

In Confidence

Office of the Minister of Fisheries
Chair, Cabinet Legislation Committee

Regulations to prohibit the import and export of toothfish and the import of southern bluefin tuna.

Proposal

1. I seek approval for submission to the Executive Council of the:
 - a. Fisheries (Import and Export Prohibitions—Toothfish) Regulations 2019
 - b. Fisheries (Import Prohibition—Southern Bluefin Tuna) Regulations 2019

Executive Summary

2. The new regulations are for the purpose of giving effect to New Zealand's international obligations. Accordingly, the import and export of toothfish, and the import of southern bluefin tuna, is to be prohibited, unless accompanied by appropriate catch documentation.
3. Currently, temporary prohibitions are given legislative effect by way of prohibition orders made under the Customs and Excise Act 2018. These prohibition orders expire on 30 September 2019.
4. On 10 April 2019, the Cabinet Economic Development Committee agreed to use powers under section 297 of the Fisheries Act 1996 to implement provisions enabling the import and export of toothfish, and the import of southern bluefin tuna, to be prohibited, unless accompanied by the appropriate documentation (DEV-19 MIN 0080).

Policy

5. New Zealand is a member of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Commission for the Conservation of Southern Bluefin Tuna (CCSBT). Accordingly, New Zealand is a participant in CCAMLR's catch documentation scheme for toothfish, and CCSBT's catch documentation scheme for southern bluefin tuna.

6. In compliance with our international obligations to implement the catch documentation schemes, domestic prohibitions are currently given legislative effect by way of prohibition orders under the Customs and Excise Act 2018. These prohibition orders expire on 30 September 2019. On 10 April 2019, the Cabinet Economic Development Committee (DEV-19-MIN-0080):
 - a. agreed to use of powers under section 297 of the Fisheries Act 1996 to implement provisions enabling the importation and exportation of toothfish to be prohibited, except in accordance with the catch documentation scheme under CCAMLR; and
 - b. agreed to use powers under section 297 of the Fisheries Act 1996 to implement provisions enabling the importation of southern bluefin tuna to be prohibited, except in accordance with the southern bluefin tun Catch Documentation Scheme under the Convention for the Conservation of Southern Bluefin Tuna.
7. The Cabinet Economic Development Committee agreed it was more appropriate to administer prohibitions that are related to fisheries under the Fisheries Act 1996 because:
 - a. under the Fisheries Act 1996, the prohibition may be more readily accessible and visible to fisheries stakeholders
 - b. placing the prohibitions under the Fisheries Act 1996 would allow penalties for non-compliance with the proposed regulations to be aligned with penalties for other similar fisheries offences; and
 - c. setting a precedent of placing fisheries import and export prohibitions under the Fisheries Act 1996 would allow for easier implementation of future fisheries import and export prohibitions.
8. The new regulations would not create new obligations for importers or exporters. However, the alignment of penalties to similar offences under the Fisheries Act 1996 could result in higher potential fines for convictions.
9. There are no impacts to monitoring, enforcement costs, or responsibilities, as current practice would largely remain the same. The New Zealand Customs Service would continue to exercise relevant powers to seize unlawfully imported or exported goods.

Regulatory Impact Analysis

10. Treasury determined that the proposal was exempt from the Regulatory Impact Analysis requirements as the proposal is the minimum necessary to meet international obligations.

Compliance

11. The regulations are compliant with:
 - a. the principles of the Treaty of Waitangi;
 - b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - c. the principles and guidelines set out in the Privacy Act 1993;
 - d. relevant international standards and obligations; and
 - e. the Legislation Advisory Committee's Guidelines on Process and Content of Legislation.

Consultation

12. Public consultation was undertaken on this proposal between 26 November and 21 December 2018. Fisheries New Zealand also discussed the proposal and sought feedback at a commercial stakeholder workshop¹, which was held on 7 November 2018.
13. Feedback was specifically sought on the potential impact of the higher maximum penalties for convictions should the prohibitions be implemented under the Fisheries Act 1996.
14. There was minimal interest or feedback received on the proposal from stakeholders. One submission was received, supporting the proposed changes. No specific feedback was received regarding increased penalties.
15. The New Zealand Customs Service, the Ministry of Justice, and the Ministry of Foreign Affairs and Trade were also consulted.

Timing and 28-Day Rule

16. The regulations are intended to come into force on 1 October 2019. This will ensure there is no gap between the current prohibition orders expiring on 30 September 2019 and the new prohibition regulations coming into force, ensuring New Zealand remains compliant with our international obligations. This timing is consistent with the 28 day rule.

Communications / Media

7. It is expected that there will be a low level of stakeholder, public, and media interest on the proposed regulations.

¹ Attendees to the workshop include Licensed Fish Receivers, representatives from tangata whenua, Fisheries Inshore New Zealand, commercial fishers, and vessel owners.

Regulations Review Committee

18. I consider that there are no grounds under Standing Order 319 that apply in relation to these regulations. Therefore, there is no need for the Regulations Review Committee to draw the regulations to the special attention of the House.

Certification by Parliamentary Counsel

19. The Parliamentary Counsel Office has certified the attached amendment regulations as being in order for submission to Cabinet.

Financial Implications

20. There are no financial implications for the Crown in this paper.

Publicity

21. The decision to create new regulations will be published in the New Zealand Gazette prior to it coming into effect before 1 October 2019. A decision letter will also be provided to inform stakeholders and tanga a whenua of the rationale for the decision, as well as notification on the Fisheries New Zealand website. No other publicity is proposed.

Proactive Release

22. Following Cabinet consideration, I intend to consider the release of this paper in full.

Recommendations

The Minister of Fisheries recommends that Cabinet Legislation Committee:

- 1 Note** that on 10 April 2019, the Cabinet Economic Development Committee (DEV-19-MIN-0080):
 - a. agreed to use of powers under section 297 of the Fisheries Act 1996 to implement provisions enabling the importation and exportation of toothfish to be prohibited, except in accordance with the catch documentation scheme under CCAMLR; and
 - b. agreed to use powers under section 297 of the Fisheries Act 1996 to implement provisions enabling the importation of southern bluefin tuna to be prohibited, except in accordance with the southern bluefin tuna Catch Documentation Scheme under the Convention for the Conservation of Southern Bluefin Tuna;
- 2 Authorise** the submission to the Executive Council of the Fisheries (Import and Export Prohibitions—Toothfish) Regulations 2019 and the Fisheries (Import Prohibition—Southern Bluefin Tuna) Regulations 2019 (the “Regulations”);
- 3 Note** that the Regulations will give effect to the decisions referred to in recommendation 1; and
- 4 Note** that the Regulations are intended to come into force on 1 October 2019.

Authorised for Lodgement

Hon Stuart Nash
Minister of Fisheries