

PROPOSAL TO AMEND ASPECTS OF THE AMATEUR
FISHING REGULATIONS

Initial Position Paper

8 July 2005

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INTRODUCTION

- 1 The purpose of this Initial Position Paper (IPP) is to seek your views on Ministry of Fisheries (MFish) proposals to amend a series of regulations that are of concern to recreational fishers.
- 2 The IPP has been developed for the purpose of consultation as required under the Fisheries Act 1996. MFish emphasises that the views and recommendations outlined in this paper are preliminary and provided as a basis for consultation with stakeholders.
- 3 A standard section outlining MFish's statutory obligations and policy guidelines for a proposal contained within any IPP is available from MFish should you wish to refer to these matters.
- 4 If you have any questions regarding this IPP you are encouraged to contact Arthur Hore, Senior Fisheries Management Advisor; or Sarah Omundsen, Fisheries Advisor on (09) 820 7771.
- 5 In August 2005, MFish will compile the Final Advice Paper. This document summarises MFish and stakeholder views on those issues being reviewed, and provides final advice and recommendations for each issue. Copies of the Final Advice Paper and subsequently the Minister's letter setting out his final decisions will be sent to all nationally represented stakeholder groups, and all other stakeholders who expressed an interest in being consulted on particular proposals, as soon as it becomes available.

Deadline for submissions

- 6 MFish requests that you provide comments on the proposed regulatory amendments no later than **5 August 2005**. Written submissions should be sent directly to:

Sarah Omundsen
Ministry of Fisheries
PO Box 19747
Auckland

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

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

PRIMARY TAKER

Executive summary

- 8 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.
- 9 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.
- 10 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.
- 11 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.
- 12 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

- 13 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

- 14 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

- 15 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.
- 16 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.
- 17 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.
- 18 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

- 19 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.
- 20 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.

- 21 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

- 22 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.
- 23 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.
- 24 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

- 25 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.
- 26 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.
- 27 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.
- 28 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

- 29 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

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

Administrative implications

- 31 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.
- 32 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

- 33 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.
- 34 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

35 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.

COUNTING AND MEASURING SCALLOPS AND DREDGE OYSTERS AT THE FIRST REASONABLE OPPORTUNITY

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.

ROCK LOBSTER CATCH METHODS

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.

COROMANDEL SCALLOP AMATEUR DAILY BAG LIMIT

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.

POSSESSION OF MUSSELS AND PAUA WITH UBA

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

SHUCKING OF SCALLOPS AND DREDGE OYSTERS AT SEA

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.