



Ministry of  
**Fisheries**  
Te Tautiaki i nga tini a Tangaroa

Review of Regulatory Measures and other Management Controls for 1 December 2010  
Volume 1: Final Advice Papers and Summary of Recommendations



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## **Introduction**

1 This paper provides you with the Ministry of Fisheries (the Ministry) initial position, final advice and recommendations on those regulatory measures and other management controls reviewed for 1 December 2010.

2 This Final Advice Paper (FAP) is produced in two parts:

- a) Volume 1 – Final Advice Paper and Recommendations; and
- b) Volume 2 – Initial Position Papers and Submissions.

## **Initial Position Papers**

3 The initial position papers (IPPs) were developed for consultation as required under the Fisheries Act 1996 (the Act). They contained the Ministry's initial position on the issues for review. The Ministry emphasised that the views and recommendations outlined in the papers were preliminary and were being provided as a basis for consultation with stakeholders.

## **Consultation**

4 The four issues in this final advice paper were consulted on as a package.

5 On 5 May 2010 the Ministry provided copies of the four proposals contained in Volume 2 to iwi and stakeholders. Stakeholders were asked to respond in writing by 16 June 2010.

6 The submissions received during the consultation process are included in Volume 2.

## **Final Advice Paper**

7 This paper contains the Ministry's final advice to you on the proposals for the 1 December 2010 regulatory round.

8 Each FAP section provides Ministry discussion (including an analysis of your statutory obligations in relation to each issue) and the Ministry's preferred options.

9 A summary of recommendations for all of the FAPs is included at the end of each document.

10 A copy of this advice paper will be made available to iwi and stakeholders who made a submission on these proposals, following the announcement of your decisions.

11 Please note the following:

- a) The Ministry consulted on a fifth proposal as a part of this package, relating to options for the closure of the Southern Titi/Muttonbird Islands to fishing under section 186 of the Fisheries Act 1996. To allow for further consideration of submissions, this proposal will now follow a different advice and implementation timeframe. The Ministry will provide you with final advice on this proposal in due course; and
- b) Among the four advice papers is one relating to regulatory options for the protection of basking shark in New Zealand waters and from New Zealand fishing vessels on the high seas. One of the proposals is that basking shark be added to Schedule 7A of the Wildlife Act 1953, which would give basking shark protected status. The paper also proposes that regulations be created under section 297(1)(o) of the Fisheries Act 1996 to prohibit New Zealand fishing vessels on the high seas from taking basking sharks. As the Wildlife Act and the Fisheries Act are administered by the Department of Conservation and the Ministry respectively, the advice paper is being sent to the Minister of Conservation and yourself, and has accordingly been signed out by both agencies.

## **Implementation of Decisions**

12 Following your final decision on any changes to management controls for 1 December 2010, officials will provide you with a draft letter to stakeholders outlining your decisions.

# Review of Challenger Area Commercial Fishing Regulation 11 – Final Advice

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## Executive Summary

13 This paper considers whether or not Regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 (hereafter Regulation 11) should be retained or revoked. The Ministry recommends that you revoke the regulation.

14 Regulation 11 stipulates that the Chief Executive of the Ministry is required to close an inner area of Tasman Bay to certain commercial fishing methods if the commercial catch of snapper in Tasman and Golden Bays (an area known as statistical area 038) exceeds 100 tonnes between October and the end of February. These method restrictions prohibit any commercial fishing using pair trawling or Danish seining and also prohibit snapper fishing using any surrounding net that is not a drag net. These restrictions apply to a defined area of Tasman Bay (see map in appendix 1), and remain effective until 30 September<sup>1</sup>.

15 An Initial Position Paper (IPP), released on 17 May 2010, presented two options for consideration. Option one proposed to retain Regulation 11 with a recommendation that monitoring regimes be amended to increase the efficiency of implementing the regulation. Option two proposed to revoke Regulation 11 (preferred option).

16 In making a decision about whether to revoke Regulation 11, the intent of the regulation and its impacts on fishing sectors needs to be considered and assessed against the potential benefits of retaining the regulation. The Ministry considers the benefits of revoking Regulation 11 to outweigh the costs. This is because:

- a) The Government has signalled the need to remove ineffective, inefficient or excessively costly regulations as part of the 'Better and Less Regulation' project. Regulation 11 imposes costs on commercial fishers without sufficient benefits to warrant its retention.
- b) Regulation 11 is ineffective at achieving its original intent, which was to prevent localised depletion of snapper, and reduce conflict between commercial fishers using different methods.
- c) Implementation of the regulation results in restrictions to efficient commercial harvest of snapper and other target species.
- d) The beneficial side-effects of Regulation 11 to non-commercial fishers are not measurable at this time, but are likely to be small in respect of snapper fishing and only achieved in years when the regulation is invoked. Beneficial effects in respect of access to other target species such as flatfish may be more significant, but again would only be achieved in years when the regulation was invoked and would continue only for as long as commercial fishers did not adapt their fishing methods and patterns from the current norm.

## The Issue

17 Regulation 11 of the (Challenger Area Commercial Fishing) Regulations 1986 states that if 100 tonnes of snapper (specifically SNA 7) is caught in statistical area 038 between October and February in any fishing year, a defined area of the inner Tasman Bay is closed to commercial fishing for snapper using pair trawl, Danish seine, or surrounding net (excluding drag net) methods. Regulation 11 was enacted to prevent localised depletion of snapper and to reduce sector conflict between commercial fishers using different methods.

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<sup>1</sup> For full regulation see appendix 2

18 In its current form, the regulation is illogical in that it constrains some but not all bulk fishing methods that might result in localised depletion. Single vessel trawling is not prohibited by the regulation despite restrictions on other bulk fishing methods including pair trawling. In effect, single trawl vessels can contribute to triggering the closure, yet remain largely unaffected by it. For instance, single trawlers caught approximately 74 tonnes of the 100 tonnes of snapper that led to Regulation 11 being invoked in 2009, yet single trawlers were unaffected by the regulation.

19 Regulation 11 is also inconsistent with enabling efficient commercial harvesting of snapper as it reduces flexibility regarding the methods that can be used to harvest the Total Allowable Commercial Catch (TACC) set at a level that ensures sustainable use of SNA 7. In addition, despite being principally enacted to protect snapper, the regulation also restricts commercial access and efficiency of harvesting for other species, in particular flatfish.

20 Some submitters consider the regulation (which is only invoked once 100 tonnes of snapper have been caught between October and February) to be misaligned as it allows for commercial fishers to target snapper over the summer period which is key for both snapper spawning and recreational fishing activity. However, protecting spawning snapper and recreational fishing activity were not the intent of the regulation.

21 A potential consequence of the constraint on commercial fishing is to improve non-commercial fishing access to some species in some areas. This potential benefit is difficult to measure as the regulation has only been invoked twice and amateur fishers do not report on their fishing activity.

22 The option to revoke Regulation 11 is in keeping with the Government's objective of 'Better and Less' regulation. The original intent of the regulation is not served by the current regulation or is better managed through other existing measures. The sustainability of snapper stocks is addressed through the setting of Total Allowable Catches (TACs). The potential for localised depletion is also partly managed through current voluntary and regulatory closures which exclude some bulk fishing methods from the inner Tasman Bay area.

23 The current application of Regulation 11 is also inefficient. The Ministry's ability to implement Regulation 11 as soon as the 100 tonne limit is reached is affected by a delay in receiving and processing catch harvest forms from commercial fishers which are required on a monthly basis. Consequently, catch of snapper in the specified area may be well over 100 tonnes before the regulation is invoked.

## Summary of Options

### *Initial Proposals*

24 The IPP proposed the following options:

- a) *Option One – Status Quo* (no change to Regulation 11): Retain Regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986.
  - i. The Ministry recommends that if Regulation 11 is retained, the Chief Executive of the Ministry of Fisheries requests that catch information to be submitted on a weekly basis from the start of the fishing year<sup>2</sup>. This would increase efficiency in implementing the regulation so that the method restrictions are invoked as soon as possible after the time when 100 tonnes of snapper are caught in statistical area 038.
- b) *Option Two – Revoke Regulation 11* (recommended option): Revoke Regulation 11 of the Fisheries (Challenger Ara Commercial Fishing) Regulations 1986.

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<sup>2</sup> Regulation 40 of the Fisheries (Reporting) Regulations 2001 allows the chief executive to specify in writing, different intervals, periods or dates for completing or providing returns if the chief executive considers it necessary

## *Final Proposal*

25 The Ministry recommends that you agree to revoke Regulation 11 from the Fisheries (Challenger Area Commercial Fishing) Regulations 1986.

### **Consultation**

26 An initial position paper was released on 17 May 2010 to offer interested parties an opportunity to submit on the proposed options of either retaining or revoking Regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986.

27 The decision on whether to retain or revoke the regulation will be pursuant to section 297 of the Fisheries Act 1996.

### **Submissions Received**

28 Submissions regarding this proposal were received from:

- a) BYX Fishing Company Limited
- b) Challenger Finfisheries Management Company Limited
- c) Marlborough Recreational Fishers Association Incorporated
- d) New Zealand Recreational Fishing Council
- e) New Zealand Sport Fishing Council Incorporated
- f) Soundfish Fisheries Management
- g) Tasman and Sounds Recreational Fishers' Association Incorporated
- h) Te Ohu Kaimoana

29 Copies of submissions and a summary of submissions can be found in volume two of this advice paper.

### **Ministry Discussion**

30 The views expressed in the submissions on the initial position paper indicate that positions on Regulation 11 are strongly polarised.

31 The three submissions from commercial fishers/organisations support the revocation of Regulation 11 because of the effect of the method restrictions on fisheries utilisation. In particular, a Danish seine operator noted the negative financial effects he incurred as a result of Regulation 11 despite catching less than 500kg of snapper annually. Commercial submitters also note the voluntary area closure in Tasman Bay between 1 November and 30 April and the regulatory prohibition on Danish seining within three nautical miles, which they consider protect juvenile snapper and offer significant spatial separation between commercial and recreational fishing activity.

32 Submissions from the recreational sector generally support the retention of Regulation 11 with improved monitoring to assist implementation. Recreational sector submitters consider Regulation 11 provides a means of controlling fishing effort in the near shore area and contributes to the sustainable utilisation of the fishery by acting as a proxy management measure to avoid the TACC being exceeded. Recreational fishers argue the benefits from removing bulk harvesting methods from the inner Tasman Bay exceed any costs that may be imposed on commercial fishers.

33 Recreational fishers also submitted on the effects of bottom impacting fishing methods, the protection of spawning grounds, and the implications of harvesting effort in Tasman and Golden Bay on the wider Marlborough Sounds fisheries. Submissions also expressed support for the establishment of non-commercial fishing areas.

34 In the Ministry's view, retaining Regulation 11 does not address the recreational fishers' concerns. Issues of the sustainability of fisheries across the Challenger Management Area are managed through the process of setting TACs. Benthic impact concerns are not addressed by Regulation 11, which does not prohibit all bottom impacting methods when invoked, nor restrict the use of these methods outside of the prohibition time period. Similarly, the retention of Regulation 11 does not protect snapper spawning grounds as it does not prevent bulk harvesting from occurring over the peak spawning period.

35 Tasman and Sounds Recreational Fishers' Association (TASFISH) suggests that Regulation 11 should be amended to prohibit all bottom impacting fishing methods in the defined area of Tasman Bay and including the Marlborough Sounds and Golden Bay areas. This option to extend beyond the scope of this review and its intent is better aligned with Marine Protected Area policies. The Ministry therefore considers the proposal better considered and evaluated as part of Marine Protected Area processes.

36 With regard to inter-sector competition for access to fisheries or fishing areas, dispute resolution under part 7 of the Fisheries Act 1996 is the appropriate avenue for fishers to formally address inter-sector conflict. The Ministry supports the use of voluntary measures like those currently in place as one means of addressing these issues.

37 TASFISH seeks better operation of the regulation so that it is invoked immediately the 100 tonne limit is reached. Should the regulation be retained, the Ministry proposes that catch information be provided to the Ministry on a weekly basis to ensure efficiency in implementing the regulation. Requesting catch information forms to be submitted on a weekly basis would provide for more efficient implementation of the regulation should it be retained.

## **Rationale for Management Options**

38 The use of effective, efficient regulations is an important tool for the Ministry to deliver on its goal of maximising the benefits from the use of fisheries within environmental limits. This review is to assess whether or not Regulation 11 fits with the current objective framework and acts as an effective and efficient management tool. Reviewing this regulation fits within the Government and Ministry's priorities for "Better and Less" regulation.

39 The options presented in this paper are to either retain the regulation (with a recommendation to amend its operation in part) or revoke the regulation.

40 In deciding which approach is best, the intent and impacts of the regulation when it is implemented need to be considered. Key factors to consider are whether the regulation achieves benefit to the snapper numbers in the inner Tasman Bay fishery at an acceptable level of cost to commercial fishers impacted by the regulation.

41 Some information on the impact that invoking the regulation has on commercial harvest is provided from catch returns; some commercial fishers have also provided additional information and anecdotal reports. No information is available to assess what impacts invoking Regulation 11 has on harvest by non-commercial sectors other than anecdotal reports provided by recreational fishers.

## **Assessment of Management Options**

### *Option 1 – Status Quo*

#### Impact

42 Regulation 11 was first implemented in the 2008/09 fishing year and subsequently in the 2009/10 year.



43 The method restrictions implemented by Regulation 11 adversely impacted the commercial flatfish fishery, in particular the ability of fishers using the Danish seine method to harvest flatfish in statistical area 038. Catch records show that estimated catch of flatfish in statistical area 038 was 52 tonnes lower in 2008-09 than the previous year when Regulation 11 was not implemented.

44 The implementation of Regulation 11 did not affect the commercial snapper catch in statistical area 038. Estimated catch records show that snapper catch from statistical area 038 in 2008/09 increased by 38 tonnes on the previous fishing year.

45 The retention of snapper catch levels in statistical area 038 does not appear to be the result of transfer of catch from one commercial method to another. Estimated catch taken by bottom pair trawlers (a method excluded when Regulation 11 is invoked) increased by 24 tonnes from the 2007/08 to 2008/09 fishing years. Over the last five fishing years, pair trawlers have predominantly operated between October and February so are largely unaffected by Regulation 11, which in both years applied has come into effect after this period.

46 The area affected by Regulation 11 overlaps with a voluntary trawl exclusion zone that was established by negotiation between the Ministry and recreational and commercial fishers in the early 1990s. The voluntary closure reduces conflict between recreational and commercial trawl fishers in this area and extends to three nautical miles. Danish seining is also prohibited within three nautical miles of the coastline by a regulatory method restriction<sup>3</sup>. These voluntary and regulatory restrictions will not be affected whether Regulation 11 is retained or revoked.

### Costs

47 Retaining Regulation 11 constrains the commercial fishing methods that can be used in the affected area when the regulation is invoked. The constraints affect the flexibility of industry to choose and use the most efficient method to take their catch allowance.

48 Implementing Regulation 11 also has effects on specific commercial fishing activities. As noted above, Danish seining for flatfish in statistical area 038 was impeded by the invoking of Regulation 11.

49 Should the frequency of catch reporting increase, commercial fishers may incur increased administration costs.

### Benefits

50 Regulation 11 removes some bulk commercial fishing methods from the inshore area of Tasman Bay for a portion of the calendar year. Recreational fishers support Regulation 11 for its ability to reduce bulk fishing methods in popular fishing areas and therefore reduce issues of localised depletion. The Ministry has no research or catch reporting information to assess the effect of Regulation 11 on recreational catch; anecdotal information in submissions from recreational fishers note greater availability of fish when commercial vessels are absent.

51 It is unlikely that the retention of the regulation will contribute to the sustainability of the Challenger Area snapper stocks (SNA 7) or other stocks in the Challenger Area. Catch reporting information suggests total commercial catch from the stocks was probably not affected by the implementation of the closure. Availability of flatfish to non-commercial fishers may have been improved in discrete, local areas when Regulation 11 was implemented; for example, catch of flatfish in statistical area 038 reduced when Regulation 11 was implemented. Not all bulk fishing methods are excluded, however, and there is nothing to prevent industry transferring fishing effort to allowed bulk fishing methods when targeting flatfish.

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<sup>3</sup> Regulation 70 of the Fisheries (Commercial Fishing) Regulations 2001 states that commercial fishers must not use Danish seine nets within 3 nautical miles seaward of the mean high-water mark of the coast of the South Island

## *Option 2 – Revoke Regulation 11*

### Impact

52 Revoking Regulation 11 would allow commercial fishers to use a greater range of bulk harvesting fishing methods to harvest their fishstock allocations in the area concerned. Revoking Regulation 11 may affect availability of flatfish for non-commercial fishers in localised parts of the area concerned in years when the regulation would otherwise have been invoked.

53 The Ministry notes the change to recent fishing practice in Tasman and Golden bay regions that would occur as a result of revoking Regulation 11 would be minimal, given that the regulation has only been implemented twice since it was promulgated in 1986.

54 Revoking Regulation 11 does not have any implications for overall catch limits set to ensure the sustainability of fish stocks. Setting the total allowable catch under the quota management system remains the principal means for ensuring sustainability of fishstocks.

### Costs

55 Revoking Regulation 11 would remove a regulatory measure that results in additional spatial separation between some commercial bulk-fishing methods and recreational fishing activity during part of the year. Some spatial separation already occurs as a result of the voluntary trawl exclusion zone in Tasman Bay between 1 November and 30 April and the regulatory Danish seine restriction within three nautical miles of the coastline.

56 The usual costs incurred during the process of revoking a regulation would be incurred.

### Benefits

57 Revoking Regulation 11 fits with government and Ministry priorities for “Better and Less” regulation by removing an inefficient regulation and increasing access to the utilisation of fisheries resources.

58 Removing the regulation will provide for improved commercial fishing efficiency by removing any constraints on the types of fishing methods that can be used for part of the fishing year.

### *Other Management Controls*

59 As discussed above, a number of submissions raised concerns relating to the impacts of bulk fishing methods on the benthos. The Ministry acknowledges the importance of these issues. Regulation 11 is not an effective means of addressing these broader scale issues as Regulation 11 does not prohibit all bottom impacting methods when invoked, nor restrict the use of these methods outside of the prohibition time period.

60 The Ministry notes the following in respect of managing benthic impacts:

- a) The Fisheries Act 1996 requirement to consider environmental effects when setting TACs and other fisheries management controls;
- b) The Marine Protected Area policy and process, which provides protection to areas of the marine environment to protect biodiversity; and
- c) The recent Ministry initiative to work with stakeholders to develop a Benthic Impact Standard.

## Statutory Considerations

61 Section 8 of the Fisheries Act 1996 states the purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. The management options presented in this paper seek to achieve the purpose of the Act by considering how the Ministry can best provide for utilisation of fisheries resources whilst ensuring their sustainability. The Ministry does not consider that the revocation or retention of Regulation 11 affects the sustainability of SNA 7, which is ensured through the appropriate setting of catch limits. Revoking the regulation would facilitate efficiency of use by commercial fishers thereby providing for the utilisation aspects of this statutory purpose. However, recreational fishers consider that revocation of Regulation 11 could adversely affect their ability to utilise fisheries resources.

62 Section 9 of the Act requires the Minister to take into account the following environmental principles:

- a) Section 9(a) requires associated or dependent species (i.e. those that are not harvested) to be maintained above a level that ensures their long term viability.
- b) Section 9 (b) requires biological diversity of the aquatic environment to be maintained.
- c) Section 9(c) requires habitat of particular significance for fisheries management to be protected.

63 There are known detrimental impacts on the benthos from trawling, which may have potential impacts on associated and dependent species, biodiversity and protected species. Comparative to recent impacts, retention or revocation of Regulation 11 is unlikely to result in change as the regulation has only been invoked in the last two fishing years; it applies to some, but not all, fishing methods that impact the benthos and that harvest the affected species; and, change to fishing activity only results in years when the regulation is invoked.

64 Any impact on associated or dependant species is managed through the setting of sustainable catch limits for each species and the monitoring of catch in fisheries without catch limits. The retention or revocation of Regulation 11 does not affect the process of setting acceptable catch levels or monitoring of catch levels.

65 Tasman Bay is an area where snapper spawn and juvenile snapper grounds occur. The revocation of Regulation 11 may increase fishing effort in the inner part of Tasman Bay; however the Regulation 11 closure does not align with the peak spawning period, and the impact on juvenile snapper is managed through setting appropriate catch levels and supported by the voluntary and regulatory closures to selected commercial fishing methods, which lessen the impact of commercial fishing pressure in this area. The Ministry notes snapper harvesting in the relevant statistical area did not reduce in the years when the regulation was invoked.

66 Section 10 of the Act sets out information principles, which require that decisions be based on the best available information, taking into account any uncertainty in that information, and applying caution when information is uncertain, unreliable, or inadequate.

67 The Ministry notes there is uncertainty with sustainability estimates for snapper in the Challenger Area (SNA 7). This stock was last assessed in 2002 and the results of the assessment were not confirmed. The stock status is therefore unknown. Stock status is unlikely to be affected by retention or revocation of the regulation, however.

68 Section 5 of the Fisheries Act 1996 requires the Minister to act in a manner consistent with New Zealand's international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The proposed regulatory amendments or revocation of Regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 do not have implications for, or effects on, the Ministry's ability to meet any specific international obligations and do not affect any obligations related to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

## Summary of Recommendations

69 The Ministry recommends that you:

- |  |          |
|--|----------|
| a) <b>Agree</b> to revoke Regulation 11 from the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 ( <b>Ministry's preferred option</b> ); <b>OR</b>   | Yes / No |
| b) <b>Agree</b> to retain Regulation 11 in the Fisheries (Challenger Area Commercial Fishing) Regulations 1986; <b>AND</b>   | Yes / No |
| c) <b>Agree</b> the Chief Executive of the Ministry of Fisheries should request catch information to be submitted on a weekly basis from the start of the fishing year to improve the operation of Regulation 11 | Yes / No |



Leigh Mitchell  
**for Chief Executive**

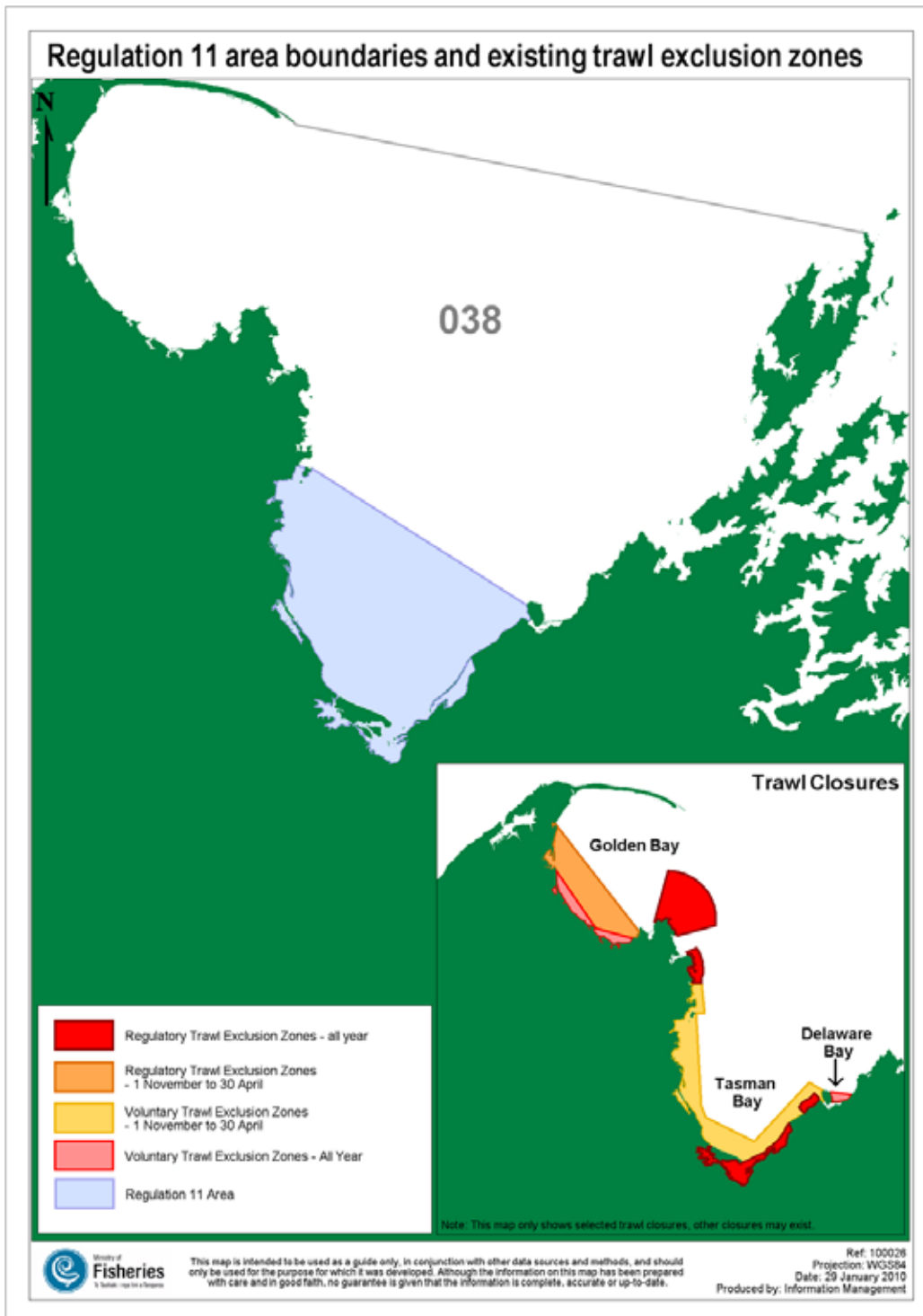
APPROVED / NOT APPROVED / APPROVED AS AMENDED

Hon Phil Heatley  
**Minister of Fisheries and Aquaculture**

/ / 2010

## Appendices

Appendix One – Map showing area specified in Regulation 11 and existing regulatory and voluntary exclusion zones<sup>4</sup>



<sup>4</sup> Note that additional closure areas exist around Farewell Spit.

### **Fishing in Tasman Bay and Golden Bay**

When more than 100 tonnes of snapper have been taken from that area of Tasman Bay and Golden Bay lying inside a straight line drawn from Farewell Spit Lighthouse (at 40°32'30" and 173°00.50'E) to Cape Stephens (at 40°41.57'S and 173°57.21'E); then around the mean high-water mark to Sauvage Point (at 40°56.47'S and 173°46.32'E); then to Okuri Point light (at 40°58.70'S and 173°45.70'E) at any time during the period commencing with the 1st day of October in any year and expiring with the last day of February in the following year, the chief executive shall give public notice of that fact in a newspaper circulating in the Nelson area and by such other means as the chief executive considers appropriate and shall specify in that notice a date (being a date later than the publication of the notice) after which no commercial fisher shall—

- (a) Take any fish by pair trawling or Danish seining; or
- (b) Take any snapper using a surrounding net that is not a drag net—

in those waters of Tasman Bay lying inside a straight line drawn from the northwestern most point of Pepin Island (at 41°08.5'S and 173°24.80'E) to the easternmost point of Adele Island (at 40°58.58'S and 173°04.11'E); then along the mean high-water mark in a westerly direction to the northernmost point of Adele Island (at 40°58.5'S and 173°03.50'E); then to the nearest point of the mainland (at 40°58.43'S and 173°02.88'E).

Regulation 11: amended, on 1 October 2008, by [regulation 20\(a\)](#) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by [regulation 20\(b\)](#) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by [regulation 20\(c\)](#) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by [regulation 20\(d\)](#) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by [regulation 20\(e\)](#) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by [regulation 20\(f\)](#) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by [regulation 20\(g\)](#) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Paragraph (b) was amended, as from 1 November 1989, by regulation 6 Fisheries (Challenger Area Commercial Fishing) Regulations 1986, Amendment No 7 (SR 1989/293) by substituting the word “snapper” for the word “fish”.

Regulation 11 was amended, as from 1 October 2001, by regulation 4 Fisheries (Challenger Area Commercial Fishing) Amendment Regulations (No 2) 2001 (SR 2001/266), by substituting the words “commercial fisher” for the words “commercial fisherman”. It was further amended by regulation 9 of those Regulations by substituting the words “chief executive” for the words “Director-General”

# Change to Approval Process for Automatic Location Communicators – Final Advice

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## Executive Summary

70 You are being asked to make a decision regarding a proposal to amend the Fisheries (Satellite Vessel Monitoring) Regulations 1993 (“the Regulations”) by removing the requirement for automatic location communicators (ALCs) to be type-approved. The Ministry considers that the current approval process for ALCs – summarised in Figure 1 – has a number of limitations given it is costly, does not effectively cater for different types of vessels, and may be preventing vessel operators from adopting more cost-effective technologies.

71 An Initial Position Paper (IPP), released for consultation on 17 May 2010, proposed to amend the Regulations by removing the requirement for ALCs to be type-approved. All of the submissions received showed support for the proposed amendments so no substantive changes to the initial proposal have been made.

72 The objective of the proposed amendments is to simplify the approval process for ALCs in order to reduce regulatory compliance and administration costs in the context of the Vessel Monitoring System (VMS). Your decision is to be made in the context of section 297 of the Fisheries Act 1996 (“the Act”), which allows the creation of regulations for a variety of purposes, including the operation and maintenance of equipment used to monitor fishing, such as ALCs.

73 This proposal only relates to the regulatory framework for ALC approvals. A separate process to develop new sets of ALC standards and related requirements would occur, aiming to have all changes in place by December 2010. It is not expected that the proposed amendments or the proposed new set of standards and related requirements would adversely affect any fishers who currently operate ALCs on board their vessels given the proposal would not change the actual technical requirements specified in current standards.

## The Issue

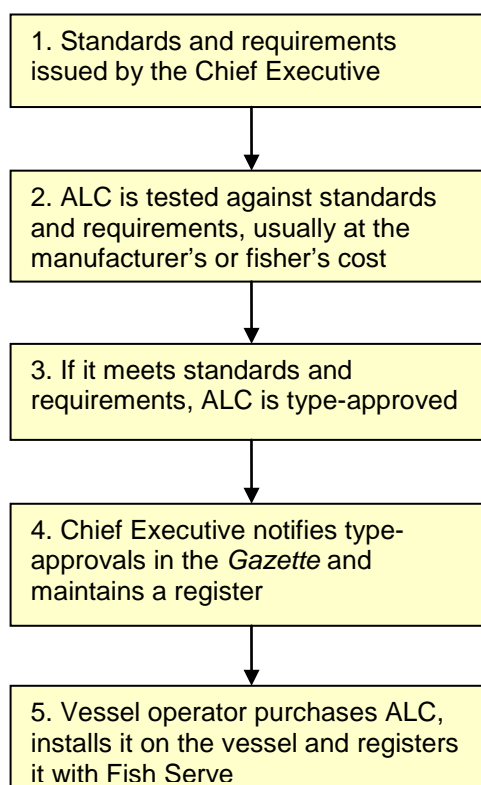
74 Approximately 90 out of the 1,280 New Zealand-registered fishing vessels currently carry and operate registered ALCs, as required by the Regulations. The Regulations set out a number of requirements for the operation of the VMS, which generates information on the time and location of fishing vessels on a near real time basis. This information is used to aid monitoring and risk analysis in support of compliance and enforcement activities.

75 Monitoring by VMS is also a requirement under numerous international agreements. For instance, several New Zealand fishing vessels must be monitored by VMS to be able to fish for species, or in areas, administered by a number of regional fisheries management organisations (RFMOs), including:

- a) Commission for the Conservation of Southern Bluefin Tuna
- b) Commission for the Conservation of Antarctic Marine Living Resources
- c) Western and Central Pacific Fisheries Commission
- d) South Pacific Regional Fisheries Management Organisation

76 Figure 1 summarises the current process for ALCs to be approved for use under the Regulations.

**Figure 1 – Current approval process for ALCs**



77 Because current standards and requirements are specific to individual types of ALC units and the software used to operate them (currently specific to Inmarsat-C only and, until recently, ARGOS units), the type-approval register has become outdated as new units and software are developed or upgraded and enter the market.<sup>5</sup>

78 There have been instances where newer versions of a particular unit or software cannot be used because they are not type-approved, even though they already exceed the standards and requirements. In order for more recent versions of particular units and software to be type-approved under the Regulations, they have to be tested and go through the above process, at a significant cost.

79 Testing against standards by independent assessors costs approximately \$6,000 per unit type, usually paid for by ALC manufacturers or fishers, and results in a delay in the approval process. Because of these costs and difficulties, fishers may be unable, or hesitant, to upgrade their units to the latest technology available, which is likely to be more efficient.

80 For fishers who fish in areas, or for species, administered by RFMOs and other jurisdictions, these difficulties may prevent them from meeting VMS standards and requirements for ALCs from those organisations. It could also force fishers to operate more than one type of ALC in order to meet different sets of requirements. The Ministry is aware of several New Zealand-registered fishing vessels which operate two separate units on board in order to meet domestic and international requirements. The rigidity of type-approvals is likely to lead to more of these costly and inefficient situations. The proposed amendments are consistent with the requirements of RFMOs, including any requirements for use of VMS, and would allow for a more efficient delivery of these obligations.<sup>6</sup>

<sup>5</sup> Currently only five ALC units and six software versions are listed in the register.

<sup>6</sup> Section 5(a) of the Fisheries Act 1996 provides the Act shall be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under it shall act, in a manner consistent with New Zealand's obligations relating to fishing.



81 Smaller vessels which are currently required to carry and operate ALCs (such as vessels fishing for deepwater clam) have difficulty in meeting the standards since current type-approved ALCs are designed mainly for larger vessels. Waivers and dispensations, resulting in additional compliance and administration costs, have been necessary in these cases as the current process does not cater adequately for newer units that are better suited to different sizes and classes of vessels.

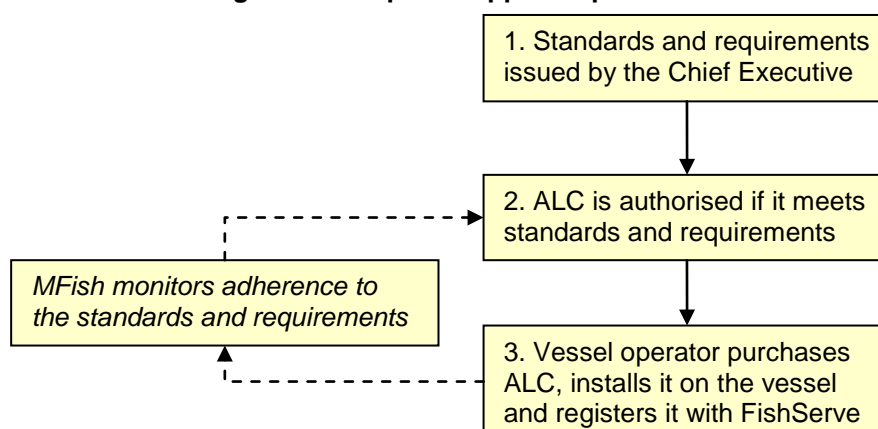
## Summary of Options

### Initial Proposal

82 The IPP proposed the following options:

- a) *Option 1 – Status Quo*: retaining the status quo would result in the continuation of the approval process summarised in Figure 1 and the issues associated with this process described above.
- b) *Option 2 – Standards-based approval of ALCs*: This option would result in amendments to the Regulations to revoke the requirement for ALCs to be type-approved, instead stipulating that any ALC that meets the standards and related requirements could be used, pursuant to the Regulations. The ALC would still need to be registered with FishServe. This option would also require new sets of ALC standards and associated requirements to be issued under regulation 4 of the Regulations. These would mirror current requirements but would also allow other unit types to be used, in addition to those currently type-approved, catering more adequately for different sizes and classes of vessels. It should be noted the technical requirements specified in the standards, currently applied through the type-approval process, would not change. The proposed new approval process is summarised in Figure 2.

**Figure 2 – Proposed approval process for ALCs**



### Final Proposal

83 The Ministry recommends that you agree to amend the Fisheries (Satellite Vessel Monitoring) Regulations 1993 to revoke the requirements for ALCs to be type-approved and to stipulate that any ALC that meets the standards and requirements specified by circular under regulation 4 can be used, pursuant to the Regulations (**Option 2**).

## Consultation

84 The Ministry has undertaken consultation on this proposal by way of an IPP, targeted primarily at the fishing industry.

## Submissions Received

85 Submissions regarding this proposal were received from:

- a) MarineCom (a marine electronics and communications service provider)
- b) Paua Industry Council (PIC)
- c) Sanford Limited (Sanford)
- d) Seafood Industry Council (SeaFIC)

## Ministry Discussion

86 MarineCom does not explicitly support or oppose the proposal but it notes that no testing or type-approval of ALCs have occurred recently because the status quo does not make it easy for technology updates or the introduction of new systems. It also notes that some other jurisdictions do not use ALC type-approval processes.

87 PIC supports the proposal, highlighting it would make requirements more adaptive, and notes that the changes are consistent with current discussions being held with the Ministry regarding the use of position tracking technology for paua fisheries.

88 Sanford also supports the proposal, noting that it would allow a wider range of ALC units to be used. It operates 35 vessels, of which 28 have type-approved ALCs on board; although 63 different tracking units are operated on board their vessels (i.e. several vessels operate two units). The majority of these units are not registered pursuant to the Regulations because of the type approval requirements. The company also uses the additional units for their own fleet management and monitoring purposes. The Ministry notes that this description of Sanford's operations demonstrates the rigidity and impact of the status quo.

89 SeaFIC also supports the proposal because in comparison with type-approvals, a standards-based approach would allow a wider variety of ALCs to suit different circumstances (e.g. different vessels, fisheries, requirements from RFMOs or other jurisdictions). This approach would make it less costly and administratively simpler to adopt new and improved technologies. SeaFIC's support for the proposal is subject to it not creating additional requirements and maintaining substantially the same liabilities and penalties as the current regime. It also stresses the importance of developing standards in collaboration with industry and manufacturers, that would make it easy to confirm compliance and that would not degrade the accuracy, precision or confidentiality of data.

90 SeaFIC also notes that the proposal would have implications for the registration of ALCs. Currently FishServe can only register type-approved ALCs. SeaFIC points out that under the proposed new approach, either FishServe would require a list of all ALCs that meet the standards or FishServe would register any ALC and the responsibility would lie solely with the vessel operator to ensure that the ALC meets the standard. As highlighted in SeaFIC's submission, the first scenario is inconsistent with the aim of providing more flexibility in the choice of ALCs; the latter would require a change to current procedures for the registration of ALCs. SeaFIC recommends that the implementation of the proposed change be discussed in more detail with FishServe.

91 The Ministry acknowledges the concerns raised by SeaFIC and confirms that the process, along with information on standards, which would reflect current technical requirements, would be developed and implemented in collaboration with industry, FishServe and technology providers. FishServe has been kept informed of the proposed changes to date.

## Rationale for Management Options

92 The amendments proposed in this paper would be made by Order in Council under section 297 of the Fisheries Act 1996 ("the Act"), specifically subsections (1)(ca) and (2)(a). Subsection (1)(ca) provides for the making of regulations related to the installation and maintenance of

equipment used to monitor fishing, such as ALCs. Subsection (2)(a) provides for the making of regulations that authorise the CE, among other things, to issue circulars such as those which specify standards and requirements for ALCs. Any other consequential amendments necessary, including amendments to the offence and penalty provisions of the Regulations, would also be made under section 297 of the Act.

93 When assessing this proposal it is important to take into account the costs that the status quo is creating and the potential benefits that a standards-based approval process would have.

94 The Ministry considers that the amendments proposed further the purpose of the Act to provide for the utilisation of fisheries resources while ensuring sustainability under section 8. In this sense, the proposed amendments would increase the cost-effectiveness of the VMS, which contributes to monitoring compliance with numerous regulations which are in place in support of utilisation and sustainability objectives. Further, the proposed amendments would contribute to the achievement of Fisheries 2030 strategic actions by ensuring the continued provision of cost-effective compliance services and a reduction in compliance and administration costs in relation to the VMS.

95 Subject to your approval, the Ministry envisages that the proposed amendments would likely take effect in December 2010. It is not expected that the proposed amendments would adversely affect any fishers who currently operate ALCs on board their vessels nor create additional obligations on those fishers. Nonetheless, those fishers would be informed in advance of the implementation and effect of these changes.

## **Assessment of Management Options**

### *Option 1 – Status Quo*

96 The circular which specifies standards and associated requirements for ALCs is specific to Inmarsat-C units. Until recently, a second circular specified standards and requirements specific to ARGOS units; this circular has now been revoked as this type of units did not meet minimum requirements. Both circulars were originally issued in 1993. Consequently, these standards and requirements are out of date and the type-approval register is constrained by them. There have been cases where newer units that exceed the standards and requirements cannot be used because of the need for those to be tested and type-approved first. This process is inefficient and is limiting the cost-effectiveness of the VMS. It is also creating unnecessary difficulties and costs for New Zealand fishing vessels that must meet international VMS requirements.

97 A significant risk in maintaining the status quo would be a failure to meet Fisheries 2030 objectives in relation to the operation of the VMS. Furthermore, there is a risk that New Zealand's ALC approval process may soon lag behind that of other jurisdictions.

98 Nonetheless, if the status quo is maintained, some of these issues could be addressed if the CE issues new standards and requirements for ALCs at a more generic level, tailored to different sizes and classes of vessels covered by the Regulations. However, without an amendment to the Regulations, ALC units would still need to be tested and type-approved prior to use pursuant to the Regulations. This approach could mitigate some of the risks, and reduce some of the compliance and administration costs created by the status quo but not all and thus would result in an inferior outcome compared to Option 2.

99 One advantage of the current type-approval process is clarity and certainty about which units can actually be used. The Regulations require the CE to maintain a register of currently type-approved ALCs. A vessel operator could then choose any unit from that register, with certainty that it meets the standards and requirements and that it is approved for use. This would not necessarily be the case under Option 2 as it would be mainly up to the operator to ensure that a particular ALC unit meets the standards.

## *Option 2 – Standards-based approval of ALCs*

100 The amendments proposed under this option, and the resulting new sets of standards and requirements that would be issued by the CE, would allow vessel operators to use a wider range of ALC units than those currently type-approved. The process to get those units approved for use would be streamlined by removing the need to test them for type-approval. The difficulties, delays and costs created by the status quo would be reduced significantly, removing barriers to meet domestic and international obligations, increasing efficiency and cost-effectiveness in the context of the VMS. Option 2 does not impose additional costs on fishers required to operate ALCs or on ALC manufacturers, nor does it create any new obligations, except to the extent that the fisher must now ensure the units do meet specifications. Clear standards easily available to fishers will ensure the ability of fishers to purchase units that are fit for purpose.

101 There would be some administrative costs for the Ministry to give effect to the regulatory amendment required but these would be negligible in comparison to the benefits of the proposal. These would include updating the ALC registration process to accommodate the proposed changes, as SeaFIC describes in its submission, and Ministry monitoring of ALC functions to ensure they meet the standards and requirements.

102 The Ministry recognises that Option 2 could create some uncertainty as to which ALC units would meet the standards and requirements issued by the CE, particularly given the CE would no longer be required to keep a register of type-approved ALCs. In addition, the Ministry recognises that disputes could arise as to whether an ALC meets the standards and requirements, given testing of the ALC would no longer be required.

103 While the Ministry acknowledges these risks, it considers that these can be mitigated by developing new standards and requirements in collaboration with industry and ALC manufacturers. It should be noted that for cost-effectiveness and ensuring the integrity of the VMS, it would be necessary to ensure that these are consistent with existing technical specifications, available technology and current Ministry systems. This would make it easier for vessel operators to confirm compliance with standards and for manufacturers to confirm that the units they retail would fall within the scope of the standards and requirements. Furthermore, MFish would monitor ALC units' adherence to the standards and requirements after their registration to identify any possible technical problems, as illustrated in Figure 2.

104 As noted by SeaFIC, Option 2 places the responsibility of meeting the ALC standards and requirements entirely on vessel operators and masters. The Ministry is proposing to step back from the testing and approval process by simply specifying the minimum standards that the units must meet. In cases where units do not meet the standards, the liabilities and penalties would be the same, or substantially similar, to what the Regulations currently stipulate. Nonetheless, the Ministry's monitoring of ALC unit functions would allow the identification of any technical problems that could be resolved with fishers soon after registration of their units.

105 In essence, the Ministry considers the benefits resulting from Option 2 outweigh any limitations associated with this proposal. In particular, removing the requirement for ALCs to be type-approved would increase the efficiency and cost-effectiveness of the VMS. It would provide for greater flexibility for industry to use available technology, reducing compliance and administration costs while still providing robust position monitoring in line with domestic and international requirements.

## *Other Management Controls and Issues*

106 Consequential amendments to the Regulations may be required if this proposal is approved. These include other changes in the Regulations to accommodate the new approval process, including consequential amendments to liabilities, offences and penalties.

107 As outlined above, should you approve this proposal, new sets of standards and any necessary supporting requirements for ALCs would be developed in consultation with industry and other interested parties. A circular specifying these standards and supporting requirements, which would replace the current circular, would be issued by the CE.

108 This paper relates to the regulatory framework for the approval process only and does not outline those standards and associated requirements. Yet it should be noted that the new standards would be consistent with those currently in place, which will remain valid for those vessels currently required to carry and operate ALCs until any changes come into effect. Thus, it is expected that all currently registered ALCs would meet the new standards and requirements and also other units which are not currently type-approved. The new sets of standards and requirements would also be as consistent as possible with existing RFMO standards which may apply to New Zealand fishing vessels. Typically these standards are lower than those set for New Zealand in order to ensure that the diverse capacities of member and cooperating non-member countries can be accommodated.

109 Where necessary, different sets of standards and requirements for different sizes and classes of vessels could be developed to cater adequately for differences in the domestic fleet, provided these do not undermine the essential requirements of the VMS as a robust monitoring measure. At this stage, the Ministry's information suggests this may not be necessary given the significant technology advances in ALC related software and unit design in recent years.

110 Likewise, the new standards and requirements would be specific enough to allow the ALC unit to communicate effectively with existing Ministry systems yet also allow for a wider range of units. The Ministry would ensure that any new standards fit with existing contractual and practical arrangements to avoid additional costs and to exclude any units which would be incompatible with existing systems.

## Summary of Recommendations

111 The Ministry recommends that you:

- d) **Agree** to amend the Fisheries (Satellite Vessel Monitoring) Regulations 1993 to revoke the requirements for ALCs to be type-approved and to stipulate that any ALC that meets the standards and requirements specified by circular under regulation 4 can be used, pursuant to the Regulations (**Option 2**)

Yes / No



Fay Holdom  
**for Chief Executive**

APPROVED / NOT APPROVED / APPROVED AS AMENDED

Hon Phil Heatley  
**Minister of Fisheries and Aquaculture**

/ / 2010

# Return to Sea of Kina – Final Advice

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## Executive Summary

112 An Initial Position Paper (IPP), released 5 May 2010, proposed kina be added to the Sixth Schedule to the Fisheries Act 1996 (the Act), to allow kina, when hand-gathered and likely to survive, to be returned to sea.

113 Submissions received during consultation support this approach. Two submissions suggest extending the approach to other harvest methods. The Ministry is concerned, however, that the survivorship of kina taken by other methods is lower, and that this is beyond the scope of the original proposal.

114 This Final Advice Paper (FAP), therefore, recommends using section 72(7) of the Act to include kina on Schedule 6. This will allow kina, when handgathered and likely to survive, to be returned to the sea, and aligns management of kina with Fisheries 2030 objectives and with management of other shellfish fisheries such as oysters, mussels, rock lobster, scallops, pipi and cockles.

115 By reducing industry compliance costs, this change is expected to increase economic benefit from kina fisheries. The change is considered to be neutral in terms of sustainability or environmental impact as only kina gathered by hand and likely to survive will be returned to sea.

## The Issue

116 Under Fisheries 2030, fishery resources are to be used in a manner that provides the greatest overall economic, social, and cultural benefit. A key task under the Fisheries 2030 five-year plan of action is ensuring fisheries laws and regulations reduce compliance costs and improve management effectiveness.

117 A draft fisheries plan for Southern Shellfish fisheries<sup>7</sup>, has identified current management is not meeting Fisheries 2030 or the draft fisheries plan outcomes in terms of the kina fishery. Unable to return low roe-recovery kina to sea, fishers face significant costs in freighting these kina to processing facilities, which may be many hours steaming from remote fishing grounds. Ultimately, kina with low roe-recovery may be uneconomic to process and dumped in landfills.

118 Divers are unable to satisfactorily select kina while underwater, given that underwater breathing apparatus is prohibited in the kina fishery and they are limited to breath-holding. As a result it is often not possible to assess a batch of kina for roe-recovery until it has been brought aboard the diving tender. Allowing fishers to legally return small kina with low roe-recovery, after they have been brought aboard the diving tender, is an alternative approach. Kina needs to be added to the Sixth Schedule to the Act, by Order in Council, for this to occur.

## Summary of Options

### *Initial Proposal*

119 The IPP proposed the following options:

- a) *Option 1: Status quo (no action)*: Under the status quo, management settings prohibiting the return of kina to sea will be retained.
- b) *Option 2: Allowing return to Sea*: By adding kina to the Sixth Schedule, fishers will be able to legally return kina to sea. Under this option the following requirements will be included on the Sixth Schedule in terms of kina:

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<sup>7</sup> A draft plan was developed during 2008-2009. The plan has not yet been approved pending further evaluation. See [www.fish.govt.nz](http://www.fish.govt.nz) Draft Southern Shellfish Plan.

- i. Kina must be likely to survive return to the water.
- ii. Kina must be taken by the method of handgathering.

### *Final Proposal*

120 The Ministry recommends Option 2; that the Sixth Schedule to the Act be amended to allow return to sea of kina where they are likely to survive, and are taken by the method of handgathering.

### **Consultation**

121 Section 72(7) of the Act allows the Governor-General to add or omit the name of any stock, or amend any provision to the Sixth Schedule, on the recommendation of the Minister of Fisheries. The IPP consulted on whether or not the Minister should make such a recommendation.

### **Submissions Received**

122 Submissions regarding this proposal, all in support, were received from:

- a) Glenice Paine, a Kaitiaki of Te Tau Ihu
- b) New Zealand Recreational Fishing Council (NZRFC)
- c) The New Zealand Seafood Industry Council (SeaFIC)
- d) Te Runanga o Ngai Tahu (TRoNT)

### **Ministry Discussion**

123 **SeaFIC** and **Glenice Paine** both support the proposal to allow kina to be returned to the sea. They also, however, propose that it not be limited to hand-gathered kina and should be extended to any method.

124 The Ministry is concerned that the survivorship of kina taken by other methods may be lower. Kina have fragile tests ('shells') and, while resistant to handling, are likely to be damaged by mechanical methods of harvest, such as trawling. The IPP did not envisage a wider approach, therefore, other stakeholders have also not had an opportunity to comment. The Ministry considers it would be inappropriate to recommend extending the approach to other harvest methods at this time.

125 **NZRFC** supports the proposal, but stresses the need for returned kina to be likely to survive. MFish notes that this would be a requirement under the recommended option.

126 **TRoNT** also supports the proposal.

### **Rationale for Management Options**

127 Section 72 of the Act prohibits the dumping of fish. An exception is provided, however, for any stock listed in the Sixth Schedule to the Act. Fishers may return such stocks to sea, and are not required to count returned fish against their Annual Catch Entitlement.

128 Twenty stocks, ranging from sedentary shellfish (dredge oysters, scallops, mussels) to pelagic species (sharks, swordfish) are listed on the Sixth Schedule. A common feature of these stocks (with the exception of spiny dogfish, which has a specific regime) is that they are all likely to survive return to sea.

129 Under Option 1, no exception to the dumping prohibition under section 72 would be provided for the kina fishery.

130 Option 2 makes use of section 72(7) to include kina on the Sixth Schedule. Under this option fishers will have the flexibility to return small kina with low roe-recovery to the water, thus avoiding the costs associated with freighting such kina to processing or landfill facilities.



131 The two requirements included under Option 2 are designed to ensure the proposal is neutral with respect to sustainability impacts, as well as Fisheries 2030 and draft fisheries plan environmental outcomes. Kina are generally considered likely to survive return to sea when handgathered, however, the survival of kina taken by other methods (for example trawling) is likely to be diminished.

132 The change in management proposed under Option 2 would become effective in December 2010. Notification of the change would occur through circulation of a Minister's decision letter and the Ministry's website.

## **Assessment of Management Options**

### *Option 1 – Status Quo*

#### Impact

133 Under the status quo, commercial kina fishers will be required to continue landing small kina with low roe-recovery.

#### Costs

134 The costs associated with freighting (and potentially land-dumping) low roe-recovery kina will remain under Option 1. The Ministry does not have quantitative information on the costs to kina fishers of landing (and potentially dumping).

135 With annual landings of just under 1,000t, and a port price of \$1 to \$1.50 per kg, the kina fishery is relatively low-value in greenweight terms. The profitability of fishing kina stocks, particularly in remote areas such as Fiordland, is very sensitive to roe-recovery rate. In such areas the target recovery rate (roe/greenweight) for commercial viability is approximately 10%.

136 On this basis, the cost associated with freighting and landing low-recovery kina appears to be a significant burden on the economic benefit gained from kina fisheries.

#### Benefits

137 Under Option 1 the Order in Council to add kina to the Sixth Schedule will be avoided.

138 Kina fishers, in consultation with the Ministry, are investigating other options to help address this issue, for example, on-board processing of kina. There will be increased incentives to investigate these under Option 1. Such processing is, however, also governed by other agencies (and no vessels have yet gained approval for this activity).

139 A national Fishery Plan for all shellfish fisheries, including kina, is scheduled to be completed by October 2010. Retaining the status quo could allow the issue identified in this paper to be addressed as part of a package of initiatives within this fisheries plan, rather than as an isolated amendment.

### *Option 2 – Allowing Return of Sea*

#### Impact

140 Under Option 2 commercial kina fishers will be able to return low roe-recovery kina to sea, when handgathered, provided the kina are likely to survive.

### Costs

141 This option requires an Order in Council.

142 As the option reduces regulatory restrictions there are no additional regulatory, compliance or management costs. It is likely to promote compliance as a practical option for the handgathering fishery.

143 Informing stakeholders of the change is expected to have a low resource impact.

### Benefits

144 Option 2 provides fishers with the flexibility to return low roe-recovery kina to sea, thereby avoiding the costs (outlined in the previous section) associated with freighting such kina to processing and/or landfill facilities.

145 This option reduces industry compliance costs and should increase economic benefit from the kina fishery. It aligns with the Fisheries 2030 five-year plan of action of ensuring fisheries laws and regulations reduce compliance costs and improve management effectiveness.

### *Other Management Controls*

146 No other management controls are proposed. As the proposal reduces regulatory restrictions and uses existing Sixth Schedule provisions, no supporting offence and penalty provisions need to be introduced or amended.

### **Statutory Considerations**

147 In considering whether to approve Option 1 or Option 2 all relevant statutory criteria contained in the Act. These include sections 5, 8, 9, 10 and 72.

148 The Ministry considers both options meet the statutory requirements included in these sections. However, the choice of options is influenced towards Option 2 by the purpose of the Act in section 8 (to provide for the utilisation of fisheries resources while ensuring sustainability).

### **Other Management Issues**

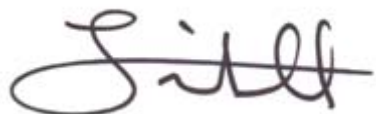
149 Monitoring and evaluation of the management rules for the kina fishery will part of the national Fishery Plan for Shellfish, scheduled for completion in October.

## Summary of Recommendations

150 The Ministry recommends that you:

- e) **Agree** to recommend the Governor-General amend the Sixth Schedule of the Act, by Order in Council, to allow return to sea of kina where they are likely to survive and are taken by the method of handgathering

Yes / No



Leigh Mitchell  
**for Chief Executive**

APPROVED / NOT APPROVED / APPROVED AS AMENDED

Hon Phil Heatley  
**Minister of Fisheries and Aquaculture**

/ / 2010

## Appendices

### *Statutory Considerations*

- a) **Section 5 – Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:** Both options presented in this paper adequately address international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- b) **Section 8 – Purpose of the Act:** Both options presented in this paper meet the purpose of the Act. The change proposed under Option 2 is considered to be neutral in terms of sustainability impact, as only kina gathered by hand and likely to survive will be returned to sea. MFish considers there is a preference for Option 2 as a result of the opportunity for greater utilisation.
- c) **Section 9 – Environmental Principles:** Both options presented in this paper take into account the environmental principles. The change proposed under Option 2 is considered to be neutral in terms of sustainability and environmental impact.
- d) **Section 10 – Information principles:** the information relied on for this FAP includes quantitative information held by MFish (for example port price) and quantitative and qualitative information provided by the commercial fishing industry on the costs of freighting low-value kina product to processing facilities.

# Management Options for Basking Sharks to give effect to New Zealand's International Obligations – Final Advice

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## Executive Summary

151 The Ministry and DOC recommend that:

- a) The Minister of Conservation agrees to prohibit the take of basking sharks (*Cetorhinus maximus*) in New Zealand and New Zealand fisheries waters under the Wildlife Act 1953; and
- b) The Minister of Fisheries and Aquaculture agrees to prohibit the take of basking sharks by New Zealand flagged vessels operating on the high seas, through regulations made under the Fisheries Act 1996.

152 The basking shark is the world's second largest fish. Its international global threat status is listed as 'Vulnerable'. The species is considered to be susceptible to over-utilisation due to its longevity and very low productivity. However, there is no information available to suggest a sustainability issue in New Zealand.

153 These recommendations are consistent with New Zealand's policy decision to protect the basking shark, which was stated through the publication of the National Plan of Action–Sharks (NPOA-Sharks) in 2008. The NPOA-Sharks is a policy document that details the management actions that are required to improve the conservation and management of shark species in New Zealand waters.

154 Protecting basking shark is also consistent with 1) New Zealand's obligation as a State Party to the Convention on the Conservation of Migratory Species of Wild Animals (the CMS), to prohibit the take of basking shark; and 2) the objectives of the International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks), as published by the United Nations Food and Agriculture Organisation (FAO).

155 In order to effect this outcome, your approval is sought for the following regulatory changes:

- a) An amendment to Schedule 7A of the Wildlife Act 1953, to include basking shark, which would give it absolute protection in New Zealand and New Zealand fisheries waters;
- b) Making regulations under section 297 of the Fisheries Act 1996 to restrict the take of basking shark by New Zealand flagged vessels operating on the high seas; and
- c) A consequential amendment to the Fisheries (Reporting) Regulations 2001 to require fishers to report take of basking shark on the non-fish and protected species catch return.

156 The option to retain the status quo is also available to you should you consider the existing management measures to be sufficient, or you wish to delay this decision or you wish to implement an alternative approach at a later date. The Ministry and DOC do not recommend retaining the status quo.

157 Although submissions were received that indicated some opposition to the proposed management action, especially on the high seas, the majority of submissions showed strong support for the proposals.

## Rationale for Management Options

158 The basking shark is the second largest fish in the world. Although its distribution in the south west Pacific has been described by various researchers<sup>8 9 10</sup>, it is not known if there is a distinct south west Pacific population. This lack of information on population connectivity makes it impossible to quantify the regional impact on the species from current fishing-related mortalities.

159 The basking shark is also considered to be extremely vulnerable to overfishing, perhaps more so than most sharks, due to its long-lived nature and very low productivity. The species has been assessed as globally vulnerable by the International Union for Conservation of Nature (IUCN) Red List and it is listed as in Gradual Decline under the New Zealand Threat Classification System<sup>11</sup>.

160 New Zealand developed the NPOA-Sharks in response to the publication of the IPOA-Sharks, by the FAO. The overarching goal of the IPOA-Sharks is 'to ensure the conservation and management of sharks and their long-term sustainable use', and as a member of the FAO that regularly takes sharks, there was an onus on New Zealand to develop an NPOA. Within the NPOA-Sharks 11 management actions are specified that, once completed, will help New Zealand's fisheries management regime satisfy the objectives of the IPOA-Sharks.

161 Action iii) in the NPOA-Sharks states that New Zealand will protect the basking shark. This action recognises that New Zealand has an obligation to prohibit the take of this species due to its listing on Appendix I of the CMS.

162 New Zealand acceded to the CMS on 7 July 2000 and it entered into force on 1 October 2000. Basking shark was listed on Appendices I and II<sup>12</sup> in 2005, following concern over its global conservation status. As a Party to the CMS, New Zealand is obliged to "*endeavour to provide immediate protection for migratory species listed in Appendix I*"<sup>13</sup>, and specifically, to "*prohibit the taking of animals belonging to species listed on Appendix I*"<sup>14</sup> both within New Zealand fisheries waters, as well as by New Zealand flagged vessels operating outside national jurisdictional limits.

163 'Taking' in this context means hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct<sup>15</sup>, and would apply to both commercial and non-commercial fishers. The CMS does provide limited exceptions to the prohibition on taking of species listed in Appendix I, such as for scientific research, conservation efforts, customary use or exceptional circumstances<sup>16</sup>.

164 The current New Zealand management framework prohibits direct targeting of basking sharks, but allows fishers to use basking shark products from any incidental captures<sup>17</sup>. Fishers are

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<sup>8</sup> Compagno LJV. 1984. FAO species catalogue. Vol. 4. Sharks of the World. An annotated and illustrated catalogue of shark species known to date. Part 1. Hexanchiformes to Lamniformes. FAO Fisheries Synopsis No. 125, Vol. 4, Part 1. FAO, Rome. 249 pp.

<sup>9</sup> Compagno LJV. 2001. FAO species catalogue for Fishery Purposes No.1, Vol. 2. Sharks of the World. An annotated and illustrated catalogue of shark species known to date. Vol. 2. Bullhead, mackerel and carpet sharks (Heterodontiformes, Lamniformes and Orectolobiformes). FAO, Rome. 269 pp.

<sup>10</sup> Compagno LJV, Dando M, Fowler S. 2005. A field guide to the sharks of the World. HarperCollins Pub. Ltd., London. 368 pp

<sup>11</sup> The New Zealand Threat Classification for basking shark is currently under review. Details of this review can be found at: <http://www.doc.govt.nz/getting-involved/consultations/closed/new-listing-of-threatened-status-of-new-zealand-marine-species/>

<sup>12</sup> Migratory species in danger of extinction are listed on Appendix I of the Convention. Migratory species that have an unfavourable conservation status, or whose conservation status would significantly benefit from international co-operation are listed on Appendix II.

<sup>13</sup> Convention on the Conservation of Migratory Species of Wild Animals (CMS), article II3(b)

<sup>14</sup> CMS, article III(5)

<sup>15</sup> CMS, article I(1)(i)

<sup>16</sup> CMS, article III(5)

<sup>17</sup> The basking shark was listed on Schedule 4C of the Fisheries Act in 2004. Schedule 4C lists those stocks and species subject to a permit moratorium under section 93 of the Fisheries Act. As there were no current permits for basking shark at the time of its listing on Schedule 4C, no commercial targeting is permitted in New Zealand, or by New Zealand flagged vessels on the high seas.

not currently penalised for incidental captures, provided the correct recording and reporting requirements are met. Although this does prohibit take, there is a concern that incentives may not be aligned with the objective of the NPOA-Sharks to protect the basking shark, as fishers can retain and sell their incidental bycatch.

165 More comprehensive measures to protect basking shark would also be consistent with the management approach that was taken by the Ministry and DOC in 2007, to prohibit the take and use of white pointer shark. This prohibition was also in response to the listing of white pointer shark on Appendices I and II of the CMS. The Ministry and DOC utilised a dual-legislative approach under both the Fisheries Act and Wildlife Act, to prohibit take of white pointer shark in New Zealand, in New Zealand fisheries waters and by New Zealand flagged vessels on the high seas.

### **Proposed Management Approach**

166 There are existing statutory tools that could be used to give effect to the policy decision detailed in the NPOA-Sharks:

- a) The Wildlife Act can be used to prohibit use of marine species within New Zealand and New Zealand fisheries waters.
- b) Regulations under the Fisheries Act could restrict the take of basking shark by New Zealand flagged vessels fishing on the high seas.

167 The Wildlife Act is the primary legislation for wildlife protection in New Zealand, and provides for both full and partial protection of a species, either through its listing on the Schedules to the Act or its recognition as wildlife in the Act itself. The Wildlife Act is administered by DOC.

168 The Wildlife Act can only be used to prohibit the take and use of basking sharks in New Zealand and in New Zealand fisheries waters. Since the Wildlife Act has limited application outside New Zealand fisheries waters, absolute protection under the Wildlife Act alone could leave New Zealand flagged vessels on the high seas largely unregulated, and would therefore result in partial regulatory protection for basking sharks by New Zealand.

169 Unlike the Wildlife Act, several tools are available under the Fisheries Act to prohibit the take and use of basking sharks by New Zealand flagged vessels on the high seas. Currently, direct take is prohibited because basking shark is listed on Schedule 4C to the Fisheries Act, but there is no restriction on subsequent use of the captured shark as fishers can retain and sell their bycatch. Although fishers have a defence if catch of basking shark is an inevitable consequence of lawful fishing, the Ministry and DOC are concerned that this defence may create incentives for fishers to opportunistically harvest basking shark, thus only providing partial protection for the species.

170 The Ministry and DOC recommend using the Wildlife Act as the primary legislation to protect and manage basking sharks within New Zealand and New Zealand fisheries waters, by listing basking shark on Schedule 7A of the Wildlife Act. The creation of new regulations under section 297 of the Fisheries Act is then recommended to manage interactions of New Zealand flagged vessels with basking sharks on the high seas.

171 Further, should you decide to list basking shark on Schedule 7A to the Wildlife Act, an amendment to the Fisheries (Reporting) Regulations 2001 would be required, to include basking shark on Part 2C of Schedule 3. Part 2C lists protected fish species that require reporting on the non-fish and protected species catch return.

172 As stated previously, this same management approach was also used in 2007 to prohibit utilisation of the white pointer shark, after its listing on CMS Appendices I and II. The Ministry's and DOC's preferred option is that you approve a consistent approach here, to afford full protection for the basking shark.

## Consultation

173 Between 4 May and 16 June 2010, the Ministry and DOC released an initial position paper (IPP) for public consultation. The IPP was posted on the Ministry and DOC websites, and key stakeholders were notified of the document's availability.

## Submissions Received

174 Submissions regarding this proposal were received from:

- a) Anaria Tangohau (Ms Tangohau)
- b) The Deepwater Group Limited (DWG)
- c) The Environmental Defence Society (EDS)
- d) Independent Fisheries Limited (IFL)
- e) Louise Holden (Ms Holden)
- f) The New Zealand Recreational Fishing Council (NZRFC)
- g) The Royal Forest and Bird Protection Society of New Zealand Inc. (Forest & Bird)
- h) Steven Benjamins (Dr Benjamins)
- i) The Seafood Industry Council (SeaFIC)
- j) Te Ohu Kai Moana (TOKM)

## Discussion

175 Submissions received from Ms Tangohau, EDS, Ms Holden, NZRFC, Forest & Bird and Dr Benjamins, supported the Ministry and DOC's preferred option to use both the Wildlife Act and Fisheries Act to protect basking shark within the EEZ and on the high seas. Submissions from EDS, Forest & Bird and Dr Benjamins also recognised the current lack of understanding of the distribution and abundance of basking sharks, and note the importance of additional management measures being adopted in the future.

176 However, submissions from DWG, IFL, SeaFIC and TOKM raised a number of issues with the proposed approach. The issues that are relevant to your decision are addressed in the following sections of this paper, and a summary of all submissions can be found in Part 2 of this final advice paper.

## Assessment of Management Options

### *Option 1 – Status Quo*

177 There is some protection afforded to basking sharks under the status quo, as basking shark is listed on Schedule 4C to the Fisheries Act. This effectively prohibits fishers from targeting basking sharks. Retaining the status quo would enable fishers to continue to use any incidental bycatch of basking shark. The Ministry and DOC do not consider that allowing opportunistic use of basking shark bycatch would be consistent with the policy decision made in the NPOA-Sharks to protect this species, or the listing of basking shark on Appendix I of the CMS. However, this option is available to you if you consider that the existing measures are sufficient or if you wish to delay these protection measures and consider an alternative approach.

178 Submissions from DWG, SeaFIC and TOKM propose an alternative approach, and are in support of a review of basking shark's CMS listing, especially the listing of the southern hemisphere population. The submissions note that: (1) there is a lack of evidence of population decline in the southern hemisphere; (2) the current threat status of the global population is not endangered<sup>18</sup>; and

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<sup>18</sup> The global population of basking shark is listed as Vulnerable and the North Atlantic population is listed as Endangered on the IUCN Red List.



(3) target fishing for basking shark has never occurred around New Zealand. Submissions view this as sufficient information to support a review.

179 The Ministry and DOC note that all information quoted above by submitters was available to the CMS 8<sup>th</sup> Conference of Parties (COP8) in 2005, when the listing of basking shark was discussed<sup>19</sup>. No new information has become available since 2005 that would warrant a review of basking shark's status under the Convention.

180 Continued take (albeit as bycatch) may have some impact on the basking shark population; however the extent of this impact is unknown. Research studies<sup>20 21</sup> have quantified the number of incidental basking shark captures, but there is no information to indicate whether this level of utilisation has impacted the sustainability of the population. Submissions show a wide range of views as to whether the current level of impact is acceptable.

181 IFL and TOKM support retaining the right to utilise bycatch that cannot be returned to the sea alive, stating that discarding animals that are unlikely to survive has no conservation value and is a wasted economic opportunity. Should you choose to retain the status quo, the infrequent trade and export of basking shark products harvested from incidental captures would be likely to continue. The high price of basking shark fins<sup>22</sup> may also encourage such opportunistic use of basking shark bycatch, which could survive being returned to the sea.

182 The Ministry and DOC agree that there is little conservation value from discarding a dead shark. However, there is concern that allowing continued use in such circumstances may incentivise fishers to engage in opportunistic use and would compromise the protection requirements of both the NPOA-Sharks and the CMS.

### *Option 2 – Prohibiting Utilisation*

183 Using a combination of the tools available under the Wildlife Act and Fisheries Act will provide the strongest and most comprehensive protection measures for basking sharks available from New Zealand. This approach will fulfil one of the management actions specified in the NPOA-Sharks, and will meet New Zealand's responsibility to prohibit the taking of basking sharks under the CMS.

184 The majority of submissions received support prohibiting utilisation within New Zealand's EEZ via regulation under both the Wildlife Act and Fisheries Act. However, some issues were raised in submissions from DWG, IFL, SeaFIC and TOKM with regard to the proposed regulation on the high seas. These issues are discussed in the following section, which details the provisions available for prohibiting utilisation of the basking shark under both Acts.

### *The Wildlife Act 1953*

185 This Act is the primary legislation for the protection of wildlife in New Zealand and is currently used to absolutely protect a range of marine species including marine reptiles and seabirds.

186 The Ministry and DOC recommend that you list basking shark on Schedule 7A to the Wildlife Act as this will provide absolute protection to the species in New Zealand and New Zealand fisheries waters.

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<sup>19</sup> At COP 8 reservations to the listing were articulated by Norway and New Zealand. However, neither country blocked consensus on listing

<sup>20</sup> Francis, M.P. & Duffy, C. (2002) Distribution, seasonal abundance and bycatch of basking sharks (*Cetorhinus maximus*) in New Zealand, with observations on their winter habitat. *Marine Biology* (2002) 140:831-842

<sup>21</sup> M.P. Francis and M.H. Smith, New Zealand Aquatic Environment and Biodiversity Report 2010

<sup>22</sup> Estimates on the value of basking shark fins is uncertain. TOKM quoted \$2,000-\$10,000 per fin, whereas IFL provided details 91kg of basking shark fins selling for \$2247 plus GST.

187 Absolute protection under the Wildlife Act would mean that any person taking, or attempting to take basking shark without lawful authority, would be committing an offence against the Act. The penalties include fines up to \$250,000 or imprisonment for no longer than six months<sup>23</sup>. A defence is provided where the accidental taking of marine wildlife occurs as part of fishing operations in accordance with section 68B<sup>24</sup>, as long as the recording and reporting requirements of section 63B<sup>25</sup> of the Wildlife Act are complied with. If the recording and reporting provisions are not followed then there are provisions for fines of up to \$10,000.

188 Section 63A of the Wildlife Act effectively requires fishers to return any captured shark to the sea, without deliberately attempting to injure or kill the animal, as it prohibits sale or possession of protected species. This would mean that any basking shark accidentally killed could not be sold or traded in any form.

189 DWG, SeaFIC and TOKM are opposed to prohibiting utilisation within the EEZ, instead supporting a review of basking shark's listing on the CMS Appendices. However, these submitters did agree that in the absence of such a review, protection under the Wildlife Act is appropriate.

### The Fisheries Act 1996

190 The following regulatory changes are recommended under the Fisheries Act:

- a) Make regulations under section 297(1)(o) to restrict the take of basking shark by New Zealand flagged vessels operating on the high seas; and
- b) Consequential amendment to the Fisheries (Reporting) Regulations 2001 to require fishers to report take of basking shark on the non-fish and protected species catch return.

191 The Ministry and DOC consider that management under the Fisheries Act would provide less protection than regulation under the Wildlife Act because fishers are still permitted to use their incidental bycatch of basking shark. The Ministry and DOC consider the Fisheries Act alone to be an inappropriate tool to achieve protection of basking sharks. However, because the Wildlife Act has limited application outside New Zealand fisheries waters, measures under the Fisheries Act are required to prohibit utilisation by New Zealand flagged vessels on the high seas.

192 An option to place conditions on all high seas permits, prohibiting the utilisation of basking shark is available, but the Ministry and DOC do not consider this approach appropriate. The proposed regulatory approach provides more transparency than amending all high seas permits, entails less administrative burden, and is consistent with the approach used in 2007 to prohibit the take and use of white pointer shark. The Ministry and DOC therefore recommend a regulatory approach.

193 Regulations could be made under section 297(1)(o) of the Fisheries Act, which provides for regulations to be enacted that implement provisions of agreements or conventions to which New Zealand is a signatory or a party. Such regulation would prohibit all New Zealand flagged vessels from taking basking sharks on the high seas, but will not apply within the EEZ.

194 Regulatory offences can incur a fine of up to \$100,000, with defence provisions available under section 241 should a fisher accidentally catch a basking shark. Under section 241, it would be a defence if a fisher who accidentally caught a basking shark could prove that they had taken

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<sup>23</sup> A further penalty fine, not exceeding \$10,000 for every item of marine wildlife (other than coral) in respect of which the offence was committed, may also be incurred.

<sup>24</sup> Section 68B of the Wildlife Act provides the possible defences available for anyone charged with an offence under the Wildlife Act. Section 68B(4)(b) states "It is a defence to the charge if the defendant proves that the death or injury to, or possession of, such wildlife took place as part of a fishing operation and the requirements of section 63B of this Act were complied with".

<sup>25</sup> Section 63B of the Wildlife Act details the reporting and recording requirements for any person who, in the course of legal fishing operations, accidentally causes injury or death to any animal defined as wildlife in the Wildlife Act or its Schedules.

reasonable precautions and exercised due diligence to avoid contravening the Act. Under section 241(1)(b) such a fisher must have also immediately returned the captured shark to the sea and complied with all the material recording and reporting requirements under the Fisheries Act.

195 Further, should you approve the listing of basking shark on Schedule 7A to the Wildlife Act, and the basking shark becomes an absolutely protected species in New Zealand and New Zealand fisheries waters, consequential amendment to the Fisheries (Reporting) Regulations 2001 will be required to necessitate reporting of protected species on the non-fish and protected species catch return.

196 The main opposition to the management measures proposed under the Fisheries Act is described in submissions from DWG, IFL, SeaFIC and TOKM. These stakeholders note that the purpose of the Act is to provide for utilisation, and the proposed regulations do not share this purpose as they aim to prohibit use of basking sharks. The Ministry and DOC acknowledge these points but note that the Fisheries Act also requires that the adverse effects of fishing are avoided, remedied or mitigated, and permits regulations to this effect.

197 DWG, SeaFIC and TOKM are also opposed to what they consider to be unilateral regulation of basking sharks on the high seas. Instead they favour a cooperative approach between States, through regional fisheries management organisations (RFMOs). The Ministry and DOC note that the proposed approach does not preclude further, multilateral management measures from being implemented through RFMOs. In addition, the proposed approach is consistent with a proposal to CMS that New Zealand co-sponsored in conjunction with Australia and the Seychelles in 2005, to develop an international conservation instrument under CMS to improve conservation of white pointer, basking and whale sharks.

#### Using both the Wildlife and Fisheries Acts

198 The Ministry and DOC consider that combining protection measures under both pieces of legislation and implementing the regulatory amendments as per Option 2 will enable New Zealand to provide the most comprehensive protection for basking sharks.

199 Implementing the regulatory amendments that are proposed here would also provide consistency with the approach that was used in 2007 to fulfil New Zealand's obligation to the CMS with regard to prohibiting utilisation of the white pointer shark.

200 Should you decide to implement Option 2, implementation of the regulatory changes to support the management measures for basking shark will be given effect from 01 December 2010.

### **Other Management Issues**

#### *Customary Considerations*

201 Shark species historically formed an important food source for Maori, however, cultural prohibitions on the killing of large sharks are widespread throughout Polynesia and Melanesia, reflecting the beliefs that these animals are reincarnated ancestors, and/or guardians (kaitiaki) of particular tribes or coastal features. Shark kaitiaki occur in a number of areas, including Moremore, the guardian of Pania Reef in Hawkes Bay. Generally the species of shark kaitiaki is not specified.

202 TOKM's submission calls for a delay in regulation until the extent of customary use can be quantified. There are mechanisms available under the Fisheries Act that allow for customary take. Whilst the Wildlife Act makes no specific provision for traditional or customary use, there are provisions under which applications could be considered for take of absolutely protected wildlife. Therefore, the Ministry and DOC do not consider the proposed regulatory amendments would preclude future customary use or customary take, and a delay in regulation is therefore unnecessary. This approach is also consistent with the CMS requirements, which allow for customary use.

### *Recreational Considerations*

203 There is little information available on the recreational use of basking sharks. There is no recreational bag limit in place, and the Ministry and DOC are unaware of any recreational targeting. However, incidental captures of basking sharks are known to have occurred in New Zealand's set net fisheries (Francis & Duffy 2002), and recreational set net fishers could potentially "take" a basking shark. In this case the defence provisions under section 68B of the Wildlife Act would apply. No submissions were received that provided any further information on this matter.

### *Beach Netting*

204 A beach-netting programme is run by Dunedin City Council and operates off Brighton, St Clair and St Kilda beaches between December and February each year. The programme has been running since December 1969, following a series of fatal attacks by white pointer sharks in the area between 1964 and 1969.

205 Shark nets are set in order to kill sharks; but are targeted at shark species that pose a risk to human life, which basking sharks do not. The beach-netting programme is not thought to pose a sustainability risk to this species as only a small number of basking shark captures have been reported over the past four decades (DCC unpublished data). A defence would be available under the Wildlife Act if a basking shark was incidentally taken by the programme.

### *Future Management*

206 Although the Ministry and DOC do not consider that additional management measures are required at this time, the tools available to you, should future management intervention be necessary, will be influenced by the management option you choose now to protect basking sharks.

207 If you choose to retain the status quo under Option 1, section 11 provisions under the Fisheries Act could be used. Section 11 measures could include fishing method, area or seasonal restrictions, and can be implemented whether or not the basking shark is protected under the Wildlife Act.

208 Alternatively, should you choose to approve Option 2, future management tools include 1) the development of Population Management Plans (PMPs) under the Wildlife Act<sup>26</sup> and 2) provision to implement measures under section 15 of the Fisheries Act.

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<sup>26</sup> DoC is currently reviewing the PMP process.

## Summary of Recommendations for Joint Ministers

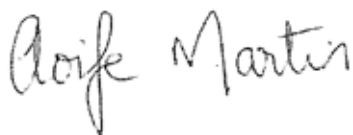
209 The Ministry and DOC recommends that the Minister of Conservation:

- f) **Agrees** to include basking shark in Schedule 7A of the Wildlife Act 1953, to give it absolute protection in New Zealand and New Zealand fisheries waters Yes / No

210 The Ministry and DOC recommends that the Minister of Fisheries and Aquaculture:

- g) **Agrees** to the making of regulation under section 297 of the Fisheries Act 1996 to restrict the take of basking shark by New Zealand flagged vessels operating on the high seas; and Yes / No

- h) **Agrees** to the making of a consequential amendment to the Fisheries (Reporting) Regulations 2001 to require fishers to report incidental take of basking shark on non-fish and protected species return. Yes / No



Aoife Martin  
Fisheries Manager - Deepwater  
**Ministry of Fisheries**



Kevin O'Connor  
General Manager – R&D Group  
**Department of Conservation**

APPROVED / NOT APPROVED /  
APPROVED AS AMENDED

APPROVED / NOT APPROVED /  
APPROVED AS AMENDED

Hon Phil Heatley  
**Minister of Fisheries and Aquaculture**

Hon Kate Wilkinson  
**Minister of Conservation**

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