

Proposed changes to import and export prohibitions for toothfish and southern bluefin tuna

Proposal

1. I seek Cabinet agreement to use my powers under the Fisheries Act 1996 to create import and export prohibitions on toothfish and southern bluefin tuna in order to continue to uphold international obligations.

Executive Summary

2. Three orders implemented under the Customs and Excise Act 2018 prevent the importation and exportation of toothfish, and the importation of southern bluefin tuna, unless accompanied by the appropriate documentation.
3. The prohibitions are necessary in order to comply with international obligations that are binding on New Zealand as a member of the Commission for the Conservation of Antarctic Marine Living Resources and the Commission for the Conservation of Southern Bluefin Tuna.
4. Currently, temporary prohibitions are given legislative effect by way of prohibition orders made under legislation administered by the New Zealand Customs Service (Customs)¹. These prohibition orders expire on 30 September 2019.
5. The Fisheries Act 1996 enables regulations to be made for the purpose of giving effect to New Zealand's international obligations.² Therefore, prohibitions on the importation and exportation of toothfish and southern bluefin tuna can be made under the Fisheries Act 1996.
6. I am seeking agreement to change the statute under which existing import and export prohibitions for toothfish and southern bluefin tuna are administered.
7. I believe that it is appropriate to administer import and export prohibitions related to fisheries under the Fisheries Act 1996 rather than continuing to administer prohibitions by way of orders made under the Customs and Excise Act 2018.
8. The proposed changes would not create new obligations on importers or exporters. However, the alignment of penalties to similar offences under the Fisheries Act 1996 would allow for higher potential fines for convictions.

1 The current prohibition orders were made under the Customs and Excise Act 1996, but are currently administered under the Customs and Excise Act 2018, which replaced the former on 1 October 2018.

2 See Section 297.

9. I propose that the penalties for non-compliance with the proposed regulations be aligned with penalties for other similar offences under the Fisheries Act 1996, up to \$100,000 for an individual or body corporate.

Background

International Obligations under the Commission for the Conservation of Antarctic Marine Living Resources

10. The Commission for the Conservation of Antarctic Marine Living Resources (the Commission) is the intergovernmental organisation responsible for the management of marine living resources in the waters surrounding Antarctica. New Zealand is a member of the Commission, as well as an active participant in the Patagonian toothfish and Antarctic toothfish fisheries.
11. The Commission adopts conservation measures designed to conserve and manage toothfish fisheries within its Convention Area in a sustainable and precautionary manner.
12. In the 1990s, authorised fishing vessels operating in the Commission's Convention Area reported high levels of illegal, unreported, and unregulated fishing ("illegal fishing") for toothfish. As a result, a catch documentation scheme was adopted by the Commission to track the origin of toothfish catch and its movement through international trade.
13. Under the Commission's catch documentation scheme, all landings and transshipments of toothfish must be accompanied by a toothfish catch document. The catch document verifies the origin of the toothfish and that it was caught in a manner consistent with the Commission's conservation measures if it was caught within the Convention Area. All imports and exports of toothfish must also be accompanied by a Toothfish Export Document.
14. New Zealand administers the Commission's catch documentation scheme through the Fisheries (Toothfish Catch Documentation Scheme) Regulations 2000, as well as through import and export prohibition orders made under Customs legislation.
15. The Customs Import Prohibition (Toothfish) Order 2018 and the Customs Export Prohibition (Toothfish) Order 2018 currently prohibit the importation and exportation of Patagonian and Antarctic toothfish, except when done in accordance with the Commission's catch documentation scheme.

International Obligations under the Commission for the Conservation of Southern Bluefin Tuna

16. The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is the intergovernmental organisation responsible for the management of southern bluefin tuna. New Zealand is a founding member of CCSBT, as well as an active participant in the fishery.

17. Southern bluefin tuna is a high value species, which puts it at risk of illegal fishing. The stock has historically been under significant fishing pressure, and remains in an overfished state.
18. To address the continuing problem of illegal fishing, CCSBT adopted a catch documentation scheme in 2010. The catch documentation scheme requires members to prohibit the landing, transshipment, import, export, or re-export of southern bluefin tuna that is not accompanied by the appropriate documents and tags.
19. New Zealand administers the CCSBT catch documentation scheme through the Fisheries (Southern Bluefin Tuna Catch Documentation Scheme) Regulations 2017 (the regulations), as well as through an import prohibition order made under Customs legislation.
20. The Customs Import Prohibition (Southern Bluefin Tuna) Order 2016 prohibits the importations of southern bluefin tuna, except when done in accordance with the CCSBT catch documentation scheme.
21. The import prohibition order is designed to comply with international obligations that are binding on New Zealand, in order to maintain an effective system of controls on the catch and importation of southern bluefin tuna.
22. The regulations prohibit New Zealand licenced fish receivers³ from selling southern bluefin tuna without providing the buyer with the appropriate catch documentation and also prohibit the sale of untagged southern bluefin tuna. The regulations have the same practical effect as an export prohibition, and therefore, an export prohibition order for southern bluefin tuna was deemed unnecessary.

Current Prohibition Orders

23. Three orders made under the Customs and Excise Act 1996 (before its repeal on 1 October 2018) prevent the importation and exportation of toothfish, and the importation of southern bluefin tuna, unless accompanied by appropriate documentation. The orders are the:
 - Customs Import Prohibition (Toothfish) Order 2018
 - Customs Export Prohibition (Toothfish) Order 2018, and
 - Customs Import Prohibition (Southern Bluefin Tuna) Order 2016.
24. These orders are now enforced by Customs under the Customs and Excise Act 2018.
25. Orders made under the Customs and Excise Act 1996 could only be in effect for up to three years. The three orders listed above expire on 30 September 2019.
26. Should the prohibitions not be renewed, then New Zealand would be in breach of our international obligations. This would have implications including:

³ Those licensed under the Fisheries (Licensed Fish Receiver) Regulations 1997 to receive fish for handling or processing from a commercial fisher.

- damage to New Zealand's international reputation as a member of the Commission and CCSBT, and as a responsible fishing nation;
 - a negative effect on New Zealand's position when advocating for controls on the trade of toothfish and southern bluefin tuna;
 - potential for an independent audit, commissioned by the Commission and/or CCSBT, of New Zealand's monitoring, control, and surveillance systems to determine that we have not effectively implemented the relevant catch documentation scheme; and
 - New Zealand ports becoming vulnerable to use for the import of illegally caught toothfish and southern bluefin tuna, which could potentially be re-exported as New Zealand product.
27. Under the Customs and Excise Act 2018, a person commits an offence if they import or export prohibited goods (including goods prohibited under the orders listed above). They are liable on conviction to a fine of up to \$5000 if an individual; and \$25,000 if a body corporate.
28. A person also commits an offence under the Customs and Excise Act 2018 if they are knowingly involved in any importing or exporting of prohibited goods. The penalties for these offences include a fine of up to the greater of \$20,000 or an amount three times the value of the goods for an individual; and the greater of \$100,000 or an amount three times the value of the goods for a body corporate. Imprisonment is also a possibility for an individual.

Proposed Changes

29. I propose that the Government note that the current prohibitions under Customs legislation expire on 30 September 2019, and agree to replace the orders with regulations under the Fisheries Act 1996.
30. I consider it more appropriate to administer import and export prohibitions that are related to fisheries under the Fisheries Act 1996 rather than continuing to administer prohibitions by way of orders made under the Customs and Excise Act 2018 because:
- Under the Fisheries Act 1996, the prohibitions may be more readily accessible and visible to fisheries stakeholders;
 - 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
 - Setting the precedent of placing fisheries import and export prohibitions under the Fisheries Act 1996 will allow for easier implementation of future fisheries import or export prohibitions.
31. Section 297 of the Fisheries Act 1996 enables regulations to be made for the purpose of giving effect to New Zealand's international obligations. Therefore, prohibitions on the importation and exportation of toothfish and the importation of southern bluefin tuna can be made under the Fisheries Act 1996.

32. New Zealand actively advocates for the development of measures to improve traceability in South Pacific tuna fisheries. New Zealand may, in the near future, agree to implement catch documentation schemes for species such as albacore, skipjack, bigeye, or yellowfin tuna.
33. Implementation of a new catch documentation scheme would require new regulations to be created under the Fisheries Act 1996.⁴ Setting the precedent of placing import and export prohibitions in the Fisheries Act 1996 (rather than into orders made under the Customs and Excise Act 2018) would reduce the administrative burden in the future.
34. There would be no new costs or obligations for industry under the new prohibitions. Importers and exporters would only need to continue to comply with the current requirements.
35. There would be no impacts to monitoring or enforcement costs or responsibilities, as current practices would largely remain the same. Customs would continue to exercise relevant powers to seize unlawfully imported or exported forfeit goods.

Penalties

36. I also propose that the penalties for non-compliance with the proposed regulations be aligned with penalties for other similar offences provided for in regulations under the Fisheries Act 1996.
37. Similar offences provided for in regulations under the Fisheries Act 1996 include:
 - Failure to meet the obligations in relation to catch documentation under regulations 6 to 8 of the Fisheries (Toothfish Catch Documentation Scheme) Regulations 2000; and
 - Failure to comply with the prohibition on the sale of southern bluefin tuna without the required tag under regulation 26 of the Fisheries (Southern Bluefin Tuna Catch Documentation Scheme) Regulations 2017.
38. A person who commits one of the above offences could be liable on conviction to a fine not exceeding \$100,000. This is a substantial increase in the penalty compared with offences that currently apply under the Customs and Excise Act 2018.
39. Given that there would be no new requirements for importers or exporters, and that compliance with existing requirements is high, I consider higher penalties would not likely affect many stakeholders.

⁴ These would likely be similar to the existing Fisheries (Southern Bluefin Tuna Catch Documentation Scheme) Regulations 2017 or Fisheries (Toothfish Catch Documentation Scheme) Regulations 2000.

Consultation

40. My officials undertook a public consultation on the proposed changes from 26 November to 21 December 2018. Fisheries New Zealand also raised the matter for discussion and feedback at the most recent commercial stakeholder workshop⁵, which was held on 7 November 2018.
41. Feedback was specifically sought on the potential impacts of the higher maximum penalties for convictions should the prohibitions be implemented under the Fisheries Act 1996.
42. There was minimal interest or feedback received on the proposal from stakeholders. Only one submission was received, supporting the proposed changes. No specific feedback was received regarding increased penalties.
43. Customs and the Ministry of Justice were consulted on the development of this Cabinet paper, and their feedback is reflected in this proposal.

Financial Implications

44. The requirements for exporters and importers would remain unchanged under this proposal, and therefore the proposed changes are not expected to create any additional financial implications.
45. The proposed changes would not result in any changes to current monitoring and enforcement costs.

Legislative Implications

46. The proposal will require the making of regulations under the Fisheries Act 1996 to come into effect on 1 October 2019. The export and import prohibition orders under Customs legislation will expire on 30 September 2019.

Impact Analysis

47. This proposal was determined by Treasury to be exempt from the Regulatory Impact Analysis requirements as the proposal is the minimum necessary to meet international obligations.

Human Rights, Gender Implications, and Disability Perspective

48. This paper does not have any human rights, gender, or disability implications.

⁵ Attendees to the workshop include Licenced Fish Receivers, representatives from tangata whenua, Fisheries Inshore New Zealand, commercial fishers, and vessel owners.

Publicity

49. I do not anticipate that this matter will be controversial based on the minimal response to the consultation process, as well as the fact that requirements for importers and exporters will not be changed.
50. I propose publicising the continuation of the prohibitions through Customs and Fisheries business publications.

Proactive Release

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

Recommendations

The Minister of Fisheries recommends that the Committee:

1. **Note** that the Customs Import Prohibition (Toothfish) Order 2018, the Customs Export Prohibition (Toothfish) Order 2018, and the Customs Import Prohibition (Southern Bluefin Tuna) Order 2016, expire on 30 September 2019;
2. **Agree** to use 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 toothfish Catch Documentation Scheme under the Convention on the Conservation of Antarctic Marine Living Resources;
3. **Agree** 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;
4. **Invite** the Minister of Fisheries to issue instructions to the Parliamentary Counsel Office to draft regulations under the Fisheries Act 1996 to give effect to the provisions agreed above;
5. **Authorise** the Minister of Fisheries to make final decisions on detail and to make changes, consistent with the policy intent outlined in this paper, on any issues that arise during drafting of the regulations.

Authorised for lodgement

Hon Stuart Nash
Minister of Fisheries