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Proposed carry forward of rock lobster Annual Catch Entitlement consultation: Summary of submissions and next steps

Purpose:

This paper provides a summary of submissions received from the public consultation on the proposed carry forward of rock lobster annual catch entitlement (ACE), our analysis of these submissions, and seeks your agreement to progress the carry forward of the lesser of the total uncaught ACE or 10% of a fishers total ACE holding at the end of a fishing year in accordance with section 67A of the Fisheries Act 1996.

Minister	Action Required:	Minister's Deadline
Minister of Fisheries	Note and agree the recommendations in this briefing.	As soon as possible, so that a Cabinet paper can be prepared for consideration by LEG in early March.

Comments:

Legislative changes will be required if you agree to progress the recommendations. The decision is also likely to attract media interest.

Contact for telephone discussion (if required)

	Name	Position	Work	Mobile
Responsible Director	Emma Taylor	Director, Agriculture, Marine & Plant Policy	s 9(2)(a)	s 9(2)(a)
Responsible Manager	s 9(2)(a)	Manager, Fisheries & Aquaculture Policy Team	s 9(2)(a)	s 9(2)(a)
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Key Messages

1. Fisheries New Zealand publicly consulted on whether to enable uncaught rock lobster commercial annual catch entitlement (ACE) to be carried forward into the next fishing year (which begins 1 April 2020).
2. In total 369 submissions were received from Māori and stakeholder groups (commercial, recreational, environmental, independent experts, and the general public/unspecified).
3. Non-commercial interests favored Option A (status quo) primarily due to sustainability concerns. Overall rock lobster stocks are healthy with catch limits set at sustainable levels. For stocks where the Total Allowable Commercial Catch (TACC) is reduced, the carry forward provisions would not apply.
4. Many Māori groups and some commercial fishing interests favored Option B (up to 10% carry forward¹) 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.
5. Most commercial interests favored Option C (100% carry forward) to avoid significant financial losses. The scale of financial losses were 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.
6. 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 full carry forward of any uncaught ACE are unknown.
7. On that basis officials propose proceeding with option B to allow up to a 10% carry forward, consistent with other stocks, rather than the full carry forward requested by the industry.
8. This will provide some financial relief to rock lobster fishers with approximately 120 tonne of the uncaught ACE to be available for harvest during the next fishing year (commencing 1 April 2020).
9. 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.

¹ 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 fishers total ACE holding at the end of a fishing year

10. Given the unprecedented circumstances of the Coronavirus and its impact on the commercial rock lobster fishery, it is acknowledged that consultation has been undertaken in haste. For this reason officials consider that if you agree to implement a carry forward at this time, it would be appropriate for further analysis of the risks to be considered over the coming year.
11. If that analysis demonstrates that enabling this carry forward in perpetuity would create a sustainability risk or unduly impact on other sectors, then officials would recommend that carry forward provisions not be continued.
12. Subject to your agreement, officials will shortly provide you with a draft Cabinet paper. We recommend it be considered by the Cabinet Legislative Committee (LEG) on 3 March 2020, in order for a decision to be made and communicated as soon as possible prior to the end of the fishing year.

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Recommendations

13. The Ministry for Primary Industries recommends that you:

- a) **Note** that 369 submissions were received on the proposed carry forward of rock lobster annual catch entitlement with a range of different views put forward regarding the three options.

Noted

- b) **Agree** to recommend the Governor-General, by Order in Council, remove all rock lobster stocks from Schedule 5A of the Fisheries Act 1996 (the Act) in accordance with section 67B of the Act, as this provides the most appropriate balance between providing for utilisation while ensuring sustainability.

Agreed / Not Agreed

- c) **Note** that subject to your agreement, officials will shortly provide you with a draft Cabinet paper to implement this option.

Noted

- d) **Agree** that Parliamentary Council Office (PCO) should be provided with urgent drafting instructions to reflect your decision to recommend the removal of all rock lobster stocks (CRA1, CRA2, CRA3, CRA4, CRA5, CRA6, CRA7, CRA8, CRA9 and CRA10) from Schedule 5A of the Act by way of Order in Council, to be presented to the LEG Cabinet Committee at its meeting on Tuesday 3 March 2020.

Agreed / Not Agree

Emma Taylor
Director, Agriculture, Marine & Plant Policy
Policy and Trade

Hon Stuart Nash
Minister of Fisheries

/ / 2020

Background

14. The commercial rock lobster fishing industry is experiencing severe and unexpected market disruption due to the Coronavirus (COVID-19) impacting on live rock lobster exports to China during the Chinese New Year period.
15. The New Zealand Rock Lobster Industry Council (NZ RLIC) requested assistance from Government to mitigate the financial impact for rock lobster fishers from the Coronavirus.
16. To alleviate the impact on rock lobster fishers you agreed to allow rock lobster to be returned to sea under specific circumstances, and for consultation to occur on options to enable uncaught rock lobster commercial Annual Catch Entitlement (ACE) to be carried forward into the next fishing year (which begins 1 April 2020).
17. Public consultation on the carry forward of ACE closed on 24 February 2020. The consultation document outlined three options:
 - i. Option A: Retaining the status quo – making no changes to the Fisheries Act 1996 (the Act), and not enabling rock lobster ACE carry forward;
 - ii. 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
 - iii. 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).
18. Due to the urgent need to provide fishers with certainty, consultation was short and targeted and included direct engagement with Te Ohu Kaimoana, NZ RLIC, key commercial operators, recreational fishing bodies, environmental groups and other Government agencies. This was in addition to announcing the consultation and distributing the consultation document via multiple channels (including the Fisheries New Zealand website, social media, and distribution lists).

Consultation process and overview of submissions

19. Public consultation ran from Friday 14 February to Monday 24 February 2020 (11 days).
20. 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 Forum Chairs;
 - NZ RLIC;
 - 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 New Zealand 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.
21. 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 and Te Puni Kōkiri.
 22. The announcement and distribution of the consultation document to the broader community occurred via multiple channels including the Fisheries New Zealand website, social media, and distribution lists.
 23. Fisheries New Zealand received 369 submissions from Māori and stakeholder groups. This included: 160 from commercial fishers (including Māori), 13 from non-commercial Māori groups, two from environmental groups, two from independent experts, 40 from recreational fishers and 152 from the general public/unspecified.
 24. This briefing provides a summary of the main themes that emerged under each option, and an analysis of the approach that should be taken.
 25. A draft summary of submissions by sector group is attached as **Appendix One**. Also accompanying this brief is a selection of representative submissions from across different stakeholder groups (**Appendix Two**). Other full submissions can be provided to you on request.

Option A (status quo) feedback

26. The majority (49%) of submissions supported the proposal to maintain the status quo (Option A) and not allow the carry forward of uncaught rock lobster ACE.
27. The submissions in support of retaining the status quo primarily came from the recreational sector (including the New Zealand Sport Fishing Council / LegaSea) and general public/unspecified. Three commercial operators, three Māori, and two independent experts also supported this option.
28. There were three broad themes underlying the preference for retaining the status quo: concern for sustainability; the inherent risk of business; and the perception commercial fishers were being advantaged over the recreational sector.
29. Many submitters indicated a concern for the sustainability of rock lobster stocks, perceiving the species to be overfished and in depletion. Not allowing a carry forward was seen as an opportunity to rebuild and alleviate stress on rock lobster populations, enabling greater benefit for future years.

30. Some submitters were also opposed to Options B and C as they were of the view that commercial fishers already have the ability to fish earlier in the season and diversify into alternative markets and that allowing a carry forward would reward poor business practice.
31. Many submitters felt disadvantaged by the commercial sector being able to carry forward their rock lobster take, without extending any benefit to the recreational sector.
32. The New Zealand Sport Fishing Council provided a submission on behalf of its members acknowledging the impact of the market disruption and government's role to try and mitigate impacts on exporters. They did not support any carry forward of uncaught catch as they believe there are sustainability concerns for some stocks and fishers chose to take the risk of fishing for the Chinese market.

Option B (up to 10% carry forward) feedback

33. There was limited support (13%) overall for Fisheries New Zealand's preferred option to carry forward up to 10% of the uncaught ACE (Option B). Notably the majority of Māori supported this option with 62% of Māori (non-commercial) submissions in support of this option to carry forward up to 10% of uncaught ACE, in addition to commercial Māori interests.
34. A small number of submissions from commercial (34 submissions), recreational (two submissions) and the general public/unspecified (four submissions) also supported this option.
35. Commercial submissions s 9(2)(b)(ii) supporting this option expressed the view that this was a pragmatic option that would provide adequate relief to fishers and local communities. This option was also supported for the flexibility to address future market fluctuations.
36. It was noted by representatives from other commercial fishing sectors (including Paua Industry Council members) that this option would provide rock lobster fishers with the same catch flexibility and equity as most other fisheries. Only 6% of stocks within the Quota Management System (QMS) are prevented from 10% carry forward.
37. This option was also viewed as a fairer option for 'more prudent' commercial fishers who spread their fishing efforts throughout the year, selling their product for less than the premium market prices usually associated with the Chinese New Year period.

38. s 9(2)(b)(ii) supports the carry forward of up to 10% uncaught rock lobster ACE in CRA 2 and CRA 4-9 for one year only. It is satisfied that this option would not have any negative impacts on the sustainability or overall abundance of the rock lobster fishery. It supports the position that the up to 10% carry forward should not be allowed for stocks where there are sustainability concerns and the Total Allowable Commercial Catch (TACC) is proposed to be reduced.
39. s 9(2)(b)(ii) all support up to a 10% carry forward as the best of the three options presented. This is supported on the condition that it is a one off carry forward at this time. An ongoing 10% carry forward should only be considered subject to further information and fisheries' sustainability assessments.
40. The NZ RLIC supports Option B along with an urgent amendment to the Fisheries Act 1996 to provide a new power for the Minister of Fisheries, on a case by case basis, to authorise the carry forward of more than 10% of uncaught rock lobster ACE in specific circumstances. If this is not supported then they support Option C.
41. The Parliamentary Commissioner for the Environment would support option B if there was evidence that a one year carry forward could be justified as being sustainable.

Option C (100% carry forward) feedback

42. This was the preferred option from the commercial sector with 75% of commercial submissions supporting this option.
43. A small number of submissions from Māori (two submissions), recreational (one submission), and the general public/unspecified (11 submissions) also supported this option.
44. Most of the submissions highlighted that the high purchase cost of ACE means fishers need to target the Chinese New Year period to extract a premium price to maintain business viability.
45. This option was identified as providing the greatest opportunity to relieve financial pressure on affected fishers. Submissions provided estimates of the expected financial losses for individuals and businesses ranging from \$30,000 - \$600,000 per entity.
46. The NZ RLIC submission stated that the carry forward of uncaught ACE is the single most important step that government could take to alleviate the financial hardship caused by the export market response to Coronavirus (COVID-19). As noted above NZ RLIC supported option B subject to conditions, otherwise it supports Option C.

47. Those supporting this option do not consider there to be any increased sustainability risk as they are just delaying the harvest, not taking more. Harvesting in the next fishing year provides the potential for a far better market return for operators which can flow into the regional businesses and communities where the industry is located.

Additional considerations

48. Under the QMS, a sustainable annual harvest level, the Total Allowable Catch (TAC), is set based on best available information. Each year catch across all sectors is allocated within the TAC. For the commercial sector, catch is constrained within the TACC through the catch balancing regime whereby all commercial fishers are required to report and balance their commercial catch with ACE or pay a deemed value. Ensuring that catch does not exceed the sustainable harvest level is critical for maintaining the sustainability of stocks managed under the QMS.
49. Fishing can be inexact and it is not always possible for commercial fishers to perfectly match their actual catch against the ACE that they hold. The deemed value regime, whereby fishers pay the Crown for catch over ACE, provides some flexibility where catch is in excess of ACE.
50. For most stocks in the QMS (600 of 636 stocks), there is an allowance enabled under the Act for the lesser of the total uncaught ACE or 10% of a fishers total ACE holding at the end of a fishing year, to be carried forward into the next fishing year. The 36 stocks where this provision is not allowed are listed on Schedule 5A of the Act.
51. This carry forward enables fishers to better manage their catch to ensure that they do not incur deemed value payments (they can catch slightly below their ACE holding knowing that any uncaught ACE can be taken in the next fishing year). It also gives some flexibility to maximise the value of catch by allowing fishers to match catch with market demand (leaving fish in the water in one year if the market is low to enable more catch to be taken the next year when markets may be higher).
52. While carry forward of ACE does not increase the overall quantum of catch taken - catch forgone in one year is taken the next - it does redistribute catch and catching effort between years with more taking place in year two. More catch in a given year may impact on sustainability by, for example, reducing the availability of legal rock lobsters. If more commercial catch is taken from areas where customary and recreational fishers catch their fish it may lead to localised depletion adversely impacting on these sectors.

53. On balance, it has been decided that for the 600 stocks not listed on Schedule 5A that a carry forward of up to 10% does not create sustainability or utilisation concerns for other sectors. It is important to note that carry forward for these stocks is not open ended and the 10% cap is the maximum considered appropriate for the sustainability reasons noted above. This is further reinforced by not allowing any carry forward where there is a reduction in the TACC in that same fishing year.
54. Rock lobster stocks are not included in these 600 stocks because the combination of using potting and allowing live release of unwanted fish meant that commercial rock lobster fishing is very precise and carry forward was considered unnecessary. This determination was supported by the rock lobster industry at the time it was made but did not appear to consider whether a 10% carry forward was desirable to accommodate market fluctuations.
55. In considering whether a 10% carry forward is appropriate for rock lobster stocks, Fisheries New Zealand has considered other similar stocks, the robustness of stock assessment and fisheries management methodologies for rock lobster.
56. Overall, New Zealand's rock lobster fishery is performing well, with isolated stock sustainability concerns (e.g. CRA 2). Most rock lobster stocks are monitored closely and TACs 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 TAC setting decisions for most stocks. This responsive management framework helps to ensure the TAC/TACC set reflects available abundance.
57. Being able to respond to changes in rock lobster abundance on an annual basis is important because rock lobster populations can fluctuate in response to changes in the environment.
58. It is unlikely that all fishers for a given stock will meet the criteria for 10% carry forward each year. Therefore, the amount of ACE that is carried forward will be a small amount in comparison to overall removals. This reduces the sustainability risks for a stock.
59. Allowing a one-off carry forward of all uncaught ACE, is unlikely to have a significant impact on stock sustainability for the first year. If this provision was to continue, there could be longer-term sustainability concerns, particularly if the amounts carried over from one year to the next are significant. This could be factored into stock assessment modelling, but there would be uncertainties associated with the carry forward amount and available abundance which could create sustainability risks, especially if a stock has cyclic trends in abundance or abundance has started to decline.
60. In terms of utilisation, the carry forward of uncaught ACE could lead some to manipulate the system and restrict the supply of ACE in the normal fishing years as they hold back ACE to ensure maximum carry over possible.

61. On balance, Fisheries New Zealand consider that enabling carry forward of up to 10% of the total ACE held by individual rock lobster fishers, if uncaught, is unlikely to impact on stock sustainability.
62. Fisheries New Zealand is satisfied that market fluctuations are a compelling argument for enabling a proportional carry forward of ACE. There is not a convincing case that sustainability concerns can be alleviated if a full carry forward was allowed and rock lobster stocks are treated differently to other stocks where the maximum 10% carry forward is allowed for.

Proposal to proceed with option B and commit to review within 12 months

63. Following consultation, it is recommended that you progress Option B and remove all rock lobster stocks from schedule 5A, to allow the carry forward of the lesser of the total uncaught ACE or 10% of a fishers total ACE holding at the end of a fishing year in accordance with section 67A of the Act.
64. The overall management approach for rock lobster fisheries is to monitor and manage them closely to provide for use while ensuring sustainability. The use of regular scientific assessments, responsive management procedures, and regular review of rock lobster TACs is consistent with this approach. Allowing a 10% carry forward is unlikely to impact on stock sustainability.
65. Option B was supported by the majority of Māori, and some commercial fishing interests 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 negatively impact sustainability.
66. It was also suggested that this should be a one year carry forward rather than an ongoing 10% carry forward. The proposal will remove rock lobster from Schedule 5A of the Fisheries Act 1996 enabling this carry forward in perpetuity.
67. A further analysis of the risks will be considered over the coming the year and if this analysis demonstrates that enabling this carry forward in perpetuity would create a sustainability risk or unduly impact on other sectors, then officials would recommend that carry forward provisions not be continued for rock lobster.
68. Non-commercial interests favored Option A (status quo) primarily due to sustainability concerns. Overall rock lobster stocks are healthy with catch limits set at sustainable levels. For stocks where there are sustainability concerns, the carry forward provisions would not apply.
69. Most commercial interests favored Option C (100% carry forward) to avoid significant financial losses. Estimates of financial losses ranged from zero to \$600,000 depending on individual business decisions and circumstances. Some fishers spread their effort (and risk) throughout the season while others seek to capitalize on higher prices towards the end of the season

70. Option B, allowing up to 10% carry forward, will provide some financial relief to rock lobster fishers with around 120 tonnes of the uncaught ACE to be available for harvest during the next fishing year, beginning 1 April 2020. This approach, while not supported by most of the industry, provides the most appropriate balance between providing for utilisation while ensuring sustainability.

Media and Communications

71. There is likely to be medium to high levels of media coverage around this decision.

Next steps

72. Subject to your agreement of our suggested approach, officials will shortly provide you with a draft Cabinet paper seeking your agreement to progress Option B, to enable carry forward of the lesser of the total uncaught ACE or 10% of a fishers total ACE holding at the end of a fishing year, by removing all rock lobster stocks from Schedule 5A of the Fisheries Act 1996 via Order in Council. This will be accompanied by a regulatory impact assessment.
73. Officials can meet with you to discuss further the content of this brief.

Appendix One: Draft summary of submissions

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Appendix Two: Representative Submissions

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