

RECREATIONAL ISSUES RELATED TO TAKING BAG LIMITS – FINAL ADVICE

Executive Summary

1 “Taking” is defined in the Fisheries Act 1996 (the Act) as “fishing”, and “fishing” is defined as the catching, taking, or harvesting of fish, aquatic life, or seaweed. As a result of this broad definition and the regulations that govern the recreational harvest of fish (i.e. bag limits and size limits), it is becoming increasingly apparent that some existing recreational activities may not be permitted under the current management framework.

2 The New Zealand Recreational Fishing Council (NZRFC) requested that the Ministry of Fisheries (MFish) review three existing activities and resolve any issues where the activities may not be permitted by relevant fishing legislation. These three activities are:

- a) Not counting undersize fish as part of the daily bag limit; and
- b) Only counting fish that are actually kept as part of the daily bag limit; and
- c) Not counting tagged and released fish as part of the daily bag limit.

3 The Initial Position Paper (IPP) presented a variety of options for managing these activities. In total, twenty eight submissions were received from fishing clubs, stakeholder organisations, and individual fishers throughout the country. MFish’s consideration of the views of submitters and final recommendations are summarised below.

A. Undersize fish and the daily bag limit

4 The Fisheries (Amateur Fishing) Regulations 1986 (the Regulations) require that all illegal fish, for example undersize fish, be returned to the sea. Consequently, MFish has previously applied the Regulations so that undersize fish do not form a part of the daily bag limit. However, this interpretation is not explicit in the Regulations. MFish therefore recommends that the status quo be confirmed by clarifying that undersize fish do not count towards the daily bag limit if they are released immediately. All submissions supported the adoption of this option.

B. Releasing fish above the minimum legal size

5 When anglers return a fish to the sea alive, they generally don’t count it towards their daily bag limit. This is particularly apparent where people operate under self-imposed size limits, or fishing club size limits, that are larger than those set out in the Regulations. There is a widely held view amongst recreational fishers that returning live fish to the water helps to conserve the resource and protects breeding stock for the future. However, if a bag limit applies to a species, the Regulations require that every fish caught counts against the bag limit, even if it is released alive. The only exception is illegal fish, such as undersized fish, that must be returned to the sea.

- 6 Three options were consulted on for managing this activity: i) specifying that the daily bag limit relates to retained fish only; or ii) issuing special permits; or iii) retaining the status quo. The first option essentially confirms the current and historical practice of most recreational fishers and the clear majority of submissions received on the issue supported the adoption of this option. There is a risk that this option will further encourage fishers to catch and release fish, potentially increasing associated fishing-related mortality. However, MFish considers that this risk can be managed through improved education (e.g. fish handling guidelines) and will seek to monitor the risk where possible.
- 7 Some submissions were also concerned about the risk of encouraging high grading. MFish does not consider that the option will increase or encourage high grading, but it will create a framework that permits high grading. To counter this, if recreational fishers are to return legal size fish to the sea that are not to count against their bag limit then the return must be immediate and can only occur if the fish is alive and likely to survive. MFish therefore recommends that you agree to adopt a revised Option One, in that the Regulations are amended to clarify that the daily bag limit does not apply to finfish returned immediately to the waters from which they were taken and that are likely to survive.
- 8 If you do not agree that the revised Option One is appropriate however, it is MFish's view that retaining the status quo (Option Three) would be the most appropriate alternative. This is because a special permit regime (Option Two) will be costly to participate in and to administer. An extensive awareness campaign will be required with the status quo option however, to better inform recreational fishers about the law as it is clear that most fishers are not aware that all fish count. MFish notes that very few submissions were received in support of either Option Two or Option Three.

C. Tagging and releasing fish for research purposes

- 9 Under the Regulations, the maximum number of fish that can be tagged and released on any day is the bag limit that applies to that fish. However, many fishers either tag and release more than their daily bag limit entitles them to, or tag and release some fish while retaining their full daily bag. Recreational fishers feel strongly that this current practice should be provided for in the regulations, as tag and release programmes significantly contribute to our understanding of fish stocks. Further, MFish has actively encouraged and supported these types of programmes.
- 10 Three management options were consulted on: i) creating a tag and release defence; or ii) issuing special permits; or iii) retaining the status quo. If you decide to clarify that the bag limit does not apply to finfish returned immediately (Issue B above) no management response will be required. If you decide not to make this clarification, MFish recommends that you agree to adopt Option One, creating a defence for tagging and releasing certain stocks or species. Further work will be required to define and consult on a list of stocks to which this option would apply. This option received the greatest level of support in the submissions.
- 11 Option Two, the issuing of special permits, would be a cumbersome and costly alternative. While there is precedent for this option in the South Island where it has been used for shark species, expansion to northern areas and additional species would impose a considerable administrative burden. Option Three, retaining and confirming

the status quo is a valid alternative but does not have the continued research and knowledge benefits associated with Option One.

Summary of Options

A. *Undersize fish and the daily bag limit*

- 12 With respect to *undersize fish and the recreational daily bag limit*, this paper considers the following management option:

Option One: (recommended)	Clarify that undersize fish do not count towards the recreational daily bag limit if released immediately.
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B. *Releasing fish above the minimum legal size*

- 13 With respect to *releasing fish above the minimum legal size*, this paper considers the following management options:

Revised Option One: (recommended)	<p>a) Clarify that the daily bag limit does not apply to finfish returned immediately to the waters from which they were taken and that are likely to survive; and</p> <p>b) Develop and distribute fish handling guidelines to mitigate the potential mortality associated with releasing fish.</p>
Option Two:	Provide for special permits to be considered for recreational fishers to release fish of legal size over and above the daily bag entitlement for a specific stock or species and/or occasion.
Option Three:	<p>a) Maintain the status quo and confirm that any fish taken of legal size must count towards the daily bag limit; and</p> <p>b) Undertake an awareness campaign to improve understanding of the rules surrounding the taking of bag limits.</p>

C. *Tagging and releasing fish for research purposes*

- 14 If you do not approve Option One above (Issue B) then in relation to *tagging and releasing fish for research purposes* this paper considers the following management options:

Option One: (recommended)	<p>a) Provide a defence for tagging and releasing certain stocks or species in the Regulations; and</p> <p>b) Consult on the list of stocks to be included in the defence</p>
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	provision.
Option Two:	Provide for special permits to be considered for recreational fishers to release fish of legal size over and above the daily bag entitlement for a specific stock or species.
Option Three:	Retain the status quo and confirm that the maximum number of fish that can be tagged and released on any day is the daily bag limit that applies to that particular fish.

Submissions Received

15 MFish received twenty eight submissions on the bag limit IPP from:

- Akaroa Harbour Recreational Fishing Club
- B. A. Jamieson
- Bill Hartley
- Brian Dean
- G. A. O'Rourke
- Hilton Leith
- John Robertson
- Kaikoura Boating Club
- Keith Ingram
- Marlborough Combined Divers Association
- Marlborough Recreational Fishers Association
- Murray Little
- Ngati Whatua Fisheries Limited
- Option4 & the NZ Big Game Fishing Council
- Pelorus Boat Club
- Peter Saul
- Piako Underwater Club
- Raglan Sport Fishing Club

- South Recreational Fishers Advisory Committee
- South Taranaki Underwater Club
- Steve Hornby
- Tasman and Sounds Fishers Association (TASFISH)
- Te Runanga O Ngati Whatua
- The North Island-South East Regional Recreational Forum
- The North Island-South West Regional Recreational Forum
- The Top of the South Regional Recreational Forum
- The Seafood Industry Council (SeaFIC)
- Wanderers Surfcasting and Angling Club

Background and Legislative Framework

- 16 Currently, “taking” is defined in the Act as “fishing”, and “fishing” is defined broadly as the catching, taking, or harvesting of fish, aquatic life, or seaweed. It includes:
- a) Any activity that may reasonably be expected to result in the catching, taking, or harvesting of fish, aquatic life, or seaweed; and
 - b) Any operation in support of or in preparation for any activities described in this definition.
- 17 In some submissions, stakeholders have expressed concern about this definition of take in the Act and recent legal interpretations. Some submitters consider these to be inconsistent with current and historic recreational fishing practice. They also consider that fishing is very different to taking for most people, and have requested that the definition be amended or that a new definition of take apply specifically for recreational fishers.
- 18 MFish recognises that the definition of take in the Act creates a very broad framework. However, the definition is important because “take” has a whole range of applications across all sectors and has a wider impact on other aspects of the non-commercial framework than just bag limits. This definition in the Act was also derived from the previous definition in the Fisheries Act 1983. It has been considered and applied in various courts, including the Court of Appeal, with the resulting case law providing important parameters and direction on how “take” is to be interpreted. Any change to this framework would likely have serious downstream implications across a range of sectors and activities. For these reasons, MFish does not propose to amend the definition of “take” in the Act or provide an alternative definition of “take” for recreational fishers in the Regulations at this time.

A. Undersize Fish and the Recreational Daily Bag Limit

Rationale for Management Options

- 19 Where a minimum legal size (MLS) applies to a species or stock, r 28 of the Regulations requires any fish that is smaller than this legal size to be returned to the water immediately. As the Regulations require undersize fish to be returned to the sea, MFish has previously applied the Regulations so that undersize fish do not form a part of the daily bag limit. However, this intention is not explicit in the amateur regulations.
- 20 In order to ensure that the intent of the Regulations is more explicit, and to remove any uncertainty in the recreational sector, MFish proposed in the IPP to clarify that the recreational daily bag limit only applies to fish taken of legal size.

Assessment of Management Options

- 21 MFish notes that 18 submissions were received in support of the proposal, with no submissions received in opposition. No information in addition to that provided in the IPP was submitted for consideration.
- 22 No risks associated with the proposal to clarify that undersize fish do not count towards the daily bag limit have been identified. This is because the clarification will simply be confirming the status quo legal interpretation adopted by MFish and the intent of the Regulations. The clarification will, however, reduce the current level of confusion that exists amongst recreational fishers.

Conclusion

- 23 MFish recommends that the status quo be confirmed by clarifying that undersize fish do not count towards the daily bag limit if they are released immediately.

B. Releasing Fish Larger than the Minimum Legal Size

Rationale for Management Options

- 24 When anglers return fish to the sea that are a legal size, they generally do not count this catch towards their daily bag limit. However, where a bag limit exists, all fish caught must be counted, even if they are returned to the sea alive. This is because once a fish is caught, it is considered to be taken (by legal definition) and only a specified number of fish may be taken each day. An exception to this rule is where a fish is undersize and must be returned to the sea.
- 25 The situation also applies to species for which there is no MLS, but where a daily bag limit has been set. In this case, fish that are released because they may be of an impractical or undesirable size are considered to count in the daily bag limit.
- 26 Imposing best practice size limits that are larger than MLS limits defined in Regulations is a relatively common practice. Recreational fishers consider this to be an important tool that enables them to self-manage fisheries in their own area. It is

also a widely held view that the practice results in significant recruitment and yield benefits that would otherwise not be achieved under the existing regulatory regime.

- 27 In this respect, there is a discrepancy between the existing regulatory framework and current fishing practices. The NZRFC therefore requested that the use of these types of self imposed size limits be permitted in the Regulations. Three options were consulted on in the IPP:
- a) Specify that the daily bag limit relates to retained fish only; or
 - b) Issue special permits for the release of legal sized fish; or
 - c) Retain the status quo.

Assessment of Management Options

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

- 28 An option to recognise current fishing practice and provide for the use of self imposed size limits is to specify that the daily bag limit relates to the number of fish that are actually *retained*. Qualifying the daily bag limit in this way will require an amendment of the Regulations and possibly the associated regional amateur fishing regulations.
- 29 18 submissions were received in support of this option. It was clearly the preferred option to resolve the regulatory compliance issues associated with releasing fish of a legal size over and above any bag limit that applies.
- 30 Submitters assert that the majority of recreational fishers only count fish that are actually retained as part of the daily bag limit. Many submitters expressed surprise and disbelief that this activity is not, in fact, permitted. In particular, many fishers are of the view that returning healthy fish to the water helps to conserve the resource and protects breeding stock to ensure future sustainability.
- 31 MFish recognises that the implementation of voluntary best practice size limits that are bigger than those specified in regulation is a relatively common practice. MFish also considers that any change in the Regulations to recognise this practice would have a negligible impact in practice. However, several risks associated with this option have been identified and these are discussed below.

High grading

- 32 In the IPP, MFish outlined concerns that implementing this option might encourage the return of dead or dying fish to the sea if fishers get “bigger and better” fish later on in the day (high grading).
- 33 Submissions were divided on this issue. Some recreational fishers conceded that there was a risk that high grading would occur as a result of adopting the option. While they advised that education and enforcement would best manage this risk, SeaFIC expressed opposition to the proposal on the basis that potential high grading would present a sustainability risk to fisheries.

- 34 In contrast, many fishers rejected the implication that their practice of “catch and release” is high grading. They also rejected the suggestion that dead or dying legal sized fish are ever deliberately returned to the sea by legitimate recreational fishers, and that most fishers release fish to contribute to sustainable fisheries. Further, some submitters argued that people who deliberately high grade under the current regime will continue offending whatever rules are put in place.
- 35 MFish agrees that deliberate offenders will likely offend regardless of the options proposed by MFish to address this issue. MFish also believes that providing for the daily bag limit to apply to retained fish only is unlikely to encourage people to actively high grade. Critically however, adopting the option could provide a framework that actually permits high grading.
- 36 MFish considers it is imperative that high grading is not permitted in the Regulations, and if recreational fishers are to return legal size fish to the sea that are not to count against their bag limit then the return must be immediate and can only occur if the fish is alive and likely to survive. As a result, the option consulted on in the IPP has been revised to incorporate this requirement. Rather than clarify that the bag limit applies only to fish that are retained, the option has been revised to clarify that the daily bag limit does not apply to finfish returned immediately to the waters from which they were taken and that are likely to survive.
- 37 Revising the option in this way will provide for the immediate return of finfish to the sea if they are alive and likely to survive, and it will ensure these returned finfish do not count towards the bag limit. It will also mean that any finfish returned to the sea dead, or unlikely to survive will count towards the bag limit.
- 38 It is important to note that the option is restricted to finfish as it was the practice of catching and releasing finfish that led to the call for the review by NZRFC. It is also important to note that the option will therefore maintain the status quo for shellfish, whereby any shellfish fish taken of legal size must count towards the daily bag limit. Broadening the option to include shellfish would create significant practical enforcement issues in the way in which “immediate” and “likely to survive” could be determined by Fishery Officers inspecting non-commercial fishers.

Increased fishing-related mortality

- 39 In the IPP, MFish also identified that there was a risk of increasing fishing-related mortality with this option, as there is always a level of mortality associated with returning fish to the sea. In fact, one submitter contends that 25% of line caught snapper do not survive when they are released. SeaFIC in particular raised concerns that allowing fishers to return legal size fish back to the sea may have implications on the ability of MFish to adequately estimate and allow for any associated fishing-related mortality.
- 40 While MFish recognises that the option will essentially permit an existing recreational fishing practice, it may also prompt fishers to implement their own voluntary size limits and return legal size but not large fish to the water. This may result in a level of increased fishing-related mortality.

- 41 In recognition of the mortality associated with releasing fish, several submitters requested that if this option was agreed to, MFish should develop guidelines to educate fishers on proper fish handling practices that will mitigate the risk of mortality. MFish agrees that this would help support recreational fishers in their activities. Further, MLS regimes assume that despite any mortality associated with releasing undersize fish, there will be a net benefit to the stock. Given correct handling practices, MFish considers that the release of some species of fish at sizes above the MLS will continue to have net benefits that mitigate this concern.
- 42 Providing fishers with the flexibility to implement their own increased size limits has clear benefits in most cases – it encourages participation in the management of the resource and it can have stock benefits for certain species. It is also evident that most recreational fishers do this anyway and that, by exercising a choice over which fish they retain, they perceive that they are enhancing their fisheries.

Option Two: Issue special permits

- 43 Rather than amend the Regulations, thereby avoiding any risks this might raise, a potential way for recreational fishers to release fish larger than the MLS yet still retain their full bag limit is to issue special permits for this purpose. Two submissions were received in support of this option. It is SeaFIC's view that the option allows MFish to retain a degree of control over the release of fish larger than MLS, and will also enable the gathering of information through requiring that all fish released are recorded.
- 44 MFish agrees that a special permit process has the benefit of allowing an assessment to be made of why a size limit needs to be different to that specified in the Regulations on a case by case basis, as well as identifying exactly who will participate in fishing this different size limit.
- 45 However, this option fails to recognise that operating self imposed size limits, and releasing legal size fish back to the water, is already common practice. Most fishers consider it to be a normal part of their fishing routine, as highlighted in the majority of submissions. The application process for special permits includes a fee as well as a lengthy administrative component. Recreational fishers are unlikely to see the imposition of new costs and effort for what is already an established practice, as fair or reasonable. The option may also place a significant administrative burden on MFish, and additional resources will be required to meet all new processing requirements.

Option Three: Retain the status quo

- 46 The final option consulted on was retaining the status quo. That is, if clubs or other organisations set size limits above those set out in the Regulations, they are required to count any fish below this size against their bag limit. Only two submissions were received in support of this option, with one submitter extremely concerned about the high rates of mortality associated with releasing fish. This submitter advised that rather than accommodate "recreational high grading", MFish should better enforce the existing regulations and ensure fishers know that every fish counts.

- 47 In principle, retaining the status quo has the benefit of retaining an unambiguous management framework and provides a level of clarity for enforcement purposes. That is, if a fisher takes a fish of legal size it counts against the bag limit and any risks of high grading are minimised. Size limits that have been defined in regulation are generally based on the best available biological and fishery information. If it is apparent that a limit is not functioning effectively, MFish is able to adjust it if required. Further, recreational fishers can still actively target bigger fish if they choose, through the use of measures such as alternative gear types, fishing locations and fishing times.
- 48 However, it is clear from submissions that the existing regulatory framework does not accord with current fishing practices and recreational fishers on the whole consider that implementing self imposed size limits is actually an important way to conserve and enhance fisheries resources.
- 49 Should you decide to retain the status quo, MFish advises that an extensive education campaign will be required to:
- a) Explain how the rules apply to catching and releasing fish; and
 - b) Inform fishers of the need to account for fishing-related mortality; and
 - c) Encourage better line fishing and fish handling practices.
- 50 It is important to note that implementing such an education campaign will involve significant costs which have not been accounted for.

Conclusion

- 51 MFish recommends that you agree to adopt revised Option One, in that the Regulations are amended to clarify that the daily bag limit does not apply to finfish returned immediately to the waters from which they were taken and that are likely to survive. This option essentially confirms the current and historical practice of most recreational fishers. MFish considers that any risk of increased mortality can be managed through improved education (e.g. fish handling guidelines). MFish also does not consider that the option will increase or encourage high grading, provided that finfish are immediately returned to the sea and are likely to survive.
- 52 If you agree to adopt revised Option One, the status quo will be maintained for shellfish. That is, any shellfish fish taken of legal size must count towards the daily bag limit.

C. Tagging and Releasing Fish for Research Purposes

Rationale for Management Options

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

- 54 MFish encourages and actively supports stakeholder initiatives to better manage their fisheries, including tag and release programmes. It is recognised that for some species, particularly sports fish, tagging and releasing fish is an important part of the recreational experience and helps to contribute to our knowledge of fishstocks.
- 55 Currently, many fishers either tag and release more than their daily bag limit entitles them to, or tag and release some fish while retaining their full daily bag. MFish is aware that recreational fishers feel very strongly that they should be permitted to participate in tag and release programmes to a greater extent than is provided under the general bag limits. In response, the following options were consulted on to manage the activity:
- a) Create a tag and release defence for certain stocks or species; or
 - b) Issue special permits to permit the tag and release over and above the daily bag limit; or
 - c) Retain the status quo.
- 56 It is important to note that if you agree to amend the regulations to clarify that the daily bag limit does not apply to finfish returned to the sea immediately (see recreational issue above), a management response will not be required in this instance. This is because such an amendment would provide for the release of legal size fish (if likely to survive), including those that have been tagged.

Assessment of Management Options

Option One: Create a tag and release defence

- 57 Submissions noted that MFish has actively promoted the tag and release of certain species for research purposes for many years. MFish acknowledges that it has not been made apparent to everyone involved in these programmes that tagged fish count towards the bag limit. Despite this, the regulations are clear that the maximum number of fish that can be tagged and released on any day is the bag limit that applies to that species.
- 58 Seven submissions were received in support of this option, with no submissions opposed to the option. It is noted however, that most submitters would prefer that the bag limit apply to retained fish only which negates the need for management intervention in this instance.
- 59 MFish recognises that tagging and releasing activities by recreational fishers have significantly contributed to our understanding of many fisheries. Providing a defence for the release of certain stocks or species where bag limits apply would allow this important activity to continue in the way it has in the past. MFish considers that there are no risks or costs associated with this option, although additional regulatory amendments may be required in the future if a stock or species was to be added to the defence. MFish would also initiate consultation on the choice of stocks to be specified in an initial defence provision.

Option Two: Issue special permits

- 60 Only one submission, from SeaFIC, was received in support of issuing special permits to recreational fishers wishing to tag and release fish over and above the daily bag limit. It is SeaFIC's view that special permits would encourage better management of the tag and release practice by recreational fishers.
- 61 MFish acknowledges that a significant benefit of this option is that each programme can be thoroughly assessed on a case by case basis. Applicants will be required to detail why the work needs to be done and what the outcomes of the work might be. It will also be consistent with the requirements of other contracted research.
- 62 There are special permits in existence for a related purpose in Fisheries Management Areas 3, 4, & 5 where there is a bag limit of 1 for a number of shark species including four of the recognised big game species (blue, mako, porbeagle, and thresher sharks). The basic intent is to allow fishers in southern waters to compete on an equal footing with those in northern waters where there are no limits. These permits occur under a Ministerial purpose to "allow club members to take, possess and convey sharks in excess of current amateur daily limits during NZ Big Game Fishing Council's national competition and inter-provincial competitions". Members can take a maximum of 5 sharks/species per day. They have to notify the local District Compliance Manager 24 hours prior to each competition, and they have to provide a report within 1 month of how much is taken, when, where, and numbers of club members fishing. About five clubs have these special permits. Generally, members have not exceeded the bag limits with retained fish, but there has been quite a lot of tag and release particularly of blue sharks.
- 63 While this precedent exists, MFish considers that expansion of this option to northern areas and to a range of stocks could result in a considerable administrative burden both to stakeholders and to MFish. This is unlikely to be considered reasonable for what has been, up to now, a common and actively encouraged practice.

Option Three: Retain the status quo

- 64 No submissions were received in support of this option. MFish considers that retaining the status quo is still valid option however. This is because recreational tag and release programmes could still be undertaken, but within the bag limit.
- 65 However, it is recognised that in some instances, small bag limits for certain stocks, such as kingfish, will deter recreational fishers from participating in tagging programmes. Tag and release programmes contribute to the knowledge and sustainable management of fish stocks and to lose this would be a disappointing outcome.

Conclusion

- 66 If you decide not to clarify that the daily bag limit does not apply to finfish returned to the sea immediately (which would negate the need for a management response in this instance), MFish recommends that you agree to adopting Option One, creating a defence for tagging and releasing certain stocks or species. Further work will be required to define and consult on a list of stocks to which this option would apply.

Statutory Considerations

- 67 MFish is satisfied that these proposals are consistent with the relevant statutory obligations under the Fisheries Act 1996 (the Act). MFish considers that all of the proposals will further the purpose of the Act, 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 proposals and, other than those specific concerns discussed in this paper, MFish is unaware of any concerns here relating to those principles. Similarly, MFish believes the proposals raise no concerns in relation to New Zealand's international obligations and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (section 5).