



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

Review of Regulatory Measures and other Management Controls for 1 December 2010  
Volume 2: Initial Position Papers and Submissions



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# Review of Challenger Area Commercial Fishing Regulation 11 – Initial Position Paper

## Executive Summary

1 This Initial Position Paper (IPP) presents options to either retain or revoke regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 (regulation 11).

2 Regulation 11 stipulates that the Chief Executive of the Ministry of Fisheries (the Ministry) is required to close the inner 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>.

3 When enacted in 1986, the intent of regulation 11 was to reduce conflict between different commercial fishing methods. Specifically, the intent was to control pair trawling and Danish seining which were seen as a threat to the established single trawl fishery. Some recreational fishers have submitted that, at a time of decline in the snapper stock, regulation 11 was also intended to protect spawning grounds and minimise the impact of commercial fishing on snapper and possibly other species abundance in the inner Tasman Bay area.

4 Constraining some commercial fishing methods once the ‘trigger’ point of 100 tonnes of snapper is reached, could serve to reduce the risk of localised depletion of some fish species of importance to non-commercial fishing stakeholders.

5 Regulation 11 was first implemented to restrict fishing methods in the Challenger area during 2009 and was subsequently invoked in April 2010. An assessment of historical snapper catch records suggests that regulation 11 should have been implemented more frequently in the past.

6 The implementation of regulation 11 in 2009 caused significant discontent from commercial fishers, particularly Danish seiners, who claim that regulation 11 unduly restricts commercial access and efficiency of harvesting. Recreational fishers, however, have indicated support for the regulation as a means of restricting commercial fishing methods and catch in this area, which might improve the availability of some fish species to them. Consequently, the merit of the regulation is disputed. In respect to managing conflict within the commercial sector, commercial stakeholder organisations consider that this is a matter that commercial fishers should manage internally and that the regulation should be revoked because it is restricting the ability of the sector to fish efficiently.

7 The primary issue is whether regulation 11 is now relevant or provides outcomes of sufficient value to warrant retaining the regulation.

8 This paper considers this issue and the implications of retaining or revoking regulation 11. The Ministry outlines two options in this IPP. Option One is to retain the *status quo*. Option Two is to revoke the regulation.

9 The Ministry has an initial preference for adopting Option Two as the intent of the regulation is no longer relevant or is better met by alternative management measures.

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

## Regulatory Impact Analysis Requirements

10 This IPP requires a Regulatory Impact Statement to be reviewed internally by the Ministry.

11 For more information on the Regulatory Impact Analysis Requirements and the meaning of the word 'significant' with reference to an IPP, please refer to the Treasury website [www.treasury.govt.nz](http://www.treasury.govt.nz).

### The Issue

12 The primary intention of regulation 11 was to reduce conflict within the commercial sector between the traditional single trawler fleet and pair trawlers and Danish seiners. The development of additional fleets in the early 1980s was seen as a threat to the established single trawl fishery and the sustainability of finfish, particularly snapper. For this reason, the regulation may have also been intended to reduce conflict between recreational and commercial snapper fishers by managing commercial fishing effort in the inner Tasman Bay.

13 Regulation 11 has engendered discontent from the commercial sector. Commercial fishers consider it is not the government's role to manage intra-sector conflict and contend regulation 11 impedes industry from achieving the most efficient use of fisheries resources. While snapper catch triggers regulation 11, its effect is not species specific, but restricts fishing for all species by Danish seine and pair trawl within the defined area.

14 Regulation 11 is not intended to confer sustainability benefits. The regulation does not limit the amount of snapper that can be caught within the greater Tasman Bay area, or the quota management area of SNA7, but merely when snapper can be caught by certain fishing methods. Incongruously, some fishing methods contribute to triggering the closure, yet remain largely unaffected by it. For instance, between October 2008 and the end of February 2009, single trawlers caught approximately 74 tonnes of the 100 tonne limit from statistical area 038 yet were unaffected by the method restrictions implemented in 2009.

15 If the intent of regulation 11 is to control snapper fishing effort, then controls on specific methods such as Danish seining are inconsistent with this intent as fishing effort can be transferred across fishing methods. Also, there is information to suggest Danish seiners are better able to target certain species (primarily flatfish in this instance) than single trawl vessels. Consequently, the impact of Danish seining on the snapper population may be reduced by the selectivity of the fishing method. Yet Danish seine methods are restricted whilst single trawling can still occur.

16 Recreational fishers support regulation 11 for its ability to reduce bulk fishing methods in popular fishing areas and, according to previous submissions, possibly protect snapper spawning grounds. However, the regulation still allows single trawl vessels to operate in Tasman Bay. Catch information suggests few benefits conferred on recreational fishers in respect of snapper availability in the affected area. The extent of any benefits is unclear as the method restriction period becomes effective after the peak summertime recreational fishing period.

17 Since regulation 11 was enacted, a voluntary agreement between recreational and commercial fishers was reached which closes some inshore areas of Tasman and Golden Bay to all commercial trawl fishing out to three nautical miles between 1 November and 30 April each year (see map in appendix 1). The intent of these voluntary closures is to mitigate conflict between recreational and commercial fishers.

18 The 'triggered' method restrictions based on catch levels (as opposed to seasonal closure) is unique to this regulation and is difficult to implement in a timely manner. Commercial fishers are required to submit monthly catch records before the fifteenth day of the following calendar month. This results in a delay in updating Ministry databases, particularly over the holiday season, when forms may need to be reviewed or returned to the fisher for amendments. Consequently, there is a delay in being able to determine whether regulation 11 needs to be invoked (i.e. whether the snapper catch has reached 100 tonnes). This means that although catch levels may have exceeded 100 tonnes before the end of February, method restrictions cannot be invoked until such time as the data becomes available to verify catch levels. In 2010 this meant that the regulation could not be enforced until 27 April. This has implications for the effectiveness of the regulation as method restrictions cannot be implemented until after February.

19 Section 8 of the Fisheries Act 1996 (the Act) states that the purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. This means conserving, using, enhancing and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing. In making a decision about whether to retain or revoke regulation 11, issues of whether the current regulation meets the purpose of the Act or impedes utilisation and therefore does not provide for the social, economic or cultural wellbeing of any sector need to be considered.

## Summary of Options

### *Option 1 – Status Quo*

20 Maintaining the *status quo* would retain regulation 11 in its current form. In summary, subject to public notice, when 100 tonnes of snapper are caught in statistical area 038 between 1 October and 28 February in any fishing year, no commercial fisher will be permitted to take any fish by pair trawling, Danish seining or any snapper by surrounding net that is not a drag net within a specified area of the inshore waters of Tasman Bay. Any such restriction is effective until 30 September.

21 Implementing the status quo has implications for the use of fisheries resources, including imposing a cost to commercial fishers by limiting fishing effort for some methods in part of statistical area 038. In particular, Danish seiners targeting flatfish are affected by the method restrictions. Recreational fishers support the regulation as a means of controlling fishing effort in the near shore area.

22 Should regulation 11 be retained, the Ministry proposes that new monitoring regimes be negotiated with commercial fishers so that catch records are submitted and available with minimum delay to effectively monitor catch levels and determine whether or not regulation 11 needs to be invoked.

### *Option 2 – Revoke Regulation 11 (Ministry's Preferred Option)*

23 The Ministry proposes that regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 be revoked.

24 This is the Ministry's preferred option as it removes a regulation that was intended to address issues that are no longer relevant or could be achieved better by other management measures. Revoking the regulation is likely to achieve more efficient utilisation of fisheries resources.

## Rationale for Management Options

25 The Ministry considers that regulation 11 restricts commercial fishing effort by some methods without inferring any direct sustainability benefits and that alternative management measures are more suited to meet the intent of the regulation.

26 As described previously, the availability of catch data in statistical area 038 in order to determine whether regulation 11 needs to be invoked (i.e. whether the snapper catch has reached 100 tonnes) results in a delay in implementing method restrictions.

27 The key factor to take into account when considering the management options presented in this paper is whether the option adequately meets the purpose of the Fisheries Act 1996, that being to provide for the utilisation of fisheries resources while ensuring sustainability.

28 Any amendment or revocation of regulation 11 will become effective before the end of the calendar year 2010.

29 Stakeholder views are sought on the management options presented in this paper.

## Assessment of Management Options

### *Option 1 – Status Quo*

#### Impact

30 Regulation 11 has been implemented twice, despite historical snapper catch records showing that the regulation should have been enacted more frequently in the past. The regulation has therefore had little impact on managing commercial fishing effort within the defined Tasman Bay region or meeting its objectives.

31 When regulation 11 was implemented during the 2008/09 fishing year, commercial fishers voiced concern about the impact of the regulation on fishing practices. In particular, Danish seiners contend that their ability to catch flatfish was hindered by the regulation. Catch records show that estimated catch for flatfish in statistical area 038 was 52 tonnes lower than the previous years' catch. Traditionally an autumn fishery, over 50 per cent of the Danish seine catch in Statistical area 038 is caught between March and October. In the 2007-08 fishing year, 71 per cent of estimated catch for flatfish was caught during this period. This suggests that the method restrictions in the defined Tasman Bay region implemented by regulation 11 adversely impact the Danish seine flatfish fishery.

32 Statistical area 038 is of particular importance within the SNA 7 fishery. Over 50 per cent of the landings for SNA 7 were reported from statistical area 038 over the last five fishing years. In 2008/09, 91 per cent of the TACC for snapper was caught in statistical area 038. The implementation of regulation 11 did not affect the level of snapper catch during that fishing year. In fact, estimated catch records show that the snapper catch from statistical area 038 in 2008/09 increased by 38 tonnes from the previous fishing year.

33 The implementation of regulation 11 does not significantly affect the ability of bottom pair trawlers to catch snapper in statistical area 038. Catch estimates increased by 24 tonnes for bottom pair trawlers from the 2007/08 to 2008/09 fishing years. Furthermore, over the last five fishing years, pair trawlers have predominantly operated between October

and February so are largely unaffected by any regulatory closure imposed after this time.

34 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 mitigates 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>2</sup>.

35 Should regulation 11 be retained, the Ministry will monitor snapper catch in statistical area 038 from the start of the fishing year. When it can be determined that the 100 tonne 'trigger' is reached, the chief executive will enforce the method restrictions as required by the regulation.

36 Maintaining the *status quo* does not infer any additional risks to the sustainability of snapper in QMA 7. However, retaining the regulation is likely to continue restrictions on commercial access and efficiency of harvesting.

### Costs

37 Regulation 11 might continue to cause unintended consequences by prohibiting the take of fish species other than snapper (such as flatfish) using certain fishing methods in the defined area, although the regulation was designed principally to protect snapper.

38 There is also a risk that by maintaining the *status quo*, increased fishing effort could occur between October and February as fishers seek to maximise catches in this inshore area before method restrictions are implemented. This could result in more conflict with the recreational sector as summer is the busiest recreational fishing season. It could also result in localised depletion of fish stocks targeted by the affected methods. The level of risk of increased conflict and localised depletion is unknown.

### Benefits

39 Retaining regulation 11 removes selected bulk commercial fishing methods from the inshore area of Tasman Bay for a significant portion of the calendar year. This could reduce the risk of localised depletion of some fish populations in the inner Tasman Bay area. In this way the regulation could enhance the recreational fishing experience. The extent to which this might occur however, is difficult to assess and currently unknown.

## *Option 2 – Revoke regulation 11*

### Impact

40 Revoking regulation 11 is likely to have minimal impact on current fishing practice in the Tasman and Golden Bay region, given that the regulation has only been implemented twice since it was promulgated in 1986.

41 Revoking regulation 11 does not impact the voluntary trawl exclusion zone.

42 Revoking regulation 11 does not impact the regulatory prohibition which currently

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<sup>2</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

prohibits Danish seining within three nautical miles of the shore in South Island waters<sup>3</sup>.

43 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.

44 There is uncertainty with sustainability estimates for snapper in the Challenger Area (SNA 7). The stock was last assessed in 2002 and the results of the assessment were not confirmed. The stock status is therefore unknown. However, the Ministry notes that regulation 11 is not intended as a sustainability tool and therefore revoking the regulation would not affect the sustainability of SNA 7.

### Costs

45 Revoking regulation 11 may be resisted by the recreational fishing community as the regulation may act to reduce inter-sector competition for some fish species in statistical area 038 at certain times of year. This issue is partly addressed by the current voluntary closed areas in part of the Tasman Bay region.

### Benefits

46 Revoking regulation 11 is supported by the regional commercial stakeholder organisation as a means to improve commercial fishing efficiency.

47 Revoking regulation 11 aligns with the Fisheries 2030 goal of maximising benefits from the use of fisheries within environmental limits.

48 Revoking regulation 11 will remove a regulation that is difficult to implement and affects commercial fishers' ability to obtain value from the fishery.

49 The Ministry considers that regulation 11 restricts commercial fishing effort without inferring any direct sustainability benefits and that alternative management measures are more suited to meet the intent of the regulation.

50 Revoking regulation 11 aligns with the Government's goal for fewer regulations and meets the objective of eliminating regulations that are unnecessary and ineffective.

## **Other Management Controls**

51 The Ministry supports the current voluntary closures created by an agreement between recreational and commercial fishers. Should regulation 11 be revoked, the Ministry would support any development of additional voluntary measures to ensure that best value is obtained from the fishery by both recreational and commercial fishers. The development and implementation of fisheries plans can be used to consider other management controls.

## **Statutory Considerations**

52 Section 8 of the Fisheries Act 1996 states the purpose of the Act as being able 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

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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.

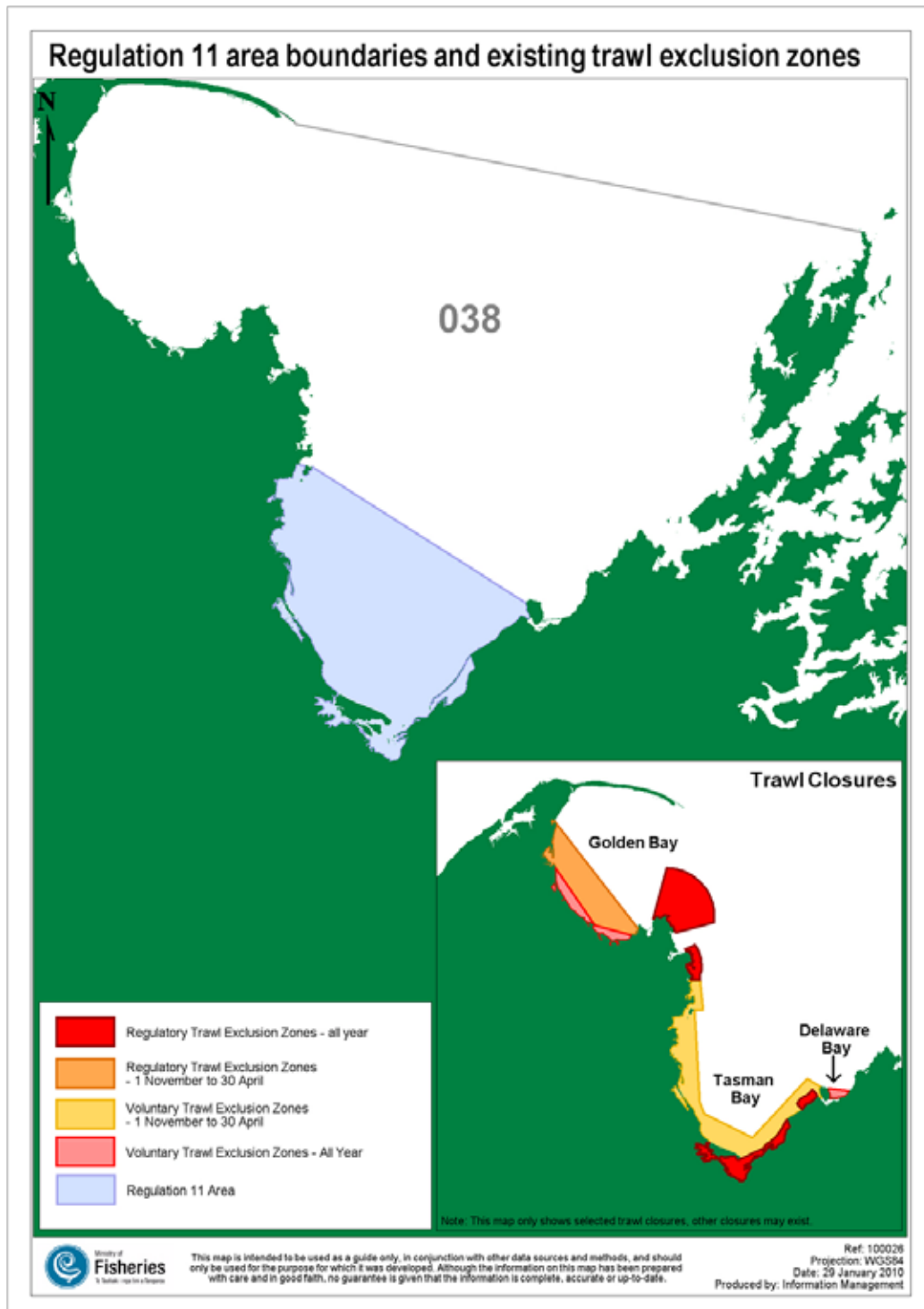


considering the implications of regulation 11 to provide for the utilisation of fisheries resources in the Tasman and Golden Bay areas whilst ensuring the sustainability of these stocks.

53 A full list of legal obligations and how they are applicable to the proposed options is attached as appendix 3.

## 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.

*Appendix Two – Regulation 11 Fisheries (Challenger Area Commercial Fishing)  
Regulation 1986*

***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°32.70'S 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 northwesternmost point of Pepin Island (at 41°08.50'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°58.50'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”.

### *Appendix Three – Statutory Considerations*

1 The following statutory considerations have been taken into account when forming the management options presented in this IPP. Under the Fisheries Act 1996 (FA96):

2 Section 5 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.

3 Section 8 of the Act states the purpose of the Act as being able to provide for the utilisation of fisheries resources while ensuring sustainability, and defines the meanings of "utilisation" and "ensuring sustainability". The management options presented seek to achieve this purpose. Option 2, revocation of regulation 11, will provide for utilisation of fisheries resources. The Ministry is not aware of any specific risks to the sustainability of SNA 7 as a result of retaining or revoking regulation 11.

4 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.

5 There are known detrimental impacts on the benthos from trawling. There are therefore potential impacts on associated and dependent species, biodiversity and protected species that require monitoring and possibly future management action. However, there are no known habitats of particular significance that are affected by the proposals.

6 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.

7 The Ministry notes that 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.

8 The Ministry notes that research to assess the level of by-catch and condition of target fish (flatfish) and by-catch (snapper) in Tasman Bay is currently underway and that once the results of this research become available, the Ministry will be better placed to review the impacts of the Danish seine fishery on snapper by-catch in the Tasman Bay area. In addition, the Ministry seeks input from stakeholders as to the appropriateness of the proposed changes.

9 Section 11(3)(d) enables the Minister to consider sustainability measures that relate to the fishing methods by which any fish, aquatic life, or seaweed of any stock may be taken or that may be used in any area. The Ministry does not consider that the options presented in this paper affect the sustainability of SNA 7.

# REVIEW OF CHALLENGER AREA COMMERCIAL FISHING REGULATION 11 - SUBMISSIONS

**A submission from**

**Tasman and Sounds Recreational Fishers'  
Association (Inc)**

**TASFISH**



**June 2010**

**Review of Challenger Area Commercial  
Fishing Regulation 11**

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[www.tasfish.org.nz](http://www.tasfish.org.nz)

1. The Association can be contacted through President, Martyn Barlow, P O Box 3485 Richmond, Nelson, phone (03) 540 3545, e mail [martyn@mapua.gen.nz](mailto:martyn@mapua.gen.nz)
2. Tasfish is committed to the sustainable use of our marine resources in the Top of the South and good management of our marine ecosystems.
3. Tasman Bay Amateur Marine Fishers' Association was formed in the 1980's in response to proposals to introduce large scale farming of scallops in the Croiselles Harbour a popular recreational fishing area on the coastline north of Nelson city. Since that time it has been renamed TASFISH and become involved in many fishery allocation and management issues affecting all the major species of interest to recreational fishers. This has included being part of many of the species specific working groups set up by MFish e.g. Snapper, Blue Cod, Shellfish. We have worked closely with both MFish and The Challenger Scallop Enhancement Company in the rebuild and ongoing management and annual allocations within the scallop fishery.
4. We were involved in the attempts to set up Fisheries Plans for both the Area 7 Blue Cod and Paua fisheries and view these combined stakeholder fishery management initiatives as important windows to the future. We are now involved in the recently formed Challenger Finfish Recreational Advisory Group set up in conjunction with the Challenger Finfisheries Management Company Limited and have four members on the Ministry of Fisheries Top of the South Recreational Forum and 3 members on the Challenger Inshore Fin Fish Plan Advisory Group.
5. Increasingly in recent years we have been regularly involved in space allocation issues for marine farming and in particular limiting their placement over habitat of recreationally important species. This has included many hundreds of submissions to Marlborough District Council on Marine Farm Resource Consent applications and also to MFish on Marine Farming Permits on how these farms affect fish or fishers. Our toughest case was taking MFish to judicial review over one permit. We recognize the importance of suitable habitat for all species and accept the need for careful management of marine ecosystems.
6. Membership of Tasfish is both individual and affiliate. While individual membership is relatively low at less than 50 many of the fishing and boating clubs in the Top of the South, from Golden Bay to Nelson and the Marlborough Sounds, affiliate to Tasfish along with several ratepayer groups particularly in the Marlborough Sounds. We represent a membership in excess of 1000 members and Tasfish is itself affiliated to the New Zealand Recreational Fishing Council and the organisation is recognised as a consultative body representing amateur fishers by MFish. Tasfish participates as fully as possible for a voluntary organisation in the annual management rounds and in addition we have made submissions on many of the recent Bills before Parliament relating to our marine systems.
7. TASFISH would like to take this opportunity to thank MFish for involving us in consultation with this document.

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## REVIEW OF CHALLENGER AREA COMMERCIAL FISHING REGULATION 11

8. The Ministry of Fisheries (MFish) proposes the following options in reviewing Regulation 11 within the Challenger Fisheries Management Area.
9. These options were developed in response to a request by the commercial fishing industry. They have asked for regulation 11 to be revoked as it has caused significant discontent within the commercial fleet.
10. TASFISH submit that this indicates how the commercial fishing industry will act as they draw up proposals to take control of regulating their own activities and is a major concern for non commercial fishing. Any regulations which cause discontent for the fishing industry will be revoked with little or no regard to the effects they have on other sectors.
11. TASFISH would also like to register their disappointment that we were not included in pre IPP consultation on this regulation review. This would have allowed a complete set of options to be developed rather than the "take it or leave it" options contained in this consultation document. We are confident that innovative solutions could be arrived at to address both access and benthic protection issues if the parties involved were brought together earlier.
12. **Option 1 – Status Quo**  
Maintaining the *status quo* would retain regulation 11 in its current form. In summary, subject to public notice, when 100 tonnes of snapper are caught in statistical area 038 between 1 October and 28 February in any fishing year, no commercial fisher will be permitted to take any fish by pair trawling, Danish seining or any snapper by surrounding net that is not a drag net within a specified area of the inshore waters of Tasman Bay. Any such restriction is effective until 30 September.
13. **Option 2 – Revoke regulation 11**  
MFish proposes that regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 be revoked.
14. TASFISH Supports Option 1.
15. TASFISH further submits there should have been third and fourth options contained in the consultation document to ensure the intent of the initial introduction of Regulation 11 was achieved.
16. The third option should have been to amend regulation 11 to ensure that the restriction took effect immediately the 100 tonne threshold had been reached.
17. This third option would avoid delay in the regulation coming into effect such as the 8 week delay in 2010. Present day technology allows us real time monitoring and reporting and it is disappointing to see industry conspiring to defeat the purpose of the regulation by delaying its implementation as was done this year, and MFish being unable to enact the regulation sooner due to the way the regulation is written and catch reporting is done.
18. The fourth option should have been to remove all mobile bottom contact fishing methods from the area inside a line from Adele Island to Pepin Island in Tasman Bay (the existing 100 tonne line) as well as the Marlborough Sounds Management Area and from Taupo Point to Puponga in Golden Bay year round.

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19. The fourth option would provide some protection to the spawning biomass, provide some much needed protection to the benthic habitat and biogenic nursery areas of Tasman and Golden Bays and the Marlborough Sounds thus contributing towards better recruitment as well as reducing the spatial conflict which currently exists in the Inner Bays and Marlborough Sounds.

## INNER TASMAN BAY FISHERY

20. Inner Tasman Bay is an extremely high value fishery to amateur fishers, in particular the snapper fishery. The inner Tasman Bay fishery provides food and sport to thousands of amateurs in the Nelson/Tasman region, both residents and tourists.
21. TASFISH recognises the need to acknowledge that the value gained by New Zealanders from our fisheries is not just about extraction. For many people, maintaining healthy fisheries resources in their aquatic environment is of equal or higher importance.
22. TASFISH submits that value and benefit gained from our fisheries resources is not restricted to solely economic benefit and that MFish must recognise this.
23. For more than twenty years amateurs were unable to catch a feed of snapper in Tasman Bay as a direct result of commercial fishing excesses where in 2 years alone 1978 and 1979, 4496 tonnes of snapper were landed predominantly by means of pair trawling and Danish seining during the spawning season.

Table 1: Reported Snapper landings (t) for the FMA 7.

Year	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Tonnes	640	767	1258	1025	789	1040	714	2720	1776	732
TACC	-	-	-	-	-	-	-	-	-	-
Year	1981	1982	1983	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
Tonnes	592	591	544	375	255	188	257	256	176	294
TACC	-	-	-	-	-	-	330	363	372	160
Year	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
Tonnes	160	148	165	147	150	146	162	182	142	174
TACC	160	160	160	160	160	160	160	200	200	200
Year	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
MHR*	156	141.11	187.32	215.51	177.76	165.81	248.04	186.97	?	
TACC	200	200	200	200	200	200	200	200	200	200

1. Data from 1971 to 1983 calendar years.
2. The "QMA totals" are approximations derived from port landing subtotals, Marlborough Sounds ports to Greymouth.
3. Data up to 1983 are from fishing returns.
4. Reported landings (t) from 1983-84 to 2007-08 and gazetted and actual TACC's (t) from 1986-87 to 2008-09.

\*MHR Monthly Harvest Return 2001-02 to 2007-08

24. 4496 tonnes is in excess of more than 22 years worth of the current TACC (200 tonnes) and this massive depletion of the fishery resulted in access to a feed of snapper being

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denied to the amateur sector for more than 20 years. It is widely recognized that a large proportion of this catch was taken from the inner areas of Tasman and Golden Bays and the introduction of reg 11 resulted from the inability of the fishing industry to develop its own catch spreading regime.

25. TASFISH submits that there is nothing that has changed over time to indicate the commercial fishing sector wouldn't repeat the same exercise and once again plunder the spawning stock. This would then result in significant "unavoidable by-catch" of snapper in the whole of rest of Area 7 during the remainder of the fishing year.
26. As a result of this earlier extreme plundering of FMA7 snapper in Tasman Bay Regulation 11 was introduced and was only enacted for the first time in 2009 and subsequently again in 2010.
27. TASFISH submits that the Golden Bay, Tasman Bay and Marlborough Sounds snapper stocks are irrefutably linked as Mfish managed SNA7 as one stock.
28. The reason this regulation was enacted for the first time was that Recreational representatives from TASFISH requested (on more than one occasion) fishery managers looked at using Regulation 11 as a direct result of overfishing in the 2006-7 fishing year when the TACC was exceeded by 24%!
29. The intent of the regulation was to control the bulk harvesting methods in Tasman Bay that decimated the fishery in the whole of FMA7, and as assessments of historical snapper catch records suggests regulation 11 could have been implemented more frequently in the past.
30. TASFISH submits if Regulation 11 had of been implemented more frequently in the past the TACC may not have been exceeded the 5 times it has been since 1990.
31. TASFISH submits that if Mfish had been more diligent in utilising regulation 11 we may well have seen a faster rebuild of this fishery.
32. TASFISH submits that the revocation of regulation 11 could well see any rebuild that may be happening actually result in a decline in snapper stock abundance.
33. TASFISH submits that the enactment of regulation 11 in 2009 and 2010 contributed towards the SNA7 TACC not being exceeded in these fishing years.

## **RECREATIONAL FISHERS**

34. The Nelson Tasman Region has a population in excess of 82,000. Estimated participation in recreational fishing is (as a % of the total population) 31% as concluded in a survey by Andrew Fletcher Consulting Agency, November 2007, prepared for the Ministry of Fisheries.
35. TASFISH submits there are in excess of 25420 resident recreational fishers in the Tasman/Nelson region. The number of recreational fishers increases substantially in the summer months given the influx of tourists & holidaymakers. The regions population continues to increase and there is anecdotal evidence indicating that the participation in recreational fishing in the region is higher than the average participation level nationally.

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36. TASFISH submits that on a per kilogram of fish basis, given the number of recreational fishers in the region, far greater “benefit” is achieved by the recreational sector for the community that could possibly be dreamed of by the commercial sector.
37. TASFISH supports the retention of regulation 11 as a means of controlling fishing effort in the near shore area and adding “benefit” to the overall sustainable utilisation of the fishery by ensuring this method of bulk harvesting is not contributing to the TACC being exceeded.

## COMMERCIAL FISHERS

38. MFish is incorrect when it claims implementing the status quo has implications for the use of fisheries resources.
39. As there are no proposed reductions to the TACC, TASFISH submits the commercial fisher, the processor and the quota holder will still achieve the same economic returns from this fishery if the status quo is retained.
40. MFish may claim implications for the commercial sector by retaining the status quo; however these implications are minimal and furthermore given the “benefit” gained by the recreational sector by ensuring the TACC is not exceeded, these “benefits” far out way the minimal implications for the commercial sector.
41. Should regulation 11 be retained, MFish proposes that new monitoring regimes be negotiated with commercial fishers so that catch records are submitted and available with minimum delay to effectively monitor catch levels and determine whether or not Regulation 11 needs to be invoked.
42. TASFISH totally supports new real time monitoring regimes so Regulation 11 can be invoked immediately the 100 tonne threshold is reached.
43. If there are species other than snapper that commercial fishers wish to exploit we submit they should develop fishing methods that specifically target those species without impacts on the benthos or our precious snapper stocks.

## TRAWLING & SPATIAL CONFLICT

44. Mobile bottom contact trawling is the primary form of harvesting employed by commercial fishing in Tasman Bay. This bulk harvesting method is claimed and promoted as the only economical method fish stocks in Tasman Bay.
45. It is proven that fish caught by long lining methods achieve far greater market value per kilogram than those caught by trawling methods.
46. The once thriving long line fishery is only in the doldrums because the abundance levels of target species have been driven to very low levels by overfishing. Slow recovery of these important shared inshore species has most likely been exacerbated by the benthos destruction wrought by excessive mobile bottom contact fishing methods.
47. The alternative to reg 11 is voluntary “no go” areas for trawlers. There are some in Tasman and Golden Bays and the Marlborough Sounds so we have something to gauge their success by.

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48. The existing voluntary no trawl lines in Tasman Bays were intended to protect juvenile fish.
49. These voluntary no trawl lines have been repeatedly ignored by some commercial fishers over the years. There are no repercussions for the commercial fishers who breached these agreements as they are voluntary. It is therefore apparent voluntary agreements do not work.
50. Bottom contact bulk harvesting is the single most destructive force in our coastal marine environment. The destructive effects of trawling are accepted by commercial fishers (declared deepwater no trawl areas SEAFIC 4 April 2007).
51. Tasman Bay is an important biogenic nursery and breeding ground for many key recreational stocks and the altered benthic habitat and bottom structure severely deprives these finfish of habitat that would contribute to greater recruitment into the fishery. The ability of juvenile finfish to seek protection from predators in this altered environment through destructive fishing practices cannot be underestimated.
52. The same can be said for Golden Bay and the Marlborough Sounds and any habitat modification to the spawning areas will impact on the Marlborough Sounds and Golden Bay snapper and other fish stocks. The Tasman and Golden Bay's fishery adjoins the Marlborough Sounds and must be considered as one.
53. A key to increased fish stock abundance is the recovery of the coastal marine area and the removal of mobile bottom contact fishing will allow the benthic habitat the opportunity to recover. The link between a healthy benthic habitat and the whole marine eco-system is irrefutable.
54. While there is no historic baseline information to measure the degree of destruction from commercial bottom trawling methods there is significant anecdotal evidence that commercial fishing interests have over several decades knowingly altered and in some cases destroyed the seabed from what was once its natural state.
55. There are also numerous scientific studies conducted in other fisheries and marine environments that conclude trawl fishing has caused the destruction and alteration of the habitat that further conclude the marine environment will not recover until the practice of bottom trawling ceases.
56. Bottom trawling and the use of other mobile fishing gear have effects on the seabed that resemble clear felling forests, a terrestrial disturbance recognised as a major threat to biological diversity and economic sustainability. Structures in marine benthic communities are generally much smaller than those in forests, but structural complexity is no less important to their bio diversity.
57. Berman and Hup (1992) demonstrated 10-65% reductions in echinoderm, polychaete, and mollusc densities after trawling. This result suggests that removal of habitat structure in relatively low-structure soft-sediment systems such as Tasman and Golden Bays and the Marlborough Sounds will significantly decrease their biodiversity, and consequently that of the wider marine ecosystem.

58. Stopping trawling significantly increases the density of large epifauna and by removing this activity we would see evidence of broad scale changes in benthic communities that can be directly related to the removal of bottom trawl fishing.
59. It is essential to recognise that the risks of trawling include many factors in addition to the direct effects on target species. By catch is perhaps the most serious general environmental impact of modern fisheries. Given Trawling gear is dragged on or near the bottom to recover benthic or near benthic species in the water column or on the soft bottom, the effects of trawling are extensive and potentially severely damaging to the ecosystem.
60. Epifaunal species are especially vulnerable, and there are overseas reports of trawlers destroying sea pens and beds of the reef building polychaete Sabellaria, the oyster *Ostrea edulis*, and sea grass *Zostera marina*.
61. In New Zealand, Bradstock and Gordon (1983) also reported the loss of large beds of bryozoans as a result of trawling. In each of the above cases the habitats that were destroyed by trawling probably represent very important nursery areas for many species, often including some of the target species of fisheries.
62. Extensive areas of benthic habitat in the Tasman Coastal Marine Area have been lost or their physical integrity compromised as a result of trawl fishing. Mobile fishing gears are a major cause for concern because of the size of the affected fishing grounds, the associated modification of the substrate, disturbance of benthic communities, and removal of non-target species.
63. Random research surveys may underestimate the actual environmental impact of the commercial bottom fishing activities. Another problem is that research surveys are often much more reduced in time and space than the actual fishing effort.
64. They report long lists of benthic species destroyed, and that most good areas are trawled over many times a year that even 25% mortality is extremely serious for long lived species that recruit episodically and live in areas exposed to trawling several times a year.
65. In addition to direct impacts, there are many indirect impacts caused by trawling resulting from increased turbidity likely to reduce or eliminate sea grass habitats. In most cases these are important habitats that become dominated by small deposit feeding polychaetes. Such shifts have serious implications because deposit-feeding communities may resist recovery of suspension feeding species. Epifauna play key roles in influencing the structure and stability of benthic communities.
66. Trawl fishing exerts a profound effect on almost all components of associated communities and ecosystems. The most sensitive components are rare habitats that serve as nurseries and the species with low reproductive rates. It is accepted that Tasman and Golden Bays and the Marlborough Sounds areas are nursery grounds for many species including our favoured Snapper, Blue Cod were even once abundant in Tasman and Golden Bays but they now have nowhere to hide from predators.
67. Fisheries managers attempt to address the sustainability of fish-stocks through the Quota Management System a system that fails to minimise the direct and indirect impacts of fishing on other components of the ecosystem. A number of recent

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international fisheries agreements have specifically identified the need to provide for habitat protection and restoration to ensure long-term sustainability of fisheries.

68. TASFISH submits that if we are to improve habitat and ultimately improve fish stock abundance all mobile bottom contact fishing methods employed must be removed from Tasman Bay a significant breeding area.
69. As scientific hypotheses are never proven, only disproven, conservative management is very difficult because exploiters can always point out uncertainties about the casual relationships between exploitation and environmental degradation. **TASFISH submit that the burden of proof lies with the exploiter.**
70. As long as the QMS system does not require a spread of catch effort within a fisheries management area the restrictions on mobile bulk harvesting methods must be strengthened.
71. Spatial controls on mobile bulk harvesting methods are required immediately to allow the habitat to recover and to reduce spatial conflict between sectors.
72. The use of spatial tools can improve the productivity of our inshore fisheries and lead to better, more secure harvests with less sector conflict. Research from around the world indicates the destruction of the living seafloor negatively impacts fish populations. Destruction of bryozoan's growth by trawling in Tasman Bay, New Zealand resulted in a marked reduction in numbers of associated juvenile fish (Turner et al. 1999).
73. Predation rates on juvenile Atlantic cod (*Gadus morhua*) increases with decreasing habitat complexity (Walters & Juanes 1993) and case studies in New Zealand and Australia suggested that loss of habitat structure through removal of large epibenthic organisms by fishing had negative effects on associated fish species (Turner et al. 1999). Removal of Epifaunal organisms like corals may lead to the degradation of habitat such that it is no longer suitable for associated fish species (Auster et al. 1996).
74. Protecting habitat areas from fishing impacts has positive effects. In an area of the Irish Sea, for example, an 11 year closure to scallop dredging increased hydroid colonies (Bradshaw et al. 2003). Hydroid colonies increased diversity and abundance of benthic fauna as well as recruitment of juvenile scallops (Bradshaw et al. 2003).
75. A model of trawl closures around locations where trawl "hangs" occurred showed that prohibiting trawling in areas with structural complexity had positive effects on juvenile Atlantic cod (Link & Demerest, 2003).
76. The research highlights the positive effects we can have on fisheries and marine habitat and we see the amendment of regulation 11 to remove all mobile bulk harvesting methods as a way to optimise yield from fisheries and increase biomass levels while offering incentives to conserve and enhance fisheries for the benefit of all stakeholders through the protection and rejuvenation of habitat.
77. *This proposed amendment improves the benefit for all sectors providing for utilisation within environmental limits. Moreover, costs associated with management, compliance and enforcement are likely to be less.*

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78. If non-commercial interests are able to access sufficient abundance and quality of fishing then it is more likely that an environment can be created where the inshore commercial fishery can thrive and reach its potential.
79. The recreational sector made a significant long term contribution to the any rebuild that is occurring with SNA 7 by going with out access to snapper for more than 20 years. The two fishing methods employed by the commercial and non-commercial sectors make it an unfair competition for recreational fishers.
80. Recreational fishers have a hook on the end of a piece of monofilament. Towing a large trawl net scooping up what ever is in the way versus a piece of monofilament with a hook on the end of it just does not compare. It is soul destroying to the recreational fisher to be anchored up with berley out trying to hook a fish when inshore trawlers trawl past them on either side. This happens in Tasman Bay on a regular basis.
81. TASFISH further submits that regulation 11 should be amended to remove all mobile bulk harvesting methods including Danish seining, purse seining, pair trawling and bottom (beam & otter) trawling inside the line form Adele Island to Pepin Island all year round.
82. New monitoring regimes will then not be required reducing the workload of both fisheries manager and commercial fishers.

## **CHALLENGER FIN FISH PLAN ADVISORY GROUP**

83. To review Regulation 11 in isolation rather than as part of the fish plan process does not provide any resolution to the environmental and spatial objectives sought by the non-commercial sectors through the fish plan process.
84. The Challenger Inshore Fin Fish Plan Group (CIFFPAG) met monthly for 17 months from December 2007 through to May 2009 and involved the customary, environmental, commercial and recreational sector representatives.
85. The objectives of each sector were recorded and unfortunately it was not until the last meeting in May 2009 that some agreement was finally reached on where the CIFFPAG wanted to take key shared stocks.
86. While the CIFFPAG agreed that all key shared stock abundances should be increased the CIFFPAG failed to reach agreement on any multi sector objectives due to the tactics and attitude brought to the table by the commercial sector who stated they were in a position of defending their current position and disagreed with the process.
87. For the non-commercial sector it is untenable that Mfish now review Regulation 11 in isolation "in response to a request by the local fishing industry."
88. That the commercial sector can seek a review of a regulation that restricts certain bulk harvest methods in a fishery highly valued by the recreational sector ignoring all other stake holders objectives effectively means the whole fish plan process has been a waste of time for all non commercial sectors.

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89. TASFISH can not support any regulation changes looked at in isolation until inter sector spatial separation is achieved through the removal of bottom impacting fishing methods and the creation of non commercial fin fish areas.

Martyn Barlow  
President  
TASFISH

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# SEAFOOD INDUSTRY COUNCIL

The New Zealand Seafood Industry Council Ltd

## Review of Challenger Area Fishing Regulation 11

1. The New Zealand Seafood Industry Council Ltd ("SeaFIC") appreciates the opportunity to comment on the Initial Position Paper which contains a review of the Challenger Area Commercial Regulation 11. The regulation closes Statistical Area 38 in the inner Tasman Bay to pair trawling and Danish seining if the commercial catch of snapper in that area exceeds 100 tonnes by the end of February. We make this submission on the proposed criteria after consultation with the wider industry.
2. Introduced in 1986, the primary intention of the regulation was to reduce conflict within the commercial sector between the traditional single trawl and new forms of fishing of pair trawlers and Danish seiners. The regulation may also have been intended to reduce any threat to the sustainability of snapper stocks in the region. It had the effect of reducing conflict between the commercial and recreational sectors by reducing commercial fishing effort in times of high catches.
3. The regulation has been invoked only twice, once in 2009 and again in 2010.
4. In addition to the regulation, industry has introduced a voluntary agreement to close some inshore areas of Tasman and Golden Bay to all commercial trawl fishing between 1 November and 30 April each fishing year. The intent of this agreement is to reduce conflict between the commercial and recreational sector during the peak recreational time of year.
5. SeaFIC supports the revocation of the regulation for the following reasons:
  - a. Revoking the regulation is likely to result in more efficient utilisation of fisheries resources;
  - b. Regulations should not arbitrarily discriminate between fishing types;
  - c. Sustainability is managed through the TAC/TACC settings;
  - d. Access to other fish stocks by pair trawlers and Danish seiners is also restricted by the closure;

- e. The existing voluntary closure to trawling is likely to be more effective than the regulation in reducing inter-sectoral conflict; and
- f. The regulation is redundant.



*Marlborough Recreational Fishers Association Inc*

*P O Box 384*

*BLENHEIM*

**A submission from**

**Marlborough Recreational Fishers Association Inc**

**June 2010**

**Review of Challenger Area Commercial  
Fishing Regulation 11**

1. The Marlborough Recreational Fishers' Association can be contacted regarding this submission through its postal address PO Box 384 Blenheim, or through committee member Des Boyce, phone (03) 5738119, email [djboyce@gmail.com](mailto:djboyce@gmail.com)
2. The Marlborough Recreational Fishers' Association (MRFA) is essentially an advocacy group for Marlborough recreational fishers and a forum for local anglers too. It has a strong allegiance to wise management of the marine environment and fisheries.
3. The Association was formed several years ago in response to fisheries mismanagement and commercial overfishing for snapper in the Marlborough Sounds, Tasman & Golden Bays. Since then, MRFA has participated and been involved in advocacy on the wider fishery including scallops. It has had two representatives on the scallop advisory committee. It has worked closely with both Mfish and The Challenger Scallop Enhancement Company in the rebuilding, management and annual allocations of the scallop fishery. The association has representation on other committees including the Ministry of Fisheries Top of the South Recreational Forum, the Blue Cod Management Group, and Marine Farm Advisory Committee.
4. Membership of the association comprises individuals and affiliated groups, being other clubs or residents' associations. There are over 75 members but as family and club memberships also involved, in terms of individuals an estimate is about 250.
5. Many MRFA members fish the Tasman Bay and Golden Bay fishery.
6. MRFA is a member of the Council of Outdoor Recreation Association of NZ.
7. MRFA appreciates the opportunity to make submissions on the document under discussion.

## **REVIEW OF CHALLENGER AREA COMMERCIAL FISHING REGULATION 11**

8. Responding to a request by the commercial fishing industry, The Ministry of Fisheries (Mfish) proposes reviewing Regulation 11 by offering 2 options:-
  - Option 1:- Status Quo.**
  - Option 2:- Revoke regulation 11**
9. Marlborough Recreational Fishers Association (MRFA) supports the TASFISH submission to the Review of Challenger Area Commercial Fishing Regulation 11 :- **IPP in it's entirety**, MRFA support and emphasize a number of important points from the TASFISH submission.
10. MRFA supports the Ministry of Fisheries **Option 1:- Status Quo.**

11. MRFA supports TASFISH's submitted *third and fourth option - Clauses 15 - 19.*
12. MRFA supports TASFISH's submission statements **Clauses 38 - 43** under the subheading **COMMERCIAL FISHERS.**
13. MRFA supports TASFISH's submission statements in **Clauses 44 - 82** under the sub heading **TRAWLING & SPATIAL CONFLICT** because all these reasoning statements will equally apply to the adjoining Marlborough Sounds snapper and other fish species. **Marlborough Sounds are irrefutably linked to the Tasman and Golden Bays snapper fishery because Mfish manage them as one stock Sna7**
14. MRFA understands that no historic baseline study has been undertaken on how the destruction of snapper spawning habitat by commercial fishing methods in Tasman and Golden Bays will affect Marlborough Sounds snapper and recreational fish stocks.
15. Considering other published research papers and their conclusions on bottom trawling effects it is more than reasonable to expect that commercial bottom trawling in Tasman and Golden Bays will have a detrimental effect on known snapper spawning grounds and habitat which will ultimately affect the adjoining Marlborough Sounds snapper stocks.
16. MRFA submit, to improve snapper and other fish stock abundance in the adjoining Marlborough Sounds all commercial mobile bottom trawling fishing methods that have the potential to destroy or modify the marine habitat and snapper spawning grounds in Tasman and Golden Bays should be removed.
17. MRFA submit that Mfish should give weight to Clauses 3, 4, 5 in their IPP **Executive Summary** because the intent of the regulation 11 must also protect and benefit the adjoining Marlborough Sounds recreational snapper fishery.
  3. *When enacted in 1986, the intent of regulation 11 was to reduce conflict between different commercial fishing methods. Specifically, the intent was to control pair trawling and Danish seining which were seen as a threat to the established single trawl fishery. Some recreational fishers have submitted that, at a time of decline in the snapper stock, regulation 11 was also intended to protect spawning grounds and minimise the impact of commercial fishing on snapper and possibly other species abundance in the inner Tasman Bay area.*
  4. *Constraining some commercial fishing methods once the "trigger" point of 100 tonnes of snapper is reached, could serve to reduce the risk of localised depletion of some fish species of importance to non-commercial fishing stakeholders.*



5. *Regulation 11 was first implemented to restrict fishing methods in the Challenger area during 2009 and was subsequently invoked in 2010. An assessment of historical snapper catch records suggests that regulation 11 should have been implemented more frequently in the past.*

18. The Marlborough Sounds are a very important Recreational fishery and Mfish have a strong duty to protect that fishery.

19. The Marlborough Sounds snapper fishery is immediately adjacent to the Tasman and Golden Bays fishery. It is reasonable to believe that the two fisheries intermingle.

In the Marlborough Sounds the recreational daily bag limit is 3 snapper, a restriction imposed because Mfish decided the fishery is stressed. Any attempts to increase this daily bag limit have been refused.

It is illogical for Mfish to consider revoking regulation 11 in Tasman Bay yet claim the fishery is stressed in the immediate vicinity.

20. MRFA are grieved that they were not notified or consulted prior to this IPP being published.

Mfish are aware that they have systems available to them to bring issues such as this Regulation Review to Recreational stakeholders attention prior to preparing an IPP discussion document

On behalf Marlborough Recreational Fishers Assn.



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Des Boyce

Committee Member.

**From:** matt.byx [mailto:matt.byx@xtra.co.nz]  
**Sent:** Sunday, 6 June 2010 9:18 p.m.  
**To:** Macfarlane, Trudie  
**Subject:** regulation 11 sna7.doc

03/06/10  
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Mount Maunganui  
Tauranga 3116  
075755289/0274474353  
[matt.byx@xtra.co.nz](mailto:matt.byx@xtra.co.nz)

Dear Sir/Ma'am,

Re Regulation 11,I have operated a Danish Seiner out of Nelson since May 2005,and have experienced 2 introductions of regulation 11, which have caused me financial hardship in the winter months.Regulation 11 isnt working at all in its present form.Regulation 11 is to protect SNA7 stocks not other species of fish ie flatfish/gurnard etc.

Surely the Ministry can see it isn't the Danish Seiners that are catching the snapper,if they cant then we are doing paperwork for nothing,paper work that is backed up by Observer days at sea on the F.V Vanguard.It should clearly show that 99% of snapper caught in Tasman Bay is caught by Pair trawling and Single trawling.I personally land less than 500 kgs of SNA7 annually.

The last two introductions have been a complete waste of time in protecting SNA7 stocks inside a line from Pepins Island to Adele Island,as by the time they have been introduced, the snapper have moved out into the deeper parts of Tasman Bay and dispersed.The three nm closure to all power hauling methods of fishing already protects the snapper fishery from Danish Seineing.We also have very little interaction with recreational fishermen,and no recreational fishermen target flounders outside 3 nm offshore.

Regulation 11 needs to be scrapped forthwith,as it isn't doing the job it was intended to do.If the Ministry was serious about conserving snapper stocks inside of a line from Pepins Island to Adele Island,they would introduce regulation implementing a maximum Trawl net or Seine net height of 1 metre and putting vessel horsepower restrictions in place.

It certainly doesn't make any sense to ban a fishing method like Danish Seineing which is more environmentally friendly to juvenile snapper than trawling or pair trawling.The survival rate of small undersize snapper in a Trawl cod-end that has been towed around the sea-bed for 2-3 hours is far less, than in a Danish Seine codend where they have only been towed for less than 30 minutes.

I can remember very well going to meetings in the late 1970's where us small boat operators complained heavily (to obviously very deaf ear's) about how the large 30 + metre pair trawlers would devastate the snapper fishery in Tasman Bay.And what do we see now,Sealords large 42 metre trawler the Otaku trawling across Delaware Bay.Why is a large deep-sea vessel trawling in shallow waters?

We cant go deep-sea trawling in our 40 foot vessels,I know that legally they are allowed to be there,**BUT Why?** Lets hope the ministry starts taking a bit of notice of the experience & hundreds of years of knowledge that participating small boat fishermen have got to offer.

Rgds M.Hardyment

# New Zealand Sport Fishing Council Inc.

16 June 2010

b) Patron: J R  
Chibnall

President: R J Baker

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**Website:** [www.nzbgfc.org.nz](http://www.nzbgfc.org.nz)

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## **NZ Sport Fishing Council Submission on the Review of Challenger Area Commercial Fishing Regulation 11**

1. The NZ Sport Fishing Council (NZSFC) formerly NZ Big Game Fishing Council is an umbrella group for sport fishing clubs. Club membership has grown steadily and we now represent over 32,000 members in 58 clubs throughout NZ. NZSFC has invested heavily in ensuring representation in many of the fisheries assessment working groups and research planning meetings for more than 12 years.
2. The NZSFC has actively participated in the MFish Snapper Working Group, now part of the Inshore Working groups for many years. Snapper is a high value species for our members.

### **The proposal**

3. Regulation 11 says that MFish is required to close the inner Tasman Bay to pair trawling or Danish seining 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. The closure for the area inside a line from Adele Island to Pepin Island will remain effective until 30 September. The TACC in SNA7 is 200 t.
4. When enacted in 1986, the intent of regulation 11 was to reduce conflict between different commercial fishing methods. Specifically, the intent was to control pair trawling and Danish seining which were seen as a threat to the established single trawl fishery. Recreational fishers supported it because of the decline in the snapper stock at the time. Regulation 11 was also intended to protect spawning grounds and minimise the impact of commercial fishing on the abundance of snapper and possibly other species in the inner Tasman Bay area.
5. However, it was invoked for the first time in 2008-09 and again in 2009-10 after the SNA7 TACC was exceeded by 24% the previous year. The closures



particularly affected the autumn Danish seine fishery for flat fish. Complaints from these fishers has sparked this review.

6. MFish has an initial preference for adopting Option Two, removing Regulation 11, *“as the intent of the regulation is no longer relevant or is better met by alternative management measures.”*

### **Submission**

7. The NZ Sport Fishing Council supports option 1, the retention of the status quo.
8. It is not clear from the IPP what alternative management measures MFish are proposing to protect spawning grounds and minimise the impact of commercial fishing on the abundance of snapper and possibly other species in the inner Tasman Bay area. The suggestion that issues on this spatial scale will be addressed in the single national inshore fish plan is not credible. Especially since the Challenger Inshore Fin Fish Plan Group where unable to progress any shared fisheries initiatives.
9. There is insufficient information in the IPP to assess what the actual impact of Regulation 11 has on the spatial distribution of snapper catch in SNA7. We would have to assume that in the last two years less of the SNA7 TACC was caught in the inner Tasman Bay. How much less?
10. The inner Tasman Bay is a popular recreational fishing area, close to population centres and easily accessed. The IPP fails to adequately describe the potential impact of allowing pair trawling and Danish seining in the inner Tasman Bay from April to September. MFish state *“Catch information suggests few benefits conferred on recreational fishers in respect of snapper availability in the affected area”*. The IPP should contain specific information to allow stakeholders to understand the impacts on non-commercial fishing interests. Unsubstantiated generalisations are not useful.
11. MFish also notes *“that research to assess the level of by-catch and condition of target fish (flatfish) and by-catch (snapper) in Tasman Bay is currently underway and that once the results of this research become available, MFish will be better placed to review the impacts of the Danish seine fishery on snapper by-catch in the Tasman Bay area”*. If the Crown and industry are spending the money to collect this information (probably a lot more than the late season flatfish fishery is worth in a year) why ask the Minister to make a decision before the results are available?
12. The IPP states that *“in respect to managing conflict within the commercial sector, commercial stakeholder organisations consider that this is a matter that commercial fishers should manage internally and that the regulation should be revoked because it is restricting the ability of the sector to fish efficiently”* Not when it comes to pair trawling. We have witnessed the near destruction of our largest snapper fisheries with the indiscriminate, but very efficient, use of pair trawling. When and where this method is deployed is not a matter that commercial fishers should manage.
13. The concept that commercial fishers should be able to manage their “own ship” in the name of increased efficiency is not accepted by the NZ Sport Fishing Council. There are, and must be, regulations that limit the use of heavy trawl gear deployed by high powered vessel(s) in inshore waters. We need to do more to protect the seabed

(benthic communities) and areas of juvenile habitat if we are to maintain the productivity of our fisheries.

14. If the industry want to show they are capable of collective management, then they should simply reduce fishing on spawning snapper schools in spring and so not exceed 100 tonnes of commercial catch in statistical area 038 by the end of February.

Richard Baker  
President



Trudie Macfarlane  
Ministry of Fisheries  
PO Box 1020  
WELLINGTON

16 June 2010

**Re: Review of Challenger Area Commercial Fishing Regulation 11**

1. Thank you for the opportunity to comment on the proposal to review/revoke Challenger Area Commercial Fishing Regulation 11("Regulation 11").
2. Challenger Finfisheries Management Company Ltd (Challenger Finfish) is the representative commercial stakeholder organisation (CSO) for 55 fishstocks in the Challenger and Central fisheries management areas 7&8. We make this submission on behalf of quota holders who own the property rights in those fishstocks and the many fishers that rely on these regions for their livelihood.
3. Challenger Finfisheries advocated for Regulation 11 to be reviewed in 2009 because of the undue impact of this closure on fishers, and the redundancy of such a management measure.
4. We do not agree that the status quo is an option and agree with the MFish preferred Option 2 - to revoke regulation 11.
5. Fishers have been very proactive in the snapper fishery and implemented a substantial voluntary area closure to enhance and protect juvenile snapper in Tasman Bay over the peak recreational summer fishing period. The closure from 1 November to 30 April offers significant spatial separation of the commercial fishers from recreational fishers over this peak holiday period. A similar seasonal closure on a regulatory basis is also provided in Golden Bay.
6. We believe that the current voluntary closure in Tasman Bay and the regulatory closure in Golden Bay provide appropriate protection mechanisms for snapper to rebuild and enhance the fishery in the Tasman/Golden Bay region, and beyond. Observations from the previous stock assessment and anecdotal information from recreational and commercial fishers suggests that this is certainly happening.
7. Of further interest is the fact that the west coast South Island trawl survey which comes into the bays as part of the survey design also caught a number of juvenile snapper which have not been evident on the survey before I believe. The survey is at the end of the snapper season but encouragingly juvenile snapper are still being caught at that time. This would not be as a consequence of Regulation 11 because the closure is after the peak snapper period. The commercial voluntary closed area may be an attributing factor.

8. We understand that the recreational sector will most probably request that Regulation 11 remain in place but there is no evidence to support that maintaining this regulation enhances the recreational fishing experience. Nor is there evidence that commercial fishing is impacting on their ability to catch snapper over the peak period or throughout the year. The current commercial voluntary and regulatory closure, in Tasman and Golden Bays respectively, offsets any perceived "inter-sector competition".
9. Discussions are ongoing in regards to the National governments policy to provide recreational-only fishing areas. Therefore it is not necessary to maintain ad hoc redundant regulations that do not add value to fisheries management. If the Government's goal is to have fewer unnecessary and ineffective regulations then Regulation 11 has to be considered as one of those and should be removed.
10. Regulation 11 discriminates between fishing methods utilised to catch flatfish (FLA7), being Danish seine and bottom trawl. Some fishers have changed their vessels at great cost from bottom trawling to Danish seining to achieve better fuel and energy efficiency. With the current price of diesel and the impending price increase generated by the emissions trading scheme, fishers should not be unduly impacted by a method restriction when clearly they are targeting flatfish and not snapper.
11. Challenger Finfisheries request that Regulation 11 be revoked.

Carol Scott  
Chief Executive

16 June 2010

Trudie MacFarlane  
Ministry of Fisheries  
Wellington

[trudie.macfarlane@fish.govt.nz](mailto:trudie.macfarlane@fish.govt.nz)

## Review of Challenger Area Commercial Fishing Regulation 11

### Introduction

1. This submission is from Te Ohu Kaimoana in its role as corporate trustee of Te Ohu Kai Moana Trust and responds to the above consultation document. In making this submission, Te Ohu does not seek to undermine any submission that you may have received from individual iwi or iwi collectives.

### Summary

2. Te Ohu considers that regulation 11 should be revoked because:
  - a. It was originally designed to manage conflict within the commercial sector
  - b. It is now redundant
  - c. It is not designed to address sustainability issues, which are managed through the TAC
  - d. While recreational interests may support it, other commercial closures that are in place are likely to be more effective in meeting their interests
  - e. If there are other concerns that are focussed on potential conflict between the sectors, then these matters should be addressed directly.

### The original purpose of Regulation 11

3. MFish's paper explains that the original purpose of Regulation 11 was to reduce conflict between commercial fishing methods, namely pair trawling and Danish seining, which had an effect on the established single trawl fishery.
4. However recreational fishers submit that the use of the regulation helps restrict commercial fishing methods and catch in this area – which might improve the availability of some species to them.

### Is the regulation still relevant?

5. MFish notes that commercial stakeholder organisations consider that they are best placed to manage conflicts between commercial fishers themselves and that the regulation should be revoked as it is restricting the ability of the sector to fish efficiently. For instance while it is intended to restrict certain methods to reduce effort for snapper – it also has the effect of restricting the harvesting of other species using those methods (for instance, flatfish).

**Are there other reasons to retain the regulation?**

6. While some recreational fishers consider the regulation helps support a reduction in bulk fishing methods in popular fishing areas and possibly protect snapper spawning grounds, MFish notes that catch information suggests that few benefits are conferred on recreational fishers in respect of snapper in the affected area.
7. For one thing, the regulation does not limit the amount of snapper that can be caught in Tasman Bay (or SNA7 generally) and in addition, fishing methods that are not restricted by the regulation (such as single trawl) have been known to catch more from the area than those methods that are restricted. In addition, the timeframe for triggering and implementing the restriction is usually delayed due to the requirement to generate catch information and therefore its effectiveness is limited.
8. We note that there are alternative measures to address conflict between recreational and commercial fishers are in place. First, a voluntary agreement between recreational and commercial fishers has been reached which closes some inshore areas of Tasman and Golden Bay to all commercial trawl fishing out to three nautical miles between 1 November and 30 April each year. A regulatory prohibition on Danish seining within three nautical miles of the shore also exists. These closures would not be affected by the revocation of regulation 11 and are likely to be more effective in dealing with conflict between the sectors.
9. Te Ohu is not aware of other reasons why this regulation should be retained. However if other concerns are raised about the relationship between sectors, we suggest these should be addressed directly, and not dealt with through measures designed for a different purpose.



Kirsty Woods  
Manager, Fisheries Leadership



## N Z RECREATIONAL FISHING COUNCIL

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RAGLAN

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11 June 2010

# NEW ZEALAND RECREATIONAL FISHING COUNCIL

*Submission on*

## Review of Regulatory Measures for December 2010

### **The Council and its Representation**

1: The national organisations represented by this body are N.Z. Angling & Casting Association, N.Z. Trailer Boat Federation, N.Z. Marine Transport Association, N.Z. Sports Industry Association and N.Z. Underwater Association. We also support the Ministry led and funded recreational forums of which many of these regional members are now members as individuals.

2: The Council maintains close contact with a number of Iwi representatives. While every effort has been made to consult we do not suggest that this submission is representative of their views.

3: This Council represents over 76,000 recreational and sustenance amateur fishers. In addition by default we represent the public interest in the fishery and those amateur fishers who are non-members. We say by default because we are the only constituted representative body that has been recognised by Government and the Courts of doing so.

4: Over one million people or by recent Ministry of Fisheries figures 20% of New Zealanders fish for sport or sustenance. This does not include those elderly or infirmed amateur fishers who can no longer actively participate in catching seafood for the table. The 1996 research to provide estimates of Recreational and Sustenance Harvest Estimates found that there are approx 1.35 million and increasing recreational and sustenance amateur fishers in New Zealand and therefore we effectively, through our associated member groups, and lack of any other democratically elected or statutory recognised group represent this number also.

5: The Council has been recognised in three court cases as representing the recreational and amateur fishers of New Zealand. The Council was attached to two of these cases without its prior knowledge and the court papers show it was ordered, "to represent the recreational fishing public of New Zealand". The first of these was the order of attachment to

the High Court Action on the Manukau, Taiapure application. The second relates to the SNA1 challenge of the Minister's decision that was heard by the High Court. The Council also holds "Approved Party Status" for consultations with the Ministry of Fisheries and is recognised by them and the Minister of Fisheries as a stakeholder group. In the third case this Council along with the NZ Big Game Fishing Council were the applicants in the recent Kahawai case.

**6:** The Council has a Board of democratically elected officers and members. The Council consults with its members and the public using various means. These include newsletters, both written and electronic, its web site and various press releases. In addition it consults through the various fishing media and meetings it holds and receives input through those forums.

**7:** This submission has been prepared and presented after consultation via email and our web site to our members and board members.

**8:** As previously stated, we are aware that many of our National Affiliates and Regional Members are submitting their own submissions and in most cases we have seen and support these submissions where they are not in direct conflict with this submissions intent or requested outcome.

**9:** In the submission we talk of both recreational and amateur fishers as these two descriptions are so intertwined. For sake of some clarity recreational fishers referred to are generally those who have an interest in supporting recreational fishing interests while amateur refers to all fishers who exercise their rights to fish under the amateur fishing regulations.

#### **10: Introduction**

We wish to thank Mfish for inclusion in this review of regulatory measures for the December 2010 fishing year.

#### **Customary Regulations for the Southern Titi/Muttonbird Island**

The proposed new customary regulations that will restrict commercial activity, so that Maori can gather traditional Kaimoana while harvesting Muttonbirds. The NZRFC totally support this new measure to close areas to commercial fishing so that tangata whenua can gather shellfish and traditional Kaimoana for sustenance use while on the islands

However we do not want to see this right abused in that shellfish are accumulated in great numbers to return to the mainland and that any seafood brought back to the mainland be consistent with the amateur fishing regulations for harvest and landing. They are after all fishing under these regulations, as customary permits should only apply for the functions of the marae, rather this is a traditional annual harvest trip to gather Titi/Mutton birds. The gathering of Kaimoana is a by-product of this function and should be treated as such.

#### **Review of Challenger Area Commercial Fishing Regulation 11**

The NZRFC support the submission put together by Tasfish a group who represent recreational fishers from the area affected by this proposal and are an affiliated body belonging to the NZRFC.

There can be no changes in these regulations until the issues that affect recreational fishers in the area are addressed.

The inter sector spatial conflict needs to be addressed with the creation of non-commercial fishing areas



The recognition that the soft sponges and corals that are present in Tasman Bay area need to be protected from bottom impacting fishing methods. It is now recognised that these areas are prime habitats for juvenile fish and in need of protection.

Only when the above points have been addressed can the NZRFC even begin to enter into discussion with any rule changes in the Tasman Bay area.

#### Management Options for Basking Sharks to Give Effect to New Zealand's International Obligations

The NZRFC agree in the full protection of Basking Sharks so that New Zealand can fulfil its international obligations.

#### **Return to Sea of Kina**

The NZRFC supports the initiative of returning small Kina to the sea. However we must stress that the returned shellfish must be likely to survive and that the Kina are graded at the time of picking from the bottom or at the first available opportunity on the surface and that the discarded Kina be placed back over the habitat from where they were taken and not over sand or barren rocks. There must be a stringent evaluation of the process to insure that this is not just an excuse to high-grade.

It is interesting that within the document there is reference that this change will have a neutral effect on sustainability and environmental impact. Surely with only small healthy fish being returned to the sea and being allowed to reach some level of maturity this has got to be beneficial to these stocks.

We wish to thank Mfish for the extension we have been given for this submission.

Yours faithfully,  
NEW ZEALAND RECREATIONAL FISHING COUNCIL

Sheryl Hart (Mrs)  
Secretary

# Change to Approval Process for Automatic Location Communicators – Initial Position Paper

## Executive Summary

1 The Ministry is proposing to amend the [Fisheries \(Satellite Vessel Monitoring\) Regulations 1993](#) (“the Regulations”) by removing the requirement for automatic location communicators (ALCs) to be type-approved. It would still be a requirement for ALCs to meet standards and requirements issued by the Ministry’s Chief Executive (CE) and to be registered pursuant to the Regulations.

2 The objective of the proposed amendments would be 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), in accordance with Fisheries 2030 objectives.

3 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 the adoption of more cost-effective technologies.

4 The purpose of this paper is to provide stakeholders with the opportunity to express their views on this proposal and to supply any additional information of relevance. The Ministry will consider any submissions received in the preparation of final advice to the Minister. Subject to the outcomes of consultation and the Minister’s approval, the proposed changes would take effect on 1 October 2010.

5 It is important to note that this proposal relates only to the regulatory framework for ALC approvals. A separate consultation process to develop new sets of ALC standards and related requirements would occur concurrently with the development of this proposal, aiming to have all changes in place by the start of the 2010-2011 fishing year. It is not expected that the amendments proposed or the new set of standards and related requirements would affect any fishers who currently operate ALCs on board their vessels nor create additional obligations for those fishers.

## Regulatory Impact Analysis Requirements

6 This proposal is exempt from the requirement to produce a Regulatory Impact Statement. For more information on this requirement, please visit The Treasury website ([www.treasury.govt.nz/publications/guidance/regulatory](http://www.treasury.govt.nz/publications/guidance/regulatory)).

## The Issue

7 Approximately 90 out of 1280 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.

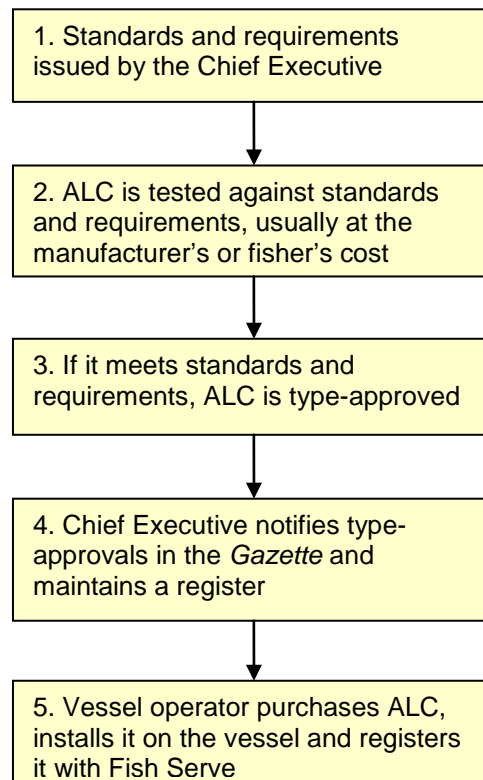
8 Monitoring by VMS is also a requirement under numerous international agreements. For instance, several New Zealand fishing vessels must be monitored by VMS to be able to fish for species, or in areas, administered by a number of regional fisheries management organisations (RFMOs), including:

- Commission for the Conservation of Southern Bluefin Tuna

- Commission for the Conservation of Antarctic Marine Living Resources
- Western and Central Pacific Fisheries Commission
- South Pacific Regional Fisheries Management Organisation

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

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



10 Because current and recent 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](#)<sup>5</sup> has become outdated as new units and software are developed and enter the market.

11 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.

12 Testing against standards by independent assessors costs approximately \$ 6000 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.

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

13 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 and could put fishers in the situation of having to operate more than one type of ALC in order to meet different sets of requirements. MFish is aware of at least two 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 such undesirable situations.

14 Because current type-approved ALCs are designed mainly for larger vessels, smaller vessels which are currently required to carry and operate ALCs (such as vessels fishing for deepwater clam) have difficulty in meeting the standards. 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 different sizes and classes of vessels.

## Summary of Options

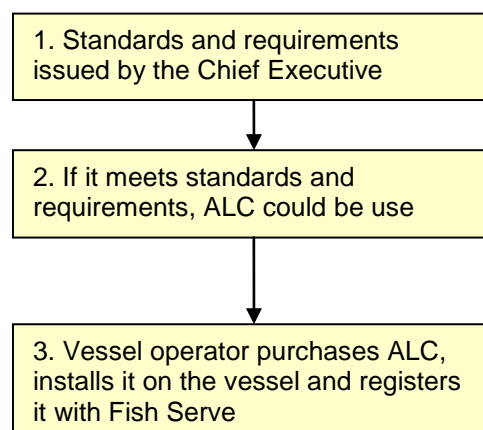
### *Option 1 – Status Quo*

15 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.

### *Option 2 – Standards-based approval of ALCs – (Ministry's Preferred Option)*

16 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 Fish Serve. This option would also result in new sets of ALC standards and associated requirements being issued, to include other unit types, in addition to those currently type-approved and to cater more adequately for different sizes and classes of vessels. The proposed approval process is summarised in Figure 2.

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



## Rationale for Management Options

17 The amendments proposed in this paper would be made under section 297 of the *Fisheries Act 1996* ("the Act"), specifically subsections (1)(ca) and (2). 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) provides for the making of

regulations that authorise the CE, among other things, to issue circulars such as those which currently specify standards and requirements for ALCs. Any other consequential amendments necessary would also be made under section 297 of the Act.

18 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. The Ministry believes that the amendments proposed 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.

19 Subject to ministerial approval, any changes would take effect on 1 October 2010. It is not expected that the amendments proposed would 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*

20 The circular which currently 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 those. 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.

21 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.

22 Nonetheless, if the status quo is maintained, some of these issues could be addressed if the CE issues new more generic sets of standards and requirements for ALCs, 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 lawful use. 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.

23 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 entirely up to the operator to ensure that a particular ALC unit meets the standards.

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

24 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.

25 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.

26 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.

27 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 would be possible to ensure that these are consistent with existing technical specifications, available technology and current MFish 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 actually be approved for use.

28 Option 2 places the responsibility of meeting the ALC standards and requirements entirely on vessel operators and masters. MFish 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 consequences would be the same, or substantially similar, to what the Regulations currently stipulate.

29 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**

30 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 amendments to liabilities, offences and penalties.

31 As outlined above, should the Minister 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 would be issued by the CE prior to the regulatory amendment establishing the new approval process taking place.

32 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.

33 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.

34 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.

### Statutory Considerations

35 In considering the proposed amendments, the Minister is required to follow relevant statutory criteria contained in the Act. These criteria are set out below.

36 **Section 5** states that all persons exercising or performing functions, duties, or powers under the Act shall act in a manner consistent with New Zealand's international obligations relating to fishing, among others. As mentioned above, one of these obligations is for New Zealand-flagged vessels fishing in areas, or for species, administered by Regional Fisheries Management Organisations to do so in accordance with the requirements of those organisations, including any requirements for the use of VMS. The amendments proposed are consistent with these obligations and would allow a more efficient delivery of that requirement.

37 **Section 8** states that the purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. The Ministry considers that the amendments proposed further the purpose of the Act by increasing 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.

38 **Section 297(ca)** prescribes the power to make regulations related to the installation and maintenance of equipment used to monitor fishing, such as ALCs.

39 **Section 297(2)** prescribes the power to make regulations that authorise the CE, among other things, to issue circulars such as those which specify standards and requirements for ALCs.

# CHANGE TO APPROVAL PROCESS FOR AUTOMATIC LOCATION COMMUNICATORS – SUBMISSIONS



15 June 2010

Ministry of Fisheries  
PO Box 1020  
Wellington 6140  
[trudie.macfarlane@fish.govt.nz](mailto:trudie.macfarlane@fish.govt.nz) (via email only)

## **Change to Approval Process for Automatic Location Communicators (MFish IPP dated 17 May 2010)**

Sanford support the MFish proposal to remove the requirement for Automatic Location Communicators (ALCs) to be type-approved under the Fisheries (Satellite Vessel Monitoring) Regulations 1993 (the Regulations).

As the IPP outlines, approximately 90 out of 1280 New Zealand registered fishing vessels currently carry and operate ALCs, as required by the Regulations. Because of the cost and rigidity of the current approval process, only a small number of units and software versions are approved for use. Sanford has a registered fishing fleet of 35 vessels, of which 28 have type-approved ALCs on board. However, in total Sanford has 63 ALC tracking units (2 on many vessels), but because of the current type-approval process many of these are not registered with MFish.

This proposal will allow Sanford to use a wider range of ALC units than those currently type-approved. The process to get these 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, and increasing efficiency and cost-effectiveness in the context of the Vessel Monitoring System.

Should you require any further information please contact the undersigned.

Regards



Andrew Bond  
Industry Liaison Manager

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**From:** Sharp, Eidre  
**Sent:** Tuesday, 18 May 2010 11:48 a.m.  
**To:** Bermeo-Alvear, Santiago  
**Cc:** Macfarlane, Trudie  
**Subject:** FW: Change To Approval Process For Automatic Location Communicators

[The first response to the consultation document...](#)

Eidre

**From:** Jeremy Cooper [mailto:cooper@xtra.co.nz]  
**Sent:** Tuesday, 18 May 2010 11:13 a.m.  
**To:** Sharp, Eidre  
**Cc:** Storm Stanley  
**Subject:** Fw: Change To Approval Process For Automatic Location Communicators

Hi Eidre

Can you please record PIC's support for this change to the approval process for ALC's

Regards  
Jeremy Cooper

C.E.O. Paua Industry Council Ltd  
ph 0274323041

----- Original Message -----

**From:** [Macfarlane, Trudie](#)  
**Sent:** Tuesday, May 18, 2010 9:52 AM  
**Subject:** Change To Approval Process For Automatic Location Communicators

Good afternoon,

Please see the attached letter regarding Change To Approval Process For Automatic Location Communicators.

Kind regards

Trudie Macfarlane  
Administration Support Officer  
Ministry of Fisheries  
DDI: 04 819 4739

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SeaFIC submission on

## **Change to Approval Process for Automatic Location Communicators**

MFish consultation on regulatory proposal for December 2010

16 June 2010

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### **Introduction**

1. Thank you for the opportunity to submit on the MFish regulatory proposal to change the approval process for Automatic Location Communicators (ALCs). This submission has been prepared by the New Zealand Seafood Industry Council Ltd (SeaFIC) in consultation with our shareholders and the wider seafood industry.

### **SeaFIC support for standards approach**

2. SeaFIC supports the proposed regulatory change for two main reasons. In comparison with the current requirement for type-approvals, a standards-based approach:
  - Allows fishers to use a wider variety of ALC units to suit the circumstances of their vessel and the fisheries they operate in. This flexibility is particularly important for vessels fishing both domestically and under RFMO administration or in other jurisdictions, and also for smaller vessels required to use ALCs; and
  - Provides a less costly and administratively simpler regime for the adoption of new and improved ALC technologies.
3. Our support for the proposal is based on the following understandings (reflected in the IPP):
  - i. The standards (once prepared and approved) will not create any new or additional obligations for vessel operators who currently use ALCs on their vessel;
  - ii. Liabilities and penalties will be in substance the same as the current regulatory requirements;
  - iii. The standards will be written in a manner that is pragmatic and makes it as simple as possible for vessel operators and manufacturers to confirm compliance of a particular unit with the standard; and
  - iv. The standards will be developed in collaboration with industry and ALC manufacturers.
4. We also expect the standards to be drafted in a way that ensures that there is no degradation of either the accuracy and the precision or the confidentiality of the collected data.

5. If any of these assumptions are revisited during the preparation of final advice or the drafting of regulations, SeaFIC would appreciate the opportunity to provide further input.

#### Implementation

6. We note that the proposed regulatory change will have implications for the registration of ALCs by FishServe. Currently FishServe has a number of approved ALCs loaded into the system so that only pre-approved ALCs can be registered. Under the proposed new approach, either:
  - i. FishServe would require a list of all ALCs that meet the standard; or
  - ii. FishServe would register any ALC and the responsibility would lie solely with the vessel operator to ensure that the ALC meets the standard.
7. Option i is inconsistent with the aim of providing more flexibility in the choice of ALCs. Option ii would require a change to FishServe's standards and specifications as FishServe can currently register only an approved ALC. SeaFIC recommends that the implementation of the proposed change should be discussed in more detail with FishServe.

<b>Contact Person:</b>	Nici Gibbs Policy Manager New Zealand Seafood Industry Council Ltd Private Bag 24 901 Wellington d: (04) 802 1842 m: 027 492 1273 e: <a href="mailto:nici.gibbs@seafood.co.nz">nici.gibbs@seafood.co.nz</a>
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**From:** Sharp, Eidre  
**Sent:** Tuesday, 25 May 2010 12:03 p.m.  
**To:** Storm Stanley  
**Cc:** Macfarlane, Trudie; Bermeo-Alvear, Santiago  
**Subject:** RE: Change To Approval Process For Automatic Location Communicators

I'm told it will be passing over.

I would, of course, not wish to deny you the opportunity to provide a more detailed submission if you wish but the emails that you and Jeremy have sent are sufficient. I will put through to Trudie as a submission.

Cheers

Eidre

**From:** Storm Stanley [mailto:STORMALONG@xtra.co.nz]  
**Sent:** Tuesday, 25 May 2010 11:11 a.m.  
**To:** Sharp, Eidre  
**Subject:** Re: Change To Approval Process For Automatic Location Communicators

Hi Eidre

Catching up on stuff now we have a rainy week in Blimin (blenheim!)

Had a read and it was in line with discussions we had at Mfish HQ on the 18th.  
As Jeremy has already said Paua Industry supports the changes proposed which seem a more rational and practical approach to ALC programme.  
Also will make it more adaptive to future technological improvements.  
We are flat out at the moment ,but could probably manage a very short submission paper if required.  
Otherwise are you happy to convey our support for the IPP ?

Cheers  
Storm

----- Original Message -----

**From:** [Sharp, Eidre](#)  
**To:** [Jeremy Cooper](#)  
**Cc:** [Storm Stanley](#)  
**Sent:** Tuesday, May 18, 2010 11:48 AM  
**Subject:** RE: Change To Approval Process For Automatic Location Communicators

Wow thanks – did you have time to read it?

**From:** Jeremy Cooper [mailto:cooper@xtra.co.nz]  
**Sent:** Tuesday, 18 May 2010 11:13 a.m.  
**To:** Sharp, Eidre  
**Cc:** Storm Stanley  
**Subject:** Fw: Change To Approval Process For Automatic Location Communicators

Hi Eidre

Can you please record PIC's support for this change to the approval process for ALC's

Regards

Jeremy Cooper

C.E.O. Paua Industry Council Ltd  
ph 0274323041

----- Original Message -----

**From:** [Macfarlane, Trudie](#)

**Sent:** Tuesday, May 18, 2010 9:52 AM

**Subject:** Change To Approval Process For Automatic Location Communicators

Good afternoon,

Please see the attached letter regarding Change To Approval Process For Automatic Location Communicators.

Kind regards

Trudie Macfarlane  
Administration Support Officer  
Ministry of Fisheries  
DDI: 04 819 4739

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**From:** Jason Webb [mailto:trackinman@gmail.com] **On Behalf Of** Jason Webb  
**Sent:** Monday, 14 June 2010 11:56 a.m.  
**To:** Macfarlane, Trudie  
**Cc:** Sharp, Eidre  
**Subject:** CHANGE TO APPROVAL PROCESS FOR AUTOMATIC LOCATION COMMUNICATORS

Hi,

My name is Jason Webb. My company is MarineCom (formerly AdvancedGlobal).

I am the type approval agent for Ministry of Fisheries (for ALCs). Or was, as there has not been any testing for some time and the current specification/law does not make it easy for any incremental updates nor any other types of new systems to be used.

I was also the type approval agent for Forum Fisheries (FFA) . They have already changed their specification for testing of ALCs. I am currently consulting with them to assist manufacturers comply with their new MTU and EMTU rules (MTU is the new name they use for ALCS and EMTU designated the inclusion of 'Catch Report' forms and sending catch data). I am working with the FFA to ensure manufacturers understand and comply with the new specification.

I have also been consulted previously by the "Central and Western Pacific Fisheries Commission" to assist with implementing their new ALC specification (that excludes ALC type approval testing)

I have considerable experience in ALCs , their performance an type approval specifications.

I am more than happy to assist with input and support the proposed changes to move away from type approval testing of ALCs.

If you have any questions please let me know.

Best Regards

Jason Webb

MarineCom

11D Airborne Road, Albany, Auckland.

PO Box 302-522 North Harbour 0751

m. 021 156 7334 | t. (09) 415 4451 | f. (09) 929 3145

International dial | m. +64 21 156 7334 | t. +64 9 415 4451 | f. +64 9 929 3145

Email: jason.webb@marinecom.co.nz | Skype: globalstation | www.marinecom.co.nz

# Return to Sea of Kina – Initial Position Paper

## Executive Summary

1 This paper proposes kina be added to the Sixth Schedule of the Fisheries Act 1996 to allow kina, when handgathered and likely to survive, to be returned to sea.

2 Fisheries 2030<sup>6</sup> describes that fishery resources are to be used in a manner that provides the greatest overall economic, social, and cultural benefit. Fisheries laws and regulations are to reduce compliance costs and improve management effectiveness.

3 Commercial kina fishers are currently unable to legally return small, low roe-recovery kina to sea, thereby facing significant costs in freighting these kina to processing facilities. Ultimately, small kina with low roe-recovery may be uneconomic to process and may be dumped in landfills.

4 By reducing industry compliance costs, this change is expected to increase economic benefit from kina fisheries. The proposal aligns management of kina with other shellfish fisheries such as oysters, mussels, rock lobster, scallops, pipi and cockles, and is believed 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.

5 Further information on the costs of the current regime and on any sustainability or environmental impacts arising from the proposed change is sought from tangata whenua and stakeholders through the submission process.

## Regulatory Impact Analysis Requirements

6 This IPP required a Regulatory Impact Statement which was reviewed internally.

7 For more information on the Regulatory Impact Analysis Requirements and the meaning of the word 'significant' with reference to an IPP, please refer to the Treasury website [www.treasury.govt.nz](http://www.treasury.govt.nz).

## The Issue

8 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.

9 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 small, 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.

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<sup>6</sup> "Fisheries 2030" provides the strategic direction for the NZ fisheries sector. See [www.fish.govt.nz](http://www.fish.govt.nz)

<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.

10 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 of the Fisheries Act 1996, by Order in Council, for this to occur.

## **Summary of Options**

### *Option 1 – Status Quo*

11 Under the status quo current management settings prohibiting the return of kina to sea will be retained.

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

12 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:

1. Kina must be likely to survive return to the water.
2. Kina must be taken by the method of handgathering.

## **Rationale for Management Options**

13 Section 72 of the Fisheries Act 1996 prohibits the dumping of fish. An exception is provided, however, for any stock listed in the Sixth Schedule to the Act. 20 stocks, ranging from sedentary shellfish (dredge oysters, scallops, mussels) to pelagic species (sharks, swordfish) are listed on this 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.

14 Under Option 1 presented in this paper, no exception to the dumping prohibition under section 72 would be provided for the kina fishery.

15 Option 2 presented in this paper 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.

16 The two requirements included under Option 2 are designed to ensure the proposal is neutral with respect to sustainability impacts, and 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.

17 The Ministry is seeking submissions from stakeholders and tangata whenua on any sustainability or environmental impacts arising from Option 2.

18 The change in management proposed under Option 2 would become effective after October 2010. Notification of the change would occur through circulation of the Minister's decision letter for the October regulatory round, and the Ministry's website.



## Assessment of Management Options

### *Option 1 – Status Quo*

#### Impact

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

#### Costs

20 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) low roe-recovery kina and seeks submissions, particularly from commercial stakeholders, to allow more precise estimation of costs.

21 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%.

22 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.

23 Kina fishers, in consultation with the Ministry, are investigating other options to help address this issue, for example, on-board processing of kina. Such processing is, however, also governed by other agencies (and no vessels have yet gained approval for this activity).

#### Benefits

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

25 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 to Sea*

#### Impact

26 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

27 This option requires an Order in Council.

28 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.

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

### Benefits

30 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.

31 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*

32 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**

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

### **Other Management Issues**

34 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.

## RETURN TO SEA OF KINA – SUBMISSIONS



The New Zealand Seafood Industry Council Ltd

### **Return to sea of kina**

1. The New Zealand Seafood Council Ltd (SeaFIC) makes this submission on the consultation document “Return to sea of kina – Initial Position Paper”. It has been compiled by SeaFIC in consultation with our shareholders.
2. To assist kina harvesters to sort and grade live kina in order to optimise the economic potential of the commercial kina harvest, whilst ensuring sustainability, we would have expected to see a more comprehensive analysis of the range of options that could have been considered, to mitigate the problem identified. This analysis would have enabled a clearer understanding as to why addition of kina to the Sixth Schedule is the only management measure proposed.
3. SeaFIC **supports** the addition of kina to the Sixth Schedule of the Fisheries Act. However we do not support the proposed restriction to listing only of “kina that is hand-gathered” as it may restrict development of future harvesting methods. Removal of the restriction on method would make the listing consistent with other non-fish species (whelks, oysters, green lipped mussels, sea cucumber, queen scallops etc) listed on Schedule 6. The qualifier that the kina must be likely to survive return should be adequate for all methods.
4. The survival rates of translocated kina are known to be exceptionally high<sup>8</sup>. Normally the survival of animals is greater than 99% assuming they have been handled and transported correctly. On this basis we do not consider there to be any substantive sustainability risks to the stock through return of live kina to the sea. By being able to selectively harvest kina the number of animals removed from the population by commercial fishers should be reduced giving possible sustainability benefits.
5. We agree with the IPP that the profitability of the fishery is determined to a large extent by the roe recovery rate. Observations by kina divers are that kina roe matures at different kina sizes and at different times in different areas within QMAs making the development of controls on size etc. impractical and unhelpful. In our view, addition of kina to Schedule 6 is a pragmatic solution to address the potential economic loss from the kina fishery.

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<sup>8</sup> James, P, and Herbert, P. (2009). Kina roe enhancement by translocation. NIWA Client Report WLG 2009-7, Feb 2009, pp 23.

**From:** SG Paine [mailto:sgpaine@xtra.co.nz]  
**Sent:** Friday, 21 May 2010 3:00 p.m.  
**To:** Macfarlane, Trudie  
**Subject:** Submission - Review of Regulatory Measures for December 2010

Kia ora,

My name is Glenice Paine. I wish to make the following submissions regarding the proposed regulatory changes as relates to Kina (SUR) and their return to the sea.

I am my whanau's Kaitiaki for customary fishing within Te Tau Ihu. As Kaitiaki I am concerned with all matters that impact upon the sustainability of fish stocks in this area. Kina is of particular importance to us here in Te Tau Ihu.

Firstly, it is understood that considerable waste has occurred over time due to poor quality Kina being discarded (wasted) due to uneconomic roe condition. The changes proposed in the MFish paper go some way to addressing this matter but, do not take account of the Kina harvested (and then wasted) as a result of methods other than handgathering (specifically dredging).

It is believed that all Kina that are likely to survive, no matter which method it is harvested by, should be able to be returned to the sea if it is deemed to be uneconomic to retain commercially. Returning such kina to the sea will reduce the possibility of local depletion/over fishing and in turn assist in part at least in the maintenance of sustainable populations. Our experience is that the vast majority of kina harvested by dredge, and handgathering, remain in a state suitable for return to the sea.

Accordingly it makes total sense to return them to the sea, for harvest at a latter stage when their condition is more suitable.

It is believed that the proposal should be amended to reflect: to allow "Kina harvested by any method and likely to survive, to be returned to the sea"

Noho ora mai

Glenice Paine  
Whanau Kaitiaki  
Te Atiawa Te Tau Ihu  
245a Waikawa Rd  
Picton 7220  
Phone: (03) 573 5622

-----Original Message-----

From: Alan Riwaka [mailto:Alan.Riwaka@teohu.maori.nz]

Sent: Friday, 25 June 2010 4:10 p.m.

To: Macfarlane, Trudie

Subject: FW:

Hi Trudie,

Please find attached Te Ohu' submission relating to SUR proposals. Please note that Te Ohu will no longer submit on the Titi Island proposal. We have decided it would be more useful to have direct discussions with Ngai Tahu.

Regards

-----Original Message-----

From: ricohscanner@teohu.maori.nz [mailto:ricohscanner@teohu.maori.nz]

Sent: Friday, 25 June 2010 4:04 p.m.

To: Alan Riwaka

Subject:

This E-mail was sent from "RNPF7A6AE" (Aficio MP C5000).

Scan Date: 25.06.2010 16:03:57 (+1200)

Queries to: [ricohscanner@teohu.maori.nz](mailto:ricohscanner@teohu.maori.nz)

25 June 2010

Trudie MacFarlane  
C/o Ministry of Fisheries  
PO Box 1020  
WELLINGTON

[Trudie.macfarlane@fish.govt.nz](mailto:Trudie.macfarlane@fish.govt.nz)

Tena koe Trudie

**REVIEW OF REGULATORY MEASURES FOR DECEMBER 2010 -  
RETURN OF KINA TO SEA**

**Introduction**

1. The Ministry of Fisheries (MFish) is currently consulting on four proposals that could result in changes to regulations by December 2010. In this submission Te Ohu Kai Moana (Te Ohu) deals with the proposal to allow commercial fishers to return kina to the sea after they have been landed on a commercial fishing vessel. In preparing this submission we have consulted the 57 Mandated Iwi Organisations (MIO) and taken into account their responses.

**Issue**

2. The kina Initial Position Paper (IPP) says that commercial kina fishers are currently unable to legally return small low roe-recovery kina to sea. The IPP says that this results in fishers incurring significant costs in having to freight these kina to processing facilities where they are subsequently dumped in landfills.
3. The kina IPP also suggests that the problem is made worse because fishing is restricted to free diving and this makes it impossible to assess dived kina until it has been brought to the surface and landed aboard the dive tender.

**Proposal**

4. The IPP proposes two options for dealing with these issues.

Option 1 – Status quo. Under this option the current management settings prohibiting the return of kina to the sea are retained;

Option 2 – By adding kina to the Sixth Schedule fishers will be able to legally return kina to sea. Under this option kina will be included on the Sixth Schedule and made subject to the following.

- o Kina must be likely to survive return to the water
- o Kina must be taken by the method of hand gathering.

## GENERAL COMMENTS

5. Any management decisions by MFish will need to be cognisant of the fact that kina is an iconic stock and of significant cultural value to iwi.
6. Paragraph 3 implies that significant amounts of low roe-recovery kina are dumped at land fills because:
  - a. they are unable to be legally returned to the sea; and,
  - b. the recoveries are too low to justify processing.
7. If the numbers are as significant as we are led to believe then one would have to ask what systems and information are being used to ensure only "fat" kina are being landed? There appears to be nothing in place.
8. We consider that the condition of kina should be checked regularly by divers and boatmen, and areas that are known to have only ever produced "skinny" roe avoided. Systems on board the vessel should ensure fish are checked at appropriate times to ensure there is no build up of kina that may need to be returned to the sea. Ideally kina that are to be returned to the sea should not be on a fishing vessel for a period longer than 30 minutes. The sooner that kina are returned to the water the greater the survival rate. When putting kina back into the water we prefer it be into the bay or onto the reef from which it was originally taken.
9. In paragraph 23 there is discussion relating to on-board processing. We are not averse to vessels operating in this way but consideration will need to be given to how waste is disposed of. We do not support dumping waste over the top of kina beds or in a way that could be harmful to important fish stocks.
10. In principle, Te Ohu supports the use of Underwater Breathing Apparatus (UBA) or hookah in the commercial fishery. However we are aware that many iwi have concerns about the potential effects of the use of UBA or hookah on local areas that are important to them for non-commercial customary purposes - and the potential for local depletion. If the industry was prepared to work with iwi to develop a planned approach to harvesting, then they are more likely to gain iwi support for using UBA. Te Ohu would be prepared to facilitate dialogue on this matter between the industry and iwi.

## RECOMMENDATIONS

### Te Ohu:

- i) Supports Option 2
- ii) Recommends the Kina Industry develop protocols that:
  - a. minimise or remove the opportunity for low roe-recovery kina to be landed on a dive vessel;

- b. ensures good survival of kina that are returned to the sea;
- c. ensures kina are placed back into the specific area from which they were taken.

iii) Recommends the Kina Industry work with Mandated Iwi Organisations (MIO) to develop a planned approach to harvesting using UBA and/or hookah gear.

11. If you would like to discuss this submission please contact the writer on 049319512 or via email [alan.riwaka@teohu.maori.nz](mailto:alan.riwaka@teohu.maori.nz)

Noho ora mai



Alan Riwaka  
Senior Fisheries Management Advisor



10 June 2010  
Trudie Macfarlane  
Ministry of Fisheries  
PO Box 1020  
WELLINGTON

Kia ora Trudie,

### Review of Regulatory Measures for December 2010

Thank you for the opportunity to comment on these initiatives. Te Rūnanga o Ngāi Tahu (in this case the fisheries entities of the Ngāi Tahu Tribal Council – namely Ngāi Tahu Seafoods and Toitū Te Whenua) wishes to comment on our own initiative to establish special Customary Regulations, under section 186 of the Fisheries Act, for the Tītī Islands and on the proposal to return kina to the sea.

#### *1. Special Customary Regulations for the Tītī Islands*

##### ***Background***

Te Rūnanga feels it is useful to briefly discuss the background to this proposal and to give an overview of the Ngāi Tahu objectives behind the initiative in order to explain how the proposal got to this stage.

Ngāi Tahu first mooted the idea of establishing formal commercial closures over certain key areas of the Tītī Islands in 1986 as part of the Rāhui Areas Programme (RAP). The RAP was facilitated by Ministry of Fisheries with the support of two very prominent muttonbirders – George Ryan and Harold Ashwell. Through the RAP, 34 commercial closure areas (‘rāhui’) around the Tītī Islands were identified (with an emphasis on nearshore gathering, pāua and kina in particular).

These areas were to be closed through regulations, however, this did not occur. The 34 areas were therefore closed under a **voluntary agreement** with commercial fishers. In subsequent years this voluntary agreement was eventually ignored and commercial fishers (pāua and kina) began fishing these areas once more.

Te Rūnanga received constant requests from ‘birding’ Tangata Tiaki/Kaitiaki and tribal members for these closures to be enacted through legislation. Te Rūnanga therefore began to engage with commercial fishers to ascertain whether support for such an initiative was possible.

At a meeting with commercial pāua fishers/quota owners in November 2001 (at the Ascot Hotel), the fishers/quota owners outlined their support 'in principle' (subject to seeing the detail of the 34 proposed closures) for the closure of areas around the Tītī Islands to commercial pāua fishing. Their representative, Jeremy Prince, outlined the consensus developed at the 24 August 2001 meeting with pāua divers that 'in principle' the agreements to avoid the customary fishing areas on the Titi Islands should be re-instated. The hui participants stated support for the use of mātaimai.

Te Rūnanga then attended meetings of the Tītī Administering Body and the Tītī Committee in 2002 to seek feedback on whether the areas proposed for the Former Crown Islands and Beneficial Islands in 1986 were still relevant, whether any boundary changes were required or whether any new closure areas should be added to this list. One new area was identified by these groups (for Little Moggy Island).<sup>9</sup>

A meeting was then held with commercial pāua and crayfish stakeholder representatives in November 2002 to progress the protection of the 35 areas. The commercial pāua representative (Ian Kennedy) outlined their industry's position on the 35 areas – being 'optimistic support', 'negotiation required' and 'likely opposition' for 6 of the areas.

In subsequent years Te Rūnanga began to work on a strategy to facilitate the establishment of a co-ordinated network of customary fisheries protection areas, spread throughout the entire Ngāi Tahu tribal area (including the Tītī Islands). Te Rūnanga are well aware that it is not possible to protect all traditional fishing grounds using customary protection tools and each established area management tool will impact on the establishment of any other within a given quota management area. It was therefore essential that Ngāi Tahu acknowledged this **cumulative effect** and co-ordinated and planned the establishment of area management tools in order to protect the most significant customary fishing areas and to ensure a good spread of customary protection is achieved around the entire tribal area.

Te Rūnanga developed a number of objectives for the **Ngāi Tahu Customary Fisheries Protection Areas Project** (CFPAP) as follows:

1. To identify significant customary fisheries areas within the Ngāi Tahu tribal area.
2. To identify a prioritised list of key areas to be protected that ensures a well spread network of customary fisheries protection areas is established throughout the entire tribal area.
3. To identify the appropriate protection mechanism for the list of key areas identified in Objective Two and to then compile, lodge and support applications for the establishment of these mechanisms.

Throughout this project Te Rūnanga conducted extensive background research (through a range of references including the tribal archives, publications and relevant Ngāi Tahu policy documents) and conducted interviews with Ngāi Tahu kaumātua, Tangata Tiaki/Kaitiaki and

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<sup>9</sup> In 2002 a birder on Tamaitemioka decided to lodge a Mātaimai application to protect the 'rāhui' area identified for the gut between that island and Pohowaitai.

fishing experts in order to identify the appropriate areas for protection and the appropriate protection tool in each instance.

A number of areas were selected for protection around the takiwā (including the 35 areas already identified for the Tītī Islands). Three major criteria were considered in identifying the areas selected for protection:

- The need to ensure an appropriate spread of protection throughout the tribal area so that all regions received some form of customary protected area.
- The need to protect a range of fisheries resources from the mountains to the sea (ki uta ki tai) wherever possible.
- The need to protect traditional fishing grounds that have contemporary significance.

The choice of **protection tool** was influenced primarily by the potential impacts on other stakeholders (in particular commercial fishers/quota owners). Te Rūnanga held a meeting with the Tītī Administering Body and Tītī Committee Chairpersons in August 2005 to seek feedback on the appropriate tools to use to protect the 35 proposed areas. Both Chairpersons confirmed the preference to use special regulations rather than mātaihai as mātaihai would impact on all fish species whereas the target species for the 'rāhui' were primarily pāua and kina for most areas (with the exception of Potted Head that was to include crayfish also).<sup>10</sup>

**Special customary regulations** were selected (rather than general fisheries regulations under section 297 of the Fisheries Act) in recognition of the cultural significance of the muttonbirding Islands. It was felt that tītī harvesting was so nationally and internationally significant<sup>11</sup> that the customary fishing (that is an integral component of the tītī gathering experience) that occurs in the rāhui' areas around each island should be appropriately acknowledged within special regulations promulgated specifically to recognize and provide for this gathering food gathering and the special relationship between muttonbirders and these rāhui gathering areas.

Te Rūnanga believes that protecting these rāhui areas through special customary regulations accords well with the 'special requirements' inherent in section 186 of the Fisheries Act. If this was not the case Te Rūnanga would not have pursued customary protection through this legislative provision.<sup>12</sup> Te Rūnanga certainly does not wish to see a plethora of new customary regulations around our takiwā and so Te Rūnanga will work with MFish Policy in the near future to document the process Ngāi Tahu has followed through the CFPAP and to develop appropriate policy and processes for any future application of section 186.

The meeting with the Tītī Committee Chairpersons in August 2005 was also used to seek feedback as to whether the areas that were likely to attract opposition or those that 'required

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<sup>10</sup> Taiāpure were also considered but were eliminated early on in the analysis of possible tools.

<sup>11</sup> To quote from Assoc. Prof. Henrik Moller's paper "*The tītī harvest is a fundamentally important, culturally defining part of being Rakiura Māori...*".

<sup>12</sup> Te Rūnanga notes that section 297 regulations were identified as the appropriate protection tool for other protection areas identified in the CFPAP, as in Te Rūnanga's view those proposed closures did not meet the high threshold required for promulgation under s186.

negotiation' could be amended to reduce their impact on commercial fishers. The Chairpersons advised that 5 of the 6 areas on the 'likely opposition' list could be removed to avoid this opposition. They then provided a list of Island 'supervisors' to contact in order to discuss amendments for the areas that 'required negotiation'.

Several boundary amendments resulted from the subsequent discussions with the supervisors in October/November 2006 (including the merger of the two areas at Murderer's Cove) as well as requests for the use of mātaimai reserves instead of regulations for certain Tītī Islands (Pikomamaku, Kaihuka and Horomamae).

The 29 areas for protection were then mapped using Te Rūnanga's Geographical Information System (GIS) and maps were then taken back to the Island supervisors by MFish Customary Staff to check their accuracy in January/February 2008. These discussions resulted in 5 new areas being identified for protection (Bunker, West Taukihepa, Putauhinu Nuggets, Solomons and Poho a Tairea). These 5 areas were 'cautiously' added to the protection list (given that they were identified so late in the process).

All 34 protection areas were lodged with MFish in September 2008 for processing – 30 closures through special fisheries regulations (29 pāua and kina closures and 1 pāua, kina and kōura closure) and 3 mātaimai (the fourth mātaimai for Tamaitemioka was lodged in 2002).

All the proposals were then discussed with commercial fishers (SURSIA, CRA8 and PAU 5B) before the IPP was developed by MFish. Discussions with the CRA8 representative indicated that CRA8 fishers did not oppose these initiatives and discussions with the SURSIA representative (through the development of the Southern Shellfish Fisheries Plan) indicated their general support for the proposals (pursuant to the 'gifts and gains' philosophy adopted in the development of the fisheries plan). Discussions and analyses from that point focused on PAU5B representatives.

The consensus of the 2009 PAU5 AGM was that apart from the proposed area on Bunker Island and another on Pikomamakuiti (North Island) the nominated areas appeared to be of little concern, however, as not all ACE and quota holders attended the AGM, the PAU5 administration surveyed their members over the following months. The outcomes of the survey indicated that 11 of the proposed areas were not fished at all by commercial pāua divers, 10 areas were fished rotationally by one diver and a further 5 areas were rotationally fished by two divers. Five divers fished Pikomamakuiti (North Island), Herekopare and Tia and eleven divers fished in the proposed closure for Bunker Island.

At the follow-up hui in April 2010 between Te Rūnanga and PAU5 representatives, that was facilitated by MFish, Te Rūnanga acknowledged the mahi conducted by PAU5 representatives to determine the impacts of the proposed closures on their members. Discussions over the findings of the fisher survey concluded with Te Rūnanga withdrawing the proposals for pāua closures on Bunker Island, West Taukihepa and the second area on Poho a Tairea (these areas were retained as kina closures only) and with Te Rūnanga committing to amend the proposed closure areas for Pikomamakuiti (North Island),

Herekopare, Tia (Entrance Island) and Poho a Tairea/Chimney Island to reduce the **cumulative impact** of all the proposed closures (including the mātaimai applications for the Tītī Islands) on PAU5B fishers. Te Rūnanga also committed to amend the proposed closure area for the Solomons Islands group should this be required to further reduce the impact on PAU5B fishers.

The final matter of business at the April hui related to the original ‘rāhui’ area for Tamaitemioka/Pohowaitai. As the applicant for the Tamaitemioka Mātaimai was recently informed by MFish that this application would not be processed, Te Rūnanga requested that the proposed mātaimai area be reinstated back on the list of pāua/kina ‘rāhui’ areas to be closed using the special customary regulations. As there was no commercial pāua take from Statistical Area 38 the PAU5 representatives agreed with this reinstatement.

### ***Analysis of the proposals in the IPP and indicative amendments***

#### ***A) Current proposals in IPP***

A number of statistical areas (Stat Areas) are affected by the proposed closures. These Stat areas make up approximately 11% of the PAU5B QMA and they yield, on average, approximately 3% of PAU5B ACE.

Te Rūnanga conducted a ‘crude’ analysis of the average PAU5B ACE affected by the current s186 closures in IPP and by the recently gazetted mātaimai areas. This analysis was conducted through an assessment of the affected coastline (the proposed closures that are currently fished) within each Stat Area relative to the average ACE taken from that Stat Area (the average affect was then doubled to factor in the possibility that the proposed closures are more productive than the remaining habitat of this type in the Stat area). Coastline length was used as a proxy to assess the affect on ACE as the only catch data available to Te Rūnanga is set at the Stat Area level. Te Rūnanga therefore has no accurate method of assessing the concentration of catch effort within each Stat area.

Although this analysis is a crude measure to employ, it provides a useful indication of the **type of affect that can be expected**. The assessment of the ‘status quo’ indicates that the average PAU5B ACE affected by the current proposed closures and by the recently gazetted mātaimai areas is approximately 320-640kg.

#### ***B) Indicative amendments***

Te Rūnanga then conducted a new assessment of average PAU5B ACE affected after amendments were made to **halve** the proposed closures area for Pikomamakuiti (North Island), Herekopare, Tia (Entrance Island) and Poho a Tairea/Chimney Island (the analysis did not include any amendments to the Solomons Islands group as this area is currently not fished). The assessment with the indicative amendments suggests that the average PAU5B ACE affected by the s186 closures and by the recently gazetted mātaimai areas is approximately 230-460kg.

Again, although this analysis is crude, it provides a useful idea of the type of affect that can be expected if appropriate amendments are made the boundaries for the four areas identified.

### ***Path forward – Agreement on amendments***

Te Rūnanga has acknowledged that amendments can be made to the above four areas (and possibly the Solomons Islands proposal also). Te Rūnanga is currently discussing possible amendments with the relevant Island supervisors and Te Rūnanga awaits the submission from the PAU5B representative to accurately and effectively define possible amendments. Further hui with PAU5B representatives may then be required to finalise boundary changes.

The achievement of formal customary protection over these exceptionally significant traditional fishing grounds will allow Ngāi Tahu to work with commercial pāua fishers on a more equal footing to manage PAU5B stocks.

Ongoing commercial support for these closures (and for the mātaītai in PAU5B) has seen the relationship between Ngāi Tahu and commercial pāua representatives grow. Te Rūnanga is currently working with commercial pāua representatives on a number of initiatives (eg, in PAU6, Southland and the Banks Peninsula) to improve the commercial pāua fishery. It is hoped that this support for customary initiatives continues throughout the Ngāi Tahu Whānui Takiwā so that Te Rūnanga and commercial pāua representatives can carry-on working collaboratively towards win-win outcomes for the fishery and for each sector.

### ***2. Return of kina to the sea***

Te Rūnanga supports this proposal.

Ngā mihi



Nigel Scott

***Senior Environmental Advisor (Hī Ika / Ngāherehere)***

*Office of Te Rūnanga o Ngāi Tahu*

B.For.Sc (Hons), PGCertAntaStud

# Management Options for Basking Sharks to give Effect to New Zealand's International Obligations – Initial Position Paper

## Executive Summary

1 Both the Ministry and the Department of Conservation (DoC) propose the following management options, to provide protection for basking sharks, (*Cetorhinus maximus*) both in New Zealand fisheries waters and from New Zealand vessels fishing on the high seas.

2 New Zealand is a member state of the Convention on the Conservation of Migratory Species of Wild Animals (CMS). By ratifying this Convention New Zealand acknowledged the importance of conserving migratory species, and agreed to take action to protect such species wherever appropriate and possible. In 2005, concern over the conservation status of basking sharks prompted the CMS Eighth Conference of the Parties to list the basking shark on Appendices I and II<sup>13</sup>.

3 New Zealand subsequently made a commitment to establishing protection measures for the basking shark in 2008, through publication of the National Plan of Action-Sharks (NPOA-Sharks)<sup>14</sup>.

4 New Zealand currently manages basking sharks through the Fisheries Act 1996, although the species is not within the quota management system (QMS). Fishers can legally utilise incidental captures of basking sharks, but targeting this species is not permitted. By continuing to allow such utilisation of basking sharks, New Zealand will not fulfil its obligations to the CMS.

5 Incidental captures of basking sharks are known to occur in New Zealand's trawl and set net fisheries<sup>15</sup>. Recent research shows an estimated 922 basking shark captures have occurred in New Zealand's deepwater and middle-depth trawl fisheries in the 14 years to 2007-08<sup>16</sup>.

6 To give effect to these international obligations, it is proposed that a combination of the following legislation be used to prohibit any remaining utilisation of basking sharks and their products:

- a) The Wildlife Act 1953 – The primary legislation for protection of wildlife in New Zealand, the powers under which are limited to within New Zealand fisheries waters (which includes New Zealand's Territorial Sea and exclusive economic zone (EEZ)).
- b) The Fisheries Act 1996 – Regulations under the Fisheries Act apply to all fishing vessels operating within New Zealand waters, and can apply to all New Zealand flagged vessels operating on the High Seas.

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<sup>13</sup> Migratory species that are in danger of extinction are listed on Appendix I of the Convention, and states should strive to strictly protect these animals. Migratory species that have an unfavourable conservation status, or whose conservation status would significantly benefit from international co-operation, organised by international Agreements, are listed on Appendix II of the Convention.

<sup>14</sup> The NPOA-Sharks is an operational procedure developed by MFish in response to the United Nations Food and Agriculture Organisation (FAO) producing an International Plan of Action-Sharks (IPOA-Sharks). The overarching goal of the IPOA-Sharks is 'to ensure the conservation and management of sharks and their long-term sustainability. Copies of the NPOA sharks can be found at: <http://www.fish.govt.nz/en-nz/Consultations/Archive/2008/NPOA+Sharks/default.htm?WBCMODE=PresentationUnpublished>

<sup>15</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>16</sup> M.P. Francis and M.H. Smith, DRAFT New Zealand Aquatic Environment and Biodiversity Report 2009

- 7 Specifically, this proposal is considering the following regulatory changes:
- a) amendment to Schedule 7A of the Wildlife Act, to include basking shark;
  - b) drafting of new Fisheries (Basking Shark – High Seas Protection) Regulations 2010; and
  - c) amendment to Part 2C of Schedule 3 to the Fisheries (Reporting) Regulations 2001, to include basking shark.

## Regulatory Impact Analysis Requirements

8 This IPP required a Regulatory Impact Statement which was reviewed internally by the Ministry.

9 For more information on the Regulatory Impact Analysis Requirements and the meaning of the word ‘significant’ with reference to an IPP, please refer to the Treasury website [www.treasury.govt.nz](http://www.treasury.govt.nz).

## The Issue

10 New Zealand ratified the CMS on 1 October 2000. In 2005, concern over the conservation status of basking sharks prompted the CMS Eighth Conference of the Parties to list the basking shark on Appendices I and II. New Zealand subsequently made a commitment to establishing protection measures for basking sharks in 2008, through publication of the NPOA-Sharks.

11 As a member state of the FAO that frequently takes sharks, there was also an onus on New Zealand to develop an NPOA-Sharks. The NPOA-Sharks specifies 11 actions that, once completed, will help New Zealand’s fisheries management regime satisfy the objectives of the IPOA-Sharks. Included in these actions are those New Zealand must deliver to meet the CMS obligations, such as protecting basking sharks.

12 As a signatory to the CMS, New Zealand is obliged to “endeavour to provide immediate protection for migratory species listed in Appendix I”, and specifically, to “prohibit the taking of animals belonging to species listed on Appendix I” both within New Zealand fisheries waters, as well as by New Zealand flagged vessels operating outside national jurisdictional limits. New Zealand is also obliged to act cooperatively with other parties to improve the conservation status of the basking shark, through developing international agreements to benefit species listed on Appendix II.

13 “Taking” in the context of the CMS means all hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct<sup>17</sup>. The definition encompasses any commercial or recreational targeting of listed species, as well as the deliberate killing of any basking shark accidentally taken. The Convention does provide limited exceptions, such as taking for use in scientific research, conservation efforts or for customary use.

14 Currently, the management of New Zealand’s basking sharks allows fishers to legally utilise basking shark products, although the species cannot be directly targeted<sup>18</sup>.

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<sup>17</sup> Article I(i) of the Convention on the Conservation of Migratory Species:  
[http://www.cms.int/documents/convtxt/cms\\_convtxt.htm](http://www.cms.int/documents/convtxt/cms_convtxt.htm)

<sup>18</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.



Prohibiting utilisation of this species, to meet our international obligation, would prevent any further utilisation of basking sharks caught as incidental bycatch. Fishers would not be penalised for incidental captures, provided the correct recording and reporting requirements are met.

15 The basking shark is the second largest fish in the world, and is considered to be extremely vulnerable to overfishing, perhaps more so than most sharks, mainly due to their long-lived nature. More detailed information on the biological characteristics of basking sharks is provided in Appendix 1.

16 Documented basking shark target fisheries have operated overseas, and are characterised by strong “boom-bust” cycles. Local populations are rarely able to support more than a few hundred removals a year, for a few years, before the fisheries collapse, with very slow or no recorded population recovery following exploitation. No target basking shark fishery has operated in New Zealand, but incidental captures have occurred. As there is little information on the size or distribution of the basking shark population around New Zealand waters, it is unknown whether the current level of fishing-related mortality is a sustainability risk to the population.

17 The report on recent research to quantify the level of basking shark captures in New Zealand (Francis & Smith 2009), indicated that 99 captures have been observed in the deepwater and middle-depth trawl fisheries between 1994-95 and 2007-08.

18 The observed captures were modelled, to estimate the total number of captures predicted to have occurred over the 14 years. Modelling resulted in an estimate of 922 captures since the 1994-95 fishing year. Irrespective of whether this level of mortality is sustainable, New Zealand is obliged to prohibit utilisation of the basking shark since it is listed on Appendix I of the CMS.

19 Low observer coverage in the inshore trawl and set net fisheries mean similar analyses cannot be completed for these fisheries. Estimates of captures given by this recent research may therefore underestimate the actual level of basking shark fishing-related mortality in New Zealand's fisheries.

20 This recent research also indicated some trade of basking shark products still operates in New Zealand. Large single basking shark fins reportedly fetch up to US\$57,000 on international markets<sup>19</sup>, a sum which could encourage opportunistic utilisation of fins, or other products from basking sharks that are landed as accidental bycatch.

## Options for management

21 In cases such as this, where international concerns dictate, utilisation can be prohibited through the use of two statutes currently in force:

- a) The *Wildlife Act 1953* (the Wildlife Act) can be used to prohibit utilisation of species in New Zealand fisheries waters.
- b) The *Fisheries Act 1996* (the Fisheries Act) provides for the protection of marine species through regulation. Fisheries Act regulations can be applied to vessels operating within New Zealand fisheries waters, and can apply to all New Zealand vessels fishing on the High Seas (under the Fisheries Act).

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<sup>19</sup> Clarke, S (2004). *Shark Product Trade in Hong Kong and Mainland China and implementation of the CITES Shark Listings*. TRAFFIC East Asia, Hong Kong, China

22 The Wildlife Act is the primary legislation for wildlife protection, 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.

23 Using only the Wildlife Act to protect basking sharks, it would only be possible to prohibit utilisation by vessels operating within New Zealand's EEZ, but would leave New Zealand flagged vessels operating on the high seas unregulated. Using only the Wildlife Act in this case would therefore mean New Zealand would only partially fulfil its obligations to the CMS.

24 Retaining the Fisheries Act alone to prohibit utilisation of basking shark would enable implementation of regulations applicable to New Zealand flagged vessels on the High Seas, as well as within the EEZ. However, the defence provisions for any incidental taking of basking shark as part of fishing operations under the Fisheries Act are stringent, and the penalty regime is severe. Given the risk of bycatch, MFish and DoC believe the defence under the Wildlife Act is more appropriate. Defence provisions of both Acts are discussed in more detail below.

25 The Ministry and DoC believe a more appropriate option would be to create new regulations using the Fisheries Act in conjunction with the Wildlife Act. The Wildlife Act provides sufficient protection to be used as the primary legislation for management of basking sharks within the EEZ, through listing basking shark on Schedule 7A.

26 Regulations enacted using powers under section 297(1)(o) the Fisheries Act can then be applied to New Zealand flagged vessels beyond the outer limits of New Zealand's fisheries waters. Should basking shark be listed 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.

27 If management action under both Acts were implemented, New Zealand would fulfil our international obligations to the CMS. In addition, if further protection is required, various tools are available under the Fisheries Act.

28 A combination of the two statutes was used in 2007 to prohibit utilisation of the white pointer shark, after this species was also listed on Appendices I and II of the CMS. Consequently the Ministry and DoC's preferred option is that the same measures be taken for the protection of the basking shark.

29 The majority of submissions received during consultation on the management measures for white pointer sharks (also known as great white sharks) indicated support for management using both Acts. There was also general agreement that listing the white pointer shark on Schedule 7A of the Wildlife Act was the most appropriate primary management measure, and a necessary step for the protection of this species.

## Summary of Options

### *Option 1 – Status Quo*

- 30 Retaining the status quo:
- a) would allow commercial fishers to utilise basking sharks or their products when this species is landed as bycatch of a legal fishing operation, provided all reporting and recording requirements of the Fisheries Act are satisfied.

- b) means New Zealand would not fulfil its obligation to the CMS, which states that all utilisation of species listed on Appendix I to the Convention should be prohibited by range states of that species.

### *Option 2 – Prohibiting utilisation using the Wildlife and Fisheries Acts*

- 31 Implementing option 2:
- a) would enable the Minister of Conservation to use the Wildlife Act to prohibit utilisation within New Zealand fisheries waters, by listing the basking shark on Schedule 7A to the Act.
  - b) would require new regulations to be drafted under section 297(1)(o) for the Fisheries Act. Drafting the new Fisheries (Basking Shark – High Seas Protection) Regulations 2010 would prohibit utilisation of basking sharks on the High Seas by New Zealand citizens and permanent residents, as well as companies and vessels registered in New Zealand.
  - c) would require an amendment to the Fisheries (Reporting) Regulations 2001, to include basking shark on Part 2C of Schedule 3. Inclusion requires any incidental captures of basking shark to be reported on the non-fish and protected species catch return.
- 32 Such management action would fulfil New Zealand's international obligation to the CMS. The Ministry would also achieve one of the actions required by the NPOA-Sharks.

### **Rationale for Management Options**

33 New Zealand has an obligation to implement protection measures for basking sharks, since this species' listing on Appendices I and II of the CMS. The listing indicates global concern for the conservation status of basking sharks and, as a member state of the CMS, New Zealand has an obligation to prohibit all "taking" of basking sharks. The obligation to protect basking sharks has arisen because of New Zealand's obligation under the CMS, not because there is evidence indicating New Zealand fisheries pose a sustainability risk to the local basking shark population.

34 Retaining the status quo would be inconsistent with New Zealand's international obligation but could be considered if there was a need to: (1) delay these protection measures, or (2) propose a change in the listed status of basking shark to the parties to the CMS. Based on current information the Ministry and DoC do not consider there is compelling information at this stage to suggest that a delay in implementation or a change in listed status is appropriate.

35 Option 2 is therefore DoC and the Ministry's preferred option. The rationale for implementing option 2 is that these measures will ensure New Zealand has fulfilled its international obligations under the CMS, to prohibit all utilisation by vessels within and outside New Zealand fisheries waters. In the Ministry's and DOC's opinion, this will be delivered most effectively by utilising both the Wildlife and Fisheries Acts and this will contribute to global efforts to ensure that the conservation status of basking shark is improved.

36 If option 2 is decided, implementation of regulation changes to support the management measures for basking shark will be given effect from 1 October 2010.

## Assessment of Management Options

### *Option 1*

37 Should the status quo be retained, trade and export of basking shark products harvested from incidental captures would continue. The current extent of basking shark utilisation in New Zealand is unknown, but it is not thought that trade of this kind operates on a routine basis. The likely economic benefits that will be incurred through continuing to allow trade of basking shark products is unclear and the Ministry and DoC would like to invite stakeholder views on this matter, through the consultation process.

38 The prices basking shark products are traded for, on both domestic and international markets are also unclear, although prices up to US\$57,000 have been reported for single large fins<sup>20</sup>. Given the infrequent capture rate, any trade in basking shark products is thought to be minimal in this country. Table 1 shows the exported basking shark products recorded from New Zealand between 2004 and 2006<sup>21</sup>. Currently, export of these products requires a permit from the Convention on International Trade in Endangered Species (CITES), as basking shark is listed on Appendix II to CITES.

<b>Year</b>	<b>Species</b>	<b>Origin</b>	<b>Destination</b>	<b>Number</b>	<b>Unit</b>
2004	Basking shark	NZ	Singapore	21	Fins
2005	Basking shark	NZ	Singapore	8	Fins
2006	Basking shark	NZ	Singapore	39	Fins

Table 1: Records of trade in basking shark specimens from New Zealand from 2004-2006.

### *Option 2 (Ministry/DoC preferred option)*

39 DoC and the Ministry believe that using a combination of the tools available from both the Wildlife and Fisheries Acts will provide the strongest and most comprehensive protection measures for basking sharks, fulfilling New Zealand's international obligations, and importantly contributing to the process of improving the global conservation status of this species. Such management action was used in 2007 to prohibit utilisation of the white pointer shark; a species also listed on the Appendices to the CMS.

40 The following section provides further detail regarding the provisions available under the Wildlife and Fisheries Acts, for managing the prohibition of utilisation of the basking shark.

#### *The Wildlife Act 1953*

41 This Act is the primary legislation for the protection of wildlife in New Zealand and is currently used to absolutely protect the following marine species:

- a) Those species defined as wildlife by the Act including seabirds (except six coastal species with varying levels of protection) and reptiles (including all species of marine turtle); and
- b) Those species listed in Schedule 7A as marine animals absolutely protected (Black coral: all species in the Order Antipatharia, Red coral: all species,

<sup>20</sup> Clarke, S. (2004). Shark product trade in mainland China and Hong Kong and implementation of the CITES shark listings. Hong Kong, China: TRAFFIC East Asia

<sup>21</sup> Source: UNEP World Conservation Monitoring Centre trade database. All recorded specimens in table 1 were for commercial trade and were harvested from the wild.

spotted black grouper (*Epinephelus daemeli*) and the white pointer shark (*Carcharodon carcharias*)).

42 Listing of basking shark on Schedule 7A of the Wildlife Act is likely to be regarded as an appropriate and necessary step to meeting New Zealand's obligations under the CMS. Protection under the Wildlife Act means that any person taking, or attempting to take, any animals identified as having absolute protection is committing an offence against the Act. The penalties include fines up to \$250,000 or imprisonment for no longer than six months.

43 A defence is provided where the accidental taking of marine wildlife occurs as part of fishing operations in accordance with section 68B<sup>22</sup>, as long as the recording and reporting requirements of section 63B<sup>23</sup> of the Wildlife Act are complied with. The requirements of section 63A of the Wildlife Act mean fishers must return any captured shark to the sea, with no deliberate attempts made to injure or kill the animal. If the recording and reporting provisions are not followed then there are provisions for fines of up to \$10,000. This would mean that any basking shark accidentally killed could not be sold or traded in any form.

44 The Wildlife Act also provides for the development of Population Management Plans (PMPs) that can include an assessment of the biology and status of a protected species, its known fisheries interaction and the degree of risk caused by fishing-related fishing mortality can be specified. If required, the development of PMPs would be undertaken by DOC. Recommendations can then be made to the Minister of Fisheries on measures to mitigate the fishing related mortality and the standard of information to be collected can be specified.

### *The Fisheries Act 1996*

45 As noted previously, sole management under the Fisheries Act is inappropriate as a tool to achieve species protection. As the purpose of the Wildlife Act is analogous to the purpose of the CMS, and this Act can provide sufficient protection within New Zealand fisheries waters, this would be the primary legislation used to provide species protection in New Zealand fisheries waters. Beyond the EEZ the Fisheries Act can be used to regulate High Seas fishery interactions with basking sharks.

46 Regulation under section 297(1)(o) can be used to provide protection for basking sharks on the High Seas. This section of the Act provides for regulations to be enacted that implement provisions of agreements or conventions that New Zealand is a signatory to. The Ministry proposes to draft the Fisheries (Basking Shark – High Seas Protection) Regulations 2010, to prohibit all New Zealand flagged vessels from taking basking sharks on the High Seas.

47 Any such regulation would apply to New Zealand flagged vessels operating outside waters under New Zealand jurisdiction. Regulatory offences can incur a fine of up to \$100,000, with defence provisions for any of the protection options contained in section 241.

48 Under section 241, it would be a defence if a fisher who accidentally caught a basking shark could demonstrate that they had taken reasonable precautions and exercised due diligence to avoid contravening the Act. Under section 241 (b) such a fisher must have

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<sup>22</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>23</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.

also immediately returned the captured shark to the waters from which it was taken and complied with all recording and reporting requirements under the Fisheries Act.

49 Should option 2 be implemented, and basking shark is listed on Schedule 7A to the Wildlife Act, therefore becoming a protected species, an amendment to Part 2C of Schedule 3 to the Fisheries (Reporting) Regulations 2001 would be required. Part 2C lists those fish species that are absolutely protected under the Wildlife Act. Incidental captures of species listed on Part 2C of Schedule 3 require reporting on the non-fish and protected species catch return.

### *Using both the Wildlife and Fisheries Acts*

50 Adding the basking shark to Schedule 7A of the Wildlife Act would prohibit utilisation of basking sharks and their products within New Zealand fisheries waters. Regulation pursuant to section 297(1)(o) of the Fisheries Act would prohibit all utilisation by New Zealand flagged vessels on the High Seas. It is the Ministry's and DOC's view that combining both pieces of legislation will provide the most comprehensive protection for basking sharks and will enable New Zealand to meet the obligations required under the CMS.

51 Using a dual legislative approach also provides for future management of this issue. If further management intervention is required to address the effects of fishing on the basking shark population, then sections 11 and 15 provisions under the Fisheries Act can be used. Section 11 measures could include fishing method, area or seasonal restrictions while section 15 (1) supports the implementation of a PMP for basking sharks developed under the Wildlife Act. In the absence of a PMP section 15 also permits the Minister to set measures which are considered necessary to further protect sharks from the effects of fishing, such as setting a limit on the number of sharks that can be accidentally killed.

52 At this time the Ministry and DoC do not consider that the additional management measures, described above, are necessary.

### **Other Management Issues**

#### *Customary considerations*

53 Provisions are available under the CMS for the taking of a protected species if it is to accommodate the needs of traditional subsistence users of such species. Both the Ministry and DOC believe Maori customary use would reflect this, although currently there is no information on the extent of customary use.

54 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, and reflect 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 Hawke Bay. Generally the species of shark kaitiaki is not specified.

55 The Ministry and DoC would like to invite stakeholders to comment on customary fisheries interactions with basking sharks, through the consultation process.

## *Recreational considerations*

56 There is currently little information available on the recreational use of basking sharks in New Zealand. There is no set recreational bag limit for this species, and the Ministry and DoC are unaware of any recreational targeting of basking shark. However, incidental captures of basking sharks are known to have occurred in New Zealand's set net fisheries (Clinton & Duffy 2002), therefore recreational set net fishers could potentially "take" a basking shark. In this case the defence provisions under the Wildlife Act would be applicable.

57 The Ministry and DoC would therefore like to invite stakeholder comment on any evidence of recreational use, through the consultation process.

## *Beach netting*

58 Currently, a beach-netting programme is run by the Dunedin City Council and operated off Brighton, St Clair and St Kilda beaches. The programme has been running since December 1969, and was a response to a series of fatal attacks by white pointer sharks around the Otago Peninsula occurring between 1964 and 1969. The netting programme runs from the months December to February inclusive. Two shark nets are set off each beach giving a total of six nets in the water. The nets are 100 metres long, eight metres deep and are anchored in 15 metres of water, with a mesh size of 300 millimetres.

59 Shark nets are set in order to kill sharks; however the nets are targeted at shark species that pose a risk to human life, which basking sharks do not. The Dunedin beach-netting programme has no records of incidental capture of basking sharks, and the nets are not thought to pose a sustainability risk to this species.

60 If the basking shark is listed on Schedule 7A of the Wildlife Act, the defence of "accidental or incidental" death or injury, in section 68B(4), would apply to the beach-netting programme. MFish and DoC would also like to invite comment from stakeholders regarding this matter.

## **Summary**

61 The Ministry and DoC have proposed two options for the management of basking sharks. Only one of these options (option 2) would fulfil the New Zealand's obligation under the Convention on the Conservation of Migratory Species of Wild Animals. This option would entail protection using a combination of measures under the Wildlife Act 1953 and the Fisheries Act 1996.

## **Consultation**

62 The Ministry and DoC would like to invite stakeholders' views on the management options proposed within this joint IPP. All submissions will be considered before the final advice is prepared for the Minister.

63 Should you have any questions on the consultation process or the IPP, please contact Vicky Reeve at the Ministry of Fisheries on (04 819 4606 or vicky.reeve@fish.govt.nz) or Ian Angus at the Department of Conservation on (04 471 3121 or iangus@doc.govt.nz). Ian will be available after the 18th of February 2010 for comments and questions.

## Appendices

### Appendix 1 – Background Information

64 The basking shark is a circumglobal species, found mainly in temperate waters of continental and insular shelf slopes of the Atlantic and Indo-Pacific oceans (figure 1). Once globally common, this species was listed on the 2004 IUCN Red List as Vulnerable throughout its range, and Endangered in the north Pacific and north-east Atlantic where it has previously been a heavily targeted fisheries resource.

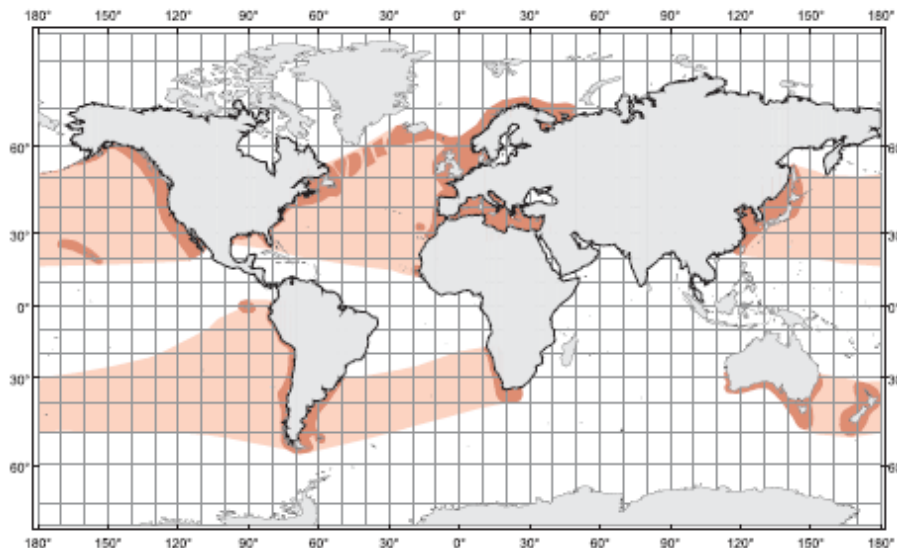


Figure 1: Distribution of the basking shark (*C. maximus*) Source: Proposal for inclusion of species on the Appendices of the Convention on the Conservation of Migratory Species of Wild Animals (Proposal I/11 and II/16)

65 Life cycle characteristics such as late maturity, low fecundity, low natural mortality and longevity are characteristic of long-lived species such as the basking shark (table 1). All of these characteristics indicate, even more so than with other sharks, a low productivity and ability to recover from population depletion. Even low levels of fishing induced mortality can be sufficient to prevent population growth of the species.

66 Basking sharks occur throughout New Zealand, being most common in cool temperate latitudes. It is likely that the individuals observed around New Zealand form part of a wider population, although it is unclear what level of mixing occurs between oceanic basins. Recent genetic studies indicate low levels of diversity among this species, with widely distributed individuals sharing high levels of genetic similarity. This could indicate high levels of population exchange, or could be evidence of a genetic bottleneck event in the evolutionary past of the species.

Category	Statistic
Maximum length	10m (33ft)
Age/size at sexual maturity	Males: 12-16 years / 5-7 m Females: 18 years / 8-9 m
Gestation period	18 months – 3 years (Pauly, 2002)
Litter size	5-6 pups (Pauly, 2002)
Size at birth	1.6 m (FAO, 2004)



Population productivity	0.013-0.023 (Musick <i>et al</i> , 2000)
Minimum population doubling time	14 years (Musick <i>et al</i> , 2000)
Temperature range	8-14 degrees C
Depth range	0-2000m

Table 2: Biological characteristics of the basking shark (*C. maximus*) Source: Proposal for inclusion of species on the Appendices of the Convention on the Conservation of Migratory Species of Wild Animals (Proposal I/11 and II/16)

67 The basking shark is the second largest fish in the world, and is likely to be the only extant species of the Cetorhinidae family, from which several fossil species have also been described. It is one of only 3 species of shark that feed on the zooplankton that becomes trapped as seawater is filtered through enlarged gill slits.

68 Basking sharks are thought to undergo large vertical and geographical migrations on a seasonal basis as they actively track dense patches of zooplankton prey. Global observations are more frequent during summer months and rare during winter time. These sharks are thought to follow and feed on the blooms of zooplankton that occur at the surface during summer and at depths of up to 900m during winter. As such, catch records from New Zealand show incidental capture has been more frequent during summer months.

69 Tagged individuals have been recorded travelling over thousands of kilometres over periods of a few months. As populations of this species occur over such wide geographical areas, local population depletion could have effects on a much larger area. Given the large distances that are travelled by this species, the proposed management options may not be effective over the entire range of this species.

# MANAGEMENT OPTIONS FOR BASKING SHARK TO GIVE EFFECT TO NEW ZEALAND'S INTERNATIONAL OBLIGATIONS – SUBMISSIONS

**From:** Stephen Bishop [mailto:Stephen.Bishop@indfish.co.nz]  
**Sent:** Tuesday, 11 May 2010 9:50 a.m.  
**To:** Reeve, Vicky  
**Subject:** MANAGEMENT OPTIONS FOR BASKING SHARKS

IFL make the following comments in relation to the management options to protect basking sharks.

1. Basking sharks are not targeted during commercial fishing operations.
2. A very small number are accidentally taken and cause considerable damage to fishing gear including sealion excluder devices.
3. On the last occasion basking shark fins were sold by us the return totalled \$2,357 plus GST for fins totalling 102 kgs.
4. The cost of repairing damaged fishing gear exceeds any economic return from these fins. This is the reason no one is ever going to target basking sharks particularly in a trawl situation.
5. On occasions some basking sharks can be returned to the water alive.
6. In other instances where the shark is dead or is unlikely to survive we believe it is a waste of a reasonably valuable resource to prohibit utilisation in the taking of fins or other parts of value. The Fisheries Act itself requires a balance of utilisation and protection. In this instance utilisation should be logically allowed.
7. We therefore suggest the following regime
  - (a) no target fishing for basking shark
  - (b) if a basking shark is accidentally taken and can be returned alive and is likely to survive then it must be returned to the sea as soon as practicable
  - (c) if the shark is dead or unlikely to survive then utilisation is allowed
  - (d) recording and reporting on relevant fishing returns required under (b) and (c).
8. It is an economic waste to throw thousands of dollars over the side when the shark is dead and no conservation value is achieved.
9. This regime should also be adopted for other protected species such as white pointer sharks, etc.

Happy to provide further information or clarification if required.

--

Stephen Bishop  
Fleet Manager

Independent Fisheries  
Phone: 03 328 7450  
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Mobile: 029 220 2924  
[stephen.bishop@indfish.co.nz](mailto:stephen.bishop@indfish.co.nz)

**From:** Steven Benjamins [mailto:[steven.benjamins@otago.ac.nz](mailto:steven.benjamins@otago.ac.nz)]  
**Sent:** Tuesday, 15 June 2010 2:31 p.m.  
**To:** Macfarlane, Trudie  
**Subject:** Submission re: Basking shark management changes

Hello Ms. Macfarlane,

My name is Steven Benjamins; I am a marine biologist working at the Dept. of Zoology at the University of Otago in Dunedin. I would hereby like to submit to you my comments on the proposed changes to the position of basking sharks under the Wildlife and Fisheries Acts, as requested. Please advise if you encounter any difficulties in accessing this document. I look forward to hearing from you in the event that further commentary is required.

Kind regards,

Steven Benjamins

Dr. Steven Benjamins  
Department of Zoology  
University of Otago  
340 Great King Street  
Dunedin  
New Zealand  
Tel.: +64-(0)3-4795456  
Email: [steven.benjamins@otago.ac.nz](mailto:steven.benjamins@otago.ac.nz)

## **Comments on the DoC/MFish position paper “Management options for basking sharks to give effect to New Zealand’s international obligations”**

Dr. Steven Benjamins  
Department of Zoology  
University of Otago  
340 Great King Street  
Dunedin  
New Zealand  
Tel.: +64-(0)3-4795456  
Email: [steven.benjamins@otago.ac.nz](mailto:steven.benjamins@otago.ac.nz)

L.S.,

I have recently had the pleasure to review the position paper “Management options for basking sharks to give effect to New Zealand’s international obligations”, co-authored by the Department of Conservation (DoC) and the Ministry of Fisheries (MFish; DoC/MFish 2010). I consider this to be a well-balanced document, clearly laying out the issues involved in management of this species. From a conservation perspective, I would strongly support the suggested Option 2, which would see basking sharks added to Schedule 7A of the Wildlife Act 1953 and concurrently adding stricter controls on their utilisation through the Fisheries Act 1996. This action would close existing loopholes in legislation which continue to allow exploitation of basking sharks within New Zealand waters, or by New Zealand-flagged vessels on the high seas (N.B.: this assumes that these new regulations will in fact be actively enforced to ensure they function as a credible deterrent).

As a large, highly migratory, slow-swimming filter-feeding species, basking sharks are subject to a range of anthropogenic pressures over a vast geographical area. Population structure of basking sharks at a global level is as yet poorly understood, but surprisingly low levels of genetic diversity have been reported, with no significant differentiation between separate ocean basins (Hoelzel *et al.* 2005). Such low genetic diversity is of significant concern when developing management strategies

for this species, as further loss of diversity could significantly affect the species' evolutionary potential. In recent years, it has become clear that individual basking sharks may dive deeper, and range much further, than had heretofore been assumed (Gore *et al.* 2008), suggesting the possibility that disparate 'populations' on opposite sides of ocean basins might actually be connected. This requires a radical rethink of management of such species.

Habitat use of basking sharks remains poorly understood in New Zealand waters (Francis and Duffy 2002). However, telemetry from tagged basking sharks in the North Atlantic has indicated that they use thermal oceanic fronts for foraging (Sims *et al.* 2003a, 2003b, 2006) and that their broad-scale distribution is strongly influenced by sea surface temperature (Cotton *et al.* 2005). There is a need to identify the distribution and longevity of such unstable features in the New Zealand area to ensure that habitat of greatest importance to basking sharks can be adequately protected. However, these abiotic features are likely to change over the next several decades as a result of global climate change, leading to a potential redistribution of basking sharks in the New Zealand area. Management plans for basking sharks should take account of such eventualities and develop risk-averse strategies to deal with them; such management plans should be developed collaboratively by MFish and DoC, as a means to further fulfil New Zealand's international obligations to conserve this species.

The potential non-destructive relevance of sharks to coastal economies (through ecotourism) have only recently been recognised (Topelko and Dearden 2005). In recent years, basking sharks have assumed greater importance in the coastal economies of the UK and Ireland as they are eagerly sought out by "shark-watching" tourists (Berrow 2010; Anonymous 2010; Shark Trust 2010). There are potential problems if such activities are left unregulated (Kelly *et al.* 2004; Shark Trust 2010); however, under the proper management regime (including, but not limited to, a Code of Conduct and strict enforcement of regulations), supported by independent research, these activities could increase the value of basking sharks to local economies. It is presently unknown whether basking sharks might occur sufficiently predictably in any location off New Zealand for them to become a viable tourist attraction, but reports indicate they are not uncommon in some areas, including around Cook Strait and off the Banks Peninsula (Francis and Duffy 2002). Reductions in fisheries-related mortality, as expected through the planned regulations, could lead to an increase in sightings and potentially increase its importance to local tourism operators. However, increased data collection and monitoring efforts are required to record changes in the small-scale distribution and habitat use, as well as to determine whether any other anthropogenic activities might affect basking sharks.

In conclusion, the proposed changes to the Wildlife and Fisheries Acts are a welcome first step to improve the conservation status of basking sharks in New Zealand waters. However, much more should be done to clarify the species' distribution and habitat use in our area, and to identify current and future threats to its survival. Only in this way can it truly be said that New Zealand fulfils its international obligations to conserve this iconic species.

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18 June 2010

Ministry of Fisheries  
Trudie McFarlane  
PO Box 1020  
Wellington 6140

Dear Trudie,

**RE: SUBMISSION ON MANAGEMENT OPTIONS FOR BASKING SHARKS TO GIVE EFFECT TO NEW ZEALAND'S INTERNATIONAL OBLIGATIONS**

DeepWater Group Ltd have sought views on this matter via its Directors and liaised with SeaFIC and Te Ohu Kaimoana in the development of their submissions on the above matter.

We have concluded that DeepWater Group support the submission by SeaFIC and have nothing further to add.

We also have noted and understand the points raised by Te Ohu Kaimoana Trustee Ltd in their submission.

DeepWater Group thanks MFish for both extra information provided during this process and an extension in time to submit.

Regards



Richard Wells

Fisheries Specialist

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Nelson 7040  
New Zealand

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# SEAFOOD INDUSTRY COUNCIL

The New Zealand Seafood Industry Council Ltd

## **Management options for basking sharks to give effect to New Zealand's international obligations.**

6. The New Zealand Seafood Council Ltd (SeaFIC) makes this submission on the consultation document "Management options for basking sharks to give effect to New Zealand's International Obligations". It has been compiled by SeaFIC in consultation with our shareholders.
7. The view of SeaFIC is that the proposed management measures are to address a legal obligation arising from the listing of all basking shark on Appendix I and Appendix II of the Convention on Migratory Species (CMS). The listing was primarily driven by target fishing of basking shark in the North Pacific and Northeast Atlantic to low levels, rather than a need to address sustainability concerns for basking sharks in the New Zealand EEZ (where target fishing is not allowed) and the wider southern hemisphere. We are not comfortable that localised sustainability problems in the northern hemisphere directly and unnecessarily result in the foregoing of utilisation opportunities for the economic benefit of New Zealand particularly when the Ministry acknowledges [para 33] that there is no evidence indicating New Zealand fisheries pose a sustainability risk to the local population.
8. The CMS listing of basking shark was primarily based on the status of northern hemisphere basking shark populations being assessed as endangered and the likely potential for future population declines to occur in the future from targeted fisheries globally, driven by the historic demand for livers and more recently demand for fins in international trade. The northern hemisphere basking shark population is clearly separated from the southern hemisphere population and thought by some to comprise separate species<sup>24</sup>. Basking shark populations have never been the focus of targeted fishing in New Zealand, its conservation status is not considered to be endangered and target fishing is unable to develop due to existing management controls. International trade is further controlled by listing of basking shark on CITES Appendix II.
9. Our preference is that any decision on management controls for basking shark be deferred and that a case is developed for an amended listing of basking shark to be

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<sup>24</sup> Siccardi (1971)

presented to the parties to CMS based on an analysis of the regional sub-populations and existing management controls.

10. We note that the IPP states [para 34] that the Crown does not propose a change in listed status of basking shark to the parties of CMS in the absence of compelling information. We consider there is sufficient information, including the current threat classification of basking shark and absence of targeted fishing to merit the initiation of a review to remove Australian and New Zealand basking sharks from CMS listing. Under these circumstances the existing management controls for basking shark under the Fisheries Act would be adequate.
11. In the absence of the Crown undertaking the commitment to propose a change in listing to CMS, the view of SeaFIC is that if protection is required under CMS to be put in place for the basking shark then this should be given effect through the Wildlife Act 1953. From a policy perspective the utilisation purpose of the Fisheries Act does not sit easily with the prohibition of utilisation of a fish stock.
12. The IPP proposes meeting CMS obligations for basking shark outside New Zealand's jurisdictional limits through use of regulations under the Fisheries Act 1996 to prohibit the taking of basking shark by New Zealand flagged vessels fishing on the High Seas. Basking shark is listed on Schedule 4C of the Fisheries Act which allows for utilisation of basking shark bycatch. The proposed regulations to prohibit the taking of basking shark would therefore be *ultra vires* whilst basking shark remains on Schedule 4C.
13. The IPP is silent on the mechanism to remove basking shark from Schedule 4C. We would appreciate greater clarity being provided on the legislative instrument that the Ministry envisage would be used. We seek a written response to this request
14. Notwithstanding, SeaFIC do not support the use of Fisheries Act regulations for the protection of basking sharks on the high seas. Article VI (2) of CMS contemplates that prohibiting taking outside national jurisdictions may not always be possible or appropriate. There is an implicit recognition that unilateral measures on the high seas are likely to be ineffective and regional cooperation is required if effective controls are to be achieved.
15. The UN Fish Stocks Agreement designates Regional Fisheries Management Organisations (RFMOs) as the primary vehicle through which states shall cooperate to bring about conservation and management of straddling stocks and migratory stocks. New Zealand is taking a proactive role in developing RFMOs that will ensure comprehensive coverage of the high seas accessed by New Zealand flagged fishing vessels in the foreseeable future.
16. Given that the establishment of RFMOs provide the appropriate opportunity and mechanisms to address the issue of conservation measures for the basking shark outside national jurisdictional limits, SeaFIC believes that it is pre-emptive to



instigate unilateral measures to “manage” basking shark outside the EEZ until such international agreements have been reached.

17. Assuming that basking shark was included in Schedule 7A of the Wildlife Act, once Agreement has been reached through RFMOs for high seas fishing, then the Agreement could be given effect through regulation made under section 72 (of the Wildlife Act). This would make it clear that the regulations and offence applied on the high seas, and that the deliberate killing of basking shark outside the EEZ by New Zealand flagged vessels will constitute an offence unless the defendant proves it did not contravene CMS (Section 68B (2))<sup>25</sup>.
18. Accordingly, basking shark should be managed as a protected species under the Wildlife Act both within and outside the EEZ.
19. In summary it is SeaFIC’s view that:
  - Listing of the global population of basking shark on CMS Appendix I and Appendix II is not appropriate and needs to be reviewed by the CMS parties
  - If following review, protections is required it should be through listing on Schedule 7A of the Wildlife Act by an Order in Council
  - The proposed regulations to prohibit taking of basking shark by New Zealand flagged vessels on the High Seas would be *ultra vires*
  - New Zealand should not feel compelled to give effect to CMS for basking shark outside the EEZ until the relevant RFMOs have considered conservation measures on the high seas
  - RFMO agreements should then given effect under regulation under the Wildlife Act

16 June 2010  
**By e-mail**  
Ministry of Fisheries  
PO Box 1020  
Wellington 6140

Attention: Trudie Macfarlane



### **SUBMISSION RE: MANAGEMENT OPTIONS FOR BASKING SHARKS**

The Environmental Defence Society (**EDS**) supports measures to provide greater protection for threatened marine species. Basking sharks are listed on the New Zealand Threat Classification List as being in gradual decline. Therefore it is appropriate to include basking sharks on Schedule 7A of the Wildlife Act 1953 to ensure they are protected throughout New Zealand and New Zealand fisheries waters (section 3 of the Wildlife Act). It is also desirable to enact regulations to prohibit all New Zealand flagged vessels from taking basking sharks

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1. <sup>25</sup> SeaFIC note however that the language of Section 68B (2) refers to New Zealand citizens. To better give effect to the intention of CMS for New Zealand vessels on the high seas then section 68B (2) would need to be amended to better reflect enforcement of persons responsible for the activities of and on New Zealand Flagged vessels on the high seas.

on the High Seas.

On the International Union Conservation of Nature Red List basking sharks are listed as vulnerable in terms of the global status. In the North Pacific and Northeast Atlantic basking sharks are assessed as endangered. These assessments are based primarily on past records of rapidly declining local populations of basking sharks as a result of short-term fisheries exploitation and very slow population recovery rates.

In light of the fact that basking sharks have very slow population recovery rates EDS would encourage the Ministry of Fisheries and the Department of Conservation to consider further management options in addition to the preferred option referred to in the discussion document. In particular, EDS would urge the Department of Conservation to prepare a population management plan. There may also be other measures that better meet New Zealand's obligation under the Convention on the Conservation of Migratory Species of Wild Animals.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'Raewyn Peart'.

Raewyn Peart  
Senior Policy Analyst

**From:** Louise Holden [mailto:[lou.holden@gmail.com](mailto:lou.holden@gmail.com)]  
**Sent:** Thursday, 10 June 2010 1:51 p.m.  
**To:** Macfarlane, Trudie  
**Subject:** Submission - basking sharks

Good afternoon Trudie,

My name is Louise Holden and my residential address is 1S, 16 Burton Street, Grafton, Auckland 1023.

I would like to make a submission in favour of the proposal to give basking sharks full protection under both the Fisheries Act 1996 (and the Act's Regulations) and the Wildlife Act 1953. It is well-known that many shark species are in decline and the basking shark is particularly vulnerable and needs protection.

Thank you

Kind regards  
Louise Holden

**From:** Kirstie Knowles [mailto:k.knowles@forestandbird.org.nz]  
**Sent:** Monday, 21 June 2010 1:44 p.m.  
**To:** Macfarlane, Trudie  
**Cc:** Reeve, Vicky  
**Subject:** F&B submission - baskign sharks

Hi Trudie,

Please find attached Forest & Bird's submission on MFish proposals to protect basking sharks.

I'm aware the deadline has passed. However, I've spoken to Vicky Reeve, who's informed me of the rules that MFish have but has said she is happy to receive it anyway.

Copying Vicky in at her request.

Thanks

Kirstie

**Kirstie Knowles**  
**MARINE CONSERVATION ADVOCATE**

**Royal Forest and Bird Protection Society of New Zealand Inc.**  
Level 1 . 90 Ghuznee St . PO Box 631 . Wellington 6140. New Zealand  
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21 June 2010

Vicki Reeve  
Ministry of Fisheries  
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Dear Vicki

**Submission: IPP - Management options for basking sharks to give effect to New Zealand's international obligations**

Forest & Bird (The Royal Forest & Bird Protection Society of New Zealand Inc) is New Zealand's largest independent conservation organisation, representing around 68,000 members and supporters.

Our members are people who care passionately about New Zealand's unique and special natural environment and native species, and want to make sure that these natural treasures are protected so that they can continue to be enjoyed by future generations.

Forest & Bird appreciates the opportunity to comment on the Ministry of Fisheries (MFish) Initial Position Paper (IPP) on management options for basking sharks (*Cetorhinus maximus*).

**Summary**

Forest & Bird submits the following in relation to the IPP:

- Basking sharks should be protected under both the Wildlife Act 1953 and the Fisheries Act 1996;
- Beach netting programmes should not be given an exemption;
- The Minister of Fisheries should direct MFish to immediately look into management options that would avoid captures of basking sharks and greatly minimise any accidental deaths. Such options may include area and seasonal closures of particular fisheries;
- Data on basking shark captures from the NPOA-Sharks should be presented to the Minister in the final Advice Paper.
- The Minister of Fisheries should prohibit all shark finning in New Zealand and on New Zealand flagged vessels and increase observer coverage in areas where shark finning is known to occur.

- The Ministers of Conservation and Fisheries should extend the proposed protection for basking sharks to include whale shark (*Rhincodon typus*), deepwater nurse shark (*Odontaspis ferox*), manta ray (*Manta birostris*) and spinetail devil ray (*Mobula japonica*).

#### **Management option**

Forest & Bird fully supports the proposal to protect basking sharks (*Cetorhinus maximus*) by the MFish and the Department of Conservation (DoC) using a combination of the Wildlife Act 1953 and the Fisheries Act 1996.

Retaining the status quo would be inconsistent with New Zealand's international obligations. It would also further delay the 2009 deadline for the protection of basking sharks, agreed in New Zealand's NPOA-Sharks.

#### **Beach netting**

Forest & Bird do not support the Dunedin's beach-netting programme and do not support an exemption for such programmes from the protection proposals.

There are only four species of shark recognised to pose a threat to human life – great hammerhead sharks, tiger sharks, great white sharks and bull sharks. Only one of these species – the Great White Shark – is found in waters off Dunedin.

White pointer sharks have not been captured in the shark nets off Dunedin since 1972 and are now protected under the Fisheries and Wildlife Acts.

Forest & Bird's submits that Dunedin's beach netting programme is ineffective in preventing great whites from entering the beach area – the nets do not cover the entire beach length and many sharks have been sighted inside the nets. However, the nets do prevent other sharks that do not pose a threat to humans, killing them unnecessarily and in a very wasteful manner – sharks caught and killed are discarded. The most common species being caught in recent years being the seven-gill, thresher and school sharks, as well as a mix of other species, including blue sharks.

School shark and Thresher shark are both listed as threatened species on the IUCN's Red List of species threatened with extinction. Blue sharks and sevengill sharks are listed as near-threatened. In 2008 CSIRO reported that Blue sharks in the Tasman Sea had declined by over 40% over the last decade. The unnecessary killing of these species in shark nets may also contribute to the decline of these species.

Forest & Bird do not support an exemption for shark netting programmes such as that operated by Dunedin City Council. We recommend that the Department of Conservation work with the council to develop practical alternatives to setting shark nets to manage great white sharks in the area.

#### **Fisheries mortality**

Forest & Bird is deeply alarmed by the findings of the new research into basking shark mortality in New Zealand's fisheries (Francis and Smith, 2010).

That an estimated 922 basking sharks were captured in New Zealand's deepwater and middle-depth trawl fisheries from 1994-94 to 2007-08 demonstrates a gross inadequacy in the management of these fisheries during this time. More alarming is that mortality estimates are likely to be highly conservative, due to underreporting and low observer coverage in inshore fisheries.

*We recommend that in addition to legal protection, the Minister of Fisheries should direct MFish to immediately look into management options that would avoid captures of basking sharks and greatly minimise any accidental deaths. Such options may include area and seasonal closures of particular fisheries.*

For example, set nets have been identified as a threat to basking sharks. Other species threatened by set nets include endangered Hector's dolphins, critically endangered Maui's dolphins, fur seals and a wide range of seabirds. Set nets are highly unsustainable fishing gear. Forest & Bird recommend that set nets be prohibited throughout New Zealand.

The new research on basking sharks also highlights the problem of under-reporting of shark captures in New Zealand. This is likely to be largely driven by the lucrative market for shark fins, with basking shark fins fetching up to US\$57,000 on international markets.

The New Zealand NPOA-sharks states in its Appendices that between 2002-2007:

- 69.05% of basking sharks caught were discarded, with 30.95% landed and 0% released alive or used on board; and
- 95.51% of basking sharks caught were finned (where finning was recorded as the primary processed state).

Legal protection tools alone will not prevent basking shark deaths in our fisheries as shark fins are still legally permitted to be landed without the shark carcass.

Shark finning – the practise of removing a shark’s fins and discarding the body – is banned in several countries, including Australia, the EU, the USA, South Africa, Ecuador, Mexico and Brazil. However finning is still legal in New Zealand waters.

New Zealand is contributing to the ongoing interest in finning basking sharks because shark finning is still legal. Requiring that all sharks retained be landed whole, with fins intact, is the only mechanism by which MFish can ensure shark fin identification and thereby deter basking shark fin collection. Increased observer coverage of our fisheries is also needed to prevent illegal fishing of basking sharks.

*Forest & Bird recommend that the above data on basking shark captures from the NPOA-Sharks be presented to the Minister in the final Advice Paper.*

*Forest & Bird recommend that in addition to legal protection, the Minister of Fisheries should prohibit all shark finning in New Zealand and on New Zealand flagged vessels and increase observer coverage in areas where shark finning is known to occur.*

#### Further recommendations

Forest & Bird also recommend that the Ministers of Conservation and Fisheries extend the proposed protection for basking sharks to include whale shark (*Rhincodon typus*), deepwater nurse shark (*Odontaspis ferox*), manta ray (*Manta birostris*) and spinetail devil ray (*Mobula japonica*).

Should you have any queries regarding our comments, please do not hesitate to contact me.

Yours sincerely



Kirstie Knowles  
Marine Conservation Advocate  
Forest & Bird

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k.knowles@forestandbird.org.nz



**From:** [Anaria Tangohau](#)

**To:** [trudi.macfarlane@fish.govt.nz](mailto:trudi.macfarlane@fish.govt.nz)

**Sent:** Friday, June 11, 2010 10:05 AM

**Subject:** Basking Sharks

Kia ora Trudi,

just giving you my name, Anaria Tangohau & address:- 8/4 Akaroa Drive, Maupuia, Wellington 6022  
in regard to giving full protection to Basking Sharks under the Fisheries Act and the Wild Life Act

Thank you, just add my name to the list of people who support this take OK.

18 June 2010

File: Policy / KW

Trudie MacFarlane  
Ministry of Fisheries  
Wellington

[trudie.macfarlane@fish.govt.nz](mailto:trudie.macfarlane@fish.govt.nz)

## Submission on Management Options for Basking Sharks

### Introduction

1. This submission is from Te Ohu Kaimoana in its role as corporate trustee of Te Ohu Kai Moana Trust (Te Ohu) and responds to the joint Initial Position Paper (IPP) titled *"Management Options for Basking Sharks to Give Effect to New Zealand's International Obligations"* from the Ministry of Fisheries (MFish) and the Department of Conservation (DoC). In making this submission, Te Ohu does not seek to undermine any submission that you may have received from individual iwi or iwi collectives.

### Summary

2. The IPP contains two options. Management option 1 is the status quo which involves a prohibition on targeting basking shark, but allows them to be utilised if they are caught as a consequence of fishing commercially for other species.
3. Option 2 is preferred by MFish and DoC which entails use of a combination of measures under the Wildlife Act 1953 and the Fisheries Act 1996 to prohibit the "taking" of basking shark and the utilisation of basking shark products. While MFish and DoC define "taking" as encompassing any commercial or recreational targeting of listed species, as well as the deliberate killing of any basking shark accidentally taken (para 13). They also argue that a prohibition on utilisation is necessary for New Zealand to comply with its international obligations under the *Convention on the Conservation of Migratory Species of Wild Animals (CMS)*.
4. Te Ohu holds a number of reservations about the IPP including:
  - (i) whether basking shark in southern hemisphere waters is endangered
  - (ii) whether it is premature to regulate the taking of basking shark on the high seas
  - (iii) whether – if basking shark is endangered – it is appropriate to ban the utilisation of those that are caught incidentally.

5. Te Ohu is of the view that irrespective of whether or not utilisation is prohibited the right of tangata whenua to target basking shark for customary non-commercial use must be retained. A more detailed explanation of these points is contained below.

#### **The Convention**

6. In 2000, New Zealand became a signatory to the CMS which prohibits the taking of basking shark (*Cetorhinus maximus*) except in a limited number of circumstances. Basking shark was included in the CMS list of animals for protection primarily due to it being endangered in the Northern Hemisphere particularly the north Pacific and north-east Atlantic where it is a targeted species. The targeting of basking sharks in the Northern Hemisphere is driven by economic returns. The MFish IPP quotes prices of up to US\$57,000 for large single basking shark fins however we understand prices are normally much lower at somewhere between \$2,000 and \$10,000. The topic of shark harvest is an emotive one because of the practice of cutting the fins off sharks and discarding the rest of the carcass. There are unsubstantiated reports that this practice is sometimes carried out while the shark is still alive, a practice that is frowned upon by many consumers of fish and the public in general.
7. The situation in New Zealand is different. Here basking sharks are not part of the Quota Management System and the targeting of the species by commercial vessels is not permitted. However, fishers are legally entitled to utilise incidental catches. We note that the practice of finning sharks while still alive is also prohibited by law in New Zealand.
8. The species is grouped into distinct northern and southern hemisphere zones and while New Zealand signed the CMS, there is no evidence to show that the basking shark is endangered in the southern hemisphere zone where New Zealand is located. Deepwater and middle-depth trawl incidental catches of basking shark in New Zealand total an estimated 66 catches per year. MFish and DOC do not know whether the current level of incidental catch in New Zealand is a sustainability risk to the population.<sup>1</sup> We would assume that as this species is not targeted in New Zealand, the pressures on the population will have been far less than those in Northern Hemisphere waters and we are not fully convinced that the listing of basking shark under the CMS is warranted.

#### **Management Option 2: Protection under the Wildlife Act and Fisheries Act**

9. Management option 2 – *Prohibiting utilisation using the Wildlife and Fisheries Act* in the IPP proposes use of the Wildlife Act 1953 and the Fisheries Act 1996 for a full prohibition of taking and utilisation of basking sharks. Option 2 proposes to list basking shark under Schedule 7A of the Wildlife Act which would make it an offence under section 63A to buy or process for sale or sell or otherwise dispose of or have in your possession a basking shark or any part thereof. As is the case now, a defence would be provided where the accidental taking of basking shark is part of lawful fishing operations. However unlike now, a dead animal would not be permitted to be utilised.
10. Option 2 would apply both in New Zealand waters and from New Zealand vessels fishing in the high seas (international waters). MFish and Doc argue that the proposal is necessary to bring the present New Zealand management

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<sup>1</sup> Para 16, page 3 of CMS.

framework for basking sharks into alignment with New Zealand's international obligations under the CMS. They argue that New Zealand has an obligation as a signatory to the CMS and under Article III to prohibit all taking of basking sharks.<sup>2</sup> A regime is required to regulate taking within New Zealand's Exclusive Economic Zone and by New Zealand flagged vessels operating on the high seas. As far as high seas are concerned, it is envisaged that management will require cooperation between countries, provided for in this region by the establishment of Regional Fisheries Management Organisation (RFMOs) which New Zealand is involved in helping to establish.

11. A hierarchy of international and domestic documents influence the management of basking sharks in New Zealand. The CMS is at the top followed by the *International Programme of Action (IPOA)* on sharks and then the *National Programme of Action on sharks (NPOA)*. The NPOA specifically identifies two action points relating to sharks. These are: *iii) Protect Basking Shark* (due 2009) and *iv) Develop and implement a prohibited utilisation process standard* (due 2011).<sup>3</sup> The NPOA refers to the fact that that full utilisation of incidentally caught sharks is encouraged in 4 of the 10 objectives in the IPOA.<sup>4</sup> Therefore, it could be argued that option 2 in the IPP is inconsistent with the pro-utilisation objectives of the IPOA. On the other hand, the NPOA qualifies this statement by also referring to the "general conservation ethic expressed in the desire to maximise the use of natural resources", and "concern over the inherently wasteful practice of shark finning".<sup>5</sup> The NPOA then proposes the use of Codes of Practice to ensure that live shark finning does not occur.

#### **Customary Use**

12. The taking of basking sharks for customary non-commercial purposes is a noted exception to the general prohibition to taking under the CMS.<sup>6</sup> Although the level of customary catch, if any, in New Zealand is unknown there is ample evidence showing that many species of shark are considered kaitiaki (guardians / kin) of significant importance to some iwi and hapu. We also know that sharks were generally targeted by Maori fishermen as a food source, for oil and for various parts that were used to make traditional ornaments.
13. For these reasons some iwi and hapu may support the full protection of basking sharks while others may support targeting and utilisation. Until we can quantify customary non-commercial catch levels it would be prudent to avoid any legislative changes that would have the effect of prohibiting the right of tangata whenua to take sharks for customary non-commercial use. The customary exception could be reviewed once better information is obtained.

#### **Matters to Consider**

14. Te Ohu wishes to highlight the following points as part of its submission:
  - a. We support the sustainable management of all fish stocks in the EEZ and by New Zealand vessels fishing on the high seas.

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<sup>2</sup> Para 14, page 3.

<sup>3</sup> Para 211 at page 45 of NPOA.

<sup>4</sup> Chapter 3.3.2, page 41 of NPOA.

<sup>5</sup> NPOA, p 42, para 195

<sup>6</sup> The specific terminology used in the CMS is that "the taking is to accommodate the needs of traditional subsistence users of such species".

- b. Paragraph 30b) of the IPP states that management option 1 – status quo (ie. enables utilisation in limited circumstances) would mean that New Zealand would not fulfil its obligation to the CMS. Furthermore an assertion is made that the CMS states *"all utilisation of species listed on Appendix 1 to the Convention should be prohibited by range states of that species.* However we were unable to find any such reference to this statement in the CMS.
- c. We support a more integrated international approach to the management of vessels on the high seas – as suggested by SeaFIC. We believe that RFMOs – which are in the process of being established in this region - provide the appropriate opportunity and mechanisms to address the issue of conservation measures for the basking shark outside of national jurisdictional limits. We also believe that it is pre-emptive to instigate unilateral measures to "manage" basking shark outside the EEZ until such international agreements have been reached. Management within this framework would also provide an appropriate context to reconsider whether basking shark in southern waters are endangered and whether they should continue to be listed on the CMS.
- d. We also wish to note that it is pre-emptive to prohibit the utilisation of basking shark until the development of the standard identifying marine species where no level of utilisation is considered sustainable. This is a specific action in the NPOA – action (iv).
- e. We support in principle the utilisation of protected species that are landed dead or that are injured to the extent they are unlikely to survive if returned to the sea where that species is caught as a consequence of legal fishing operations. We suggest that utilisation could only be permitted where an observer is on board at the time of capture. The observer's role would be to attest that all correct procedures were followed. This should ensure that the ability for fishers to utilise that species does not create incentives to target them. Again in principle, we consider that utilisation in these limited circumstances is an efficient use of an economic resource that would otherwise be unnecessarily foregone.
- f. We support the retention of the right of tangata whenua to target and utilise basking shark for customary non-commercial use where tangata whenua choose to do so. We note that this right is explicitly recognised in the CMS and its application would be entirely consistent with the CMS. Changes to the Fisheries and Wildlife Acts must be implemented in a manner that does not prohibit the taking of basking shark for customary non-commercial use.

#### **Recommendations**

- 15. As noted above, we consider that as a matter of principle, protected species that are caught incidentally – as a consequence of legal fishing operations – ought to be able to be utilised subject to appropriate checks. However in the case of basking sharks we do not believe that the benefits of utilisation warrant these provisions.
- 16. Therefore we recommend that if it is determined that additional protection of basking shark is appropriate, management option 2 is adopted but with the amendment that the high seas regulation option be deferred until a regional solution for the high seas is developed by RFMOs.

17. We also recommend that the right of tangata whenua to take basking sharks for customary non-commercial use is retained – as is consistent with the CMS.
18. If you have any questions about this submission please contact the writer or Maru Samuels – email: [maru.samuels@teohu.maori.nz](mailto:maru.samuels@teohu.maori.nz) ddi: (04) 931 9509.



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