setting a MLS.

- There is no information on post release mortality except for vague assessments based on anecdotal reports.

- The recreational catch is low in comparison to commercial catches and the amount of small red gurnard killed by commercial practices make setting a MLS meaningless.

- The focus should be on encouraging recreational fishers to modify fishing practices to reduce the incidence of small fish being caught.

- A code of practice, with the objective of increasing yield per recruit, would be more appropriate.

31. As stated in the IPP, there is no available analysis to model the effect of a recreational MLS on the red gurnard population.

32. The largest estimates of the national recreational catch of red gurnard are that it is about 10% of the national commercial landing.

33. The IPP states that the lengths of red gurnard measured during boat ramp surveys indicate that most red gurnard (98%) taken recreationally are longer than 25 cm. This would indicate that there are few small red gurnard being taken which is at variance with the concern expressed by recreational fishers. This may indicate that landing small fish is not widespread but localized.

34. Therefore, submissions on the magnitude of the problem and the contribution a MLS would have on reducing the risk to the national sustainability of red gurnard are correct in that it is likely to be small.

35. However, at the local level and especially in predominantly recreational fishery areas, a MLS may well contribute to an improved quality of fishing, but the degree of improvement will be contingent upon post release survival.

36. There is no hard data available to estimate the survival of released red gurnard. As the probability of survival of released fish declines, MLSs become less effective in improving recruitment and increasing yield per recruit because greater numbers of undersized fish die and cannot contribute to future spawning biomass or catches.

37. In the absence of data on post release survival of small red gurnard, MFish considers the widely corroborated assessment by experienced recreational fishers, that the majority are likely to survive, to be the best available information. On balance, MFish considers that the benefits to be gained from a MLS will outweigh any yield loss generated through release-related mortality.

38. One submitter cautions the use of uncertain, unreliable or inadequate information. However, MFish notes that section 10 of the Act provides that decisions should be based on the best available information and, 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 this Act.

39. Implementing a MLS can have clear benefits by a) allowing fish to live long enough for them to spawn, and b) improving yield per recruit by allowing fish to grow to a larger size. Size limits may also result in forgone yield due to the mortality associated with releasing undersize fish, but again this loss of numbers of fish may be offset by the increased weight of those that do survive release.

40. Given that no analysis has been undertaken on optimal size limits, or their effects on red gurnard stocks, a valid option is to maintain the status quo until better information is available. In addition, there may be alternative management measures, such as suggested in submissions, to develop a code of practice with the objective of increasing yield per recruit. It should be noted that the recreational sector is very diverse and experience to date with codes of practice has produced varied results.

41. A MLS for red gurnard that protects the juvenile component of stocks will have positive effects on local populations. However, the precise benefits that may be gained will depend on the level of mortality associated with releasing undersize fish.

42. MFish sought recreational fishers views on regulatory issues of importance to improve perceptions of credible fisheries management. An important consideration in evaluating the benefit of a MLS for red gurnard is MFish's commitment in the Statement of Intent to credible fisheries management.

43. The desired management outcomes of recreational fishers are not just sustainability, but an improved quality of a fishery. The clear majority of submissions demonstrate a wish to participate in the management of recreational fisheries, leading by example by supporting measures they believe will benefit those fisheries. In this particular case, a clear majority of fishers support introducing a MLS for red gurnard as they perceive they are enhancing their fishery. MFish therefore recommends that a MLS of 25cm for red gurnard be implemented.

Trumpeter

Background

44. Recreational fishers in the South Island raised concerns about the trumpeter fishery based on their observations of the number of 10 – 15 cm fish that were

being landed. They considered that if left unchecked this could pose problems for the fishery.

45. As with red gurnard, there is currently no recreational MLS in place for trumpeter. Furthermore, smaller fish occur in inshore waters where they are targeted by recreational fishers, potentially reducing the yield per recruit. These problems have prompted a request for management action to improve the status of the fishery.

46. No estimates of current and reference biomass are available for trumpeter. The 2006 Report from the Fisheries Assessment Plenary states that it is not known if recent catch levels are sustainable or at levels that will allow the stock to move towards a size that will support the maximum sustainable yield. However, there is anecdotal information from Australia and New Zealand that localised populations of trumpeter can be quickly fished out.

47. Trumpeter was introduced into the QMS in 1998 and the combined recreational allowance for all stocks is 39 tonnes. The combined TACCs (all stocks) is currently 144 tonnes but catches have not been this high since introduction into the QMS. In fact, in 2000–01 and 2001–02, commercial catches were as low as 25 tonnes. Trumpeter is largely a bycatch fishery.

Assessment of Management Options

48. Twenty submissions were received on the proposal to set a recreational MLS of 45 cm for trumpeter in the Fisheries (Amateur Fishing) Regulations 1986, or to retain the *status quo* for the species.

49. Of the twenty submissions received, seven supported setting a 45 cm MLS, nine supported setting a MLS less than 45 cm (seven recommended 35 cm) and four did not support setting a MLS for trumpeter.

50. All of the reasons for and against setting a MLS for red gurnard are repeated in submissions on trumpeter. These are discussed under the red gurnard heading and don't require repeating (refer paragraphs 29 and 30). Points from submissions particular to trumpeter are:

    - Trumpeter is not as widely distributed as red gurnard, so a regional rather than a national MLS was suggested.

    - As there is little known about trumpeter, this lack of information has been put forward as a reason not to take management action.

    - Juvenile trumpeter inhabit inshore reefs while adult trumpeter (45 cm +) tend to inhabit deep water offshore reefs. A MLS of 45 cm would, therefore, effectively exclude most recreational fishers from the trumpeter fishery. Consequently, nine submitters have requested a smaller compromise MLS be set for trumpeter.

51. Trumpeter occurs all around New Zealand but mainly from the Bay of Plenty southwards. Therefore, the problems that arise from juvenile trumpeter habitat preference being inshore reefs will apply to the majority of the New Zealand

coastline. As trumpeter is more common in the south, the problem is more pronounced there, but will not be exclusive to this area. For this reason MFish considers that a regional approach would not fully address the issue.

52. Trumpeter is wide spread throughout the southern hemisphere and in Tasmania the species is a highly regarded and well researched recreational fish. Tasmania has set a MLS of 45 cm, but initially began with a MLS of 35 cm. Further, as trumpeter in New Zealand waters is known to move into deeper waters at about 40-50 cm length, this behavioural change may indicate onset of maturity in local stocks.

53. As a result, MFish consulted on a 45 cm MLS as appropriate for the species. However, trumpeter in Tasmania is thought to spawn at a different time of the year than in New Zealand indicating there may be other differences between these stocks. This highlights a need for New Zealand-specific research, especially in this instance, on size at maturity. The Inshore Fishery Assessment Working Group has agreed to a research programme to determine the basic biological information about a group of less important commercial stocks. Trumpeter would be appropriate for this programme.

54. In addition, no analysis has been undertaken on optimal size limits, or their effects on trumpeter stocks. MFish, therefore, considers that a valid option is to maintain the *status quo* until further information is available.

55. As stated previously, when setting a MLS for sustainability reasons, the size used generally corresponds with the size of age at maturity for the species concerned as this allows the fish to spawn at least once before entering the fishery. The best available information indicates that for trumpeter, this is likely to be around 45 cm.

56. The largest category of submitters was those requesting a MLS less than the 45 cm figure consulted on in the IPP. Of these seven identified 35 cm as a compromise length. These submitters considered that a MLS of 45 cm would effectively exclude them from access to the trumpeter fishery.

57. Few trumpeter have been measured in boat ramp surveys, particularly in the southern region where trumpeter fisheries are most significant. However, the limited information that is available suggests that a large proportion of fish taken recreationally are smaller than 45cm. Together with the fact that the recreational trumpeter fishery is mostly based inshore where juveniles predominate, there is likely to be a substantial loss of recreational catch and access to the fishery if you decide to set the MLS at 45 cm..

58. However, MFish noted in the IPP that setting a MLS may also assist in obtaining better value from a recreational fishery by enhancing the yield obtained from fish retained. Also, MFish noted in the IPP that as juveniles grow rapidly, a MLS smaller than 45 cm would still increase the proportion of larger juveniles available in shallow water.

59. As with red gurnard, there is no available analysis to model the effect of a recreational MLS on the trumpeter population. However, it is clear that the

recreational fishery contributes significantly to the total amount of trumpeter harvested. A management tool that protects a proportion of the population from this harvest is likely to result in future recruitment and yield benefits.

60. As mentioned, a MLS will only be effective if fish are likely to survive being returned to the sea. Unfortunately, the probability of survival of released trumpeter is not known. Given the biological characteristics of trumpeter, however, and concerns about the small size of trumpeter being landed, MFish considers that the benefits to be gained from a MLS will outweigh losses that may occur through release related mortality.

61. Given there is anecdotal evidence that localised populations of trumpeter can be fished out, and that fishers in some areas are concerned about the availability of trumpeter, a MLS for the species is likely to have considerable stock benefits.

62. By taking no management action at this time, there is a risk that problems with the availability of trumpeter will worsen. Within the context of significant submitter support MFish considers that a further option be put forward for your consideration, that is a recreational MLS of 35 cm be set. Such a measure would allay the concerns of recreational fishers about 10-15 cm fish being taken, maintain reasonable access for recreational inshore fishers to the trumpeter fishery and improve the yield per fish. This situation could be reviewed at a later date when the results of the biological characteristics of trumpeter became available. MFish therefore recommends that a MLS of 35cm for trumpeter be implemented.

Blue Cod

Background

Blue Cod (BCO 1, BCO 2, BCO 8, BCO 10)

63. The national MLS for blue cod is currently 33cm, as prescribed in the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations).

64. In 1993 the national MLS for blue cod was increased from 30 to 33 cm. This adjustment was based on data obtained from the South Island blue cod fisheries. The NZRFC has reported that the MLS of 33 cm is actually too high in the north, and that recreational fishers would like to see the limit revert to 30cm.

Assessment of Management Options

65. Twenty submissions were received regarding the proposals to either amend relevant regional amateur fishing regulations to decrease the blue cod recreational MLS from 33cm to 30cm in the North Island; or retain the status quo in this area.

66. Of these submissions 12 supported lowering the MLS for blue cod in the North Island, and eight did not support lowering the MLS.

67. An examination of submissions shows that of the eight that do not support lowering the MLS, seven are from the lower North Island or top of the South Island, the remaining submission being from SeaFIC. Those that do support lowering the MLS are from the upper North Island. Fishers in the lower North Island are adamant that there is ample blue cod available to recreational fishers

and they are able to access fish in excess of the current 33 cm MLS. These submitters cite the greater period available for breeding as the main reason to maintain the larger MLS. Some submitters also considered that there was a risk, that in popular areas, the size of fish would decrease with any lowering of the MLS and that the quality of the fishery would decrease correspondingly.

68. Submitters in support of lowering the MLS note that blue cod tend to swallow the hook and are often damaged with a consequential high post release mortality. These submitters contend that a lower MLS would reduce the incidence of post release mortality in recreationally caught blue cod.

69. Regional differences in the size of blue cod available for harvesting are not known with any certainty. However, MFish notes in the IPP that there is a known gradient of age at maturity for blue cod by latitude, blue cod mature earlier in the north than the south. Northland blue cod mature at 10–19 cm total length (TL) at an age of two years, whilst in the Marlborough Sounds maturity is reached at 21–26 cm (TL) at three to six years. In Southland, fish become sexually mature between 26–28 cm (TL) at an age of four to five years. Abundance of the fish, as indicated by landings, also suggest blue cod are more prolific in the south.

70. As mentioned, from 1986 until 1993, northern blue cod had a MLS of 30 cm. This was increased in 1993 to 33 cm, however, this adjustment to the MLS was based on South Island data.

71. The clear majority of submitters from the lower North Island do not want a smaller MLS for blue cod, while the clear majority of submitters from the upper North Island support a lower MLS.

72. Within this context, MFish considers that an alternative management option would be to retain the current MLS of 33 cm in BCO 2, BCO 8 and BCO 10, and, to reduce the MLS from 33 cm to 30 cm in BCO 1. MFish believes that the probable absence of recreational fishing for blue cod from BCO 10 means that an adjustment for this quota management area would not be necessary. This is MFish's preferred option.

73. SeaFIC contends that amendments must be able to be assessed in terms of their impacts on sustainability. SeaFIC submits that for blue cod there is no information about what is being caught by the recreational sector, the reasons for there being no large fish off the North Island, or the size distribution of fish off the North Island. In SeaFIC's view this lack of information should preclude any change to the MLS at this stage.

74. MFish notes that an MLS set for sustainability purposes needs to be set above the size at maturity for the species. Size at maturity of Northland blue cod is known to be 10-19 cm (TL). A MLS of 30 cm would be biologically appropriate from a sustainability perspective.

75. Recreational blue cod fishers from northern New Zealand clearly feel that the quality of the blue cod recreational fishery would be enhanced by setting a MLS at 30 cm.

Statutory Considerations

76. MFish is satisfied that these proposals are consistent with the relevant statutory obligations under the Fisheries Act 1996 (the Act). MFish considers that all of the proposals will further the purpose of the Act, in providing for utilisation while ensuring sustainability (section 8). The environmental and information principles set out in sections 9 and 10 of the Act have also been taken in account in developing the proposals and, other than those specific concerns discussed in this paper, MFish is unaware of any concerns here relating to those principles. Similarly, MFish believes the proposals raise no concerns in relation to New Zealand's international obligations and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (section 5).

PAUA (PAU) 6 FISHERY – REVIEW OF THE EIGHTH SCHEDULE MINIMUM ANNUAL HOLDINGS OF ANNUAL CATCH ENTITLEMENT

Executive Summary

1. The Ministry of Fisheries (MFish) recommends amending the Eighth Schedule of the Fisheries Act 1996 (the Act) to reduce the minimum holding of annual catch entitlement (ACE) for the PAU 6 fishery.[2]

2. PAU 6 is a small fishery: the total allowable commercial catch (TACC) for PAU 6 is just 1 tonne. When applied to a small fishery, existing minimum ACE holding rules and quota aggregation limits for paua severely reduce the options available to quota share owners to use the ACE generated from their quota shares.

3. The Crown plans to tender its 90 000 000 quota shares in the PAU 6 fishery in 2007. A quota aggregation limit restricts anyone from owning more than 20 000 000 quota shares (or 20 per cent of the TACC) in any paua fishery.[3] Consequently, there will be multiple quota share owners in PAU 6. A minimum ACE holding requirement prevents fishers from harvesting any paua fishery unless they hold at least 1 tonne of ACE in the fishery. For PAU 6, the minimum ACE holding is the same as the current TACC. As a result, the only way to utilise the commercial PAU 6 fishery is for all quota share owners to sell all their ACE to the same fisher.

4. The Initial Position Paper (IPP) presented three management options to provide future quota share owners in PAU 6 with greater flexibility in using their ACE. Option 1 retains the minimum ACE holding at 1 tonne (*status quo*). Option 2 reduces the minimum ACE holding to 200 kilograms, and Option 3 reduces the minimum ACE holding to 100 kilograms. Reducing the minimum ACE holding for PAU 6 would improve the ability of quota share owners to use their ACE by reducing the proportion of quota share owners having to cooperate in order to utilise the fishery. Improving the ability of quota share owners to manage the use of their ACE is consistent with the purpose of the Act, which "is to provide for the utilisation of fisheries resources while ensuring sustainability".[4]

5. MFish received three submissions in response to the IPP. One submission supports reducing the minimum ACE holding to 100 kgs (Option 3) whilst two submissions contend that the aggregation limit is the greatest impediment to utilisation of the PAU 6 fishery (rather than minimum ACE holding requirements) and should be amended.

6. MFish did not consult on a proposal to amend the aggregation limit because a mechanism already exists to seek exemption to aggregation limits, and increasing

[2] The PAU 6 fishery extends from Kahurangi Point to Awarua Point on the west coast of the South Island.
[3] However, under s 60 of the Act, a person may apply to the Minister of Fisheries for consent to own quota shares in excess of quota aggregation limits.
[4] Section 8(1).

the aggregation limit would not necessarily provide quota share owners with more options to utilise the fishery.

7. MFish considers amending the minimum ACE holding requirement better provides for utilisation of the PAU 6 fishery without undermining the intent of the management framework. Minimum ACE holdings exist primarily to limit the number of small fishers in a fishery, who may otherwise create high administration and compliance costs relative to the size of their ACE holding.

8. Reducing the minimum ACE holding for PAU 6 to 200 or 100 kilograms would not significantly increase the number of fishers operating in the fishery because the fishery is very small. Consequently, MFish's preferred option is Option 3 (reducing the minimum ACE holding to 100 kilograms), as it provides the most flexibility to quota share owners wishing to utilise their ACE.

Summary of Options

9. Existing rules applying to PAU 6, combined with the small TACC, will impede the ability of PAU 6 quota share owners' to utilise the ACE generated from PAU 6 quota shares. MFish recommends that you:

EITHER

Option 1:

a) Retain the minimum ACE holding at 1 tonne (*status quo*);

OR

Option 2:

b) Reduce the minimum ACE holding to 200 kilograms;

OR

Option 3:

c) Reduce the minimum ACE holding to 100 kilograms;
d) Option 3 is MFish preferred option;
e) Note that should you agree to reduce the minimum ACE holding for the PAU 6 fishery, MFish would then follow the procedure set out in s 74(7) of the Act which requires an amendment to Schedule 8 by Order in Council.

Submissions Received

60 MFish received submissions on the PAU 6 IPP management options from:

(a) New Zealand Rock Lobster Industry Council (NZRLIC)

(b) New Zealand Seafood Industry Council (SeaFIC)

(c) Te Ohu Kai Moana Trustee Ltd (TOKM).

Rationale for Management Intervention

10. Section 8(1) states the purpose of the Act "is to provide for the utilisation of fisheries resources while ensuring sustainability". PAU 6 is a small fishery (the TACC is 1 tonne). Options for utilising ACE generated from PAU 6 shares are limited by the combination of the aggregation limit, and minimum ACE holding.

11. Section 59(1)(c) of the Act provides for a paua quota aggregation limit. It restricts anyone from owning more than 20 000 000 quota shares (20 per cent of the TACC) for paua in any one quota management area, unless they have been granted consent by the Minister of Fisheries under s 60 of the Act, to own quota shares in excess of the quota aggregation limit. The PAU 6 fishery is also listed in the Eighth Schedule of the Act, which prescribes a minimum ACE holding of 1 tonne. Section 74 of the Act states that "no commercial fisher may take any stock listed in the Eighth Schedule unless the fisher holds, at the time of the taking, the minimum amount of annual catch entitlement" that is specified for that stock.

12. Unlike most other fisheries where aggregation limits and minimum ACE holdings apply, the PAU 6 fishery is very small - the current TACC is 1 tonne. When applied to the 1 tonne PAU 6 TACC, the quota aggregation limit and minimum ACE holding act to severely limit the options available to quota share owners to utilise the ACE generated from their quota shares. This is because:

    - the maximum quota shares any single person can own is 20 000 000
    - 20 000 000 quota shares generates 200 kilograms of ACE under the current TACC
    - the minimum amount of ACE a fisher must hold at the time of fishing in PAU 6 is 1 tonne.

13. Therefore, the only way PAU 6 quota share owners could fish PAU 6 ACE is if all quota share owners (including existing share owner, TOKM) sell their ACE to the same fisher, thus enabling that fisher to achieve the 1 tonne minimum ACE holding. If quota share owners fail to sell their ACE to the same fisher, the PAU 6 commercial fishery cannot be harvested, and quota share owners cannot realise any value from their quota shares.

14. The IPP presented three options in considering how to provide more flexibility for PAU 6 quota share owners to utilise the ACE generated from their quota shares. Option 1 retains the minimum ACE holding at 1 tonne (*status quo*). Options 2 and 3 reduce the minimum ACE holding – Option 2 to 200 kilograms and Option 3 to 100 kilograms.

15. Option 1 (*status quo*) would retain the existing management framework, acknowledging that this limits how quota share owners could utilise the ACE

generated from quota shares. Option 1 would encourage prospective quota share owners to work together to utilise and "prove up" the fishery, or alternatively to seek exemption from the quota aggregation limits.

16. Options 2 and 3 (reduce the minimum ACE holding for PAU 6) would provide quota share owners with more options to utilise the ACE generated from their quota shares, and hence more ability to manage the use of their ACE with some degree of flexibility.

17. Option 2 would reduce the PAU 6 minimum ACE holding to 200 kilograms. Option 2 improves the ability of PAU 6 quota share owners to manage the use of their ACE by reducing the proportion of quota share owners that would have to cooperate to utilise the fishery. Under the current TACC, those holding the maximum amount of quota shares allowable (20% of the TACC) could fish or sell their ACE without recourse to other quota share owners. However, those holding less than the maximum amount of quota shares allowable, would still need to come to an agreement with other quota share owners to sell their ACE to the same fisher.

18 Option 3 would reduce the PAU 6 minimum ACE holding to 100 kilograms. Of the three options presented, reducing the minimum ACE holding to 100 kilograms provides the greatest ability for PAU 6 quota share owners to manage the use of their ACE. Under the current TACC, those holding 10% or more of the TACC could fish or sell their ACE without recourse to other quota share owners.

19 None of the management options affect the sustainability of the PAU 6 fishery as no change to the TACC is proposed. All options also have negligible impact on non-commercial users of the PAU 6 fishery, as any increase in the number of fishers participating in the fishery would be small (less than 10 fishers).

Assessment of Management Options

20 MFish notes that one submission received in response to the IPP supports Option 1 (*status quo*), one submission supports Option 3 (reduce the minimum ACE holding to 100 kgs), whilst a third submission does not indicate a preferred option but rejects Options 2 and 3.

18. Two submissions contend that the small TACC and aggregation limit produce the greatest impediment on the ability of quota share owners to utilise and develop the PAU 6 fishery. The submitters would prefer that the aggregation limit for PAU 6 was increased or removed rather than the minimum ACE holding reduced.

19. Increasing the aggregation limit would not necessarily achieve greater flexibility in the fishery. Under the current TACC of 1 tonne, the same person would have to own all the quota shares in order to fish their ACE without recourse to other quota share owners. Even if the aggregation limit were to be removed, a quota tender process may result in multiple quota owners in PAU 6.

20. Additionally, MFish notes that the Act provides a mechanism to request exemption to an aggregation limit - under section 60, a person may apply to the

Minister of Fisheries for consent to own quota shares in excess of quota aggregation limits. The intent of aggregation limits in paua fisheries is to prevent the unacceptable trade practices or lack of a competitive market that can arise from a concentration of rights and safeguard the continued involvement by small quota holders. MFish believes section 60 is the appropriate mechanism to consider proposals to exceed paua quota aggregation limits as it provides an opportunity to directly consider the impact of any proposed quota aggregation at the time of application.

21. No mechanism exists that allows fishers to apply to fish with less than the minimum ACE holding.[5] The intention of minimum ACE holdings is to limit the number of small fishers in a fishery, who may otherwise have caused high administration and compliance costs relative to the size of their ACE holding. Minimum ACE holdings were applied to paua fisheries because they are highly valued, single species fisheries that are highly vulnerable to theft, and therefore can result in high administrative and compliance costs. In fisheries with small TACCs, a reduction in the minimum ACE holding will not significantly increase the number of fishers operating, and therefore will not undermine the intent of the minimum ACE holding framework.

22. The submission supporting retention of the status quo (from NZRLIC) argues that whether to reduce the minimum ACE holding is for the relevant quota share owners to propose, not for MFish to prescribe. The purpose of the Act is to provide for utilisation whilst ensuring sustainability. MFish considers the existing framework would unnecessarily impede utilisation of PAU 6 by future quota shareowners.

23. The submission (from existing quota share owner, TOKM) supports a reduction in minimum ACE holdings for PAU 6, and suggests the minimum ACE holding should also be reduced for PAU 1 and PAU 10 because they also have very small TACCs. MFish considers that, because of initial allocations of quota (due to catch history) and the way these fisheries operate, the minimum ACE holdings do not significantly impact utilisation in PAU 1 and 10. However, MFish is willing to discuss minimum ACE holdings with quota share owners in these fisheries, if the quota share owners are concerned that their ability to utilise ACE generated from their quota shares is impeded.

24. Some submitters note that the PAU 6 fishery does not currently present an economically viable opportunity for utilisation. NZRLIC submits that the potential tendering of the Crown's quota shares in PAU 6 will provide opportunities for future quota share owners to 'prove up' the fishery with the aim of securing a larger TACC. TOKM notes that quota share owners may be prepared to contract research into PAU 6 stock abundance with the same goal in mind.

25. MFish agrees it is possible future PAU 6 quota share owners may be able to 'prove up' the fishery, and has proposed the reduction of the minimum ACE

[5] However, there are various provisions under s 74(2) of the Act that specify circumstances when people are not required to meet the minimum ACE holding, such as when their ACE holding is reduced as a result of a reduction to the TACC or as a result of a quota management area being altered.

holding to provide quota share owners with greater ability to utilise and develop the fishery.

Statutory Considerations

26. **Section 8:** None of the management options affect the sustainability of the PAU 6 fishery as no change to the TACC is being proposed. Utilisation of the fishery would be best provided for by Option 3 and the least provided for by Option 1, as the lower the minimum ACE holding, the greater the ability PAU 6 quota share owners would have to manage the use of their ACE.

27. **Section 9(a) and (b):** There is no bycatch of any associated or dependent species in this fishery as the method of harvesting is diving. Option 3 is likely to result the largest increase in the numbers of fishers participating within the fishery, but the benign harvesting method means this will not result in additional impact on the biological diversity of the aquatic environment.

28. **Section 9(c):** No habitats of particular significance for fisheries management have been identified within PAU 6. It is considered unlikely that an increase in the number of fishers under Option 2 and Option 3 would have demonstrable adverse effects on such habitats, due to the benign nature of the harvesting method.

29. **Section 5(a):** There is a wide range of international obligations relating to fishing (including sustainability and utilisation of fishstocks and maintaining biodiversity). MFish believes the provisions of general international instruments such as the United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Fish Stocks Agreement (UNFSA) have been implemented through the provisions of the Act and given effect to under all the management options. MFish is unaware of any specific international obligations that are applicable to PAU 6.

30. **Section 5(b):** MFish considers provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 are adequately addressed in the management options for this stock.

31. **Section 10:** MFish is confident this advice paper is based on the best available information.

32. **Section 11(2A)(b):** No approved Fisheries Plan exists for this fishery yet.

33. **Section 11(2A)(a) and (c):** No relevant conservation services or fisheries services exist in this fishery.

Other Management Issues

34. A number of commercial stakeholders have expressed a desire to amalgamate two quota management areas (PAU 7 and PAU 5A) with PAU 6. If a proposal of this sort arises in the future it would need the approval of the Minister, and, if such an amalgamation were to occur, an appropriate harvest level would need to be set to reflect the abundance of paua within the newly amalgamated area. None of the management options would affect consideration of these amalgamation proposals, should they ever occur.

35. NZRLIC believes there is an uneven playing field in the tender process for quota shares, as two entities have a blanket exemption from aggregation limits. NZRLIC submits that the tender process would be fairer if aggregation limits were removed from PAU 6.

36. MFish notes TOKM and the Chatham Islands Enterprise Trust are the two entities with general exemption from aggregation limits, under s 59(8) of the Act. The rationale behind the decision to grant TOKM a general exemption was because TOKM is a statutory body that is, in effect, a trustee of the quota it holds. Giving TOKM an exemption from aggregation limits was considered the most effective way to adhere to the intent of the Deed of Settlement. The Chatham Islands Enterprise Trust was given a general exemption from aggregation limits to ensure they did not breach the limits as a result of s 49(4) of the Act. Section 49(4) of the Act provides that the Crown will transfer any unallocated quota for a Chatham Islands quota management area to the Chatham Islands Enterprise Trust. This provision is based on a regional enhancement policy decision made by the government in 1996 to recognise the reliance the people of the Chatham Islands have on fishing.

Conclusion

37. Currently, options for utilisation of ACE generated from PAU 6 shares are limited - the only way PAU 6 quota share owners can utilise PAU 6 ACE is if they all sell their ACE to a single fisher, thus enabling that fisher to achieve the 1 tonne minimum ACE holding. If quota share owners fail to agree to sell their ACE to the same fisher, the PAU 6 commercial fishery cannot be harvested, and quota share owners cannot realise any value from their quota shares.

38. Retaining the status quo (Option 1) is the appropriate option if you consider administration and compliance costs would be too high if the minimum ACE holding was reduced, or if you would prefer to limit the utilisation of the PAU 6 commercial fishery to a single fisher.

39. MFish considers reducing the minimum ACE holding for PAU 6 to the levels suggested in Options 2 (200kgs) and 3 (100kgs) would have only a very small impact on administration and compliance costs because the fishery is small (1 tonne). Consequently, MFish's preferred option is Option 3 (reducing the minimum ACE holding to 100 kilograms), as it provides the most flexibility to quota share owners wishing to utilise their ACE.

40. None of the management options affect the sustainability of the PAU 6 fishery as no change to catch levels are proposed. The management options also have negligible impact on non-commercial users of the PAU 6 fishery, as any increase in the number of fishers participating in the fishery would be small.

APPLICATION FEES FOR FIVE YEAR PERMITS AND ALC – FINAL ADVICE PAPER

Executive Summary

1. In late August 2006, the Ministry of Fisheries ("MFish") consulted on a proposal to allow commercial fishers to lodge a fishing permit and Automatic Location Communicator ("ALC") application for a maximum period of five years. In order to meet the administrative costs associated with this change, MFish also proposed to amend the schedule of fees associated with these applications.

2. Commercial fishers are currently required to apply annually for a fishing permit and ALC (if required). The application fees for permits and ALCs are received by Commercial Fisheries Services Limited ("FishServe"), as they deliver these services under contract to MFish as a Service Delivery Agency (SDA). These fees are defined in Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001 (see Appendix 1).

3. The Fisheries Act 1996 allows for permits and vessel registrations (to which ALCs are associated) to be issued for a period of up to five years. MFish has, to date, required FishServe to issue permits and ALC registrations annually. Vessel registration, a devolved service managed by FishServe as the Approved Service Delivery Organisation (ASDO), is also limited to annual issue. FishServe requested a review of this approach to allow for applications to be made for permits, vessel registrations and ALCs for a period of up to five years. FishServe argue that this would provide flexibility, improve administrative efficiency and reduce costs for commercial fishers and FishServe.

4. The proposal in the Initial Position Paper ("IPP") to amend the fee structure for permits and ALC applications is supported by all submitters. The New Zealand Seafood Industry Council Limited (SeaFIC) also sought a provision to have a refund of fees in circumstances where commercial fishers cancel their permit registration prior to the expiry of the term of the permit. MFish notes that this concern is not relevant to the proposal as the fees paid are application fees only. The fee is payable so that an application can be considered irrespective of its outcome.

5. Applications to register foreign charter vessels ("FCV") will continue to be made for a period of one year only. This will enable the chief executive to assess the risk of such vessels as required by Section 103(6) of the Fisheries Act 1996 ("the Act").

Summary of Options

6. MFish recommends that you:

EITHER

Option 1:

a) Status quo - Retain the current annual application period and fee structure for fishing permit and ALC registrations;

OR

Option 2:

b) Amend sections 3 and 16 of Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001 to allow applications for up to five years for fishing permit and ALC registrations and review fee structures accordingly.

c) Option 2 is the Ministry's preferred option. Under Option 2, future amendments to the SDA and ASDO standards and specifications will be necessary to reflect the change in the contractual and devolved requirements of FishServe.

Submissions Received

- The New Zealand Seafood Industry Council (SeaFIC)
- Sanford Limited

Rationale for Management Options

7. MFish currently requires that permits and ALCs are applied for on an annual basis. The rationale for this is that, MFish can condition permits annually where necessary to minimise the risk to the sustainability of fisheries. There is currently a legislative framework in place that allows fishing permits, vessels and ALCs to be registered for up to five years. Vessels have a uniquely identifiable ALC on board hence these two registration processes are inextricably linked.

8. The risk to the sustainability of fisheries has been minimised as the majority of commercial fish stocks are now in the Quota Management System. There are a specific number of permits conditioned for Schedule 4C stocks[6] while all other species are open access. The chief executive also has the power under Section 92(2) of the Act to amend, add, or revoke any conditions of the permit where necessary.

9. The rationale for Option 2 is to provide commercial fishers with flexibility when making applications for commercial fishing permits, and vessel and ALC

[6] Schedule 4C of the Act lists non-QMS species that are not open access.

registrations. The option does not increase the risk to the current fisheries management framework.

10. This option does not extend to the management of FCVs as MFish believes that the nature and duration of the fishing activities and foreign charter arrangements pose unique risks to the fisheries management framework that differ in some respects to those of the domestic fleet. The chief executive wishes to maintain the ability to manage this risk by annually reviewing the entry of such vessels under charter arrangements.

11. Option 2 will result in substantial cost savings for commercial fishers that apply for a fishing permit or ALC registration for the maximum five year period. No greater cost is incurred for fishers who choose to retain the one-year application period.

12. Treasury guidelines stipulate that if you can clearly identify the recipients of a service then they must bear the cost of that service. In these instances the applicant, being the recipient of the service, is clearly identifiable and is already the subject of fees for this purpose.

Assessment of Management Options

Option 1: Status quo - Retain the current annual application period and fee structure

13. Commercial fishers have to apply annually for a commercial fishing permit and ALC registration (when required). The authorisations, once approved, are issued for a period of one year only. The advantage of the current schedule of application fees and registration processes is that commercial fishers are accustomed to the annual application process and the annual application fee charged. Fishers can continue to re-apply for their permit and ALC on an annual basis.

14. The disadvantages are that the status quo is not flexible, is costly, and is an administrative burden to commercial fishers who would prefer to be able to apply for a longer registration period.

15. The status quo also does not enable FishServe to operate as efficiently as possible due to the administrative requirement to process applications annually.

16. For these reasons, MFish believe that the status quo is not a desirable option.

Option 2: Amend sections 3 and 16 of Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001

17. The preferred option of MFish is to amend sections 3 and 16 of Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001 (see Appendix 2) to take into account the fees required when applications are made for permits and ALC registrations for periods greater than one year. This is an application fee only. The fee is payable so that an application can be considered irrespective of its outcome.

18. The current fee structure is listed in Appendix 1. MFish proposes that this is amended so that where a person's application for a permit is for a period greater

than one year a fee of $27 for each subsequent year will apply. Where a person's application for an ALC registration is for a period greater than one year a fee of $45 for each subsequent year will apply (see Appendix 2).

19. The option is a logical step that fits within the current legislative framework by giving commercial fishers flexibility to make applications for up to five years. This will also benefit commercial fishers by reducing costs and improving the efficiency of administrative processes.

20. Vessel registration is a devolved service: applications are received and approved by the ASDO as required by the standards and specifications. If this option is implemented, the standards and specifications will be amended to allow domestic vessel registrations to be issued for a period of up to five years. Because vessel registration is devolved, the ASDO sets all application fees and collect all revenue associated with the vessel registration process.

21. The Act imposes unique responsibilities on the chief executive with respect to the registration of FCVs. When deciding whether to register a FCV, s 103(6) of the Act requires the chief executive to consider:

    - The previous offending history of…the vessels, owner, operator, foreign charter party, notified user, master, or crew;
    - The nature of the charter or other agreement with the operator (if any);
    - Such other matters considered relevant.

22. Consideration of these matters is necessary because FCVs commonly operate on a seasonal basis and may have multiple crews within a fishing year. The proposal to retain the one-year application period for FCV registration will ensure that the chief executive is able to effectively manage these responsibilities and the unique risks posed by the nature of these vessels.

23. The proposed amendments do not affect the right of the chief executive to amend, add, or revoke any conditions of the permit as specified in Section 92(2) of the Act.

Statutory Considerations

24. The preferred option is currently possible under the Fisheries Act 1996. Section 91(1) of the Act states that a fishing permit can be issued for a period not exceeding 5 years. Section 103 (3)(a) allows for a fishing vessel (and an ALC) to be registered for a period not exceeding 5 years.

25. Standards and specifications for the delivery of contracted and devolved registry services are able to be amended under sections 294(4A) and 296O of the Fisheries Act 1996 respectively.

Appendix 1 – Current Regulation

Fisheries (Commercial Fishing) Regulations 2001

Schedule 2

3. Application fees for fishing permits—

The fees payable in respect of an application for a fishing permit are as follows:

Type of application	**$ (GST incl.)**
(a) for issue of a permit under section 91 of the Act	112.00
(b) for the approval of an agreement under section 89(4)(a) of the Act	36.00
(c) for the approval of an agreement under section 89(4)(b) of the Act	36.00
(c) for the approval of a variation of an agreement under section 89(6) of the Act	36.00
(d) for the issue of a permit under section 93A of the Act	112.00
(e) for the issue of a duplicate fishing permit	18.00

16. Automatic location communicators—

(2) The fee payable in respect of an application for the registration of an automatic location communicator.	180.00

Appendix 2 – Proposed Amended Regulation

Fisheries (Commercial Fishing) Regulations 2001

Schedule 2

3. Application fees for fishing permits—

The fees payable in respect of an application for a fishing permit for a one year term are as follows:

Type of application	**$ (GST incl.)**
(a) for issue of a permit under section 91 of the Act (one year term)	112.00
(b) for the approval of an agreement under section 89(4)(a) of the Act	36.00
(c) for the approval of an agreement under section 89(4)(b) of the Act	36.00
(c) for the approval of a variation of an agreement under section 89(6) of the Act	36.00
(d) for the issue of a permit under section 93A of the Act	112.00
(e) for the issue of a duplicate fishing permit	18.00

Where an application is for a period greater than one year the fee payable in respect of such an application will be as prescribed in 3(a) plus and extra fee of $27.00 for each subsequent year applied for

16. Automatic location communicators—

(2) The fee payable in respect of an application for the registration of an automatic location communicator.	180.00

Where an application is for a period greater than one year the fee payable in respect of such an application will be as prescribed in 16 (2) plus and extra fee of $45.00 for each subsequent year applied for

AMENDMENT OF REGULATION 19A OF THE FISHERIES (AMATEUR FISHING) REGULATIONS 1986 – FINAL ADVICE

Executive Summary

1. In December 2005, the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) were amended, allowing divers to take up to two extra bag limits of scallops or dredge oysters when safety people are on board their vessel (r19A).

2. Under the normal provisions for collecting scallops or dredge oysters (i.e. r19), taking one shellfish over the daily entitlement is normally considered to be a minor breach of the regulations. However, the way that r19A was constructed has had an unforeseen consequence, where even slightly exceeding the daily bag limit is classified as a serious non-commercial offence.

3. In the Initial Position Paper (IPP), the Ministry of Fisheries (MFish) proposed that the Regulations be amended so that the same standard of offences under the normal r19 applies to r19A. Fourteen submissions were received in response to the IPP and all supported the proposed amendment to ensure that minor breaches of regulation 19A are not turned into serious offences by default.

4. MFish recommends that you agree to amend the Regulations as proposed in Option 1.

Summary of Options

5. MFish recommends that you:

    a. Amend the Regulations to ensure that when a diver takes less than three times their individual entitlement under r19A, it is not considered to be a serious non-commercial offence in law;

    b. Note the status quo is not considered to be a valid management option as it serves to continue a situation where minor breaches of r19A are serious non-commercial offences by default.

Submissions Received

6. MFish received fourteen submissions on the r19A IPP from:

- Akaroa Harbour Recreational Fishing Club
- B. A. Jamieson
- Hilton Leith
- John Robertson
- Keith Ingram
- Marlborough Combined Divers Association

- Ngati Whatua Fisheries Limited
- North Island-South East Regional Recreational Forum
- North Island-South West Regional Recreational Forum
- Option4 & the New Zealand Big Game Fishing Council
- Raglan Sport Fishing Club
- Tasman and Sounds Fishers Association
- Te Runanga O Ngati Whatua
- The Seafood Industry Council (SeaFIC)

Rationale for Management Intervention

7. In 2005, the Regulations were amended to allow divers, when diving from a vessel, to collect an additional daily bag limit of scallops or dredge oysters for each safety person onboard that vessel, to a maximum of two safety persons (regulation 19A). Regulation 19A has now been in effect for a full fishing season and several incidents have occurred which have highlighted an unforeseen compliance consequence of the regulation.

8. The strict interpretation of r19A is that a diver may only take an extra daily limit of scallops or dredge oysters if that person meets all the requirements of the regulation. These requirements are:

    a. The diver must be diving from a fishing vessel; *and*

    b. The relevant safety people must be on board the vessel at all times when the diver is fishing; *and*

    c. **No more than 1 or 2 times the bag limit** (depending on the number of safety people on board the vessel) can be taken in total.

9. Where a diver does not comply with these requirements, the default daily limit applies (r19) and this default limit is the limit that any breach of the regulations is related to.

10. For example, if two safety people are on board a vessel, a diver may take a total of 60 scallops, or three bag limits[7]. If the diver accidentally surfaces with 61 scallops (one scallop in excess) the diver has not met all the conditions of r19A(3) and the default limit of 20 scallops applies, with no entitlements for safety people. This means that the diver can be charged with having in excess of three times the bag limit under r19(3), a serious non-commercial offence that is liable on summary conviction to a fine not exceeding $20,000 pursuant to r29(2).

11. Under normal circumstances (i.e. r19), taking one shellfish over the daily entitlement is a minor offence (r19(2)). This offence is liable on summary conviction to a fine not exceeding $10,000 pursuant to r29(1), although generally only an infringement notice will be issued.

[7] This example relates to the scallop national daily bag limit of 20 that is specified in the Fisheries (Amateur Fishing) Regulations 1986. It is important to note that regional regulations may specify alternative scallop bag limits for certain areas.

Assessment of Management Options

12. The consequence of the current r19A is that it turns what could previously be considered a minor breach of the regulations into a serious non-commercial offence. This is not the intent of the regulation and the same standard for offences should apply to both r19 and r19A.

13. Given r19A at present effectively classifies minor breaches as serious offences, the regulation is also relatively costly to enforce and administer. Amending the regulations will reduce these costs, and allow breaches of r19A to be dealt with more cost effectively and in accord with their original intent.

14. The recreational sector has generally welcomed the change in regulation to allow divers to collect extra daily bag limits when safety people are on board their vessels. MFish considers the application of a separate standard of offence for r19A diminishes the benefits of this change to recreational fishers, and that possible breaches on r19A can be effectively managed by the standard policy offence framework under the Regulations. MFish recommends that you agree to amend the Regulations as proposed to ensure that the same standard of offences applies to r19A as it does to r19.

15. MFish also considers it appropriate that the standard offences should only apply to that part of the take not intended for safety persons, i.e. to the primary taker's daily entitlement only. This would ensure that minor offences would relate to taking or possessing up to three times the primary taker's bag limit (e.g. 21-59 scallops or dredge oysters in excess) rather than up to three times the primary taker's *and additional* bag limits (e.g. 61- 179 scallops and dredge oysters in excess).

16. MFish notes that fourteen submissions were received in response to the IPP and all supported the proposed amendment to ensure that minor breaches of regulation 19A are not turned into serious offences by default. No information in addition to that provided in the IPP was submitted for discussion.

17. If you agree that an amendment is necessary, the Parliamentary Counsel Office will be requested to draft an appropriate amendment to r19A. The types of amendments that could be considered to better reflect the intent include:

    a. Redrafting the entire r19A;
    b. Creating a new offence provision specific to r19A; or
    c. Providing additional sections within r19A to clarify the intent of the regulation.

Statutory Considerations

18. MFish considers that the proposal will further the purpose of the Fisheries Act 1996, in providing for utilisation while ensuring sustainability (section 8). The environmental and information principles set out in sections 9 and 10 of the Act have also been taken in account in developing the proposal and MFish is unaware of any concerns here relating to those principles. Similarly, MFish believes the

proposal raises no concerns in relation to New Zealand's international obligations and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (section 5).

SCALLOPS – PROPOSAL TO AMEND THE SCALLOP FISHING SEASON FOR AMATEUR FISHERS

Executive Summary

1. As part of the recreational regulation review process, the New Zealand Recreational Fishing Council (NZRFC) requested the Ministry of Fisheries (MFish) to consider shifting the amateur scallop closed season from 15 February - 14 July (inclusive) to 1 April – 31 August (inclusive). MFish included a proposal to change the amateur scallop season nationwide in the Initial Position Paper (IPP) that was released for consultation with stakeholders in July.

2. The proposed change was supported by most of the non-commercial submissions from the north-east coast – east Northland, the Hauraki Gulf, Coromandel, and the Bay of Plenty. The proposal was opposed by the Coromandel commercial scallop fishers mainly due to concerns that the proposal may have on the sustainability of the scallop fishery. However, MFish considers that the season change will not present a significant sustainability risk to the fishery because the existing 100mm minimum legal size limit allows scallops to spawn at least once before reaching the legal size limit. In addition, these fisheries are currently in a generally healthy state and are being managed on a conservative basis by both commercial and non-commercial stakeholder groups. Accordingly, MFish recommends that the amateur scallop season be shifted as proposed for the north-east coast.

3. For the north-west coast (Kaipara and Manukau Harbours, and the other smaller west coast harbours north of Kawhia), MFish considers there could be merit in shortening the open season. However, because this option could potentially be contentious and because there were few submissions from stakeholders from this area, MFish recommends retaining the status quo for this fishery in the short term. MFish will undertake further consultation on refining the recreational scallop season for the north-west coast. This would also then allow consultation on the possibility of prohibiting dredging from early January each year to reduce the impact on juvenile scallops settling in January-February.

4. Virtually all of the submissions from the Nelson-Marlborough area were opposed to the proposed change, and requested that the status quo should remain for the amateur scallop season for three main reasons. First, most stakeholders considered that scallops were in reasonably good condition early in the season in July and August. Second, the local commercial scallop fishery generally does not start fishing until September for various reasons. Recreational fishers want to maintain the current season opening date in order to gain access to the scallop fishery before the commercial fishers. Third, spat settlement occurs mainly in the late January to April period, and a prolonged open season with increased scallop dredging would be detrimental to the juvenile scallops. Largely on the basis of rationale provided in the submissions received, MFish recommends that the amateur scallop season should remain unchanged for the Nelson-Marlborough area.

5. The amateur scallop season for the Southland Fishery Management Area (FMA) was adjusted in 1994, as scallops in the area spawn in July and August. In the IPP, no changes were proposed to any scallop seasons in regions that were different to the national scallop season. Accordingly, the amateur scallop closed season for the Southland FMA (primarily the small scallop fisheries at Paterson Inlet (Stewart Island) and Fiordland) will remain unchanged from 16 March – 30 September.

6. There are also a few other small discrete (eg. Wellington Harbour) amateur scallop fisheries sprinkled around parts of the coastline. For administrative reasons due to the structure of the amateur fishing regulations and for consistency with the large Nelson-Marlborough fishery, MFish recommends that the amateur scallop closed season should remain unchanged from 15 February to 14 July in all the remaining areas around NZ.

Summary of Options

Initial Proposals

7. It was proposed in the IPP to either:

    a. Amend regulation 24 of the Fisheries (Amateur Fishing) Regulations 1986 to shift the closed season for the amateur scallop fishery from 15 February - 14 July (inclusive) to 1 April – 31 August (inclusive); or

    b. Maintain the existing closed season for amateur scallop fisheries (15 February - 14 July (inclusive)).

Final Recommendations

Southland Fishery Management Area

8. MFish recommends that you:

    a. note that the closed season for the Southland Fishery Management Area will remain unchanged from 16 March – 30 September (inclusive) for the amateur scallop fishery;

North-east coast (North Cape – Cape Runaway)

9. MFish recommends that you:

EITHER

Option 1:

    a. agree to shift the closed scallop season for the north-east coast (North Cape – Cape Runaway) amateur fishery to 1 April – 31 August (inclusive);

    b. Option 1 is MFish preferred option

OR

Option 2:

c. **agree** to retain the existing closed scallop season for the north-east coast (North Cape – Cape Runaway) amateur fishery from 15 February - 14 July (inclusive);

North-west coast (North Cape – Tirua Point)

10. MFish recommends that you

EITHER

Option 1:

a. agree to retain the existing closed scallop season for the north-west coast (North Cape – Tirua Point) amateur fishery from 15 February - 14 July (inclusive); and

b. note MFish will consult further on the merit of refining the scallop closed season for the north-west coast;

c. Option 1 is MFish preferred option;

OR

Option 2:

d. agree to shift the existing closed scallop season for the north-west coast (North Cape – Tirua Point) amateur fishery to 1 April – 31 August (inclusive);

All remaining areas of NZ

11. MFish recommends that you

EITHER

Option 1:

a. agree to retain the existing closed scallop season for all remaining areas of NZ for the amateur fishery from 15 February - 14 July (inclusive);

b. Option 1 is MFish preferred option;

OR

Option 2:

c. agree to shift the existing closed scallop season for all remaining areas of NZ for the amateur fishery to 1 April – 31 August (inclusive).

Submissions Received

12. MFish received 34 submissions on the scallop season proposal from:

- Stu Marsh
- Bob Rosemergy (Freediving NZ (Chairman))
- Grant Shaw
- KB Turner
- Dennis Petty (ProDive NZ)
- Bryn Jamieson
- Hilton Leith
- John Robertson
- Piako UnderWater Club
- Kaikoura Boating Club
- Hartley family
- Murray Little
- WJ Waugh (Tarakohe Sea Anglers)
- Coromandel commercial scallop fishers
- Kevyn and Corinne Moore
- Trevor Collings
- Mark Iggo
- Peter Saul
- John Duncan
- Challenger Scallop & Dredge Oyster Recreational Advisory Group
- Tasman & Sounds Fishers Association
- Pohara Boat Club
- Te Runanga o Ngati Whatua
- Ngati Whatua Fisheries Ltd
- Seafood Industry Council
- Whangamata Seafoods Ltd
- Collingwood Boat Club
- NZ Big Game Fishing Council and option4
- North Island South-West Recreational Fishing Forum
- North Island South-East Recreational Fishing Forum

- Raglan Sport Fishing Club
- Keith Ingram
- John Forest / Wanderers Surfcasting and Angling Club
- Top of the South Recreational Fishing Forum
- Bridget and Tony Orman

Rationale for Management Options

13. The closed season for recreational scallop fishers is set by regulation from 15 February to 14 July each year[8]. This general closure is provided for in regulation 24 of the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) and means that scallops can only be taken recreational fishers during the open season between 15 July and 14 February (both days inclusive).

14. The NZRFC advised MFish that scallops at the start of the open season are, on average, small and in very poor condition in some areas. Further, the NZRFC advised MFish that scallops tend to be in good condition as late as Easter each year, which the NZRFC considered is likely to be due to a significant scallop spawning event that generally occurs in autumn.

15. In order to leave the early season scallops to improve condition and potentially spawn again prior to being harvested, as well as take advantage of those scallops in good condition in late February and March, the NZRFC requested that MFish consult with stakeholders on an option to change the recreational scallop open season from 15 July – 14 February to 1 September – 31 March. This change would mark a seven week shift in the season, but would not change the actual number of days that the recreational season is open for.

16. The alternative management option was to maintain the status quo and not change the regulation. MFish recognised that as the recreational scallop season has been in place for over 30 years, there is an "opening season" tradition in many areas. In addition, there may be some areas where particular regional fishery characteristics would not suit a shift in the current season.

Assessment of Management Options

Key issues

17. The key issues to be considered for the amateur scallop season are:

    a. whether or not the proposed change to the scallop season should be applied to any or all regions around NZ;

    b. whether or not the proposed change would create a sustainability risk to the scallop fishery.

Regional variation for the scallop season

North-east coast scallop fishery (east Northland, Hauraki Gulf,

[8] Except for the Southland Fishery Management Area where the amateur scallop fishery is closed from 16 March to 30 September.

Coromandel, Bay of Plenty)

18. The rationale for the proposed change to the season length was largely based on observations reported to the NZRFC and MFish of scallop condition by non-commercial scallop fishers fishing on the north-east coast (east Northland, the Hauraki Gulf, and Bay of Plenty). These fishers commented that scallops are generally in poor condition with small gonads (also known as roes) in July and August, and were often in good condition in mid February when the scallop fishery is closed.

19. These anecdotal observations for the north-east coast are also generally supported by quantitative scientific information on scallop condition by recent research conducted in the western Hauraki Gulf. This research showed that scallop gonad condition varied between sites within the western Gulf, but that some generalisations could be made. Scallop gonads were generally in peak condition in November-December, were reasonably good from October to March, and were generally in poor condition from May to August.

20. The majority of submissions from non-commercial fishers based on the north-east coast favoured the proposed change to the later season for scallop fishing (1 September – 31 March). NZ Big Game Fishing Council (NZBGFC) / option4 favoured delaying the season change to 2008 to allow for more consultation with fishers. SeaFIC was supportive of aspects of the proposed change, but raised a number of concerns and considered there was insufficient information available at this time to support the change. The submissions from the Coromandel commercial scallop fishers and Whangamata Seafoods were opposed to the proposed change.

<u>Impact on sustainability</u>

21. The main concern raised by the commercial sector was that there was insufficient information to adequately assess how the proposed change would impact on the sustainability of the scallop fishery. MFish recognises the general difficulties that exist for obtaining better information on recreational fishing. However, MFish considers that the proposed season shift for the north-east coast scallop fisheries is likely to have only a minor impact on the sustainability of these fisheries for a number of reasons. Firstly, both the Northland and Coromandel scallop fisheries have dramatically improved in abundance from 2000 and are now in a much more healthy state. Scientific surveys (Attachment 1) show that scallop abundance in both areas over the last two years is considerably more than at any other period going back to 1990 when the surveys began.

22. Secondly, in both fisheries, both the commercial and non-commercial sectors have taken a conservative approach to the in-season TAC increase process. Specifically, the amount of the TAC increase has been considerably less that the Current Annual Yield (CAY) estimated for the fishery in recent years. In a Maximum Sustainable Yield (MSY) context, the management approach has been akin to managing both fisheries at a biomass level well above the level that can produce the MSY. Much of the rationale for this management approach is that stakeholders want to build a greater level of scallop biomass to form a "buffer" as a way of reducing the high natural variability of scallop populations.

23. Thirdly, MFish notes that the current baseline recreational allowance in both the Northland and Coromandel fisheries is 7.5 tonnes. Both allowances were at levels that would allow for an increase in the recreational catch as the stock biomass improved. Furthermore, increases in the non-commercial catch during periods of high scallop abundance (such as the current situation) can be allowed for under the current management approach by increasing the non-commercial allowances in-season on a proportional basis relative to the level of the ACE increase. For Coromandel, you agreed with MFish's recommendation for an in-season increase to the recreational allowance to 15 tonnes. For Northland, MFish has recommended increasing the recreational allowance for the current season to 13 tonnes. At the end of the scallop "fishing year", both allowances will revert back to 7.5 tonnes.

24. Finally, it is possible that in the future, both scallop populations will decline below the current high level due to natural environmental factors and the inherent high variability of scallop populations. However, MFish considers that the season shift will not have a significant impact on the overall sustainability of the scallop populations. This is because MFish considers that the 100mm minimum legal size limit[9] for amateur fishers for the north-east coast provides the critical sustainability measure for scallops. Some scallops reach sexual maturity at 40mm, but most individuals are sexually mature at about 60 mm. The size limit therefore ensures that most scallops have at least one spawning season before reaching the size limit.

Other commercial sector concerns

25. Other concerns raised by the industry were that the proposed season change should have been considered as part of the Coromandel scallops Fisheries Plan, the proposal should have been put through the Stock Assessment Working Group process, and that the season should also be changed for the commercial sector.

26. MFish does not agree that the proposed season change had to be included in the Coromandel Fisheries Plan because the proposal was to make a nationwide change to the amateur scallop season. In addition, the Coromandel scallops Fisheries Plan is still in a draft stage and has not yet been released for statutory consultation with stakeholders as required by section 12 of the Fisheries Act. Therefore, the Plan has not been reviewed or approved by you under section 11(2A) of the Act.

27. MFish also considers that the industry's proposal is inappropriate because it is essentially suggesting that fisheries management in a particular fishery should be put on hold while a Fisheries Plan is developed. An extension of this argument is that the annual in-season TAC increase process should also be delayed for the Coromandel scallop fishery while the Fisheries Plan is developed; it is unlikely this sort of proposal would be acceptable to the commercial scallop fishers.

28. The Fisheries Act 1996 does not contain any reference or mention of the Stock Assessment Working Group (SAWG) process. There is therefore no statutory

[9] The minimum legal size limit for commercial fishers is 90mm for the Coromandel fishery and 100mm for the Northland fishery.

requirement that proposed regulation changes must first be considered by the SAWG. MFish mainly operates the Working Group process as a prelude to considering TAC changes as part of the Quota Management System. The Working Groups are primarily a scientific forum to evaluate and discuss stock assessment analyses involving detailed research from tagging programmes, Catch Per Unit Effort (CPUE), and trawl surveys. Accordingly, due to the absence of scientific information about the proposed scallop season change, MFish did not consider it necessary to consider the proposal as part of the Working Group process.

29. The submission from Whangamata Seafoods (scallop processor) was the only submission suggesting that the scallop season should also be changed for the commercial sector, mainly for marketing reasons. Notably, the submissions from the Coromandel commercial scallop fishers and SeaFIC did not request a season change. From discussions with Coromandel and Northland scallop fishers and quotaholders over the last two years, MFish understands that most fishers and quotaholders are generally satisfied with the current duration of the commercial season. The Coromandel fishery closes by regulation on 21 December. The Northland and Nelson fishers attempt to catch most of their quota by Christmas each year; both of these fisheries are closed by regulation on 14 February.

30. For various reasons, the northern commercial scallop fishers prefer to not fish after Christmas. First, many fishers prefer to go tuna fishing in the summer – autumn period. Second, the fishers recognise that if they continue scallop fishing after Christmas, then there would be a greater likelihood of resource and physical conflict on-the-water when most of the recreational diving (mainly) and dredging occurs for scallops. Finally, many fishers consider that January – February is the main period when scallop larvae (also termed "spat") are settling from the plankton to the seafloor and metamorphosing into small (5-10mm) juvenile scallops. Many fishers consider that the disturbance from dredging at this time could be detrimental to juvenile scallops.

North-west coast scallop fishery (Manukau Harbour, Kaipara Harbour, and the other smaller west coast harbours from Hokianga to Kawhia)

31. Most of the submissions with a north-west coast affinity (Trevor Collings, Ngati Whatua, John Forrest / Wanderers Surfcasting and Angling Club) favoured retaining the status quo. The Raglan Sport Fishing Club agreed with the proposal to shift the open season to the later opening and closing days.

32. Trevor Collings (an experienced Honorary Fishery Officer (HFO)) provided a detailed submission documenting his concerns mainly about the Clarks Beach scallop fishery. Clarks Beach is on the southern side of the Manukau Harbour, and has been the main "walk-out" beach for handgathering scallops at low tide. Collings makes four key points. First, scallops are in poor condition for the first month or so of the season. Second, scallops peak in condition in October – December, and then condition declines in January – February. Third, in January – February, most of the scallops taken by fishers are undersize, which creates a significant drain on MFish compliance resources. Fourth, similar patterns occur in the North Manukau and Kaipara Harbour.

33. The following comments are relevant for providing some background information on the north-west coast scallop fishery. Commercial scallop fishing has been banned by regulation from all of the west coast harbours since at least the 1970s, and there is no commercial scallop fishing on the open coast outside the harbours. Virtually all of the amateur scallop fishing occurs inside the west coast harbours. From the recreational survey information, it is known that the recreational scallop catch in the Manukau is twice the amount from the Kaipara, and that there is a very small scallop catch taken from the other west coast harbours. Most of the recreational catch is taken by dredging: Manukau Harbour - 72%; Kaipara Harbour - 91%.

34. As noted in the submission by Ngati Whatua, largely at the instigation of tangata whenua and the local community, a two-year closure by *Gazette* Notice has been placed on scallop fishing in the Kaipara Harbour due to low scallop abundance. The closure is due to expire in July 2007. However, if scallop abundance has not improved in the Kaipara, then local fishers could propose that the closure be continued for a further two years.

35. Prior to the implementation of the two-year closure, MFish had discussions with the local Kaipara community about the state of the scallop resource. One of the other management options that attracted a lot of support from the community was that the season should be shortened. The local Kaipara people favoured opening the season later around September, and felt that the season should finish earlier around the New Year. The rationale was that Kaipara scallops were in poor condition in July and August, and that there was excessive fishing pressure from holiday makers starting around Christmas and continuing through into January-February. This proposal did not proceed largely because the community felt that the scallop beds needed a complete closure in the short term, rather than changing the season.

36. MFish notes that an additional reason for not extending the season for the north-west coast is that recreational scallop fishing on the north-west coast is mainly based on dredging. Continued dredging in the remainder of February and March could be detrimental to recently settled juvenile scallops, as noted earlier concerning commercial scallop dredging on the north-east coast.

37. Based on the above considerations, MFish considers that there may be merit in shortening the scallop season for the north-west coast with an opening day on 1 September and a closing day possibly before 14 February. However, MFish notes that this outcome would be somewhat different to the options proposed in the IPP. In addition, in contrast to the north-east coast and the Nelson-Marlborough fishery, MFish did not receive many submissions on the proposal. Accordingly, MFish recommends retaining the status quo for the north-west coast recreational scallop fishery. MFish will consult further on the timing of the amateur scallop season for the north-west coast. This would also then allow consultation on the Clarks Beach situation and the possibility of prohibiting dredging from early January each year to reduce the impact on juvenile scallops settling in January-February.

Nelson-Marlborough scallop fishery

38. Virtually all of the submissions received from Nelson-Marlborough were opposed to the proposed change and supported retention of the existing scallop season for this area. Three main reasons were stated by stakeholders for retaining the status quo.
    - Most stakeholders considered that scallops in many areas of the fishery were in reasonably good condition early in the open season in July and August.
    - The Area 7 commercial scallop fishery generally does not start fishing until September for various reasons. Recreational fishers want to maintain the current season opening date in order to gain access to the scallop fishery before the commercial fishers.
    - Spat settlement occurs mainly in the late January to April period, and a prolonged season with increased scallop dredging would be detrimental to the juvenile scallops.

39. As noted earlier, the rationale for the proposed change to the season length was largely based on scallop condition on the north-east coast (east Northland, the Hauraki Gulf, and Bay of Plenty). Prior to the IPP, MFish and the NZRFC had not had the opportunity to discuss the issue in detail with Nelson-Marlborough scallop fishers. MFish is not aware of any scientific or quantitative information that would refute the information provided in submissions by the Nelson-Marlborough scallop fishers. Accordingly, based mainly on the reasons provided in the large number of submissions opposing the season change, MFish recommends that the status quo should remain regarding the scallop season for the Nelson-Marlborough area.

Lower North Island

40. Few submissions were received from the lower half of the North Island. MFish believes this is because large scallop beds are generally rare in this area. However, MFish is aware that there are small scallop beds in Wellington Harbour. Because fishers from Wellington often fish in the Tasman Bay / Marlborough Sounds area, MFish considers that the status quo for the existing scallop season should remain for the lower half of the North Island to ensure a consistent season with the top half of the South Island.

Southern South Island (Southland Fishery Management Area)

41. There is a small recreational scallop fishery in the fiords of Fiordland and around Stewart Island, particularly in Paterson Inlet. The Patterson Inlet scallop fishery has been closed since the early 2000s due to concerns about the sustainability of the fishery.

42. In the 1990s, MFish reviewed the management of the Stewart Island and Fiordland recreational fisheries. As a result, it was recognised there was a seasonal difference in this fishery, with scallops spawning in July and August.

Accordingly, the closed season was adjusted to 16 March – 30 September commencing from 1 October 1994[10].

43. The Southland scallop season was not included in the scallop season review as MFish and southern stakeholders are satisfied that the southern season is appropriate for the management of the southern scallop fisheries.

Remainder of the South Island

44. No submissions were received from fishers from other parts of the South Island. MFish is not aware of any significant scallop fisheries in other parts of the South Island. MFish recommends the retention of the status quo concerning the amateur scallop season for all other areas in the South Island. This will ensure a consistent scallop season with the large Nelson-Marlborough amateur scallop fishery.

Statutory Considerations

45. The management options proposed relate to changing the scallop season by regulation. The options do not set or vary catch limits (s 13 and s 21) or sustainability measures (s11). In forming the management options, the following statutory considerations have been taken into account.

    f. **Section 5 (a):** A wide range of international obligations relate to fishing. MFish is unaware of any international obligation that would be affected by the management options. MFish believes the provisions of general international instruments such as the United Nations convention on the Law of the Sea (UNCLOS) and the United Nations Fish Stocks Agreement (UNFSA) have been implemented through the provisions of the Fisheries Act 1996 and given effect to under all the management options.

    g. **Section 5 (b): Scallops** (tupa) are an important customary species, and all of the options will continue to provide for Maori customary fishing.

    h. **Section 8:** None of the management options are contrary to the purpose of the Act, which is to provide for the utilisation of fisheries resources while ensuring sustainability. MFish does not consider that any of the options present a sustainability risk to the scallop fisheries. MFish considers that MFish's recommended options will further improve the utilisation of these fisheries. The other options will continue to provide for a reasonable level of utilisation of the scallop resource.

    i. **Section 9:** None of the management options are likely to have any significant impact on associated and dependent species, biological diversity, and habitats of particular significance to fisheries management.

    j. **Section 11(2A)(a) and (c):** No relevant conservation services or fisheries services exist in the scallop fishery relating to the proposed season change.

[10] Regulation 5(1) of the Fisheries (Southland and Sub-Antarctic Areas Amateur Fishing) Regulations 1991.

k. **Section 11(2A)(b):** No approved Fisheries Plan exists for the scallop fishery.

Attachment 1: Scallop abundance for the surveyed areas in the Northland and Coromandel scallop fisheries.

Table 1: Millions of scallops (95 mm or greater shell length) estimated at the time of the survey in the main areas of the Northland scallop fishery since 1992. The same dredge efficiency correction (64%) has been assumed for all sizes and years. Totals include data from all surveyed beds and are not directly comparable among years. Asterisks (*) indicate unreliable results, dashes (–) indicate no survey. Surveys in 2002 and 2003 were completed very close to the start of the season, and are positively biased compared to other years.

Year	Spirits	Rangaunu	Doubtless	Whangaroa	Cavalli	Bream	Pakiri	Total
1992	–	7.0	0.7	–	0.4	16.8	4.0	28.9
1993	–	*1.5	0.7	1.7	0.4	5.5	–	*9.8
1994	–	8.5	1.3	0.6	–	4.2	0.2	14.8
1995	–	9.0	1.0	2.3	1.2	3.5	0.1	18.2
1996	24.4	7.7	0.3	1.2	0.9	2.2	–	37.6
1997	15.8	9.9	0.7	1.1	0.7	*5.7	0.4	35.3
1998	4.7	6.0	0.3	0.5	0.9	0.2	<0.1	14.0
1999	–	–	–	–	–	–	–	–
2000	–	–	–	–	–	–	–	–
2001	5.4	6.6	0.0	0.1	–	1.1	–	13.2
2002	10.5	9.3	–	0.1	–	5.4	–	26.6
2003	8.3	7.5	0.1	0.4	0.0	1.6	–	18.0
2004	–	–	–	–	–	–	–	–
2005	4.9	7.2	–	–	–	46.7	4.9	66.1
2006	3.0	12.3	–	–	–	51.0	5.5	71.8

NB. For 2006, other areas (Doubtless Bay, Whangaroa, Cavalli Islands) that have supported commercial scallop fishing and have been surveyed in previous years, were not surveyed in 2006 as quota owners believed scallop numbers were likely to be low in these areas.

Table 2: Millions of scallops (95 mm or larger) estimated at the time of the survey in the main areas of the Coromandel commercial fishery since 1990. Historical average dredge efficiency has been assumed for all years, including 2001–03 when different vessels were used. Totals include data from all surveyed beds and are not directly comparable among years. Dashes (–) indicate no survey in an area or year.

Year	Whitianga / Mercury Is	Waihi Beach	Motiti / Papamoa	Little Barrier	Cape Colville	Waiheke Island	Total
1990	7.4	–	–	–	–	6.4	13.8
1991	11.1	–	–	–	–	2.8	13.9
1992	10.7	–	–	–	–	0.7	11.4
1993	6.6	7.1	–	–	0.3	0.4	14.4
1994	4.8	1.5	–	–	–	0.0	6.3
1995	4.4	0.6	4.5	2.5	0.1	0.3	12.5
1996	6.1	0.2	2.2	3.3	0.1	0.3	12.6
1997	6.1	0.7	1.9	4.0	0.3	5.4	18.4
1998	6.4	0.1	1.2	1.0	0.2	5.3	14.2
1999	1.8	0.2	0.9	0.2	0.0	0.2	3.3
2000	–	–	–	–	–	–	–
2001	1.5	–	0.7	1.6	–	0.2	4.2
2002	2.7	–	0.7	0.8	–	1.0	5.3
2003	4.2	–	2.1	1.4	3.5	1.7	12.9

2004	23.5	1.0	2.4	1.2	0.3	4.7	33.2
2005	53.2	3.7	1.8	2.8	2.5	2.4	66.6
2006	36.3	-	1.8	3.1	7.3	–	48.6