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# **Associated Species - Fish Not Landed**

Section Detail Report

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## Overview

The Fisheries Act 1996 (the Fisheries Act) clearly states the landing and catch reporting requirements for all commercially caught fish in New Zealand.

For the 99 fish species managed within the Quota Management System (which account for over 94% of the commercial catch by weight), the Fisheries Act generally requires the landing and reporting of any catch. However, the Fisheries Act has provisions for legally returning fish to the sea. These provisions generally relate to sustainability or vessel safety purposes. They are:

- Being less than the minimum legal size (16 species have a Minimum Legal Size)<sup>1</sup>;
- Being allowed under Schedule 6 of the Fisheries Act (33 species have a Schedule 6 provision)<sup>2</sup>;
- Being necessary to ensure the safety of the vessel or any crew member<sup>3</sup>;
- Being a part of fish, aquatic life, or seaweed lawfully processed on a vessel<sup>4</sup>; or
- Being authorised by a Fisheries Officer or a government authorised observer<sup>5</sup>.

For any fish species not managed within the QMS, catch may be landed or returned to the sea at the fisher's choice. However, all such catch must be reported to Fisheries New Zealand (FNZ) irrespective of being landed or returned to the sea.

Stock assessments and catch allocations make provision for catches of non-retained fish. Non-retained fish is therefore managed within the bounds of sustainability under the Fisheries Act.

Breaches of the Fisheries Act's requirements relating to the landing and/or reporting of catch may have serious implications for the sustainability and value derived from New Zealand's fisheries resources and are regarded as serious offences.

There are two business divisions within the Ministry for Primary Industries (MPI) with roles in the management of New Zealand's fisheries: MPI Compliance, tasked with surveillance, investigations and enforcement, and Fisheries New Zealand (FNZ), tasked with managing fisheries and monitoring fishing activities. Together, these two groups operate a range of monitoring and surveillance measures to assess the risks of non-compliance and to detect possible offences across the New Zealand commercial fishing fleet. These include: extensive catch reporting requirements; satellite monitoring of vessel positions; marine patrols (using surface vessels and aircraft); deployment of fisheries officers and at-sea observers; and risk assessments to determine where offences may be occurring (including profiling and catch discrepancy assessments).

MPI Compliance operate an effective risk assessment programme based on their VADE approach – a sequential and staged programme based on a Voluntary, Assisted, Directed and Enforced approach. Any identified breaches of the landing and reporting requirements result in a response from MPI Compliance. This may consist of warnings and assistance for a fisher to voluntarily comply with the legislations but for serious breaches threatening sustainability or repeated offences will include prosecutions. Upon conviction, penalties resulting from prosecutions can include significant fines and an automatic forfeiture of the catch and any gear, vessel or property (including quota) used in the committing of the offence. Repeat offenders may be suspended from participating in commercial fishing activity for a period of up to 3 years.

FNZ is progressively implementing a new Digital Monitoring (DM) programme, which is comprised of three components: Electronic Reporting (ER), real-time position reporting (GPR) and Electronic Monitoring (EM) across New Zealand commercial fishing vessels. Monthly electronic reporting and GPR have been in place on trawlers larger than 28 m in length for some years now but electronic reporting has since moved to real time

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<sup>1</sup> Fisheries Act 1996 Section 72(3)

<sup>2</sup> Fisheries Act 1996 Section 72(2)

<sup>3</sup> Fisheries Act 1996 Section 72 (5)(b)

<sup>4</sup> Fisheries Act 1996 Section 72 (5) (a)

<sup>5</sup> Fisheries Act 1996 Section 72 (5) (c)

GPR and ER provide real-time capture of vessel position data and daily electronic catch and effort reporting. The roll-out of these requirements on smaller vessels is underway, with implementation across the fleet scheduled for completion by the end of 2019. Electronic logbooks will be used by fishers to meet statutory reporting requirements.

EM requirements are under development by Government, including the option of deployment of on-vessel cameras. To allow for these developments to be undertaken on a considered basis, and for the necessary policy changes to be developed and implemented prior to EM deployment, exemptions to the existing regulations for EM are currently in place<sup>6</sup> (the EM regulations were promulgated in 2017). The Minister of Fisheries has advised that further consultation will take place prior to EM implementation to ensure that it will become an effective monitoring tool<sup>7</sup>.

The Ministry for Primary Industries is currently consulting on possible changes to its landings/return to the sea policy<sup>8</sup>. The options presented for consideration include:

- The status quo, as described in current Open Seas documentation;
- An option that reduces the ability of fishers to return fish to the sea through a removal of the Minimum Length Size provision and a reduction in the species able to be returned under a Fisheries Act Schedule 6 provision; and
- An option that will provide greater scope to return fish to the sea through an extension of the above provisions.

Reporting of all catch will be required but there may be adjustments made to catch balancing provisions of the Fisheries Act. This policy development is seen as a pre-requisite to determining the scope and extent of the electronic monitoring programme of fishing activity and a review of the offences and penalties regime as set out in the Fisheries Act .

New Zealand is recognised as a world leading nation in the management of its commercial fishing activity and has policies and conformance practices that reflect international best practice. The Digital Monitoring initiative referred to above will, when implemented, be the world's first comprehensive electronic monitoring of a nation's commercial fishing fleet.

## Key facts

- The Fisheries Act specifies 5 exemptions allowing for or requiring fish to be legally returned to sea.
- The Fisheries Act contains provisions for 33 species to be legally returned to sea.
- Research by the National Institute of Water and Atmospheric Research (NIWA) estimated that for every kg of catch, approximately 6% of the catch is returned to sea. This includes fish both legally and illegally returned to sea.
- The term “discards” is not used or defined in legislation, regulation or case law in New Zealand fisheries.
- Breaches of landing regulations could be deemed a serious offence, resulting in penalties from up to five years' imprisonment, fines up to \$500,000 and forfeiture of all equipment including vessels, fishing gear and quota shares.

## Scope of this report

The scope of this report covers the management, policy and practices for commercially caught fish that are not landed, noting any landings must be to a Licensed Fish Receiver (LFR).<sup>9</sup> While the Fisheries Act requires that caught fish managed

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<sup>6</sup> <https://www.fisheries.govt.nz/protection-and-response/sustainable-fisheries/strengthening-fisheries-management/fisheries-change-programme/digital-monitoring-resources/#exemptions>

<sup>7</sup> <https://www.beehive.govt.nz/release/next-steps-digital-monitoring-fisheries>

<sup>8</sup> <https://www.fisheries.govt.nz/news-and-resources/consultations/your-fisheries-your-say/>

<sup>9</sup> <https://www.mpi.govt.nz/growing-and-harvesting/fisheries/licensed-fish-receivers/>

under the Quota Management System (QMS) must generally be landed, the legislation provides for several exceptions to this general rule. Some of the provisions require the catch to be subject to the catch balancing provisions of the Fisheries Act, some do not. This report details those provisions.

In addition to the reported QMS catch, there is an element of illegal activity in not landing or reporting of QMS species catch. The report details the processes used to detect and manage such activity.

The Fisheries Act allows for catch of species not in the QMS to be landed or not landed at the option of the fisher. The processes for those options are detailed.

## ***Out of scope***

Any discussion of not landed fish entails a discussion of the policies and practices for landed fish. That aspect is covered in detail in the report on “Managing for Sustainability”.

Explicitly out of scope, however, are the following:

- Recreational and customary fishing
- What happens to commercially caught fish beyond their landing >> remit of Traceability, Food Safety section
- Aquaculture and Fish Farmers
- MSC certification of specific species >> remit of species profiles.

## **The New Zealand approach**

### **Introduction**

New Zealand fisheries are managed under the Fisheries Act 1996 (the Fisheries Act). All commercially landed species are managed under either the Quota Management System (QMS) or as non-QMS species. Where there are sustainability<sup>10</sup> or utilisation issues, species are managed under the QMS. Species in the non-QMS management option generally tend to be species which are not sought to be utilised by any fishing sector and, while they may be caught as by-catch when QMS species are targeted, they are considered not to have sustainability issues as a consequence of being by-caught.

Of the commercial catch caught in NZ waters, 94% of the catch weight consists of the catch of QMS species and 6% of non-QMS species.

The management of the species - including the policy, conformance and validation procedures - differs under the two frameworks. The fisheries management framework is described in detail in the *Managing for Sustainability* and *Fishing Rules* reports.

### **Terminology**

Any understanding of the New Zealand fisheries management regime requires some understanding of the terminology used in the Fisheries Act, regulation and policy statements. In some instances, the New Zealand legislative meaning may differ to the common meaning of the term.

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<sup>10</sup> Sustainability is defined in section 8 of the Act as (a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment

## **To Take**

The New Zealand legislative framework uses the term “to take” fish or aquatic life rather than to catch.

While the term “to take” is not specifically defined in the Fisheries Act, it has been defined in judicial proceedings to be a verb “*when applied to fish or game, means to capture or to catch in the sense of securing the fish or game, either by complete removal from its natural element or by some method of restraint, so that it is prevented from re-entering or moving unrestrainedly within its natural element*”<sup>11</sup>. Taking can thus be interpreted as a synonym for the Fisheries Activity of catching fish but is not synonymous with either the catch or landing.

## **Catch**

Catch has both a common and legislated meaning. The common meaning would be synonymous with taking or harvesting and refers to the total amount of fish at some time in the possession of the fisher. Catch is also often referred to as the catch retained or landed.

When referred to in the Fisheries Act in the QMS regime, catch has a particular definition. Catch can be defined as that amount of the total fish harvested to which the Fisheries Act’s catch balancing provisions (section 76 of the Fisheries Act) apply. While it generally refers to the greenweight equivalent of the fish landed or transferred to the possession of a Licensed Fish Receiver, the catch may also include that part of the harvest permitted under the Fisheries Act to be returned to the sea. It may also include that part of the harvest which is illegally returned to the sea.

## **Landing**

Landings commonly refer to fish landed to a dock for processing, distribution or final distribution. In terms of the Fisheries Act, landings have that same connotation.

“Landings” and “catch” are often used interchangeably in fisheries management. However, the Fisheries Act has different meanings as outlined above and people should be cautious when using the term “catch” to ensure no confusion.

## **Returned to the sea**

All fish not landed in New Zealand (or to an overseas port if approved) is referred to as either legally or illegally returned to the sea.

## **Discards**

The term “discards” is not used or defined in legislation, regulation or case law in New Zealand fisheries.

## **QMS Species**

Section 72(1) of the Fisheries Act contains a general requirement that all QMS species taken by a commercial fisher must be landed. However, the legislation provides for five exceptions that make it legal to return fish to sea. These exceptions are provided under the following circumstances:

- Being less than the minimum legal size (Section 72(3) of the Fisheries Act);
- Being allowed under Schedule 6 of the Fisheries Act (Section 72(2) of the Fisheries Act);
- Being necessary to ensure the safety of the vessel or any crew member (Section 72 (5)(b) of the Fisheries Act);
- Being a part of fish, aquatic life, or seaweed lawfully processed on a vessel (Section 72 (5) (a) of the Fisheries Act); or

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<sup>11</sup> *Attorney-General v Gillespie* [1959] NZLR 746.

- Authorised by a Fishery Officer or FNZ observer (Section 72 (5) (c) of the Fisheries Act).

These exemptions are discussed below.

## ***Minimum Legal Size***

Minimum legal sizes for a number of species are set in the Fisheries (Commercial Fishing Regulations) 2001. The regulations are enabled as a sustainability measure under Section 11 of the Fisheries Act. Section 11 (1) provides the Minister of Fisheries with the power to “*from time to time, set or vary any sustainability measure for 1 or more stocks or areas, after taking into account—(a) any effects of fishing on any stock and the aquatic environment; and (b) any existing controls under this Act that apply to the stock or area concerned; and (c) the natural variability of the stock concerned.*”

Among the measures available to the Minister is a power – Section 11(3)(b) - to “*set the size, sex, or biological state of any fish, aquatic life, or seaweed of any stock that may be taken.*” *Those decisions are then established under regulations using the Minister’s power to seek orders in Council (Section 298)*”. Sixteen species have minimum sizes set under the Fisheries Act<sup>12</sup>.

Section 72(3) requires any fisher catching fish below a minimum legal size to immediately return that fish, aquatic life, or seaweed, whether alive or dead, to the sea or waters from which the fish, aquatic life, or seaweed was taken. It is an offence under Section 84 (2) of the Fisheries (Commercial Fishing) Regulations 2001 to retain any fish smaller than the minimum legal size on a vessel.

The catch returned to the sea is not subject to the catch balancing provisions of the Fisheries Act and is not reported on any return.

## ***Schedule 6***

Schedule 6 of the Fisheries Act contains return to sea provisions applying to 33 species of fish, shellfish, or aquatic life. In general, fish can be returned to the sea under this provision if it is likely to survive on return and is returned as soon as practicable after being taken. A number of entries have additional conditions as to the fishing gear used to take the fish.

For example, the rock lobster provisions require the return to the sea of fish carrying eggs, fish in a soft-shell state or fish with damage that prevents the size being measured. In the case of spiny dogfish, blue sharks, mako sharks and porbeagle sharks, returns to the water can be either dead or alive.

All Schedule 6 returns are required to be reported.

In general, the returns are not subject to catch balancing. The only exceptions are for returns of spiny dogfish (alive or dead) and dead or nearly dead blue mako and porbeagle sharks. Catch balancing provisions apply to the return of these species.

## ***Necessary to Ensure the Safety of the Vessel or Any Crew Member***

Section 72 (5)(b) of the Fisheries Act allows for the return to sea any catch if it is necessary to ensure the safety of the vessel or any crew member. The greenweight of the fish returned to the sea is required to be estimated and reported on catch returns and is subject to the catch balancing provisions of the Fisheries Act.

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<sup>12</sup> Fisheries (Commercial Fishing) Regulations 2001

## ***Part of Fish, Aquatic Life, or Seaweed Lawfully Processed on a Vessel***

Section 72 (5)(a) of the Fisheries Act allows for the return to sea of parts of a fish that has been processed on board. The greenweight catch (prior to processing) is subject to catch balancing provisions. However, the subsequent return of any processed parts is not reported.

## ***Authorised by a Fishery Officer or Observer***

Section 72 (5)(c) of the Fisheries Act allows for the return to sea of any catch where that catch would normally be required to be landed but where an observer or fisheries officer<sup>13</sup> observed the landing of the fish and authorised the return to the sea. Such returns to the sea are required to be included in catch returns and are subject to the catch balancing provisions of the Fisheries Act.

## ***Inclusion in Sustainability Settings***

Where fully informed stock assessments are undertaken for a fish stock, estimates and allowances are made within the modelling for the estimated level of unreported mortality in the fishery.

It is a requirement that where a TAC is set and allocations made for the recreational, customary and commercial sectors, allowances are also made for other fishing related incidental mortality (OFRIM). While there is a general assumption that the OFRIM should be at least 5% of the commercial catch allocation, the OFRIM is adjusted to take into account other factors and knowledge as appropriate. These may include evidence of poaching, legislated returns to the sea and illegal returns to the sea. These are removed as an aggregate from the TAC before any allocations to the sectors are made rather than the OFRIM being made within the recreational, customary or commercial sector allocations. These calculations and estimates are available in the Ministry's Annual Plenary Report<sup>14</sup> and are subject to peer review and scientific working group scrutiny.

## **Non-QMS Species**

Of the commercial catch caught in NZ waters, 6% of the catch weight consists of non-QMS species.

Under the Fisheries Act, fishers have no obligation to land any non-QMS fish caught. However, they do have an obligation to report all catches of non-QMS species in their catch and landing returns (refer to the *Fishing Rules Section Detail Report* for more information).

Landing non-QMS catch is at the option of the fisher.

Most non-QMS catch is returned to the sea because it does not have commercial demand or value.

At present, the only two non-QMS species retained in any quantity are albacore and skipjack tuna. Any landing of these species incurs a per kilogram cost recovery levy, the levies being used to meet a share of the cost of commercial compliance, observer placements and registry and catch reporting activities and the industry share of any research activities.

There are exceptions that apply to non-QMS species. For example, by regulation, commercial vessels must not take or possess any marlin species<sup>15</sup> or any salmon species<sup>16</sup>. These species are deemed recreational species only and, where they are

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<sup>13</sup> Fisheries officers are employed under Section 196 of the Act and have powers of: entry, search and questioning; giving directions; seizure of property and records; and arrest. In addition to officers appointed under the Act, every officer in charge of a New Zealand Defence Force vessel or aircraft and every constable is deemed to be a fisheries officer.

<sup>14</sup> Ministry for Primary Industries (2018).

<sup>15</sup> Fisheries (Commercial Fishing) Regulations 2001 Section 30

<sup>16</sup> Fisheries (Commercial Fishing) Regulations 2001 Section 43

caught as an incidental by-catch, they must be returned to the sea or disposed of as required by a fisheries officer. They cannot be retained for sale by a commercial fisher.

Section 91(3) of the Fisheries Act prevents the taking of species listed in Schedule 4C of the Fisheries Act. That list includes protected fish species, such as spotted black groper and a range of sharks and rays, as well as a range of invertebrates and seaweeds. Any capture of a protected fish species is required to be reported to the Department of Conservation under Section 63B of the Wildlife Act 1953.

Failure to comply with the regulations is an offence under the Fisheries (Commercial Fishing) Regulations 2001<sup>17</sup>.

## Complying with the New Zealand approach

### Introduction

The commercial fishing industry is required to comply with the Fisheries Act's legislative and regulatory provisions. Oversight and enforcement of those provisions and rules is the responsibility of MPI.

### Reporting

Fishers are required to report the catch of non-landed QMS species as follows;

- Being less than the minimum legal size – While this catch has previously not been reported and is not subject to the catch balancing provisions of the Fisheries Act., reporting of this catch is required with the introduction of the new electronic reporting systems being progressively implemented over 2019;
- Being allowed under Schedule 6 of the Fisheries Act – the greenweight of the catch is reported on the Catch Landing Returns with the appropriate destination code and is subject to the catch balancing provisions of the Fisheries Act for specific species as noted earlier in this report;
- Being necessary to ensure the safety of the vessel or any crew member – the greenweight of the catch is estimated and reported on the Monthly Harvest Return with the appropriate destination code and is subject to the catch balancing provisions of the Fisheries Act;
- Being a part of fish, aquatic life, or seaweed lawfully processed on a vessel – the returned to the sea element is not reported. However the pre-processed greenweight of the catch is reported under the appropriate Catch Effort return and the Monthly Harvest Return ; and
- Authorised by a fishery officer or observer – the greenweight of the catch is reported on the Monthly Harvest Return with the appropriate destination code and is subject to the catch balancing provisions of the Fisheries Act.

Fishers are required to report the greenweight of their catch of non-landed non-QMS species on their Monthly Harvest Return.

### Catch Returned to the Sea

Notwithstanding the general requirement to land all catch of QMS managed species subject to the regulated exceptions referred to above, it is known that there is some catch of QMS species which is illegally returned to the sea and not reported on catch returns. The quantities that may be involved are unknown.

For the deepwater fisheries, MPI commissions NIWA to estimate the quantities of fish returned to the sea based on MPI observer reports<sup>18</sup>. These analyses are routinely undertaken for each the major deepwater target fisheries (i.e. hake, hoki,

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<sup>17</sup> Fisheries (Commercial Fishing) Regulations 2001 Sections 84(2) and 84(3)

ling, jack mackerel, orange roughy, oreo, scampi, squid, and southern blue whiting). The results indicate that around 5.5% of the total catch is returned to the sea. Of this 5.5%, 75% (4.1%) is non-QMS species, which can be legally returned to the sea and for which reports of estimated catch are required by law. The 5.5% includes fish both legally and, potentially, illegally returned to the sea.

There have been a number of prosecutions for illegal returns to the sea. Upon conviction, these prosecutions have resulted in significant fines and penalties.

## Conformance and verification measures

Industry performance against the fishing legislation and regulations is monitored and enforced by MPI. MPI has a number of tools to monitor performance and to detect and deter non-compliance. Non-compliance with the New Zealand fishing legislation is considered serious offending. Serious offences include; misreporting (catch type, amount or area caught), dumping fish overboard, “trucking” (i.e. catching fish in one QMA and reporting it caught in another), using illegal gear or techniques, or fishing within a prohibited area.

MPI has an Operations division responsible for delivering border clearance services, incursion diagnostics, surveillance, response management, compliance, intelligence, operational planning and national coordination. This division reports to the Chief Operations Officer and is a different reporting line to the Ministry fisheries managers. Within the Operations division, there is a separate group responsible for fisheries compliance activity. The Ministry currently spends 40% of its fisheries management expenditure on compliance and enforcement.

### Fisheries Officers

Frontline enforcement is conducted by fisheries officers. Fisheries officers can issue infringement notices, prosecute those involved, and seize boats and equipment used in fishery-related offences. More information can be found in the *Fishing Rules Section Detail Report*.

### Compliance Activity

The Ministry operates a tiered response (VADE) to enforcement matters. VADE<sup>19</sup> stands for:

- Voluntary – The Ministry works with fishers and offenders to obtain a voluntary change to be compliant (e.g. through education);
- Assisted – The Ministry actively assists fishers and offenders to be compliant (e.g. through inspections and providing feedback on areas for improvement);
- Directed - The Ministry directs the fishers and offenders to amend their practices and behaviour to be compliant (e.g. through official warnings); and
- Enforced – The Ministry uses its enforcement powers to penalise an offender (e.g. through prosecutions).

The non-landing of catch can, at sufficient levels, threaten the sustainability and long term utilisation levels of the species. Any unreported catch results in poor quality information being used in stock assessments and undermines the accuracy of those stock assessments. Equally, it reduces the benefits to New Zealand of the utilisation of that catch. For those reasons, the non-reporting of catch is regarded as a serious offence and incurs high penalties under the Fisheries Act.

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<sup>18</sup> Anderson, O.F. (2008). Anderson, O.F. (2009). Anderson, O.F. (2011). Anderson, O.F. (2012). Anderson, O.F. (2013). Anderson, O.F. (2014). Ballara, S.L.; O’Driscoll, R.L. (2015). Anderson, O.F. et al (2017a). Anderson, O.F. et al (2017b). <https://www.niwa.co.nz/fisheries/tools-resources/deepwater-trawl-fisheries-bycatch-and-discards>

<sup>19</sup> [https://www.planning.org.nz/Attachment?Action=Download&Attachment\\_id=750](https://www.planning.org.nz/Attachment?Action=Download&Attachment_id=750)

Ministry officers have no discretion to ignore offences in respect of non-reporting of catch but do have powers of discretion to apply an appropriate tiered response. Their choice of their initial option to achieve compliance of the fisher will depend on the severity of the offence, the fisher's history of offending and the wider fishery's history of offending. Those instances of initial offending by a fisher or where the fishery has a previous history of previous offending are such that the scale of such offending threatens the sustainability of the species will generally be considered for enforcement action rather than a lower tier response. Where the scale of initial offending is lower and the offending is a first occurrence, a lesser response would be considered. Repeat offending will see the response elevated to higher tiers.

## Intelligence Gathering and Profiling

Based on intelligence/information, the Ministry conducts risk profiling of certain fisheries and clients where suspected offending is occurring, or the species are particularly vulnerable to offending. Where a risk profile identifies areas of compliance concern, the Ministry takes action to manage that area.

This may include increased fisheries patrols, or the Ministry may also undertake surveillance operations where suspected illegal activity is occurring. Coordinated surveillance and information gathering operations often include the New Zealand Defence Force acting in their roles as fisheries officers.

The Ministry has an established discrepancy review process which includes the reconciliation of Catch Effort data against Monthly Harvest Return data and then against Licensed Fish Receiver Return data. Compliance staff are also able to analyse and compare positional information reported on catch effort returns with vessel location data where such systems are required on vessels.

When a discrepancy is found and determined to be a deliberate discrepancy, surveillance operations and further investigation may be undertaken to determine the scope of the offending. Prosecutions and penalty regimes as allowed by the Fisheries Act will be enforced depending on the severity of the offending.

## Observers

The Ministry runs an observer programme, which places personnel onboard vessels for the purposes of fisheries research, management and enforcement. Observers collect information on all fishing activity including catch effort data, all aspects of vessel operation, quantity and condition of fish taken, effects on aquatic environments, and the processing, transporting and landing of fish<sup>20</sup>. They are an important part of ensuring compliance with the fishing rules and collecting information for further investigations.

At the conclusion of each trip, the observer debriefs with both fisheries managers and compliance officers to discuss, inter alia, any observations of offending on the vessel, including any non-landing or mis-reporting of catch. A summary of the observer's report is forwarded to the vessel operator for their information and action. In the event of offending having been observed, the fisheries officer will consider the appropriate enforcement response.

More information on the Observer programme can be found in the *Fishing Rules Section Detail Report*.

## Penalties

Breaches of landing and reporting obligations contained in the Fisheries Act and the Fisheries (Commercial Fishing) Regulations 2001 are deemed serious offences and are subject to penalties set out in those respective pieces of legislation.

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<sup>20</sup> Fisheries Act 1996 Section 223.

## ***Fisheries Act Penalties***

Under the Fisheries Act, the Court is able to apply penalties for serious offending ranging from up to five years' imprisonment, fines up to \$500,000, and forfeiture of all equipment including vessels, fishing gear and forfeiture of quota shares. (Fisheries Act 1996, Part 13).

Illegal returns to the sea are an offence under Section 72(4) of the Fisheries Act. Under Section 252(3) of the Fisheries Act, on conviction the maximum fine payable is \$250,000. Misreporting of catch is an offence and under Section 252(1), on conviction, the person convicted is liable to a maximum fine is \$250,000 or an imprisonment term not exceeding 5 years. In addition to those penalties, any fish or the proceeds of the sale of such fish and any fishing gear or property used in the commission of the offence are forfeit to the Crown unless the court orders otherwise (Section 255C of the Fisheries Act). Section 255C also provides that the court may also order that any quota owned by the convicted person is forfeit to the Crown. Under Section 256 (3) any person claiming an interest in the forfeit property may apply to the court for the relief of forfeiture. The court shall determine the value of the property if sold at auction, the value of the applicant's interest and the costs to the Ministry incurred in the prosecution of the offence and having regard to other matters including, amongst other things, the nature and impact of the offence, the social and economic impact on the applicant, previous offending history and the prevalence and severity of the offence, determine the amount to be paid by the applicant to provide relief of the forfeiture.

In case of repeat serious offending, that person can be banned from the fishing industry by being prohibited from holding any licence, approval, permission or fishing permit, engaging in any fishing activity, or deriving any financial benefit from activities associated with fishing. (Fisheries Act 1996, s257) This ban can be applied for a period of up to 3 years.

## ***Fisheries (Commercial Fishing) Regulations 2001 Penalties***

Where fish less than any Minimum Size for the species are retained, on conviction, the offender is liable to a maximum fine of \$100,000.<sup>21</sup>

Where a fisher is convicted in respect of the catch of a salmon, the offender is subject to a maximum fine of \$20,000.<sup>22</sup>

Where a fisher is convicted in respect of the catch of a marlin, the offender is subject to a maximum fine of \$100,000.<sup>23</sup>

## **New Initiative**

The Ministry is currently developing a range of new strategic, regulatory, policy and management measures to implement digital monitoring systems on every vessel. The system combines onboard camera monitoring, vessel positioning data and real-time catch effort reporting and will provide for greater access and monitoring of all vessels in the New Zealand fleet and in particular improve at-sea monitoring of the fleet.

Vessel positioning and catch reporting were implemented for trawl vessels over 28 metres with effect from 1 October 2017. It should be noted that these vessels had already implemented position reporting since 1994 and electronic reporting since 2010 with these data transmitted to Fisheries New Zealand to monitor fishing activity. The new system, however, provides Fisheries New Zealand with faster (daily) access to data, which will provide greater opportunity to target compliance risk, and as a consequence further reduce the potential for unreported catch and area misreporting.

Vessel positioning and catch electronic reporting is to be implemented progressively throughout the remainder of the fleet from 1 May 2019 and all vessels should be electronically reporting position and catch by 30 November 2019. No dates have

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<sup>21</sup> Fisheries (Commercial Fishing) Regulations 2001 Sections 85(4)

<sup>22</sup> Fisheries (Commercial Fishing) Regulations 2001 Sections 85(2)

<sup>23</sup> Fisheries (Commercial Fishing) Regulations 2001 Sections 85(4)

yet been announced for the implementation of camera monitoring on the fleets.<sup>24</sup> Further work is required before cameras can be introduced, including clarifying camera specifications and how they can be introduced. The introduction of vessel positioning systems and electronic monitoring of at sea activities will significantly augment the existing monitoring and surveillance capacity and capability of the Ministry.

New Zealand is also reviewing its policy on landing catch and discarding of fish at sea. It has proposed three scenarios and is evaluating those options for implementation in the future. The options will address both QMS and non-QMS species and will address reporting and returns to the sea processes.

Accompanying those changes will be a wider use of infringement fees as penalties for less serious offending. Electronic monitoring and infringement fees should provide a more effective and ubiquitous deterrent to issues such as catch misreporting and illegal returns to the sea.

Some changes to the reporting of catch have been implemented with the introduction of the electronic systems.

## Comparability to international best practice

New Zealand has been recognised as world leading in the implementation of a catch-rights based quota management system. Today New Zealand continues to be one of the top regarded operators in the world for fisheries management<sup>25</sup>.

The policies on landing and non-landing of fish are consistent with international best practice for sound fisheries management. Refer to the *Managing for Sustainability Section Detail Report* for additional detail.

The existing conformance and validation processes will be strengthened with the digital monitoring and penalty reform initiatives. While there are a number of electronic monitoring applications in some fleets in some nations, it is expected New Zealand will be the first to implement that technology for all its fleet and all fishing activity.

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<sup>24</sup> Nash S. (2017)

<sup>25</sup> Worm, B. et al (2009) and Alder, J. et al (2010).

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## Report Details

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