

REGULATORY IMPACT STATEMENT

Regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Fisheries (the Ministry).
2. It provides an analysis of regulatory options pertaining to the retention or revocation of regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986.
3. The origin and purpose of this regulation was assessed against its intended purpose and effects. The Ministry concluded that the regulation is adversely affecting the ability of the commercial fishing sector to obtain best value from the fishery and that the regulation is both ineffective in meeting its intended purpose and a poor fit with current approaches to fisheries management. There are no significant constraints, caveats or uncertainties concerning the analysis.
4. The preferred option of revoking regulation 11 is unlikely to have any of the effects the government is concerned about. It will not impair private property rights, market competition or the incentives on businesses to innovate and invest. It will not override fundamental common law principles. Revoking the regulation would allow for efficient use of fisheries resources. Retaining the regulation (non-preferred option) will maintain constraints on the utilisation of fisheries resources in the defined area and the associated costs to commercial fishers.



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Status quo and problem definition

1. Regulation 11 of the (Challenger Area Commercial Fishing) Regulations 1986 states that if 100 tonnes of snapper is caught in an area known as statistical area 038 (see map 1) between October and February in any fishing year (beginning October 1st), a defined area of the inner Tasman Bay will be closed to the take of any fish using pair trawl or Danish seine, and there will be a prohibition on taking any snapper with a surrounding net excluding a drag net.
2. Regulation 11 was created to reduce conflict between different commercial fishing methods and to prevent localised depletion of snapper within Tasman Bay. The regulation was first invoked in the 2008/09 fishing year, and subsequently, in the 2009/10 fishing year.
3. However, regulation 11 is ineffective at achieving its intent. One aspect of the regulation that contributes to its ineffectiveness is that it constrains some, but not all, bulk fishing methods that might result in localised depletion of snapper. Single vessel trawling is not prohibited by the regulation despite restrictions on other bulk fishing methods that take snapper, including pair trawling. In effect, single trawl vessels can contribute to triggering the closure, yet remain unaffected by it. For instance, single trawlers caught approximately 74 tonnes of the 100 tonnes of snapper that led to regulation 11 being invoked in 2009, yet single trawlers were unaffected by the regulation.
4. Regulation 11 is also inconsistent with enabling efficient commercial harvesting of snapper as it reduces flexibility regarding the methods that can be used to harvest the Total Allowable Commercial Catch (TACC) set at a level that ensures sustainable use of snapper. In addition, despite being principally enacted to protect snapper, the regulation restricts commercial access and efficiency of harvesting for other species, in particular flatfish.
5. A further issue is that the current application of regulation 11 is inefficient. The Ministry's ability to implement regulation 11 as soon as the 100 tonne limit is reached is affected by a delay in receiving and processing catch harvest forms from commercial fishers which are required on a monthly basis. Consequently, catch of snapper in the specified area may be well over 100 tonnes before the regulation is invoked.

Objectives

6. The desired Ministry and Government objectives against which options are assessed are:
 - The sustainable utilisation of fisheries resources is ensured;
 - The value of the fisheries resources are maximised within environmental limits;
 - Cost-effective management is achieved through the removal of ineffective, inefficient or excessively costly regulations to align with the Government directive for 'better and less' regulation.

Regulatory Impact Analysis

7. The use of effective, efficient regulations is important for the Ministry to deliver on its goal of maximising the benefits from the use of fisheries within environmental limits. The Ministry has proposed revoking regulation 11 to better meet this goal and align with Government intentions for 'better and less' regulation. This section outlines the

impacts of retaining or revoking regulation 11.

8. Regulation 11 has been invoked twice, and catch trends suggest that the 100 tonne limit is likely to be met in future fishing years which would result in the frequent implementation of regulation 11.
9. The implementation of regulation 11 restricts fishing effort in part of Tasman Bay and affects the ability of commercial fishers to obtain value from fisheries in the Bay. For example, catch records show that estimated catch of flatfish by Danish seiners in statistical area 038 was 52 tonnes lower in 2008-09 than the previous fishing year when regulation 11 was not implemented.
10. Despite being principally created to prevent localised depletion of snapper, the implementation of regulation 11 did not affect the commercial snapper catch in statistical area 038. Estimated catch records show that snapper catch from statistical area 038 in 2008/09 increased by 38 tonnes on the previous fishing year.
11. The retention of snapper catch levels in statistical area 038 does not appear to be the result of transfer of catch from one commercial method to another. Estimated catch taken by bottom pair trawlers (a method excluded when regulation 11 is invoked) increased by 24 tonnes from the 2007/08 to 2008/09 fishing years. Over the last five fishing years, pair trawlers have predominantly operated between October and February so are largely unaffected by regulation 11, which in both years applied has come into effect after this period.
12. It is unlikely that the retention of the regulation will contribute to the sustainability of the Challenger Area snapper stocks or other stocks in the Challenger Area. Catch reporting information suggests total commercial catch from the stocks was probably not affected by the implementation of the closure.
13. Recreational fishers support regulation 11 for its potential to reduce bulk fishing methods in popular fishing areas and therefore reduce issues of localised depletion. Availability of flatfish to non-commercial fishers may be improved in discrete, local areas when regulation 11 is implemented (commercial catch of flatfish in statistical area 038 did reduce in the years that regulation 11 was implemented). However, not all bulk fishing methods are excluded by regulation 11 and there is nothing to prevent industry transferring fishing effort to allowed bulk fishing methods when targeting flatfish and other species.
14. Revoking regulation 11 from the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 would provide for improved commercial fishing efficiency by removing the constraints on the types of fishing methods that can be used for part of the fishing year.
15. Revoking regulation 11 would also remove a regulation that is illogical and ineffective in meeting its objectives and better align the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 to current management practices which are based on output controls; setting limits on the amount of catch that can be sustainably taken rather than controlling methods that can be used to take fish.
16. The Ministry notes the change to recent fishing practice in the Tasman and Golden bay regions that would occur as a result of revoking regulation 11 would be minimal because the regulation has only been implemented twice.

17. Revoking regulation 11 is likely to cause discontent within the recreational fishing community as the regulation may temporarily improve the availability of some species in the region to recreational fishers. The quantum of benefits lost is not measurable at this time but is likely to be small in respect of snapper fishing and only achieved in years when the regulation is invoked. Beneficial effects to recreational fishers in respect of access to other target species such as flatfish may be more significant, but again would only be achieved in years when the regulation was invoked and would continue only for as long as commercial fishers did not adapt their fishing methods and patterns from the current norm.
18. Revoking regulation 11 would remove a regulatory measure that results in additional spatial separation between some commercial bulk-fishing methods and recreational fishing activity during part of the year. Some spatial separation already occurs as a result of the voluntary trawl exclusion zone in Tasman Bay between 1 November and 30 April and the regulatory Danish seine restriction within three nautical miles of the coastline. These voluntary and regulatory restrictions would not be affected by the revocation of the regulation.
19. Revoking regulation 11 would not have any implications for overall catch limits set to ensure the sustainability of fish stocks. Setting the total allowable catch under the quota management system remains the principal means for ensuring sustainability of fishstocks.

Consultation

20. The Ministry sought feedback from stakeholders on the proposed options through the release of an initial position paper (IPP). The IPP outlined two proposed management options, one to revoke, the other to retain regulation 11.
21. The views expressed in the submissions on the initial position paper indicate that positions on regulation 11 are strongly polarised.
22. The three submissions from commercial fishers/organisations support the revocation of regulation 11 because of the effect of the method restrictions on fisheries utilisation. In particular, a Danish seine operator noted the negative financial effects he incurred as a result of regulation 11 despite catching less than 500kg of snapper annually. Commercial submitters also note the voluntary area closure in Tasman Bay between 1 November and 30 April and the regulatory prohibition on Danish seining within three nautical miles, which they consider protect juvenile snapper and offer significant spatial separation between commercial and recreational fishing activity.
23. Submissions from the recreational sector generally support the retention of regulation 11 with improved monitoring to assist implementation. Recreational sector submitters consider regulation 11 provides a means of controlling fishing effort in the near shore area. Recreational fishers also submitted on the effects of bottom impacting fishing methods, the protection of spawning grounds, and the implications of harvesting effort in Tasman and Golden Bay on the wider Marlborough Sounds fisheries.
24. The Ministry considers that retaining regulation 11 does not address the recreational fishers' concerns. Issues of the sustainability of fisheries across the Challenger Management Area are managed through the process of setting total allowable catches. Benthic impact concerns are not addressed by regulation 11, which does not prohibit all bottom impacting methods when invoked, nor restrict the use of these

methods outside of the prohibition time period. Similarly, the retention of regulation 11 does not protect snapper spawning grounds as it does not prevent bulk harvesting from occurring over the peak spawning period.

25. Recreational fishers also expressed discontent with the practice of commercial fishing in inshore regions favoured by recreational fishers. Inter-sector competition for access to fisheries or fishing areas is best addressed through dispute resolution under part 7 of the Fisheries Act 1996. The Ministry supports the use of voluntary measures like those currently in place as one means of addressing these issues.

Conclusions and recommendations

26. The Ministry's preferred option is to revoke regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986.
27. This is the preferred option because the Government has signalled the need to remove ineffective, inefficient or excessively costly regulations as part of the 'Better and Less Regulation' project. Regulation 11 imposes costs on commercial fishers without sufficient benefits to warrant its retention and is neither effective at meeting its intended purpose nor a good fit with current management practices.

Implementation

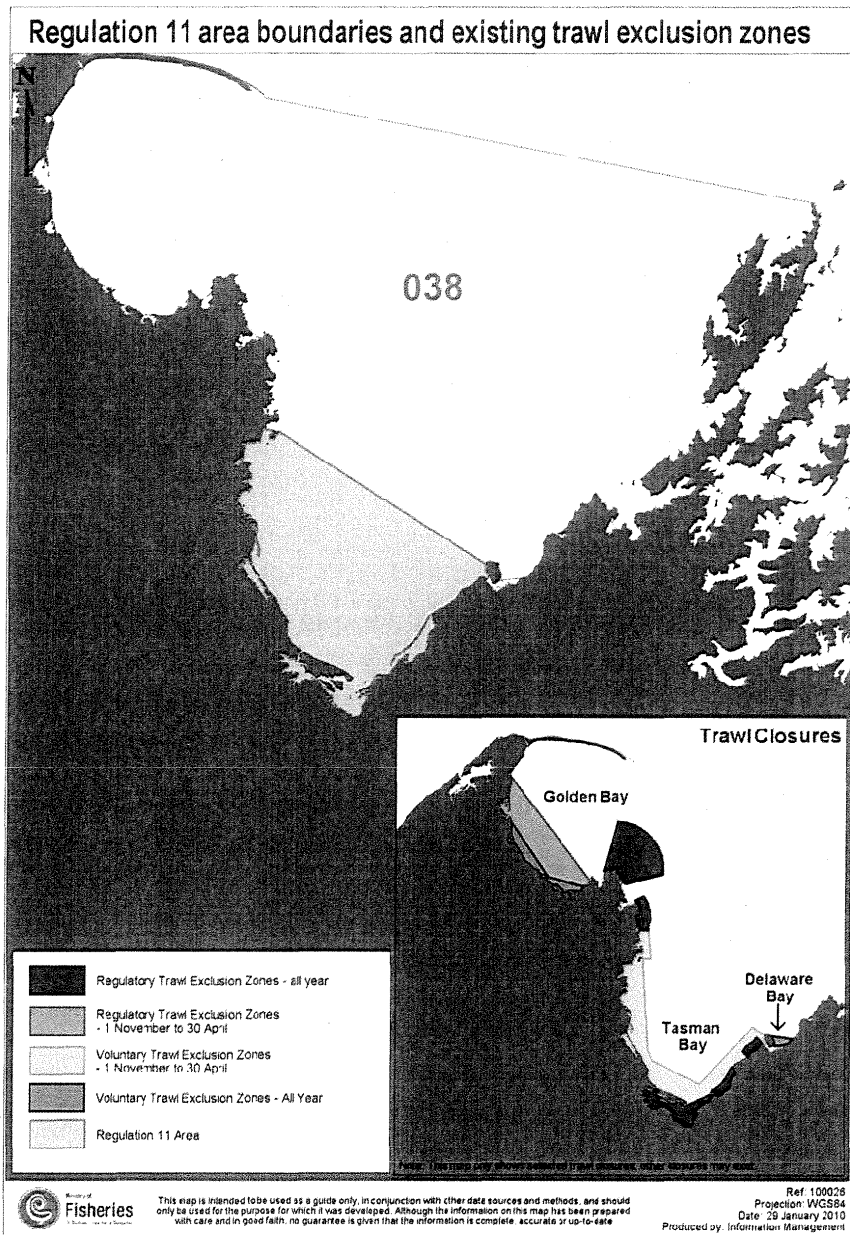
28. Revoking regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 would become effective on 2 December 2010 and communicated to relevant commercial stakeholder organisations, relevant recreational fishing organisations and the Ministry's recreational fishing forums.
29. Should regulation 11 be retained, the Ministry will monitor catch from the beginning of the fishing year (1 October). In accordance with the regulation, if or when it can be shown that 100 tonnes of snapper has been caught in statistical area 038, the Chief Executive will give notice as required in the regulation and invoke the regulation.
30. The Ministry recommends that if regulation 11 is retained, the Chief Executive of the Ministry of Fisheries requests that catch information to be submitted on a weekly basis from the start of the fishing year (1 October)¹. This would increase efficiency in implementing the regulation so that the method restrictions are invoked as soon as possible after the time when 100 tonnes of snapper are caught in statistical area 038.

Monitoring, evaluation and review

31. Should regulation 11 be retained or revoked, the Ministry will continue to monitor catch effort in statistical area 038 through the current system of catch reporting. In this system, harvest returns are submitted by commercial fishers on a monthly basis and these are monitored to ensure that the total allowable commercial catch is not exceeded.
32. No formal evaluation or review of the effect of the retention or revocation of regulation 11 has been planned.

¹ Regulation 40 of the Fisheries (Reporting) Regulations 2001 allows the chief executive to specify in writing, different intervals, periods or dates for completing or providing returns if the chief executive considers it necessary

Map 1 showing area specified in Regulation 11 and existing regulatory and voluntary exclusion zones²



² Note that additional closure areas exist around Farewell Spit.