



Fisheries New Zealand

Tini a Tangaroa

Proposed changes to import and export prohibitions for toothfish and southern bluefin tuna



Discussion document

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Consultation

The consultation document will be available for public feedback until 21 December 2018.

Written submissions should be sent directly to:

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or emailed to: FMSubmission@mpi.govt.nz

All submissions are subject to the Official Information Act and can be released, if requested, under the Act. If you have specific reasons for wanting to have your submission withheld, please set out your reasons in the submission. MPI will consider those reasons when making any assessment on the release of submissions if requested under the Official Information Act.

1 Executive summary

Fisheries New Zealand is seeking feedback from tangata whenua and stakeholders on a proposal to change the statute under which import and export prohibitions for toothfish and southern bluefin tuna are administered, and the potential impact of the resulting higher financial penalties for convictions associated with this change.

The prohibitions restrict the importation and exportation of toothfish, and the importation of southern bluefin tuna, which are not accompanied by appropriate documentation. The prohibitions are necessary in order to comply with international obligations that are binding on New Zealand as a member of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Commission for the Conservation of Southern Bluefin Tuna (CCSBT).

Currently, the temporary prohibitions are administered under the Customs and Excise Act 2018, expire on 30 September 2019, and can only be renewed for three years at a time.

The Fisheries Act 1996 enables regulations to be made for the purpose of giving effect to New Zealand's international obligations. Therefore, permanent prohibitions on the importation and exportation of toothfish and southern bluefin tuna can be made under the Fisheries Act 1996.

Fisheries New Zealand is of the view that it is appropriate to administer permanent import and export prohibitions under the Fisheries Act 1996 due to:

- The ongoing sustainability objectives behind the prohibitions;
- The ongoing risk of illegal, unreported, and unregulated fishing;
- Reduced government administration costs by removing the need for review every three years; and
- The alignment of penalties with other similar offences under fisheries regulations.

The proposed changes would not create new obligations on importers and exporters. However, the alignment of penalties to similar offences under the Fisheries Act 1996 would result in higher potential fines for convictions.

2 Purpose

The purpose of this discussion document is to seek feedback from tangata whenua and stakeholders on a proposal to use powers under the Fisheries Act 1996 to create import and export prohibitions for toothfish and southern bluefin tuna in order to uphold international obligations.

Feedback is also sought on the potential impacts of the higher maximum penalties for convictions, should the prohibitions be made under the Fisheries Act 1996.

The discussion document will be available for public consultation until 21 December 2018.

3 Background information

3.1 CATCH DOCUMENTATION SCHEMES

3.1.1 Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)

CCAMLR is the intergovernmental organisation responsible for the management of the marine living resources in the waters surrounding Antarctica. New Zealand is a member of CCAMLR, as well as an active participant in the Patagonian toothfish (*Dissostichus eleginoides*) and Antarctic toothfish (*Dissostichus mawsoni*) fisheries.

CCAMLR adopts conservation measures designed to conserve and manage toothfish fisheries within its boundaries in a sustainable and precautionary manner.

In the 1990s, illegal, unreported, and unregulated fishing for toothfish in the CCAMLR Convention Area was estimated to be over six times the catch reported by authorised fishing vessels. This fishing activity had the potential to seriously undermine CCAMLR's conservation objectives and the long-term viability of the toothfish fisheries under its jurisdiction.

In response, CCAMLR adopted conservation measures that require members to establish a catch documentation scheme for toothfish. The catch documentation scheme is designed to track the origin of toothfish catches and their movement in international trade through a 'certificate of origin' system.

Under the CCAMLR catch documentation scheme, landings and transshipments of toothfish must be accompanied by a toothfish catch document. The catch document verifies that the toothfish was either caught in a manner consistent with CCAMLR's conservation measures, or that it was caught outside the waters covered by the Convention. All imports and exports of toothfish must also be accompanied by a Toothfish Export Document.

New Zealand administers the CCAMLR catch documentation scheme through the Fisheries (Toothfish Catch Documentation Scheme) Regulations 2000, as well as through import and export prohibition orders under sections 54 and 56 of the Customs and Excise Act 2018¹. The orders are the Customs Import Prohibition (Toothfish) Order 2018 and the Customs Export Prohibition (Toothfish) Order 2018. The orders currently prohibit the importation and exportation of Patagonian and Antarctic toothfish, except when done in accordance with the CCAMLR catch documentation scheme.

The prohibition orders are designed to comply with international obligations that are binding on New Zealand, in order to maintain an effective system of controls on the catch, importation, and exportation of toothfish.

3.1.2 Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

CCSBT is the intergovernmental organisation responsible for the management of southern bluefin tuna (*Thunnus maccoyii*). New Zealand is a founding member of CCSBT, as well as an active participant in the fishery.

Southern bluefin tuna is a high value species, which puts it at risk of illegal, unreported, and unregulated fishing. The stock has historically been under significant fishing pressure, and remains in an overfished state.

¹ The Customs and Excise Act 2018 came into effect on 1 October 2018.

To address the continuing problem of illegal, unreported, and unregulated fishing, CCSBT adopted a catch documentation scheme. The catch documentation scheme requires members to prohibit the landing, transshipment, import, export, or re-export of southern bluefin tuna that is not accompanied by the appropriate documents and tags.

New Zealand administers the CCSBT catch documentation scheme through the Fisheries (Southern Bluefin Tuna Catch Documentation Scheme) Regulations 2017, as well as through an import prohibition order under section 54 of the Customs and Excise Act 2018. The Customs Import Prohibition (Southern Bluefin Tuna) Order 2016 prohibits the importations of southern bluefin tuna, except when done in accordance with the CCSBT catch documentation scheme.

The import prohibition order is designed to comply with international obligations that are binding on New Zealand, in order to maintain an effective system of controls on the catch and importation of southern bluefin tuna.

The Fisheries (Southern Bluefin Tuna Catch Documentation Scheme) Regulations 2017 prohibit New Zealand licenced fish receivers from disposing of southern bluefin tuna without providing the person acquiring the tuna with the appropriate catch documentation, and also prohibits the sale of untagged southern bluefin tuna. This has the same practical effect as an export prohibition without the required documentation and tags. Therefore, an export prohibition order was deemed unnecessary.

3.2 LEGAL CONTEXT

3.2.1 Import and export prohibitions under the Customs and Excise Act 2018

Orders under the Customs and Excise Act 2018 can only be in effect for up to three years. Therefore, the prohibitions need to be reviewed every three years in order for new orders to be issued. If the prohibitions prove to be appropriate and in the public interest, new orders may be issued.

The first import and export prohibition orders for toothfish were made in 2000. The current orders for toothfish were made on 11 May 2018, and expire on 30 September 2019². The first import prohibition order for southern bluefin tuna was made in 2010. The current order for southern bluefin tuna was made on 1 October 2016, and expires on 30 September 2019.

A person who fails to comply with the current prohibition orders would commit an offence under the Customs and Excise Act 2018, and would be liable on conviction to a fine not exceeding \$5,000. A body corporate which fails to comply with the orders would commit an offence, and would be liable on conviction to a fine not exceeding \$10,000.

To enforce the prohibition orders, and to seize any toothfish or southern bluefin tuna that is deemed forfeit due to being unlawfully imported or exported, Customs officers use the following provisions of the Customs and Excise Act 2018:

- Under section 191, Customs officers have the powers to board and search craft where there is reasonable cause to suspect that the craft is carrying any prohibited or forfeited goods.

² The Ministry for Primary Industries recently sought Cabinet approval to continue the toothfish orders until 30 September 2019, so that the expiration date for the toothfish orders would be aligned with the southern bluefin tuna order, and so that the long term administration of all three orders could be considered together.

- Under section 176, goods that are imported or exported in breach of a prohibition order are forfeited goods. Section 176 applies to offences committed under sections 338 to 391, which states that a breach of an import or export order is an offence. Therefore, when goods are discovered in contravention of sections 338 to 391, those goods are forfeit to the Crown.
- Under section 178, the Customs officer may seize any forfeited goods that he or she has reasonable cause to suspect are forfeited.

3.2.2 Import and export prohibitions under the Fisheries Act 1996

Section 297 of the Fisheries Act 1996 enables regulations to be made for the purpose of giving effect to New Zealand's international obligations (i.e. obligations on New Zealand as a party to the Convention on the Conservation of Antarctic Marine Living Resources, and the Convention on the Conservation of Southern Bluefin Tuna). Therefore, permanent prohibitions on the importation and exportation of toothfish and the importation of southern bluefin tuna can be made under the Fisheries Act 1996.

Many of the goods for which Customs New Zealand bears some regulatory responsibility for intercepting at the border are not prohibited goods under sections 338 to 391 of the Customs and Excise Act 2018. Goods may be deemed to be prohibited for the purposes of specific sections, or not prohibited at all. Importantly, other legislation can contain the mechanism that triggers an enforcement role for Customs New Zealand (for example, section 16 of the Arms Act 1983). If the import of goods is an offence under an enactment, then by virtue of section 176, the goods will be forfeit. Likewise, under section 176, if goods are unlawfully exported, they will be forfeit.

Therefore, under sections 176 of the Customs and Excise Act 2018, Customs New Zealand would be able to exercise its statutory abilities to carry out search and seizure activity in relation to toothfish and southern bluefin tuna to give effect to New Zealand's international obligations.

3.3 IMPORTS AND EXPORTS OF TOOTHFISH AND SOUTHERN BLUEFIN TUNA

3.3.1 Patagonian and Antarctic toothfish

Annually, there are only small quantities of toothfish imported into New Zealand (Table 1)³. Usually, there are under five imports by one importer per year.

Exports of toothfish occur in larger quantities (Table 1) and have involved up to six exporters. In 2016, most exports were of products caught by New Zealand flagged vessels. The higher quantity of exports in 2017 is due to a number of foreign vessels making a port call in New Zealand and landing their Ross Sea toothfish fishery catch (this happens in some years because New Zealand is the nearest port state for landing toothfish for CCAMLR's Ross Sea fishery). In an average year, there are around 100 exports, however in years where there are additional landings, such as 2017, the number can be higher.

³ The CCAMLR catch documentation scheme does not consider the landing of toothfish into a New Zealand port as an import. In the context of the CCAMLR catch documentation scheme, toothfish must be landed and certified by a Port State authority before it can be considered an export or import. By this definition, toothfish caught in the Ross Sea and landed in New Zealand therefore cannot be considered an import from Antarctica. In practice, New Zealand and foreign fishing vessels who choose to land their toothfish at a New Zealand port will have the landing certified by the Ministry for Primary Industries (the Port State authority for the CCAMLR catch documentation scheme).

Table 1. Import and export quantities (tonnes) of toothfish over the two most recent completed calendar years.

Year	Imports (tonnes)	Exports (tonnes)
2016	0	483
2017	0.3	1256

Source: CCAMLR *Dissostichus* catch documentation scheme data

Compliance with the import and export prohibitions is very high, and to date no prosecutions have been initiated for breaches.

3.3.2 Southern bluefin tuna

Annually, there are very small quantities of southern bluefin tuna imported into New Zealand (Table 2). Usually, there are under five imports by up to two importers per year.

Table 2. Import quantities (tonnes) of southern bluefin tuna over the two most recent completed calendar years.

Year	Imports (tonnes)
2016	0.2
2017	0.2

Source: CCSBT catch documentation scheme data.

Compliance with the southern bluefin tuna import prohibition is very high, and to date no prosecutions have been initiated for breaches.

3.4 RATIONALE FOR PROPOSED CHANGES

Fisheries New Zealand is of the view that it is appropriate to administer permanent import and export prohibitions under the Fisheries Act 1996. This is due to:

- The drivers behind the prohibitions are long-term in nature. The drivers include the concerns about the sustainability of the stocks, and the ongoing risk of illegal, unreported, and unregulated fishing;
- Government administration costs would be reduced. This is because prohibitions made using powers under the Fisheries Act 1996 would no longer need to be reviewed every three years;
- Under the relevant catch documentation scheme regulations, the prohibitions may be more readily accessible/visible to the public;
- The prohibition orders have consistently been replaced with new orders every three years; and
- The new penalties for breaches of the prohibitions would be in line with penalties for similar offences provided for in regulations under the Fisheries Act 1996.

With these considerations, Fisheries New Zealand proposes that the current prohibitions will not be renewed under the Customs and Excise Act 2018 once they expire, and are to be replaced by regulations made under the Fisheries Act 1996 to comply with New Zealand's international obligations.

4 The status quo and proposed option

4.1 STATUS QUO

Import and export prohibitions currently restrict the importation and exportation of toothfish and southern bluefin tuna without the appropriate documentation, as required by the catch documentation schemes of CCAMLR and CCSBT. The prohibitions are made under the authority of the Customs and Excise Act 2018, and are set to expire on 30 September 2019.

4.1.1 Impacts

Under the status quo, importers and exporters of toothfish and southern bluefin tuna would have to continue to comply with the current requirements under the prohibitions until they expire on 30 September 2019. There would be no additional costs or responsibilities for industry in terms of their obligations under the status quo.

Customs New Zealand and Fisheries New Zealand would continue to work together to monitor and enforce the prohibitions. Enforcement of the current prohibitions would not present additional costs or responsibilities for Customs New Zealand.

Penalties for industry involved in instances of non-compliance would remain substantially lower than those provided for in regulations with a similar purpose.

Given there would be no new obligations, and compliance with existing obligations is very high, the status quo would not expose the industry to a higher risk of non-compliance and resulting potential penalties.

If the prohibitions are retained under the Customs and Excise Act 2018, Fisheries New Zealand and Customs New Zealand would have to continue to review the prohibitions every three years. The government administration costs associated with the review would continue.

Should a review find the prohibitions not suitable to be renewed under the Customs and Excise Act 2018, then New Zealand would fail to maintain a legally binding system to certify the importation and exportation of toothfish and southern bluefin tuna, and would be in breach of its obligations under CCAMLR and CCSBT. This would have implications including:

- Potential damage to New Zealand's international reputation as a member of CCAMLR and CCSBT and as a responsible fishing nation;
- A negative effect on New Zealand's position when advocating for controls on the trade of toothfish and southern bluefin tuna;
- Potential for the independent audit of New Zealand's monitoring, control, and surveillance systems commissioned by CCAMLR and CCSBT to expose weaknesses in our implementation of the catch documentation schemes; and
- New Zealand could also be vulnerable to its ports being used for the import of illegally caught toothfish and southern bluefin tuna that could potentially be re-exported as New Zealand product.

4.2 PROPOSED OPTION – CREATING IMPORT AND EXPORT PROHIBITIONS UNDER THE FISHERIES ACT 1996

Fisheries New Zealand proposes to let the current prohibitions expire and to create new import and export prohibitions for toothfish, and import prohibitions for southern bluefin tuna, under the Fisheries Act 1996.

Fisheries New Zealand also proposes that the penalties for non-compliance with the proposed regulations be aligned with penalties for other similar offences provided for in regulations under the Fisheries Act 1996.

Similar offences provided for in regulations under the Fisheries Act 1996 include:

- Failure to meet the obligations on ship masters in relation to catch documentation under regulations 6 to 8 of the Fisheries (Toothfish Catch Documentation Scheme) Regulations 2000; and
- The sale of southern bluefin tuna without the required tag under regulation 26 of the Fisheries (Southern Bluefin Tuna Catch Documentation Scheme) Regulations 2017.

A person who fails to comply with these regulations would commit an offence and could be liable on conviction to a fine not exceeding \$100,000. This is a substantial increase in the penalty compared with offences that currently apply under the Customs and Excise Act 2018.

Customs New Zealand and Fisheries New Zealand would continue to work together to monitor and enforce the prohibitions.

4.2.1 Impacts

There would be no new obligations for industry under the new prohibitions. Therefore, importers and exporters would only need to continue to comply with the current requirements. There would be no additional costs or responsibilities for importers and exporters in terms of complying with the prohibitions.

However, there would be potentially higher penalties for those involved in instances of non-compliance. Given that there are no new obligations proposed, and that compliance with existing obligations is very high, the new regulations are not likely to expose the industry to a higher risk of non-compliance and resulting potentially higher penalties. That said, those involved in instances of non-compliance could be liable on conviction to a fine not exceeding \$100,000.

There would be no impacts in terms of monitoring and enforcement costs and responsibilities as the current practices would largely remain the same. Customs New Zealand would continue to exercise relevant powers to seize unlawfully imported or exported goods that are forfeited.

The prohibitions made using powers under the Fisheries Act 1996 would not need to be reviewed every three years, and would therefore reduce government administration costs going forward.

5 Conclusion

Import and export prohibitions for toothfish and southern bluefin tuna require that all shipments are accompanied by validated documentation that demonstrates its legal origins. The prohibitions are necessary in order to comply with international obligations of the catch documentation schemes that are binding on New Zealand as a member of CCAMLR and CCSBT, and as party to both the conventions.

The maximum penalties for non-compliance would be substantially higher under the new regulations. However, compliance with the existing obligations is very high and there are no changes proposed to those existing obligations. The proposed changes will, however, bring about significant administrative gains for the government agencies involved.