

REGULATORY IMPACT STATEMENT
Removal of provisions to carry forward unfished annual catch entitlements for
the southern bluefin tuna stock (STN 1)

Agency Disclosure Statement

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

The Regulatory Impact Statement provides an analysis of options to manage the risk that catches of southern bluefin tuna exceed the total allowable catch, which is a national allocation set by an international fisheries management organisation. This risk arises because the current legislation allows for the carry forward of annual catch entitlements, and the sum of annual catch entitlements available in a given fishing year may therefore exceed the total allowable commercial catch. As a result, total (legal) catches could exceed the commercial catch limit, and in turn the total allowable catch, in which case New Zealand would fail to meet its international obligations.

Analysis of this problem has been based on meetings of the Commission for the Conservation of Southern Bluefin Tuna, and particularly on discussions of under-fishing provisions; and on flag state responsibilities for monitoring and control of their fisheries. The risk of New Zealand catches exceeding the country allocation has been assessed based on past catches and catch trends.

Making this change could be seen to limit existing rights of holders of annual catch entitlements, by removing a provision for the carry forward of unfished catch entitlements that provides them with some additional flexibility. However, the Ministry's view is that the power to remove the ability to carry forward annual catch entitlements is clearly prescribed in the Fisheries Act to be used in appropriate cases.



Gavin Lockwood
Deputy Chief Executive Fisheries Management

REGULATORY IMPACT STATEMENT

Removal of provisions to carry forward unfished annual catch entitlements for the southern bluefin tuna stock (STN 1)

Status Quo and Problem Definition

The Ministry proposes to place southern bluefin tuna on Schedule 5A of the Fisheries Act, as a stock to which section 67A does not apply. Section 67A provides for a limited carry forward of uncaught annual catch entitlements (10%) from one fishing year to the next for fishstocks subject to the quota management system. Quota shares generate an amount of annual catch entitlements at the beginning of each fishing year. Such annual catch entitlements can be traded, and give the holder the right to take a certain weight of a fishstock during a fishing year.

The Ministry has identified a risk of total catches of southern bluefin tuna exceeding New Zealand's national allocation for the fishstock if the carry forward provisions of section 67A remain in place for southern bluefin tuna. The specific circumstances in this fishery, where the total allowable catch is a national allocation agreed through the Commission for the Conservation of Southern Bluefin Tuna), are considered to outweigh some general benefits for operational efficiency that section 67A is intended to provide.

The provisions in section 67A of the Fisheries Act for up to 10% of unfished catch entitlements to be caught in the following fishing season allow some flexibility for fishers. In biological terms catching some of the total allowable commercial catch in the subsequent year has a neutral outcome for most species. However, the risk of catches exceeding the total allowable commercial catch is that New Zealand could fail to meet its international obligation under the Commission for the Conservation of Southern Bluefin Tuna. The Commission for the Conservation of Southern Bluefin Tuna is a regional fisheries management organisation, which has the objective of ensuring, through appropriate management, the conservation and optimal utilisation of southern bluefin tuna. New Zealand is a founding member of this tuna commission.

Objectives

The Government's objectives are to:

- Reduce the risk that total catches exceed New Zealand's national allocation.
- Maintain consistency with decisions of the Commission for the Conservation of Southern Bluefin Tuna.
- Avoid an administratively-complex situation in which the commercial catch limit has to be reduced because total catches exceeded the national allocation in the previous year.

Regulatory Impact Analysis

Options for addressing this problem are:

- To place southern bluefin tuna on Schedule 5A of the Fisheries Act (i.e. to remove under-fishing provisions), so that annual catch entitlements will not be carried forward to the 2011-12 fishing year and thereafter; or
- Maintain the status quo (i.e. continue to allow for the carry-forward of up to 10% unfished annual catch entitlements as provided for by section 67A of the Fisheries Act).

Non-regulatory options

It would be difficult to develop a non-regulatory approach to this problem (e.g. a voluntary agreement not to fish under-fishing entitlements, or to place limits on their use). Placing additional constraints on the use of annual catch entitlements that have been carried forward (for example later in the season when it became apparent that catches were close to the catch limit) could lead to a 'race for fish' as individual holders sought to maximise their own use of the carry forward catch entitlements before voluntary controls were put in place.

Regulatory options

The Ministry considers the regulatory approach of placing southern bluefin tuna on Schedule 5A of the Fisheries Act is the most appropriate option. The Ministry initially consulted on an option of removing under-fishing provisions for southern bluefin tuna before 1 October 2010. This would have the effect of preventing the carry forward of unfished catch entitlements from this fishing year (2009-10) to the next fishing year (2010-11). After considering submissions, the Ministry now recommends that this action be deferred until next year (i.e. on or before 30 September 2011, to prevent carry forward from the 2010-11 to the 2011-12 fishing year and in subsequent years).

During initial consultation, the Ministry noted it would consider alternative proposals from industry to manage the situation. Limiting carry forward to only 5% of unfished catch entitlements (rather than 10%) was suggested, but would also require legislative change, since section 67A specifies the amount of unfished catch entitlements that may be carried forward.

Status quo

Maintaining the status quo would provide some benefits to individual fishers who are holders of annual catch entitlements, although it should also be noted that if catches do exceed the catch limit because of use of the under-fishing provisions, this would affect commercial fishers and quota holders. In this situation New Zealand would be expected to reduce the catch limit by the amount of overcatch.

The fishing season for southern bluefin tuna is relatively short, and total catches can be affected by a range of factors including weather and sea conditions, market conditions, and availability of fish in New Zealand waters. Fishers face the risk that conditions will not be favourable for obtaining a return on their investment in catch entitlements for a given season. Providing fishers with the ability to carry forward some of the catch entitlements (up to 10%) may provide encouragement to invest in the fishery, with benefits for New Zealand if this leads to maximisation of catches within the country allocation. In addition, if conditions are poor in one year, fishers have the chance to re-coup at least some of their foregone catches in the following season.

Fishers have submitted that if there is no carry forward of unfished catch entitlements, the risk of the catch limit being fully or over-caught could increase. Due to the high value of the fishery and quota, fishers may wish to maximise their investment by fully catching their entitlements early in the season (rather than run the risk of not being able to catch it later on, for example if conditions deteriorate later in the season). However, annual catch entitlements may not then be available to cover any catches of southern bluefin tuna taken later in the season as bycatch of other longline fisheries.

This situation could lead to either dumping of fish, or to the payment of deemed values. With an interim deemed value rate of \$23.46/kg and an annual rate of \$46.92/kg, and average

fish size is around 70-100kg, this could lead to substantial deemed value payments (e.g. around \$4,600 for a single fish if no annual catch entitlements were available at the end of the fishing season to cover catches).

Although these considerations suggest a potential financial impact on fishers if the under-fishing provisions are removed, it is difficult to quantify possible impacts, since the actual impact in any given season would depend on fishing conditions, and must be weighed against the impact of reduced catches in the following season if the total allowable catch were exceeded. In the current fishing season (2009-10), annual catch entitlements generated from the under-fishing provisions were allocated to 68 fishers, with volumes ranging from 1kg to 22.2t. The average amount of annual catch entitlements carried forward was 629kg, and all but seven individual holders received a carry forward of less than 1t. A nominal value could be placed on the carry forward of these entitlements, but it should be noted that this value would only be available in a given season if it had not been realised in the previous season.¹

Catches for southern bluefin tuna can be variable but have been generally increasing for several years since a low of 238 tonnes in 2005-06. Low catches in that and subsequent years can be attributed partly to a lack of small fish entering the fishery. The availability of fish of a range of sizes has improved in recent seasons and although it is difficult to predict catches in advance, there is now an appreciable risk of exceeding the catch limit.

In 2008-09, commercial catches were 417 tonnes from a total allowable commercial catch of 413 tonnes. Total New Zealand catches in that year, including non-commercial catches, were estimated at 419 tonnes, from a country allocation of 420 tonnes. The Commission for the Conservation of Southern Bluefin Tuna increasingly scrutinises members' ability to ensure catches remain within their country allocations.² Exceeding the commercial catch limit even by a small amount is potentially embarrassing and may weaken New Zealand's position as a nation that consistently advocates for strong adherence to conservation and management measures.

Remove under-fishing provisions before 1 October 2011

Because of the risks outlined above, the Ministry considers it necessary to remove the under-fishing provisions for this fishery. By removing the under-fishing provisions, the available annual catch entitlements in the fishery will equal (rather than exceed) the total allowable commercial catch, and hence catches will be unlikely to exceed New Zealand's country allocation. Other controls already in place are effective at ensuring catches do not exceed the catch entitlements.

It is proposed to remove under-fishing provisions with effect from the 2011-12 fishing year and thereafter (i.e. unfished catch entitlements could be carried forward into the 2011-12 fishing year, but not in subsequent years). This proposal is based on analysis of submissions received. Fishers have already entered into commercial arrangements such as the sale and purchase of annual catch entitlements in the current season on the assumption that existing under-fishing provisions would operate. Implementing this change to have effect from 2011-12 onwards (rather than in the 2010-11 fishing year) would provide fishers

¹ Based on an export value of \$33.36 per kg for frozen whole southern bluefin tuna in 2008, this would equate to an average value of the annual catch entitlements that was able to be carried forward of approximately \$20,980 (assuming it was fully caught in the following season).

² Annual catch entitlements are not carried forward in a year in which the total allowable commercial catch is reduced, so the presence of under-fishing provisions would not affect New Zealand's ability to ensure catches do not exceed the catch limit in a situation in which the Commission for the Conservation of Southern Bluefin Tuna reduces New Zealand's allocation.

with greater advance notice of any change when they make their arrangements for the 2010-11 fishing season.

The decisions reached by the Commission at its annual meeting in October 2009 provide an opportunity for some additional flexibility in the way New Zealand ensures its total catches do not exceed its country allocation in 2009-10 and 2010-11 (570t).³ The Commission decided that New Zealand's annual catch should not exceed 1,040t over the next two years (2010 and 2011), or an average of 570t per year. The Minister may therefore choose to alter the southern bluefin tuna catch limit for 2010-2011 within that fishing season, taking into account final catches for 2009-10.

The approach of altering catch limits from year to year based on catches in the previous year is not considered appropriate as a longer term solution. It would be administratively complex to alter catch limits every year based on the previous year's final catches, and fishers would not have certainty about the quota likely to be available to them until after the fishing year had already commenced. Further, catch limits can only be increased (not decreased) within a fishing season, so the ability to apply this option in the longer term depends on future Commission decisions about the total allowable catch available to New Zealand.

The Ministry acknowledges fishers' concerns about the potential impact of removing the carry forward provisions, but does not consider these concerns outweigh the risk of New Zealand exceeding its agreed national allocation, as is possible under the status quo. However, the Commission has agreed to discuss under-fishing provisions again at its annual meeting in October this year. If the Commission does agree on formal under-fishing provisions, there would still be time to make any changes required before the start of the 2011-12 fishing year (i.e. the Minister could re-visit any decision to remove under-fishing provisions before it had been implemented if agreement is reached in October this year).

Consultation

The Ministry first proposed this change when southern bluefin tuna was introduced into the quota management system on 1 October 2004. The Ministry agreed to defer the change until the conclusion of related negotiations within the Commission for the Conservation of Southern Bluefin Tuna. Despite proposals by New Zealand, the Commission has not been able to agree on a formal system of under and over-fishing. Members face increasing scrutiny of their ability to control their total catches, in the context of very poor stock status for southern bluefin tuna. New Zealand intends to continue to seek the Commission's agreement on formal under-fishing provisions.

More recently, the Ministry had initial discussions with some commercial fishery representatives on this topic, followed by formal consultation on an initial position paper with a wider range of commercial, non-commercial, Maori and environmental stakeholders.

Fishers indicated that the under-fishing provisions are an important component of their operations. In general there was understanding from industry organisations that the under-fishing provisions pose potential risks for New Zealand. As outlined above, individual fishers provided additional information on how the fishery operates and identified potential implications with removing under-fishing provisions.

³ An in-season increase recently brought New Zealand's total allowable catch for southern bluefin tuna to 532t. The total quantity of annual catch entitlements including those carried forward from the previous season is now 558t; allowances of 12t have been made for non-commercial catches and other sources of mortality, bringing the total to 570t, in line with decisions made by the Commission for the Conservation of Southern Bluefin Tuna in 2009. The catch limit will revert to its former level of 420t at the end of the current fishing season (i.e. from 1 October 2010).

Conclusions and Recommendations

The Ministry concludes that placing southern bluefin tuna on Schedule 5A of the Fisheries Act is necessary in order to prevent potential overcatch of New Zealand's national allocation, and in order to reflect the decision of the Commission for the Conservation of Southern Bluefin Tuna not to allow for under-fishing provisions. The Ministry considers that the risk of catches exceeding the two-year catch limit set by the Commission can be adequately managed through other means in the 2009-10 fishing year, but that under-fishing provisions should be removed so that unfished annual catch entitlements cannot be carried forward from the 2010-11 fishing year or in subsequent fishing years, unless in the interim the Commission agrees on under-fishing provisions.

Implementation

For all stocks in the quota management system except those listed on Schedule 5A of the Fisheries Act, carry forward of unfished annual catch entitlements occurs automatically following an assessment of an individual's end of year holdings of annual catch entitlements against end of year catches. Section 67B of the Fisheries Act provides for amendments to Schedule 5A of the Fisheries Act. The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, amend Schedule 5A by adding or removing one or more stocks to that schedule. Any such Order in Council takes effect on and from the first day of the next fishing year for the stocks concerned.

In line with the provisions of section 67B, the Ministry recommends that southern bluefin tuna be placed on Schedule 5A of the Fisheries Act. The Ministry recommends that this should take effect for the 2011-12 fishing year and thereafter (i.e. there would be no carry forward from the 2010-11 to the 2011-12 fishing year or thereafter). To achieve this, an Order in Council would be made after 1 October 2010 but before 1 October 2011. The Ministry recommends an Order in Council be prepared for signature after the annual Commission meeting in October 2010, to accommodate the outcomes of any decisions reached by the Commission.

Alternatively, it remains open to the Minister to choose to remove under-fishing provisions with immediate effect (i.e. so there would be no carry forward from 2009-10 into 2010-11).

Monitoring, Evaluation and Review

This proposal does not have ongoing implications for monitoring, compliance, or administrative services. Standard monitoring of the fishery would continue, including monitoring of catch against quota. Regular workshops that the Ministry holds with surface longline fishers would provide an opportunity to hear feedback from fishers on the impacts on their operations, and to seek to address any concerns that arise. New Zealand will continue to encourage the Commission for the Conservation of Southern Bluefin Tuna to develop rules for under-fishing provisions.