

Regulatory Impact Statement

INTRODUCTION OF ALL RIG STOCKS TO SCHEDULE 6 OF THE FISHERIES ACT 1996

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Agriculture and Forestry (MAF).
2. It provides an analysis of options to address the problem of wastage and costs to industry associated with the requirement to land all rig (a species of shark) caught. MAF's preferred option is to include all rig stocks on Schedule 6 of the Fisheries Act 1996 (the Act). This would allow rig, 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 MAF and supplied by the fishing industry. It does not highlight any constraints or assumptions relating to the proposal.
4. The proposal would not impair private property rights, market competition or the incentives on businesses to innovate and invest. It would reduce industry compliance costs.



James Stevenson-Wallace

Director Fisheries Management,
Resource Management & Programmes

16 / 2 / 2012

Status quo and problem definition

5. Studies have shown that, when some sharks, such as rig, are returned to the water alive and immediately after capture, many are likely to survive.¹ However, currently there is no provision under the Act to allow commercial fishers to legally return rig to the sea when likely to survive. The lack of this provision results in significant wastage and costs to the industry because fishers are required to land all rig caught, even if it is unwanted (i.e. if taken as bycatch) and likely to survive a return to the sea.

6. The most significant of these costs is payment of deemed values. Currently, commercial fishers are required to balance all rig catch with Annual Catch Entitlement (ACE)² or to pay associated deemed value fees³. Deemed values for rig range between \$1.70 and \$6.00/kg, depending on the extent of over catch and area.

7. Over the last five years, commercial fishers have paid total deemed value fees ranging from \$45,200 to \$290,100 per year for landing rig in excess of their ACE holdings. In order to avoid having to pay deemed values for unwanted rig catch, commercial fishers must source ACE, unless they own sufficient rig quota to cover their annual catch. The average cost of ACE for rig is \$1/kg.

8. In order to avoid these costs when rig is unwanted catch (i.e. bycatch), MAF believes that some fishers currently resort to dumping or misreporting some of their catch. The extent and prevalence of this practice is unknown. The implications for fisheries management from these practices could potentially be significant as information is distorted.

9. For several robust fish and shellfish species that are generally likely to survive a return to sea after capture (as is the case for rig) an exemption to allow such a return to the sea is provided by Schedule 6 listing. This removes the requirement to land unwanted catch and to either cover it with ACE or to pay deemed values. Because of this, the flexibility provided by Schedule 6 listing also reduces to some extent the incentives to dump and misreport catch.

10. The status quo would result in further wastage and costs to industry and a continued incentive for fishers to dump or misreport rig catches.

Objectives

11. Under Fisheries 2030⁴, 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.

¹ E.g.: Skomal, GB (2007) Evaluating the physiological and physical consequences of capture and post-release survivorship in large pelagic fishes. *Fish Management Ecology*. 14: 81-89.

Francis, MP (1989) Exploitation rates of rig (*Mustelus lenticulatus*) around the South Island of New Zealand. *New Zealand Journal of Marine and Freshwater Research*. 23: 239-245.

² The right, derived from quota, to catch a certain amount of a particular species in a particular area in a given year.

³ 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.

⁴ Fisheries 2030 provides the strategic direction for the New Zealand fisheries sector. See www.fish.govt.nz

12. The objectives of the proposal are to:

- reduce wastage (and associated impact on sustainability) and compliance cost to industry of having to land unwanted rig that is otherwise likely to survive, if returned to the sea, and
- improve reporting of commercial rig catch.

13. There is no authoritative or statutory basis for reviewing the issue, nor must the change be achieved within a certain time period or budget. Nonetheless, the decision to recommend this change was made by the Minister of Fisheries and Aquaculture (the Minister) under section 72(7) of the Act. An Order in Council is necessary to implement the Minister's recommendation. It is proposed that the change becomes effective on 1 May 2012 simply for administrative and practical reasons (i.e. the period of time it would take to put it in place).

Regulatory impact analysis

14. The preferred option is to add rig to Schedule 6 of the Act. This would allow commercial fishers to legally return rig to sea when likely to survive. Given the specificity of the problem, no alternative options were considered as MAF does not believe there are other viable alternatives (regulatory or otherwise).

15. If rig were to be included on Schedule 6, the costs and wastage associated with landing unwanted rig that is likely to survive could be avoided, the cost to industry may be significantly reduced, and reporting of rig would improve. This has been the case for other shark species previously listed on Schedule 6 such as blue shark, mako shark, porbeagle shark, skate, and spiny dogfish.

16. By reducing industry compliance costs the proposal would improve efficiency and increase economic benefit from the rig fishery. It aligns with the Fisheries 2030 five-year plan of action of ensuring fisheries laws and regulations reduce compliance costs and improve management effectiveness.

17. The proposal also brings management of rig into line 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 and skate. The proposed change is expected to have a positive impact in terms of sustainability by reducing overall fishing mortality as only rig likely to survive would be allowed to be returned to the sea. This would eventually benefit all users of the resource.

18. Like for other species on Schedule 6, compliance would depend on fishers' own assessment of the rig's likelihood to survive. Because this assessment may not always be accurate (or objective), 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 rig. Because of that, the objective of the proposal is not entirely reliant on fishers' assessment of likelihood to survive.

19. As regulatory restrictions for rig 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. Compliance with the proposed provision of returning rig only when likely to survive would be monitored as part of existing observer coverage and at sea monitoring activities.

20. The status quo would result in further wastage and costs to industry. As discussed above, over the last five years, commercial fishers who have reported rig 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/kg on average) as an alternative to paying deemed values for unwanted rig that is likely to survive and nor would they be faced with the incentive of dumping or misreporting rig catches to avoid these costs.

21. These costs would continue to apply only in relation to rig 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. Nonetheless, MAF expects a significant reduction in deemed value payments as a result of the proposed change.

Consultation

22. 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. Six submissions were received on the proposal.

23. All submitters except one recreational sector submitter supported the listing of rig on Schedule 6. The submitter that did not support the proposal did not believe that the change would help with improved reporting of rig catch or the sustainability of the rig fishery. MAF disagrees with this and is confident that the proposed change would improve reporting of rig and support the sustainability of the fishery.

Conclusions and recommendations

24. The preferred option is to add rig to Schedule 6 to the Act. This would allow fishers to return unwanted rig to sea when likely to survive and if the return takes place as soon as practicable after the rig is taken.

25. The proposal would reduce compliance costs, improve efficiency and increase economic benefit from the rig fishery. It would also reduce wastage, improve reporting and 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

26. MAF proposes to use of section 72(7) of the Act to add rig 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.

27. It is proposed that the change would become effective from 1 May 2012. 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.

28. Given that the proposed change would increase flexibility for commercial fishers to manage rig 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

29. Compliance with the proposed provision of returning rig 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.

30. The sustainability of rig stocks is monitored primarily using scientific surveys which estimate 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 would 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.