

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

**SUBMISSION ON BEHALF OF THE NEW ZEALAND BIG GAME FISHING  
COUNCIL INC. AND OPTION4**

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## 1. Introduction

The Ministry of Fisheries (MFish) has invited stakeholders to provide submissions on the proposal to amend aspects of the Amateur Fishing Regulations.

The Ministry is formally consulting on behalf of the Minister of Fisheries in relation to the proposed changes, in accordance with the Minister's statutory obligations to consult under the Fisheries Act 1996.

In 2005 the Ministry of Fisheries reviewed a series of recreational rules and regulations. The review was part of a commitment given by the Minister of Fisheries to review recreational fishers' top ten concerns within a specified timeframe. MFish identified that another three regulations, or issues, could be addressed in 2006. Another three issues will be reviewed in 2007.

The Initial Position Paper, dated 13 July 2006, follows the MFish review of three issues identified by the New Zealand Recreational Fishing Council that needed to be addressed. Those issues were:

- a. Clarify "take" and how it relates to daily bag limits;
- b. Review the minimum legal size for red gurnard, trumpeter and blue cod; and
- c. Shift the recreational scallop season.

Submissions were due by September 8<sup>th</sup> 2006. The submitters are grateful to the Ministry of Fisheries for extending the submission deadline to September 11<sup>th</sup>.

MFish expect to complete a Final Advice Paper (FAP) for the Minister, including recommendations, by the end of September.

This document comprises the submission from the New Zealand Big Game Fishing Council Inc. and option4 (the submitters). NGOs which promote the interests of non-commercial marine fishers in New Zealand.

## 2. General Comment

Throughout 2003 the New Zealand Big Game Fishing Council, the New Zealand Recreational Fishing Council, the NZ Angling and Casting Association and option4 were party to discussions with MFish in the Reference Group<sup>1</sup>. In December 2003 a consensus letter was signed and sent to the Minister of Fisheries, Pete Hodgson, addressing the issue of a regulation review<sup>2</sup>. In that letter it was agreed,

*"6. MFish to review recreational regulations (limited review of up to top 10 regulations of most concern) within specified timeframe.*

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<sup>1</sup> [http://option4.co.nz/Your\\_Rights/referencegroup.htm](http://option4.co.nz/Your_Rights/referencegroup.htm)

<sup>2</sup> [http://option4.co.nz/Your\\_Rights/rglcons1203.htm](http://option4.co.nz/Your_Rights/rglcons1203.htm)

*We do support this element of the reform package, however, only the sorting of the regulations requiring review will reveal how many regulations in fact require review and the resources required to do same. We note the process by which the regulation review takes place has yet to be discussed and agreed upon.”*

In the absence of any meaningful discussion since that time, we have to ask what is the point of reviewing specific regulations until the following fundamental questions have been addressed?

1. What are the purposes of the regulations and how can we measure the effectiveness of the current regulations in achieving whatever those objectives/purposes are?
2. What are the non-commercial “interests” that shall be allowed for?
3. What role do regulations have in allowing for those interests?

Our understanding is that the amateur regulation framework objective/purpose is to achieve a measure of reasonableness that serves to prevent the illegal unlicensed commercial fishing that would be occurring without some form of constraint. In fact, we believe that that was the purpose of regulations when they were first imposed. Now they are being used for other purposes where they do not fit.

It seems that the Ministry view regulations as a mechanism for constraining recreational catch to the recreational “allowance”. We do not believe that was the intent or the original purpose of the regulations.

Therefore we question why we are being asked to comment on specific regulations when the fundamentals have not been addressed.

We all have important roles to play in the Shared Fisheries Policy project, which deals with the most basic issue of allocation of fisheries between sectors.

Our recommendation for the Ministry and Minister of Fisheries would be to focus on the fundamentals and the detail can be dealt with in due course. Lets get first things first.

### **3. Recreational Minimum Legal Sizes**

#### **Gurnard**

Currently there is no minimum legal size for red gurnard in New Zealand. The Ministry of Fisheries (MFish) is consulting on an option to introduce a recreational minimum legal size of 25cm for red gurnard at the request of the New Zealand Recreational Fishing Council (NZRFC).

## **Sustainable Management**

The Quota Management System was introduced to reduce commercial overfishing and rebuild severely depleted inshore fisheries. Commercial catch of gurnard has never been constrained since 1986.

It is a concern that the gurnard plenary report (May 2006) notes,

*“The 1986 TACCs were based on 1984 landings for Southland and 1983 landings for other regions” and “The current TACCs were based on a period of highest ever catches, and these levels have not been reached in recent years” and “MCY estimates based on catch data are subject to a great deal of uncertainty”*

After 20 years of management we would expect a lot more certainty or an equal amount of caution applied to these fisheries of questionable status. If there are sustainability concerns then the Ministry needs to look hard at their track record of commercial management, or lack of it, in the red gurnard fishery.

The regular appearance of skinned and boned gurnard fillets in the supermarkets weighing less than 40 grams each is of some concern. The greenweight of the gurnard to yield two 40 gram fillets is approximately 240 grams. The greenweight of a 25cm snapper is approximately 440 grams. The trawl gear being deployed that is capable of killing the 240 gram gurnard must also have negative effects on juvenile snapper and trevally populations.

We have been unable to locate any readily available data profiling the complete catch of this trawl method that kills 240 gram gurnard. We ask that MFish used scientific observers on inshore trawl vessels to establish the extent of juvenile fish bycatch.

The Ministry should invite the fishing industry to identify the months and areas where large numbers of juvenile gurnard are taken. Having data that could help reduce the mortality of juvenile gurnard and increase yield per recruit would benefit all sectors. If this information is not available then MFish should tender a research project to collect it.

The Ministry have acknowledged in previous papers that the effects of fishing down a stock is the reduction in availability of fish to the non-commercial sector and also the decrease in size of the available fish.

If there is a lack of bigger size fish available to be caught then the cause for that needs to be explored including the cumulative effect of overfishing on the biomass.

## **Release Mortality**

Red gurnard are prone to gut hooking which is known to significantly increase mortality. Small gurnard that are released also tend to float and are not strong enough to swim down; this will also increase predation and mortality. Any proposal that would lead to an increase in the numbers of fish being returned to the water would

need to address the issue of net benefit. There is very little point in fishers returning fish to the water if they are not likely to survive.

The Ministry admit in the IPP that recreational catch is “*likely to be relatively low in comparison to the commercial harvest of the species*”. Recreational harvest estimates could be around 10% of the commercial harvest and just 2% of landed catch is smaller than 25 cm. So the bag limit proposal will affect 0.2% of the fish caught many of which may die on release anyway, therefore it will have no impact on the stock or local abundance.

The only result of a recreational size limit is that some amateur fishers will be prosecuted for keeping a small gurnard that was likely to die if released.

### **Gurnard Minimum Legal Size**

The submitters do not support a minimum legal size for red gurnard.

The submitters are very concerned about the stock size of gurnard in some areas. We strongly recommend the Ministry of Fisheries fund updated stock assessments for the red gurnard stocks and include the management of gurnard fisheries in the annual sustainability round when those assessments are completed.

The submitters would support a well researched code of practice, with the objective of increasing yield per recruit, which would encourage amateur fishers to release gurnard that they consider too small and have a good chance of surviving.

### **Trumpeter**

Currently there is no minimum legal size for trumpeter in New Zealand. The Ministry of Fisheries (MFish) is consulting on an option to introduce a recreational minimum legal size of 45cm for trumpeter at the request of the New Zealand Recreational Fishing Council (NZRFC).

Trumpeter is not a big fishery nationwide. The Total Allowable Commercial Catch (TACC) for the entire country is 144 tonne. There are only four main fisheries; Area 2 (Cape Runaway to Wellington) is the only significant North Island trumpeter fishery. Commercial catch ranges from 26% to 56% of a 20 tonne TACC set in 1998.

Southland fishers are concerned about the small size of trumpeter being caught in their area and have suggested this review. Trumpeter Area 5 around Southland has had commercial catches ranging from 1% to 22% of the TACC, which is set at 22 tonne.

There is very little information on trumpeter, no stock assessment, no growth rate, no idea if current catches are sustainable or anywhere near the level that would support the maximum sustainable yield, Bmsy.

The Ministry has acknowledged in previous papers that the effects of fishing down a stock is the reduction in availability of fish to the non-commercial sector and also the decrease in size of the available fish.

### **Trumpeter Minimum Legal Size**

The submitters do not support a minimum legal size for trumpeter at this time.

We agree with the Ministry's suggestion in the IPP that, due to the localised nature of recreational trumpeter fisheries, it may be more appropriate to manage trumpeter stocks on a regional or local scale, rather than implement a national MLS.

Considering the problems that have arisen for localised southern fishers the most effective way to improve the Southland trumpeter fishery would be to look at constraining commercial access to those areas.

The submitters would support a well researched code of practice that would encourage amateur fishers to release trumpeter that they consider too small and have a good chance of surviving.

### **Blue Cod**

The 33cm Minimum Legal Size (MLS) for blue cod was introduced in 1993 and was based on information from the South Island fisheries. There have been a number of changes to size limits in the South Island including an increase from 28 to 30cm in the Marlborough Sounds, and decrease from 33 to 30cm in the Challenger Area (East) in 2003. MFish suggest that blue cod in the north mature faster and therefore reproduce earlier than in the south. The NZ Recreational Fishing Council has asked MFish for a reduction in the North Island legal size from 33 to 30 cm.

Area 8 from Wellington to Tirua Point is the largest commercial North Island blue cod fishery at with a total allowable commercial catch (TACC) of 74 tonne. Recent commercial landings in that area range from 7 to 35 tonnes per year.

### **Blue Cod Minimum Legal Size**

The submitters support the change of blue cod legal size from 33 cm to 30 cm for amateur fishers at this time.

There do not seem to be any current sustainability concerns in most North Island areas if the amateur size limit is decreased. However, we have not had time or resources to fully consult with our members and supporters in the lower North Island.

Blue cod do have a tendency to swallow the hook and gut hooked fish are known to have a higher mortality rate when released. Therefore this change may reduce wastage and allow fishers to select fish to release that are likely to survive. Well researched

information on how to handle and release small blue cod should be provided to assist recreational fishers reduce incidental mortality.

## **4. Scallop Management**

Two options are proposed in the IPP for all scallop fisheries except the Southland Fisheries Management Area. The proposal is for a seven-week shift in the recreational scallop harvest season although the length of the season would remain the same. The commercial season will remain the same as it is now.

The IPP offers the following options for amateur fishers only:

1. Change the current scallop season from 15<sup>th</sup> July to 14<sup>th</sup> February, to 1st September to 31st March inclusive.
2. Maintain existing dates of 15<sup>th</sup> July to 14<sup>th</sup> February inclusive.

MFish consider the take of scallops is likely to increase due to scallops being available for harvest later into the autumn but do not consider there is a sustainability risk. Compliance has been raised as an issue as the current seasons have been in place since 1973 and a lot of publicity would be required to advertise the changes.

### **Season Change**

- There is general support for a closed season (annual rahui) as a management tool in the scallop fishery.
- The submitters agree that a shift in season would increase access by non-commercial fishers who are generally more active in the summer months than the winter months.
- We note that MFish have accepted the value of anecdotal information on the availability and condition of fish in making fisheries management decisions.
- We note that there is no proposal to change the commercial scallop season. In scallop beds where there commercial and recreational fisheries overlap the period of harvest and bed disturbance would be from 15 July to 31 March with the proposed change.
- There is support for a change to the scallop harvesting season for amateur fishers in some areas but it is not universal.
- The best closed season in the Manukau Harbour may not be the same for Coromandel, Hokianga or Akaroa Harbour.
- The submitters have not had sufficient time or resources to consult with their members and supporters nationally so cannot agree to a one-size-fits-all approach at this time.
- We note that the Coromandel scallop fisheries plan pilot project is still working through scallop management issues with stakeholders and a change to this regulation at this time would override that process.
- We submit that MFish propose to change the scallop open season in 2008 (1 September 2008 to 31 March 2009) and take the time to engage with amateur scallop fishers in all regions and provide for the input of non-commercial Maori fishers before making that change to the Regulations.



## 5. What Counts as Take and Bag Limits

As a result of the Ministry of Fisheries current interpretation of the Fisheries Act 1996 and the regulations that govern the recreational harvest of fish (i.e. bag limits and size limits), they believe that all fish caught, whether smaller than the minimum legal size and release, larger than the legal size and released or tagged and released should count against the individuals amateur daily bag limit.

The submitters strongly recommend that MFish explain in their final advice to the Minister that it has never been the intent of the Amateur Fishing Regulations for daily bag limits to include fish that are released because they were under sized, tagged for research purposes or even if the fisher just chose to let it go. The vast majority of people would agree that it would be cynical of compliance staff if they started prosecuting fishers for releasing fish in these circumstances. In our view it is not the public that is confused over this issue, but the Ministry.

We believe that the vast majority of the public are perfectly clear that they can release fish in good condition above the Minimum Legal Size (MLS) to help conserve the resource. The Ministry has been facilitating a co-operative gamefish tagging programme for over 30 years that has promoted the tag and release of certain species of fish for research purposes. Not once have they suggested that that tagged fish count toward the daily bag limit until now, even with species such as sharks in the South Island where the bag limit is one per person. It clearly has not been the intent of the Legislation or Regulations to prohibit these activities.

The Fisheries Act 1996 defines taking as “fishing” and fishing is defined as “*any activity that may reasonably be expected to result in catching*” a fish; or “*any operation in support of or in preparation for any activities*” to catch a fish<sup>3</sup>. It seems that an error has been made in drafting the Fisheries Act if an amateur fishers are ruled to be “taking” as soon as they put the boat in the water. We submit that the MFish provide a definition of “taking” specifically for amateur fishers in the Amateur Fishing Regulations as this is currently too loosely defined.

The Ministry state that, “*It is generally accepted that a fish is considered taken when it has been captured and a fisher has exercised possession and control over it.*” This is also part of the problem. MFish seem to have developed this conclusion as a means of obtaining prosecutions rather than through a policy development process that explains the necessity for this particular interpretation and the management goal it will achieve.

The Ministry would have to admit that most scallop divers were very surprised to learn that they had to measure and count their scallops before they were put into the dive bag. This revelation was not because of a new regulation, just a new interpretation.

The Ministry should be well aware that their compliance image was badly tarnished when Fisheries Officers started chasing divers in the water in order to get prosecutions based on this new interpretation. The result was alienation of a section of the

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<sup>3</sup> Section 2 of the Fisheries Act 1996 Interpretation of “Fishing”  
Non-commercial submission

population who were previously happy to comply with the regulations. This also led to a large increase in the use of recreational dredges, which caused more damage to the environment and an increase in scallop mortality. Clearly this was a negative outcome for fisheries management.

The confusion that is discussed in the IPP is largely as a result of the new interpretations by Ministry, which have been applied without consultation. We submit that the MFish has a duty to consult on their re-interpretation of the legislation and it should be brought into line with commonly accepted opinion with a focus on management objectives, which is after all the fundamental purpose and intent of the regulations.

If all MFish can manage at this time is a band-aid approach to fisheries management then the following are our preferences:

- Clarify that undersize fish do not count towards the recreational daily bag limit.
- Clarify that a recreational fisher's daily bag limit applies only to the number of lawfully taken fish that are actually *retained*.
- Provide a defence for tagging and releasing certain stocks or species in the Regulations.

## **Initial Proposal**

We object to some of the language and messages in the Initial Position Paper.

MFish imply that the status quo is that all fish caught while fishing count against the daily bag limit. We suggest that this is in fact a significant change to the intent, interpretation and practice of fisheries management and compliance in New Zealand.

MFish state that recreational fishers who release fish above the MLS are guilty of high grading. Releasing live fish to help conserve the resource is totally different to the practice that was once common in the commercial longline fleet of dumping dead fish (standard grade) so that they would have more quota available for high value export grades of fish (iki jime fish) which is a criminal waste of the resource.

Most recreational fishers do not come close to catching their bag limit so there is no incentive to swap one fish for another. The motivation for releasing fish is to contribute to a better fishery in the future, not greed.

The non-commercial sector has been asking for a planning right for many years. This has been more clearly articulated in the principle endorsed by over 100,000 members of the public and by the main representative organisations, since 2000.

*“The ability to devise plans to ensure future generations enjoy the same or better quality of rights while preventing fish conserved for recreational use being given to the commercial sector<sup>4</sup>.”*

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<sup>4</sup> option4 principle # 3, <http://option4.co.nz/>  
Non-commercial submission

For the Ministry to now suggest that the catch and release of fish should be counted against a person's individual daily bag limit is beyond reasonableness.

## **6. Regulation 19A**

The submitters support, at this time, the proposal to amend the Fisheries (Amateur Fishing) Regulations 1986 to ensure minor breaches of regulation 19A are not considered serious offences, due to changes in the regulations made for scallops and dredge oysters in December 2005.

## **7. Conclusion**

The NZBGFC and option4 thank the Ministry of Fisheries for the opportunity to have input into the proposals to amend some aspects of the Amateur Fishing Regulations. We would like to be kept informed of future developments regarding the Amateur Fishing Regulations.

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