

# AMENDMENT OF REGULATION 19A OF THE FISHERIES (AMATEUR FISHING) REGULATIONS 1986 – FINAL ADVICE

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## Executive Summary

- 1 In December 2005, the Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) were amended, allowing divers to take up to two extra bag limits of scallops or dredge oysters when safety people are on board their vessel (r19A).
- 2 Under the normal provisions for collecting scallops or dredge oysters (i.e. r19), taking one shellfish over the daily entitlement is normally considered to be a minor breach of the regulations. However, the way that r19A was constructed has had an unforeseen consequence, where even slightly exceeding the daily bag limit is classified as a serious non-commercial offence.
- 3 In the Initial Position Paper (IPP), the Ministry of Fisheries (MFish) proposed that the Regulations be amended so that the same standard of offences under the normal r19 applies to r19A. Fourteen submissions were received in response to the IPP and all supported the proposed amendment to ensure that minor breaches of regulation 19A are not turned into serious offences by default.
- 4 MFish recommends that you agree to amend the Regulations as proposed in Option 1.

## Summary of Options

- 5 This paper considers the following management option:  
  
**Option 1:** Amend the Regulations to ensure that when a diver takes less than three times their individual entitlement under r19A, it is not considered to be a serious non-commercial offence in law.
- 6 The status quo is not considered to be a valid management option as it serves to continue a situation where minor breaches of r19A are serious non-commercial offences by default.

## Submissions Received

- 7 MFish received fourteen submissions on the r19A IPP from:
  - Akaroa Harbour Recreational Fishing Club
  - B. A. Jamieson
  - Hilton Leith
  - John Robertson

- Y Keith Ingram
- Y Marlborough Combined Divers Association
- Y Ngati Whatua Fisheries Limited
- Y North Island-South East Regional Recreational Forum
- Y North Island-South West Regional Recreational Forum
- Y Option4 & the New Zealand Big Game Fishing Council
- Y Raglan Sport Fishing Club
- Y Tasman and Sounds Fishers Association
- Y Te Runanga O Ngati Whatua
- Y The Seafood Industry Council (SeaFIC)

## Rationale for Management Intervention

- 8 In 2005, the Regulations were amended to allow divers, when diving from a vessel, to collect an additional daily bag limit of scallops or dredge oysters for each safety person onboard that vessel, to a maximum of two safety persons (regulation 19A). Regulation 19A has now been in effect for a full fishing season and several incidents have occurred which have highlighted an unforeseen compliance consequence of the regulation.
- 9 The strict interpretation of r19A is that a diver may only take an extra daily limit of scallops or dredge oysters if that person meets all the requirements of the regulation. These requirements are:
  - a) The diver must be diving from a fishing vessel; *and*
  - b) The relevant safety people must be on board the vessel at all times when the diver is fishing; *and*
  - c) No more than 1 or 2 times the bag limit (depending on the number of safety people on board the vessel) can be taken in total.
- 10 Where a diver does not comply with these requirements, the default daily limit applies (r19) and this default limit is the limit that any breach of the regulations is related to.
- 11 For example, if two safety people are on board a vessel, a diver may take a total of 60 scallops, or three bag limits<sup>1</sup>. If the diver accidentally surfaces with 61 scallops (one scallop in excess) the diver has not met all the conditions of r19A(3) and the default limit of 20 scallops applies, with no entitlements for safety people. This means that the diver can be charged with having in excess of three times the bag limit under r19(3), a serious non-commercial offence that is liable on summary conviction to a fine not exceeding \$20,000 pursuant to r29(2).
- 12 Under normal circumstances (i.e. r19), taking one shellfish over the daily entitlement is a minor offence (r19(2)). This offence is liable on summary conviction to a fine not

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<sup>1</sup> This example relates to the scallop national daily bag limit of 20 that is specified in the Fisheries (Amateur Fishing) Regulations 1986. It is important to note that regional regulations may specify alternative scallop bag limits for certain areas.

exceeding \$10,000 pursuant to r29(1), although generally only an infringement notice will be issued.

## Assessment of Management Options

- 13 The consequence of the current r19A is that it turns what could previously be considered a minor breach of the regulations into a serious non-commercial offence. This is not the intent of the regulation and the same standard for offences should apply to both r19 and r19A.
- 14 Given r19A at present effectively classifies minor breaches as serious offences, the regulations is also relatively costly to enforce and administer. Amending the regulations will reduce these costs, and allow breaches of r19A to be dealt with more cost effectively and in accord with their original intent.
- 15 The recreational sector has generally welcomed the change in regulation to allow divers to collect extra daily bag limits when safety people are on board their vessels. MFish considers the application of a separate standard of offence for r19A diminishes the benefits of this change to recreational fishers, and that possible breaches on r19A can be effectively managed by the standard policy offence framework under the Regulations. MFish recommends that you agree to amend the Regulations as proposed to ensure that the same standard of offences applies to r19A as it does to r19.
- 16 MFish also considers it appropriate that the standard offences should only apply to that part of the take not intended for safety persons, i.e. to the primary taker's daily entitlement only. This would ensure that minor offences would relate to taking or possessing up to three times the primary taker's bag limit (e.g. 21-59 scallops or dredge oysters in excess) rather than up to three times the primary taker's *and additional* bag limits (e.g. 61- 179 scallops and dredge oysters in excess).
- 17 MFish notes that fourteen submissions were received in response to the IPP and all supported the proposed amendment to ensure that minor breaches of regulation 19A are not turned into serious offences by default. No information in addition to that provided in the IPP was submitted for discussion.
- 18 If you agree that an amendment is necessary, the Parliamentary Counsel Office will be requested to draft an appropriate amendment to r19A. The types of amendments that could be considered to better reflect the intent include:
  - a) Redrafting the entire r19A;
  - b) Creating a new offence provision specific to r19A; or
  - c) Providing additional sections within r19A to clarify the intent of the regulation.

## Statutory Considerations

- 19 MFish considers that the proposal will further the purpose of the Fisheries Act 1996, in providing for utilisation while ensuring sustainability (section 8). The environmental and information principles set out in sections 9 and 10 of the Act have

also been taken in account in developing the proposal and MFish is unaware of any concerns here relating to those principles. Similarly, MFish believes the proposal raises no concerns in relation to New Zealand's international obligations and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (section 5).