

REGULATORY IMPACT STATEMENT
Regulatory amendments to support introduction of Patagonian toothfish into
the Quota Management System

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Fisheries (the Ministry).
2. It provides an analysis of three regulatory proposals to support the introduction of Patagonian toothfish ("toothfish") into the Quota Management System (QMS) on 1 October 2010.
3. The analysis does not highlight any assumptions or constraints relating to the regulatory proposals, which are minor and consequential to the introduction of this species into the QMS.
4. The preferred options are extremely unlikely to have any of the effects the government is concerned about. They will not impair private property rights, market competition or the incentives on businesses to innovate and invest. They will not override fundamental common law principles. They will not impose additional costs on fishers wishing to fish for this species.



Gavin Lockwood
Deputy Chief Executive Fisheries Management

REGULATORY IMPACT STATEMENT

Regulatory amendments to support introduction of Patagonian toothfish into the Quota Management System

Status Quo and Problem Definition

On 4 March 2010 the Minister of Fisheries made a determination to introduce Patagonian toothfish ("toothfish") stocks into the QMS on 1 October 2010. The Ministry proposes three consequential regulatory amendments in order to support the introduction of this species into the QMS.

First, the Fisheries (Reporting) Regulations 2001 need to be amended to incorporate the new reporting code to be used by commercial fishers from 1 October 2010. In the absence of government action the existing reporting codes will be inconsistent with the new quota management area (QMA) for toothfish that will be established when the species enters the QMS.

Secondly, the Ministry is proposing that toothfish be added to Schedule 5 of the Fisheries Act 1996 (the "Act"), which will allow a person to own quota up to the equivalent of 45% of the combined total allowable commercial catches (TACC) for toothfish stocks. In the absence of government action the default aggregation limit is 35%. Of the 29 deepwater species, 26 are already listed in this Schedule. The addition of toothfish meets the criteria relating to addition of further species to this Schedule, which include:

- A species must require substantial investment in harvesting or processing;
- A species must require substantial investment for science; and
- Quota aggregation should benefit international competitiveness

Finally, the Ministry proposes that toothfish be added to the Sixth Schedule of the Act to enable commercial fishers to return this species to the sea. It is illegal to return QMS species to the sea unless either listed on this Schedule or they are less than the minimum legal size. Tagging and releasing toothfish, and then monitoring recapture rates, will be an important method of generating scientific information used for management purposes. The release of tagged fish back to the sea will not be possible unless toothfish is listed on the Sixth Schedule.

Objectives

There are separate objectives for each of the three regulatory proposals. The objective of the proposed amendment to the Fisheries (Reporting) Regulations 2001 is to ensure that the reporting code for toothfish is consistent with the QMA that will be established for this species when it enters the QMS on 1 October 2010. There is no statutory basis for this proposal; however it is important to ensure consistency between all elements of the reporting framework.

The objective of adding toothfish to Schedule 5 of the Act (45% quota aggregation limit) is to ensure that the companies wishing to invest in developing the toothfish fishery can benefit from holding sufficient quota to achieve economies of scale. The Act enables the Minister of Fisheries to recommend to the Governor-General the addition of species to this Schedule.

The objective of adding toothfish to the Sixth Schedule (enabling commercial fishers to return this species to the sea) is primarily to enable tagged fish to be returned to the sea to generate scientific information. The Act also enables the Minister of Fisheries to recommend to the Governor-General the addition of species to this Schedule.

It is desirable that all regulatory proposals are in place by 1 October 2010, which is the date when toothfish will enter the QMS.

Regulatory Impact Analysis

With regard to amending the reporting code to be used for toothfish there are no options available other than amending the Fisheries (Reporting) Regulations 2001. The codes currently specified in those regulations will be inconsistent with the new code to be used when toothfish enters the QMS on 1 October 2010. There are no costs associated with this proposal either to the Crown or to fishers. The benefit is that fishers will enter the correct information on their catch and effort returns. Without the correct information it will be harder for the Ministry to accurately monitor landings and ensure catch is constrained to the catch limit.

With regard to the quota aggregation limit for toothfish the options are the default option or the addition of this species to Schedule 5. Under the default option the standard quota aggregation limit applies (no person may own quota equivalent to more than 35% of the combined total allowable commercial catches for this species) and no regulatory amendment is necessary. Addition of this species to Schedule 5 of the Act will raise the quota aggregation limit to 45% of the combined total allowable commercial catches for this species.

There are no costs associated with this proposal either to the Crown or to quota owners. Toothfish is a deepwater species and over 90% of deepwater QMS species are already listed on Schedule 5. In creating the ability for a 45% quota aggregation limit, Parliament recognised that such a provision would not be contrary to the purpose of aggregation limits (inhibiting monopolistic behaviour) but would give industry the discretion to arrange business affairs to suit the realities of fishing.

Deepwater species typically require significant capital investment in harvesting capacity. The argument that the more efficient use of the capital invested in the fishing fleet of a large operator can lower operating costs certainly applies to toothfish. Additionally, increased aggregation is likely to improve incentives for collective action in management of the toothfish fishery.

With regard to enabling commercial fishers to return toothfish to the sea the options are the default option or addition of this species to the Sixth Schedule. Under the default option section 72(1) of the Act applies, which prohibits commercial fishers from returning any QMS species to the sea. This option does not require any regulatory amendments.

If toothfish were added to the Sixth Schedule of the Act commercial fishers would be able to return toothfish to the sea under certain circumstances. The primary rationale for this proposal is to enable tagged toothfish to be returned to the sea. Data from recaptured tagged fish will be used to provide valuable scientific information on the sustainability of the toothfish fishery. There are no costs associated with toothfish being added to the Sixth Schedule. If toothfish was not added to the Schedule the opportunity to gain scientific data would be lost. Such information is valuable to both government and the fishing industry.

None of the proposals meet the Treasury's significance criteria.

Consultation

Consultation with stakeholders regarding the regulatory proposals addressed in this RIS has been undertaken via an Initial Position Paper (IPP). All submissions received by the Ministry supported the policy behind the regulatory proposals presented in the IPP.

Conclusions and Recommendations

The Ministry recommends:

- a) That the Fisheries (Reporting) Regulations 2001 be amended to include a new reporting code for toothfish to be used by commercial fishers when completing their statutory returns;
- b) That toothfish be added to Schedule 5 of the Fisheries Act 1996 to enable a person to own quota up to the equivalent of 45% of the combined total allowable commercial catches for this species;
- c) That toothfish be added to the Sixth Schedule of the Fisheries Act 1996 to enable commercial fishers to return this species to the sea; and
- d) That all regulatory amendments come into force when toothfish enters the QMS on 1 October 2010

Implementation

A Final Advice Paper has been prepared for the Minister of Fisheries and Aquaculture. His decisions will require approval by Cabinet and the Governor-General. No transitional arrangements are necessary.

The only risk to implementation is that the proposals are not in place when toothfish enters the QMS on 1 October 2010. The Ministry will ensure that sufficient time is available to ensure that all necessary steps in the process are completed by that date. However, should the proposals not be in place on 1 October, the Ministry will implement contingency plans. These include fishers being encouraged to voluntarily enter the correct reporting code; investigating alternative options to enable tagged fish to be returned to the sea; and the postponement of any tender of Crown-held toothfish quota until such time as toothfish is added to Schedule 5 of the Act.

There are no compliance costs associated with adding toothfish to either Schedule 5 or to the Sixth Schedule of the Act. There are no additional costs to fishers associated with the new reporting code. If fishers use incorrect reporting codes regardless of whether a species is in the QMS or not their returns will be returned to them for correction. The costs of this are not borne directly by fishers; the costs of administering the catch effort system are recovered from all quota holders. The Ministry will ensure that all likely toothfish fishers are aware of the correct code to be used from 1 October 2010.

Monitoring, Evaluation and Review

Once a species is subject to the QMS there is no mechanism for considering whether the species still needs to be subject to the QMS.

There will be no need to review the reporting code for toothfish contained in the Fisheries (Reporting) Regulations 2001 unless the quota management area for this species changes. Reviews of both the quota aggregation limit and the ability for this species to be returned to the sea by commercial fishers are only likely to occur if initiated by stakeholders. The Ministry will however monitor both regulatory amendments.