

Regulatory Impact Statement

Ensuring flexibility for notified user regime under the Fisheries Act 1996

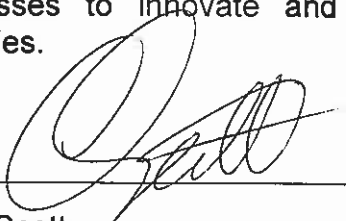
Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Fisheries.

It provides an analysis of options to ensure that there is a simple process under the Fisheries Act 1996 to enable registration as a notified user and thereby provide opportunities for flexibility for commercial fishing from registered fishing vessels.

It proposes a technical amendment that will streamline the process and consequently address an implementation issue arising out of the Fisheries Act 1996. Whilst this issue could have been dealt with by further regulation, the current statutory process is unnecessarily complex. The problem has been identified during implementation by the service provider (FishServe) and the analysis and options have been developed by Ministry officials. Due to the technical nature of the issue and the preferred option of removing the potential for restrictions on commercial fishers becoming notified users, there has been no consultation with stakeholders. FishServe has been informed of the proposed amendment. If the legislative amendment is made, no further work will be required.

None of the options considered are likely to impose additional costs on business, nor impair private property rights, market competition, or the incentives on businesses to innovate and invest or override fundamental common law principles.



Cathy Scott

Date: 01/06/10

Deputy Chief Executive – Strategy

Regulatory Impact Statement

Status quo and problem definition

Prior to commencement of the Fisheries Act 1996 (the Act), only the registered operator of a fishing vessel was allowed to use that vessel for commercial fishing. For enforcement and compliance purposes, it is necessary to have information about who is using a fishing vessel, however, this situation prevented flexible arrangements whereby commercial fishers could share vessels. The Act provides for flexibility by enabling both the operator of a registered vessel and a 'notified user' to use a registered vessel.

Section 104 enables a person to apply to the Chief Executive to become a notified user of a fishing vessel. Section 104(3)(b) provides that no person shall be a notified user in relation to any vessel *other than those of types and classes specified by Order in Council*. This means that an Order in Council must be made to enable persons to be registered as notified users. This unnecessarily complicates the process for registration as a notified user and places demands on departmental (and Cabinet) time and resources in developing an Order in Council.

When the notified user regime was introduced, the requirement for an Order in Council was included to manage the risk of non-compliance posed by certain vessels. The Order in Council provided a mechanism for preventing notified users being registered in relation to certain fishing vessels. Although this risk continues, it has not required restrictions to be imposed to date. Mfish considers that these risks can be more effectively managed on a case-by-case basis without requiring regulation.

Despite the absence of an Order in Council, 126 notified users have been registered since 2001. There are currently 28 persons registered as notified users. In addition to this, 6 applications for registration have been received this year. Currently, it is predominantly small-scale inshore operators who require flexible business arrangements to minimise costs, including sharing of vessels. The notified user regime is designed to provide such business flexibility.

Objectives

The objectives here are to ensure that the notified user regime:

- (i) provides a simple administrative process to allow registration of notified users and thereby ensure flexibility for commercial fishing from registered fishing vessels; and
- (ii) is aligned with Government objectives of better and less regulation and in particular reducing compliance costs, 'red tape' and uncertainty by eliminating unnecessary requirements.

Options proposed

- *Option 1- Retain the status quo*
- Option 2 - Delete the restriction that prevents persons being notified users unless an Order in Council expressly allows for notified users in respect of the particular type or class of vessel.
- Option 3 - Amend section 104 to enable a person to be a notified user unless an order in council expressly restricts notified users in respect of a particular class of vessel.

Regulatory impact analysis

Option 1- Retain the status quo

If no changes are made to the legislation, an Order in Council will need to be made to enable persons to be registered as notified users. As outlined above, this unnecessarily complicates the process for registration as a notified user. It also places demands on departmental (and Cabinet) time and resources in developing an Order in Council.

As Mfish has not identified any vessels for which the notified user regime is inappropriate, an Order in Council is likely to authorise the notified user regime in relation to *all* classes and types of vessels (other than foreign-owned New Zealand fishing vessels). This amounts to unnecessary regulation and does not meet government objectives of reducing red tape and eliminating unnecessary requirements.

This does not address the issue for those notified users that were registered before an Order in Council is made.

Option 2 - Delete the restriction in section 104 that prevents persons being notified users unless an Order in Council expressly allows for notified users in respect of the particular type or class of vessel.

This is the preferred option as it best meets the objectives identified above. It provides maximum flexibility for commercial fishers by allowing anyone to become a notified user (on application to the chief executive) and therefore share use of registered fishing vessels. Removing the requirement for an Order in Council, streamlines the administrative process for registration of notified users by removing unnecessary regulation. It also ensures that departmental and Cabinet time is not wasted.

If it becomes apparent in the future that there are certain vessels where notified user status is not appropriate, conditions to control this can be placed on the vessel at the time of registration.

The amendment will also need to address the situation for those notified users who have already been registered.

Option 3 - Amend section 104 to enable a person to be a notified user unless an order in council expressly restricts notified users in respect of a particular class of vessel.

This amendment would change the notified user framework from a restrictive one (in which only specified types of vessels are able to use it), to a permissive one (in which all vessels, except any specified, are able to use it). This would provide flexibility for commercial fishers but retains the ability to use an Order in Council to restrict use of certain vessels by notified users should this become necessary in the future. As outlined above, controls can be imposed without the need for an Order in Council in appropriate circumstances and therefore this option is not supported as it still provides for unnecessary red tape and regulation.

The amendment will also need to address the situation for those notified users who have already been registered.

Consultation

The Ministry has consulted with the Ministry of Economic Development, The Treasury and Parliamentary Counsel Office. None of these departments have raised significant concerns with the proposal.

Due to the technical nature of the issue and the preferred option of removing the potential for restrictions on commercial fishers becoming notified users, there has been no consultation with stakeholders. The Ministry's service provider (FishServe) has been informed of the proposed amendment.

Implementation

This amendment is proposed to be included in the Regulatory Reform Bill. The amendment does not require any form of substantial transitional arrangements. The amendment will be brought into force once the Bill is enacted. The Bill is proposed to be passed by December 2010

Monitoring, evaluation and review

There is ongoing departmental monitoring of the implementation of the Act. This will provide an opportunity to address any further implementation issues that arise in relation to any amendment to the notified user regime.

Regulatory Impact Statement

Improving access to legislative instruments

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Fisheries.

It provides an analysis of options to improve access to legislative instruments for affected persons in the fishing sector.

The options analysed include the status quo and legislative amendment. Legislative amendment is the preferred option. The analysis underpinning the options is high level as the proposal is simply to provide a mechanism to address the issue. Further work will be carried out, including analysis of specific costs and benefits that arise in the circumstances before this mechanism is actually used.

Due to the technical nature of the issue ie providing a mechanism to address the issue, there has been no consultation with stakeholders. Parliamentary Counsel Office is to be consulted.

None of the options considered are likely to impose additional costs on business, nor impair private property rights, market competition, or the incentives on businesses to innovate and invest or override fundamental common law principles.



Cathy Scott

Date: 01/06/10

Deputy Chief Executive – Strategy

Regulatory Impact Statement

Status quo and problem definition

The Act provides for a range of measures to be imposed via Gazette notices, including sustainability measures under Part III, bringing stock into the QMS and setting total allowable commercial catch limits under Part IV.

Historically, there has been a mixed practice in relation to publication of such notices. In particular:

- All notices have been published in the Gazette

- There has not been a consistent practice of revoking existing notices when amendments are made.
- Some notices have been printed and published as if they were regulations pursuant to section 14 of the Acts and Regulations Publication Act 1989. As a result of printing in the SR series, some notices have been amended and official consolidated reprints of these notices are available.
- Some notices deal with a number of matters (eg Fisheries (Declaration of New Stocks Subject to Quota Management System) Notice 2003), and some notices deal with individual matters (eg Fisheries (Freshwater Eel Total Allowable Catches) Notice 2000). The practice of having individual notices has led to a proliferation of notices with more being added each year.

As a result of this, it is difficult for people to find what restrictions apply to particular stocks. The inconsistent approach that has been taken in the publication of these regulations has led to duplication in many cases, and a lack of clarity for business. There is anecdotal evidence that this ad hoc approach has provided some uncertainty for the fishing industry, in situations when it has been unclear as to what rules or restrictions apply. The current framework has become inefficient for both Ministry of Fisheries business processes; and for the fishing industry generally.

It would be useful to consolidate notices so that there was, for example, one notice that covers all quota management stocks, set the total allowable catch (TAC) and the total allowable commercial catch (TACC) for all stocks. This notice could then be amended from time to time if the TAC or TACC for specific stocks was varied pursuant to section 13 or section 20 of the Act.

It is possible to implement this practice without further legislative change in terms of new stocks, however, there is a legacy issue and it would be useful to be able to consolidate old notices (without further amendment to the content) without triggering the consultation obligations or other decision making requirements in the Act. Consolidation can be achieved informally but it is useful for stakeholders to have an official consolidated version.

Objectives

The objectives here are to ensure that:

- There is an efficient and effective way of informing the fishing industry of relevant controls imposed via Gazette notice and that ensures accessibility of these controls; and
- Process for notices is aligned with Government objectives of better and less regulation and in particular reducing compliance costs, 'red tape' and uncertainty by eliminating unnecessary requirements.

Options proposed

- Option 1- Retain the status quo

- Option 2 – Provide an additional power for consolidation of Gazette notices without change to the content that and clarify that this does not trigger consultation or other decision making requirements under the Act.

Regulatory impact analysis

Option 1- Retain the status quo

This option does not address the problems of access highlighted above. Over time this issue can be addressed by consolidating notices as the requirements are changed. However, this will take some time and as it will have to be carried out on an ad hoc basis, it will not necessarily result in a comprehensive solution that will assist the fishing industry. It is also an inefficient use of departmental, Cabinet and PCO resources to deal with the issue in this way.

Option 2 - Provide an additional power for consolidation of Gazette notices without change to the content that and clarify that this does not trigger consultation requirements or other decision-making requirements under the Act.

This is the preferred option as it will allow a comprehensive approach to be taken to consolidating rules and restrictions that apply to the fishing industry and broader fishing sector. It will improve accessibility to these rules and restrictions with a consequent reduction in time and resources needed by business to determine compliance.

Clarifying that consultation is not necessary when there is no change to requirements will remove unnecessary costs for business in engaging in consultation. Consultation will still be carried out, as required, where there are changes to the content of any requirements.

Consultation

The Ministry has consulted with the Ministry of Economic Development, The Treasury and Parliamentary Counsel Office. None of these departments have raised significant concerns with the proposal.

Due to the technical nature of the issue ie providing a mechanism to address the issue, there has been no consultation with stakeholders.

Implementation

This amendment is proposed to be included in the Regulatory Reform Bill. The amendment does not require any form of substantial transitional arrangements. The amendment will be brought into force once the Bill is enacted. The Bill is proposed to be passed by December 2010

Monitoring, evaluation and review

There is ongoing departmental monitoring of the implementation of the Act. This will provide an opportunity to address any further implementation issues that arise in relation to the consolidation of Gazette notices.