

REVIEW OF CHALLENGER AREA COMMERCIAL FISHING REGULATION 11– INITIAL POSITION PAPER

Executive Summary

- 1 This Initial Position Paper (IPP) presents options to either retain or revoke regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 (regulation 11).
- 2 Regulation 11 stipulates that the Chief Executive of the Ministry of Fisheries (MFish) is required to close the inner Tasman Bay to certain commercial fishing methods if the commercial catch of snapper in Tasman and Golden Bays (an area known as statistical area 038) exceeds 100 tonnes between October and the end of February. These method restrictions prohibit any commercial fishing using pair trawling or Danish seining and also prohibit snapper fishing using any surrounding net that is not a drag net. These restrictions apply to a defined area of Tasman Bay (see map in appendix 1), and remain effective until 30 September¹.
- 3 When enacted in 1986, the intent of regulation 11 was to reduce conflict between different commercial fishing methods. Specifically, the intent was to control pair trawling and Danish seining which were seen as a threat to the established single trawl fishery. Some recreational fishers have submitted that, at a time of decline in the snapper stock, regulation 11 was also intended to protect spawning grounds and minimise the impact of commercial fishing on snapper and possibly other species abundance in the inner Tasman Bay area.
- 4 Constraining some commercial fishing methods once the ‘trigger’ point of 100 tonnes of snapper is reached, could serve to reduce the risk of localised depletion of some fish species of importance to non-commercial fishing stakeholders.
- 5 Regulation 11 was first implemented to restrict fishing methods in the Challenger area during 2009 and was subsequently invoked in April 2010. An assessment of historical snapper catch records suggests that regulation 11 should have been implemented more frequently in the past.
- 6 The implementation of regulation 11 in 2009 caused significant discontent from commercial fishers, particularly Danish seiners, who claim that regulation 11 unduly restricts commercial access and efficiency of harvesting. Recreational fishers, however, have indicated support for the regulation as a means of restricting commercial fishing methods and catch in this area, which might improve the availability of some fish species to them. Consequently, the merit of the regulation is disputed. In respect to managing conflict within the commercial sector, commercial stakeholder organisations consider that this is a matter that commercial fishers should manage internally and that the regulation should be revoked because it is restricting the ability of the sector to fish efficiently.
- 7 The primary issue is whether regulation 11 is now relevant or provides outcomes of

¹ For full regulation see appendix 2

sufficient value to warrant retaining the regulation.

- 8 This paper considers this issue and the implications of retaining or revoking regulation 11. MFish outlines two options in this IPP. Option One is to retain the *status quo*. Option Two is to revoke the regulation.
- 9 MFish has an initial preference for adopting Option Two as the intent of the regulation is no longer relevant or is better met by alternative management measures.

Regulatory Impact Analysis Requirements.

- 10 This IPP requires a Regulatory Impact Statement to be reviewed internally by MFish.
- 11 For more information on the Regulatory Impact Analysis Requirements and the meaning of the word ‘significant’ with reference to an IPP, please refer to the Treasury website www.treasury.govt.nz.

The Issue

- 12 The primary intention of regulation 11 was to reduce conflict within the commercial sector between the traditional single trawler fleet and pair trawlers and Danish seiners. The development of additional fleets in the early 1980s was seen as a threat to the established single trawl fishery and the sustainability of finfish, particularly snapper. For this reason, the regulation may have also been intended to reduce conflict between recreational and commercial snapper fishers by managing commercial fishing effort in the inner Tasman Bay.
- 13 Regulation 11 has engendered discontent from the commercial sector. Commercial fishers consider it is not the government’s role to manage intra-sector conflict and contend regulation 11 impedes industry from achieving the most efficient use of fisheries resources. While snapper catch triggers regulation 11, its effect is not species specific, but restricts fishing for all species by Danish seine and pair trawl within the defined area.
- 14 Regulation 11 is not intended to confer sustainability benefits. The regulation does not limit the amount of snapper that can be caught within the greater Tasman Bay area, or the quota management area of SNA7, but merely when snapper can be caught by certain fishing methods. Incongruously, some fishing methods contribute to triggering the closure, yet remain largely unaffected by it. For instance, between October 2008 and the end of February 2009, single trawlers caught approximately 74 tonnes of the 100 tonne limit from statistical area 038 yet were unaffected by the method restrictions implemented in 2009.
- 15 If the intent of regulation 11 is to control snapper fishing effort, then controls on specific methods such as Danish seining are inconsistent with this intent as fishing effort can be transferred across fishing methods. Also, there is information to suggest Danish seiners are better able to target certain species (primarily flatfish in this instance) than single trawl vessels. Consequently, the impact of Danish seining on the snapper population may be reduced by the selectivity of the fishing method. Yet Danish seine methods are restricted whilst single trawling can still occur.
- 16 Recreational fishers support regulation 11 for its ability to reduce bulk fishing methods

in popular fishing areas and, according to previous submissions, possibly protect snapper spawning grounds. However, the regulation still allows single trawl vessels to operate in Tasman Bay. Catch information suggests few benefits conferred on recreational fishers in respect of snapper availability in the affected area. The extent of any benefits is unclear as the method restriction period becomes effective after the peak summertime recreational fishing period.

- 17 Since regulation 11 was enacted, a voluntary agreement between recreational and commercial fishers was reached which closes some inshore areas of Tasman and Golden Bay to all commercial trawl fishing out to three nautical miles between 1 November and 30 April each year (see map in appendix 1). The intent of these voluntary closures is to mitigate conflict between recreational and commercial fishers.
- 18 The ‘triggered’ method restrictions based on catch levels (as opposed to seasonal closure) is unique to this regulation and is difficult to implement in a timely manner. Commercial fishers are required to submit monthly catch records before the fifteenth day of the following calendar month. This results in a delay in updating MFish databases, particularly over the holiday season, when forms may need to be reviewed or returned to the fisher for amendments. Consequently, there is a delay in being able to determine whether regulation 11 needs to be invoked (i.e. whether the snapper catch has reached 100 tonnes). This means that although catch levels may have exceeded 100 tonnes before the end of February, method restrictions cannot be invoked until such time as the data becomes available to verify catch levels. In 2010 this meant that the regulation could not be enforced until April 27th. This has implications for the effectiveness of the regulation as method restrictions cannot be implemented until after February.
- 19 Section 8 of the Fisheries Act 1996 (the Act) states that the purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. This means conserving, using, enhancing and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing. In making a decision about whether to retain or revoke regulation 11, issues of whether the current regulation meets the purpose of the Act or impedes utilisation and therefore does not provide for the social, economic or cultural wellbeing of any sector need to be considered.

Summary of Options

Option 1 – Status Quo

- 20 Maintaining the *status quo* would retain regulation 11 in its current form. In summary, subject to public notice, when 100 tonnes of snapper are caught in statistical area 038 between 1 October and 28 February in any fishing year, no commercial fisher will be permitted to take any fish by pair trawling, Danish seining or any snapper by surrounding net that is not a drag net within a specified area of the inshore waters of Tasman Bay. Any such restriction is effective until 30 September.
- 21 Implementing the status quo has implications for the use of fisheries resources, including imposing a cost to commercial fishers by limiting fishing effort for some methods in part of statistical area 038. In particular, Danish seiners targeting flatfish are affected by the method restrictions. Recreational fishers support the regulation as a means of controlling fishing effort in the near shore area.

- 22 Should regulation 11 be retained, MFish proposes that new monitoring regimes be negotiated with commercial fishers so that catch records are submitted and available with minimum delay to effectively monitor catch levels and determine whether or not regulation 11 needs to be invoked.

Option 2 – Revoke regulation 11 – MFish Preferred Option

- 23 MFish proposes that regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 be revoked.
- 24 This is the MFish preferred option as it removes a regulation that was intended to address issues that are no longer relevant or could be achieved better by other management measures. Revoking the regulation is likely to achieve more efficient utilisation of fisheries resources.

Rationale for Management Options

- 25 MFish considers that regulation 11 restricts commercial fishing effort by some methods without inferring any direct sustainability benefits and that alternative management measures are more suited to meet the intent of the regulation.
- 26 As described previously, the availability of catch data in statistical area 038 in order to determine whether regulation 11 needs to be invoked (i.e. whether the snapper catch has reached 100 tonnes) results in a delay in implementing method restrictions.
- 27 The key factor to take into account when considering the management options presented in this paper is whether the option adequately meets the purpose of the Fisheries Act 1996, that being to provide for the utilisation of fisheries resources while ensuring sustainability.
- 28 Any amendment or revocation of regulation 11 will become effective before the end of the calendar year 2010.
- 29 Stakeholder views are sought on the management options presented in this paper.

Assessment of Management Options

Option 1 – Status Quo

Impact

- 30 Regulation 11 has been implemented twice, despite historical snapper catch records showing that the regulation should have been enacted more frequently in the past. The regulation has therefore had little impact on managing commercial fishing effort within the defined Tasman Bay region or meeting its objectives.
- 31 When regulation 11 was implemented during the 2008/09 fishing year, commercial fishers voiced concern about the impact of the regulation on fishing practices. In particular, Danish seiners contend that their ability to catch flatfish was hindered by the regulation. Catch records show that estimated catch for flatfish in statistical area 038 was 52 tonnes lower than the previous years' catch. Traditionally an autumn fishery, over 50 per cent of the Danish seine catch in Statistical area 038 is caught between March and October. In the 2007-08 fishing year, 71 per cent of estimated catch for

flatfish was caught during this period. This suggests that the method restrictions in the defined Tasman Bay region implemented by regulation 11 adversely impact the Danish seine flatfish fishery.

- 32 Statistical area 038 is of particular importance within the SNA 7 fishery. Over 50 per cent of the landings for SNA 7 were reported from statistical area 038 over the last five fishing years. In 2008/09, 91 per cent of the TACC for snapper was caught in statistical area 038. The implementation of regulation 11 did not affect the level of snapper catch during that fishing year. In fact, estimated catch records show that the snapper catch from statistical area 038 in 2008/09 increased by 38 tonnes from the previous fishing year.
- 33 The implementation of regulation 11 does not significantly affect the ability of bottom pair trawlers to catch snapper in statistical area 038. Catch estimates increased by 24 tonnes for bottom pair trawlers from the 2007/08 to 2008/09 fishing years. Furthermore, over the last 5 fishing years, pair trawlers have predominantly operated between October and February so are largely unaffected by any regulatory closure imposed after this time.
- 34 The area affected by regulation 11 overlaps with a voluntary trawl exclusion zone that was established by negotiation between MFish and recreational and commercial fishers in the early 1990s. The voluntary closure mitigates conflict between recreational and commercial trawl fishers in this area and extends to three nautical miles. Danish seining is also prohibited within three nautical miles of the coastline by a regulatory method restriction².
- 35 Should regulation 11 be retained, MFish will monitor snapper catch in statistical area 038 from the start of the fishing year. When it can be determined that the 100 tonne 'trigger' is reached, the chief executive will enforce the method restrictions as required by the regulation.
- 36 Maintaining the *status quo* does not infer any additional risks to the sustainability of snapper in QMA 7. However, retaining the regulation is likely to continue restrictions on commercial access and efficiency of harvesting.

Costs

- 37 Regulation 11 might continue to cause unintended consequences by prohibiting the take of fish species other than snapper (such as flatfish) using certain fishing methods in the defined area, although the regulation was designed principally to protect snapper.
- 38 There is also a risk that by maintaining the *status quo*, increased fishing effort could occur between October and February as fishers seek to maximise catches in this inshore area before method restrictions are implemented. This could result in more conflict with the recreational sector as summer is the busiest recreational fishing season. It could also result in localised depletion of fish stocks targeted by the affected methods. The level of risk of increased conflict and localised depletion is unknown.

² Regulation 70 of the Fisheries (Commercial Fishing) Regulations 2001 states that commercial fishers must not use Danish seine nets within 3 nautical miles seaward of the mean high-water mark of the coast of the South Island

Benefits

- 39 Retaining regulation 11 removes selected bulk commercial fishing methods from the inshore area of Tasman Bay for a significant portion of the calendar year. This could reduce the risk of localised depletion of some fish populations in the inner Tasman Bay area. In this way the regulation could enhance the recreational fishing experience. The extent to which this might occur however, is difficult to assess and currently unknown.

Option 2 – Revoke regulation 11

Impact

- 40 Revoking regulation 11 is likely to have minimal impact on current fishing practice in the Tasman and Golden Bay region, given that the regulation has only been implemented twice since it was promulgated in 1986.
- 41 Revoking regulation 11 does not impact the voluntary trawl exclusion zone.
- 42 Revoking regulation 11 does not impact the regulatory prohibition which currently prohibits Danish seining within three nautical miles of the shore in South Island waters³.
- 43 Revoking regulation 11 does 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.
- 44 There is uncertainty with sustainability estimates for snapper in the Challenger Area (SNA 7). The stock was last assessed in 2002 and the results of the assessment were not confirmed. The stock status is therefore unknown. However, MFish notes that regulation 11 is not intended as a sustainability tool and therefore revoking the regulation would not affect the sustainability of SNA 7.

Costs

- 45 Revoking regulation 11 may be resisted by the recreational fishing community as the regulation may act to reduce inter-sector competition for some fish species in statistical area 038 at certain times of year. This issue is partly addressed by the current voluntary closed areas in part of the Tasman Bay region.

Benefits

- 46 Revoking regulation 11 is supported by the regional commercial stakeholder organisation as a means to improve commercial fishing efficiency.
- 47 Revoking regulation 11 aligns with the Fisheries 2030 goal of maximising benefits from the use of fisheries within environmental limits.
- 48 Revoking regulation 11 will remove a regulation that is difficult to implement and

³ Regulation 70 of the Fisheries (Commercial Fishing) Regulations 2001 states that Commercial fishers must not use Danish seine nets within 3 nautical miles seaward of the mean high-water mark of the coast of the South Island.

affects commercial fishers' ability to obtain value from the fishery.

- 49 MFish considers that regulation 11 restricts commercial fishing effort without inferring any direct sustainability benefits and that alternative management measures are more suited to meet the intent of the regulation.
- 50 Revoking regulation 11 aligns with the Government's goal for fewer regulations and meets the objective of eliminating regulations that are unnecessary and ineffective.

Other Management Controls

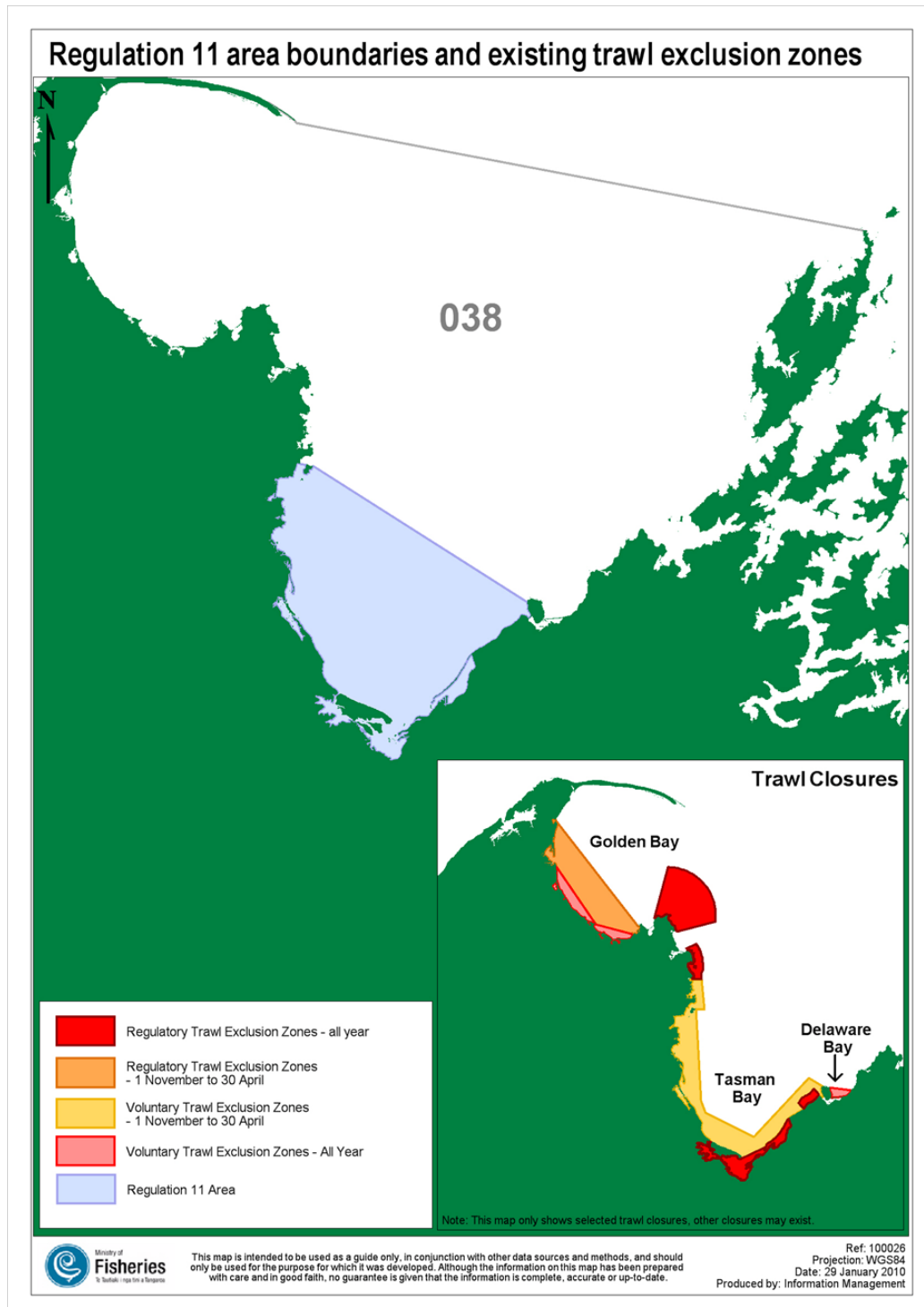
- 51 MFish supports the current voluntary closures created by an agreement between recreational and commercial fishers. Should regulation 11 be revoked, MFish would support any development of additional voluntary measures to ensure that best value is obtained from the fishery by both recreational and commercial fishers. The development and implementation of fisheries plans can be used to consider other management controls.

Statutory Considerations

- 52 Section 8 of the Fisheries Act 1996 states the purpose of the Act as being able to provide for the utilisation of fisheries resources while ensuring sustainability. The management options presented in this paper seek to achieve the purpose of the Act by considering the implications of regulation 11 to provide for the utilisation of fisheries resources in the Tasman and Golden Bay areas whilst ensuring the sustainability of these stocks.
- 53 A full list of legal obligations and how they are applicable to the proposed options is attached as appendix 3.

Appendices

1 Map showing area specified in regulation 11 and existing regulatory and voluntary exclusion zones⁴



⁴ Note that additional closure areas exist around Farewell Spit.

2. Regulation 11 Fisheries (Challenger Area Commercial Fishing) Regulation 1986

Fishing in Tasman Bay and Golden Bay

When more than 100 tonnes of snapper have been taken from that area of Tasman Bay and Golden Bay lying inside a straight line drawn from Farewell Spit Lighthouse (at 40°32.70'S and 173°00.50'E) to Cape Stephens (at 40°41.57'S and 173°57.21'E); then around the mean high-water mark to Sauvage Point (at 40°56.47'S and 173°46.32'E); then to Okuri Point light (at 40°58.70'S and 173°45.70'E) at any time during the period commencing with the 1st day of October in any year and expiring with the last day of February in the following year, the chief executive shall give public notice of that fact in a newspaper circulating in the Nelson area and by such other means as the chief executive considers appropriate and shall specify in that notice a date (being a date later than the publication of the notice) after which no commercial fisher shall—

- (a) Take any fish by pair trawling or Danish seining; or
- (b) Take any snapper using a surrounding net that is not a drag net—

in those waters of Tasman Bay lying inside a straight line drawn from the northwesternmost point of Pepin Island (at 41°08.50'S and 173°24.80'E) to the easternmost point of Adele Island (at 40°58.58'S and 173°04.11'E); then along the mean high-water mark in a westerly direction to the northernmost point of Adele Island (at 40°58.50'S and 173°03.50'E); then to the nearest point of the mainland (at 40°58.43'S and 173°02.88'E).

Regulation 11: amended, on 1 October 2008, by regulation 20(a) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by regulation 20(b) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by regulation 20(c) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by regulation 20(d) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by regulation 20(e) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by regulation 20(f) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Regulation 11: amended, on 1 October 2008, by regulation 20(g) of the Fisheries (Challenger Area Commercial Fishing) Amendment Regulations 2008 (SR 2008/271).

Paragraph (b) was amended, as from 1 November 1989, by regulation 6 Fisheries (Challenger Area Commercial Fishing) Regulations 1986, Amendment No 7 (SR 1989/293) by substituting the word “snapper” for the word “fish”.

Regulation 11 was amended, as from 1 October 2001, by regulation 4 Fisheries (Challenger Area Commercial Fishing) Amendment Regulations (No 2) 2001 (SR 2001/266), by substituting the words “commercial fisher” for the words “commercial fisherman”. It was further amended by regulation 9 of those Regulations by substituting the words “chief executive” for the words “Director-General”.

3. Statutory Considerations

- 1 The following statutory considerations have been taken into account when forming the management options presented in this IPP. Under the Fisheries Act 1996 (FA96):
- 2 Section 5 requires the Minister to act in a manner consistent with New Zealand's international obligations and the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The proposed regulatory amendments or revocation of regulation 11 of the Fisheries (Challenger Area Commercial Fishing) Regulations 1986 do not have implications for, or effects on, MFish's ability to meet any specific international obligations and do not affect any obligations related to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- 3 Section 8 of the Act states the purpose of the Act as being able to provide for the utilisation of fisheries resources while ensuring sustainability, and defines the meanings of "utilisation" and "ensuring sustainability". The management options presented seek to achieve this purpose. Option 2, revocation of regulation 11, will provide for utilisation of fisheries resources. MFish is not aware of any specific risks to the sustainability of SNA 7 as a result of retaining or revoking regulation 11.
- 4 Section 9 of the Act requires the Minister to take into account the following environmental principles:
 - a) Section 9(a) requires associated or dependent species (i.e. those that are not harvested) to be maintained above a level that ensures their long term viability.
 - b) Section 9 (b) requires biological diversity of the aquatic environment to be maintained.
 - c) Section 9(c) requires habitat of particular significance for fisheries management to be protected.

There are known detrimental impacts on the benthos from trawling. There are therefore potential impacts on associated and dependent species, biodiversity and protected species that require monitoring and possibly future management action. However, there are no known habitats of particular significance that are affected by the proposals.

- 5 Section 10 of the Act sets out information principles, which require that decisions be based on the best available information, taking into account any uncertainty in that information, and applying caution when information is uncertain, unreliable, or inadequate.

MFish notes that there is uncertainty with sustainability estimates for snapper in the Challenger Area (SNA 7). This stock was last assessed in 2002 and the results of the assessment were not confirmed. The stock status is therefore unknown.

MFish notes that research to assess the level of by-catch and condition of target fish (flatfish) and by-catch (snapper) in Tasman Bay is currently underway and that once the results of this research become available, MFish will be better placed to review the impacts of the Danish seine fishery on snapper by-catch in the Tasman Bay area. In

addition, MFish seeks input from stakeholders as to the appropriateness of the proposed changes.

- 6 Section 11(3)(d) enables the Minister to consider sustainability measures that relate to the fishing methods by which any fish, aquatic life, or seaweed of any stock may be taken or that may be used in any area. MFish does not consider that the options presented in this paper affect the sustainability of SNA 7.