



07 February 2020

Document Number: B20-0065

Proposed carry forward of rock lobster Annual Catch Entitlement

Purpose:

This briefing requests that you inform Cabinet of your intention to undertake consultation to implement rock lobster Annual Catch Entitlement (ACE) carry forward provisions, in response to Coronavirus impacts on the Chinese market.

Minister	Action Required:	Minister's Deadline
Minister of Fisheries	Agree that officials prepare you a draft consultation document to take to Cabinet, to enable rock lobster ACE carry forward.	By 10 February if possible, to enable an oral item at Cabinet on 17 February


Comments:

There is likely to be a high level of public and media attention, given the links to the Coronavirus outbreak.

Contact for telephone discussion (if required)

	Name	Position	Work	Mobile
Responsible Manager	Emma Taylor	Director Agriculture, Marine and Plant Policy	s 9(2)(a)	s 9(2)(a)
Principal Author	s 9(2)(a)	Principal Advisor	s 9(2)(a)	

Key Messages

1. On 4 February 2020 we provided you with options to address the Rock Lobster Industry Council's (RLIC) request for Government support, in relation to impacts of the Coronavirus on rock lobster exports to China [B20-0067 refers].
2. You agreed for officials to progress the option to carry forward uncaught Annual Catch Entitlement (ACE) into the next fishing year (beginning 1 April 2020). We propose an approach that provides relief for rock lobster fishers highly-exposed to the unexpected market impacts of the Coronavirus, without creating sustainability risks, in conjunction with measures that they can take themselves to mitigate financial impacts.
3. You have announced the decision to allow industry to release rock lobster currently in holding pots, under supervision of Fisheries Officers, subject to biosecurity and survivability criteria. This process is underway, and we will continue to update you on this.
4. s 9(2)(ba)(i)

5. Should you agree to carry forward rock lobster ACE, there are two options:
 - a. Carrying forward up to 10% of ACE held by fishers, which is enabled by the Fisheries Act 1996 (the Act) in principle, and would require an Order in Council and consultation to remove rock lobster from Schedule 5A of the Act; or
 - b. Carrying forward all uncaught ACE, in excess of the current 10% threshold, which is not currently authorised under section 67A of the Act and would therefore require a legislative amendment.
6. Fisheries New Zealand considers that option (a), in combination with wider commitments to enable industry to return held rock lobster, would provide appropriate support to industry. This option would provide rock lobster fishers with the same catch flexibility as some other fisheries, would not pose additional sustainability risks, avoids precedent and expectations of exceeding sustainability thresholds to address future market fluctuations, and is most readily achieved within the 1 April 2020 timeframe to enable fishers to make catch decisions about uncaught ACE this fishing year.
7. Carrying forward 10% of rock lobster ACE before the 1 April 2020 fishing year would require an Order in Council along a rapid timeframe, including a waiver of the 28 day rule. Cabinet support would be required to go directly to the Cabinet Legislation Committee without formal approval from the Cabinet Economic Development Committee. Consultation is also required under the Act.
8. Should you agree to progress the carry forward proposal, we will provide you with a draft consultation document on options for carrying forward uncaught rock lobster ACE. If you consider it is necessary to inform or seek Cabinet approval prior to consulting, we suggest that you do so on 17 February 2020.

9. The availability (or not) of ACE carry forward will influence what fishers do for the remainder of the fishing year. If they are not able to carry forward unfished ACE, some fishers may choose to catch and sell rock lobster in lower value markets before 31 March 2020, whereas if they can carry forward ACE they may choose to defer fishing until the next fishing year.
10. **Talking points** are also attached to support your wider conversation about Coronavirus impacts at Cabinet on 10 February.

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Recommendations

1. Fisheries New Zealand recommends that you:

- a) **Note** that on 4 February 2020 we provided you with options to address the rock lobster industry's request for Government support, in relation to impacts of the Coronavirus on rock lobster exports to China [**B20-0067 refers**];

Noted

- b) **Note** that you agreed for officials to progress the option to carry forward uncaught rock lobster Annual Catch Entitlement (ACE) into the next fishing year (beginning 1 April 2020);

Noted

- c) **Note** that the New Zealand Rock Lobster Industry Council seeks for Government to carry forward all uncaught rock lobster ACE;

Noted

- d) **Agree** that officials prepare you a draft consultation document on options for carrying forward uncaught rock lobster ACE (Option (a) no change; (b) enabling up to 10% carry forward; or (c) enabling greater than 10% carry forward), as soon as possible;

Agreed / Not Agreed

- e) **Note** officials' preference for option (b), enabling up to 10% carry forward.

Noted

Emma Taylor
Director Agriculture Marine and Plant Policy
Policy and Trade

Hon Stuart Nash
Minister of Fisheries

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Background

1. On 4 February 2020 we provided you with options to address the rock lobster industry's request for Government support, in relation to impacts of the Coronavirus on rock lobster exports to China [B20-0067 refers].
2. You agreed for officials to progress the option to carry forward uncaught ACE into the next fishing year (which begins on 1 April 2020). We propose an approach that provides relief for rock lobster fishers highly-exposed to the unexpected market impacts of the Coronavirus, without creating sustainability risks, in conjunction with measures they can take themselves to mitigate financial impacts (such as further exploring domestic and frozen market alternatives).
3. s 9(2)(ba)(i)
[Redacted]
4. s 9(2)(ba)(i)
[Redacted]
5. 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. Smaller operators with large holdings of unfished ACE would be the most exposed, and RLIC considers that some fishers will be severely impacted.
6. Fisheries New Zealand estimates that overall, 22% of rock lobster ACE across all stocks is currently unfished (611 tonnes). However, the total amount of unfished ACE will depend on proportions that remain unfished and are returned from holding facilities. This will not be known until all catch returns have been submitted and accounted for at the end of the current fishing year.
7. We do not know how long the demand on Chinese exports will continue, but expect it likely that it will take until beyond the current fishing year for the Chinese rock lobster market to recover.
8. We understand that the Tasmanian authorities are implementing full carry forward of any uncaught rock lobster catch, to address similar market issues. Other Australian States are considering similar measures. Both industry and New Zealand officials are staying in close discussion with our Australian counterparts, and will keep you updated.

9. You announced the decision to allow industry to release rock lobster currently held in holding pots, under the supervision of Fisheries Officers, subject to biosecurity and survivability criteria [B20-0067 refers]. This process is underway, and we will continue to update you on this.

Proposed ACE carry forward

10. s 9(2)(ba)(i) [REDACTED]
[REDACTED] Should you decide to carry forward rock lobster ACE, there are two options for enabling this:

Carrying forward up to 10% of the total ACE held by fishers

11. Section 67A of the Fisheries Act 1996 (the Act) provides that at the start of each fishing year, individual ACE holders are provided with either:
- Up to 10% of their total ACE holdings at the end of the previous fishing year before catch balancing; or
 - The amount of ACE which was not caught, whichever is the lesser.
12. However, section 67A does not apply if:
- The fishstock is listed on Schedule 5A of the Act; or
 - If the specific stock has been subject to a TACC reduction from the previous year.
13. All rock lobster ACE is listed on Schedule 5A of the Act, and is therefore exempt from carry forward provisions. Other Schedule 5A stocks, where carry forward is not permitted, include cockles, oysters, eels, pipi and scallops. At the time the Schedule 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. Under the Act, an Order in Council is required to remove stocks from Schedule 5A.

Carrying forward all unfished ACE

14. Section 67A of the Act limits the proportion of ACE that can be carried forward for a stock. Enabling the full amount (estimated by Fisheries New Zealand as currently up to 22% in total) s 9(2)(ba)(i) [REDACTED] would require a legislative amendment to remove or increase the 10% limit for rock lobster.

Preferred option – carrying forward up to 10%

15. We recommend enabling up to 10% of rock lobster ACE to be carried forward, by removing rock lobster from schedule 5A, for the following reasons:
- a. It would provide rock lobster fishers with the same catch management flexibility provided to some other fisheries, and in combination with wider commitments to enable industry to return held crayfish, would provide financial relief for the industry until the market improves;
 - b. There are not significant additional sustainability concerns associated with carrying forward up to 10% of ACE, as we consider that this volume could be sustainably absorbed within the following year for most rock lobster stocks. In particular:
 - i. Most rock lobster stocks are in good health, with southern stocks in particular becoming increasingly abundant;
 - ii. Stocks that have been subject to TACC reductions from the previous year are not permissible for carry forward, under Section 67A(3)(b) of the Act. Fisheries New Zealand has recently consulted on TACC reductions for CRA 1 (Northern North Island, 9 tonnes estimated uncaught) and CRA 3 (East Coast North Island, 65 tonnes estimated uncaught);

If decreased as per the consultation, these stocks would not be eligible for carry forward. RLIC has proposed shelving as an alternative to avoid this issue (voluntarily catching less during the 2020 fishing year), but this would need to be considered as part of broader fisheries management considerations; and
 - iii. All rock lobster stocks would continue to be closely monitored.
 - c. Increasing carry forward beyond 10% increases sustainability risks by focussing fishing intensity within a single year;
 - d. An Order in Council timeframe is more achievable than a legislative amendment to enable greater than 10% carry forward, in terms of providing fishers with certainty to make catch decisions on uncaught ACE this fishing year; and
 - e. The current severe market circumstances were unforeseen at the time that rock lobster were included in Schedule 5A, and enabling carry forward provisions for rock lobster will be beneficial in addressing any future market fluctuations.

16. We prefer option (a) in favour of a legislative approach to increase ACE carry forward beyond 10% because:
 - a. Carrying forward a higher tonnage could result in a significant increase in fishing effort in the next fishing year, increasing risks of sustainability concerns and potentially impacting recreational and customary sectors through localised depletions;
 - b. It would set precedent and expectations for Government legislative intervention and higher carry forward thresholds, to address future market fluctuations for rock lobster and other fisheries;
 - c. Legislative change would be extremely challenging to complete before the 1 April 2020 fishing year begins. Amending the Act would require an Amendment Bill. Even for a small and straightforward Bill, this process would usually take around a year, including consideration by Select Committee, notwithstanding the election. The process could be expedited through an urgent process if accorded high priority and there was sufficient Parliamentary support.

17. s 9(2)(g)(i) [REDACTED] on-commercial fishers may feel that increasing the amount of commercial catch in the next fishing year could impact their ability to catch rock lobster. Negative perception risks will be higher if more than 10% of ACE is carried forward via a legislative amendment.

18. We will continue to work with industry, and consider feedback from consultation, in order to understand how the proposed carry forward would align with ongoing fisheries management and future TACC decisions.

Process for carrying forward up to 10% of ACE

19. Should you agree to this approach, carrying forward 10% of rock lobster ACE before the 1 April 2020 fishing year would require an Order in Council along a rapid timeframe, including a waiver of the 28 day rule. Cabinet support to go directly to the Cabinet Legislation Committee without formal approval from the Cabinet Economic Development Committee would be required. Consultation is also required under the Act, and we propose a truncated one to two week consultation process.

20. Should you agree to this approach, Fisheries New Zealand will undertake targeted consultation with tangata whenua and stakeholders commencing in February.

Anticipated timeframes		
Date	Milestone	Detail
14 February	FNZ provide draft consultation document to Minister	
17 February	Oral item to Cabinet (if required)	Inform Cabinet of intent to consult Request skipping DEV process
18 February	Start targeted 1-2 week consultation	Draft LEG paper Analysis of consultation feedback PCO to draft Order in Council
5 March	Cabinet office deadline for LEG	
10 March	Cabinet LEG	Present Order in Council for approval Approval for 28 day waiver
16 March	Order in Council published	
19 March	Gazette	
31 March	Order will need to be in force	

Next Steps

21. Should you agree to our recommended approach, we will prepare you a draft consultation document on options for carrying forward uncaught rock lobster ACE.

Media and Communications

22. There is likely to be a high level of public and media attention in relation to this given links to the Coronavirus outbreak. Fisheries New Zealand is urgently working to finalise internal and external communications, and will continue to liaise closely with your office.
23. We are also considering other means of supporting fishers, and have extended mental wellbeing support to fishers (that is currently being provided as part of the Hector's and Maui Threat Management Plan).
24. Fisheries New Zealand will keep your office updated of the implementation and progress with these measures.

Out of scope

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s 9(2)(ba)(i)

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