

**PROPOSAL TO AMEND ASPECTS OF THE
AMATEUR FISHING REGULATIONS**

(Part 2)

Initial Position Paper

11 July 2006

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INTRODUCTION

- 1 The purpose of this Initial Position Paper (IPP) is to seek your views on proposals to amend a series of regulations that are of concern to recreational fishers.
- 2 The IPP has been developed for the purpose of consultation as required under the Fisheries Act 1996. MFish emphasises that the views and recommendations outlined in this paper are preliminary and provided as a basis for consultation with stakeholders.
- 3 The process that is undertaken to develop the initial position in IPPs involves consideration of recent research, analysis of commercial catch data, and any other relevant information. All IPPs have regard to the legal obligations required under the Fisheries Act.
- 4 A standard section outlining MFish's statutory obligations and policy guidelines for a proposal contained within any IPP is available from MFish should you wish to refer to these matters.
- 5 If you have any questions regarding this IPP you are encouraged to contact Arthur Hore, Senior Fisheries Management Advisor; or Sarah Omundsen, Fisheries Advisor on (09) 820 7771.
- 6 In September 2006, MFish will compile the Final Advice Paper. This document summarises MFish and stakeholder views on those issues being reviewed, and provides final advice and recommendations for each issue. Copies of the Final Advice Paper and subsequently the Minister's letter setting out his final decisions will be sent to all nationally represented stakeholder groups, and all other stakeholders who expressed an interest in being consulted on particular proposals, as soon as it becomes available.

Deadline for Submissions

- 7 MFish requests that you provide comments on the proposed regulatory amendments no later than **8 September 2006**. Written submissions should be sent directly to:

Sarah Omundsen
Ministry of Fisheries
PO Box 19747
Auckland

or emailed to Sarah.Omundsen@fish.govt.nz

- 8 Please note that all submissions are subject to the Official Information Act and can be released, if requested, under the Act. If you have specific reasons for wanting to have your submission withheld, please set out your reasons in the submission. MFish will consider those reasons when making any assessment for the release of submissions if requested under the Official Information Act.

AMENDMENT OF THE RECREATIONAL SCALLOP FISHING SEASON

Executive Summary

- 1 Recreational scallop fisheries are closed by regulation from 15 February to 14 July each year. This closure is defined in regulation 24 of the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) and means that scallops can only be taken recreationally between 15 July and 14 February (both days inclusive).
- 2 The New Zealand Recreational Fishing Council (NZRFC) have advised the Ministry of Fisheries (MFish) that scallops at the start of the open season are, on average, small and in very poor condition in some areas. Further, the NZRFC have advised MFish that scallops tend to be in good condition as late as Easter each year, which is likely to be due to a significant scallop spawning event that generally occurs in autumn.
- 3 In order to leave the early season scallops to improve condition and potentially spawn again prior to being harvested, as well as take advantage of those scallops in good condition in later February and March, the NZRFC have requested that MFish consult with stakeholders on an option to change the recreational scallop season from 15 July – 14 February to 1 September – 31 March. This change would mark a seven week shift in the season, but would not change the actual number of days that the recreational season is open for.

Summary of Options

- 4 MFish is consulting on options to either:
 - a) Amend regulation 24 of the Fisheries (Amateur Fishing) Regulations 1986 to shift the season when the recreational scallop fishery is closed from 15 February - 14 July (inclusive) to 1 April – 31 August (inclusive); or
 - b) Maintain the existing closed season for recreational scallop fisheries (15 February - 14 July (inclusive)).

Background

- 5 Scallops are serial spawners, releasing millions of eggs each spawning season, which generally occurs from September to April. Scallops may spawn several times each year (although not all of these spawning events lead to successful spat settlement). Spawning from September to late December is thought to account for most new scallops entering the fishery.
- 6 Most scallops are sexually mature at about 60 mm, so they generally have at least one spawning season before reaching the minimum legal size that can be harvested recreationally and commercially. However, large, old scallops produce substantially more eggs and sperm than smaller scallops.

- 7 Recreational scallop fisheries in New Zealand are subject to a seasonal closure. Regulation 24 of the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) states that no person shall take or possess any scallops taken between the 15th day of February and the 14th day of July (both days inclusive). This seasonal closure applies to all scallop fisheries except in the Southland Fisheries Management Area, where the scallop fishery is closed from the 16th of March to the 30th of September¹.
- 8 The closed season for the recreational scallop fishery is a moderately important management tool, limiting fishing effort to a part of the year and also protecting scallops for a period of time during which they are in poor condition. The open season is the time when scallops spawn and is meant to allow for the harvest of scallops in peak condition.
- 9 The commercial scallop open and closed seasons are the same as those in the recreational fishery for the reasons outlined above; except in the Coromandel scallop fishery which is only open for commercial fishing from 15 July to 21 December (inclusive)². This shortened commercial fishing season was introduced at the request of the Coromandel Scallop Fisherman's Association due to their concerns about potential dredge damage to newly settled scallop spat in late December and January.
- 10 Commercial fishers generally work within a season to time their harvesting with peaks in scallop condition. This is particularly important because commercial catch limits are based on meat weight rather than shell weight.
- 11 Scallop seasons have been in place since the 1973/74 fishing year. Although the general timing of the open and closed season is important, the precise dates of the seasons are probably arbitrary.

Statement of the Problem and Need for Action

- 12 The NZRFC have advised MFish that recreational fishers are reporting that scallops at the start of the open season are, on average, small and in very poor condition. Condition in scallops is related to spawning activity, and the most significant spawning activity occurs much later in the season. Recreational fishers have also observed that scallops tend to be in good condition as late as Easter each year as a significant spawning event generally occurs in autumn.
- 13 In order to leave the early season scallops to improve condition and potentially spawn again prior to being harvested, as well as take advantage of those scallops in good condition in later February and March, the NZRFC have requested that MFish consult with stakeholders on an option to change the season when scallops can be harvested recreationally from 15 July – 14 February to 1 September – 31 March. This change in dates represents a shift in the season of seven weeks. While this shift would alter the timing of access to the recreational fishery, there would be no change to the actual amount of time recreational fishers could access the fishery.

¹ Fisheries (Southland and Sub-Antarctic Areas Amateur Fishing) Regulations 1991.

² Fisheries (Auckland and Kermadec Areas Commercial Fishing) Regulations 1986.

Preliminary Consultation

- 14 MFish reviewed a series of recreational rules and regulations in 2005, as part of a commitment given to review recreational fishers' top ten concerns within a three year timeframe. Following consultation with its members, the NZRFC provided MFish with a list of further issues of concern that they wanted to be considered for review in 2006.
- 15 A workshop was held on 24 March 2006 with NZRFC members and MFish staff, with the purpose of prioritising these issues and agreeing to three issues to be reviewed in 2006. A shift in the scallop open season from 15 July – 14 February to 1 September – 31 March was identified as a priority for review at this time.
- 16 There has been no preliminary consultation with other government agencies about this proposal.

Options for Management Response

Shift the recreational scallop season

- 17 Shifting the dates that the recreational scallop season is open for, from 15 July – 14 February to 1 September – 31 March, will require an amendment of r 24 of the Regulations. No changes are proposed where associated regional regulations specify a season different to that specified in the Regulations.
- 18 MFish considers that it is unlikely that shifting the recreational scallop season will have a significant impact on current recreational access or harvest levels because the actual length of the season is not changing. Further, the original scallop season dates set in 1973 were largely arbitrary and shifting the dates will not change the principle of the management regime (allowing the harvest of scallops in optimum condition, while protecting them when in poor condition).
- 19 However, MFish acknowledges that shifting the recreational scallop season may result in some increase in the current levels of take. Although most recreational harvesting occurs in the months of December and January, shifting the season from colder winter months to warmer autumn months may result in an increase in fishing activity. This is likely to be further compounded as better condition scallops will be available for harvest during this time, encouraging a greater level of participation. Despite the potential for increased harvest levels, MFish considers the minimum legal size limit, not the closed season, to be the most important management tool to ensure the sustainability of scallops. Therefore, MFish does not consider that the proposed change constitutes a sustainability risk.

Maintain the status quo

- 20 The alternative option is to maintain the status quo. MFish recognises that as the recreational scallop season has been in place for over 30 years, there is an “opening season” tradition in many areas. In addition, there may be some areas where particular regional fishery characteristics would not suit a shift in the current season. MFish is interested in stakeholder views on whether or not a shift in the season would benefit the recreational scallop fishery in their area.

Statement of Net Benefits and Costs of the Proposal to Stakeholders

Shift the recreational scallop season

Benefits

- 21 There will be benefits to recreational fishers as a result of this proposal, as access will be provided to good condition scallops in autumn where previously this did not occur. There are also likely to be stock benefits. Leaving the recreational season closed until September will allow scallops to improve condition and spawn at least once in the spring season prior to being harvested.

Costs

- 22 MFish is not aware of any particular values, social or biological, that exist in opening the recreational scallop season on the 15th of July each year. However, the shift in timing of the season may result in an increase in participation in some scallop fisheries. This is not considered to represent a sustainability risk given the minimum legal size for scallops that exists, but catches could potentially increase as a result.

Maintain the status quo

Benefits

- 23 The benefit of retaining the status quo is that the scallop season has been in place for a very long time. There is likely to be a level of confusion in the recreational fishery if the dates are changed, particularly with respect to the start of the season.

Costs

- 24 No significant costs are expected with maintaining the status quo.

Administrative Implications

- 25 Resources will be required to change the Regulations. There will also be resource implications associated with raising public awareness of any regulatory changes made, including changes to current pamphlets and signage. The difference between seasons will mean that pamphlet and signage changes will need to occur in the three to four month period between the closure of the existing season but prior to the start of the new season. The need for new signs, and their cost, means the existing signage maintenance programme will need to be deferred until the new signage can be produced and installed nationally.

Compliance Implications

- 26 Changing the recreational scallop season will have significant compliance implications. The scallop season has been in place a long time, and a great deal of public relations activity will be required nationally to ensure people are aware of the change.

Other Considerations

- 27 The scallop season is both a sustainability measure (limiting fishing effort to a part of the year) and a utilisation tool (allowing harvest of scallops when they are in peak condition). Under section 11 of the Fisheries Act (the Act), the Minister must take into account a variety of issues prior to implementing or varying any such sustainability measure. The effects of fishing on scallops and the aquatic environment, any existing controls under the Act that apply to scallops, and the natural variability of scallops have been taken into account in developing this proposal. MFish does not consider these issues to be relevant to the recreational scallop fishing season.
- 28 Of particular relevance to this proposal is that MFish and stakeholder leaders are currently preparing a fisheries plan for the Coromandel Scallop Fishery (s 11(2A)(b)). While not yet approved under s11, it is likely that the Minister of Fisheries will be in a position to consider the fisheries plan by early-mid 2007. The closed season is a relevant management tool in the fishery and any changes to the season will be relevant to this fisheries plan and will need to be incorporated.
- 29 MFish considers that all other considerations under the Act have been taken into account in developing the proposal, and that the proposal is consistent with all obligations under the Act.

Proposal

- 30 It is proposed to either:
- a) Amend regulation 24 of the Fisheries (Amateur Fishing) Regulations 1986 to shift the season when the recreational scallop fishery is closed from 15 February - 14 July (inclusive) to 1 April – 31 August (inclusive); or
 - b) Maintain the existing closed season for recreational scallop fisheries (15 February - 14 July (inclusive)).

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

Executive Summary

- 1 The Ministry of Fisheries (MFish) is consulting on an option to introduce a recreational minimum legal size of 25cm for red gurnard, and 45cm for trumpeter. MFish is also consulting on an option to decrease the blue cod recreational minimum legal size from 33cm to 30cm in the North Island.
- 2 Currently there is no minimum legal size for red gurnard or trumpeter in New Zealand. However, there have been growing concerns about the small size of both species being caught by recreational fishers. The New Zealand Recreational Fishing Council (NZRFC) has requested that MFish review and consult on options to introduce minimum legal sizes for both species.
- 3 There is currently a national minimum legal size of 33cm for blue cod, except in parts of the Challenger Fisheries Management Area and the South-East Fisheries Management Area where it is 30cm. The analysis supporting the minimum legal size of 33cm was specific to South Island fisheries and the NZRFC consider it to be too high in the North Island where blue cod mature at a much smaller size. The NZRFC have requested that MFish review and consult on an option to reduce the blue cod recreational minimum legal size to 30cm in the North Island.
- 4 The proposals relate to recreational minimum legal sizes only, and the net benefits that can be gained from size limits in the red gurnard, trumpeter and blue cod recreational fisheries.

Summary of Options

- 5 MFish is consulting on options to:
 - a) Specify a recreational minimum legal size of 25cm for red gurnard in the Fisheries (Amateur Fishing) Regulations 1986; or retain the status quo for the species;
 - b) Specify a recreational minimum legal size of 45cm for trumpeter in the Fisheries (Amateur Fishing) Regulations 1986; or retain the status quo for the species;
 - c) Amend relevant regional amateur fishing regulations to decrease the blue cod recreational minimum legal size from 33cm to 30cm in the North Island; or retain the status quo in this area.

Red Gurnard

Background

- 6 Red gurnard is a widespread species, occurring in inshore waters throughout New Zealand. It is a moderately important recreational species, often taken by fishers when targeting snapper and tarakihi, particularly in the northern region. Annual recreational catches of red gurnard throughout the country have been estimated at between 150 and 500 tonnes, from national and regional diary surveys (although the harvest estimates derived from these surveys are considered to be unreliable).
- 7 Red gurnard was introduced into the quota management system (QMS) in 1986, but no recreational allowance has been set for any stock. Combined total allowable commercial catches (TACC) are currently 5 047 tonnes, although actual commercial catches are only approximately 3 500 tonnes each year. Recreational catches are likely to be relatively low in comparison to the commercial harvest of the species.
- 8 The 2005 Report from the Fisheries Assessment Plenary suggests that current catch levels of red gurnard are probably sustainable; however the status of any red gurnard stock is not clear (see Appendix One for a map of red gurnard stocks).

Statement of the problem and need for action

- 9 Currently there is no recreational minimum legal size in place for red gurnard. Minimum legal sizes are used to protect and enhance fish populations by allowing fish to live long enough for them to spawn. They are also an effective way to provide quality fishing by preventing the harvest of smaller individuals and allowing a greater number of fish to survive to a more desirable size.
- 10 The NZRFC have advised MFish that there are growing concerns from recreational fishers about the small size of red gurnard regularly being taken. They have received reports that fish as small as 10cm are being landed which is causing concern about the impact this will have on future recruitment into the fishery, and on the availability of larger fish. The NZRFC have therefore requested that MFish consult on whether or not recreational fishers support a minimum legal size for red gurnard.

Options for management response

Implement a national minimum legal size

- 11 Red gurnard reach sexual maturity at an age of two to three years and a fork length (FL) of about 23 cm, after which their growth rate slows. Growth rates can vary spatially, and females grow faster and are usually larger than males. Maximum age of red gurnard is about 16 years and maximum size is 55+ cm. Small juveniles (< 15 cm FL) are often caught in shallow harbours. From a biological perspective, a minimum legal size of 25cm would be appropriate.
- 12 Implementing minimum legal sizes can have clear benefits by a) allowing fish to live long enough for them to spawn, and b) improving yield per recruit by allowing fish to grow to a larger size. However, size limits may also result in forgone yield due to the mortality associated with releasing undersize fish. As the probability of survival of

released fish declines, minimum legal sizes become less effective in improving recruitment and increasing yield per recruit because greater numbers of undersized fish die and cannot contribute to future spawning biomass or catches.

- 13 There is no available analysis to model the effect of a recreational minimum legal size on the red gurnard population. There is also no information available to determine what the survival probability is of released red gurnard. However, some recreational fishers report that red gurnard, like snapper, are relatively robust species and the probability of survival following release is anticipated to be high. On balance MFish considers that the benefits to be gained from a minimum legal size will outweigh any yield loss generated through release-related mortality.

Maintain the status quo

- 14 Given that no analysis has been undertaken on optimal size limits, or their effects on red gurnard stocks, a valid option is to maintain the status quo until better information is available. In addition, there may be alternative management measures, such as changes in set net mesh sizes or bag limits, that could be more preferable to fishers in the management of the recreational red gurnard fishery. MFish is interested in stakeholder views on whether they consider any alternative management measures to be necessary or appropriate in the red gurnard fishery.

Statement of net benefits and costs of the proposal to stakeholders

Implement a national minimum legal size

Benefits

- 15 A minimum legal size for red gurnard that protects the juvenile component of stocks will have positive effects on the population. However, the precise benefits that may be gained will depend on the level of mortality associated with releasing undersize fish.

Costs

- 16 MFish is not aware of any particular social or cultural value of very small red gurnard. Boat ramp surveys that have been undertaken also indicate that most red gurnard taken recreationally are larger than 25cm. In fact, 98% of red gurnard measured since 1990 (a total of 18 493 have been measured, mostly in the North Island) are larger than 25cm. As a result, it is unlikely that a recreational minimum legal size of 25cm will result in a significant loss of access to red gurnard fisheries.

Maintain the status quo

Benefits

- 17 The principle benefit of retaining the status quo for red gurnard will be that an additional regulation will not be imposed on recreational fishers.

Costs

- 18 There are no costs anticipated with maintaining the status quo.

Trumpeter

Background

- 19 Trumpeter occurs mainly from the Bay of Plenty southwards, reaching the Auckland Islands, but is seldom common. It is a locally important recreational species, particularly in the South Island with most recreational catch taken in quota management areas 3, 5 and 7 (see Appendix One for a map of trumpeter stocks). Recreational surveys have estimated annual catches of trumpeter throughout the country to be between 1 and 40 tonnes. This may be an underestimate of harvest however, as the weight used to convert the number of fish caught to a tonnage was derived from a sample of mainly small fish and is possibly unrepresentative.
- 20 Trumpeter was introduced into the QMS in 1998 and the combined recreational allowance for all stocks is 39 tonnes. The sum of the combined TACCs is currently 144 tonnes, but catches haven't been this high since introduction into the QMS. In fact, in 2000–01 and 2001–02, commercial catches were as low as 25 tonnes.
- 21 No estimates of current and reference biomass are available for trumpeter. The 2005 Report from the Fisheries Assessment Plenary states that it is not known if recent catch levels are sustainable or at levels that will allow the stock to move towards a size that will support the maximum sustainable yield. However, there is anecdotal information from Australia and New Zealand that localised populations of trumpeter can be quickly fished out.

Statement of the problem and need for action

- 22 Like red gurnard, there is currently no recreational minimum legal size in place for trumpeter. Concerns have been raised by MFish's Southland Marine Recreational Advisory Committee about the small size of trumpeter being caught. Furthermore, smaller fish occur in inshore waters where they are targeted by recreational fishers, potentially reducing the yield pre recruit. These problems, combined with concerns about localised depletion in popular areas, have prompted some fishers to ask for management action to improve the status of the fishery. In particular, the Committee have requested that MFish consult with recreational fishers on the introduction of a minimum legal size for the species.

Options for management response

Implement a national minimum legal size

- 23 Trumpeter is restricted to offshore reefs and rough ground to about 300 m deep, with juveniles (30–40 cm) in shallower coastal waters. It is known that adults reach about 1 m in length and 25 kg in weight, but their growth rate is unknown. There is also very little information on the reproductive biology of trumpeter in New Zealand.

- 24 What is known is that juvenile trumpeter are found in shallow water and that they move offshore at about 4.5 years and about 45cm (FL). It is likely that this move coincides with maturity. As a result, MFish considers that a 45cm minimum legal size would be appropriate for the species. However, as juveniles grow rapidly a minimum size smaller than 45 cm would still increase the proportion of larger juveniles available in shallow water.
- 25 As with red gurnard, there is no available analysis to model the effect of a recreational minimum legal size on the trumpeter population. However, it is clear that the recreational fishery contributes significantly to the total amount of trumpeter harvested. A management tool that protects a proportion of the population from this harvest is likely to result in future recruitment and yield benefits.
- 26 As mentioned, minimum legal sizes will only be effective if fish are likely to survive being returned to the sea. Unfortunately, the probability of survival of released trumpeter is not known. Given the biological characteristics of trumpeter, however, and concerns about the small size of trumpeter being landed, MFish considers that the benefits to be gained from a minimum legal size will outweigh losses that may occur through release related mortality.

Maintain the status quo

- 27 Recreational trumpeter fisheries are relatively small and localised. Combined with concerns about the availability of trumpeter only in certain areas, recreational fishers may consider it more appropriate to manage trumpeter stocks on a regional or local scale, rather than by implementing a national minimum legal size.
- 28 In addition, no analysis has been undertaken on optimal size limits, or their effects on trumpeter stocks. MFish therefore considers that a valid option is to maintain the status quo until further information is available. MFish is interested in stakeholder views on whether they consider any alternative management measures to be necessary or appropriate in the trumpeter fishery.

Statement of net benefits and costs of the proposal to stakeholders

Implement a national minimum legal size

Benefits

- 29 Given there is anecdotal evidence that localised populations of trumpeter can be fished out, and that fishers in some areas are concerned about the availability of trumpeter, a minimum legal size for the species is likely to have considerable stock benefits. The measure will afford a level of protection to juveniles in inshore areas and help to ensure a greater proportion of juveniles are able to reach sexual maturity.

Costs

- 30 Few trumpeter have been measured in boat ramp surveys, particularly in the southern region where trumpeter fisheries are most significant. However, the limited information that is available suggests that a large proportion of fish taken recreationally are smaller than 45cm. Together with the fact that the recreational

trumpeter fishery is mostly based inshore where juveniles predominate, there is likely to be a loss of recreational catch and access to the fishery as a result of this proposal.

Maintain the status quo

Benefits

- 31 As for red gurnard, the principle benefit of retaining the status quo for trumpeter will be that an additional regulation will not be imposed on recreational fishers. Further, the status quo is unlikely to impact on the access of recreational fishers to trumpeter fisheries.

Costs

- 32 There are no specific costs anticipated with maintaining the status quo for trumpeter. However, there are concerns about the availability of trumpeter in some areas. By taking no management action at this time, there is a risk that problems with the availability of trumpeter will worsen.

Blue Cod

Background

- 33 Blue cod is a bottom-dwelling species endemic to New Zealand. Although distributed throughout New Zealand near foul ground to a depth of 150 m, they are more abundant south of Cook Strait and around the Chatham Islands.
- 34 Blue cod are generally the most important recreational finfish in Marlborough, Otago, Southland and the Chatham Islands. Annual recreational harvest has been estimated from diary surveys at between 600 and 2 000 tonnes throughout the country, although the harvest estimates derived from these surveys are considered to be unreliable. National charter vessel catches were obtained separately in 1997–98 and were estimated to be as high as 187 tonnes in that year.
- 35 Blue cod was introduced into the QMS in 1986 but a recreational allowance has only been set for BCO 7 (See Appendix One for a map of blue cod stocks). The sum of combined TACCs is currently 2 681 tonnes and is almost fully caught each year. The recreational catches estimated for BCO 2, 3, 7 and 8 in the most recent diary survey far exceeded the current TACCs and commercial landings in those areas.
- 36 The 2005 Report from the Fisheries Assessment Plenary states that for BCO 7 it is not known if the combined recreational and commercial catches are sustainable or if they are at levels that will allow the stock to move towards a size that will support the maximum sustainable yield. For all other BCO stocks, recent commercial catch levels and current TACCs are considered sustainable and are probably at levels which will allow the stocks to move towards sizes that will support the maximum sustainable yield.

Statement of the problem and need for action

- 37 The *national* minimum legal size for blue cod is currently 33cm, as prescribed in the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations). The minimum legal size was increased from 30cm in 1993 to help reduce fishing pressure on blue cod stocks but analysis supporting the 33cm limit was specific to South Island fisheries. An exception to the national limit was made in BCO 3 where the minimum legal size was retained at 30cm. Blue cod in this south-east area were not perceived to be under fishing pressure.
- 38 In 1994, the minimum legal size was decreased to 28cm in the Marlborough Sounds, in recognition of intensive fishing pressure that the blue cod population are exposed to in that area. In part, this lower size limit was intended to balance a reduction in the daily bag limit with a reduction in incidental mortality of blue cod returned to the sea.
- 39 In 2003, the size limit was increased from 28cm to 30cm in the Marlborough Sounds, and was decreased from 33cm to 30cm in the Challenger Area (East). 30cm was chosen as it allowed a larger proportion of the overall cod population to spawn than the 28cm limit, and enabled a larger range of the population to be harvested than under the 33cm regime.
- 40 As a result of these various changes, BCO 3 and parts of BCO 7 currently have a minimum legal size limit of 30cm, while all other areas have a size limit of 33cm. The NZRFC have reported that the national minimum legal size of 33cm is actually too high in most places, and that recreational fishers would like to see the limit reverted back to 30cm.
- 41 The 33cm minimum legal size remains an important sustainability measure in BCO 4 and 5, areas in the South Island that support important blue cod fisheries which are heavily harvested. However, MFish recognises that the 33cm limit was based on information available for South Island fisheries and may be set too high for the North Island. Blue cod of 33cm and higher may not be very common in these areas.

Options for management response

Reduce the minimum legal size in the North Island

- 42 Blue cod growth can be influenced by a range of factors, including sex, habitat quality and fishing pressure relative to location. Size at sexual maturity also varies according to location and appears to increase southwards. In Northland for example, sexual maturity is reached at 10–19 cm total length (TL) at an age of two years, whilst in the Marlborough Sounds it is reached at 21–26 cm (TL) at three to six years. In Southland, fish become sexually mature between 26–28 cm (TL) at an age of four to five years.
- 43 Blue cod have also been shown to be protogynous hermaphrodites, with individuals changing sex from female to male (Carbines, 1998). Validated age estimates using otoliths have shown that blue cod males grow faster and are larger than females. The maximum recorded age for this species is 18 years.
- 44 The current national size limit of 33cm for blue cod was based on biological and fishery information from the South Island, where blue cod have historically been a

significant recreational fishery. The minimum legal size of 33 cm remains an important management tool in the BCO 4 and 5 areas. However, BCO 3 and parts of BCO 7 have regional size limits of 30cm.

- 45 Given that blue cod size at maturity is smaller in the North Island, 33cm could be unnecessarily large in that region. Some important blue cod fisheries in the South Island already have a 30cm minimum legal size, which is considered an effective management tool in these areas. Consequently, MFish considers that the same size limit of 30cm in the North Island may also be appropriate. Decreasing the minimum legal size will enable recreational fishers to catch blue cod in the 30-32 cm size range.

Maintain the status quo

- 46 While there is evidence to suggest that blue cod mature at smaller sizes in northern regions, there is no information available to indicate whether there is a difference in the overall range of sizes available throughout the country. For example, it is not known if blue cod are generally smaller in the North Island, or parts of the North Island, which is resulting in the reported lack of 33cm fish available to recreational fishers in these areas. Until further information is available to better inform a decision on changing blue cod minimum legal sizes, a valid option is to maintain the current 33cm limit in the North Island.

Statement of net benefits and costs of the proposal to stakeholders

Reduce the minimum legal size in the North Island

Benefits

- 47 Reducing the minimum legal size for blue cod from 33 to 30cm in the North Island will increase the availability of blue cod in these areas, improving the fishery for recreational fishers.

Costs

- 48 Although blue cod mature at a much smaller size in the north than in the south, reducing the blue cod size limit in the North Island will allow more of the population to be harvested.

Maintain the status quo

Benefits

- 49 Regional differences in the size of blue cod available for harvesting are not known with any certainty. Maintaining the status quo has the benefit, therefore, of ensuring that no changes to the management of the fishery are made until further information on blue cod stocks becomes available.

Costs

- 50 Recreational fishers have raised concern that they are unable to catch blue cod of legal size in northern areas. Maintaining the status quo will potentially continue to restrict recreational access to the blue cod fishery.

Preliminary Consultation

- 51 MFish reviewed a series of recreational rules and regulations in 2005, as part of a commitment given to review recreational fishers' top ten concerns within a three year timeframe. Following consultation with its members, the NZRFC provided MFish with a list of further issues of concern that they wanted to be considered for review in 2006.
- 52 A workshop was held on 24 March 2006 with NZRFC members and MFish staff, with the purpose of prioritising these issues and agreeing to three issues to be reviewed in 2006. The review of the minimum legal size for red gurnard, trumpeter and blue cod was identified as a priority for review at this time. The review relates to recreational fisheries only, and the associated net benefits to the stocks that can be gained from changes in some recreational size limits.
- 53 There has been no preliminary consultation with other government agencies about this proposal.

Administrative Implications

- 54 There will be short-term administrative implications associated with amending the regulations as resources will be required to make the changes proposed. There will also be resource implications associated with raising public awareness of any regulatory changes made, including changes to current pamphlets and signage.

Compliance Implications

- 55 The introduction of a minimum legal size for red gurnard and trumpeter will have compliance implications requiring fishery officers to enforce two new additional size limits. Decreasing the blue cod minimum legal size in the North Island will also have some compliance implications. There will be a need to educate and inform the fishing community of the changes to ensure that they are aware of the new limits that apply.

Other Considerations

- 56 MFish considers that this proposal is consistent with the relevant statutory obligations under the Fisheries Act 1996 (the Act). MFish also considers that all considerations under the Act have been taken into account in developing this proposal.

Proposal

57 With respect to **red gurnard**, it is proposed to either:

- a) Specify a recreational minimum legal size of 25cm for red gurnard in the Fisheries (Amateur Fishing) Regulations 1986;

OR

- b) Maintain the status quo.

58 With respect to **trumpeter**, it is proposed to either:

- a) Specify a recreational minimum legal size of 45cm for trumpeter in the Fisheries (Amateur Fishing) Regulations 1986;

OR

- b) Maintain the status quo.

59 With respect to **blue cod**, it is proposed to either:

- a) Amend relevant regional amateur fishing regulations to decrease the blue cod recreational minimum legal size from 33cm to 30cm in BCO 1, BCO 2, BCO 8, BCO 9 and BCO 10;

OR

- b) Maintain the status quo.

APPENDIX ONE: MAPS OF FISHSTOCKS

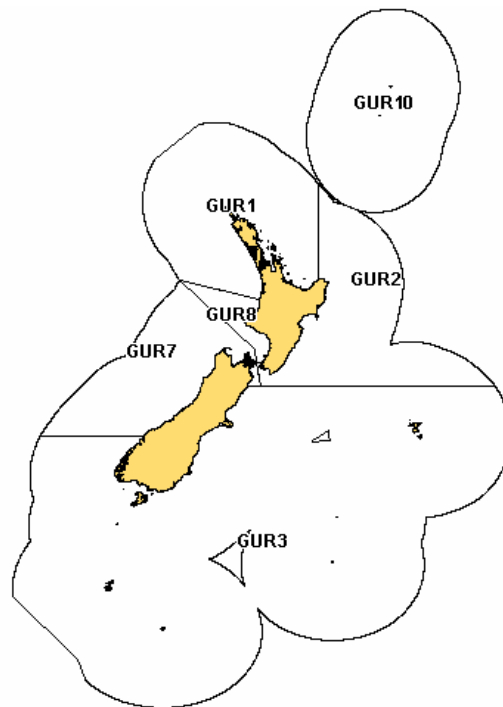


Figure 1. Map showing the boundaries of red gurnard stocks

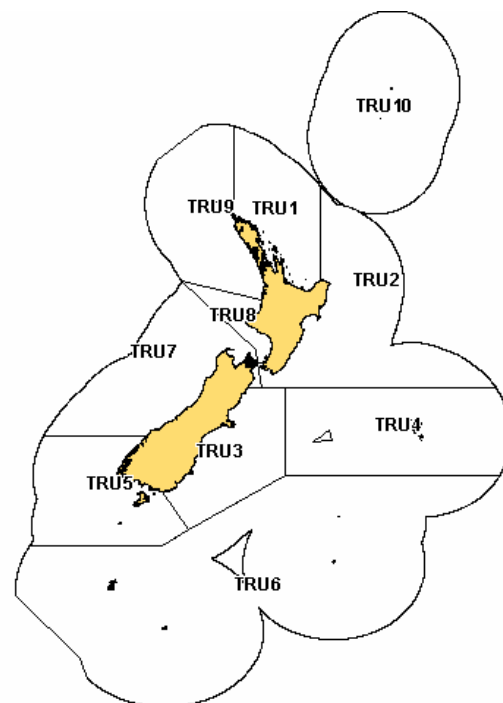


Figure 2. Map showing the boundaries of trumpeter stocks

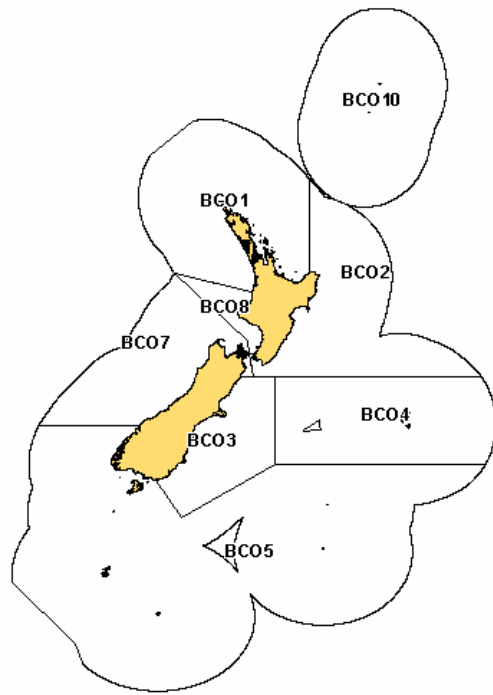


Figure 3. Map showing the boundaries of blue cod stocks

RECREATIONAL ISSUES RELATED TO TAKING BAG LIMITS

Executive Summary

- 1 The Ministry of Fisheries proposes to amend the Fisheries (Amateur Fishing) Regulations 1986 to clarify that the release of undersize fish does not count towards the recreational daily bag limit. MFish also seeks feedback on a variety of options proposed to allow recreational fishers the ability to release legal size fish over and above the daily bag limit for the purpose of implementing their own size limits, and tagging and releasing fish for research purposes.
- 2 Currently, “taking” is defined in the Fisheries Act 1996 as “fishing”, and “fishing” is considered generally to mean the catching, taking, or harvesting of fish, aquatic life, or seaweed. As a result of this definition and the regulations that govern the recreational harvest of fish (ie bag limits and size limits), it is apparent that some existing recreational activities may not be permitted under the current management framework. The New Zealand Recreational Fishing Council has requested that the Ministry of Fisheries review these existing activities and resolve any issues where the activities may not be permitted by relevant fishing legislation.

Summary of Options

Undersize fish and the recreational daily bag limit

- 3 The Ministry of Fisheries (MFish) proposes to clarify that undersize fish do not count towards the recreational daily bag limit.

Releasing fish above the minimum legal size

- 4 MFish proposes to:
 - a) Clarify that a recreational fisher’s daily bag limit applies only to the number of lawfully taken fish that are actually retained; or
 - b) Provide for special permits to be considered for recreational fishers to release fish of legal size over and above the daily bag entitlement for a specific stock or species; or
 - c) Maintain the status quo and confirm that any fish taken of legal size must count towards the daily bag limit.

Tagging and releasing fish for research purposes

- 5 MFish proposes to:
 - a) Provide a defence for tagging and releasing certain stocks or species in the Regulations; or

- b) Provide for special permits to be considered for recreational fishers to release fish of legal size over and above the daily bag entitlement for a specific stock or species; or
- c) Retain the status quo and confirm that the maximum number of fish that can be tagged and released on any day is the daily bag limit that applies to that particular fish.

Background

6 The Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) and the associated regional regulations³ govern recreational fishing in New Zealand. In particular, the Regulations prescribe:

- a) The maximum numbers of fish that may be taken or possessed (bag limits); and
- b) The minimum legal size of fish that may be taken or possessed (size limits).

7 The Regulations direct that any person engaged in amateur fishing shall immediately return any finfish, shellfish, or aquatic life that is unlawfully taken or is of an unlawful state or size back into the waters from which the finfish, shellfish, or aquatic life was taken (r 28). Section 241 of the Fisheries Act 1996 (the Act) also provides a defence to taking fish in contravention of any provision of the Act or regulations if the fisher shows:

- a) That –
 - i) The contravention was due to the act or default of another person, or to an accident or to some other cause beyond the defendant's control; and
 - ii) The defendant took reasonable precautions and exercised due diligence to avoid the contravention; and
- b) In the case of an offence concerning the taking of any fish, aquatic life, or seaweed in contravention of any provision of this Act prohibiting the taking, or requiring the taking to be under the authority of a licence, permit, or [other authorisation issued under this Act], that—
 - i) The defendant immediately returned the fish, aquatic life, or seaweed to the waters from which they were taken except where such return was prohibited by this Act; and
 - ii) The defendant complied with all the [material] requirements of this Act in respect of the recording and reporting of the taking, return, or landing of the fish, aquatic life, or seaweed

8 Currently, “taking” is defined in the Act as “fishing”, and “fishing” is defined broadly as:

- a) The catching, taking, or harvesting of fish, aquatic life, or seaweed; and

³ Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986; Fisheries (Central Area Amateur Fishing) Regulations 1986; Fisheries (Southland and Sub-Antarctic Areas Amateur Fishing) Regulations 1991; Fisheries (South-East Area Amateur Fishing) Regulations 1986; Fisheries (Challenger Area Amateur Fishing) Regulations 1986.

- b) Includes—
 - i) Any activity that may reasonably be expected to result in the catching, taking, or harvesting of fish, aquatic life, or seaweed; and
 - ii) Any operation in support of or in preparation for any activities described in this definition
- 9 It is generally accepted that a fish is considered taken when it has been captured and a fisher has exercised possession and control over it.
- 10 As a result of this definition and the regulations that govern the recreational harvest of fish, there is confusion surrounding whether or not some existing activities are permitted under the current management framework. These include:
- a) Not counting undersize fish towards the recreational daily bag limit;
 - b) Releasing fish that are larger than minimum legal size limits; and
 - c) Tagging and releasing fish for research purposes.
- 11 The New Zealand Recreational Fishing Council (NZRFC) has requested a review and resolution of these issues.

Undersize Fish and the Recreational Daily Bag Limit

Statement of the problem and need for action

- 12 Where a minimum legal size applies to a species or stock, r 28 of the Regulations requires any fish that is smaller than this legal size to be returned to the water immediately.
- 13 MFish has previously applied the Regulations so that where the obligation to immediately return the unlawfully taken fish to the water is met, no offence has been committed. Recreational fishers have expressed confusion, however, about whether or not undersize fish that are caught, and subsequently returned to the sea, are actually considered to be part of the daily bag limit. For example, if a fisher catches a full bag limit and all fish are undersize and returned to the sea, should the fisher stop fishing?
- 14 MFish considers that as the Regulations require any fish of unlawful size to be returned to the sea, undersize fish cannot be considered a part of the daily bag limit. However, MFish recognises that this intention is not explicit in the amateur regulations.

Options for management response

- 15 MFish agrees that the Regulations are not clear that undersize fish do not count against the daily bag limit. In order to ensure that the intent of the regulations is explicit, and to remove any uncertainty in the recreational sector, MFish proposes to clarify that the recreational daily bag limit only applies to fish of legal size.
- 16 If a change is considered necessary, the Parliamentary Counsel Office will be requested to draft the most appropriate amendment to the Regulations.

Statement of net benefits and costs of the proposal to stakeholders

- 17 The benefit of amending the Regulations will be in providing clarity to recreational fishers that undersize fish are not part of the daily bag limit, thereby removing the current level of confusion that exists.
- 18 No costs are anticipated for this proposal.

Releasing Fish Larger than the Minimum Legal Size

Statement of the problem and need for action

- 19 In some instances, recreational fishers impose their own size limits that are larger than the minimum legal size limits defined in regulations. This is a form of local-scale management and fishers may impose these “best practice” limits because of the potential yield benefits that can be gained through leaving fish to spawn several times prior to harvesting.
- 20 Most commonly, self-imposed size limits are fished by charter boats and clubs operating under their own codes of practice, as well as limits declared during fishing competitions. A good example is the snapper fishery on the west coast of the North Island. The snapper legal size is 27cm in this area, but many clubs impose a 30cm size limit to allow snapper a better chance of spawning before being subject to fishing pressure.
- 21 Most fishers that return fish to the sea that are legal size but not the ideal size do not count this catch towards their daily bag limit. Under the current framework, however, those fish must be considered to be part of the bag limit even if they are returned to the sea alive. This is because once you have caught a fish it is considered to be taken under the relevant regulations, and you may only take a specified number of fish each day. An exception to this rule is where a fish is undersize and you are required to return it to the sea.
- 22 This situation also applies to species for which there is no minimum legal size, but where a daily bag limit has been set. Fish that are released because they may be of an impractical or undesirable size do count against the daily bag limit.
- 23 The NZRFC have requested that the use of “best practice” size limits be better facilitated through only counting fish that are actually retained as part of the daily bag limit. They consider this to be important tool that enables recreational fishers to self-manage fisheries in their own area, and that these tools can result in significant gains in yields that would otherwise not be achieved under the existing formal regime.

Options for management response

- 24 Minimum size limits are used to protect and enhance fish populations by allowing fish to live long enough for them to spawn at least once on average. Under any minimum legal size regime, there is a level of mortality accounted for that is associated with the return of undersize fish (ie the number of fish that are actually likely to die in the process of catching the bag limit). A minimum legal size regime assumes that despite this release mortality, there will be a net benefit to the stock. Fish handling guidelines

are available for recreational fishers to maximise the opportunity for released fish to survive.

- 25 The existence of a minimum legal size for a fish stock generally means that a past assessment has been made that there are net benefits in recreational fishers releasing small fish. That is, any potential mortality is offset by biological benefits. At issue is whether a voluntary best practice increase above this minimum legal size by some recreational fishers is likely to continue to have net benefits to the stock. In cases where no minimum legal size applies, there has been no such initial assessment. However, as a general rule the release of small immature fish of most species will have biological benefits if there is a high likelihood of their survival.
- 26 Given correct handling practices, MFish considers that the release of some species of fish at sizes above the minimum legal size that applies will continue to have net benefits. It is also likely that this represents current practice in some fisheries, so any change in regulations to recognise this practice would have a negligible impact.

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

- 27 MFish recognises that the implementation of size limits that are bigger than those specified in regulation are a relatively common practice, and have been in place for some time. MFish also recognises that:
- a) In some areas fish may be larger than average; or
 - b) There may be localised issues that recreational fishers feel best placed to manage through the imposition of higher than regulated size limits; or
 - c) Harvest pressure can be very high for short periods during fishing competitions and fishers may prefer to set higher than regulated limits to mitigate the short term harvest pressure.
- 28 Fishers generally perceive that the implementation of their own size limits (that are larger than the minimum legal size) is beneficial for stocks. They do not realise that they must count all legal size fish against their daily bag limit, even if they return some to the sea. An option to provide for this kind of practice is to specify that the daily bag limit relates to the number of fish that are actually *retained*.
- 29 There are risks in this approach. The most significant concern is that people will return dead or dying fish back to the sea if they get “bigger and better” fish later on in the day (high grading). It is therefore imperative that such scenarios are prevented. If a change is deemed necessary, the Parliamentary Council Office, with input from MFish, will determine the most appropriate way this could be done. For example, the Regulations could be amended to:
- a) Prohibit the dumping of a dead fish of legal size– likely to be similar in nature to the prohibition of dumping on commercial fishers as set out in s72(1) of the Act. An offence would also need to be created where a fisher contravenes that prohibition; or

- b) Specify that no fisher shall continue to fish for a particular species on any day in which he or she has already retained the limit for that species⁴.
- 30 There may also be a risk that greater fishing mortality will arise, as more recreational fishers will be encouraged to return legal but not large fish to the water. While MFish promotes fish handling guidelines, there is a concern that poor compliance with such guidelines may result in an increase in fishing mortality
- 31 Another concern is that the option will create a discrepancy in the way that commercial discards are dealt with. In most cases, commercial fishers are required to land all quota species above the minimum legal size, regardless of their preferred sizes (e.g. where markets demand larger fish). It is unlikely that commercial fishers will see a change in the framework for recreational fishers as equitable.
- 32 Finally, there is the potential for difficulties in reconciling the existing application of the concept of “taking” under the Act and regulations and the concept of “retaining” fish. Currently the concept of “retention” is not per se a necessary component of “taking” and it will be important to ensure that this distinction is maintained for the purpose of the Regulations, generally.

Option Two: Issue special permits

- 33 A potential way for recreational fishers to release fish larger than the minimum legal size yet still retain their full bag limit is to grant special permits to clubs, charter boats and fishing competition organisers. The advantage of this option is that it would not open the regulations to deliberate offending by permitting high grading.
- 34 Special permits would apply to specific circumstances such as fishing competitions, where rules include landing only fish above a certain size (that is larger than the minimum legal size). Applicants would be required to identify why they want size limits different to those in the Regulations, and what fishing practices they will adopt to ensure they target these appropriately.

Option three: Status quo

- 35 MFish considers another valid option is to retain the status quo. That is, if clubs or other organisations set higher size limits, they must still count any fish below this size (and above the minimum legal size) against their bag limit. Size limits that have been defined in regulations are generally based on the best available biological and fishery information. If it is apparent that a limit is not functioning effectively, MFish is able to adjust it upwards if required.
- 36 While the status quo may not enable participation in the local management of fishery resources, it will reduce the risk of high grading and increases in fishery related mortality. Further, recreational fishers will still be able to actively target bigger fish, through the use of measures such as alternative gear types, fishing locations and fishing times.

⁴Daily bag limit condition taken from the Sport Fishing Regulations 2005-2006 made pursuant to section 26R (3) of the Conservation Act 1987.

Statement of net benefits and costs of the proposal to stakeholders

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

- 37 The benefits of allowing fishers to implement their own increased size limits are clear in most cases – it encourages participation in the management of the resource and it can have stock benefits for certain species.
- 38 This option does have the risk of opening up the recreational framework to high grading. There will also be associated problems in enforcing this option as there will be significant difficulties determining whether a fisher has dumped a dead fish, or has kept fishing for a species despite already taking the bag limit.
- 39 Finally, commercial fishers are likely to perceive the option as inequitable as they are required to land all fish of legal size that are subject to the QMS. However, specific provisions of the Act (the Sixth Schedule) allow the release of some quota species subject to the condition that they are likely to survive and that their return is immediate.

Option Two: Issue special permits

- 40 A special permit process has the benefit of allowing an assessment to be made of why a size limit needs to be different to that specified in the Regulations on a case by case basis, as well as identifying exactly who will participate in fishing this different size limit.
- 41 However, there are likely to be costs associated with processing special permits. For fishers the costs will be financial as there is an application fee associated with special permits, as well as the cost of the additional administrative work required.

Option three: status quo

- 42 Maintaining the status quo has the benefit of being an unambiguous management framework. That is, if a fisher takes a fish of legal size it counts against the bag limit and the further risks of high grading are subsequently minimised.
- 43 There are no direct costs anticipated with retaining the status quo, although MFish expects there will be concern amongst those in the recreational sector who actively encourage larger size limits because of the perceived benefits. There may be subsequent requests to adjust size limits as a result.

Tagging and Releasing Fish for Research Purposes

Statement of the problem and need for action

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

- 45 MFish encourages and actively supports stakeholder initiatives to better manage their fisheries, including tag and release programmes. It is recognised that for some species, particularly sports fish, tagging and releasing fish is an important part of the recreational experience and helps to contribute to our knowledge of fishstocks. In general the cost of research is borne by the recreational fishers themselves, including the cost of tags, yet the information generated can benefit all sectors. Further, much of the information generated is actually provided to MFish, who cover the costs of managing the information, including database storage and data analysis.
- 46 Currently, many fishers either tag and release more than their daily bag limit entitles them to, or tag and release some fish while retaining their full daily bag. The NZRFC have advised MFish that recreational fishers feel very strongly that they should be permitted to participate in tag and release programmes to a greater extent than is provided under the general bag limits.

Options for management response

- 47 It is important to note that if it is agreed to amend the regulations to specify that the daily bag limit relates to the number of fish that are actually *retained* (see paragraph 28), a management response will not be required in this instance. This is because such an amendment would provide for the release of legal size fish (if likely to survive), including those that have been tagged.
- 48 The alternative options for consideration are provided below.

Option One: Create a tag and release defence

- 49 The practice of participating in tag and release programmes is generally constrained to certain species in certain areas, such as billfish and kingfish in the north of the North Island. Bag limits do not apply to many of these species so there is no need to make a general provision for this activity for all fish. Therefore, one solution is to allow recreational fishers to participate in tag and release programmes by providing a defence for the release of certain stocks or species where bag limits apply. As a starting point, there are currently nominated stocks under the gamefish tagging programme and these could form the basis for the defence. These gamefish are billfish, kingfish, mako sharks, blue sharks and yellowfin tuna.

Option Two: Issue special permits

- 50 Another option to allow for tag and release programmes is to require people participating in them to apply for a special permit. A significant benefit of this option is that each programme can be thoroughly assessed on a case by case basis. Applicants will be required to detail why the work needs to be done and what the outcomes of the work might be. Another benefit of this option is that it will retain the strict regime in relation to the bag limit because of the high grading risk. This is because the option will ensure tagging is not simply used as an excuse for high grading.

Option three: Status quo

- 51 MFish considers that retaining the status quo is a valid option. Recreational tag and release programmes could still be undertaken, but within the bag limit. The status quo would also remove the potential risks in changing the rules in relation to tag and release.

Statement of net benefits and costs of the proposal to stakeholders

Option one: Create a tag and release defence

- 52 Providing a defence to return specific species of fish to the sea for the purpose of tag and release will allow fishers to generally participate in research programmes without the need for other administrative processes.
- 53 There will be administrative costs in preparing the defence, and there may be future costs associated with adding species or removing species from the defence as necessary. However the costs are not expected to be significant.

Option two: Issue special permits

- 54 The option to require special permits for tagging and releasing fish has the benefit of being consistent with the requirements of other contracted research, and it will also help to ensure high grading under the auspices of tag and release does not occur.
- 55 There will be new costs for recreational fishers associated with this option due to special permit application fees, and there is the strong possibility that recreational fishers will perceive this to be an administrative burden.

Option three: status quo

- 56 The benefit of retaining the status quo in this instance is to retain the current management framework for tag and release. That is, all fish of legal size that are taken count against the bag limit, if one applies. The status quo also still provides for fish to be tagged and released under the bag limit.
- 57 MFish recognises that in some instances, small bag limits for certain stocks, such as kingfish, will continue to deter recreational fishers from participating in tagging programmes. To some recreational fishers, this would be a disappointing outcome.

Preliminary Consultation

- 58 MFish reviewed a series of recreational rules and regulations in 2005, as part of a commitment given to review recreational fishers' top ten concerns within a three year timeframe. Following consultation with its members, the NZRFC provided MFish with a list of further issues of concern that they wanted to be considered for review in 2006.
- 59 A workshop was held on 24 March 2006 with NZRFC members and MFish staff, with the purpose of prioritising these issues and agreeing to three issues to be reviewed in

2006. The review of issues related to taking bag limits was identified as a priority for review at this time.

- 60 There has been no preliminary consultation with other government agencies about this proposal.

Administrative Implications

- 61 Resources will be required to make any regulatory changes required in these proposals. There will also be resource implications associated with raising public awareness of any regulatory changes made, including changes to current pamphlets and signage.
- 62 There will be ongoing administration implications if it is agreed to use special permits to resolve any of the issues. Although special permits are a cost that will be recovered, there will be an impact on resource availability.

Compliance Implications

- 63 Depending on the options agreed to, these proposals have the potential to have significant compliance implications. Most importantly, new regulations may be drafted which will have to be enforced. These will require consideration of specific approaches to manage the type of regulatory change made, for example identifying normal recreational fishing from that allowed under special permit, and the need to monitor high grading and dumping.

Other Considerations

- 64 MFish considers that these proposals are consistent with the relevant statutory obligations under the Act. MFish also considers that all considerations under the Act have been taken into account in developing these proposals.

Proposal

- 65 With respect to undersize fish and the recreational daily bag limit, MFish proposes to:
- a) Amend the Fisheries (Amateur Fishing) Regulations 1986 to clarify that undersize fish, that are returned to the water in accordance with regulation 28, do not count toward an amateur fisher's daily bag limit.
- 66 With respect to releasing fish above the minimum legal size, MFish proposes to:
- a) Amend the Fisheries (Amateur Fishing) Regulations 1986 to clarify that an amateur fisher's daily bag limit applies only to number of lawfully taken fish that are actually retained;

OR

- b) Provide for special permits to be considered for those fishing clubs, charter boats and fishing competition organisers that wish to fish size limits bigger than minimum legal sizes set out in legislation, in order to enable them to release fish of legal size over and above the daily bag entitlement for a specific stock or species;

OR

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

67 With respect to recreational tag and release programmes, MFish proposes to:

- a) Amend the Fisheries (Amateur Fishing) Regulations 1986 to provide a defence for tagging and releasing certain stocks or species;

OR

- b) Provide for special permits to be considered for recreational fishers participating in tag and release programmes to enable them to release fish of legal size over and above the daily bag entitlement for a specific stock or species;

OR

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

REGULATION 19A OF THE FISHING (AMATEUR FISHING) REGULATIONS 1986

Executive Summary

- 1 The Ministry of Fisheries (MFish) proposes to amend the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) to ensure that minor breaches of regulation 19A are not turned into serious offences by default.
- 2 In December 2005, the Regulations were amended, allowing divers to take up to two extra bag limits of scallops or dredge oysters when safety people are on board their vessel (r19A).
- 3 Under the normal provisions for collecting scallops or dredge oysters (ie r19), taking one shellfish over the daily entitlement is normally considered to be a minor breach of the regulations. However, the way that r19A was constructed has had an unforeseen consequence, where even slightly exceeding the daily bag limit is classified as a serious non-commercial offence. It is MFish's view that the regulation should be amended so that the same standard for offences under the normal r19 applies to r19A.

Summary of Options

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

Background

- 5 In 2005, MFish reviewed the "primary taker" regime as it relates to diving for dredge oysters and scallops. As a result, the Minister of Fisheries decided that divers be allowed, when diving from a vessel, to collect an additional daily bag limit of scallops or dredge oysters for each safety person onboard that vessel, to a maximum of two safety persons. The provision allows no more than two extra bag limits per vessel, per day, providing that two safety people are on board the vessel at that time and acting in the capacity of safety people. The new regulation came into effect on 16 December 2005.

Statement of the Problem and Need for Action

- 6 Regulation 19A has now been in effect for a full fishing season and several incidents have occurred which have highlighted an unforeseen compliance consequence of the regulation.
- 7 The strict interpretation of r19A is that a diver may only take an extra daily limit of scallops or dredge oysters if that person meets all the conditions in the regulation (Appendix One). Where a diver does not fit within these restricted circumstances, the

default daily limit applies (r19) and this default limit is the limit that any breach of the regulations is related to.

- 8 For example, if two safety people are on board a vessel, a diver may take a total of 60 scallops, or three bag limits⁵. If the diver accidentally surfaces with 61 scallops (one scallop in excess, which is considered to be a minor breach of the regulations) the diver has not met all the conditions of r19A(3) and the default limit of 20 scallops applies, with no entitlements for safety people. This means that the diver can be charged with having in excess of three times the bag limit under r19(3), a serious non-commercial offence that is liable on summary conviction to a fine not exceeding \$20 000 pursuant to r29(2).
- 9 Under normal circumstances (i.e. r19), taking one shellfish over the daily entitlement is a minor offence (r19(2)). This offence is liable on summary conviction to a fine not exceeding \$10 000 pursuant to r29(1), although generally only an infringement notice will be issued. The consequence of r19A is that it turns what could previously be considered a minor breach of the regulations into a serious non-commercial offence. It is MFish's view that this is not the intent of the regulation and that the same standard for offences should apply to both r19 and r19A.

Preliminary Consultation

- 10 There has been no preliminary consultation with fisheries stakeholders about this proposal. The issue has been raised as a result of several compliance incidents that required legal advice to be sought regarding the interpretation of r19A. There have, however, been discussions with various MFish business groups to determine the most appropriate course of action to ensure the policy intent of r19A is clear.
- 11 There has been no preliminary consultation with other government agencies about this proposal.

Options for Management Response

- 12 The standard for shellfish offences in r19 is:
 - a) A person commits an offence if they take or possess more than the daily limit, but not more than three times the daily limit; and
 - b) A person commits a serious non-commercial offence if they take or possess more than three times the daily limit.
- 13 In order to ensure that the same standard of offences applies to r19A as it does to r19, the Regulations will need to be amended. However, if the change is made, a diver could potentially take 180 scallops¹ before he or she is deemed to have committed a serious non-commercial offence.

⁵ This example relates to the scallop national daily bag limit of 20 that is specified in the Fisheries (Amateur Fishing) Regulations 1986. It is important to note that regional regulations may specify alternative scallop bag limits for certain areas. For example, the Fisheries (Challenger Area Amateur Fishing) Regulations 1986 specify that the scallop daily bag limit in the Challenger Fisheries Management Area is 50.

- 14 MFish therefore considers it appropriate that the standard offences should only apply to that part of the take not intended for safety persons, i.e. to the primary taker's daily entitlement only. This would ensure that minor offences would relate to taking or possessing up to three times the primary taker's bag limit (e.g. 21-59 scallops or dredge oysters in excess) rather than up to three times the primary taker's *and additional* bag limits (e.g. 61- 179 scallops and dredge oysters in excess).
- 15 If a change is considered necessary, the Parliamentary Counsel Office will be requested to draft an appropriate amendment to r19A. The types of amendments that could be considered to better reflect the intent include:
- a) Redrafting the entire r19A;
 - b) Creating a new offence provision specific to r19A; or
 - c) Providing additional sections within r19A to clarify the intent of the regulation.

Statement of Net Benefits and Costs of the Proposal to Stakeholders

Benefits

- 16 The recreational sector has generally welcomed the change in regulation to allow divers to collect extra daily bag limits when safety people are on board their vessels. The application of a separate standard of offence for r19A will diminish the benefits of this change and is unlikely to be considered fair and reasonable by recreational fishers. Taking the initiative to rectify this problem and standardise offence provisions now it has become evident will achieve positive benefits. Importantly, it will also ensure that the appropriate penalty is applicable.

Costs

- 17 No costs are anticipated for this proposal.

Administrative Implications

- 18 There will be short-term administrative implications associated with amending the regulations as resources will be required to make the changes proposed.

Compliance Implications

- 19 Under the current circumstances, with minor breaches of the regulations technically being classified as serious offences, r19A is relatively costly to enforce and administer. Amending the regulations will reduce these costs, and allow breaches of r19A to be dealt with more cost effectively and in accord with their original intent.

Other Considerations

- 20 MFish considers that this proposal is consistent with the relevant statutory obligations under the Fisheries Act 1996 (the Act). MFish also considers that all considerations under the Act have been taken into account in developing this proposal.

Proposal

- 21 MFish proposes to:
- a) Amend the Fisheries (Amateur Fishing) Regulations 1986 to ensure that when divers take less than three times their individual entitlement under r19A, it is not considered to be a serious non-commercial offence in law.

APPENDIX ONE: REGULATION 19A

Regulation 19A of the Fisheries (Amateur Fishing) Regulations 1986: Daily allowance for dredge oysters or scallops when diving if safety person on board vessel

- (1) Despite regulation 19(1) or any other regulations made pursuant to section 297 of the [[Act]] relating to daily limits, a person may take on any day, an additional amount of dredge oysters or scallops that is equivalent to—
 - (a) 1 times the daily limit of dredge oysters or scallops, if subclause (2) applies; or
 - (b) 2 times the daily limit of dredge oysters or scallops, if subclause (3) applies.
- (2) This subclause applies if—
 - (a) the person takes the dredge oysters or scallops by the method of hand gathering when diving from a fishing vessel; and
 - (b) 1 safety person is on board the vessel at all times when the dredge oysters or scallops are taken; and
 - (c) no more than an additional amount that is equivalent to 1 times the daily limit of dredge oysters or scallops is taken in total by all persons diving from the vessel.
- (3) This subclause applies if—
 - (a) a person takes the dredge oysters or scallops by the method of hand gathering when diving from a fishing vessel; and
 - (b) 2 or more safety persons are on board the vessel at all times when the dredge oysters or scallops are taken; and
 - (c) no more than an additional amount that is equivalent to 2 times the daily limit of dredge oysters or scallops is taken in total by all persons diving from the vessel.
- (4) In this regulation,—

daily limit, in relation to dredge oysters or scallops, means—

 - (a) the maximum daily number of dredge oysters or scallops specified in the table in regulation 19(1); or
 - (b) in any other case, the maximum daily number or maximum daily catches of dredge oysters or scallops specified in any other regulations made pursuant to the [[Act]]