

THE INCLUSION OF KINGFISH ON THE SIXTH SCHEDULE OF THE FISHERIES ACT 1996 – FINAL ADVICE

Initial Proposal

- 1 MFish proposed that pursuant to an Order in Council made under s 72(7) of the Fisheries Act 1996, kingfish (all stocks) be listed as a species on the Sixth Schedule of the Fisheries Act 1996 to allow kingfish to be returned to the sea, subject to the condition that fish are:
 - a) Not taken by the method of set netting;
 - b) Likely to survive;
 - c) Returned to the same waters from which they are taken;
 - d) Returned as soon as practical; and
 - e) Returned catch is recorded and reported on catch and effort forms using an appropriate code.

Submissions

- 2 Submissions regarding the kingfish proposal were received from:
 - a) **Lady Marcella Fishing Ltd** (LMF)
 - b) **Area 2 Inshore Finfish Management Company Ltd** (Area 2)
 - c) **United Fisheries Ltd** (UFL)
 - d) **Ocean Fisheries Ltd** (OFL)
 - e) **Independent Fisheries Ltd** (IFL)
 - f) **New Zealand Seafood Industry Council** (SeaFIC)
 - g) **New Zealand Royal Forest and Bird Inc** (NZRFB)
 - h) **Sanford Ltd** (Sanford)
 - i) **Snapper 8 Company Ltd** (SNA 8 Co)
 - j) **New Zealand Big Game Fishing Council** (NZBGFC)
 - k) **option4**
 - l) **New Zealand Recreational Fishing Council** (NZRFC)
 - m) **New Plymouth Sportfishing and Underwater Club Inc** (NPSUCI)

Management Measures

- 3 LMF support the inclusion of KIN 8 on the Sixth Schedule but wishes to have the condition removed that would prohibit the release of kingfish taken by set net.

LMF suggest that kingfish caught by set net is often in good condition and, if handled correctly (fishers would cut their nets), kingfish can be released in good condition.

- 4 **Area 2** is a commercial stakeholder organisation (CSO) representing inshore finfish quota owners in Fisheries Management Area 2 (FMA2). Area 2 submits that kingfish in all FMAs should be included on the Sixth Schedule providing:
- a) That the existing minimum legal size (MLS) is removed;
 - b) That it is optional to immediately return to the sea, kingfish of any length that are highly likely to survive;
 - c) That kingfish returned immediately to the sea do not come off ACE;
 - d) That an estimate of all kingfish returned immediately to the sea is reported on CELR or TCEPR/CLRs;
 - e) That the Sixth Schedule conditions exclude the setnet method;
 - f) That the reporting codes for all the above are clearly defined;
 - g) That the MLS with respect to the recreational sector may need to be re-visited.
- 5 Area 2 is concerned that the value of ACE and quota shares may be eroded or compromised by the effects of introduction of kingfish onto the Sixth Schedule. Fishers will release kingfish subject to the Sixth Schedule requirements to avoid paying deemed value. Area 2 submit that this will significantly reduce the value of both ACE and quota. Where fishers have sought quota and paid premiums on its value, then any drop in the commercial value of that quota should be compensated for by the Crown because of the regulatory change so soon after the species inclusion into the QMS.
- 6 Area 2 believes that if the MLS is removed, then the allowance made for the mortality of fish under 65cms should be re-allocated to the TACC. Area 2 is well aware that MFish will need to weigh up all options and the impacts of those options (and combinations thereof) very carefully and offer further opinion on this topic should MFish request it.
- 7 **UFL** contend that the large deemed values incurred by fishers for bycatches of KIN 8 are an unreasonable burden on commercial fishing activities, particularly in the JMA7 fishery. JMA 7 is an important export fishery, but as a high volume / low value species its profitability is severely compromised by deemed values incurred on unavoidable KIN 8 bycatches.
- 8 UFL submit that the deemed value is considerably higher than the prices received for dressed kingfish. For instance in the 2003–04 fishing year UFL were charged an overall differential deemed value of \$15.39 per greenweight kg for KIN 8 bycatches. This equates to \$27.70 per kg landed (dressed) weight. UFL submits that the prices it has received for the dressed kingfish on the local market range between \$2.65 and \$3.00 per kg. UFL say that this is more in line with the average surveyed port price of \$3.71 mentioned in submissions regarding the introduction of kingfish into the QMS.
- 9 UFL owns no KIN 8 quota and says that it is impossible to obtain more than very small amounts of ACE from a low TACC. UFL notes that the deemed value has been

lowered for KIN 2 because of a lower port price for this stock. UFL suggests that the port price for KIN 8 justifies a similar reduction in deemed value.

- 10 UFL submits that MFish's only proposed option (to include kingfish in the Sixth Schedule of the Fisheries Act) to allow the return to the sea of fish which are likely to survive would be of no benefit to it in its operation of freezer trawlers in the JMA7 fishery and says that it is unlikely that any ACE freed up in respect of returned fresh kingfish would be available to them.
- 11 UFL submits that the Ministry should consider setting a lower deemed value for frozen-at-sea KIN 8. Alternatively, UFL submit that if deemed values are not to be reduced, then a higher KIN 8 TACC needs to be set to address the problem of ACE availability. UFL submit that it seems that punitive management decisions in regard to commercial fishing have been made to placate the recreational sector, which was not in favour of kingfish becoming a QMS species.
- 12 **OFL** has two trawl vessels that operate in KIN 3. OFL is concerned at the high costs of deemed values for kingfish and refers to the potential for these to rise as kingfish stocks rebuild. OFL supports the proposal to list kingfish on the Sixth Schedule. OFL say that the advice from its fishermen is that a high percentage of the KIN 3 caught would be likely to survive release on retrieval of the trawl net.
- 13 **IFL** supports the inclusion of all kingfish on the Sixth Schedule of the Fisheries Act. IFL request some policy consistency and request a review of other species that should be included on the sixth schedule or are currently on the Sixth Schedule but are dealt with in a different manner e.g. spiny dogfish which is returned alive but must count against ACE.
- 14 **SeaFIC** supports the inclusion of all kingfish stocks on the Sixth Schedule of the Fisheries Act 1996 to allow kingfish to be returned to sea (subject to some conditions).
- 15 SeaFIC says that, while it is factually correct that SeaFIC did not comment on the inclusion of kingfish on the Sixth Schedule at the time of introduction of the species into the QMS, its submission most certainly foreshadowed all the problems that are becoming apparent now.
- 16 SeaFIC notes that the conundrum presented by the options of increasing or decreasing deemed values illustrates the point that it has made previously that tweaking deemed values is not a substitute for setting a TACC based on sound information. This is particularly important in multi-species fisheries, where TACCs for jointly caught stocks need to be considered in an integrated manner.
- 17 SeaFIC notes that the IPP proposes to exclude kingfish taken by the method of set netting from the Sixth Schedule listing. The justification for this decision is an assertion that "*MFish assesses that kingfish is a robust species...that can survive return to the water in most instances after capture by most methods except set netting*". SeaFIC submits that this assertion without any supporting evidence is not at all persuasive and therefore cannot support the method exclusion.

- 18 SeaFIC is not convinced that a code of conduct for “ready identification of kingfish likely to survive releases and to guide their handling” is necessary. SeaFIC says that imposing the development of a code of conduct is an unrealistic and unnecessary solution to the possible problem of discarding dead fish. Either fishers can be trusted not to discard dead fish, or they cannot be trusted.
- 19 **NZRFB** support inclusion of kingfish on the Sixth Schedule allowing them to be released alive subject to the conditions suggested. NZRFB submits that this proposal increases the incentive for small fish to be returned to the water. NZRFB submits that, in addition, commercial operators need to avoid areas of high kingfish bycatch and if the over-catch in KIN 8 continues then measures should be taken to increase deemed values for kingfish.
- 20 **Sanford and SNA 8 Co** both support the inclusion of kingfish on the Sixth Schedule for all kingfish stocks. Both companies do so on the basis that it is the only practical alternative given that TACCs for kingfish have, in their view, been set at unreasonably low levels. Both companies would prefer the alternative of a TACC increase to better match the unavoidable bycatch in KIN 8.
- 21 Sanford and SNA 8 Co support the conditions proposed to govern the release of kingfish under the Sixth Schedule provisions. Both companies support in principle the development of a code of practice for returning live kingfish to the ocean and wish to be involved in the development of detail to ensure it is practical, and does not create compliance concerns.
- 22 The **NZBGFC and option4** are pleased that MFish are acknowledging a problem in KIN 8 and are looking to MFish to address the over-catch of kingfish by the commercial sector.
- 23 NZBGFC and option4 continue to support the inclusion of kingfish on the Sixth Schedule to allow the return of live kingfish to the water. Support for the inclusion of kingfish on the Sixth Schedule is conditional on the understanding that every effort is made to ensure that released kingfish are likely to survive.
- 24 NZBGFC and option4 consider it essential that commercial fishers develop and actively follow a code of conduct that will allow ready identification of kingfish that are likely to survive when released. NZBGFC and option4 say that initially this code of conduct will require some independent monitoring to determine whether the urgency required to ensure the survival of kingfish can in fact be given sufficient priority by the crews aboard trawl vessels when landing catches.
- 25 NZBGFC and option4 submit that if commercial fishers are found to not be complying with the Sixth Schedule requirements, or the code is unable to deliver the desired outcomes, then other management controls must be devised and implemented by the MFish.
- 26 In addition option4 submit that MFish should inform the Minister that management controls proposed for the SNA8 fishery will likely result in less kingfish by-catch in KIN 8.

- 27 **NZRFC** support the inclusion of kingfish on the Sixth Schedule subject to the understanding that every effort is made to ensure released kingfish are likely to survive. NZRFC submit that if commercial fishers are found not to be complying then other management controls must be devised.
- 28 The New Plymouth Sportfishing and Underwater Club Inc (NPSUCI) would like to see a TAC reduction for kingfish in area 8.

MFish Discussion

Sixth Schedule listing

- 29 MFish notes the support for the proposal to list kingfish on the Sixth Schedule in the majority of submissions. MFish notes further that the majority of commercial stakeholder submissions favour the inclusion of all kingfish stocks. An exception to the majority support is the submission of UFL.

Reduction in deemed value

- 30 UFL submits that the deemed values for kingfish should be reduced and/or a separate deemed value should apply to frozen kingfish. UFL holds no quota and says it is unable to acquire more than very small amounts of ACE for kingfish. Under these circumstances differential deemed values immediately apply to its catch of kingfish. This explains the high deemed value payments quoted in submission.
- 31 MFish considers that a reduction in deemed values would merely result in reduced cost to fishers but no reduction in catch. As outlined in the IPP, MFish is concerned to maintain the integrity of current TACCs set for kingfish. These TACCs reflect the desire of the Minister to see a rebuild in kingfish stocks by reducing the level of use of the kingfish resource by both commercial and non-commercial fishers. MFish considers that there is an onus on fishers to ensure that they have adequate ACE to cover bycatch that is landed.
- 32 MFish suggests that if UFL considers that kingfish is an inevitable bycatch of the JMA 7 fishery then it should make every effort to obtain quota or ACE for this stock. Alternatively, MFish notes that there have been recent shifts in the distribution and seasonality of the JMA 7 fleet. UFL could consider how the area of its fishing operations may affect kingfish bycatch and consider spatial and or seasonal arrangements (or other bycatch reduction options) in order to minimise kingfish bycatch.

Increase in TACC for KIN 8

- 33 UFL submit that if no reduction is made to deemed values for kingfish then, alternatively, the TACC for KIN8 should be increased. SeaFIC, Sanford and SNA 8 Co all submit that their support for the Sixth Schedule provisions is premised on a preference of the alternative that TACCs are set to match required levels of bycatch in the multi-species fishery on the west coast of the north island. NPSUCI submit in favour of a reduction in the TACC for KIN 8.

- 34 As outlined in the preceding sections, TACCs for kingfish stocks have only recently been set (1 October 2003). MFish does not propose revisiting allocation decisions made at this time. Rather the focus of current proposals is how best to constrain landings within existing TACC

Effect of the Sixth Schedule on quota and ACE value

- 35 Area 2 is concerned that allowing the release of kingfish under Sixth Schedule provisions may undermine quota and ACE values and suggests that those fishers that paid high prices to acquire quota and ACE should be compensated if this occurs.
- 36 MFish does not agree. Area 2's concern that releasing kingfish under the Sixth Schedule may undermine quota and ACE, and that they should be compensated goes against the integrity of the QMS and the efficient use of the ITQ market. Releasing kingfish may affect the price of ACE (less demand equals lower price), however as the stock improves the quota value will increase. Compensating fishers is equivalent to a subsidy, which would distort trade and undermine the efficient use of the market to determine quota and ACE price.

Application of the Sixth Schedule to all kingfish stocks

- 37 Most commercial submissions in support of this proposal advocate that it should apply to all kingfish stocks. This is aptly summarised in the SeaFIC submission

‘SeaFIC supports including all kingfish stocks on the Sixth Schedule. While the current overcatch is occurring in KIN 8, the “problem” may well manifest itself in another QMA in the future’.

- 38 This option was contemplated in the MFish IPP. MFish concludes that while other areas may not have the same unavoidable bycatch issues currently, the Sixth Schedule provisions may well provide assistance to individual fishers to manage their individual bycatch in the short term and will also be available should bycatch issues arise for the fishery as a whole in the future.

Conditions of release

- 39 The majority of submissions in support of the proposal either made no comment on the proposed conditions of release or were in support of the conditions as proposed. Exceptions were the submissions of LMF and of SeaFIC. Both submissions suggest that kingfish taken by method of set net should not be excluded from the provisions. SeaFIC submits on the basis that there is little rationale provided for the condition proposed and LMF on the basis that kingfish in good condition could be released from set nets.
- 40 MFish remains of the views that in general kingfish taken by the method of set net are less likely to survive release than those taken by other fishing methods. The ensnaring nature of set nets and the duration that captured fish spend in the water are likely to result in the majority of catch being dead on retrieval of the fishing nets. Rather than put fishers in a position of making an assessment about kingfish condition and the likelihood of survival, MFish considers that it is better not to provide for release by this method. Further, retention of this condition may well act as an

incentive for fishers to avoid areas where there is likely to be a significant bycatch of kingfish including kingfish below the minimum legal size. Set nets can potentially cause significant mortality on undersized kingfish. There is a lawful requirement to return undersized kingfish to the sea whether it is dead or alive.

Removal of the MLS for commercially taken kingfish

- 41 Area 2 submits that the commercial minimum legal size (MLS) for kingfish should be removed so that live kingfish of any size can be released (and all kingfish of any size that are dead retained). Area 2 submit further that the allowance for other sources of fishing mortality could then be made available as increased TACC. This proposal has merit and was suggested by MFish as an option for consideration when kingfish were introduced into the QMS. At that time the proposal gained little support.
- 42 Since 2003 there has been no further consultation on this issue. It is likely to be of significant interest to non-commercial stakeholders. These stakeholders have all submitted that a code of practice and monitoring should be in place to ensure that all kingfish that are returned to the sea have a high chance of survival. MFish considers that once a code of practice has been developed and its implementation evaluated then it would be timely to consider the option of removing the MLS for commercially caught kingfish.

Reporting of discards

- 43 The MFish IPP included a proposal that fishers record and report discards of kingfish in order for MFish to monitor the frequency and quantity of discarding. All submissions in support of the proposal agreed with this suggested condition.
- 44 There is some confusion in reporting regulations regarding the code to be used for fish discarded under the provisions of the Sixth Schedule that are not required to be counted against ACE. MFish considers that it is important to monitor the level of use of the Sixth Schedule provisions for key species such as kingfish. For clarification, MFish considers that a separate generic code should be established for Sixth Schedule discard reporting where there is no requirement for discarded catch to be reported against ACE. This would require an amendment to the Fisheries Reporting Regulations and a recommendation to this effect is included in this advice paper.
- 45 UFL suggest that there should be a common policy on the release of species under Sixth Schedule provisions. The MFish position is that case-by-case consideration is required. For example in the case of kingfish there is some scientific information and widely held anecdote in support of the fact that this is a robust species capable of surviving capture and release. This is not the case for all species and it would be inappropriate to provide options for Sixth Schedule release if the prospects for survival of the species on return to the water were limited or non-existent. An exception is made for spiny dogfish in an attempt to limit the total mortality on the stock (by way of TACC) but acknowledging that requiring all fish to be landed would not recognise the limited market for this species. In this case Sixth Schedule releases are required to be reported against ACE.

Code of practice for release and monitoring

- 46 Sanford and SNA 8 Co support in principle the development of a code of practice to guide the release of kingfish under Sixth Schedule provisions. The SeaFIC submission is disappointing in this regard. The development of a code of practice for handling and release of kingfish is considered to be essential by non-commercial stakeholders. MFish considers that if the biological benefits of Sixth Schedule release are to be realised, then a change in handling practice may be required for some fishing fleets. This can best be realised by the development and adoption of a code of practice.
- 47 MFish is also of the view that industry is best placed to develop such a code and SeaFIC could well play a coordinating role in that process. If successful implementation of Sixth Schedule release is realised then the option of removing the commercial MLS for kingfish could be considered as outlined above. If it is unsuccessful, then MFish will need to reconsider alternative options and/or incentives to reduce kingfish bycatch.
- 48 MFish has proposed research for the 2006–07 year to examine the issue of handling and subsequent mortality of kingfish released from commercial fishing vessels. Observer coverage is also proposed for that year to assist in monitoring the application of Sixth Schedule provisions.

Conclusion

- 49 MFish concludes that the use of the Sixth Schedule can provide important flexibility in managing unavoidable bycatch of kingfish. MFish notes that the majority of submissions support both the use of the Sixth Schedule and the conditions proposed for kingfish. MFish has considered other matters raised in submissions and remains of the view that adjustments in deemed value are not appropriate at this stage and concludes that there is no basis for increasing the TACC for KIN 8 simply because commercial landings exceed this level.
- 50 Other matters raised in submission have not altered MFish views on the initial proposal, however, MFish notes that longer-term consideration of the role of an MLS in the commercial fishery is open to consideration subject to the successful implementation of Sixth Schedule provisions.

Final Recommendations

- 51 MFish recommends that you:
- a) **Agree** that kingfish is listed as a species on the Sixth Schedule of the Fisheries Act 1996 to allow kingfish to be released to the sea, subject to the condition that fish are:
 - i) not taken by the method of set netting;
 - ii) likely to survive;
 - iii) returned to the same waters from which they are taken;

- iv) returned as soon as practical; and
 - v) returned catch is recorded and reported on catch (effort) landing returns using an appropriate code.
- b) **Agree** to amend the Fisheries (Reporting) Regulations to include a generic code to apply to Sixth Schedule discards that are not required to be counted against ACE.
- c) **Note** that MFish will work with industry to ensure a code of practice is developed to allow ready identification of kingfish likely to survive release and to guide their handling.
- d) **Note** that observer coverage in trawl fisheries and directed research proposed for 2005–06 will provide an opportunity to monitor the application of Sixth Schedule provisions for kingfish.

