

Office of the Minister for Oceans and Fisheries

Cabinet Economic Development Committee

## Customs Export Prohibition (Green-lipped Mussel Spat) Order 2022

### Proposal

- 1 I seek Cabinet approval to continue the export prohibition on live New Zealand green-lipped mussels with a shell size of less than 50 millimetres in length (known as mussel spat) for a period of five years. The export prohibition, legislated under the Customs Export Prohibition (Green-lipped Mussel Spat) Order 2019 (the **Current Prohibition Order**), is due to expire on 30 September 2022.

### Background

- 2 Section 96(1) of the Customs and Excise Act 2018 provides that the Governor-General may, by Order in Council, on the recommendation of the Minister of Customs, prohibit the importation or exportation of any specified goods or any specified class of goods. Section 96(5) further states that the Minister of Customs must not make a recommendation unless he or she considers that the proposed prohibition is necessary in the public interest.
- 3 Orders in Council prohibiting exportation of goods under section 96, referred to as Customs Export Prohibition Orders, are used when a government department does not have the authority in primary legislation to prohibit the export of goods, or when an interim prohibition is required until such time as the principal legislation can be amended.
- 4 The prohibition order may impose:
  - 4.1 an absolute prohibition; or
  - 4.2 a prohibition that is only applied under particular circumstances; or
  - 4.3 a prohibition that is conditional on the approval of the Chief Executive of the New Zealand Customs Service (Customs) or another person named in the prohibition order.
- 5 The prohibition order is subject to parliamentary scrutiny and will lapse if it is not confirmed by Parliament.

### *The Export Prohibition*

- 6 The export prohibition was originally made through the Customs Export Prohibition Regulations 1953, then carried over through Customs Export Prohibition Orders (Prohibition Orders) under the Customs and Excise Act 1996. The Current Prohibition Order is under the Customs and Excise Order 2018.
- 7 Initially, the export prohibition applied to both live adult mussels and to mussel spat (juvenile mussels with a shell size of less than 50 millimetres in length). In 1983, the export prohibition for *adult* green-lipped mussels was removed due to the export opportunity that this developing industry presented. However, the export prohibition on live mussel *spat* remained in place.

8 s 6(a)

- 9 The current prohibition order includes an exception whereby the Minister for Oceans and Fisheries can consent to the export of mussel spat. However, to date, officials are not aware that any such request has ever been made.

### Analysis

- 10 The export prohibition was assessed in terms of the public interest, our international obligations, the views of stakeholders, and Te Tiriti o Waitangi obligations.

### Public Interest

- 11 The Customs and Excise Act 2018 requires a Prohibition Order to be deemed by the Minister of Customs as necessary in the public interest. Although public interest is not defined under that Act, public interest considers the Order's impact on the environment, public health, administration of justice and economy, among other considerations.
- 12 For this analysis, the Ministry for Primary Industries (MPI) sought input and consideration by relevant Government Agencies<sup>1</sup> and informed relevant stakeholders. These stakeholders included Te Ohu Kaimoana, Aquaculture New Zealand, Te Hiku iwi, Whakatōhea, and Te Whānau-ā-Apanui, who provided comments on their view of the export prohibition.

### Relevant International Obligations

- 13 New Zealand is a member of the World Trade Organization (WTO) and party to several Free Trade Agreements (FTAs).

s 9(2)(h)

<sup>1</sup> Customs, Ministry of Foreign Affairs and Trade, the Treasury, Te Puni Kōkiri, and Parliamentary Counsel Office were consulted. The Department of the Prime Minister and Cabinet were also informed.

s 9(2)(h)

15 s 9(2)(g)(i)

*Stakeholder Support for the Export Prohibition*

- 16 Mussel spat collection is primarily at Te-Oneroa-a-Tōhe/Ninety Mile Beach, with key growing regions in Thames/Coromandel and Marlborough. Aquaculture New Zealand have reported the value of total mussel exports for a 12-month period, April 2021-March 2022, at \$307 million, with live mussels accounting for \$10.6 million of this.
- 17 The green-lipped mussel industry largely relies on the wild harvest of beach cast mussel spat along Te Oneroa-a-Tōhē/Ninety Mile Beach<sup>2</sup>, which often has an unpredictable supply due to the irregular harvest season. This reliability can impact both the quantity and quality of spat that is collected annually and is a key constraint for the industry. Industry is in support of the continuation of the export prohibition to reduce domestic harvesting pressures.
- 18 Efforts to help reduce the reliance on wild spat include the establishment of the SPATnz hatchery, led by industry and supported by the Primary Growth Partnership programme. A new hatchery is being built in Te Moana-a-Toi/Bay of Plenty, by Te Whānau-ā-Apanui with Government support.
- 19 The aquaculture industry strongly supports the continuation of the export prohibition. In 2017, Aquaculture New Zealand wrote to MPI concerned that removing the export prohibition could increase the risk of rival, green-lipped mussel industries developing in other countries. The risk identified by Aquaculture New Zealand is that the diversion of spat for export may affect the ability of the industry to grow in New Zealand.

*Iwi Views on the Export Prohibition*

- 20 Te Ohu Kaimoana acts as the trustee under the Maori Commercial Aquaculture Claims Settlement Act 2004 for 58 iwi organisations. They have expressed their support of the continuation of the export prohibition.

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<sup>2</sup> Each year beach cast generally makes up around 65 to 85 percent of spat supply.

- 21 MPI did not consider the prohibition to have a significant impact on all iwi, as it is a relatively minor and longstanding prohibition and consulted with those iwi directly affected. MPI discussed the proposal to continue the export prohibition with Te Hiku iwi, Whakatōhea, and Te Whānau-ā-Apanui. Te Whānau-ā-Apanui are building the Te Huata spat hatchery at Te Kaha. Te Hiku iwi and Whakatōhea are directly affected by beach cast spat collected on Te Oneroa-a-Tōhē/Ninety Mile Beach. Te Hiku iwi also classify green-lipped mussels as a tāonga species.

22 s 9(2)(g)(i), s 9(2)(b)(ii)

- 23 Te Whānau-ā-Apanui raised initial concerns with the continuation of the export prohibition order, including that:
- 23.1 there should be a consideration of individual iwi rights that have been negotiated with the Crown;
  - 23.2 there is a fundamental difference between wild-harvested spat and spat produced from other sources including hatcheries, and exportation of spat should be decided by the iwi in a particular rohe;
  - 23.3 there may be unintended and negative commercial consequences, and the prohibition may hinder aspirations to export live mussels of this size range as a food product to international markets;
  - 23.4 the efficacy of the prohibition is questionable, as under current settings live green-lipped mussels can be exported overseas, and brood-stock can be created from these adult mussels;
  - 23.5 there is merit in a well-thought through prohibition, which could add value and protect Māori rights and interests internationally, but that;
  - 23.6 the export extension from three to five years is inappropriate due to the aquaculture industry being in a significant period of growth and change.

#### *Mitigations to Treaty Partner Concerns*

- 24 MPI will work with Te Whānau-ā-Apanui to work through the following possible mitigation options, which Te Whānau-ā-Apanui are comfortable with.
- 25 The Current Prohibition Order includes an exception, in which a person may export live New Zealand green-lipped mussels with a shell size of less than 50 mm in length if the person has the consent of the Minister for Oceans and Fisheries and does so in accordance with the terms of that consent.
- 26 In future, if the prohibition order presents a barrier for an emerging market, as outlined by Te-Whānau-ā-Apanui, agencies could undertake a review of the prohibition order prior to its expiry.

#### *Treaty Settlement and Obligations*

- 27 Under the Maori Commercial Aquaculture Claims Settlement Act 2004, iwi have a choice over receiving financial compensation or access to 20 percent of marine aquaculture space.

- 28 Iwi (particularly those who have gained new aquaculture space) are likely to be concerned about how any change to the status of the export prohibition might affect continued access to mussel spat. It is necessary in the public interest that the New Zealand Government is able to continue to settle Treaty obligations in good faith, and for both parties to have certainty whether the value of aquaculture settlements will be maintained.

### Consultation

- 29 MPI has consulted MFAT, Customs, the Treasury, Te Puni Kōkiri, and Parliamentary Counsel Office. MPI has also informed the Department of Prime Minister and Cabinet.

### Comment

- 30 MFAT provided advice under the relevant international obligation's analysis of this paper.

31 s 9(2)(h)

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- 33 Customs has no issues with the continuation of the current prohibition. It is enforced by way of risk management and targeting, within existing funding, and has negligible operational impact. There have been no known breaches of this longstanding prohibition.

### Financial Implications

- 34 There are no financial implications from this proposal. All costs of administering the prohibition order will continue to be met from existing budgets.

### Legislative Implications

- 35 The continuation of the export prohibition on live New Zealand green-lipped mussel spat with a shell size of less than 50 millimetres in length requires the making of a new Order in Council.

### Impact Analysis

- 36 The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

**Human Rights**

- 37 This proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

**Publicity**

- 38 The continuation of the export prohibition will be publicised through Customs' business publications.

**Proactive Release**

- 39 Following Cabinet consideration, I intend to consider the release of this paper, with certain redactions in line with the Official Information Act 1982.

PROACTIVE RELEASE

## Recommendations

I recommend that the Committee:

1. **Note** that the Customs Export Prohibition (Green-lipped Mussel Spat) Order 2019 expires on 30 September 2022

2. s 9(2)(h)

3. **Agree** that the continuation of the export prohibition of live New Zealand green-lipped mussels with a shell size of less than 50 millimetres in length is necessary in the public interest
4. **Agree** to continue the prohibition on the exportation of live New Zealand green-lipped mussels with a shell size of less than 50 millimetres in length, for a further five-year period from the date the export prohibition expires
5. **Agree** that those mussels may be exported with the consent of the Minister for Oceans and Fisheries, provided the export is done in accordance with the terms of that consent
6. **Authorise** the Minister for Oceans and Fisheries to make final decisions on the detail and to make changes, consistent with the policy intent outlines in this paper, on any issue that arise during drafting of the Order in Council
7. **Invite** the Minister of Customs to instruct Parliamentary Counsel to draft an Order in Council which will continue the export prohibition under the Customs and Excise Act 2018.

Authorised for lodgement

Hon David Parker  
Minister for Oceans and Fisheries