

FISHERIES (SCHEDULE 5A – Rock Lobster) ORDER 2020 – ENABLING CARRY FORWARD OF ROCK LOBSTER ANNUAL CATCH ENTITLEMENT

Proposal

1. This paper:
 - 1.1. is an urgent response to the impacts of the Coronavirus (COVID-19) on New Zealand’s rock lobster industry;
 - 1.2. proposes to temporarily remove all rock lobster stocks from Schedule 5A of the Fisheries Act 1996 (the Act) for one fishing year (1 April 2020 to 31 March 2021), by way of Order in Council, to enable rock lobster annual catch entitlement (ACE) holders to carry forward up to 10% of total rock lobster ACE holdings for the fishing year, if uncaught, to the following fishing year; and
 - 1.3. recommends that the Cabinet Legislation Committee authorise the submission of the Fisheries (Schedule 5A – Rock Lobster) Order 2020 to the Executive Council.

Executive Summary

2. China is the leading export market for live New Zealand rock lobster, accounting for about 98% of all exports (\$299.7 million). The outbreak of the Coronavirus (COVID-19) has led to the collapse of demand for live rock lobster in the Chinese market, particularly as it coincided with the Chinese New Year period. This has led to New Zealand’s commercial rock lobster fishing industry experiencing severe and unexpected market disruptions.
3. As of 24 February, Fisheries New Zealand estimated that around 388 tonnes of rock lobster ACE remains uncaught (14% of total ACE for the fishing year ending 31 March 2020)¹. Fisheries New Zealand estimates the value of this uncaught rock lobster at around \$44 million, based on submissions from industry and typical export prices. Industry report that some fishers will be severely impacted if unable to catch and sell their uncaught ACE.
4. Industry approached government seeking support to respond to the Coronavirus (COVID-19) impacts on the Chinese market. There are opportunities to provide relief to rock lobster fishers unable to catch and sell their remaining ACE, in conjunction with measures they can take themselves to mitigate market impacts, without impacting sustainability of the stock. These opportunities include allowing the return of rock lobster in holding facilities to sea, allowing industry to carry forward their ACE, ACE trading between fishers to reduce individuals’ ACE liabilities and finding alternative export markets.
5. On 5 February, I agreed to allow the industry to release live rock lobster currently held at sea and on land, provided specific biosecurity and survivability criteria are able to be met. This issue required an urgent decision as rock lobsters in holding facilities are held for varying amounts of time and the length of time they are held, along with conditions in which they are held influences their survivability s 9(2)(g)(i)

¹ Landings information is reconciled monthly at the middle of each month.

6. There is a degree of urgency in making further decisions on how to support the industry as the end of the fishing year is rapidly approaching (31 March 2020) and rock lobster fishers require certainty about whether to return rock lobster to the sea from holding pots (subject to meeting biosecurity and survivability criteria), or sell them to lower value markets. There are still a limited number of fishers holding fish at sea in significant volumes and they are choosing not to make decisions on returning these fish until a decision is made on potential ACE carry forward.
7. Fisheries New Zealand publically consulted on three options concerning the carry forward of rock lobster ACE:
 - 7.1. **Option A:** Retaining the status quo – making no changes to the Fisheries Act 1996, and not enabling rock lobster ACE carry forward;
 - 7.2. **Option B:** Enabling carry forward of up to 10% of the total ACE held by individual fishers, if uncaught (by removing rock lobster from Schedule 5A of the Act via Order in Council)²; and
 - 7.3. **Option C:** In addition to Option B, enabling the one-off carry forward of all uncaught rock lobster ACE, beyond 10% (which would require a legislative amendment to the Act).
8. For most New Zealand species managed within the Quota Management System, there is an allowance enabled under the Act for up to 10% of total ACE held by individual fishers and uncaught at the end of a fishing year, to be carried forward into the next fishing year. However, this currently excludes rock lobster³.
9. Public consultation closed on 24 February. In total 369 submissions and responses were received from Māori and stakeholder groups (commercial, recreational, environmental, independent experts, and the general public/unspecified).
10. Non-commercial interests favored Option A primarily due to sustainability concerns. Many Māori groups⁴ and some commercial fishing interests favored Option B on the basis that it provides rock lobster fishers with the same catch flexibility and equity as most other fisheries, and that it would not affect sustainability. This was generally supported on the condition that it was a one-off carry forward for the upcoming fishing year only. Most commercial interests favored Option C to avoid significant financial losses. The scale of financial losses are related to the individual business decisions and circumstances.
11. Fisheries New Zealand indicated a preference for option B during consultation, as it would: provide rock lobster fishers with the same catch flexibility as most other fisheries (as provided for under the Act); is unlikely to pose additional sustainability risks; and provide flexibility to address future market disruptions.

² In accordance with section 67A of the Fisheries Act 1996, the carry forward amount is the lesser of the total uncaught ACE or 10% of a fisher's total ACE holding at the end of a fishing year.

³ At the time Schedule 5A was developed it was considered there would be no need to manage unexpected rock lobster catch at the end of the fishing year, due to the precise nature of rock lobster harvesting.

⁴ s 9(2)(b)(ii)

12. Fisheries New Zealand is satisfied that market fluctuations are a compelling argument for enabling a proportional (up to 10%) carry forward of uncaught ACE, consistent with other stocks. Longer term sustainability risks associated with a one-off carry forward of more than 10% of total uncaught ACE are uncertain. However, this would set a new precedent beyond the 10% carry forward provisions of the Act and Fisheries New Zealand have significant concerns for sustainability and responsive management if total carry forward was allowed.
13. On that basis and due to the exceptional circumstances and urgent need to make a decision prior to the end of the fishing year (31 March 2020), I propose to progress with Option B on a temporary basis for one fishing year (1 April 2020 – 31 March 2021). This will enable some financial relief to rock lobster fishers by providing them with flexibility to defer some catch to the next fishing year. This approach, while not supported by most of the industry, is supported by the majority of Māori groups and some commercial interests. It provides the most appropriate balance between providing for utilisation while ensuring sustainability.
14. As required by the Act, carry forward provisions do not apply to any rock lobster stock where the Total Allowable Commercial Catch (TACC) is reduced for the coming fishing year⁵. Rock lobster stocks will continue to be closely monitored.
15. I recommend the Committee authorise the submission of Fisheries (Schedule 5A – Rock Lobster) Order 2020 to the Executive Council, to temporarily amend Schedule 5A of the Fisheries Act 1996 for one fishing year (1 April 2020 to 31 March 2021), by removing all rock lobster stocks to enable the carry forward of up to 10% of uncaught rock lobster annual catch entitlement in response to Coronavirus (COVID-19) impacts on the Chinese market.

Background

16. Due to the outbreak of the Coronavirus (COVID-19) and impacts on the movement of people and transport restrictions in China, demand for rock lobster has collapsed and Chinese buyers have cancelled orders of rock lobsters from New Zealand, Australia and other jurisdictions.
17. This comes at an unfortunate time for fishers when large volumes of rock lobster are usually caught and held to meet export demand for Chinese New Year celebrations (25 Jan – 8 Feb) in anticipation of the premium export prices.
18. As of 24 February 2020, Fisheries New Zealand estimated that 14% of rock lobster ACE across all stocks is currently unfished, compared to 0.4% of unfished rock lobster at the same time in 2019. The New Zealand Rock Lobster Industry Council (NZ RLIC) anticipates that the unfished proportion will remain unfished by the end of the fishing year (31 March 2020), due to continuing low Chinese demand.

⁵ s 9(2)(f)(iv)

19. s 9(2)(b)(ii)

20. On 5 February, I agreed to allow the industry to release live rock lobster currently held at sea and on land, provided specific biosecurity and survivability criteria are able to be met.
s 9(2)(b)(ii)

21. I have also extended mental wellbeing support to fishers, primarily through an independent fishing industry health and safety provider.

22. Additionally, I agreed for officials to progress work on proposed options to implement provisions to carry forward rock lobster ACE into the next fishing year.

Public consultation on proposed options to carry forward rock lobster ACE

23. I agreed to publically consult on proposed options to carry forward rock lobster ACE into the next fishing year (as required by the Act) and informed my Cabinet colleagues at the Cabinet meeting on Monday 10 February [CAB-20-MIN-0018 refers].

24. Public consultation was held from 14 February to 24 February 2020. Officials distributed the consultation document via multiple channels including the Fisheries New Zealand website, social media and distribution lists. As required under the Act, officials also engaged directly with the following groups who have strong interests in the stock:

24.1. Te Ohu Kaimoana and Iwi Fisheries Forums Chairs;

24.2. New Zealand Rock Lobster Industry Council;

24.3. Key operators, including the Fiordland Lobster Company, Burkhardt's Fishing, Ngāi Tahu and Southern Seafoods Ltd;

24.4. Recreational fisheries bodies, including the New Zealand Sport Fishing Council/LegaSea, New Zealand Recreational Fishing Council and Fish Mainland;

24.5. Environmental Groups, including Forest and Bird, World Wildlife Fund and Greenpeace;

24.6. Any members of the National Rock Lobster Management Group not already covered.

25. Fisheries New Zealand directly contacted the Chairs of Iwi Fisheries Forums and Te Ohu Kaimoana to facilitate additional engagement with Māori, as well as with government agencies, including the Department of Conservation, Ministry for the Environment and Te Puni Kōkiri.

26. The consultation document outlined three options concerning the carry forward of rock lobster ACE:
- 26.1. **Option A:** Retaining the status quo – making no changes to the Fisheries Act 1996, and not enabling rock lobster ACE carry forward;
 - 26.2. **Option B:** Enabling carry forward of up to 10% of the total ACE held by individual fishers, if uncaught (by removing rock lobster from Schedule 5A of the Act via Order in Council); and
 - 26.3. **Option C:** In addition to Option B, enabling the one-off carry forward of all uncaught rock lobster ACE, beyond 10% (which would require a legislative amendment to the Act).
27. Fisheries New Zealand indicated a preference for option B during consultation, as it would: provide rock lobster fishers with the same catch flexibility as most other fisheries (as provided for under the Act); is unlikely to lead to additional sustainability risks; and provide flexibility to address future market disruptions.
28. In total 369 submissions and responses were received from Māori and stakeholder groups (commercial, recreational, environmental, independent experts, and the general public/unspecified).
29. Non-commercial interests favored Option A primarily due to sustainability concerns.
30. Fisheries New Zealand advises me that rock lobster stocks are overall healthy, with catch limits set at sustainable levels. They also advise that rock lobster stocks are closely monitored with catch limits assessed for their suitability on an almost annual basis. Further, for stocks where the TACC is reduced, the carry forward provisions would not apply.
31. Many Māori groups and some commercial fishing interests favored Option B on the basis that it provides rock lobster fishers with the same catch flexibility and equity as most other fisheries, and that it would not affect sustainability. This was generally supported on the condition that it was a one-off carry forward for the upcoming fishing year only.
32. Most commercial interests favored Option C to avoid significant financial losses. The scale of financial losses are related to the individual business decisions and circumstances. Some fishers spread their effort (and risk) throughout the season while others seek to capitalise on higher prices towards the end of the season.
33. Fisheries New Zealand is satisfied that market fluctuations are a compelling argument for enabling a proportional (up to 10%) carry forward of ACE, consistent with other stocks. Longer term sustainability risks associated with a one-off carry forward of more than 10% of uncaught ACE are uncertain. There may be short term impacts on access to rock lobster for recreational and customary fishers as a result of increased commercial activity or instances of localised depletion.
34. However, if total carry forward was allowed, it would set a new precedent beyond the 10% carry forward provisions of the Act and Fisheries New Zealand have significant concerns for sustainability and responsive management approaches as well as disruption to current scientific approaches.

35. On that basis and due to the exceptional circumstances and urgent need to make a decision prior to the end of the fishing year (31 March 2020), I propose to progress with Option B on a temporary basis for one fishing year (1 April 2020 – 31 March 2021). This will enable some financial relief to rock lobster fishers by providing them with flexibility to defer some catch to the next fishing year.
36. This approach, while not supported by most of the industry, is supported by the majority of Māori groups and some commercial interests. It provides the most appropriate balance between providing for utilisation while ensuring sustainability.

Policy

37. At the start of each fishing year individual ACE holders are provided up to 10% of their ACE holdings, which were not caught during the previous fishing year, under section 67A of the Act⁶, unless the fish stock is listed on Schedule 5A or if the TACC has been reduced for the coming fishing year.
38. Rock lobster is one of a small number of stocks currently included on Schedule 5A and therefore it is necessary to amend the schedule to remove all rock lobster stocks allowing for ACE to be carried forward.⁷
39. The Fisheries (Schedule 5A – Rock Lobster) Order 2020 will temporarily remove all rock lobster stocks from Schedule 5A of the Act for one year to enable rock lobster ACE holders to carry forward up to 10% of total rock lobster ACE holdings for the current fishing year, if uncaught within the year, to the following fishing year.
40. Consistent with the approach taken for other fisheries, this amendment will not apply to any rock lobster stocks where TACCs are reduced for the coming fishing year.⁸ Rock lobster stocks will continue to be closely monitored.
41. In order to be effective the Order will need to be in force by the start of the next fishing year (1 April 2020) which is rapidly approaching. Accordingly, the 28 Day rule will need to be waived. I consider this appropriate because of the urgent need to alleviate economic impacts as a result of the Coronavirus (COVID-19), and because it is an enabling rather than restrictive change.
42. The allocation of up to 10% carry forward entitlement will only be given to those individuals who hold ACE for a rock lobster stock at the close of the ACE register for the fishing year, as calculated under section 67A(2) of the Act.

⁶ In accordance with section 67A of the Fisheries Act 1996, the carry forward amount is the lesser of the total uncaught ACE or 10% of a fisher's total ACE holding at the end of a fishing year.

⁷ There are currently 36 other stocks on this Schedule, many of which are shellfish species. At the time the Schedule was developed it was considered that there would be no need to manage unexpected rock lobster catch at the end of the fishing year, due to the precise nature of rock lobster harvesting.

⁸ s 9(2)(f)(iv)

Implications of removing rock lobster from Schedule 5A

43. The amendment:

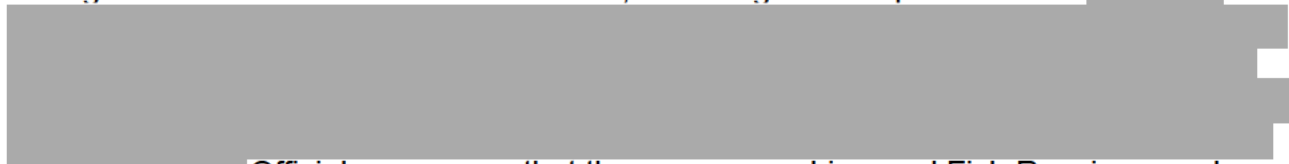
- 43.1. will provide clarity to fishers prior to the start of the new fishing year;
- 43.2. will provide flexibility to defer some catch until market demand improves;
- 43.3. is consistent with the same catch management flexibility provided to most other fisheries;
- 43.4. will not impact the sustainability of the rock lobster stocks or the health of the aquatic environment;
- 43.5. will see a moderate volume of catch be deferred and carried forward to the following fishing year, which would not significantly increase fishing effort in the next fishing year; and
- 43.6. will provide some financial relief for the industry by enabling the value of up to 10% of total ACE holdings, if uncaught, to be preserved.

44. As at 24 February, Fisheries New Zealand estimated that around 388 tonnes of rock lobster remains uncaught (14% of total ACE). Based on the current distribution of ACE, Fisheries New Zealand estimates that of the 14% of total ACE uncaught, a carry forward arrangement of up to 10% would mean that 4.4% (120 tonnes) of ACE would be carried forward into the next fishing year.

45. Some ACE holders will be impacted more severely than others, due to their holdings and nature of fishing operations.

Existing measures to provide relief for fishers

- 46.** As mentioned earlier, government has agreed to allow the industry to release live rock lobster currently held at sea and on land, provided specific biosecurity and survivability criteria are able to be met.
- 47.** Mental wellbeing support has been made available to fishers, primarily through an independent fishing industry health and safety provider.
- 48.** The New Zealand Trade and Enterprise infosite and the Ministry for Primary Industries' (MPI) website includes information to help New Zealand exporters plan, prepare and mitigate impacts of the Coronavirus (COVID-19) outbreak.
- 49.** Fisheries New Zealand understands that some fishers are taking steps to mitigate financial impacts themselves, including ACE trading between fishers to reduce individuals' ACE liabilities. Further ACE trading could be expected following this decision.
- 50.** Financial impacts from low demand for live lobster exports to China could also be offset through increased frozen or domestic sales, or finding other export markets. ^{s 9(2)(b)(ii)}



Officials are aware that there are some Licensed Fish Receivers and processors who are tailing and freezing rock lobster as well as selling rock lobster at lower than normal prices on the domestic market.

Timing and 28-day rule

51. Subject to Cabinet and Executive Council approval, the Order will be gazetted on 12 March and come into force on 1 April.
52. A waiver of the 28-day rule is being sought: as the Order is being made in response to extraordinary circumstances brought about by the Coronavirus (COVID-19) outbreak; the Order is enabling not restrictive; there is a pressing need to provide clarity to affected fishers; there is minimal impact on the general public and it is more likely to affect the commercial rock lobster fishing sector; and in order for the Order to be effective it needs to come into force on 1 April in time for the start of the next fishing year.

Compliance

53. The Order complies with:
 - 53.1. the principles of the Treaty of Waitangi;
 - 53.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 53.3. the principles and guidelines set out in the Privacy Act 1993;
 - 53.4. relevant international standards and obligations;
 - 53.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.]
54. The process to make amendments to Schedule 5A is set out in section 67B of the Act, which states:

Section 67B Amendments to Schedule 5A

- 1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, amend Schedule 5A by—
 - a. adding 1 or more stocks to that schedule;
 - b. omitting 1 or more stocks from that schedule.
 - 2) An Order in Council made under subsection (1) takes effect on and from the first day of the next fishing year for the stocks concerned.
 - 3) Before recommending the making of an Order in Council under subsection (1), the Minister must consult with such persons or organisations as the Minister considers are representative of those classes of persons having an interest in the stocks subject to the order.
55. I am satisfied that all statutory prerequisites have been met.

Regulations Review Committee

56. I do not consider that there are any grounds for the Regulations Review Committee to draw the Order to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

57. The Order has been certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

58. The Impact Analysis Requirements apply and MPI have prepared the Regulatory Impact Assessment in accordance with the necessary requirements. This is attached as **Appendix One**.
59. The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Summary 'Enabling Catch Entitlement carry forward for rock lobster' produced by MPI and dated 27 February 2020. The review team considers that it meets the Quality Assurance criteria.

Publicity

60. Fisheries New Zealand will issue a media release once the regulations are made. Changes will be publicised on Fisheries New Zealand's website and directly communicated to iwi, rock lobster fishers and other stakeholders.

Proactive release

61. Following Cabinet consideration I intend to release this paper and the Regulatory Impact Assessment on the Ministry for Primary Industries' website, subject to appropriate redactions under the Official Information Act 1982.

Consultation

62. The Department of Conservation, the Ministry for the Environment, the Treasury and Te Puni Kōkiri were consulted in the development of this paper.

Proactively Released

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **Note** that this proposal is an urgent response to the impacts of the Coronavirus (COVID-19) on New Zealand's rock lobster industry
2. **Note** that on 25 February 2020, following advice from my officials, I recommended an Order in Council to temporarily remove all rock lobster stocks from Schedule 5A of the Fisheries Act 1996 for one year.
3. **Note** that I recommend the Governor-General, by way of Order in Council, to temporarily amend Schedule 5A of the Fisheries Act 1996 for one fishing year (1 April 2020 to 31 March 2021), by removing all rock lobster stocks to enable the carry forward of up to 10% of uncaught rock lobster annual catch entitlement in response to Coronavirus (COVID-19) impacts on the Chinese market.
4. **Note** that the Fisheries (Schedule 5A – Rock Lobster) Order 2020 will give effect to the decision referred to in paragraph 3 above;
5. **Note** that carry forward provisions do not apply to any rock lobster stock where the Total Allowable Commercial Catch (TACC) is reduced for the coming fishing year.
6. **Note** that section 67B(3) of the Fisheries Act 1996 requires that before recommending the making of an Order in Council, the Minister must consult with such persons or organisations as the Minister considers are representative of those classes of persons having an interest in the stocks subject to the order;
7. **Note** I am satisfied that the statutory prerequisites for making an amendment to Schedule 5A of the Fisheries Act 1996 have been met;
8. **Note** that a waiver of the 28-day rule is sought on the grounds that:
 - 8.1. the amendment is being made in response to extraordinary circumstances brought about by the Coronavirus (COVID-19) outbreak;
 - 8.2. there is a pressing need to provide clarity to affected fishers;
 - 8.3. there is minimal impact on the general public and it is more likely to affect the commercial rock lobster fishing sector; and
 - 8.4. in order for the amendment to Schedule 5A to be effective it needs to come into force on 1 April in time for the start of the next fishing year.
9. **Agree** to waive the 28-day Rule so that the Order can come into force on 1 April 2020;
10. **Agree** to proactively release the Regulatory Impact Assessment before the Fisheries (Schedule 5A – Rock Lobster) Order 2020 is gazetted.
11. **Authorise** the submission of the Fisheries (Schedule 5A – Rock Lobster) Order 2020 to the Executive Council.

Authorised for lodgement

Hon Stuart Nash
Minister of Fisheries

Impact Summary: Enabling Catch Entitlement carry forward for rock lobster

Section 1: General information

Purpose

The Ministry for Primary Industries (MPI) and Fisheries New Zealand is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:

- *In-principle policy decisions to be made by the Minister of Fisheries*
- *Final decisions to proceed with a policy change to be taken by Cabinet*

Key Limitations or Constraints on Analysis

Representative bodies of the commercial rock lobster industry have indicated that a collapse in demand for live export rock lobster to China has adversely impacted on those who have caught rock lobster in advance of the end of the fishing year (31 March 2020), or hold rock lobster annual catch entitlement (ACE) in the intention for supplying the Chinese market. They note that this impact comes in addition to inability to supply to alternative live export markets or profit from other lower value rock lobster products.

Fisheries New Zealand is not required to take any actions, but considers that there is an opportunity to provide financial relief to rock lobster fishers unable to sell their rock lobster and remaining ACE by allowing it to be carried forward into the next fishing year, when live export markets are likely to improve, without impacting on the sustainability of rock lobster stocks. Currently, fishers do not have the ability to carry forward rock lobster ACE into the next fishing year, unlike most other species in the Quota Management System (QMS).

Fisheries New Zealand consulted on three options in relation to enabling the carry forward of rock lobster ACE, as follows:

- A. Retaining the *status quo* – making no changes to the Act, and not enabling ACE carry forward;
- B. Enabling fishers to carry forward up to 10% of ACE holdings, if uncaught, and
- C. In addition to Option B, also enabling the one-off carry forward of all uncaught ACE.

Fisheries New Zealand did not consult on any other proportion of uncaught ACE to be carried forward.

Fisheries New Zealand's preliminary preference is **Option B**, but limiting this provision to the **2020/21 fishing year only**, as this would pose the least risk to any ongoing rock lobster sustainability concerns.

The following criteria assess how Option B for the 2020/21 fishing year only meets the objective of providing financial relief for rock lobster fishers highly exposed to the unexpected market impacts of the Coronavirus outbreak, compared to retaining the status quo under Option A:

- a. Enabling relief to fishers unable to catch and sell uncaught rock lobster and ACE;
- b. Reducing additional risks to environmental sustainability;
- c. Minimising impacts on Iwi and stakeholders with an interest in rock lobster stocks; and
- d. Minimising additional costs to the Crown.

Fisheries New Zealand considers that Option B, in combination with wider commitments to enable industry to return held rock lobster, would:

- a. provide clarity to fishers prior to the start of the new fishing year;
- b. provide flexibility to defer some catch until market demand improves;
- c. be consistent with the same catch management flexibility provided to most other fisheries;
- d. not impact the sustainability of the rock lobster stocks or the health of the aquatic environment;
- e. see a moderate volume of catch be deferred and carried forward to the following fishing year, which would not significantly increase fishing effort in the next fishing year; and
- f. provide some financial relief for the industry by enabling the value of up to 10% of total ACE holdings, if uncaught, to be preserved.

Fisheries New Zealand is unable to quantify the level of financial impact the commercial rock lobster fishery is exposed to. Fisheries New Zealand is largely reliant on accounts of the industry in the potential financial impacts for market disruptions.

The potential monetised costs to the commercial rock lobster fishing industry of up to [redacted] of foregone revenue for live rock lobster exports to China are based on industry submissions and cannot be verified by Fisheries New Zealand. The extent to which this revenue could be offset through sales of other rock lobster products (e.g. frozen) or to other markets (including domestic sales) has not been quantified.

While Fisheries New Zealand has some information on the value of assets involved in the fishery, such as vessel valuation and ACE trading value, it is uncertain how these will change in the absence of viable live export markets, or any proposed ACE carry forward provisions.

The industry has indicated that collapse of the market is having significant impact on the economic viability of businesses and the wellbeing of those involved in the fishery. These impacts will fall on individuals and some will be more exposed to financial hardship than others. Many fishers will be small operators and the financial burden of having purchased ACE in advance of the market collapse is likely to be detrimental to their income. This could have flow-on effects to the economies of local communities, especially in the regions.

Fisheries New Zealand anticipates that all monetised costs of implementing the proposed options will be solely borne by the commercial fishing industry, including administrative costs associated with enabling an ACE carry forward provision for rock lobster. There is anticipated to be medium to low non-monetised costs on other affected parties, including resource costs on Fisheries New Zealand to enable a change to ACE carry forward provisions, and the assumption that industry will seek the resources of New Zealand Trade and Enterprise in exploring options for alternative live export markets.

Given the short timeframe for consultation, concerns have been raised in submissions regarding the availability of supporting information and the limited opportunity to provide submitters appropriate time to properly consider the implications of the options proposed.

A change to the annual catch entitlement (ACE) carry forward provisions for rock lobster are within the scope of this proposal. The proportion of uncaught ACE able to be carried forward and the ability to provide for ACE carry forward if a stock's total allowable commercial catch (TACC) is reduced for that fishing year is not in the scope of this proposal.

Responsible Manager (signature and date):

Emma Taylor

Director Agriculture Marine and Plant Policy

Policy and Trade

Ministry for Primary Industries

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

The MPI Regulatory Impact Analysis Panel

Quality Assurance Assessment:

The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Summary '*Enabling Catch Entitlement carry forward for rock lobster*' produced by MPI and dated 27 February 2020. The review team considers that it meets the Quality Assurance criteria.

Reviewer Comments and Recommendations:

No further comments.

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

The commercial rock lobster fishing industry is currently experiencing severe and unexpected market disruption due to the Coronavirus outbreak. Measures taken by China with respect to restrictions on transport and people movements have led to wide scale cancellation of live rock lobster export orders during the Chinese New Year period. This is a period of high demand when live rock lobster prices are high.

China accounts for 98-99% of all live exports of rock lobster. As of 24 February, Fisheries New Zealand estimates s 9(2)(d)

based on submissions from industry and usual export prices.

Generally, fishers have purchased rock lobster ACE in advance prior to the end of the fishing year (31 March 2020) to fill orders for the typical increase in export market demand around the Chinese New Year period. There has been a significant decline in demand for live rock lobster exports to China, and limited alternative or domestic markets for live rock lobster. In most case fishers would have purchased ACE in advance and hold a significant ACE liability as alternative products for rock lobster (such as frozen) command a much reduced retail value.

It is uncertain how long the low demand for Chinese exports will continue, or whether industry will be able to find alternative markets that could take the remaining volume of rock lobster, before the end of this fishing year.

Fisheries New Zealand is not required to take any actions, but considers that there is an opportunity to provide financial relief to rock lobster fishers unable to sell their rock lobster and remaining ACE by allowing it to be carried forward into the next fishing year, when live export markets are likely to improve, without impacting on the sustainability of rock lobster stocks.

For most quota management system (QMS) species, under section 67A of the Fisheries Act 1996 (the Act), at the start of each fishing year individual ACE holders are provided with either:

- a. Up to 10% of their total ACE holdings at the end of the previous fishing year before catch balancing; or
- b. The amount of ACE which was not caught, whichever is the lesser.

However, section 67A does not apply if:

- a. The fishstock is listed on Schedule 5A of the Act; or
- b. If the specific stock has been subject to a Total Allowable Commercial Catch (TACC) reduction from the previous year.

All rock lobster stocks are listed on Schedule 5A of the Act, and are therefore exempt from ACE carry forward provisions. Under the Act, an Order in Council is required to change stocks listed on Schedule 5A.

The commercial rock lobster industry has requested for uncaught ACE to be carried forward to the next fishing year s 9(2)(d)

If rock lobster was removed from Schedule 5A, section 67A of the Act limits the proportion of ACE that can be carried forward to 10%.

Section 67A(3)(b) of the Act prevents any ACE carry forward provisions for stocks that have a reduction in the TACC from the previous fishing year. Fisheries New Zealand is not consulting on enabling changes to the rules preventing carry forward for stocks with a TACC reduction, as Fisheries New Zealand considers that this would risk placing additional fishing pressure on stocks that already require catch reductions due to sustainability concerns.

While financial impacts from low demand for live lobster exports to China could be offset through increased frozen or domestic sales, or finding other export markets, industry considers the economic viability of domestic alternatives to be low, given the large volume of uncaught ACE. Industry also considers that export opportunities are limited by the short timeframe to the end of the fishing year and an international glut of live lobster due to other lobster-producing countries being similarly exposed to Chinese trade pressures.

To maximise the value of uncaught ACE, and for the greatest benefits of financial relief to be realised, any change to rock lobster ACE carry forward provisions will need to be enabled by the end of the current fishing year on 31 March 2020.

Existing measures to provide relief for fishers

To provide some relief to fishers that have caught rock lobster but are unable to export them, or sell them at profit, Fisheries New Zealand is allowing the release of rock lobster currently held in holding pots under the supervision of Fishery Officers and subject to biosecurity and survivability criteria.

Fisheries New Zealand has also extended mental wellbeing support to fishers that may be going through financial hardship (this is currently being provided as part of the Hector's and Maui Dolphin Threat Management Plan).

Fisheries New Zealand understands that some fishers are taking steps to mitigate financial impacts themselves, including ACE trading and arbitrage arrangements between fishers to reduce individuals' ACE liabilities.

2.2 Who is affected and how?

The commercial rock lobster industry is the principle sector directly impacted. Industry is made up of tangata whenua interests, commercial fishers, Licenced Fish Receivers and other businesses. The industry representative body, the New Zealand Rock Lobster Industry Council has requested uncaught ACE to be carried forward.

There are approximately 260 permit holders with ACE holdings across ten rock lobster stocks. There will be variation between rock lobster fishers in terms of economic impact. Fishers who have large volumes of ACE unfished, and are now unable to secure markets for rock lobster, will incur the greatest financial impacts.

Non-commercial fishers may feel that increasing the amount of commercial catch in the next fishing year could impact their ability to catch rock lobster and presents a perception risk of the Ministry supporting poor business models of industry.

The nature of interest among Treaty Partners and stakeholders is summarised in Table 1 below.

Table 1. Treaty Partners and interested stakeholders

	Group	Nature of interest
<i>Treaty Partners</i>	Tangata Whenua	The proposals have the biggest influence on iwi commercial fisheries, commercial interests in quota, catching fish and as fish retailers. Outside commercial interests, tangata whenua have a broad interest in any changes that affect the long term sustainability and productivity of fisheries as expressed through their role as kaitiaki (guardians) / managers of their customary fisheries and any interests they have as individual recreational fishers.
<i>Stakeholder groups directly affected by the proposal</i>	Commercial fishers	The proposals have the biggest influence on commercial fishers in terms of potential loss of revenue and business viability. The proposals will provide greater certainty for fishers when making business decisions in how to use their remaining uncaught rock lobster ACE.
<i>Stakeholder groups indirectly affected by the proposal</i>	The general public	The general public are interested in these proposals as consumers with an interest in a premium seafood product, and the potential costs and benefits of these proposals on their local communities' and New Zealand's economy. Ensuring a profitable fishing sector supports New Zealand's wellbeing and international reputation.
	Recreational fishers	Recreational fishers have a broad interest in these changes insofar as rock lobster being a highly prized recreational species.
	Environmental Groups	Environmental groups are keenly interested in the long term sustainability of the rock lobster stocks.

Tangata whenua are represented through Iwi Fisheries Forums and Māori are represented through consultation with a range of bodies including Te Ohu Kaimoana (Te Ohu), Mandated Iwi Organisations, Asset-Holding Companies, and individuals.

Te Ohu is an independent Trust, established to provide for the allocation and governance of Fisheries Settlement assets, divested under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and Fisheries Deed of Settlement. Te Ohu provides fisheries advisory services to iwi, the Māori Fisheries Settlement entities and industry groups. Te Ohu Kaimoana provides advice to and is guided by the 58 Mandated Iwi Organisations that represent all Māori in New Zealand. Iwi are also represented separately through these Mandated Iwi Organisations and Asset Holding Companies.

Commercial fishers include individual fishers, individual companies/fishers (small and large operators) who own quota, individual companies (small and large operators) who fish using ACE from other operators, licensed fish receivers (LFRs, who may own quota as well) and commercial industry associations.

General public include individuals and organisations with social and community interests in fisheries.

Recreational fishers include representative bodies such as the New Zealand Sports Fishing Council and LegaSea, New Zealand Recreational Fishing Council, fishing clubs and individuals.

Environment groups include non-government organisations and individuals with environmental interests.

2.3 What are the objectives sought in relation to the identified problem?

The primary objective is to provide financial relief for rock lobster fishers highly exposed to the unexpected market impacts of the Coronavirus outbreak, without creating sustainability risks to rock lobster stocks or additionally impacting on tangata whenua and stakeholders, in conjunction with measures that fishers can take themselves.

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Section 3: Options identification

3.1 What options have been considered?

Proposed options

- A. Retaining the *status quo* – making no changes to the Act, and not enabling carry forward;
- B. Enabling fishers to carry forward up to 10% of ACE holdings for the 2020/21 fishing year only, if uncaught.

Criteria

The following criteria assess how the options meet these objectives:

- a. Enabling relief to fishers unable to catch and sell uncaught rock lobster and ACE;
- b. Reducing additional risks to environmental sustainability;
- c. Minimising impacts on Iwi and stakeholders with an interest in rock lobster stocks as specified under 67B(3) of the Act as 'The Minister must consult with such persons or organisations as the Minister considers are representative of those classes of persons having an interest in the stocks subject to the order'; and
- d. Minimising additional costs to the Crown.

3.2 Which of these options is the proposed approach?

Fisheries New Zealand notes that there are some non-regulatory options possible under the status quo (Option A), but considers these don't go far enough to achieve the objective to provide financial relief for rock lobster fishers. Fisheries New Zealand considers that it is reasonable to provide some support to fishers that are incurring financial hardship.

Fisheries New Zealand's preferred approach is **Option B, for the 2020/21 fishing year only**, as this option best meets the assessment criteria. The proposed change would allow fishers to defer their catch and selling of live rock lobster for export to the next fishing year when markets may have improved. This would also help maintain the value of rock lobster ACE and revenue received from the live export market.

Option B, in combination with wider commitments to enable industry to return held rock lobster to sea would provide the appropriate support to industry and is most readily achieved within the 1 April 2020 timeframe, in order to enable fishers to make catch decisions about uncaught ACE for this fishing year.

Fisheries New Zealand considers that Option B would not have long-term implications, as the ACE carry forward provision would only be in place for the 2020/21 fishing year (1 April 2020 – 31 March 2021).

Option B has specific statutory consultation requirements under the Act, which have been provided for through the consultation process.

Option B is compared to the status quo using the assessment criteria in Table 2 below.

Table 2. Status quo and Option B and assessment criteria

	Status quo - No action	Option B – up to 10% ACE for 2020/21
<i>Enabling relief to industry</i>	0 No opportunity for financial relief. Foregone export value of up to s 9(2)(d) No additional economic benefit to local communities	+ Fishers able to mitigate some impacts of low market demand Same catch management flexibility provided to most other fisheries
<i>Reducing additional risks to environmental sustainability</i>	0 No additional sustainability risk	0 Low level of additional risk as no significant increase in fishing effort Volume could be absorbed for most stocks with low additional risk to sustainably
<i>Minimising Impacts on other Iwi and stakeholders with an interest</i>	0 No additional impact on others with an interest	0 Low level impact on other users as no significant increase in fishing effort
<i>Minimising costs to the Crown</i>	0 No additional cost to the Crown	- Administrative costs borne by industry and some resourcing costs for the Crown in required changes to Schedule 5A
Overall assessment	0 No additional impacts on sustainability, others with interests but taking no action is likely to lead to financial hardship for industry	+ Enables industry to mitigate some financial impacts Low risk of additional impact to sustainability and other users, and some costs to Crown
Key: + better than doing nothing/the status quo 0 about the same as doing nothing/the status quo - worse than doing nothing/the status quo		

Enabling relief to fishers

Option B would provide some financial relief to rock lobster fishers and the industry by enabling up to 10% of ACE to be carried forward and would enable the value of up to 10% of uncaught ACE to be preserved, in combination with wider Government and industry measures to mitigate impacts of low market demand.

Fisheries New Zealand considers that an opportunity to provide relief from economic hardship would also provide flow-on benefits to coastal communities, particularly in the regions.

Fisheries New Zealand acknowledges that individual ACE holders hold varying levels of rock lobster ACE, and while this will not provide full relief of fishers' ACE liabilities, Option B will provide some management flexibility and certainty for catch planning.

Reducing additional risks to environmental sustainability

Fisheries New Zealand considers that a carry forward of up to 10% of ACE under Option B would create low additional risk to the sustainability of rock lobster stocks or additional impact on the health of the aquatic environment. Fisheries New Zealand considers that Option B would not significantly increase fishing effort and the additional volume of catch within the following year could be absorbed for most rock lobster stocks without impacting on sustainability.

Overall, New Zealand's rock lobster fishery is performing well, with isolated stock sustainability concerns. Most stocks are in good health, with southern stocks becoming increasingly abundant. Rock lobster stocks are monitored closely and TACCs are reviewed annually. Stock assessments are generally carried out every 4-5 years for each rock lobster stock, and management procedures have been used to guide annual TACC setting decisions for most stocks. This responsive management framework helps to ensure the TACC set reflects available abundance.

Consistent with the approach taken for other fisheries, this would not apply to any rock lobster stocks where TACCs are reduced from the previous fishing year under section 67A(3)(b) of the Act. Fisheries New Zealand has recently consulted on TACC reductions for CRA 1 (Northern North Island) and CRA 3 (East Coast North Island). If these TACCs are decreased as per the consultation, these stocks would not be eligible for ACE carry forward. Industry has proposed ACE shelving as an alternative to avoid this issue, but this would need to be considered as part of the broader fisheries management considerations.

Fisheries New Zealand is not considering reviewing 67A(3)(b) of the Act and it is out of the scope of this proposal.

Minimising impacts on Iwi and stakeholders

An ACE carry forward provision poses a low level of additional impact on customary or recreational fishers, or on the ability for customary or recreational fishers to catch rock lobster, as there would be not be a significant increase to the current level of catch volume or fishing effort, and this proposal is for the 2020/21 fishing year only.

Minimising additional costs to the Crown

There would be a one-off administrative cost for Option B in reallocating uncaught ACE, undertaken by FishServe, but this would be borne by industry through levy payments. Option B would have some resourcing costs for the Crown in the required changes to Schedule 5A through an Order in Council process, but these would be minimal.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits			
Affected parties	Comment:	Impact	Certainty
Additional costs of proposed approach, compared to taking no action			
Commercial rock lobster industry including fishers, ACE holders, LFRs, exporters	One-off ACE carry forward benefit where any ACE remains uncaught at the end of the 2019/20 fishing year. This is verified through catch balance reporting and trade reporting through the supply chain. It is assumed that there is a low level of misreporting.	s 9(2)(d) [redacted] foregone revenue from live rock lobster exports	Medium – unknown how much of foregone revenue could be offset through alternative markets/products
Ministry for Primary Industries	Currently undertaking a one-off resource cost to implement an ACE carry forward provision for 1 April 2020.	low	high
New Zealand Trade and Enterprise	Assumed that industry will seek advice and support to develop alternative live rock lobster export markets	low	low
FishServe	Approved service provider tasked with ongoing annual administrative process to calculate and redistribute carry forward of uncaught ACE	low	high
Total Monetised Cost	Monetised costs solely borne by industry	s 9(2)(d) [redacted]	medium
Non-monetised costs	Administrative and resourcing costs	low	medium
Additional benefits of proposed approach, compared to taking no action			
Commercial rock lobster industry including fishers, ACE holders, LFRs, exporters	Relief of some financial burden by enabling opportunity to carry forward uncaught rock lobster ACE into the next fishing year. Additional potential revenue to be realised next year. Certainty and positive wellbeing outcomes	s 9(2)(d) [redacted] additional revenue potentially able to be realised in the next fishing year	Medium - unknown how much revenue could be gained from an ACE carry forward
New Zealand Trade and Enterprise	Opportunity to explore alternative markets for live rock lobster exports	low	low
Total Monetised benefits	Monetised benefits primarily to industry	s 9(2)(d) [redacted]	medium
Non-monetised benefits	Non monetised benefits include wellbeing outcomes and potential market diversification	low	low

4.2 What other impacts is this approach likely to have?

s 9(2)(d)

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Due to the tight timeframe for any proposed option to be in place for the 1 April 2020 fishing year, a truncated and targeted public consultation was held from 14 February to 24 February 2020.

Officials spoke directly with the following groups who have strong interests in the stock (as required under the Act):

- Te Ohu Kaimoana and Iwi Fisheries Forums Chairs;
- NZ Rock Lobster Industry Council;
- Key operators, including the Fiordland Lobster Company, Burkhardt's Fishing, Ngāi Tahu and Southern Seafoods Ltd.;
- Recreational fisheries bodies, including the New Zealand Sport Fishing Council/Legasea and NZ Recreational Fishing Council;
- Environmental Groups, including Forest and Bird, World Wildlife Fund and Greenpeace;
- Any members of the National Rock Lobster Management Group not already covered.

Fisheries New Zealand directly contacted the Chairs of Iwi Fisheries Forums and Te Ohu Kaimoana to facilitate additional engagement with Māori, as well as with Government agencies, including the Department of Conservation, Ministry for the Environment and Te Puni Kōkiri.

Targeted emails were sent to stakeholders including iwi representatives and commercial fishers, and also distributed through iwi forums.

In total 369 submissions were received from Māori and stakeholder groups (commercial, recreational, environmental, independent experts, and the general public/unspecified). A full summary of submissions has been provided to the Minister separately **[B20-0091]**.

Non-commercial interests favoured Option A (*status quo*) primarily due to sustainability concerns, contributing to approximately 49% of all submissions.

There was limited support for Option B (up to 10% carry forward in perpetuity as initially consulted on), at approximately 13% of all submissions. Treaty Partners and a range of commercial fishing interests favoured Option B, with some including support for a one-year carry forward provision, on the basis that it would not affect sustainability and that it provides rock lobster fishers with the same catch flexibility and equity as most other fisheries.

Given the short timeframe for consultation, concerns have been raised in submissions regarding the availability of supporting information and the limited opportunity to provide submitters appropriate time to properly consider the implications of the options proposed.

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Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Fisheries New Zealand recommends limiting this provision to the 2020/21 fishing year only by removing rock lobster from Schedule 5A of the Act before the end of the current fishing year and reintroducing rock lobster into Schedule 5A for the following fishing year starting 1 April 2021.

Any changes to rock lobster ACE carry forward provisions would be subject to approval by Cabinet, and any changes will be implemented as soon as practicable – ideally in sufficient time to provide certainty for fishers' catch management decisions before the end of the 31 March 2020 fishing year.

Enabling an ACE carry forward provision for up to 10% of rock lobster ACE before the end of fishing year would require an Order in Council along a rapid timeframe, including a waiver of the 28 day notification rule, and proceeding directly to the Cabinet Legislation Committee without formal approval from the Cabinet Economic Development Committee.

If the Minister approves enabling an ACE carry forward provision for rock lobster for the 2020/21 fishing year only, Fisheries New Zealand will instruct the Parliamentary Counsel Office to draft an Order in Council by mid-March, in anticipation for this to be Gazetted shortly after. The Order in Council will be in force from 1 April 2020 to 31 March 2021.

The Minister of Fisheries' decision will be posted on the Fisheries New Zealand website and social media pages, and submitters will be notified directly of the decisions. Administrative processes would be undertaken by the service provider FishServe prior to the start of the fishing year to enable smooth transition.

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Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Fisheries New Zealand recommends enabling an ACE carry forward provision for rock lobster for the 2020/2021 fishing year only.

There are arrangements already in place to carry forward up to 10% of uncaught ACE into the following fishing year for other QMS stocks. For stocks with ACE carry forward provisions, the portion of uncaught ACE that is carried forward is allocated by FishServe to ACE holders soon after final monthly harvest returns for the year have been submitted.

While it is not possible to determine the uncaught ACE from regular ACE holdings following allocation, fishers are required to report all rock lobster caught, and balance this against total ACE holdings. The volume of rock lobster landed is further verified through landing reports and Licenced Fish Receiver (LFR) returns.

Assuming the live rock lobster export market improves as per normal next fishing year, there are reporting measures and data collection systems already in place to monitor and evaluate if any impacts materialise. Rock lobster sales will be monitored through export documentation and the required reporting of revenue from exports.

It is unknown what level of impact any new arrangements will have on individual ACE holders as each will hold differing levels of ACE and have individual arrangements with LFRs to supply export markets.

Fisheries New Zealand considers that there will be no long-term implications as the ACE carry forward provision will be in place for the 2020/21 fishing year only.

7.2 When and how will the new arrangements be reviewed?

Outside of exceptional circumstances, Fisheries New Zealand considers that there is unlikely to be a need to manage unexpected rock lobster catch at the end of the fishing year and retaining the inability to carry forward ACE in subsequent fishing years would pose the least risk to any sustainability concerns for rock lobster.

Fisheries New Zealand recommends returning rock lobster to Schedule 5A of the Act before the end of the 2020/21 fishing year to limit this ACE carry forward provision to the 2020/21 fishing year only.