



# Introduction of all School Shark Stocks to Schedule 6 of the Fisheries Act 1996

Regulatory Impact Statement

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## Regulatory Impact Statement

### Introduction of all School Shark Stocks to Schedule 6 of the Fisheries Act 1996

#### Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry for Primary Industries (MPI).
2. It provides an analysis of options to address the problem of costs to industry associated with the requirement to land all school shark caught. MPI's preferred option is to include all school shark stocks on Schedule 6 of the Fisheries Act 1996 (the Act). This would allow school shark, when caught by commercial fishers and likely to survive, to be returned to sea rather than having to be landed.
3. The analysis relies on information held by MPI and supplied by the fishing industry and is consistent with the new Zealand National Plan of Action for Sharks. It does not highlight any constraints or assumptions relating to the proposal.
4. The proposal recommends the alternative bycatch management tool available under the Fisheries Act 1996 for school shark, to reduce operating costs for fishers.

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## Status quo and problem definition

5. While ITQ based systems focus on individual species management, many species are caught simultaneously. Individual fishers can target multiple species at once while in other cases a different species may be captured unintentionally. So within this type of system, mechanisms must be established that allow fishers to deal with either excess catch of species for which they hold quota or the unintentional catch of species for which they do not hold quota.
6. The current default mechanism is to require all fish subject to the QMS to be landed. For fish caught unintentionally and without catch entitlement fishers have only two options to deal with their extra catch: they must either purchase the extra catch entitlement required or pay a deemed value.<sup>1</sup> The deemed value mechanism is designed to ensure that there is little or no profit from catching additional fish so that the level of bycatch and overfishing is reduced.
7. School shark is a highly valued species and supports a lucrative target fishery. The species is widely distributed in coastal waters and is vulnerable to a wide range of fishing methods. These characteristics of school shark results in an evenly divided fishery - between those fishers targeting the species and those catching school sharks as bycatch when fishing for other species.
8. The requirement to land all school shark has resulted in an economic cost in the form of deemed value payments for fishers who are unable to avoid it when fishing for other species and do not have the ACE to cover the catch. In the past five years, commercial fishers have collectively paid total annual deemed values ranging from \$45,200 to \$290,100. At issue is the feasibility of reducing or alleviating these costs by considering inclusion of school shark on schedule 6 of the Fisheries Act 1996 (the Act) and thus become subject to a more flexible bycatch management tool.

## Objectives

9. The objective of the proposal is to recommend an management tool available under the Act for school shark.
  - that reduces current costs to fishers;
  - that maintains the current reporting and monitoring systems to ensure fishers comply with catch limit rules;
  - and that is available under current provisions of the Act.
10. The recommendation to make this change was considered by the Minister for Primary Industries (the Minister) under section 72(7) of the Act. An Order in Council is necessary to implement this recommendation. It is proposed that the change becomes effective on 1 May 2013 simply for administrative and practical reasons (i.e. the period of time it would take to put it in place).

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<sup>1</sup> Deemed values are an administrative penalty paid by commercial fishers when catching in excess of their ACE holdings. When the amount of commercial fishers' reported catch is greater than the amount of ACE that they own, they are issued with a deemed value invoice. Deemed value invoices must be paid within 20 days of the date on the invoice. If they do not pay their deemed value invoice on time, and the amount of the deemed values they owe is \$1000 or more, their fishing permit is suspended.

# Regulatory impact analysis

Table 1: Available bycatch management tools

Option 1	Status quo: No specific measures allowing school shark to be returned to the sea. All catch reported and counts against quota.
Option 2	School shark can be returned to the sea if in a survivable state. All catch reported but fish released alive under this provision is reported but does not count against ACE.

## *Option 1 (Status Quo)*

11. Option 1 is the default setting for QMS stocks.
12. Under Option 1, all mortality associated with commercial fishing of school shark will, in theory, be entirely constrained within catch limits as all school shark landed are counted against ACE (or attract deemed value payments).
13. The status quo would result in further costs to industry. Commercial fishers who have reported school shark catch in excess of their ACE holdings have paid total deemed value fees ranging from \$45,200 to \$290,100 per year. Furthermore, fishers would not be required to source ACE (\$1.70/kg on average) as an alternative to paying deemed values for unwanted school shark that is likely to survive.

## *Option 2*

14. The preferred option is to add school shark to Schedule 6 of the Act. This would allow commercial fishers to legally return school shark to sea when likely to survive.
15. If school shark were to be included on Schedule 6, the costs associated with landing unwanted school shark that is likely to survive could be avoided, the cost to industry may be significantly reduced. This has been the case for other shark species previously listed on Schedule 6 such as blue shark, mako shark, porbeagle shark, skate, spiny dogfish and rig.
16. These costs would continue to apply only in relation to school shark that is not likely to survive. The exact magnitude of these costs cannot be determined prior to implementation of the change but could be monitored after implementation with information reported by fishers under existing requirements.
17. The proposal also aligns management of school shark with other robust fish species (i.e. that are likely to survive being returned to sea after capture) such as blue shark, kingfish, mako shark, porbeagle shark, skates and rig. The proposed change is expected to have a positive impact in terms of sustainability if, for example, fishers preferentially release mature females. If this practise became established it would increase productivity of the resource.
18. There is a risk that some school shark released under Schedule 6 will not survive. This risk is probably greatest for school shark caught and released from set nets. Like other species on Schedule 6, effectiveness would depend on fishers' own assessment of the school shark's likelihood to survive. Because this assessment is subjective, Schedule 6 listing is only provided for species that are known to be robust and generally likely to survive a return to sea after capture, as is the case for school shark. Because of that, the objective of the proposal is not entirely reliant on fishers' assessment of likelihood to survive.

19. Fishers would require notification of the measure being implemented. This would provide the opportunity for MPI to remind fishers of their reporting obligations. It also provides the opportunity for development of codes of best practise (for example by describing best practise techniques for release and to promote increased productivity by selectively releasing mature females).
20. As regulatory restrictions for school shark are reduced under the proposal, there are no additional regulatory, compliance or management costs. Existing Schedule 6 provisions are utilised and no specific supporting offence, penalty provisions or other management controls need to be introduced or amended. School shark returned to the sea, in accordance with Schedule 6 of the Act, must be recorded under an existing separate destination code. This information will assist in providing more accurate reporting on school shark stocks, which in turn, will assist in the management of the stocks. MPI is developing a framework and programme for inshore vessel monitoring. Improved monitoring will assist with managing the compliance risk of discarding school shark unlikely to survive.
21. This proposal is consistent with actions and objectives in the New Zealand National Plan of Action for Sharks (NPOA-Sharks)<sup>2</sup>. An action listed in the NPOA-Sharks is to review use of the Schedule 6 provision to allow live release of additional (unspecified) shark species.
22. Under Fisheries 2030<sup>3</sup>, fishery resources are to be used in a manner that provides the greatest overall economic, social, and cultural benefit. A key task under the Fisheries 2030 five-year plan of action is ensuring fisheries laws and regulations reduce compliance costs and improve management effectiveness.

## Consultation

23. Public consultation took place as part of the development of final advice to the Minister. Tangata whenua and stakeholders from the amateur, commercial, and environmental sectors were invited to make written submissions. Seven submissions (and two submissions in support of other submissions) were received on the proposal.
24. All but one submission supports adding school shark to Schedule 6 (thereby allowing school shark to be returned to the sea when likely to survive). The NZ Royal Forest and Bird Society support the status quo because of concerns about survivability of released fish and concern that fishers will discard dead school shark to avoid paying deemed values. MPI disagrees with this and notes that the status quo provides a greater incentive for commercial fishers to discard unwanted school shark than if included on Schedule 6, since the option to release live school shark is unavailable in the status quo. The status quo also does not alleviate the economic cost associated with fishers having to hold ACE or pay deemed values on all school sharks that are caught but could be released alive.

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<sup>2</sup> New Zealand National Plan of Action for the Conservation and Management of Sharks October 2008

<sup>3</sup> Fisheries 2030 provides the strategic direction for the New Zealand fisheries sector. See [www.fish.govt.nz](http://www.fish.govt.nz)

## Conclusions and recommendations

25. The preferred option is to add school shark to Schedule 6 to the Act. This would allow fishers to return unwanted school shark to sea when likely to survive and if the return takes place as soon as practicable after the school shark is taken.
26. The proposal would reduce compliance costs and increase economic benefit from the school shark fishery. It would also maintain and possibly improve the current reporting and monitoring provisions that support the sustainability of the fishery for the benefit of all users. It also aligns with the Fisheries 2030 five-year plan of action of ensuring fisheries laws and regulations reduce compliance costs and improve management effectiveness.

## Implementation

27. MPI proposes to use of section 72(7) of the Act to add school shark to Schedule 6. This section allows the Governor-General, by Order in Council made on the recommendation of the Minister, to add or omit from Schedule 6 any stock, or amend or add new provisions to the Schedule.
28. It is proposed that the change would become effective from 1 May 2013. Stakeholders have been notified of the Minister's endorsement of this proposal. Further information would be provided to affected stakeholders closer to the implementation date, should the proposal be approved.
29. Given that the proposed change would increase flexibility for commercial fishers to manage school shark catches, no additional regulatory, compliance or management costs are expected. Existing Schedule 6 provisions are utilised and no specific supporting offence, penalty provisions or other management controls need to be introduced or amended.

## Monitoring, evaluation and review

30. Compliance with the proposed provision of returning school shark only when likely to survive would be monitored as part of existing observer coverage and at sea monitoring activities in the fishery, within existing budgets.
31. The sustainability of school shark stocks is monitored primarily by monitoring relative abundance, maturity state, sex ratio, and age structure. Furthermore, commercial fishers are required to report all fish caught and returned to sea under Schedule 6. As described above, it is expected that compliance with this requirement could possibly improve as a result of the proposal. Over time, these scientific indicators and the information reported by commercial fishers would allow for monitoring, evaluation and review of the management measure. This information would highlight the impact of the proposed measure on sustainability of the fishery and whether any further changes or adjustments are required