

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

Final Advice Paper

9 September 2005

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INTRODUCTION

- 1 This paper provides you with the Ministry of Fisheries' (MFish) **initial position and final advice and recommendations** on the proposal to amend aspects of the amateur fishing regulations.
- 2 The paper has been structured so that the **Initial Position Paper (IPP)** for each issue is followed immediately by the **Final Advice Paper (FAP)** for that issue.

Initial Position Paper

- 3 The IPP was developed for the purpose of consultation as required under the Fisheries Act 1996 and it contained MFish's initial position on proposed amendments to fisheries regulations. MFish emphasised that the views and recommendations outlined in the paper were preliminary and provided as a basis for consultation with stakeholders.

Consultation

- 4 On or about 9 July 2005, MFish provided copies of its IPP to iwi, stakeholders and you.
- 5 Stakeholders and iwi were asked to provide written submissions to you on the proposals being reviewed by 10 August 2005. A copy of each submission received has been given to you in a separate document.

Final Advice Paper

- 6 This paper contains MFish's final advice and recommendations to you on the proposal to amend aspects of the amateur fishing regulations.
- 7 Each FAP section contains your preliminary views on the proposal in the IPP, a summary of the views of stakeholders, MFish discussion (which contains an analysis of your legislative obligations in relation to each fishstock) and recommendations for regulatory amendments. MFish recommends that you regard the complete document (comprising both the IPP and FAP sections) as a single advice paper.
- 8 This paper does not contain the standard section outlining MFish's statutory obligations and policy guidelines. This section is available in the '*Review of sustainability measures and other management controls for the 2005-06 fishing year -Final Advice Paper*' should you wish to refer to these matters.
- 9 A copy of this advice paper will be forwarded to iwi and stakeholders who submitted a submission on these proposals.

Implementation of Decisions

- 10 Following your final decision on any regulatory amendments, officials will provide you with a draft letter to stakeholders outlining your decisions.
- 11 In addition, s 12(2) of the Fisheries Act 1996 requires that after setting or varying any sustainability measure, you are to, as soon as practicable, write to sector groups advising them of the reasons for your final decisions. MFish will provide a draft decision letter for your consideration.

PRIMARY TAKER –INITIAL POSITION PAPER

Executive summary

- 1 The Fisheries Act 1996 provides that no natural person may take fish, aquatic life or seaweed other than in accordance with any amateur fishing regulations made under the Act.
- 2 The Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) specify the maximum number of fish and shellfish that may be taken or possessed by a person on any day (the daily bag limit). Over time, case law has confirmed that only persons actively involved in taking fish are entitled to take a bag limit.
- 3 New Zealand Recreational Fishing Council (the Council) representatives consider that this entitlement is unfair when gathering scallops or dredge oysters by diving. They contend that people who remain on board a fishing vessel for the purpose of diver and vessel safety are an integral part of the fishing operation and should be entitled to a bag limit gathered on their behalf. This is a long-standing issue that has been reviewed previously by the Ministry of Fisheries (MFish) in consultation with stakeholders.
- 4 MFish considers the principle that only recreational fishers who are actively taking fish can take up to a daily allowance is an important one. Without such a constraint, bag limits as a management measure would be ineffective. MFish acknowledges that in the particular case of diving for certain shellfish species, safety personnel are an important part of the fishing activity. MFish also recognise that the recreational dissent with the constraints of the current approach is likely to compromise compliance.
- 5 MFish is prepared to consider a limited alternative to the general rule that will apply only in the case of diving from a fishing vessel (free diving or using UBA). Two options are proposed to allow divers to gather on behalf of either one safety person or two safety people.

Proposal

- 6 It is proposed to amend regulation 19 of the Regulations to allow a diver (or divers), when diving from a fishing vessel, to collect a daily bag limit of scallops or dredge oysters on behalf of one other person. The provision will allow no more than one extra bag limit per vessel, per day, providing that a person is on board the fishing vessel at that time and acting in the capacity of a safety person.

OR

- 7 It is proposed to amend regulation 19 of the Regulations to allow a diver (or divers), when diving from a fishing vessel, to collect a daily bag limit of scallops or dredge oysters on behalf of two other people. The provision will allow no more than two extra bag limits per vessel, per day, providing that two safety people are on board the fishing vessel at that time and acting in the capacity of safety people.

Background

- 8 The current regulatory framework for amateur fishers has been in place since 1986. Over time the courts have clarified the interpretation of the rules relating to the taking of fish and applicable daily bag limits. The courts have held that in the case of diving, only the diver is entitled to a bag limit. In the Court's view, people who remain on board a vessel while divers are fishing do not provide a level of support that can be considered a part of the act of fishing. This has become known as the 'primary taker' regime.
- 9 Recreational dissatisfaction with the application of the primary taker regime in the case of diving for shellfish is long standing. MFish reviewed the regime in 1998 when the Auckland Regional Recreational Fishers Association submitted a proposal to allow people diving from vessels to collect shellfish on behalf of non-divers. Stakeholder responses to the proposal at that time were mixed. Commercial and environmental submissions opposed any change in the primary taker regime and there was a mixed response from recreational interest groups, some in support and some opposed.
- 10 The 1998 review concluded that the primary taker regime should be retained and that consideration of any alternative options to resolve recreational concerns should be deferred until a full review of regulations, planned to commence in 1998, was undertaken. No full review has since occurred.
- 11 MFish remains of the view that it is appropriate to interpret the current legislative framework as only providing the primary taker with an entitlement to a daily allowance. However, MFish accepts that, in the limited circumstances of diving from a vessel for scallops or dredge oysters, changes in the framework could be made that would be enforceable and would not undermine the effectiveness of bag limits as a management tool. The outcome of any change is not considered to pose any sustainability risk for the species involved.

Statement of the problem and need for action

- 12 Representatives of the Council consider that the requirement that only those directly taking fish are able to claim a daily bag limit is unfair in relation to diving for some shellfish species. They argue that in the case of diving, a minimum of one safety person is an integral part of the taking of shellfish and as a result they should be entitled to a daily limit in their own right. The scallop and dredge oyster fisheries have been identified as those fisheries where this is perceived to be a problem.
- 13 The primary taker regime as it applies to scallops and dredge oysters is also considered by recreational fishers to encourage dredging as a fishing method. Dredging allows more people on board a vessel to participate in the fishing activity thereby ensuring more people are entitled to a bag limit. Council representatives have noted that dredging is not a preferred method for catching scallops and dredge oysters because catches tend to be higher than required, shellfish can be damaged, and it is perceived to be damaging to the environment. Despite these issues, recreational fishers use dredges because all participants can secure their "share". It is generally

agreed that diving would be the preferred method for fishing for scallops and dredge oysters if safety people legitimately involved in the taking were entitled to a bag limit.

- 14 Recreational concern over the primary taker regime is significant to the extent that compliance with recreational rules is often compromised. The rules are perceived by some to be unreasonable.

Preliminary consultation

- 15 The Minister of Fisheries invited recreational fishers to identify the regulations of greatest concern to them, with a commitment given to review their top ten concerns over a three-year period. The Council identified a series of issues that it feels need to be reviewed as a first step. One of these issues is the primary taker regime.
- 16 MFish staff met with representatives from the Council on 1 April 2005. The purpose of the meeting was, in part, to clearly define the problems associated with the impact on divers and their assistants of applying the current primary taker regime. The options presented in this paper result from these discussions.
- 17 Council representatives have an initial preference for the option of providing for two safety people aboard dive vessels as best reflecting the range of vessel sizes, dive numbers and safety requirements across the recreational dive vessel fleet.

Options for Management Response

- 18 A non-regulatory response is not available as limits on take are specified in regulation. Two options for regulatory amendment are proposed. Both recognise that, in the case of diving from a fishing vessel, the safety of the vessel and the divers is an issue. Both options provide the opportunity to take on behalf of safety people, but differ in the number of people required on board a vessel for safety purposes.
- 19 Only two options have been proposed: collection on behalf of one safety person or two safety people. MFish agrees that one or two people are appropriate to ensure the safety of divers and the diving vessel, and does not have an initial preference for either option at this stage. More than two people acting as safety people are not considered necessary or reasonable, and MFish considers that the two options proposed are appropriate.
- 20 The following provisions will apply to both options:
 - a) The maximum number of scallops or dredge oysters that may be taken by any person on any day by the method of diving will be twice the current daily bag limit;
 - b) The diving operation must place entirely from a vessel;
 - c) The vessel must be manned by at least one person, other than the person taking the shellfish, continuously during the diving operation;
 - d) The person manning the vessel must be engaged wholly or substantially for the duration of the diving operation, in ensuring its safety and effectiveness; and

- e) No more than (X plus 1) or (X plus 2) the daily bag limit shall be allowed from one vessel, in one day, where X is the number of persons who have fished.
- 21 MFish acknowledges that the options proposed may lead to an increase in recreational catches in some scallop and dredge oyster fisheries where diving is the primary method of fishing. Conversely, allowing a diver to collect on behalf of a safety person, or safety people, is likely to encourage fishers to dive rather than dredge for scallops and dredge oysters. This in turn may lead to a decrease in recreational catches in these fisheries. On balance, the risk of any recreational allowance being exceeded as a result of the options in this paper is extremely low and not sufficient to warrant any immediate action.

Statement of Net Benefits and Costs of the Proposal

Benefits

- 22 Many in the recreational sector believe this issue to be an inequity, and believe it promotes dredging for scallops and oysters, which can have impacts on the environment. Resolution of the issue will be of significant benefit and an improvement in compliance is anticipated.

Costs

- 23 No costs in addition to administrative implications are anticipated.

Administrative implications

- 24 There are administrative implications associated with amending the regulations. Resources will be required to make the changes proposed. There are also resource implications associated with raising public awareness of any new regulatory amendments.
- 25 Depending on the outcomes of the other regulatory proposals provided in this review of amateur regulations, administrative costs may be shared. MFish also expects that any education material required for disseminating the outcomes of the other proposals can be compiled together, reducing costs and resources required.

Compliance implications

- 26 MFish recognises that a key step in achieving compliance with fishing rules is not only ensuring that they are known and understood but are also considered to be reasonable. The situation of a safety person (or safety people) has been a long-standing one with the recreational sector at large. The resolution of this issue is expected to improve levels of compliance.
- 27 The resolution is specific to the problem defined. MFish considers the principle of primary taker for other fisheries and for shore-based fishing must be maintained. This principle is recognised by the courts and provides for an enforceable management regime.

Preliminary recommendation

28 MFish proposes to:

- a) Amend regulation 19 of the Fisheries (Amateur Fishing) Regulations 1986 to allow a diver (or divers), when diving from a fishing vessel, to collect a daily bag limit of scallops or dredge oysters on behalf of **one** other person. The provision will allow no more than **one** extra bag limit per vessel, per day, providing that a person is on board the fishing vessel at that time and acting in the capacity of a safety person.

OR

- b) Amend regulation 19 of the Fisheries (Amateur Fishing) Regulations 1986 to allow a diver (or divers), when diving from a fishing vessel, to collect a daily bag limit of scallops or dredge oysters on behalf of **two** other people. The provision will allow no more than **two** extra bag limits per vessel, per day, providing that two safety people are on board the fishing vessel at that time and acting in the capacity of safety people.

PRIMARY TAKER –FINAL ADVICE

Initial Proposal

- 1 The Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) specify the maximum number of fish and shellfish that may be taken or possessed by a person on any day (the daily bag limit). Over time, case law has confirmed that only persons actively involved in taking fish are entitled to take a bag limit.
 - 2 The New Zealand Recreational Fishing Council considers that this entitlement is unfair and unsafe when gathering scallops or dredge oysters by diving. They contend that people who remain on board a vessel for the purpose of diver and vessel safety are an integral part of the fishing operation and should be entitled to a bag limit gathered on their behalf. This is a long-standing issue that has been reviewed previously by the Ministry of Fisheries (MFish) in consultation with stakeholders.
 - 3 MFish considers the principle that only recreational fishers who are actively taking fish can take up to a daily allowance is important. Without such a constraint, bag limits would be ineffective as a management measure. MFish acknowledges that in the particular case of diving for certain shellfish species, safety personnel are an important part of the fishing activity. MFish also recognises that recreational dissatisfaction with what fishers regard as the unfair constraints of the current approach is likely to compromise compliance.
- 1 Accordingly, MFish considered a limited alternative to the general rule that will apply only in the case of diving from a vessel (free diving or using UBA). Two options were proposed to recognise either one safety person or two safety people as part of the diving activity. Option 1 was to allow a diver (or divers), when diving from a vessel, to collect **one** extra bag limit per vessel, per day. This purpose of this option was to recognise a safety person as part of the diving activity, providing that the person is on board the fishing vessel at that time and acting in the capacity of a safety person.
 - 2 Option 2 was to allow a diver (or divers), when diving from a vessel, to collect **two** extra bag limits per vessel, per day. This purpose of this option was to recognise two safety people as part of the diving activity, providing that they are on board the fishing vessel at that time and acting in the capacity of safety people.

Submissions

- 3 *The following submissions were in support of the proposal:*
 - a) **Option 1 -one person:** Bryn Jamieson, Peter Herbert, Brent Davies, Graeme Martin, Phil Clow, David Kelly, Mark Armstrong, Ross Walker, Steve Ryder, Whangamata Seafoods, Keith Armstrong, Stu Marsh, Jock Woodley, Nelson Underwater Club, Todd Robertson, Aaron Murray, Keith Wright, Bruce Tait, Raewyn Parke, B Fisher, NO Tait, John Robertson, Dan Craig, Tony Pugh, Jim Hamilton, Daryl Walsh, Doug Ashford, Geoff Rasmussen, Dave Gulliver, Alan Turner, Graeme Petheric, J McLennan, Rod Harrison, Shane Roberts,

Lenny Allred, Harry Trewavas, Darryl Thomas, Sue Rhodes, Greg Goodall, Mike Thompson, Neil McLean, Martyn Barlow, Gordon Aston, Kerry Campbell, Ian Franklin, Trevor Knowles, Ray Frater and Dean Cederman.

- b) **Option 2 -two people:** Rod Budd, Bill Gallagher, Ron Meiklen, Jon Marwick, Brian Dean, LJ Prescott (Captain Petone Workingmens Club Inc (Diving adjunct), Keith Turner, Nigel Wright, Kevyn and Corinne Moore, DK Ransom, New Zealand Recreational Fishing Council (NZRFC), Piako Underwater Club, Sam Winstone, Taranaki Fisheries Liaison Committee, David and Ronda Nilsson, Marlborough Combined Divers Association Inc, option4, Ted Young, David Short, Canterbury Sport Fishing Club, New Plymouth Sportfishing and Underwater Club, Marlborough Recreational Fishers Association, Manukau Sportfishing Club, Kay Saunders, Royal Forest and Bird Protection Society (Forest and Bird) and Environment and Conservation Organisations of New Zealand (ECO).
 - c) **One or two people depending of the boat size:** New Zealand Underwater Association, Kaikoura Boating Club, Hartley Family.
- 4 *The following submissions were not in support of the proposal:* Andrew McLean, Paua 2 Industry Association Inc (Paua 2), Paua Industry Council Ltd (PICL), Seafood Industry Council (SeaFIC), Reid Quinlan, TV Collings, Te Ohu Kai Moana Trustees Ltd (Te Ohu).

Background to the primary taker issue

- 5 During the late 1970s the restrictions on daily catches (where they existed) of recreational species were often expressed in terms of boat limits, whereby no more than a specified quantity could be on board a particular vessel. However under this regime there were difficulties assigning responsibility to individuals in situations where a boat limit was exceeded.
- 6 The regulatory framework developed during the 1980s removed the boat limit component and focused on establishing daily limits that recreational fishers could 'take'. The regulatory framework was updated in 1986 to establish both national and regional regulations. The focus on the primary taker approach was retained.
- 7 Where TACs have been set, the key role of daily recreational limits is to restrict the overall recreational catch to a level that is consistent with any allowance that has been set for a particular fishery, while providing for all recreational fishers to have an opportunity to participate in the harvest. However, daily limits do not guarantee individuals a harvest, and much is left up to the ability of, and harvest methods chosen by, the fishers concerned if they are to successfully take fish. Further, the regulations do not enable a person to take another persons harvest on their behalf.
- 8 The word 'take' is defined in s 2 of the Fisheries Act 1996 as meaning fishing; and 'to take' and 'taken' have a corresponding meaning. 'Fishing' is defined to mean the catching, taking, or harvesting of fish, aquatic life or seaweeds and includes any activity that may reasonably be expected to result in the catching, taking or harvesting of fish, aquatic life or seaweed; and any operation in support or preparation for any activities described in the definition. There have been a number of relevant Court

rulings, which have assisted with defining the application of the primary taker rule within the fisheries management framework.

- 9 From these, and subsequent Court rulings MFish has concluded that it is appropriate to continue to interpret the regulatory framework as providing for the ‘primary taker’ with an entitlement to a daily limit. This has meant that in the case of a recreational fishing activity that requires divers, only the divers are entitled to take their daily limit, and they cannot take a limit on behalf of someone else who remains on the boat or on shore.
- 10 The definition of the ‘primary taker’ has become an issue for the recreational sector. This is due to perceived inequities in the shellfish fisheries. The recreational sector generally regards it as acceptable for all individuals on a vessel to claim a limit when scallops and dredge oysters are taken using the dredge method.¹ However when divers take scallops, only the divers are entitled to a daily take, even though one or more people number of people may assist the divers and ensure their safety. This is regarded by the recreational sector as being unfair on the people actively providing the assistance or ensuring safety.
- 11 The situation is further complicated by the evolutionary approach to enforcing the primary taker rule during the period leading up to the interpretation by the Courts that MFish currently operates to. Through the 1980s and early 1990s in Northland, the Hauraki Gulf and the Bay of Plenty, where there is the greatest amount of recreational fishing effort, it was commonplace for a recreational diver diving for scallops from a boat to take a bag limit of 20 scallops on behalf of the other people in the boat. During this period, Fishery Officers applied a broad interpretation of “take” and allowed this activity to occur. For example, if there was one diver and three non-divers in a boat, then the Fishery Officers would allow a boat to return with up to 80 legal sized scallops.
- 12 Following the court decisions, Fishery Officers in the northern areas started to enforce the new “primary taker” interpretation based on the case law that had been established. The recreational sector in northern areas was very concerned about the change. Northern recreational fishing leaders considered that enforcement of the primary taker regime had effectively disenfranchised the recreational sector from part of its overall traditional catch entitlement for scallops. A similar view prevailed in southern dredge oyster fisheries and the smaller dive fishery for scallops in the southern areas.

Issues

Sustainability Implications

Submissions

- 13 SeaFIC is concerned that the IPP contains only one sentence addressing the sustainability implications of the proposal – paragraph 18 states that “the outcome of

¹ Note that in a situation where a group of people are on a vessel using the harvest method of dredge, to comply with the legislative and regulatory framework each person must be actively involved in the taking of scallops or dredge oysters in order to claim a limit.

any change is not considered to pose any risk for the species involved”. SeaFIC notes that this claim is not substantiated by any information presented in the IPP. SeaFIC expects estimates of how many recreational vessels fish for scallops and dredge oysters in each of the affected fisheries using the dive method, and an analysis of the impact of each of those vessels taking an extra one or two bag limits per day on (a) the sustainability of the stocks; and (b) the likelihood of recreational catch being constrained within recreational allowances.

- 14 Te Ohu is concerned that there is no analysis of the potential impacts to sustainability arising from an increase in the recreational catch. It believes the management of amateur fishing is currently fraught with difficulties. Te Ohu also submits that there is considerable uncertainty around the level of recreational harvest, there are no constraints (other than bag limits) placed on amateur fishing to ensure that the recreational allowance is not exceeded, and there is no monitoring of recreational harvest.
- 15 TV Collings considers that the proposed amendment promotes increased take of resources from some already over fished areas.

MFish Discussion

- 16 MFish considers that any sustainability implications from the proposal relate to the Northland and Coromandel (includes the Hauraki Gulf and Bay of Plenty) scallop fisheries. This is because most of the recreational catch from these fisheries is taken by diving. In contrast, the scallop fisheries in the northern west coast harbours (commercial scallop fishing is prohibited in all of these harbours) such as the Manukau are mainly dredge fisheries. Similarly, most of the southern recreational scallop fishery involves dredging as the primary gathering method. This fishery is enhanced and has a significantly higher daily bag limit of scallops to reflect this fact.
- 17 SeaFIC, Te Ohu and others are critical at the lack of supporting information for the MFish assessment that allowing divers to gather on behalf of safety people has little or no sustainability implications. To clarify, MFish considers that the minimum size limit is the important sustainability measure for scallops. Scallop populations can fluctuate markedly in size from year to year regardless of fishing activity. This is largely due to the particular biological and ecological characteristics of scallops. Scallops are short lived (4-6 years) and are serial spawners releasing millions of eggs each spawning season. Most scallops are sexually mature at about 60 mm. The minimum legal size limit ensures that most scallops have at least one spawning season before reaching the size limit.
- 18 The minimum size limit in the Coromandel scallop fishery varies between the commercial sector (90mm) and the recreational sector (100mm). This is mainly because the sectors are now mostly spatially separated and fish different areas. Scientific modelling indicated that it was better from a sustainability perspective to allow the commercial sector to fish to a smaller size limit to overcome the adverse impact of releasing 90-100mm scallops if the size limit had remained at 100mm. However, it was considered that the size limit for the recreational sector should remain at 100mm for sustainability reasons to act as an “insurance policy” to ensure that a large proportion of mature scallops spawned each year.

- 19 MFish notes that a minimum size limit also applies to dredge oysters. A person must not take or possess any dredge oyster that can be passed through a rigid circular metal ring having a clear inside diameter of 58 mm. As for scallops, this minimum size limit is a very important sustainability measure for dredge oysters.
- 20 Any change to the primary taker rule may in fact limit take in some cases. MFish holds the view that most vessels fishing for scallops or dredge oysters will return with a bag limit for all onboard because:
- a) All in the party participated in dredging;
 - b) Some people in the party dived and some people dredged; or
 - c) Some people dived and gathered on behalf of others in the boat, either through ignorance or in disagreement with the law.
- 21 Providing for divers to take a limited number of extra scallops and dredge oysters in association with a public education programme is likely to reduce the instances of c) above and may also encourage people to dive rather than dredge.
- 22 MFish acknowledged in the IPP that the options proposed may lead to an increase in recreational catches in those scallop and dredge oyster fisheries where diving is the primary method of fishing. Conversely, allowing a diver to collect on behalf of a safety person, or safety people, is likely to encourage fishers to dive rather than dredge for scallops and dredge oysters. This in turn may lead to a decrease in recreational catches in these fisheries. On balance, the risk of the options in this paper leading to sustainability concerns is extremely low.

Boat sizes

Submissions

- 23 The New Zealand Underwater Association suggests that the extra bag limit(s) be governed by the size of the craft. One extra bag limit would apply to craft of 7.5 metres or less. The rationale is that one person can act as safety person and skipper on a boat of this size. Two extra bag limits would apply to vessels at or above 7.5 metres.
- 24 The Kaikoura Boating Club and the Hartley Family support the proposal for an extra daily bag limit for 1 safety person while diving for scallops or dredge oysters from a boat under 6 metres and for 2 safety persons on a boat over 6 metres.

MFish Discussion

- 25 MFish acknowledges that the number of safety people required on board a vessel will vary with vessel size and type. MFish has a preference for a simple regulatory change to apply irrespective of boat size. If the option of two safety people is elected, then in smaller vessels an extra person (who in some submitters' view may not be necessary for vessel safety), can claim a bag limit if acting in that capacity. If the option of one safety person is elected, then the converse would be true for larger vessels.

Dredging

Submissions

- 26 **Brent Davies** believes that from an environmental point of view, diving should be encouraged over dredging.
- 27 **L. J. Prescott** considers the present regulations discriminatory as they allow all on board to take part and claim a daily bag limit when using a dredge, despite the fact that dredging is far more damaging than diving.
- 28 **David Kelly** considers there is a discrepancy between the rules for diving and the rule for dredging. He notes that if recreational fishers dredge for scallops, then every person on the boat who participates gets a quota, the catch can be sorted and measured on the boat, and the catch is allocated amongst those participating. On the other hand, Mr Kelly submits that the most fishery friendly means of capture - free diving (ie. not bottles) is discouraged: the divers must measure the catch while holding their breath on the sea floor, the boat person who is responsible for the safety of the divers does not get a quota, and the quota is specific to each diver ie. if one diver gets 15 the other diver can't take 25 to combine to 20 each.
- 29 **The Forest and Bird and ECO** support a change as diving has a low environmental impact when compared to recreational dredging. This change should act as an added incentive for non-commercial fishers to dive for these species.
- 30 **Mark Armstrong** considers that the argument about the dredge method is irrelevant. He states that if dredging is so environmentally destructive then it should be banned. Mr Armstrong also believes the same argument could be logically and factually used to say diving is less destructive than every other fishing method as diving is 100% selective with no bycatch, or accidental environmental damage caused.
- 31 **SeaFIC** does not accept the claim that the primary taker rule encourages dredging as a fishing method. This statement is anecdotal only and should be treated accordingly in any decision making process. Many factors in addition to the primary taker rule influence choice of fishing method including access to gear, weather, and the skill of those involved in the fishing operation. SeaFIC also notes (anecdotally) that the "safety person" role is frequently rotated within a group during the course of a day, enabling the safety person to take a turn at being the "primary taker" in a normal day's diving.
- 32 **Te Ohu** believes it is misleading to suggest that the primary taker regime encourages dredging as a fishing method. Te Ohu suggests there are a variety of reasons why fishers use dredges. For example, dredging may be the only means available to harvest scallops and oysters.
- 33 **Te Ohu** also finds it perplexing that [NZRFC] Council representatives claim dredging is not a preferred method for catching, yet it is also said dredging catches more fish than is usually required. Te Ohu considers these are ridiculous statements to make. Te Ohu notes so too the assumption that any increase in recreational catch resulting from divers being able to harvest for one or two safety persons on a boat, will be offset by a decline in the number of people using dredges. Te Ohu notes that in fact it is claimed

there may be a decline in the overall recreational catches as a result of primary taker rules being relaxed.

- 34 Reid Quinlan considers the primary motivation behind the proposal is the disparity between those taking scallops via a dredge and those taking scallops whilst diving. He believes that the proposed solution is problematic and does not address the right issues. He considers that it seems to be generally believed that the present rules encourage dredging instead of diving, but he would like to see the facts. How many people have actually used a dredge instead of going diving, specifically to get an extra daily limit or two? He believes few people would go to the extreme action of changing their collection method just to get a few more scallops.
- 35 Reid Quinlan considers it is the disparity that causes the concern to divers. It would make more sense to reduce the number of personal daily limits that can be collected with a dredge than to effectively increase the allowance for divers. He wonders whether the use of dredges should be prohibited or discouraged. The IPP notes that there are perceived risks of using dredges; the inference is made that their use should be discouraged, not encouraged, as a method of collecting scallops. If these are serious objections, then the obvious action is to limit or ban use of dredges for collecting scallops, *not* to allow divers to take more. If dredging is a risk at all, it should be prohibited or severely limited.
- 36 Reid Quinlan discusses research provided by Martin Cryer from NIWA in a report held by MFish (Project Code AKSC03: “Incidental Effects of Commercial Scallop Dredges”, 30 September 1997). Mortality associated with dredging was high. By comparison, the report states, “scallops caught by divers from areas not dredged are never damaged to the extent that their likelihood of survival can be considered negligible”. This research also cites a report by Morrison after a study in Colville in 1985 that showed that “large numbers of undersize scallops were probably killed by commercial [dredge] fishing activities”. Reid Quinlan acknowledges that this evidence relates to commercial dredges and not recreational dredges, but it would seem that dredging has a serious negative impact and warrants further investigation as to its suitability on recreational scallop beds.

MFish Discussion

- 37 There was some comment in submissions that dredging should be banned rather than providing extra scallop bag limits for divers. This argument is in reply to the issue that some recreational fishers say that they use a dredge as a way of claiming additional bag limits for other people on the vessel, when only one diver has actually dived for scallops from the vessel. MFish field staff report that use of dredges for this purpose is a common practise in some areas. The concern is that dredging causes more environmental damage to the seafloor and scallops than diving. Information is not available to support a total ban on dredging, but commonsense indicates that dredging is more damaging than diving. MFish, therefore, considers that it is a sensible management approach to facilitate diving being undertaken rather than dredging, if at all possible.

Application to other fisheries

Submissions

- 38 **Stu Marsh, Ted Young and Brent Davies** consider that the change should also apply to rock lobster.
- 39 **The Manukau Sport Fishing Club** considers that rock lobster, paua, and mussels should be included in the change to primary taker.
- 40 **Mark Armstrong, Todd Robertson, Aaron Murray, Keith Wright, Bruce Tait, Raewyn Parke, B Fisher, NO Tait, John Robertson, Dan Craig, Tony Pugh, Jim Hamilton, Daryl Walsh, Doug Ashford, Geoff Rasmussen, Dave Gulliver, Alan Turner, Graeme Petheric, J McLennan, Rod Harrison and Shane Roberts** consider the regulation needs to cover diving for all species.
- 41 **SeaFIC** notes the “logic” of removing the primary taker rule for scallops and dredge oysters could be applied equally to other dive fisheries such as rock lobster and paua. If an exception is made for one group of fisheries, SeaFIC considers that the validity of the measure for other fisheries becomes more vulnerable to challenge on similar grounds.
- 42 **Reid Quinlan** notes that if the proposal is accepted to allow 1 (or 2) daily limits to be collected by divers on behalf of a safety person, then divers could argue the same should apply to spearfishers and when crayfishing, and taking mussels. He submits that this is a dangerous precedent, and that is surely not the intention of the Fisheries Act 1996.
- 43 **PICL and Paua 2** consider the proposal sets a clear precedent for paua to be treated in the same way at a later date, believing this would increase the recreational take of paua and exacerbate significant sustainability issues.

MFish Discussion

- 44 Submissions by industry stakeholders in opposition to the proposals indicated their concern that providing an exception in the scallop and dredge oyster fisheries would set a precedent for other (dive) fisheries. However, MFish addressed this issue in the initial position paper (IPP). MFish made it clear that only in the limited circumstances of diving from a vessel for scallops or dredge oysters would changes (as proposed in the IPP) to the primary taker framework be considered.
- 45 MFish does not consider there is any merit in extending the proposal to other species. The main reason for this is that the outcome of any change for scallops and dredge oysters is not considered to pose any sustainability risk for these species. In contrast, MFish considers that there are greater sustainability issues with rock lobster and paua due to their biological and ecological characteristics. The potential for an increase in take as a result of a change to the primary taker regime presents too high a risk of these species.
- 46 Further, prior to the establishment of the “primary taker” regime it was normal for diver(s) to take the full bag limit entitlement of scallops and dredge oysters for the other people in the boat. This situation did not commonly occur for rock lobster

because they are much more difficult to catch than scallops, and are generally less abundant and available than scallops. Because divers generally could not catch their own personal bag limit, there was much less likelihood that they would be in a position to claim an additional bag limit(s) on behalf of other people in the boat.

- 47 MFish does not intend to set a precedent for other fisheries by recognising safety people as part of the diving activity for scallops and dredge oysters. MFish was clear in the IPP that this concession would be considered on the explicit understanding that no other similar changes would be made for other fisheries. This intention has been accepted in most submissions. The three main recreational fishing organisations (NZRFC, option4, NZ Underwater Association) that made a submission on this proposal did not request that the proposal be extended to other fisheries. Most of the submissions from individual fishers did not consider that a precedent had been set. Most of these submissions considered that the proposal should not be extended to other fisheries.

One versus two bag limits

Submissions

- 48 Mark Armstrong submits that divers should take for only one other person – the boatperson. A party of divers invariably have a “Team Coach” who, like the non-drinking driver, is left on the vessel for the safety of the other divers. It is reasonable that an extra daily quota be taken for this person.
- 49 At a meeting of recreational fishers at the Motueka Yacht Club it was agreed to allow a diver to collect scallops or dredge oysters on behalf of one safety person. The Group considered the possibility of allowing a diver to collect on behalf of two safety people, but felt that this option could be explored later, once the sustainability and compliance effects of allowing for one safety person have been determined.
- 50 Brent Davies considers that it only takes one competent person to control a boat – therefore he disagrees with the proposal to allow take for two people.
- 51 Bill Gallagher, Ted Young, David Short, NZRFC, The Piako Underwater Club, The Marlborough Combined Divers Association Inc, D. K Ransom and Sam Winstone submit that at least two safety people are required as part of the fishing party for safety reasons and that these safety people are actively participating in the taking.
- 52 Ron Meiklen notes that he has been a SCUBA diver for over 40 years, a diving instructor (although no longer active in that field), a dive accident investigator for the then NZ Underwater Association; and a member of the NZ Police Dive Team. He states that SCUBA diving is an inherently dangerous activity and it is imperative that there should be a diving safety officer/stand by diver ready to enter the water at a moments notice should a diver get into difficulties. If the diving is being done from a boat then there must be a boat master, or person able to competently handle the boat, on board at all times. This cannot be the same person. For the sole reason of safety, these two persons are absolutely vital in any diving party, and Meiklen submits that two people should be entitled to a limit bag of scallops and dredge oysters.

- 53 **LJ Prescott** (Captain Petone Workingmens Club Inc (Diving adjunct) supports the proposal to allow the taking of a daily bag limit for two non divers on board the vessel, which would be the helmsman and the diver observation safety officer. He considers it unreasonable to expect the helmsman to leave the helm to give assistance to a diver as the helm should be manned at all times unless at anchor – the larger the vessel the more relevant this becomes.
- 54 **Kevyn & Corinne Moore** and **David & Ronda Nilsson** consider that with larger vessels (e.g. motor launches) it is more practical and sensible, to anchor at a little distance with a safety person to ensure the safety and effectiveness of the vessel, and to have a second safety person in a dinghy keeping a close watch on the diver and the immediate diving area.

MFish Discussion

- 55 Submissions were mixed regarding the preference of one or two safety people to be regarded as part of the diving activity. In general, the choice is based on how many safety people are required on board a vessel and this requirement is mostly dependant on the size of the vessel. MFish have no preference for either option, as both are considered appropriate. However, as MFish prefer a simple regulatory change that is not boat size dependant, there is merit in recognising two safety people to ensure the safety concern is covered for both large and small boats.
- 56 MFish do not consider that either option pose sustainability concerns. Allowing two extra bag limits per vessel per day may marginally increase the recreational catch in dive-based fisheries. However, as mentioned, MFish considers the minimum legal size limit to be the most important management tool to ensure sustainability.

General opposition to the proposals

Submissions

- 57 **Reid Quinlan** submits that when he goes scallop diving, he does not really need a safety person on board. He could argue that he should, but everyone knows that a large number of divers do not use a safety person when they dive. He believes that pressure for this rule change is all a “beat up” which has evolved simply as a reaction to the rules concerning dredges. Quinlan also raises a legal question: if one diver collects scallops for the safety person, and some of those scallops are undersized, who gets prosecuted?
- 58 **Andrew McLean** considers that allowing the boatman to claim quota without being involved in fishing is foolish. The ability to dredge for scallops allows plenty of opportunity for a boatman to claim their quota. McLean also notes that regarding safety, the majority of boatmen presently pay little attention to diver safety.

MFish Discussion

- 59 In one submission received it was considered that a safety person was not a necessary part of the diving activity. MFish notes that a majority of submitters in fact believe that a safety person is essential for safe practice and an integral part of the fishing activity. MFish notes that not all people fishing for scallops and dredge oysters want

to dredge. Many would prefer to dive, providing that everyone involved in the fishing activity is entitled to a bag limit. MFish notes that whoever is in possession of undersize fish is liable to prosecution.

Conclusion

- 60 The courts applied a stricter definition of the “primary taker” regime in the mid 1990s. The courts held that only the “primary taker” was entitled to take, and that “secondary takers” (people assisting the diver) were not entitled to take a daily bag. The recreational sector is concerned that this situation is unfair when gathering scallops or dredge oysters by diving. To resolve this concern, MFish released two proposals to recognise either one safety person or two safety people as part of the diving activity.
- 61 MFish remains of the view that it is appropriate to interpret the current legislative framework as only providing the primary taker with an entitlement to a daily allowance. Further, MFish considers the principle that only recreational fishers who are actively taking fish can take up to a daily allowance is an important one. Any major departure from current arrangements will undermine this principle.
- 62 However, MFish accepts that, in the limited circumstances of diving from a vessel for scallops or dredge oysters, changes in the framework could be made that would be enforceable and would not undermine the effectiveness of bag limits as a management tool.
- 63 MFish supports only a limited alternative to the general rule, that will apply only in the case of diving for scallops and dredge oysters from a vessel. The recognition of one safety person or two safety people as part of the diving activity acknowledges the particular safety aspects of diving from a vessel for scallops and dredge oysters.
- 64 MFish does not consider that this change will have any significant sustainability implications because the minimum size limit is the most important sustainability measure for scallops and dredge oysters. However, you may consider that, on the basis of the sustainability implications or the change in principles associated with these proposals, a status quo option is more appropriate at this stage.

Final Recommendations

- 65 MFish recommends that you:
- a) Recognise that a safety person is part of the diving activity and allow a diver (or divers), when diving from a vessel, to collect **one** extra bag limit per vessel, per day providing that the safety person is on board the fishing vessel at that time and acting in the capacity of a safety person.

OR

- b) Recognise that two safety people are part of the diving activity and allow a diver (or divers), when diving from a fishing vessel, to collect **two** extra bag limits per vessel, per day providing that the safety people are on board the fishing vessel at that time and acting in the capacity of safety people.

OR

- c) Retain the status quo so that only persons diving for scallops and dredge oysters are entitled to take a bag limit.

COUNTING AND MEASURING SCALLOPS AND DREDGE OYSTERS AT THE FIRST REASONABLE OPPORTUNITY –INITIAL POSITION PAPER

Executive Summary

- 1 The Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) are clear about the maximum number and minimum size of scallops and dredge oysters that a person can take but they do not specify at what point they are actually “taken”. The Courts have considered that when diving, shellfish are “taken” either when they are placed in the dive bag or removed from the water. The Courts have also considered that the first reasonable opportunity for divers to count and measure shellfish should generally be on the seafloor when they are placed in the dive bag. However, recreational fishers consider that sorting on the seafloor may not be precise, or possible, in all situations.
- 2 There is widespread confusion and misunderstanding about how shellfish regulations are applied. Recreational fishers are generally under the impression that regulations state that divers must count and measure scallops and dredge oysters on the seafloor, regardless of circumstances. Improved education and awareness of the regulation and its interpretations, is necessary to ensure all recreational fishers who dive for scallops and dredge oysters understand their responsibilities.

Proposal

- 3 The Ministry of Fisheries (MFish) considers that no regulatory amendment is required regarding the taking and possession of scallops and dredge oysters. MFish proposes instead to better inform recreational fishers about counting and measuring scallops and dredge oysters at the first reasonable opportunity. MFish also proposes to investigate the viability of developing a “Code of Practice” with recreational fishers, which will provide greater clarity on what activities are considered reasonable.

Background

- 4 The maximum number of scallops and dredge oysters that may be taken or possessed by a person on any day is specified under regulation 19(1) of the Regulations. The minimum length of scallops and dredge oysters (whether entire, chipped or broken) that may be taken or possessed by any person on any day is specified under regulation 19(4) of the Regulations.
- 5 The Regulations are clear about the maximum number and minimum size of scallops and dredge oysters that a person can take. However, the Regulations do not specify at what point they are actually “taken”. Divers generally place scallops and dredge oysters in a catch bag while they are diving, approximating the number and size collected as they swim. They argue that the final sorting of their catch is most practically undertaken once they have surfaced and returned to their fishing vessel. If any excess or undersize scallops and dredge oysters have been taken, they can be

returned to the sea unharmed at that time. There is uncertainty however, whether the expectation from MFish is that scallops and dredge oysters are actually taken when placed in the catch bag, or brought to the surface, in which case recreational fishers must count and measure their catch underwater.

- 6 MFish has looked to case law for guidance in applying the scallop size and bag limit regulations.
- 7 In *Loach v Chisholm* 17/4/75, the then Supreme Court held that a taking under the Fisheries Act 1908 was complete when: the fish were removed from the water; the fish were measured; and there was a failure to remove those fish which were undersize and return them to the water. The Court also took the view that a fisher must be given a reasonable opportunity to measure and throw back the undersize fish, and the reasonableness or otherwise of the time taken to perform these operations depended on all the surrounding circumstances, including any urgent duties that had to take precedence over measurement of the catch.
- 8 In *MAF v Bolland* 12/12/90, under the Fisheries Act 1983 and regulation 19 of the Regulations, the District Court adopted the general principle in *Loach v Chisholm* that a taking is complete upon an assessment being made and a failure then to immediately return the protected shellfish. The Court found that taking was completed while on the bed of the sea, because a clear assessment was possible on the seabed to restrict collection to a number reasonably proximate, if not exact, to their legal quota. However, the Court also indicated that any reasonable fishery officer might exercise discretion in favour of an amateur fisher who may have removed from the seabed a few shellfish in excess of the lawful quota to allow for the possibility that some might be undersize.
- 9 In the most recent case of *MAF v Prangley; MAF v Folwell* [1994], the Court of Appeal held that “take” should be given its ordinary meaning appropriate to the particular method of fishing being employed. In respect of scallops collected by diving, they generally will be taken when placed in the dive bag and certainly when removed from the water. Knowledge and therefore assessment of the catch are not part of the taking. The Court of Appeal took that view that the expanded meaning of “take” in *Loach v Chisholm* to include measurement of the catch was no longer appropriate in the context of the Fisheries Act 1983, given the statutory defence available under section 105 (now found in section 241 of the Fisheries Act 1996). The assessment of the nature of the catch, how and where it is done, and the steps following will be critical to whether the statutory defence is available. Generally the Court of Appeal considered that a diver should be expected to count scallops as they are picked up and placed in the dive bag. It is for the defendant to establish on the balance of probabilities that all reasonable steps were taken to ensure the prohibited act was not done.
- 10 Based on these interpretations of regulation 19 of the Regulations, divers must count and measure their scallops at the first reasonable opportunity. The Courts consider that the first reasonable opportunity for divers to do this will generally be on the seafloor as they are picked up and placed in the dive bag. However it is agreed by recreational fishers that sorting on the seafloor may not be precise, or possible in all situations. Fishery Officers are also expected to exercise reasonable discretion and deal with events on a case by case basis, provided that the person:

- a) Is not unjustifiably in excess of their bag limit; and
- b) Is not in possession of an unjustifiable quantity of undersize scallops; and
- c) Has an opportunity to return any undersize or excess scallops back to the water from which they came, unharmed.

Statement of the Problem and Need for Action

- 11 There is widespread confusion and misunderstanding about how regulation 19 of the Regulations is applied. Recreational fishers are generally under the impression that the Regulations are now interpreted such that divers must count and measure scallops and dredge oysters on the seafloor, regardless of circumstances. Some recreational fishers consider that sorting on the seafloor can be impractical, unfair and dangerous. Recreational fishers do not believe that expecting divers to measure and count scallops and dredge oysters on the seafloor is always reasonable.
- 12 It is not clear to many fishers that MFish recognizes that the seafloor might not be the first reasonable opportunity to sort scallop catches in all situations. It is also not clear that Fishery Officers will look at the circumstances of each event on a case-by-case basis. As recreational fishers are not clear about the application of the regulation, there are widespread feelings of frustration within the sector. This affects the experience of the recreational fisher as well as the relationship between MFish and the recreational sector.
- 13 MFish acknowledges that many recreational fishers currently surface to count and measure their scallop catch. MFish also agrees that current interpretations of the regulations as they apply to diving for scallops and dredge oysters are not clear. It is evident that the lack of clarity is causing problems for recreational fishers.

Preliminary Consultation

- 14 The Minister of Fisheries invited recreational fishers to identify the regulations of greatest concern to them, with a commitment given to review their top ten concerns over a three-year period. The Council identified a series of issues that it feels need to be reviewed as a first step. One of these issues is measuring and counting scallops and dredge oysters on the seafloor.
- 15 MFish has been aware for some time that the requirement for divers to count and measure scallops and dredge oysters on the seafloor causes a great deal of concern. The Minister of Fisheries receives regular correspondence from recreational fishers related specifically to this problem.
- 16 MFish staff met with representatives from the Council on 1 April 2005. The purpose of the meeting was, in part, to clearly define the problems associated with counting and measuring scallops and dredge oysters on the seafloor, and also to discuss the possible and reasonable solutions to the problem.
- 17 Council representatives generally agreed that it is difficult to count and measure scallops and dredge oysters when diving and while it is not acceptable to exceed the bag limit excessively during the taking, it is common to surface with several scallops

and dredge oysters over the bag limit. For example, in the Hauraki Gulf where conditions can be difficult, visibility is generally limited and the substrate is muddy not sandy, it is very easy to lose count of the catch. Council representatives say that it is preferable to return to the vessel to count and measure the scallop catch, and return any undersize or excess scallops and dredge oysters immediately without harm to the shellfish.

- 18 Council representatives acknowledged that the seafloor is the first reasonable opportunity for counting and measuring scallops and dredge oysters and that to reach the surface with numbers of scallops and dredge oysters well in excess of the bag limit could indicate intent to break the law. However, counting and measuring scallops and dredge oysters on the seafloor is not a specific requirement under regulation and Council representatives felt that as a general rule should not be made to apply. Representatives requested that recreational fishers be better informed and educated on this issue to ensure they understand what is required to fish within the law and that interpretations of the law reflect best and realistic practice.

Options for Management Response

- 19 “To take” and “taking” are defined in the Fisheries Act 1996, and have previously been interpreted through case law. The case law commonly holds that taking is complete when the fish is removed from the water and scallops and dredge oysters must be measured at the first reasonable opportunity. If excess or undersize scallops and dredge oysters are removed from the water, a statutory defence is available under section 241(1)(b) of the Fisheries Act 1996 if these excess or undersize fish are to be returned unharmed to the water from which they came. MFish does not consider that a redefinition of “take” or a regulatory amendment is necessary to resolve this problem.
- 20 Amending the regulations would provide an opening for deliberate offending and create difficulties apprehending and prosecuting offenders. The preferred option is to improve education and awareness of the regulation and its interpretations to ensure all recreational fishers who dive for scallops and dredge oysters understand their responsibilities.
- 21 It may also be appropriate to develop a code of practice with recreational fishers expressing suggested “best practice” for fishing, including diving for scallops and dredge oysters. A code of practice would serve to educate and inform recreational fishers on the Regulations and interpretations related to sorting scallops and dredge oysters at the first reasonable opportunity. It would provide clarity to fishers and would also serve to ensure consistent application of the Regulations in different areas.

Statement of Net Benefits and Costs of the Proposal

Benefits

- 22 Recreational fishers are frustrated and confused with the lack of clarity surrounding the legal requirements for counting and measuring scallops and dredge oysters collected by diving. It is important that MFish is able to enforce rules that the recreational sector understands. By raising awareness of the regulatory requirements,

it is expected that recreational scallop divers will consider the requirements reasonable, and will better appreciate and understand their responsibilities.

Costs

- 23 No costs in addition to administrative implications are anticipated.

Administrative Implications

- 24 An education and awareness-raising campaign will require both staff and financial resources. The preparation and distribution of pamphlets similar to the current regulations pamphlets are likely to be the most effective strategy in the long term. Should a code of practice be developed, this will also require staff and financial resources.
- 25 Depending on the outcomes of the other regulatory proposals provided in this review of amateur regulations, administrative costs may be shared. MFish also expects that any education material required for disseminating the outcomes of the other proposals can be compiled together, reducing costs and resources required.

Compliance Implications

- 26 Improved education related to this problem is likely to have positive implications for the relationship between recreational fishers and MFish, and is also expected to improve compliance with the regulations.
- 27 The process of clarifying regulation 19 and its associated interpretations will ensure all MFish staff are clear about the application of the regulations. A code of practice will also assist to achieve this consistency.
- 28 There is a risk to compliance in developing a code of practice, as there may be a discrepancy between policy advice provided through such a code, and situations where fishers are prosecuted. Care must be taken in developing a code of practice, to ensure it doesn't impact or affect the ability of compliance to enforce the regulations. A code of practice must not conflict with case law, nor assist in the interpretation of the regulations (such as defining take in relation to the regulations). The code of practice must simply be based on a suggested best practice, not the bare minimum required to comply with a regulation.

Preliminary Recommendation

- 29 MFish proposes to:
- a) Educate and raise the awareness of recreational fishers on counting and measuring scallops and dredge oysters at the first reasonable opportunity.
 - b) Investigate the possibility of developing a code of practice with recreational fishers that will provide recreational fishers with greater clarity on what activities are considered reasonable.

COUNTING AND MEASURING SCALLOPS AND DREDGE OYSTERS AT THE FIRST REASONABLE OPPORTUNITY –FINAL ADVICE

Initial Proposal

- 1 The Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) are clear about the maximum number and minimum size of scallops and dredge oysters that a person can take but they do not specify at what point they are actually “taken”. The courts have considered that when diving, shellfish are “taken” either when they are placed in the dive bag or removed from the water. The courts have also considered that the first reasonable opportunity for divers to count and measure shellfish should generally be on the seafloor when they are placed in the dive bag.
- 2 Recreational fishers consider that sorting on the seafloor may not be precise, or possible, in all situations. Consequently, there is widespread confusion and misunderstanding about how shellfish regulations are applied.
- 3 The Ministry of Fisheries (MFish) considered in the initial position paper (IPP) that no regulatory amendment is required regarding the taking and possession of scallops and dredge oysters. MFish proposed instead to better inform recreational fishers about counting and measuring scallops and dredge oysters at the first reasonable opportunity. MFish also proposed to investigate the viability of developing a “Code of Practice” with recreational fishers, which will provide greater clarity on what activities are considered reasonable.

Submissions

- 4 The submissions have been summarised into three main categories: support or opposition for measuring on the seafloor, and support for the proposed Code of Practice.
- 5 *Five submissions supported the requirement that scallops should be measured on the seafloor.* Bryn Jamieson, Rod Budd, DK Ransom, Sam Winstone, TV Collings.
- 6 *The following submissions were opposed to the requirement that scallops should be measured on the seafloor.* Barbara Francis, Peter Herbert, Richard Burke, Jon Marwick, David Kelly, Brian Dean, Ross Walker, Nigel Wright, Kevyn and Corinne Moore, David and Ronda Nilsson, Keith Armstrong, Piako Underwater Club, Taranaki Fisheries Liaison Committee, NZ Underwater Association, Stu Marsh, option4, David Short, Reid Quinlan, Jock Woodley, New Plymouth Sportfishing & Underwater, Hartley Family, Kaikoura Boating Club, Nelson Underwater Club, Manukau Sportfishing Club, Todd Robertson, Aaron Murray, Keith Wright, Bruce Tait, Raewyn Parke, B Fisher, NO Tait, John Robertson, Dan Craig, Tony Pugh, Jim Hamilton, Daryl Walsh, Doug Ashford, Geoff Rasmussen, Dave Gulliver, Alan Turner, Graeme Petheric, J McLennan, Rod Harrison and Shane Roberts.

- 7 *The following submissions supported the development of a Code of Practice:* Kaikoura Boating Club Committee, Manukau Sport Fishing Club, Phil Clow, Steve Ryder, Motueka recreational fishers meeting, New Zealand Recreational Fishing Council (NZRFC), Marlborough Combined Divers Association, SeaFIC, Te Ohu, Marlborough Recreational Fishers Association, Royal Forest and Bird Protection Society (Forest and Bird) and ECO.

Issues

Support for measuring on the seafloor

- 8 **Bryn Jamieson, DK Ransom and Sam Winstone** consider that measuring scallops and dredge oysters whilst gathering on the seabed is reasonable under all conditions. However, they consider that it is sometimes difficult to maintain an accurate count of scallops or dredge oysters taken whilst on the bottom especially when diving conditions are difficult due to poor visibility, strong tidal current and when diving with a novice diver, as the taker has to be thinking of various safety issues at all times.
- 9 **TV Collings** believes that divers have ample opportunity to measure on the sea floor. He suggests that currently, many divers gather far in excess of legal allowance bring to the surface to sort and measure. Fishers are frequently in too big a hurry to pick, and so do not measure. The regulations are quite clear and have been widely publicised. TV Collings also considers that compliance will be more difficult if changes are made eg. when to approach, when will be first opportunity, dealing with fishers in an area where quota is 20 but who claim they fished in area where quota is 30.
- 10 **Rod Budd** submits that people should plan their dives to include time to count and measure scallops on the bottom.

Opposition to measuring on the seafloor

- 11 **Peter Herbert** considers that divers should be able to measure on the boat. He says that MFish has agreed that for free-diving the first opportunity to measure was back at the boat. He believes the same should apply to SCUBA divers as the undersize and excess scallops get returned unharmed and there is no impact on sustainability.
- 12 **Richard Burke, Nigel Wright, Nelson Underwater Club, and the Kaikoura Boating Club Committee** consider that it can be very dangerous to measure and count on the seafloor for divers.
- 13 **Jon Marwick, Ross Walker, Kevyn & Corinne Moore and David & Ronda Nilsson, Taranaki Fisheries Liaison Committee, Jock Woodley, New Plymouth Sportfishing and Underwater Club and the Manukau Sport Fishing Club** believe that it is impractical to accurately count and measure scallops on the sea floor and that the shellfish should be measured and counted as soon as is reasonable after the fish are landed in the boat.
- 14 **Brian Dean** considers that it is not always possible or practical to count and measure scallops or dredge oysters on the bottom. He suggests it is also not uncommon for a dive vessel to be in possession of a dredge, allowing all on board to take provided that

they all partake in the operation of taking, hence measuring and counting on the vessel. He questions if a vessel is in possession of a dredge, who is going to determine what fish were taken by divers and not measured and counted on the bottom? He believes the rule ought to be amended to allow scallops and dredge oysters to be measured and counted on the vessel, and any excess and under sized fish returned to the sea as close as possible to where they were taken.

- 15 The NZ Underwater Association (NZUA) considers that there is a major safety problem with divers counting and measuring scallops and dredge oysters on the seafloor. Over Rex Gilbert's (author of the NZUA submission) many years as accident recorder, it became apparent that gathering of scallops was classed as some of the most dangerous activities. He suggests that sometimes the danger was caused by greed, but in most cases the danger came from staying too deep for too long and running out of air or getting into decompression time. He believed that these problems occurred when scallops were scarce and the divers moved deeper to get their legal catch.
- 16 Stu Marsh considers that scallops should be brought to the surface for counting and measuring for health and safety reasons. He notes that it can be very muddy and dirty on the bottom such that a diver can be distracted and loose count. He considers that the boat should not move until counting and sizing has occurred.
- 17 option4 has concerns that the Code of Practice will not legally determine the issue of "take", nor can it interfere with any of the previous judgements on the issue of "take". option4 believes the first reasonable opportunity to measure and count the catch under all circumstances is immediately that the catch is placed in the vessel/boat. This covers fishers who have been diving in murky water, and divers who have been fishing in deep water whose ability to count and measure may have been impaired.
- 18 option4 believes MFish would be better off to allow non-commercial fishers a specific time from the point when the last diver got out of the water or from when the catch bag was put on board to measure and count the scallops. This presents no mortality risk to scallops as they often live in areas where they are exposed at low tide.
- 19 David Short notes that all experienced divers size scallops when they pick them up and would/should automatically reject undersized shellfish. Most times in clear water this is relatively simple. However, he notes that divers are working at depth, sometimes in current, under pressure and the water magnifies the scallops. Logically, the scallops are again measured on the boat with a measure to obtain accuracy, and there is also a second count to ensure the bag limit is not exceeded. This should be clarified and allowed, as measuring on the service/boat is allowed for dredging for scallops.
- 20 Reid Quinlan opposes the proposal to educate people and investigate a Code of Practice. He submits that the following new regulation should be introduced to clarify the existing case law: "A person operating a vessel commits an offence by actively moving the vessel away from the area where scallop collection has occurred, if (a) there are any undersize scallops on board; or, (b) there is an excessive number of scallops onboard the vessel, taking into account the daily bag limits of those onboard." Quinlan also submits that if the rules are not going to be changed, that

freedivers should be advised that the first opportunity for them might be on the surface or at the boat.

- 21 **Quinlan** claims he is aware of the reason for this rule to be enforced – it is about catching those with lots of scallops onboard who are clearly intending to break the rules. However, he suggests the following points need to be considered. SCUBA divers may well mis-count their catch on the bottom and measuring may be not as accurate as possible because of visibility, short sightedness, or lack of stability in the water. If the diver surfaces with one extra scallop, then the diver is technically in violation of the current rules.
- 22 **Quinlan** believes that most divers would surface with one or two over in case they mis-counted on the bottom. Over a 20 minute dive, he suggests that counting to 20 can be difficult if you are distracted, and then you cannot practically tip the scallops out of your catch bag and count them again. Discarding the scallops back onto the scallop bed from a boat, when they have been counted, would seem to do no harm to the shellfish.
- 23 **Todd Robertson, Aaron Murray, Keith Wright, Bruce Tait, Raewyn Parke, B Fisher, NO Tait, John Robertson, Dan Craig, Tony Pugh, Jim Hamilton, Daryl Walsh, Doug Ashford, Geoff Rasmussen, Dave Gulliver, Alan Turner, Graeme Petheric, J McLennan, Rod Harrison and Shane Roberts** support amending regulation 19 to state that nothing is deemed to be taken until it is removed from the water and excess or undersize fish or shellfish shall be returned to the water at the first reasonable opportunity.
- 24 **The Hartley Family** note that when “free-diving”, it can be impossible to count and measure on the bottom without putting life in danger, and this cannot be enforced. They note that most people do not like to break the law, and are frustrated that the laws are not clear enough. That is why there is a lot of paranoia, because people think they will be prosecuted for not counting / measuring on the seafloor.
- 25 **The Piako Underwater Club** considers that the need for more clarity about the regulations is essential. Bringing the odd undersized scallop or a few too many to the surface doesn't represent a crime so long as the sorting and returning of the scallops to the sea is done promptly. The Club's view is that diver safety is paramount, and that if mis-counting and mis-measuring over-ride safety, then accidents will happen.

The Code of Practice

- 26 **The NZRFC** agrees that there is widespread confusion and misunderstanding about how shellfish regulations are applied. It agrees that improved education and awareness of the regulation and its interpretations, is necessary to ensure all recreational fishers who dive for scallops and dredge oysters understand their responsibilities. NZRFC also agrees with the proposal to investigate the viability of developing a “Code of Practice” with recreational fishers, which will provide greater clarity on what activities are considered reasonable.
- 27 **SeaFIC, Te Ohu, Steve Ryder and Phil Clow** agree with developing a Code of Practice on "what is first reasonable opportunity".

- 28 At a meeting of recreational fishers at the **Motueka Yacht Club** there was concern that there is a discrepancy between divers being expected to count and measure on the seafloor, and people sorting their dredge catch on board a vessel. It was also acknowledged that many divers sort their catch on the surface anyway. The group supported the development of a Code of Practice, provided it was easy to access, well publicised, and coupled with a good programme of education.
- 29 The **Marlborough Combined Divers Association** acknowledges that a compliance problem exists when excessive numbers or undersize shellfish are intentionally landed. Better education with clear interpretation and understanding of what can be considered reasonable should be introduced through a Code of Practice.
- 30 The **Marlborough Recreational Fishers Association** supports developing a “Code of Practice” for the taking and possession of scallops and dredge oysters. Such a move will clarify the regulations and how they are interpreted which should lead to a better understanding from recreational fishers of their responsibilities.
- 31 The **Royal Forest and Bird Protection Society** and **ECO** agrees there is a need for clarity in advice on the counting and measuring of scallops and dredge oysters “at the first reasonable opportunity”. The organisations support education and raising the awareness of recreational fishers on counting and measuring scallops and dredge oysters at the first reasonable opportunity. Investigation of the possibility of developing a Code of Practice with recreational fishers is also supported, as this will provide recreational fishers with greater clarity on what activities are considered reasonable. The organisations recognise that Fishery Officers have discretion to act on a case-by-case basis.
- 32 The **Kaikoura Boating Club Committee** supports a “Code of Practice” for counting and measuring scallops and dredge oysters as it is not always safe / practical / or possible to do on the sea floor – the Club is frustrated that the law is not clear.
- 33 The **Manukau Sport Fishing Club** supports the development of a Code of Practice, but has some reservations. The Club notes that because by far the greatest proportion of recreational fishers do not belong to any form of formal organisation that a Code of Practice will be hard to administer and promote. The Club feels that the amendment should be written in regulation to state that scallops and dredge oysters should be measured and counted immediately upon returning to the vessel or before if practical. This makes the vessel over the beds the final place that these species may be legally measured and counted.

Dredging

- 34 At a meeting of recreational fishers at the **Motueka Yacht Club** there was concern that there is a discrepancy between divers being expected to count and measure on the seafloor, and people sorting their dredge catch on board a vessel.
- 35 **Nigel Wright, John Marwick, and Ross Walker** submit that if free divers and people using dredges can sort their catch on the surface, it is only fair that divers do as well.

- 36 option4 submits that non-commercial fishers who are diving present zero risk to the sustainability of the resource, because all of the legal sized scallops would have spawned and diving has a near zero juvenile undersized mortality rate. Option4 suggests that this is unlike commercial fishers who have a 35% mortality rate when the heavy Victorian dredges are used.

Submission Summary

- 37 There was some support for the development of a Code of Practice. Some of these submissions considered that the “first reasonable opportunity” for measuring and counting scallops was once the diver had returned to the boat with the catch.
- 38 Other submissions opposed the requirement that scallops should be counted and measured on the seafloor. These submissions considered that scallops should be counted and measured in the boat as the first reasonable opportunity. These submitters wanted the situation clarified by a regulatory amendment.

MFish Discussion

- 39 MFish considers that the submissions generally reflected the level of confusion that exists amongst fishers as to what the regulations require, and what is reasonable fishing behaviour. Some submissions favoured a regulatory change to make it clear that scallops and dredge oysters taken by divers can be measured and counted in the boat. These submissions identified the difficulties there can be in some situations in counting and measuring scallops and dredge oysters on the seafloor.
- 40 Other submissions considered that education would provide greater clarity as to when it is appropriate to strictly apply the regulation, and when to apply discretion. At this stage, MFish does not favour amending the regulations, as this would provide an opening for deliberate offending, which could then create difficulties apprehending and prosecuting offenders. For example, if the regulations were defined as requested, then there would be no limit on the number or size that a diver could take back to the boat, provided the shellfish were then all sorted and returned (undersize and in-excess) to the sea. MFish does not consider that this sort of regulation change is appropriate.
- 41 The problem is that recreational fishers are generally under the impression that the regulations are now interpreted such that divers must count and measure scallops and dredge oysters on the seafloor, regardless of circumstances. These recreational fishers consider that sorting on the seafloor can be impractical, unfair and dangerous. Recreational fishers do not believe that expecting divers to measure and count scallops and dredge oysters on the seafloor is always reasonable.

- 42 However, MFish recognises that in some situations the seafloor might not be the first reasonable opportunity to sort scallop catches in all situations e.g. very low visibility, fast currents, and strong surge on the seafloor from surface swells. In these situations, Fishery Officers will look at the circumstances of each event on a case-by-case basis. For example, the courts anticipate that Fishery Officers will exercise reasonable discretion in situations when the person:
- a) is not unjustifiably in excess of their bag limit; and
 - b) is not in possession of an unjustifiable quantity of undersize scallops; and
 - c) has an opportunity to return any undersize or excess scallops back to the water from which they came, unharmed.
- 43 MFish intends to investigate the possibility of developing a Code of Practice with recreational fishers suggesting “best practice” for fishing, including diving for scallops and dredge oysters. A Code of Practice would serve to educate and inform recreational fishers on the Regulations and interpretations related to sorting scallops and dredge oysters at the first reasonable opportunity.
- 44 The Code of Practice would need to be consistent with the case law provided by the Courts. It would provide clarity to fishers and would also serve to ensure consistent application of the Regulations in different areas. MFish acknowledges the concern expressed by some fishers that the Code of Practice may rely too heavily on discretion. However, MFish considers that the Code of Practice will be a useful guide for both recreational fishers and for MFish staff.

Conclusion

- 45 MFish considers that it is important to improve education and awareness of the regulation and its interpretations, with the possibility of developing a Code of Practice to ensure all recreational fishers who dive for scallops and dredge oysters understand their responsibilities.

Final Recommendations

- 46 MFish recommends that you:
- a) Agree for MFish to educate and raise the awareness of recreational fishers on counting and measuring scallops and dredge oysters at the first reasonable opportunity.
 - b) Agree that MFish investigate the possibility of developing a Code of Practice with recreational fishers that will provide recreational fishers with greater clarity on what activities are considered reasonable.

ROCK LOBSTER CATCH METHODS –INITIAL POSITION PAPER

Executive Summary

- 1 The combined effect of the broad rock lobster pot definition in regulation 3 and requirements of regulations 25, 25B and 25C in the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) means that, unless a method is specifically authorised or meets specific requirements, the method cannot be used by recreational fishers to take rock lobster. As a result, many of the methods that fishers currently use are unlawful. The Regulations need to be amended to ensure these legitimate methods are recognised.

Proposal

- 2 The Ministry of Fisheries (MFish) proposes to amend regulation 25 of the Regulations to permit the use of bobs and ring pots for catching rock lobster. It is also proposed to amend the Regulations to permit the use of scoop nets to secure fish lawfully taken by any method. Finally, MFish seeks feedback on whether or not the use of hand-held lassoes should be permitted to catch rock lobster while diving.

Background

- 3 As a result of the extended definition of “rock lobster pot” as well as method specifications under the Regulations, many capture methods used in the rock lobster fishery are unlawful. However, these methods have a long history of use and catches by these methods are included in the current TAC.
- 4 In 2003, the National Rock Lobster Management Group (NRLMG) evaluated capture methods and devices used by non-commercial fishers. Advice was sought on the legality of a variety of new and existing methods. The conclusion for methods specific to this paper were as follows:
 - a) Bobbing - this method falls under the definition of a “rock lobster pot” and is therefore unlawful because it lacks escape apertures. Bobbing also falls under the definition of a “net” and is unlawful because baited nets are prohibited;
 - b) Ring potting - both baited and unbaited ring pots are lawful provided they meet the requirements of nets specified in the Regulations. One requirement is that ring pots must have a minimum mesh size of 100mm;
 - c) Hand-held lassoes - this method is unlawful as it falls under the definition of a “rock lobster pot” and lacks the required escape apertures; and
 - d) Scoop nets - this method is unlawful as it falls under the definition of a “rock lobster pot” and lacks the required escape apertures.

- 5 The NRLMG recognised that under current definitions in the regulations, most new methods, and many existing methods, are unlawful. However, in a 2003 discussion paper, the NRLMG advised that it would not endorse any “new and improved” non-commercial capture methods as they may increase recreational fishing pressure. In that paper, the NRLMG also advised that should new methods be reviewed in the future, catching potential should not be enhanced by the use of devices to aid capture. Such devices included lassoes and scoop nets.
- 6 The discussion paper did advise that the NRLMG evaluate methods traditionally used by the sector, but which are not specified in Regulations. Ring potting and bobbing were highlighted in particular. Neither of these methods is considered to be size selective, but both allow undersized, unmeasurable or berried lobsters to be returned to the sea unharmed. In addition it was recognised that both methods have a history of use that is included in current amateur catch estimates and TAC allowances.
- 7 At the time of the review, it was recognised that incorporating these existing methods in the regulations would be problematic. As a result, the NRLMG did not recommend any changes to the regulations be made. Instead, the NRLMG agreed to maintain a watching brief on the use of alternative capture methods, and the desires of the amateur fishing sector for a regulatory review.

Statement of the Problem and Need for Action

- 8 Regulation 25 of the Regulations prohibits certain methods for taking rock lobster and permits others. Rock lobster pots are permitted and are defined in regulation 3 as “... *any pot, whether baited or not, that is capable of catching or holding rock lobsters; and includes any other device capable of catching, holding, or storing rock lobsters*”. If a method is considered to be a rock lobster pot, it must comply with requirements defined in regulations 25, 25B and 25C. Requirements include the type and number of escape gaps incorporated in the pot (regulation 25B).
- 9 The combined effect of the broad rock lobster pot definition in regulation 3 and the requirements of regulations 25, 25B and 25C means that, unless a method is specifically authorised in the Regulations (or it complies with the requirement for escape gaps), the method may not be used by amateur fishers to take rock lobster. As a result, many of the methods that recreational fishers have been using for decades are unlawful. The Regulations need to be amended to ensure legitimate methods that are currently in use, are recognised.

Preliminary Consultation

National Rock Lobster Management Group (NRLMG) (2003 and 2004)

- 10 The NRLMG has previously discussed the possibility of changing the regulations to recognise new and existing rock lobster catch methods. Of primary concern to the NRLMG was that new methods could have the potential to increase catches by the recreational sector. In particular, lassoes and scoop nets were considered to be methods that could enhance recreational catch potential, which may result in the total allowable catch (TAC) allowance being exceeded. As a result of their discussions, the

NRLMG did not recommend that any new or existing methods be recognised in the Regulations.

- 11 MFish considers it important to note that while method controls can be useful tools to ensure sustainable catches, the current regulations for rock lobster were not intended to control a range of methods. Rather, methods are being controlled unintentionally by broad definitions contained within the Regulations. This causes widespread confusion for recreational fishers and makes the Regulations very difficult to enforce.

New Zealand Recreational Fishing Council (2005)

- 12 The Minister of Fisheries invited recreational fishers to identify the regulations of greatest concern to them, with a commitment given to review their top ten concerns over a three-year period. The Council identified a series of issues that it feels need to be reviewed as a first step. One of these issues is rock lobster catch methods.
- 13 MFish staff met with representatives from the Council on 1 April 2005. The purpose of the meeting was, in part, to clearly define the problems associated with methods used for catching rock lobster, and also to discuss the possible and reasonable solutions to the problem.
- 14 Council representatives concurred that any method that can cause damage to lobsters should not be legalised. However, bobbing and ring potting are existing methods widely used by recreational fishers. Catch levels by these methods are already considered in the TAC allowances, they do not enhance capture success and do not harm the fish. Representatives strongly agreed that these methods should be recognised within the regulations.
- 15 Council representatives also agreed that hand-held lassoes should be recognised in the Regulations. Lassoes are an existing method that causes little damage and allows for selective harvesting. In contrast to the views of the NRLMG, they are thought to cause less damage to the lobster than hand gathering and do not improve the catching success beyond that of hand gathering.
- 16 Further, it was recognised that most fishers use a scoop net to assist in the landing of fish already caught. Council representatives disagreed with the NRLMG that scoop nets are a new method for catching rock lobster, pointing out that most recreational fishers have used them for decades. It was also noted that scoop nets were used in a range of fisheries. Representatives agreed that scoop nets should also be recognised as a legitimate landing method in the regulations.

Options for Management Response

- 17 MFish recognises that bobs, ring pots, scoop nets and hand held lassoes are existing methods with their own history of use that is implied in current rock lobster recreational catch estimates and TAC allowances.
- 18 MFish considers that while bobbing may not be size selective, it does not harm the fish and does not increase recreational pressure. Therefore, it is proposed that the current use of bobs be recognised, by permitting their use through a regulatory amendment.

- 19 Ring pots are defined in the Regulations and are permitted under regulation 25(2). However, ring pots also come under the definition of a net and as a result must have a minimum mesh size of 100mm. Ring pots currently used by recreational fishers do not meet this criteria. It is proposed that ring pots with mesh size of less than 100mm be permitted through a redefinition of ring pot in the Regulations.
- 20 Scoop nets are not a primary method of catching rock lobster, they are simply a type of gear used to help land the fish. They are highly unlikely to cause any damage at all to the fish and any excess or undersize catch can be returned to the sea unharmed. Scoop nets are widespread and their use is not specific to recreational rock lobster fishers. Scoop nets were previously permitted to secure fish lawfully taken with a rod and line (section 88 (1) (a) the Fisheries Act 1983), but this provision was not included in the Fisheries Act 1996. MFish proposes to reinstate this provision in the Regulations and extend it to include its use for securing fish lawfully taken by any method.
- 21 Hand-held lassoes are size selective and unlikely to improve catching success over hand gathering. However, there is debate about whether they have the potential to cause damage to the fish, which will impact on a fisher's ability to return undersize fish to water unharmed. One option is to amend the regulations to permit the use of lassoes. Another option is to leave the regulations as they currently stand and wait until better information on lasso-inflicted damage is available. MFish invites stakeholders to consider and provide comments on whether hand-held lassoes should be permitted.
- 22 A full review of the rock lobster regulations will be required subsequent to any amendments resulting from this proposal. As mentioned, the current regulations for rock lobster were not intended to control a range of methods. Methods are actually being controlled unintentionally and this is not an effective, or satisfactory, way of managing a fishery. Further, the rock lobster regulations inadvertently cause problems in other fisheries, such as crab fisheries, or when fishers want to set fish traps.

Statement of Net Benefits and Costs of the Proposal

Benefits

- 23 Many recreational fishers are unintentionally breaking the law because methods commonly used to catch rock lobster are illegal. These methods have not been specifically prohibited. They are unlawful because of the extended definition of "rock lobster pot" and the specific requirements for some methods (e.g. escape gaps for pots, and mesh size for nets).
- 24 The lack of clarity in the regulations regarding what methods are allowed and what methods are unlawful has resulted in confusion amongst recreational fishers and also makes the Regulations difficult to enforce. By amending the Regulations, MFish will remove the ambiguity surrounding some current rock lobster catch methods.

Costs

- 25 No costs in addition to administrative implications are anticipated.

Administrative Implications

- 26 There will be administrative implications associated with amending the Regulations. Resources will be required to make the changes proposed. There will also be resource implications associated with raising public awareness of any regulatory amendments.
- 27 Depending on the outcomes of the other regulatory proposals provided in this review of amateur regulations, administrative costs may be shared. MFish also expects that any education material required for disseminating the outcomes of the other proposals can be compiled together, reducing costs and resources required.

Compliance Implications

- 28 There are unlikely to be any compliance risks associated with this proposal. The proposal is likely to provide Fishery Officers with greater clarity on lawful rock lobster catch methods, making it easier to enforce the Regulations for a variety of fisheries.

Preliminary Recommendation

- 29 MFish proposes to:

- a) Amend the Fishing (Amateur Fishing) Regulations 1986 (the Regulations) to permit the use of bobs for catching rock lobster.

AND

- b) Amend the Regulations to permit the use of scoop nets to secure fish lawfully taken by any method.

AND

- c) Amend the definition of ring pots in the Regulations so they are not required to have a minimum mesh size.

AND

- d) Amend the Regulations to permit the use of hand-held lassoes for catching rock lobster.

OR

- e) Review hand-held lassoes as an acceptable method for catching rock lobster when better information is available regarding damage to fish associated with their use.

ROCK LOBSTER CATCH METHODS –FINAL ADVICE

Initial Proposal

- 1 The combined effect of the broad rock lobster pot definition in regulation 3 and the requirements of regulations 25, 25B and 25C of the Regulations means that, unless a method is specifically authorised or meets specific requirements, the method cannot be used by recreational fishers to take rock lobster. As a result, many of the methods that fishers currently use are unlawful. It was proposed that the Regulations be amended to ensure these legitimate methods are permitted.
- 2 The Ministry of Fisheries (MFish) proposed to amend regulation 25 of the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) to permit the use of bobs and ring pots for catching rock lobster. It was also proposed to amend the Regulations to permit the use of scoop nets to secure fish lawfully taken by any method.
- 3 Two options were proposed for hand-held lassoes. Option 1 was to amend the Regulations to permit the use of hand-held lassoes for catching rock lobster. Option 2 was to review hand-held lassoes as an acceptable method for catching rock lobster when better information is available regarding damage to rock lobster associated with this method.

Submissions

Bobs

- 4 *The following submissions were received in support of permitting the use of bobs to catch rock lobster:* Brian Dean, Bryn Jamieson, Canterbury Sport Fishing Club, D. K. Ransom, Environment and Conservation Organisations of New Zealand (ECO), Hartley Family, Jock Woodley, John Commins, Jon Marwick, Kaikoura Boating Club, Keith Armstrong, Manukau Sport Fishing Club, Marlborough Combined Divers Association Inc., Marlborough Recreational Fishers Association, New Plymouth Sportfishing and Underwater Club Inc, New Zealand Recreational Fishing Council (NZRFC), New Zealand Rock Lobster Industry Council (NZRLIC), option4, Phil Clow, Royal Forest and Bird Protection Society (Forest and Bird), Sam Winstone, Seafood Industry Council (SeaFIC), Steve Ryder, Ted Young, Te Ohu Kai Moana Trustee Ltd (Te Ohu), Todd Robertson, Aaron Murray, Keith Wright, Bruce Tait, Raewyn Parke, B Fisher, NO Tait, John Robertson, Dan Craig, Tony Pugh, Jim Hamilton, Daryl Walsh, Doug Ashford, Geoff Rasmussen, Dave Gulliver, Alan Turner, Graeme Petheric, J McLennan, Rod Harrison, Shane Roberts, Lenny Allred, Harry Trewavas, Darryl Thomas, Sue Rhodes, Greg Goodall, Mike Thompson, Neil McLean, Martyn Barlow, Gordon Aston, Kerry Campbell, Ian Franklin, Trevor Knowles, Ray Frater and Dean Cederman.
- 5 *The following submissions were received opposing the use of bobs to catch rock lobster:* New Zealand Underwater Association.

Scoop nets

- 6 *The following submissions were received in support of permitting the use of scoop nets to secure fish lawfully taken by any method:* Brian Dean, Bryn Jamieson, Canterbury Sport Fishing Club, D. K. Ransom, Environment and Conservation Organisations of New Zealand (ECO), Hartley Family, Jock Woodley, John Commins, Jon Marwick, Kaikoura Boating Club, Keith Armstrong, Manukau Sport Fishing Club, Marlborough Combined Divers Association Inc., Marlborough Recreational Fishers Association, New Plymouth Sportfishing and Underwater Club Inc, New Zealand Recreational Fishing Council (NZRFC), New Zealand Rock Lobster Industry Council (NZRLIC), option4, Phil Clow, Royal Forest and Bird Protection Society (Forest and Bird), Sam Winstone, Seafood Industry Council (SeaFIC), Steve Ryder, Ted Young, Te Ohu Kai Moana Trustee Ltd (Te Ohu), Todd Robertson, Aaron Murray, Keith Wright, Bruce Tait, Raewyn Parke, B Fisher, NO Tait, John Robertson, Dan Craig, Tony Pugh, Jim Hamilton, Daryl Walsh, Doug Ashford, Geoff Rasmussen, Dave Gulliver, Alan Turner, Graeme Petheric, J McLennan, Rod Harrison, Shane Roberts, Lenny Allred, Harry Trewavas, Darryl Thomas, Sue Rhodes, Greg Goodall, Mike Thompson, Neil McLean, Martyn Barlow, Gordon Aston, Kerry Campbell, Ian Franklin, Trevor Knowles, Ray Frater and Dean Cederman.
- 7 *The following submissions were received opposing the use of scoop nets to secure fish lawfully taken by any method:* Rod Budd and the New Zealand Underwater Association.

Ring Pots

- 8 *The following submissions were received in support of amending the definition of ring pots in the Regulations so they are not required to have a minimum mesh size:* Brian Dean, Bryn Jamieson, Canterbury Sport Fishing Club, D. K. Ransom, Environment and Conservation Organisations of New Zealand (ECO), Hartley Family, Jock Woodley, John Commins, Jon Marwick, Kaikoura Boating Club, Keith Armstrong, Manukau Sport Fishing Club, Marlborough Combined Divers Association Inc., Marlborough Recreational Fishers Association, New Plymouth Sportfishing and Underwater Club Inc, New Zealand Recreational Fishing Council (NZRFC), New Zealand Rock Lobster Industry Council (NZRLIC), option4, Phil Clow, Royal Forest and Bird Protection Society (Forest and Bird), Sam Winstone, Seafood Industry Council (SeaFIC), Steve Ryder, Ted Young, Te Ohu Kai Moana Trustee Ltd (Te Ohu), Todd Robertson, Aaron Murray, Keith Wright, Bruce Tait, Raewyn Parke, B Fisher, NO Tait, John Robertson, Dan Craig, Tony Pugh, Jim Hamilton, Daryl Walsh, Doug Ashford, Geoff Rasmussen, Dave Gulliver, Alan Turner, Graeme Petheric, J McLennan, Rod Harrison, Shane Roberts, Lenny Allred, Harry Trewavas, Darryl Thomas, Sue Rhodes, Greg Goodall, Mike Thompson, Neil McLean, Martyn Barlow, Gordon Aston, Kerry Campbell, Ian Franklin, Trevor Knowles, Ray Frater and Dean Cederman.
- 9 *The following submissions were received opposing the amendment of the ring pot definition so they are not required to have a minimum mesh size:* New Zealand Underwater Association.

Hand-Held Lassoos

- 10 *The following submissions were received in support of permitting the use of hand-held lassoos for catching rock lobster:* Bryn Jamieson, Canterbury Sport Fishing Club, D. K. Ransom, Hartley Family, John Commins, Jon Marwick, Kaikoura Boating Club, Keith Armstrong, Manukau Sport Fishing Club, New Plymouth Sportfishing and Underwater Club Inc, New Zealand Recreational Fishing Council (NZRFC), New Zealand Underwater Association, option4, Peter Downes, Sam Winstone, Ted Young, Todd Robertson, Aaron Murray, Keith Wright, Bruce Tait, Raewyn Parke, B Fisher, NO Tait, John Robertson, Dan Craig, Tony Pugh, Jim Hamilton, Daryl Walsh, Doug Ashford, Geoff Rasmussan, Dave Gulliver, Alan Turner, Graeme Petheric, J McLennan, Rod Harrison, Shane Roberts, Lenny Allred, Harry Trewavas, Darryl Thomas, Sue Rhodes, Greg Goodall, Mike Thompson, Neil McLean, Martyn Barlow, Gordon Aston, Kerry Campbell, Ian Franklin, Trevor Knowles, Ray Frater and Dean Cederman.
- 11 *The following submissions did not support permitting the use of hand-held lassoos for catching rock lobster:* Brian Dean, Environment and Conservation Organisations of New Zealand (ECO), Jock Woodley, Marlborough Combined Divers Association Inc., Marlborough Recreational Fishers Association, Nelson Underwater Club, New Zealand Rock Lobster Industry Council (NZRLIC), Peter Herbert, Phil Clow, Rod Budd, Royal Forest and Bird Protection Society (Forest and Bird), Seafood Industry Council (SeaFIC), Steve Ryder, Te Ohu Kai Moana Trustee Ltd (Te Ohu).

Issues

Management process issues

Submissions

- 12 **SeaFIC, Te Ohu** and the **NZRLIC** submit that final advice on the proposed changes should have been sought from the National Rock Lobster Management Group (NRLMG) in its role as the primary source of rock lobster fisheries management advice to the Minister of Fisheries.
- 13 The **NZRLIC** believes that the following comment in the initial position paper (IPP) is incorrect "...as a result of discussions the NZRLMG did not recommend that any new or existing methods be recognised in Regulations". The **NZRLIC** notes that the **NRLMG** was never asked to consider and give advice on any "new" methods other than "snares" and recommended to **MFish** (not to the Minister) that snares not be approved as a legitimate amateur capture method. In addition, the **NZRLIC** states that the **NRLMG** was never asked by **MFish** or by the Minister to consider the regulatory implementation of any other methods. Those matters were discussed directly between **MFish** and amateur sector representatives in a separate working group process set up for the review by the Minister of Fisheries, and the proposals for amendments came directly from that forum

MFish Discussion

- 14 Recreational fishers were invited by the previous Minister of Fisheries to identify the regulations of greatest concern to them, with a commitment given to review their top

ten concerns over a three-year period. Responses to this invitation were limited, however the NZRFC provided you with a series of issues that it felt needed to be reviewed as a first step. You requested that MFish undertake a review of these issues in February this year.

- 15 MFish notes that the NZRFC is an active participant in the NRLMG. MFish also notes that the NRLMG was aware of the issue when it was considered in 2003. MFish understands that the NZRFC briefed the NRLMG about the proposed regulation change. The recreational review was run outside the NRLMG process due to the nature of your commitment to address recreational fishers concerns, and due to timing of the review. All relevant stakeholders have been made aware of the proposals through the IPP, and have been provided with an adequate opportunity to comment on the proposed changes.

Rock lobster regulations

Submissions

- 16 The NZRLIC considers that the current regulations are written with the intention that amateur catch methods be restricted to hand gathering and potting. It believes the various elaborations on “hand gathering” (hooks, wands, bobs, ring-pots, lassoes) have been a consequence of the amateur fishing sector seeking efficiency gains, or of gear and equipment suppliers seeking economic gains. The NZRLC also suggests that the elaborations have been allowed to gain momentum because the current regulations are not worded with sufficient clarity to enable their intent.
- 17 The NZRLIC considers that the regulatory amendment proposals in the current IPP do not address the issue commented on in para 11 – “.... methods are being controlled unintentionally by broad definitions contained within Regulations”. It submits that there is nothing in the IPP to suggest that the Regulations will not continue to contain broad definitions.
- 18 The NZRLIC suggests that the publicity for any possible changes should include reference to existing regulations regarding the possession of illegal rock lobsters, including the requirement to immediately return undersized and egg-bearing rock lobsters to the sea.
- 19 **option4** considers that the regulations for catching rock lobsters were never designed to prevent recreational fishers from taking their legitimate bag limit and that the regulations were to protect the fishery from poaching and unnecessarily high fishing related mortality i.e. restrict the taking of crayfish using a spear gun.
- 20 option4 agrees with MFish that a full review of the rock lobster regulations will be required subsequent to any amendments resulting from the proposal. It submits that the current regulations for rock lobster were not intended to control a range of methods. It believes that methods are actually being controlled unintentionally and this is not an effective, or satisfactory, way of managing a fishery.
- 21 **Todd Robertson, Aaron Murray, Keith Wright, Bruce Tait, Raewyn Parke, B Fisher, NO Tait, John Robertson, Dan Craig, Tony Pugh, Jim Hamilton, Daryl Walsh, Doug Ashford, Geoff Rasmussen, Dave Gulliver, Alan Turner, Graeme**

Petheric, J McLennan, Rod Harrison and Shane Roberts support amending the regulations to permit the use of catch bags to hold rock lobster when diving.

- 22 **John Commins** recommends the new regulation be drafted to include catch bags and protective gloves worn by divers, as technically these are also a “device capable of catching, holding or storing rock lobsters”.

MFish Discussion

- 23 **MFish** remains of the view that the broad definition of what constitutes a rock lobster pot was not intended to serve as a way to control other methods to take rock lobster. The broad scope of the definition creates problems not only in the recreational fishery, but also in the commercial fishery where fish traps and pots are captured by the definition.
- 24 As indicated in the IPP, **MFish** considers that it will be appropriate for a full review of the rock lobster regulations and the broad definition of a rock lobster pot to be conducted in the near future. For example, some submitters consider that catch bags could be classified as a “rock lobster pot” under the broad definition. **MFish** considers that it was not the intention in the Regulations for catch bags to be considered as a rock lobster pot. The purpose of the future review would be to generally allow most methods of taking rock lobster, unless there was good reason (eg. damage, significant sustainability risk) to prohibit a method.

Bobs, ring pots and scoop nets

Submissions

- 25 The **NZRLIC** notes that there is no definition of “bob” proposed in the IPP and that an unequivocal definition is essential. It submits that the amendment must not become an excuse for the use of baited nets or snares.
- 26 **SeaFIC, Te Ohu and NZRLIC** support the use of scoop nets provided they are not used as the primary method for taking rock lobster and they are only used to secure a rock lobster once they have been taken.
- 27 The **Marlborough Combined Divers Association Inc** and the **Marlborough Recreational Fishers Association** consider that the change should make it clear that scoop nets should not be used by a diver to catch rock lobster underwater.
- 28 The **NZRFC** notes that scoop nets are used extensively in other recreational fisheries when landing a fish caught on a rod and line. The primary method of take is the rod and line and the net is used at the final stage purely to secure the landing of the fish. The **NZRFC** believes that if the fish falls off the hook at the stage the net has been introduced then it could be deemed to be “landed” and therefore “taken” by the net in contravention of the law. It submits that such an interpretation would be unacceptable.

MFish Discussion

- 29 There was widespread support and agreement in submissions that bobs, ring pots and scoop nets should be allowed. **MFish** notes that although these methods are not

commonly used (especially bobs and ring pots), there has been a lengthy history of use of these methods in some areas around New Zealand. In addition, MFish considers that these methods are unlikely to cause any significant damage to the rock lobster -probably less damage than lobster caught by divers using their hands.

- 30 Should the Regulations be amended to allow these methods, MFish agrees that care will need to be taken with defining the methods, and defining the acceptable use of scoop nets.

Hand-held lassoes

Submissions

Support for the use of hand-held lassoes

- 31 **Jon Marwick, recreational fishers in the Motueka region, Piako Underwater Club, New Zealand Underwater Association, Steve Hornby, Ted Young, Kaikoura Boating Club, John Commins and the Hartley Family** submit that hand held lassoes should be permitted for taking rock lobster on the grounds that they do less damage to the fish than collecting lobster by hand.
- 32 **Peter Downes, Piako Underwater Club and New Zealand Underwater Association** believe that a lasso allows the return of rock lobster that are carrying eggs, are undersize or soft to their environment with little or no damage.
- 33 **NZRFC, the Hartley Family and the Kaikoura Boating Club** consider that lassoes allow for more selective harvesting.
- 34 **NZRFC** notes that its members have mixed views about the use of lassoes, with some in support and some not, while others appear to be relaxed or share no view. The NZRFC supports the use of hand-held lassoes being legalised, noting that this method has been used for many years and is not designed to injure the fish any greater than if it is caught by hand.
- 35 The NZRFC notes that in a 2003 discussion paper, the NRLMG advised that it would not endorse any “new and improved” non-commercial capture methods as they may increase recreational fishing pressure. The NZRFC does not consider hand-held lassoes to be new or improved and the method is in such little use that it will not increase fishing pressure.
- 36 **Steve Hornby’s** experiences with divers using hand-held lassoes and bare hands to capture rock lobster has shown over the last 12 years that a lot less damage is done to the rock lobster when caught with a lasso than those caught with bare hands. He suggests that rock lobster caught by bare hand usually suffer breakage to the antennae and have legs torn off, whereas lasso-caught rock lobster can be better controlled when caught and transferred to a catch bag in optimum condition without any damage.
- 37 **Ted Young** notes that the correct use of lassoes prevents the higher mortality associated with hand catching. He believes hand catching is inclined to result in lobsters losing legs, claws etc, which is less likely to occur when using a lasso as it becomes possible to actively walk the lobster out of a crevice or hole causing less

damage. From his experience, lassoes are beneficial to the fishery rather than detrimental.

Opposition to the use of hand-held lassoes

- 38 **SeaFIC, Phil Clow, Forest and Bird, ECO, Brian Dean and Steve Ryder** oppose the use of lassoes as they may damage fish.
- 39 SeaFIC believe that hand-held lassoes could enhance recreational catch potential.
- 40 Te Ohu does not support the use of hand-held lassoes as there is currently a lack of information available to assess the potential for this method to cause damage. Te Ohu encourages MFish to resubmit the proposal once more information is available to assess the potential to cause damage.
- 41 The NZRLIC does not support any change that would permit the use of hand-held lassoes. The NZRLIC strongly disagrees with the comment in para 21 of the IPP – “lassoes ... are unlikely to improve catching success over hand gathering”. It believes that the evidence is to the contrary. The method is not acceptable to the NZRLIC for several reasons and the technology of lassoes is so variable that a more rigorous evaluation of the capture device is inevitable given their widespread use. It suggests that the issue must be referred back to the NRLMG for proper evaluation and recommendation.
- 42 **Peter Herbert and Phil Clow** consider that if you cannot catch lobster by hand, then the lobster should be left to go free.
- 43 **Rod Budd** notes it is not difficult to catch lobster without hooks or lassoes and he believes divers should only be able to catch lobster by hand (no tools except a catch bag).
- 44 The **Nelson Underwater Club** notes that various opinions were expressed by its members regarding hand-held lassoes. Some divers believe that they are just a pain in the neck to carry around and if someone wants to use one then good luck to them. The general feeling of the Club is that in the big scheme of things the number of crayfish taken with lassoes or hooks is not huge but banning all implements would be cleaner and easier to manage.
- 45 The **Marlborough Combined Divers Association and Marlborough Recreational Fishers Association** are not convinced that hand-held lassoes do not cause damage to the lobster.

MFish Discussion

- 46 The purpose of the Fisheries Act 1996 is to provide for the utilisation of fisheries resources while ensuring sustainability. MFish views a decision on the use of hand-held lassoes in this context. In submissions there was a mixture of support and opposition for the use of hand-held lassoes. What is apparent from submissions is that hand-held lassoes have been in use in the fishery for some time, albeit that they are not commonly used.

- 47 MFish recognises that the concerns in submissions about sustainability are important. However, under an “output” based fisheries management regime such as the quota management system, the total allowable catch, total allowable commercial catch and recreational allowances are the primary tools used to ensure sustainability. The Minister has set an overall allowance for recreational fishing for the main rock lobster fisheries. Secondary tools such as the recreational bag limit and the size limit are then used to ensure that the overall recreational allowance is not exceeded.
- 48 Recreational fishing research surveys (e.g. telephone/diary, boat ramps) are required to determine the amount of the recreational catch. If the surveys indicate that the recreational allowance has been significantly exceeded and there is a sustainability risk, then you can either increase the allowance or take steps (e.g. bag limit reduction, size limit increase) to reduce the recreational catch.
- 49 MFish is also concerned about the potential for hand-held lassoes to cause damage to rock lobster. Te Ohu considers there is insufficient information to make a judgement. NZRLIC says that hand-held lassoes take a variety of forms and this matter should be referred to the NRLMG as the primary provider of rock lobster advice. However, the majority of submissions from experienced recreational divers who commented on the damage issue considered that hand-held lassoes cause less damage to rock lobsters than taking rock lobsters by hand. MFish is not aware of any research to definitively show whether or not hand-held lassoes cause more damage than hand gathering.
- 50 Industry was also concerned that hand-held lassoes have the potential to increase the overall rock lobster catch taken by the recreational sector. The concern is that an increased recreational catch may then cause sustainability problems. MFish is also not aware of any research to definitively show whether or not hand-held lassoes result in improved catch rates. However, as noted in the IPP, MFish’s view remains that hand-held lassoes are unlikely to significantly improve catching success over hand gathering.

Conclusion

- 51 The combined effect of the broad rock lobster pot definition in regulation 3 and the requirements of regulations 25, 25B and 25C means that, unless a method is specifically authorised in the Regulations (or it complies with the requirement for escape gaps), the method may not be used by amateur fishers to take rock lobster. As a result, many of the methods that recreational fishers have been using for decades are unlawful.
- 52 Most submissions supported a change to the Regulations to allow the use of bobs, ring pots and scoop nets. MFish recognises that these are existing methods with their own history of use that is included in current rock lobster recreational catch estimates and TAC allowances. MFish considers that the methods are unlikely to cause significant damage to rock lobsters and a change to the Regulations is unlikely to result in sustainability risks. However, you may wish to retain the status quo to restrict rock lobster methods to hand gathering and potting.
- 53 Submissions were divided regarding hand-held lassoes. Concern was raised that hand-held lassoes may cause excessive damage to rock lobster and that they have the

potential to increase overall recreational catch. There is no conclusive evidence to indicate whether or not this is the case. However, anecdotal information suggests the risk of damage or increased catch is very low. Should you agree to amend the Regulations to permit hand-held lassoes, MFish consider it is unlikely to create sustainability problems for rock lobster fisheries. However, as for bobs, ring pots and scoop nets, you may wish to retain the status quo to restrict rock lobster methods to hand gathering and potting.

Final Recommendations

54 MFish recommends that you:

- a) Amend the Regulations to permit the use of bobs for catching rock lobster;
- b) Amend the Regulations to permit the use of scoop nets to secure fish lawfully taken by any method; and
- c) Amend the definition of ring pots in the Regulations so that ring pots are not required to have a minimum mesh size.

OR

- d) Retain the status quo and make no changes to the Regulations for the use of bobs, ring pots and scoop nets for catching rock lobster.

AND

- e) Amend the Regulations to permit the use of hand-held lassoes for catching rock lobster.

OR

Retain the status quo and make no changes to the Regulations for the use of hand-held lassoes for catching rock lobster.

COROMANDEL SCALLOP AMATEUR DAILY BAG LIMIT –INITIAL POSITION PAPER

Executive Summary

- 1 Improvements in the stock biomass of the Coromandel scallop fishery lead to in-season increases in the Total Allowable Catch (TAC) for the 2002, 2003 and 2004 fishing seasons. This resulted in increased commercial annual catch entitlement, but no increases in the allowance for non-commercial sectors were provided. Results from the 2005 biomass survey indicate that biomass is again high. Another in-season increase in the TAC is likely for the 2005 season. Recreational fishers feel they have contributed to the rebuilding of the fishery and would also like to benefit from the improvements. An amateur bag limit increase is considered to be the most fair and reasonable way for the recreational sector to share in the benefits of the improved fishery at this time.

Proposal

- 2 The Ministry of Fisheries (MFish) proposes that the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 be amended to set a daily scallop bag limit of 30 in the Coromandel scallop fishery area (an increase from the nationally regulated 20).

Background

- 3 The Coromandel scallop fishery is located between Cape Rodney (in the north) and Town Point (in the south), and includes the Hauraki Gulf, Coromandel Peninsula and the northern part of the Bay of Plenty. Extensive parts of the Hauraki Gulf and many inshore scallop beds within fishery are closed by regulation to commercial fishing. Non-commercial fishing occurs throughout the fishery, however most occurs in those areas closed to commercial fishing.
- 4 The biomass of the Coromandel scallop stock fluctuates from year to year. As a result, the reported commercial catch has varied from a peak of 384 tonnes in 1987 to a low of 6.6 tonnes in 2000. Recruited biomass in any given year cannot be predicted from historical biomass estimates, or even from biomass estimates in the previous year adjusted by catch in the intervening season. As a result, the overall catch limit is determined from the results of dredge and dive surveys undertaken before the start of each fishing season.
- 5 While the Coromandel scallop fishery has traditionally been a variable fishery, there have been concerns for the sustainability of the stock. In 1990 there was a voluntary closure of the fishery when it was feared excessive dredging was impacting on juvenile scallops. Further, biomass and catches steadily declined from the mid 1990's. Measures to assist in rebuilding the fishery included shortening the fishing season and reductions in daily limits.

- 6 Despite previous sustainability concerns, the fishery is evidently rebuilding with recent surveys showing increased stock biomass. These biomass increases have resulted in in-season increases in commercial annual catch entitlement for 2002, 2003 and 2004. The survey for 2004 showed a significant improvement in the fishery. The total survey estimate was nearly double the 1997 estimate, which had been the highest estimate since 1990. As a result, there was a conservative, but substantial, in-season increase in the TAC from 22 to 76 meat weight tonnes for the 2004 fishing season.
- 7 While in-season increases in TAC have been adopted in response to the increased biomass in the Coromandel scallop fishery, to date all of the increase has been made available as annual catch entitlement (with an increased allowance for fishing related mortality in proportion to that increase). MFish has noted in previous reviews that the biomass survey results relate to the scallop beds mainly fished by the commercial sector. To date it has been considered reasonable to allocate any additional yield assessed from the scallop beds mainly fished by commercial fishers to that sector.
- 8 It is recognised that scallop beds outside of the commercial areas have not been surveyed and assessed. However, scallop abundance in these areas is likely to have also increased. In addition, non-commercial fishing can take place throughout the whole fishery area. Increases in stock biomass in any parts of the stock represent potential benefits for all users, including recreational fishers.
- 9 The current recreational allowance is 7.5 tonnes. It is equivalent to the estimate of recreational catch from a telephone diary survey conducted in 1996. Two other estimates of recreational catch are available, one from 1993-94 (8.8 tonnes) and one from 1999-2000 (3.8 tonnes). The average of all estimates is 6.7 tonnes. Given the current recreational allowance is higher than the average of estimates of recreational catch and recent catch estimates in particular, MFish has considered that the current allowance is set at a level that allows for an increase in catch when the stock biomass increases (based on the current bag limit of twenty scallops per day).
- 10 It is not known exactly how an increase in daily bag limit to 30 will affect the overall take of scallops by recreational fishers in a given season. A number of factors such as participation in the fishery, the frequency of fishing and the abundance of scallops on recreational beds will determine this. It is likely that in years of low abundance (as reflected in the baseline TAC for the fishery) recreational catch will remain within the allowance set for the fishery. The absence of legal sized scallops on the beds will in itself limit recreational take. However, it can be expected that in years of increased scallop abundance recreational take will increase.
- 11 MFish has not considered historical equity issues associated with the current shares of the resource. Allowances and TACs were set based on best available information at the time the TAC was last adjusted. If the increase in bag limit is approved, the potential for recreational catch to exceed the base line allowance will need to be taken into account in the annual process of reviewing the TAC and subsequent allocation of annual catch entitlement in the fishery.
- 12 Further, Council representatives have asked MFish to investigate implementing a flexible mechanism to amend bag limits in the circumstance that prolonged periods of low scallop abundance warrant reconsideration of the recreational bag limit.

Statement of the Problem and Need for Action

- 13 The preliminary results for the 2005 survey show that the scallop biomass is high again and a TAC increase for the 2005 fishing season is likely. This will be the fourth year that the commercial fishery has benefited from a rebuild in the fishery, through an increase in the catch limit. Recreational fishers have been involved in helping to rebuild the fishery and there is an increased expectation that this sector should also benefit from the substantial improvement in the stock. Specifically, recreational fishers would like an increase in the current daily bag limit to allow a greater take when fishing.

Preliminary Consultation

- 14 The Minister of Fisheries invited recreational fishers to identify the regulations of greatest concern to them, with a commitment given to review their top ten concerns over a three-year period. The Council identified a series of issues that it feels need to be reviewed as a first step. One of these issues is the Coromandel scallop bag limit.
- 15 MFish staff met with representatives from the Council on 1 April 2005. The purpose of the meeting was, in part, to clearly define the problems associated with the Coromandel scallop bag limit, and also to discuss the possible and reasonable solutions to the problem.
- 16 Council representatives discussed the inequity of only commercial fishers benefiting from the increased biomass in the Coromandel scallop fishery. They considered that an amateur bag limit increase in the fishery would be the most fair and reasonable way for the recreational sector to share in the benefits of the improved fishery.
- 17 Council representatives discussed the appropriate scale of increase in the bag limit and agreed that an increase from 20 to 30 was appropriate. An increase proportional to the recent increases provided to commercial fishers would require an adjustment to the recreational allowance and a very high bag limit to be set. However, the Council representatives agreed that it was not known whether non-commercial areas in the Coromandel fishery could sustain an increase of that magnitude and a more conservative approach was preferred at this stage.
- 18 It was noted that an increase in the scallop bag limit would be relevant to the Coromandel fishery only and would not relate to any other scallop fishery. There is substantial scientific information to support an increase in the recreational bag limit in this area. Should an increase be requested in other fisheries, a similar level of scientific information would be required.

Previous consultation

- 19 While the Council brought this issue to the attention of the Minister in 2004, it is not the first time that the request for an increase in the amateur bag limit in the Coromandel scallop fishery has been made. Previous requests have been made in the annual in-season TAC reviews for the fishery. In the 2004 in-season review, MFish recognised that if there has been a widespread increase in scallop biomass in the surveyed areas, then it is likely that there will have been a similar scallop increase in the areas closed to commercial dredging. However, at the time it was considered that

there would need to be a high level of discussion and informal consultation with the recreational sector about whether or not changes in the bag limits were warranted.

Options for Management Response

- 20 MFish considers an increase in the daily bag limit is a reasonable way for recreational fishers to share in the rebuild of the Coromandel scallop fishery. It is recognised that fishers have the option of fishing more often over the scallop season and thereby collect a greater catch over time. This would require no regulatory intervention to increase the bag limit. However, individuals would prefer to take more fish on any given day rather than have to fish more often. MFish considers it reasonable for recreational fishers to expect a gain from the improved fishery.
- 21 MFish also recognises that an increase in the daily bag limit will likely result in an increase in the overall recreational catch in periods of increased scallop abundance. While the recreational allowance has been set in excess of the average of estimates of recreational catch and well in excess of a recent estimate, this allowance will provide for only limited increases in recreational catches. MFish considers that the risk of the allowance being exceeded is an issue that should be addressed in the annual TAC review for the fishery and the subsequent generation of commercial annual catch entitlement.
- 22 The amateur bag limit for scallops is specified in regulation 19(1) of the Fisheries (Amateur Fishing) Regulations 1986. Under this regulation, the maximum number of scallops that may be taken or possessed by a person on any day is 20. This regulation applies nationally, however exceptions to the national rule apply in different areas. For example, in the Challenger Fishery Management Area a daily bag limit of 50 scallops applies in the Challenger scallop fishery. A similar exception to the rule is proposed for the Coromandel scallop fishery.
- 23 Setting a daily scallop bag limit of 30 for the Coromandel fishery will require an amendment to the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986. The revised bag limit will need to be specific to the Coromandel fishery area.

Statement of Net Benefits and Costs of the Proposal

Benefits

- 24 The Coromandel scallop fishery has improved significantly in recent years. Setting a daily scallop bag limit in the area of 30 will ensure that recreational fishers can share in the benefits of the fishery's rebuild.

Costs

- 25 No costs in addition to administrative implications are anticipated.

Administrative Implications

- 26 There will be administrative implications associated with amending the regulations. Resources will be required to make the changes proposed. There will also be resource implications associated with raising public awareness of any regulatory amendments.
- 27 Depending on the outcomes of the other regulatory proposals provided in this review of amateur regulations, administrative costs may be shared. MFish also expects that any education material required for disseminating the outcomes of the other proposals can be compiled together, reducing costs and resources required.

Compliance Implications

- 28 The proposed daily scallop bag limit of 30 in the Coromandel scallop fishery relates to a defined area within a larger Fisheries Management Area, in which the bag limit will remain at 20. The 'boundary' areas between the management areas are heavily fished. There is a risk that if publicity is not adequate, there may be confusion regarding the applicable bag limit in different areas. There is also some risk that this confusion could result in bag limits in adjacent scallop fisheries being exceeded. This risk can be mitigated by a good programme of public information of which the key message will be 'if uncertain stay within the national bag limit of 20 scallops per day'.

Preliminary Recommendation

- 29 MFish proposes to:
- a) Amend the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 to set a daily scallop bag limit of 30 in the Coromandel scallop fishery area.

COROMANDEL SCALLOP AMATEUR DAILY BAG LIMIT –FINAL ADVICE

Initial Proposal

- 1 Improvements in the stock biomass of the Coromandel scallop fishery led to in-season increases in the total allowable catch (TAC) for the 2002, 2003 and 2004 fishing seasons. This resulted in increased commercial annual catch entitlement, but no increases in the allowance for non-commercial sectors were provided. Results from the 2005 biomass survey indicated that biomass is again high and another in-season increase in the TAC was proposed for the 2005 season.
- 2 Recreational fishers feel they have contributed to the rebuilding of the fishery and would also like to benefit from the improvements in stock biomass. An amateur bag limit increase was considered to be the most fair and reasonable way for the recreational sector to share in the benefits of the improved fishery at this time.
- 3 The Ministry of Fisheries (MFish) proposed that the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 be amended to set a daily scallop bag limit of 30 in the Coromandel scallop fishery area (an increase from the nationally regulated 20).

Submissions

- 4 *The following submissions were received in support of the proposal:* Barbara Francis, Hartley Family, David and Ronda Nilsson, Jon Marwick, Kaikoura Boating Club Committee, Keith Armstrong, Kevyn and Corinne Moore, Manukau Sport Fishing Club, Martin Graeme, New Plymouth Sportfishing and Underwater Club Inc., New Zealand Underwater Association, option4, Otago Recreational Marine Fishers Association, Otago Underwater Diving Club, Peter Herbert, Phil Clow, Piako Underwater Club, South Eastern Fisheries Advisory Committee, The New Zealand Recreational Fishing Council and Whangamata Ocean Sports Club.
- 5 *The following submissions received were not in support of the proposal:* Andrew McLean, Bryn Jamieson, D. K. Ransom, David Short, Environment and Conservation Organisations of New Zealand, Keith Turner, Reid Quinlan, Rod Budd, Royal Forest and Bird Protection Society (Forest and Bird), Sam Winstone, T. V. Collings, Te Ohu Kai Moana Trustee Ltd (Te Ohu), The Seafood Industry Council (SeaFIC) and Whangamata Seafoods.

Issues

Coromandel Scallop Biomass Surveys

Submissions

- 6 Te Ohu, Andrew McLean, SeaFIC, Sam Winstone, D. K. Ransom and Bryn Jamieson submit that the proposal is not supported by stock surveys that have been undertaken within any of the recreational beds. Instead the proposal relies upon annual survey work that is carried out by industry to determine the state of stocks within the commercial beds.
- 7 Te Ohu and SeaFIC note that although non-commercial fishers can fish anywhere, the commercial and non-commercial Coromandel scallop fisheries are, in effect, spatially separated as a result of the exclusion of commercial fishing from large areas of the fishery.
- 8 Whangamata Seafoods, Te Ohu, SeaFIC, Sam Winstone, D. K. Ransom and Bryn Jamieson do not agree that the assumption that the condition of stocks within the commercial beds is similar to those in the recreational beds as there is no scientific evidence.
- 9 Whangamata Seafoods and Andrew McLean submit that a survey of the recreational areas must be done before any changes are proposed. Andrew McLean notes that due to the shallower nature of the recreational beds a survey should be easier and more cost effective than the commercial bed survey.

MFish Discussion

- 10 A research survey of the six main Coromandel scallop beds used for commercial fishing was conducted in May 2005 to inform the in-season review of the TAC. The survey showed that scallop biomass in the Coromandel fishery is significantly higher than it has ever been since surveys began in 1990. MFish recognises that the surveys have been undertaken in the “commercial” scallop beds only, not in the “recreational” scallop beds.
- 11 However, MFish considers that the trends observed in the commercial beds are relevant to the recreational fishery as well. Firstly, all scallops in the area are considered to be a single stock; the commercial beds are not independent from the recreational beds. There is likely to be mixing between the beds and general patterns in abundance are likely to be consistent throughout the area.
- 12 Secondly, while the commercial beds are discrete in the fishery management area, the recreational beds are not. There are areas closed to commercial fishing. Recreational fishers on the other hand can choose to fish anywhere in the fishery, including the surveyed commercial beds. This means that recreational fishers are entitled to fish these beds where biomass increases are evident.
- 13 A survey of the main scallop beds targeted by recreational fishers could be undertaken at the same time the commercial surveys. Inclusion of the recreational areas in the pre-season biomass surveys undertaken for the commercial fishery will be discussed

at the next meeting of the Shellfish Fisheries Research Planning in mid-September. This could include extra scientific surveying of the recreational beds in the Kawau Bay area, the eastern end of Waiheke Island and some of the areas closed to commercial dredging on the eastern side of the Coromandel Peninsula.

Sustainability Concerns

Submissions

- 14 SeaFIC, Whangamata Seafoods, Sam Winstone, D. K. Ransom, Bryn Jamieson, David Short, Forest & Bird and ECO do not believe that the fishery has recovered. It is noted that while this season has seen excellent recruitment, in light of the long-term decline in the fishery it is not appropriate to talk of a recovered or healthy fishery.
- 15 SeaFIC, Sam Winstone, D. K. Ransom and Bryn Jamieson note that the improved stock biomass has not been uniform across the fishery. They submit that the increased scallop numbers in the 2005 survey are largely associated with a single area and numbers have decreased in other area.
- 16 SeaFIC, Sam Winstone, D. K. Ransom and Bryn Jamieson submit that the IPP contains no analysis of how the proposed increase in amateur daily bag limit will affect the overall take of scallops by recreational fishers, or of how that level of take will affect the sustainability of the scallop stocks.
- 17 SeaFIC submits that the fishery that is vulnerable to significant fluctuations in abundance, particularly as it is in a region that is accessible to a very large recreational fishing population.
- 18 T. V. Collings does not think the bag limit should be increased because parts of the area are over fished now and popular dive and dredge spots and are finished for legal harvesting about four months into each season.
- 19 Andrew McLean is a regular diver in the Mercury Bay / Mercury Islands area, and considers that the scallop stocks are much lower this year (2005) than last year (2004). He believes that the beds contain a high proportion of shellfish over the 100mm limit, but that the beds are smaller than last year with less shellfish per square meter.
- 20 Andrew McLean feels that any change to recreational or commercial allowances should be cautious so as to buffer and protect the stocks from the decline that occurred in the 1990's.
- 21 Reid Quinlan considers that as the Auckland and Coromandel population increases, the number of scallops taken from the sea will continue to increase. Increasing the daily limit will amplify population growth related harvesting pressures.

MFish Discussion

- 22 MFish agrees that the Coromandel scallop fishery should not be considered to be 'recovered'. It is important that a cautious approach is taken for the fishery, as it was only recently (2000) that catches were the lowest ever recorded. MFish also agrees

that the fishery is subject to large fluctuations in biomass, which makes it vulnerable to the impacts of over-fishing. However, it is evident that the fishery is improving, with surveys showing the biomass of surveyed beds has essentially doubled each year since 2001.

- 23 MFish also recognises that increases in biomass were not recorded at all sites surveyed. Two out of the six sites showed declines in biomass from the previous (2004) surveys. Despite this, the 2005 survey indicated that the sustainable harvest for the fishery would be in the order of 487 tonnes for the season.
- 24 Stakeholders recommended a cautious approach for the in-season TAC adjustment. As a result, MFish has recommended to you that the TAC for the 2005 season be set at 239 tonnes, half of the estimated sustainable harvest level. While 239 tonnes is lower than the potential harvest, the increase in available annual catch entitlement (ACE) is five times the baseline total allowable commercial catch (TACC). Other allowances are also proposed to increase by a factor of five, including an increase in the recreational allowance from 7.5 to 40 tonnes.
- 25 The current recreational allowance of 7.5 tonnes is higher than the average of the recreational catch estimates. MFish considers that the current allowance is set at a level that allows for an increase in catch when the stock biomass increases, based on the current bag limit of 20 scallops per day. A bag limit increase to 30 scallops is an increase of 50% and if every person harvesting scallops were to take their full bag, the recreational catch could be expected to increase by 50%. This would make the recreational catch 11.25 tonnes when stock biomass is high, which is well below the 2005 recreational allowance of 40 tonnes.
- 26 An estimated increase in the recreational catch from 7.5 tonnes to 11.25 tonnes is unlikely to risk the sustainability of the Coromandel scallop fishery. An increase in the bag limit is also unlikely to encourage more people to fish so the proposal is unlikely to pose sustainability risks through causing an increase in participation.
- 27 However, MFish agrees with submitters that as fixed and transient human populations increase, participation will increase and it is not known whether a bag limit of 30, or even 20 will be sustainable in the long-term. Should annual surveys be conducted in recreational beds as well as commercial beds, there will be adequate monitoring of the fishery to ensure that the take of all sectors is sustainable.
- 28 MFish also notes that some submitters consider several recreational beds to be at risk of depletion already and unlikely to sustain an increase in the recreational bag limit. The risk of localised depletion is a concern in the Coromandel scallop fishery, as it is in most shellfish fisheries. It is unlikely the bag limit increase would have adverse effects at the fishery scale. However, there are risks that some beds, particularly small beds and beds close to urban centres, may be harvested to a point where most fish are smaller than the minimum legal size. It is likely that self-regulation will apply before that stage, however, with fishers moving to more productive beds.
- 29 Different minimum legal sizes apply between recreational (100mm) and commercial (90mm) fisheries. The current 100mm minimum legal size limit is considered to be the critical sustainability measure for recreational scallop beds. MFish considers that recreational fishing effort will self-regulate between scallop beds. As the numbers of

legal size scallops declines either recreational harvest will decline or fishers will move to other beds. At 100mm, a self-sustaining population is likely to always remain on recreational scallop beds.

- 30 Self-regulation also applies in the commercial fishery. A single TACC is set for the whole of the Coromandel scallop fishery based on aggregate estimates of surveyed and un-surveyed beds. The commercial fishery relies on self-regulation to manage its effort between beds as no other rules apply to where catch can be taken (apart from commercial closed areas). In general, fishers move between beds when catch rates of legal sized scallops (90mm in this case) decline to uneconomic levels.

Compliance Risks

Submissions

- 31 Whangamata Seafoods, T. V. Collings, SeaFIC, Sam Winstone, D. K. Ransom, Bryn Jamieson, ECO and Forest & Bird believe the proposal raises significant compliance risks:
- a) Confusion if the limit is raised and then has to be lowered in subsequent years;
 - b) Confusion about bag limits inside and outside the boundary area (which will remain at 20);
 - c) Confusion may result in abuse of the standard twenty bag limit regulation;
- 32 Whangamata Seafoods considers there is not enough compliance activity in the area as it stands. They believe an increase in the bag limit will make enforcement even more difficult, particularly as the population increases significantly at weekend and holiday periods.

MFish Discussion

- 33 The proposed daily scallop bag limit of 30 in the Coromandel scallop fishery relates to a defined area within a larger Fisheries Management Area, in which the bag limit will remain at 20. The IPP noted that the 'boundary' areas between the management areas are heavily fished and that there is a risk that if publicity is not adequate, there may be confusion regarding the applicable bag limit in different areas. The IPP also noted that there is some risk that this confusion could result in bag limits in adjacent scallop fisheries being exceeded.
- 34 Whangamata Seafoods are concerned that the bag limit change will make enforcement even more difficult due to a lack of compliance staff. While MFish recognises that the bag limit change may lead to a certain level of confusion amongst recreational fishers, a lack of compliance staff is not considered to be a problem. The heavily fished 'boundary' areas occur in the Auckland region and the Tauranga region. There are more compliance staff in these regions than there are in the Coromandel Peninsula.
- 35 As discussed in the IPP, the risk of confusion regarding the bag can be mitigated by a good programme of public information of which the key message will be 'if uncertain, stay within the national bag limit of 20 scallops per day'.

Recreational Catch Estimates and Allowances

Submissions

- 36 SeaFIC, Sam Winstone, D. K. Ransom and Bryn Jamieson submit that the estimated levels of recreational catch outlined in paragraph 9 of the IPP are both incorrect and highly uncertain. The IPP gives a figure of 3.8 tonnes for the 99/00 survey, whereas the estimate from that survey was substantially larger at 30.1 tonnes. These submitters believe that this is an error and does not give them confidence in the accuracy and level of internal scrutiny and review of the proposals in the IPP. In addition, they state that the surveys referred to in the IPP are all recognised to have significant flaws. These submitters believe that the Minister should be informed of the high level of uncertainty associated with this aspect of the advice. SeaFIC considers that the statement that “*the current allowance is set at a level that allows for an increase in catch when the stock biomass increases*” should be qualified by that uncertainty.
- 37 SeaFIC is concerned about the relationship between daily bag limit and recreational allowance. SeaFIC is concerned that an increased daily bag limit could potentially drive an increase in the recreational catch allowance. This approach is back to front – the recreational allowance should determine the amateur bag limit. SeaFIC agrees that an increase in daily bag limit should result in an assessment of the risk of the recreational catch exceeding the recreational allowance. If this situation was to eventuate, the response should be to reduce the bag limit. Any increases in recreational allowance at the expense of the TACC should be undertaken only with agreement of the commercial rights holders or through a negotiated compensation arrangement.
- 38 Te Ohu submits that increasing the daily bag limit may worsen the problems that it believes exist with recreational fishing:
- a) Recreational catch estimates are unreliable and it is not known whether the current recreational allowance is sustainable.
 - b) Unlike industry and to some extent customary, there is no system that enables recreational fishing to be monitored.
 - c) MFish has no effective policies in place to constrain the recreational allowance if it is exceeded.

MFish Discussion

- 39 SeaFIC and others question the accuracy and level of internal scrutiny and review of all of the proposals in the IPP. This is because they say that the estimated levels of recreational catch in the IPP are both incorrect and highly uncertain. They say you should be informed of the high level of uncertainty associated with this aspect of the advice.
- 40 Firstly, MFish note that the estimated level of recreational catch in the IPP was not wrong. SeaFIC and others note that the IPP gives a figure of 3.8 tonnes total scallops harvested for the 1999/2000 survey, they believe the estimate from that survey was substantially larger at 30.1 tonnes. Allowances in scallop fisheries, as for many shellfish fisheries, are provided in *meatweight*. *Meatweight* is the weight of the fish

only, and excludes the shell. Most surveys report results in *greenweight*, a combination of the fish and the shell. The 1999/2000 survey reported a total of 30.1 tonnes *greenweight* as the recreational catch estimate for the Coromandel scallop fishery. MFish then converted this number to *meatweight* to determine the recreational allowance. 30.1 tonnes *greenweight* is approximately 3.8 tonnes *meatweight*.

- 41 Secondly, estimated levels of recreational catch for the Coromandel Scallop fishery are obtained from the national recreational surveys. MFish recognises that these surveys may not be entirely accurate. However, MFish does not believe that there are so many uncertainties and inherent problems with these estimates that they cannot be used as the basis for management decisions, provided that they are used with caution. Further, the recreational allowance in the Coromandel Scallop fishery was agreed to when the stock was introduced into the quota management system in 2001.
- 42 SeaFIC are concerned that the bag limit change is driving a recreational allowance change. MFish does not agree with that contention. MFish considers that the bag limit change is unlikely to affect average recreational catches in normal years. However, MFish noted in the IPP that an increase in the daily bag limit is likely to result in an increase in the overall recreational catch in periods of increased scallop abundance. As outlined above, any such increase in catch should still be below the 2005 recreational allowance of 40 tonnes.
- 43 The TAC is reviewed in season. In years of increased abundance, the TAC will be increased for the season. Just as an increase in ACE is made available for commercial fishers, you can increase the recreational allowance so that recreational fishers can take advantage of the good season. The amount that you increase the allowance by will take the current bag limit into account. Contrary to SeaFIC's assertion, this increase in recreational allowance is not made at the expense of commercial fishers, and is undertaken through the normal annual in-season review process, which includes consultation with stakeholders.
- 44 MFish does not agree with Te Ohu's more general comments about the problem it sees in monitoring recreational fishing and constraining recreational catch. MFish has commissioned several research programmes to estimate recreational harvest using a variety of survey techniques in recent years. While there have been questions over the accuracy of some survey findings, this kind of work is subject to ongoing refinement, and has provided information that has been useful for management decisions. Further, controls such as bag limits, size limits, area closures and method restrictions can be effective at constraining recreational catches if required.

Bag Limit Approach

Submissions

- 45 SeaFIC, Sam Winstone, D. K. Ransom and Bryn Jamieson submit that a regulated high daily bag limit is inflexible. Unlike the TACC, which is adjusted on an annual basis, once regulated a high daily bag limit will be difficult to subsequently reduce, requiring further regulatory change.

- 46 SeaFIC and Peter Herbert believe that consideration should be given to retaining a low amateur daily bag limit, and instigating a mechanism for in-season increases based on surveys of abundance in non-commercial areas. This would give the recreational fishing regime the same flexibility as the commercial regime currently has.
- 47 Whangamata Seafoods note that if a bag limit reduction was required for sustainability reasons, it would take too long to implement. They note that for MFish to adjust the TAC each year takes up to three months.
- 48 Reid Quinlan submits that the recreational daily bag limit for scallops is not adjusted frequently for recreational fishers and any change made now may endure for at least several years. There is every chance that the stock will reduce naturally again, in at least one of the next few seasons. Increasing the recreational harvest would be fine in good years, but there will always be some poor years too. He notes that no proposal to regularly review the recreational limit has been suggested and in the absence of regular reviews, the long-term sustainable level of recreational harvest should be adopted. In his view, this is a daily limit of twenty.
- 49 ECO and Forest & Bird do not believe a bag limit increase is required, as recreational fishers will benefit from an increased allowance in the 2005 season and more importantly the awareness that scallops are more plentiful this season. People will go fishing more often if the scallops are as available as predicted.

MFish Discussion

- 50 MFish recognises that a bag limit change is not as flexible as the in-season TAC adjustment used to generate additional ACE for the commercial sector. Should there be a sustainability concern for the fishery, the bag limit could not be reduced quickly using the standard regulatory amendment process. MFish will investigate the possibility of implementing a flexible mechanism to amend bag limits in the circumstance that prolonged periods of low scallop abundance warrant reconsideration of the recreational bag limit. If pre-season surveys are extended to recreational beds, these should give timely warnings of any sustainability issues.
- 51 MFish agrees with ECO and Forest & Bird that recreational fishers can take advantage of the improved season by fishing more often, rather than changing the bag limit. However, as discussed in the IPP, individuals would prefer to take more fish on any given day rather than have to fish more often. Also, some fishers live in inland areas where it is not practical for them to fish more frequently. MFish considers it reasonable for recreational fishers to expect this type of gain from the improved fishery.

Conclusion

- 52 The majority of submissions received were in support of this proposal. An increase in the daily bag limit would allow fishers to benefit from improvements to the fishery, commensurate with in-season increases in ACE for commercial fishers. Importantly, the proposal would allow recreational fishers to take more scallops on a given day, rather than fish more often to take advantage of improvements in the stock.

- 53 However, some submissions were concerned that no surveys have been undertaken in the “recreational” beds, there may be confusion about the bag limits in boundary areas, and a bag limit reduction due to sustainability concerns may take time.
- 54 MFish considers that concerns raised in submissions are manageable and does not consider that the risks could threaten the overall sustainability of the fishery. This is particularly the case as a 100mm size limit applies in the fishery and this measure contributes significantly to ensuring the sustainability of recreational scallop beds. However, you will need to consider the views of stakeholders in support of and in opposition to the proposal.

Final Recommendations

- 55 MFish recommends that you:
- a) Amend the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 to set a daily scallop bag limit of 30 in the Coromandel scallop fishery area.
- OR*
- b) Retain the status quo and make no changes to the existing daily scallop bag limit of 20 in the Coromandel scallop fishery.

POSSESSION OF MUSSELS AND PAUA WITH UBA – INITIAL POSITION PAPER

Executive Summary

- 1 The Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) prohibit the taking and possession of mussels and paua with underwater breathing apparatus (UBA). The prohibition on taking was put in place for sustainability reasons. The prohibition on possession was put in place to assist enforcement of the prohibition on taking.
- 2 New Zealand Recreational Fishing Council (Council) representatives and the Ministry of Fisheries (MFish) consider that the prohibitions may no longer be necessary for mussels and could be removed. The Regulations are considered to provide an unreasonable constraint on recreational activity.
- 3 While the prohibition on taking is still considered to be an important tool for ensuring the sustainability of paua stocks, there is debate about whether the prohibition on possessing paua with UBA is necessary. The Ministry of Fisheries (MFish) invites stakeholders to consider and provide comments on whether the prohibition on possessing paua with UBA should be removed.

Proposal

- 4 MFish proposes to remove reference to mussels from regulation 21 of the Regulations so that this species can be taken by UBA and possessed with UBA.
- 5 It is proposed to retain the prohibition on taking paua using UBA, but consider the removal of the prohibition on possessing UBA while in possession of paua.

Background

- 6 Regulation 21 of the Regulations prohibits the take of mussels and paua with underwater breathing apparatus (UBA). Regulation 21 provides that no person shall:
 - a) Use any underwater breathing apparatus while taking paua or mussels:
 - b) Possess any paua or mussels while in possession of any underwater breathing apparatus:
 - c) Have any paua or mussels in or on any conveyance in or on which there is any underwater breathing apparatus:
 - d) Possess any paua or mussels that the person knows to have been taken when the person taking them was using underwater breathing apparatus.
- 7 The prohibition on taking mussels and paua with UBA was put in place for sustainability reasons. By limiting the effort that could be applied to the fisheries, it

was intended that the stocks were afforded a level of protection by prohibiting the use of UBA.

- 8 The prohibition on possessing mussels and paua with UBA was put in place to assist compliance enforce the prohibition on taking with UBA. It is difficult to determine whether someone has actually taken paua or mussels with UBA without observing the fishing activity, so an important part of enforcing the regulation is the ability to prohibit possession.
- 9 Regulation 21 was reviewed in 1998, when the New Zealand Marine Transport Association (NZMTA) proposed that the regulation be changed to allow fishers in northern New Zealand to possess, but not take, mussels and paua in association with UBA. NZMTA considered that recreational fishers were being unfairly disadvantaged by regulation 21.
- 10 At that time, some industry representatives opposed the proposal, as they believed it would allow recreational fishers to take mussels and paua with UBA. There was concern that this would not be fair for commercial fishers who are prohibited from fishing with UBA. Other commercial representatives supported a change for amateur fishers in the northern region, although they noted that the change would pose some compliance difficulties.
- 11 Non-commercial views on the proposal were mixed. Iwi and recreational fishers that were consulted were supportive, but were concerned about how the prohibition on taking might be compromised. Environment groups were not supportive, as they believed it raised too many enforcement issues.
- 12 MFish at the time recognised that NZMTA's proposal had merit, but believed the proposal was complex and required more public discussion. As a result, MFish recommended that the Minister decline the proposal due to potential enforcement difficulties.

Statement of the Problem and Need for Action

- 13 Some recreational fishers consider regulation 21 to be an unreasonable restraint, particular in the modern environment in which a large number of recreational fishers spend lengthy holidays at sea. For example, if UBA is present on the vessel they are unable to take paua or mussels and have them in their possession even if they have taken the fish lawfully (ie within bag limit and without UBA). Recreational fishers have commented that regulation 21 impacts on the quality of their fishing and boating experiences.
- 14 There are concerns about localised depletion of mussel beds in some areas, such as Mount Maunganui. Nevertheless, there are no longer any significant sustainability risks or poaching concerns for mussels in most areas. In addition, due to the large numbers of mussel farms around the country they are now available reliably, and very cheaply, from supermarkets. MFish considers that a method control for this species is no longer necessary. Bag limits for mussels will still apply around the country and this level of output control is likely to be enough to ensure harvesting of mussels remains sustainable.

- 15 In the southern areas of New Zealand (Wairarapa/Wellington/South Island), there are still very serious sustainability concerns for paua and poaching remains a significant problem. UBA as a method of catch is considered to be a risk to the sustainability of the stock as divers using UBA can fish deeper waters and collect more paua from areas previously regarded as a “reserve” for the stock. The prohibition on possession in these southern areas still assists the enforcement of the prohibition on take.
- 16 Recreational fishers think that regulation 21 imposes a restraint on their activities because the possession of paua and UBA together is unlawful. However, fishing representatives do not wish to increase the sustainability risks in the paua fishery and seek wider comment on the option of retaining the prohibition on using UBA to take paua, but removing the prohibition on possession of paua and UBA together.

Preliminary Consultation

- 17 The Minister of Fisheries invited recreational fishers to identify the regulations of greatest concern to them, with a commitment given to review their top ten concerns over a three-year period. The Council identified a series of issues that it feels need to be reviewed as a first step. One of these issues is the possession of paua and mussels with UBA.
- 18 MFish staff met with representatives from the Council on 1 April 2005. The purpose of the meeting was, in part, to clearly define the problems associated with the possession of paua and mussels with UBA, and also to discuss the possible and reasonable solutions to the problem.

Mussels

- 19 Council representatives expressed concern that regulation 21 still applies to mussels. They advised that is cheaper to buy mussels from the supermarket now, than it is to fish for them. They did not feel there was a sustainability risk to mussel stocks at all, as mussel farms are now common. Regulation 21 as it relates to mussels is outdated and the Council representatives agreed that it is no longer necessary.

Paua

- 20 Council representatives agreed that there are still considerable sustainability concerns for paua and that poaching is still an issue of concern. They do not want the prohibition on taking paua with UBA to be removed because of the sustainability risks this would impose. However the council representatives would like the prohibition on possessing paua with UBA to be removed if, following wider comment, this can be achieved without substantially increasing the sustainability risks in the fishery.

Options for Management Response

Mussels

- 21 MFish recognises that there may no longer be any need to prohibit the take and possession of mussels with UBA. MFish proposes to remove reference to mussels from regulation 21 of the Regulations.

Paua

- 22 The options available in relation to paua are dependant on the risks associated with changing the Regulations. Given the existing sustainability and poaching risks, MFish considers that the prohibition on taking paua with UBA should not be removed.
- 23 MFish recognises that the prohibition on possessing paua with UBA is restrictive for recreational fishers. Removal of the prohibition would rely on recreational fishers continuing to observe the prohibition on taking paua using UBA and fishing within the prescribed bag limit.
- 24 There are risks associated with removing the prohibition on possession, however. The prohibition on taking paua with UBA is a moderately important measure that is helping to ensure the sustainability of the fishery. The prohibition on taking with UBA protects deeper lying paua stocks, which act as a reserve to the stocks closer inshore. Sustainability could be compromised if recreational fishers cease complying with the prohibition on taking with UBA knowing it will be difficult for MFish to enforce.
- 25 There is a chance that the removal of the possession prohibition would encourage new offending in the fishery and / or repeat offending. Nevertheless, removing the prohibition on possessing paua with UBA will not affect serious poachers as they already use any method to take large quantities. The daily bag limit would still be enforceable regardless of how the paua were taken.
- 26 In the southern regions, there are still significant sustainability and poaching concerns. The main risks associated with removing the prohibition on possession are expected to include: an increase in the non-compliance by the recreational public; the wrong message being sent out to recreational fishers about the status of paua stocks; and the need for compliance staff to prove that taking was carried out using UBA, which in reality is impossible in the majority of instances.
- 27 The option to remove the prohibition on possessing paua with UBA from regulation 21 of the Regulations requires consideration of wider stakeholder comment.

Statement of Net Benefits and Costs of the Proposal

Benefits

- 28 Regulation 21 as it currently stands is restrictive, particularly for mussels. Removing reference to mussels from the Regulations and possibly changing regulation 21 for paua will have positive social effects. In particular, people who spend a lengthy time at sea will be able to have paua or mussels in their possession even if UBA is present on the vessel.

Costs

- 29 No costs in addition to administrative implications are anticipated.

Administrative Implications

- 30 There are administrative implications associated with amending the Regulations. Resources will be required to make the changes proposed. There are also resource implications associated with raising public awareness of any regulatory amendments.
- 31 Depending on the outcomes of the other regulatory proposals provided in this review of amateur regulations, administrative costs may be shared. MFish also expects that any education material required for disseminating the outcomes of the other proposals can be compiled together, reducing costs and resources required.

Compliance Implications

- 32 Allowing the possession of paua but still prohibiting the take of paua with UBA will cause compliance difficulties. It will not be possible for Fishery Officers to determine whether or not paua has been taken on UBA, when checked at landing points. The ability to enforce the prohibition on taking paua using UBA will be compromised as a result. Compliance with this rule would rely on self-policing by the recreational sector.

Preliminary Recommendation

- 33 MFish proposes to:
- a) Remove reference to mussels from regulation 21 of the Fishing (Amateur Fishing) Regulations 1986 and allow this species to be taken using UBA.
- AND
- b) Retain the prohibition on taking paua using UBA
- AND
- c) Remove the prohibition on possessing UBA and paua together
- OR*
- d) Retain the prohibition on possessing paua and UBA together

POSSESSION OF MUSSELS AND PAUA WITH UBA – FINAL ADVICE

Initial Proposal

- 1 Regulation 21 of the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) prohibits the taking and possession of mussels and paua with underwater breathing apparatus (UBA). The prohibition on taking was put in place for sustainability reasons. The prohibition on possession was put in place to assist enforcement of the prohibition on taking.
- 2 New Zealand Recreational Fishing Council (NZRFC) representatives and the Ministry of Fisheries (MFish) considered that the prohibitions may no longer be necessary for mussels and could be removed. The Regulations were considered to provide an unreasonable constraint on recreational activity.
- 3 While the prohibition on taking was still considered to be an important tool for ensuring the sustainability of paua stocks, there was debate about whether the prohibition on possessing paua with UBA is necessary. MFish invited stakeholders to consider and provide comments on whether or not the prohibition on possessing paua with UBA should be removed.

Submissions

Mussels

- 4 *The following submissions were received in support of removing the prohibition on taking and possessing mussels with UBA:* Aaron Murray, Alan Turner, B. Fisher, Hartley Family, Bruce Tait, Bryn Jamieson, D. K. Ransom, Dan Craig, Darryl Thomas, Daryl Walsh, Dave Gulliver, Dean Cederman, Doug Ashford, Environment and Conservation Organisations of New Zealand (ECO), Geoff Rasmussen, Gordon Aston, Graeme Petheric, Greg Goodall, Harry Trewavas, Ian Franklin, J McLennan, Jim Hamilton, John Robertson, Jon Marwick, Kaikoura Boating Club, Keith Armstrong, Keith Wright, Kerry Campbell, Lenny Allred, Manukau Sport Fishing Club, Marlborough Combined Divers Association Inc., Marlborough Recreational Fishers Association, Martyn Barlow, Mike Thompson, N. O. Tait, Neil McLean, Nelson Underwater Club, New Plymouth Sportfishing and Underwater Club Inc, New Zealand Underwater Association, option4, Otago Recreational Marine Fishers Association, Otago Underwater Diving Club, Piako Underwater Club, Quenton Stephens, Raewyn Parke, Ray Frater, Reid Quinlan, Rod Budd, Rod Harrison, Royal Forest and Bird Protection Society (Forest and Bird), Sam Winstone, Seafood Industry Council (SeaFIC), South Eastern Fisheries Advisory Committee, Steve Ryder, Stu Marsh, Sue Rhodes, Te Ohu Kai Moana Trustee Ltd (Te Ohu), The New Zealand Recreational Fishing Council, Todd Robertson, Tony Pugh and Trevor Knowles.

5 *The following submissions were received in support of removing the prohibition on possessing mussels with UBA:* Betty McNabb, Brian Dean, Keith Turner, Mark Armstrong, Peter Herbert and Ross Walker

6 *The following submissions did not support the removal of the prohibition on taking and possessing mussels with UBA:* Barbara Francis, Canterbury Sport Fishing Club, Jock Woodley, Phil Clow, T. V. Collings, Te Runanga o Ngai Tahu (Ngai Tahu), The Motunau Fishermens Association, The Taranaki Fisheries Liaison Committee, Whangamata Ocean Sports Club

Paua

7 *The following submissions were received in support of removing the prohibition on possessing paua with UBA:* Brian Dean, Canterbury Sport Fishing Club, Darryl Thomas, Dean Cederman, Gordon Aston, Greg Goodall, Harry Trewavas, Ian Franklin, John Marwick, Kerry Campbell, Lenny Allred, Manukau Sport Fishing Club, Martyn Barlow, Mike Thompson, Neil McLean, New Zealand Recreational Fishing Council, New Zealand Underwater Association, option4, Otago Recreational Marine Fishers Association, Otago Underwater Diving Club, Pete Saunders, Ray Frater, Reid Quinlan, South Eastern Fisheries Advisory Committee, Steve Ryder, Stu Marsh, Sue Rhodes, and Trevor Knowles

8 *The following submissions did not support the removal of the prohibition on possessing paua with UBA:* Aaron Murray, Alan Turner, B. Fisher, Barbara Francis, Betty McNabb, Hartley Family, Brent Davies, Bruce Tait, Bryn Jamieson, D. K. Ransom, Dan Craig, Daryl Walsh, Dave Gulliver, Doug Ashford, Environment and Conservation Organisations of New Zealand (ECO), Geoff Rasmussen, Graeme Petheric, J McLennan, Jim Hamilton, Jock Woodley, John Robertson, Kaikoura Boating Club, Keith Armstrong, Keith Wright, Mark Armstrong, Marlborough Combined Divers Association Inc., Marlborough Recreational Fishers Association, N. O. Tait, Nelson Underwater Club, New Plymouth Sportfishing and Underwater Club Inc, Paua 2 Industry Association Inc (Paua 2), Paua Industry Council Ltd (PICL), PauaMAC 4, PauaMAC 5, PauaMAC 7, Peter Downes, Peter Herbert, Phil Clow, Quentin Stephens, Raewyn Parke, Rod Budd, Rod Harrison, Royal Forest and Bird Protection Society (Forest and Bird), Sam Winstone, Seafood Industry Council (SeaFIC), T. V. Collings, Te Ohu Kai Moana Trustee Ltd (Te Ohu), Te Runanga o Ngai Tahu (Ngai Tahu), The Motunau Fishermen's Association, The Taranaki Fisheries Liaison Committee, Todd Robertson, Tony Pugh and Whangamata Ocean Sports Club.

Issues

Mussels

Submissions

9 Ngai Tahu, Te Ohu, Phil Clow and Mark Armstrong have concerns for the sustainability of local mussel beds and that localised depletion will be accelerated with the use of UBA.

- 10 Te Ohu notes, however, that local sustainability problems can be taken care of through other, more appropriate, interventions.
- 11 Mark Armstrong submits that there is clearly a lucrative market for live mussels, which will be easily accessed by poachers if use of UBA is lawful and harvest in quantity is made easier.

MFish Discussion

- 12 MFish recognises that there are concerns for the sustainability of mussel beds in some areas. However, limiting effort through the prohibition of UBA is unlikely to be an important management tool for mussels. The primary sustainability tool for mussels is the daily bag limit² and this will still apply if the UBA prohibition is removed.
- 13 MFish considers it unlikely that the harvesting of mussels will increase if the prohibition is removed. It is doubtful that people will participate in the fishery just because they can use UBA. Live mussels, mostly grown on marine farms, are available cheaply, reliably and easily from most supermarkets around New Zealand. People are more likely to continue purchasing their mussels, than be encouraged to dive for their catch instead.
- 14 Sustainability concerns for mussels generally occur on a very localised scale. Changes to method restrictions over the large scale of fishery management areas are unlikely to be effective or responsive to these fine scale sustainability concerns. MFish concurs with Te Ohu that local sustainability problems for mussels can be managed in more appropriate ways than generalised method restrictions. For example, there are provisions in the Fisheries Act 1996 for managing local issues, such as temporary closures that protect specific species in specified areas.
- 15 MFish does not consider that lifting the prohibition will encourage poaching. As mentioned, mussels are extremely cheap and easy to access from supermarkets, and are generally larger and in better condition than those from wild populations. As a result, a poor economic return and the risks of being caught make poaching unlikely for wild mussel populations. More importantly, the bag limit and associated fines for exceeding the bag limit are more realistically the primary deterrents for poaching activity.

Paua

Compliance Concerns

Submissions

- 16 Bryn Jamieson, D. K. Ransom, Sam Winstone, Phil Clow, Te Ohu, The Kaikoura Boating Club, PICL, PauaMAC 2, PauaMAC 4, PauaMAC 5, PauaMAC 7, Quenton Stephens, SeaFIC, Ngai Tahu, Rod Budd and Peter Downes consider that the removal of the prohibition on possessing paua with UBA would make it impossible to enforce the prohibition on taking paua with UBA. Illegal

² The national daily bag limit for mussels is 50 per person. A daily bag limit of 25 applies in the Auckland Coromandel Area and Southland Fishery Management Area.

fishing is likely to increase because of the lack of ability to detect whether or not a person's catch has been taken by legal means.

- 17 PauaMAC 5 submits that the law is currently unambiguous. If the law is changed, then MFish enforcement officers will need to put in extensive surveillance to catch lawbreakers. There will always be a defence for divers to simply deny UBA was used at the time. It seems unlikely to them that such a regulation would be enforceable in real terms.
- 18 PauaMAC 7 submits that the proposal will significantly raise the cost of effective compliance. The PAU7 commercial stakeholders already contribute towards the cost of compliance and question how the increased compliance work needed would be funded.

MFish Discussion

- 19 MFish recognises that the ability to enforce the prohibition on taking paua with UBA is to some extent reliant on the prohibition on possession. Unless Fishery Officers witness divers surfacing with UBA and paua, it will be difficult to determine how the paua was actually taken.
- 20 The prohibition on possession is unlikely to discourage poachers using UBA to harvest for the black market because the penalty (\$250) is outweighed by returns on the illegal product. MFish believes poachers will use UBA to harvest paua with or without restrictions on possession. Compliance and enforcement associated with this type of activity is better directed towards more effective deterrents including fines related to possession of excess fish (up to \$20,000) and imprisonment.
- 21 However, the prohibition on possession is probably useful for discouraging small-scale illegal operators using UBA to catch paua within the amateur bag limit with the intent to sell. MFish acknowledges that relaxing the possession rule will make it easier for these fishers to use UBA to harvest paua. In context of the impact of illegal activity in the paua fishery however, small-scale illegal operations do not compare to large scale poaching, and, as discussed above, MFish does not believe the possession prohibition is an effective deterrent against large scale poaching.
- 22 Additionally, MFish consider that allowing people to possess paua with UBA may encourage some recreational fishers to break the law. Most recreational fishers abide by existing regulations, including bag limits, size limits and method and area restrictions. There will be some people however, who will be tempted to take paua with UBA in the hope that they will not be detected.
- 23 If the proposal to remove the possession prohibition resulted in increased small-scale illegal activity, or increased non-compliance by recreational fishers, then additional compliance activity would be required. For example, improved coverage of vessels at sea would be necessary to gauge whether UBA was being used to take paua. If that situation arose, a careful cost-benefit analysis would be required, as any change in compliance activity would need to be cost effective.

Sustainability Concerns

Submissions

- 24 **The Marlborough Combined Divers Association, the Marlborough Recreational Fishers Association, ECO, Forest and Bird, Bryn Jamieson, D. K. Ransom and Sam Winstone, The Kaikoura Boating Club, PICL, PauaMAC 4, PauaMAC 7, SeaFIC and Te Ohu are concerned that any change to the Regulations would have a serious effect on the sustainability of the fishery.**
- 25 ECO and Forest and Bird submit that the current restriction on paua allows paua to occur in areas below free diving depths and reduces the chance of all paua being serially stripped from an area.
- 26 PICL note that low-mobile invertebrate species are highly vulnerable to overexploitation, especially those in shallow water that are highly accessible.
- 27 Bryn Jamieson, D. K. Ransom, Sam Winstone and SeaFIC consider that the proposal is surprising given the serious sustainability concerns that exist in many of the paua fisheries. They submit that the inconvenience suffered as a result of regulation 21 by recreational fishers during their “lengthy holidays at sea” is trifling in comparison with the added risk to the sustainability of paua fisheries.
- 28 PauaMAC 7 notes that the change requested by the recreational sector to allow the possession of UBA and paua together is asked for purely as a matter of convenience during “lengthy holidays at sea”. The sustainability of the PAU7 fishery is a serious issue and should not be trifled with for such an inconsequential reason.

MFish Discussion

- 29 Some submissions received consider that removal of the possession prohibition will encourage fishers to harvest paua using UBA. MFish agrees that if fishers were encouraged to harvest paua using UBA, paua catches would increase and the amount of fish taken from deeper parts of the fishery would also increase.
- 30 MFish considers that most recreational fishers currently abide by the regulations and are not tempted to take paua with UBA. However, when opportunities present themselves to take paua using UBA some fishers may offend. It is not known how much catches could increase by. Catches higher than the existing TAC would impact on the sustainability of all paua fisheries. Therefore, the sustainability risks related to recreational fishing are increased by this proposed measure to a moderate level of risk.
- 31 MFish does not believe that sustainability risks caused by large scale poaching activity will necessarily increase because poachers by definition have uninhibited access to the resource. The deterrent against large scale poaching is not the small fine associated with the use of UBA, but the large fines and potential imprisonment provided under the Fisheries Act 1996.
- 32 MFish considers the greatest sustainability risk is increased take by small-scale illegal operators who make a profit from the amateur bag limits. It is possible that these illegal operators could be encouraged to take their bag limit more often due to the ease of harvesting with UBA. MFish does not have any information to quantify the current

level of this kind of take. As a result, the actual risk posed by an increase in small-scale illegal operations is not known.

Recreational Take

Submissions

- 33 Te Ohu, PICL, Paua 2 and PauaMAC 4 consider that the proposal to allow the possession of paua with UBA has the potential to significantly increase recreational take.
- 34 Te Ohu considers that there is likely to be a significant increase in the recreational catch as a result of fishers being able to possess UBA and paua together.
- 35 Te Ohu also considers that there is no ability to monitor recreational catches. The government has no policy in place to ensure recreational allowances are not exceeded. The principal means of managing catch is through bag limits, size limits and method controls.
- 36 PICL submits it is premature to significantly increase potential recreational take before the impacts of such actions on the sustainability of stocks can be assessed.
- 37 PICL is concerned at the overall lack of constraint of the recreational catch. Minimum legal size limits and bag limits are the principle means used to constrain catches but these are regularly abused by recreational fishers and MFish needs to be prepared to treat recreational catch the same as commercial and limit extraction to that allowed for within the total allowable catch. This will require robust monitoring to provide information that enables managers to take action if and when the recreational allowance is exceeded.
- 38 PauaMAC 4 considers that a central concern is the absence of constraints placed on amateur fishing to ensure that the recreational allowance is not exceeded. Other management issues include:
- a) Difficulties in controlling recreational catch;
 - b) The absence of monitoring recreational catch;
 - c) A lack of reliable information about recreational catch; and
 - d) Difficulties in enforcing existing regulations.
- 39 PauaMAC 4 considers the nature of amateur fishing does not support a co-ordinated approach to self-policing; self-policing relies on individuals to act with integrity and self-restraint. PauaMAC 4 considers that the temptation to use UBA rather than a snorkel would be too great and therefore it is imperative that the possession of UBA and paua is prohibited.
- 40 PauaMAC 7 notes that the current estimated level of illegal take and the policing of the illegal take of paua using UBA is already a challenge in its area and will rise as recreational participation is expected to increase.

- 41 Paua 2 considers that the problem for in New Zealand is the lack of credible knowledge of the recreational catch and hence the lack of meaningful constraint of the recreational catch.
- 42 Paua 2 notes that missing in the IPP were figures on the number of UBA divers. Given the history of non compliance with recreational rules and the impossibility of effective compliance of the proposed change in UBA/paua regulations, Paua 2 submits that the extra take of paua would be in proportion to the numbers of divers taking crayfish.
- 43 Paua 2 submits that problems in estimating recreational take could be solved where an abalone diver must first purchase a license or coupon to take a set number of abalone. If this was done, Paua 2 submits it would not matter so much how paua are caught from a sustainability perspective as the number of coupons would be limited to ensure sustainability.

MFish Discussion

- 44 As discussed already, MFish does not believe that all recreational fishers who currently abide by the rules will be tempted to break the law if the regulation was changed. There may be a small risk that people who currently offend will be further encouraged to do so and will do so more frequently. There may also be an increase in some additional opportunistic take by recreational fishers. This could result in an increased recreational catch.
- 45 A further scenario that might result in increased recreational catch of paua is where fishers elect to take UBA on fishing expeditions (e.g. for rock lobster) and therefore currently cannot fish for paua. The removal of the possession prohibition will allow them to fish for paua (without UBA) on the same fishing expedition. This may well increase the frequency of fishing by recreational fishers for paua and hence the total take.
- 46 MFish considers that if the regulation were to result in increased illegal activity, it would mostly be due to small-scale illegal operators that catch with amateur bag limits with the intent to sell. MFish does not consider this kind of activity to be recreational fishing. Therefore, any increases in catch by small-scale illegal operators will not increase recreational take.
- 47 Industry are concerned that recreational catches are essentially unknown, unmonitored and unconstrained. MFish does not agree with this assertion. MFish has commissioned several regional and national research programmes to estimate recreational harvest. Due to a methodological error the results of some surveys are now considered to be unreliable, and some survey results are implausibly high. While the surveys give unreliable estimates of absolute catch they nevertheless give an order of magnitude of catch that was not previously available. They also allow for relative comparisons between different stocks.
- 48 While there have been questions over the accuracy of some harvest estimates, the surveys have provided information that has been useful for management decisions. For example it allows judgement of the relative scales of the commercial and recreational fisheries. In general, recreational take of paua is estimated to be

significantly less than commercial take. Further, bag limits, size limits and method and area closures all contribute to constraining recreational catch.

Consultation Issues

Submissions

- 49 The PICL views this IPP as outside the process of responsible management. It was preceded by no constructive dialogue, is accompanied by no robust assessment of the impacts these changes are likely to have on stocks, and left unchallenged has the potential to set dangerous precedents. The PICL believe it has come completely out of left field, is inconsistent with the Ministry's Statement of Intent and contradicts the sustainability requirements of the Fisheries Act.
- 50 SeaFIC and the PICL note that last year the Minister of Fisheries convened a Joint Paua Fishery Working Group that has prepared a compliance risk assessment for the paua fisheries and developed recommendations for the Minister on a compliance strategy to effectively constrain IUU fishing of paua. No contact was made with the Joint Working Group over this IPP and that is very disappointing, as the initiative to remove the prohibition of possessing paua with UBA has enormous compliance implications.

MFish Discussion

- 51 The previous Minister of Fisheries asked recreational fishers to identify the regulations of greatest concern to them, with a commitment given to review their top ten concerns over a three-year period. Responses to this invitation were limited. However the NZRFC provided you with a series of issues that it felt needed to be reviewed as a first step. You requested that MFish undertake a review of these issues in February this year.
- 52 The review was run outside the normal stakeholder working group process due to the nature of your commitment to address recreational fishers concerns, and due to timing of the review. All relevant stakeholders have subsequently been made aware of the proposals through the Initial Position Paper, and have been provided with an adequate opportunity to comment on the proposed changes to regulation 21. The issues highlighted here as requiring your consideration are all based on stakeholders' comments and concerns identified in their submissions.

Benefits of the proposal

Submissions

- 53 **Manukau Sport Fishing Club, Lenny Allred, Harry Trewavas, Darryl Thomas, Sue Rhodes, Greg Goodall, Mike Thompson, Neil McLean, Martyn Barlow, Gordon Aston, Kerry Campbell, Ian Franklin, Trevor Knowles, Ray Frater and Dean Cederman** note that size and number restrictions are already in place for paua and these have more importance for the viability of the species than method of harvest. They consider that poachers will continue to poach whatever the regulations are and relaxing the prohibition will not encourage further poaching. **Reid Quinlan**

notes that few poachers are being caught under the current regulations and if they are caught they will be way over the limit or will have undersize paua anyway.

- 54 Reid Quinlan submits that on large vessels, it is likely people have UBA on board as a matter of course and this does not demonstrate intent to break the law.

MFish Discussion

- 55 MFish considers that the bag limit and minimum legal size restrictions are generally the most important and effective management tools for recreational species. Paua are a unique species, however, and the prohibition on taking paua with UBA is considered to be of equal importance to other controls. This is because of the value of protecting some of the stock from harvest and because of the deterrence for over harvesting.
- 56 MFish agrees that allowing possession of paua with UBA is unlikely to encourage further serious poaching, as it is likely that these offenders will take paua illegally whatever the regulations specify. However, there is a moderate risk that small-scale illegal operations will be made easier if the regulation is changed. This is due to potential difficulties in enforcing the prohibition on take and the possibility of increased take within changed rules (where fishers are deterred from taking paua because they are in possession of UBA).

Removal of 'take' from the regulations

Submissions

- 57 **Manukau Sport Fishing Club** considers the prohibition on taking paua with UBA should also be removed. They submit that a diver on UBA may have more time to correctly measure the paua before removing them from the sea, ensuring better survival than presently.

MFish Discussion

- 58 MFish agrees that fishers may be better able to judge legal sizes if they were able to use UBA. They may also be better able to remove paua safely and without damage when they use UBA as it gives them more time underwater. The Plenary reports that large numbers of paua gathered commercially are undersized and must be returned to the sea, a substantial proportion of which do not survive.
- 59 However, there is a trade off between the benefits of using UBA for safer harvesting purposes and the risk of increased effort involved in allowing paua to be harvested with UBA. MFish does not consider that this prohibition should be removed without further consideration and consultation.

Conclusion

- 60 Some recreational fishers consider regulation 21 to be an unreasonable restraint, particular in the modern environment in which a large number of recreational fishers spend lengthy holidays at sea. For example, if UBA is present on the vessel they are unable to take paua or mussels and have them in their possession even if they have taken the fish lawfully (ie within bag limit and without UBA). Recreational fishers

have commented that regulation 21 impacts on the quality of their fishing and boating experiences.

- 61 MFish considers that there is no longer any need to prohibit the possessing and taking of mussels with UBA. The bag limit is the most important management tool for the species and a restriction on the use of UBA is unlikely to assist in dealing with localised sustainability concerns. However, some submitters have raised concerns that mussel harvesting will increase should the prohibition on the use of UBA be removed from regulation 21, exacerbating sustainability concerns. While MFish considers it unlikely that sustainability concerns for mussels will occur as a result of the intended amendment, you need to be aware of the risks involved in changing regulation 21.
- 62 In contrast, the prohibition on taking paua with UBA plays an important role in the management of paua. Removing the prohibition of possessing paua with UBA may have the following impacts:
- a) A compromise in the enforcement of the prohibition on take;
 - b) An increase in illegal activity due to small-scale poachers and to some additional opportunistic take by some recreational fishers; and
 - c) An increase in take by recreational fishers who will now be able to take paua when on fishing trips for other species like rock lobster.
- 63 All of these impacts may result in an increase in the overall amount of paua caught which, in turn, has implications for the sustainability of stocks. You need to consider the benefits in improving the recreational fishing experience balanced with the costs of potentially increasing the sustainability and poaching risks for paua.

Final Recommendations

- 64 With respect to mussels, MFish recommends that you:
- a) Remove reference to mussels from regulation 21 of the Fishing (Amateur Fishing) Regulations 1986 and allow this species to be taken and possessed with UBA.
OR
 - b) Retain the status quo and make no changes to regulation 21 for mussels.
- 65 With respect to paua, MFish recommends that you:
- a) Retain the prohibition in regulation 21 on taking paua using UBA
- AND
- b) Remove the prohibition in regulation 21 on possessing UBA and paua together
OR
 - c) Retain the status quo and make no changes to regulation 21 for paua.

SHUCKING OF SCALLOPS AND DREDGE OYSTERS AT SEA –INITIAL POSITION PAPER

Executive Summary

- 1 The possession of unmeasurable shellfish (i.e. shucked) below the mean high water mark is prohibited under regulation 20 of the Fishing (Amateur Fishing) Regulations 1986 if a minimum size limit applies to the shellfish. This regulation was put in place to help enforce shellfish minimum sizes because shellfish sizes apply to the length or width of the shell.
- 2 In the case of scallops and dredge oysters, recreational fishers find regulation 20 impractical and not in keeping with modern boating practices. The Ministry of Fisheries (MFish) recognises that the regulation is restrictive and limits the potential enjoyment of the fishing experience. On the basis that compliance with key rules relating to bag and size limits will be maintained, MFish considers that this prohibition can be removed for scallops and dredge oysters.

Proposal

- 3 MFish proposes to amend regulation 20 of the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) to allow the possession of shucked scallops and dredge oysters on board a vessel. The requirement that scallops and dredge oysters are landed from any fishing vessel in a measurable state will remain.

Background

- 4 Regulation 20 of the Regulations provides that no person shall (a) possess seaward of the mean high-water mark; or (b) land from any fishing vessel; any shellfish to which a minimum length restriction applies, in such a state that it cannot be measured.
- 5 Regulation 20 was put in place to help enforce the minimum size regulation for relevant shellfish. All minimum sizes for shellfish relate to the shell size. The regulation ensures that Fishery Officers can check for undersize shellfish when they inspect recreational catches.
- 6 Minimum size limits are important management tools for ensuring that juvenile fish are protected and individuals have a chance to reproduce before they can be fished. Size limits are widely used and help to ensure the sustainability of many fish stocks, including shellfish such as paua, scallops and dredge oysters.

Statement of the Problem and Need for Action

- 7 The minimum size limit remains an important tool for managing shellfish. However, regulation 20 means that when people on board a vessel collect shellfish to which a size limit applies, they must take their catch back to land, shuck and eat the shellfish while they are on land, then return back to their vessel. Part of the modern

recreational experience, in which people holiday at sea, is the ability for fishers to eat shellfish on board their vessels.

- 8 For paua, where there are significant sustainability and enforcement issues, regulation 20 remains an important component for ensuring that minimum sizes are not breached. For scallops and dredge oysters, however, MFish considers that the prohibition on possession of shucked scallops and dredge oysters at sea can be relaxed on the basis that:
- a) Most recreational fishers respect the bag and size limits already imposed on shellfish and the prohibition is unlikely to deter people who take undersize shellfish;
 - b) Removing an impediment to the recreational experience will see compliance with bag and size limit rules maintained if not enhanced; and
 - c) The majority of scallops and dredge oysters taken by recreational fishers are landed and the requirement to land scallops and dredge oysters in a measurable state will remain.

Preliminary Consultation

- 9 There has been preliminary consultation with representatives of the New Zealand Recreational Fishing Council who agree with this proposal. MFish is aware that it is a regulation of concern, and regular correspondence is received on the problem and its impacts.

Options for Management Response

- 10 MFish considers that the prohibition on landing shucked shellfish to which a size limit applies (regulation 20 (b)) should be retained. There is no need to shuck shellfish at sea if they are to be landed, and retaining this regulation will ensure the shellfish minimum sizes enforceable on landing. MFish considers that the prohibition on possessing shellfish in an unmeasurable state below the mean high water mark (regulation 20 (a)) can, on balance, be removed for scallops and dredge oysters.

Statement of Net Benefits and Costs of the Proposal

Benefits

- 11 Amending the Regulations will have positive impacts on recreational fishers that spend time at sea, whether for short or long periods. Regulation 20 can significantly and adversely affect recreational fisher's experience. They are unable to eat scallops and dredge oysters on board their vessel as a size limit applies to the species. This is now regarded as being restrictive and impractical.

Costs

- 12 No costs in addition to administrative implications are anticipated.

Administrative Implications

- 13 There will be administrative implications associated with amending the regulations. Resources will be required to make the changes proposed. There will also be resource implications associated with raising public awareness of any regulatory amendments.
- 14 Depending on the outcomes of the other regulatory proposals provided in this review of the Regulations, administrative costs may be shared. MFish also expects that any education material required for disseminating the outcomes of the other proposals can be compiled together, reducing costs and resources required.

Compliance Implications

- 15 Amending regulation 20 of the Regulations will have positive compliance implications. MFish recognises that the regulation can affect the relationship between compliance staff and the general public.
- 16 Recreational fishers will still be required to observe daily bag and size limits for scallops and dredge oysters. There will be a reduced ability to ensure that scallops and dredge oysters opened at sea were taken in compliance with the size limit. However the majority of scallops and dredge oysters taken in the recreational fishery are landed and the requirement to ensure that these are landed whole will remain. The overall risk to the fishery is therefore considered to be small.

Preliminary Recommendation

- 17 MFish proposes to:
 - a) Amend regulation 20 of the Regulations to allow the possession of shucked scallops and dredge oysters on board a recreational fishing vessel while at sea.

SHUCKING OF SCALLOPS AND DREDGE OYSTERS AT SEA –FINAL ADVICE

Initial Proposal

- 1 MFish proposed to amend regulation 20 of the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) to allow the possession of shucked scallops and dredge oysters on board a vessel.
- 2 In the case of scallops and dredge oysters, many recreational fishers consider regulation 20 impractical and not in keeping with modern boating practices. The Ministry of Fisheries (MFish) recognises that the regulation is restrictive and has the potential to limit the enjoyment of the fishing experience.
- 3 On the basis that compliance with key rules relating to bag and size limits will be maintained, MFish was of the view that this prohibition could be removed for scallops and dredge oysters. The requirement that scallops and dredge oysters are landed from any fishing vessel in a measurable state will remain.

Submissions

- 4 *The following submissions were received in support of the proposal:* Aaron Murray, Alan Turner, B. Fisher, Betty McNabb, Bruce Tait, Bryn Jamieson, Canterbury Sport Fishing Club, D. K. Ransom, Dan Craig, Darryl Thomas, Daryl Walsh, Dave Gulliver, David and Ronda Nilsson, David Short, Dean Cederman, Doug Ashford, Environment and Conservation Organisations of New Zealand, Geoff Rasmussen, George Elkington, Gordon Aston, Graeme Petheric, Greg Goodall, Harry Trewavas, Ian Franklin, J McLennan, Jim Hamilton, John Robertson, Jon Marwick, Kaikoura Boating Club Committee, Keith Armstrong, Keith Turner, Keith Wright, Kerry Campbell, Kevyn and Corinne Moore, Lenny Allred, Manukau Sport Fishing Club, Marlborough Recreational Fishers Association, Martyn Barlow, Mike Thompson, N. O. Tait, Neil McLean, New Plymouth Sportfishing and Underwater Club Inc., New Zealand Underwater Association, option4, Otago Recreational Marine Fishers Association, Otago Underwater Diving Club, Peter Downes, Morrinsville Dive Club, Peter Herbert, Phil Clow, Piako Underwater Club, R. A. Kempthorne, Raewyn Parke, Ray Frater, Reid Quinlan, Robin Pasley, Rod Harrison, Ross Walker, Royal Forest and Bird Protection Society (Forest and Bird), Sam Winstone, Shane Roberts, South Eastern Fisheries Advisory Committee, Steve Ryder, Sue Rhodes, Taranaki Fisheries Liaison Committee, The Marlborough Combined Divers Association Inc. The New Zealand Recreational Fishing Council, Todd Robertson, Tony Pugh, Trevor Knowles and Whangamata Ocean Sports Club.
- 5 *The following submissions received were not in support of the proposal:* Barbara Francis, Challenger Fisheries, Jock Woodley, Mark Roden, Rod Budd, Seafood Industry Council (SeaFIC), T.V. Collings, Te Ohu Kai Moana Trustee Ltd and Whangamata Seafoods.

Issues

Encouraging Illegal Activity

Submissions

- 6 **Rod Budd, Challenger Fisheries, SeaFIC, T.V. Collings and Whangamata Seafoods** consider that the proposal will provide an incentive for fishers to harvest over and above the daily bag limit.
- 7 SeaFIC submit that the amended regulation would be interpreted by amateur fishers as enabling the consumption of any number of shellfish at sea *plus* taking the bag limit back to shore in a measurable state.

MFish Discussion

- 8 MFish does not accept the suggestion from some submitters that the proposal will encourage people to harvest over and above the daily bag limit. Allowing people to possess shucked scallops and dredge oysters at sea is unlikely to result in “unchecked” consumption, or encourage people to harvest more shellfish. MFish considers that recreational fishers will comply with an amended regulation 20 given that currently, as mentioned in the IPP, most recreational fishers respect the bag and size limits already imposed on shellfish.
- 9 Rather than encouraging people to harvest over and above the daily bag limit in the Regulations, MFish considers that removing an impediment to the recreational experience may well improve compliance with bag and size limit rules. During consultation on the IPP, it was apparent that regulation 20 as it currently stands causes a great deal of frustration and resentment. In submissions, recreational fishers indicated their support for the regulation being reviewed, noting a widely held feeling that the way it works at present is unfair and unreasonable.

Compliance Issues

Submissions

- 10 **SeaFIC, Challenger Fisheries and T.V. Collings and Whangamata Seafood** submit that the daily bag limit and the minimum legal size will become impossible to enforce if the regulation is changed.
- 11 **ECO and Forest and Bird** support the proposal but submit that the changes need to be monitored to ensure they are not abused.

MFish Discussion

- 12 As noted in the IPP, there will be a reduced ability for MFish to ensure that scallops and dredge oysters opened at sea have been taken in compliance with the size limit. However, most recreational fishers currently respect the bag and size limits already imposed on shellfish and the prohibition is unlikely to deter people who take undersize shellfish.

- 13 MFish recognises that Fishery Officers will not be able to determine, on landing, if scallops and dredge oysters over and above the daily bag limit have been consumed while on board a vessel. However, this problem already exists in the scallop and dredge oyster fisheries under regulation 20 as it currently stands. MFish does not consider the proposal will exacerbate compliance problems in this respect and as a result, MFish does not consider any changes to current enforcement activity will be required.
- 14 While MFish does not consider that a specific monitoring programme is required to ensure the changes are not abused, existing monitoring will need to continue with these changes in mind. Should compliance staff report increases in taking over and above the daily bag limit with the intention of consuming at sea, MFish can review the amendment to regulation 20. Similarly, should future biomass surveys and stock assessments show a decline in the stock levels of scallops and dredge oysters, the impacts of this change will need to be considered.

Sustainability Implications

Submissions

- 15 SeaFIC considers better information and analysis is required to indicate that the proposal will not increase risks to the sustainability of the scallop and dredge oyster stocks. It considers there are sustainability risks due to a higher recreational take of these fish, and a higher take of undersize shellfish. SeaFIC also note that the proposal will exacerbate the already significant problems with monitoring recreational catch levels.

MFish Discussion

- 16 The intention of the proposal is to amend an outdated regulation, and not to allow people to take more scallops or shellfish. MFish does not consider the proposed change to regulation 20 will have sustainability implications due to an increase in recreational harvest. MFish does not consider that recreational fishers, on the whole, will see the change as an opportunity to consume large quantities of shellfish while at sea and then land their whole bag limit.
- 17 With respect to undersize shellfish, the majority of scallops and dredge oysters taken in the recreational fishery are landed and the requirement to ensure that these are landed whole will remain. MFish therefore considers the overall risk to the fishery to be small.

Application to other Species

Submissions

- 18 **Manukau Sport Fishing Club** urge that the proposal include paua as they see no difference between the harvesting of scallops or paua and there are harvest restrictions already in place within the regulations.

MFish Discussion

- 19 MFish does not consider that harvesting of scallops and dredge oysters is the same as harvesting of paua. There are significant sustainability concerns for paua, and significant enforcement issues that are not present in the scallop and dredge oyster fisheries. For paua, regulation 20 remains an important component of ensuring that minimum sizes and bag limits are not breached.

Clarity of Regulation Changes

Submissions

- 20 **Challenger Fisheries, Mark Roden and the Marlborough Combined Divers Association** note that any wording of the regulation should be clear that any scallops or dredge oysters eaten on board a vessel would be deducted from the daily bag limit. There is a potential for fishers to misinterpret the law and harvest more than the daily bag limit.
- 21 **Challenger Fisheries and SeaFIC** advise that the proposal would need to be followed up with a properly resourced education programme for amateur fishers –one that is simple and unambiguous.
- 22 **Bryn Jamieson, Sam Winstone and D. K. Ransom** have no objection to the proposal to allow possession of shucked scallops and dredge oysters on board a vessel, but with perhaps an upper limit by number equal to a maximum of two daily bag limits calculated in accordance with those regulations (ie. a maximum of 120 shucked and/or unshucked scallops at any one time on board assuming there are one diver and two safety people on board at that time).

MFish Discussion

- 23 MFish agrees with the submission that the wording of an amendment to regulation 20 must be clear that any scallops or dredge oysters eaten on board a vessel will be deducted from the daily bag limit. In addition to careful wording of the regulation, MFish will need to raise public awareness of the changes and an education programme will be required.
- 24 Regular accumulation provisions will be included in the revised regulation providing that up to three daily bag limits can be accumulated so long as the fisher can prove that they were not taken on the same day (ie. bagged and dated). The education programme can be used to explain how the accumulation limits can be applied.

Application to Different Vessel Types

Submissions

- 25 **The Marlborough Recreational Fishers Association** supports the proposal but submits the term “recreational vessel” needs to be defined to exclude commercial charter vessels that would have the opportunity to gather and consume excessive amounts of shellfish whilst at sea possibly to the decline of a fishery.

- 26 The Marlborough Combined Divers Association are concerned that the wording of the proposed amendment refers to a “recreational fishing vessel”. Members of the Association request that charter fishing vessels should be included in the wording of the amended regulation as “recreational fishing vessel” may be interpreted as being a private vessel only and will preclude commercial charter fishing vessels.
- 27 Rod Budd does not support the proposal but does think there is a case for live-aboard vessels to be able to shuck scallops while at sea but not small run-abouts.

MFish Discussion

- 28 There is currently no definition of “recreational fishing vessel” in the Fisheries Act 1996 or associated regulations. Consequently, MFish has removed the reference to “recreational” from the proposal. “Fishing Vessel” is defined in section 2 of the Fisheries Act 1996 as “*any vessel that is capable of being used for fishing*”. MFish considers that all fishers should be treated equally whether fishing off a private boat or a charter boat. MFish does not consider that the proposal will result in recreational charter boats taking more than they do currently.
- 29 With respect to vessel sizes, MFish considers the amendment to regulation 20 allowing the possession of shucked scallops and dredge oysters should apply to all vessels irrespective of size. Narrowing the definition will complicate both the enforcement of the regulation as well as public awareness of the regulation.

Landing Shucked Shellfish

Submissions

- 30 Recreational fishers from the Motueka region and Robin Pasley note that in some areas, people own baches that can only be accessed by water. They land scallops in their shells, and shuck them while they are at their bach. However, when they return home they have to throw away any scallops that have not been eaten, as they cannot take them back on board their vessel. The Group request MFish explore the possibility of allowing shucked scallops to be landed when they are being conveyed from their bach to their home.
- 31 R. A. Kempthorne, Kevyn and Corinne Moore, and David and Ronda Nilsson submit that people that spend extended time on board a vessel should be able to freeze shucked scallops and take them home. Provided the skipper can prove the days that he or she has been at sea, and have no more than their legal daily entitlement, in a shucked state, and dated the day they were taken on board for those on board, then this should suffice as it does for any other shore operator. The shells could also be retained until landed and then disposed of.

MFish Discussion

- 32 MFish recognises that, in some instances, people would like to take frozen shellfish home but are unable to do so, as they cannot be frozen in a measurable state. Currently it is possible to convey frozen fish fillets on a vessel and the disparity with shellfish is considered unfair by some fishers. However, the proposed amendment to

regulation 20 has not addressed the possibility of allowing shucked shellfish to be landed in any circumstance.

- 33 While MFish does not consider the possession of shucking shellfish at sea to be a significant compliance or sustainability risk, allowing people to land shucked shellfish would remove the ability to enforce the minimum legal size restriction. Minimum legal sizes are a very important management tool for many fish species, including scallops and dredge oysters.
- 34 At this stage, MFish does not consider that landing scallops or dredge oysters out of their shells should be permitted. However, it may be possible to define an acceptable “conveyance” activity, or for special permits to be obtained. These options are beyond the scope of this review, but can be investigated in the future.

Conclusion

- 35 The majority of submissions were in support of the proposal. Of those submissions that opposed the proposal, the most significant issue raised in submission related to the risk of the proposed amendment to regulation 20 encouraging illegal activity. MFish does not accept that assumption. MFish believes the proposed amendment to regulation 20 will make an outdated regulation more fair and reasonable and will not result in recreational fishers deliberately taking more than they are entitled to. Equally, MFish does not consider that the minimum size limit for scallops and dredge oysters will be compromised by the proposal. However, you can choose to retain the status quo should you consider that any sustainability or compliance risks associated with the proposal are not acceptable.
- 36 Should you approve the recommended amendment to regulation 20, it is vital that the changes are adequately explained to recreational fishers to ensure the change is not misinterpreted. An education programme will require administrative and financial resources, which will be met within existing MFish baseline funding.

Final Recommendations

- 37 MFish recommends that you:
- a) Amend regulation 20 of the Regulations to allow the possession of shucked scallops and dredge oysters on board a fishing vessel while at sea.
- OR*
- b) Retain the status quo and make no changes to regulation 20.

SUMMARY OF RECOMMENDATIONS

Primary Taker

1 MFish recommends that you:

- a) Recognise that a safety person is part of the diving activity and allow a diver (or divers), when diving from a vessel, to collect **one** extra bag limit per vessel, per day providing that the safety person is on board the fishing vessel at that time and acting in the capacity of a safety person.

OR

- b) Recognise that two safety people are part of the diving activity and allow a diver (or divers), when diving from a fishing vessel, to collect **two** extra bag limits per vessel, per day providing that the safety people are on board the fishing vessel at that time and acting in the capacity of safety people.

OR

- c) Retain the status quo so that only persons diving for scallops and dredge oysters are entitled to take a bag limit.

Counting and measuring scallops and dredge oysters at the first reasonable opportunity

2 MFish recommends that you:

- a) **Agree** for MFish to educate and raise the awareness of recreational fishers on counting and measuring scallops and dredge oysters at the first reasonable opportunity.
- b) **Agree** that MFish investigate the possibility of developing a Code of Practice with recreational fishers that will provide recreational fishers with greater clarity on what activities are considered reasonable.

Rock Lobster Catch Limits

3 MFish recommends that you:

- a) Amend the Regulations to permit the use of bobs for catching rock lobster;
- b) Amend the Regulations to permit the use of scoop nets to secure fish lawfully taken by any method; and
- c) Amend the definition of ring pots in the Regulations so that ring pots are not required to have a minimum mesh size.

OR

- d) Retain the status quo and make no changes to the Regulations for the use of bobs, ring pots and scoop nets for catching rock lobster.

AND

- e) Amend the Regulations to permit the use of hand-held lassoes for catching rock lobster.

OR

Retain the status quo and make no changes to the Regulations for the use of hand-held lassoes for catching rock lobster.

Coromandel scallop amateur daily bag limit

4 MFish recommends that you:

- a) Amend the Fisheries (Auckland and Kermadec Areas Amateur Fishing) Regulations 1986 to set a daily scallop bag limit of 30 in the Coromandel scallop fishery area.

OR

- b) Retain the status quo and make no changes to the existing daily scallop bag limit of 20 in the Coromandel scallop fishery.

Possession of mussels and paua with uba

5 With respect to mussels, MFish recommends that you:

- a) Remove reference to mussels from regulation 21 of the Fishing (Amateur Fishing) Regulations 1986 and allow this species to be taken and possessed with UBA.

OR

- b) Retain the status quo and make no changes to regulation 21 for mussels.

6 With respect to paua, MFish recommends that you:

- a) Retain the prohibition in regulation 21 on taking paua using UBA

AND

- b) Remove the prohibition in regulation 21 on possessing UBA and paua together

OR

- c) Retain the status quo and make no changes to regulation 21 for paua.

Shucking of scallops and dredge oysters at sea

7 MFish recommends that you:

- a) Amend regulation 20 of the Regulations to allow the possession of shucked scallops and dredge oysters on board a fishing vessel while at sea.

OR

- b) Retain the status quo and make no changes to regulation 20.



Arthur Hore
For Chief Executive

APPROVED / NOT APPROVED / APPROVED AS AMENDED

Hon Jim Anderton
Minister of Fisheries