

# Infringement regime for retention and discard offences in the commercial fishing industry

## Coversheet

Purpose of Document	
Decision sought:	<i>Cabinet to authorise the creation of an infringement regime to address retention and discarding offences in the commercial fishing industry</i>
Advising agencies:	<i>Ministry for Primary Industries</i>
Proposing Ministers:	<i>Hon Rachel Brooking, Minister for Oceans and Fisheries</i>
Date finalised:	<i>9 May 2023</i>
MPI can now create an infringement regime to address low-level discarding offences	
<ol style="list-style-type: none"><li>1. Currently, the Ministry for Primary Industries (MPI) has no proportionate enforcement response to penalise illegal low-level retention, return, or abandonment of quota management system (QMS) species at sea by commercial fishers.</li><li>2. The recently passed Fisheries Amendment Act (the Amendment Act) enables the creation of a new infringement regime to proportionately respond to this offending.</li><li>3. An infringement regime will provide MPI with an additional enforcement tool to address low-level discarding offences without the need for prosecution, enhancing MPI's ability to incentivise compliance.</li><li>4. The creation of an infringement regime is part of broader changes to strengthen the fisheries system, including the roll-out of cameras that will detect low-level offending.<sup>1</sup></li></ol>	
Executive Summary	
<ol style="list-style-type: none"><li>5. The Amendment Act came into force on 1 November 2022.</li><li>6. It makes several changes to the Fisheries Act 1996 (the Act), including enabling the creation of an infringement regime to address low-level illegal retention, return or abandonment of QMS species by commercial fishers.<sup>2</sup></li><li>7. The infringement regime supports the Government's broader suite of changes to strengthen the fisheries system. These include encouraging fishers to avoid catching non-target fish species and improving landing and discarding practices to help ensure the sustainability of fisheries resources.</li></ol>	

<sup>1</sup> <https://www.mpi.govt.nz/fishing-aquaculture/commercial-fishing/fisheries-change-programme/on-board-cameras-for-commercial-fishing-vessels/>

<sup>2</sup> <https://www.legislation.govt.nz/act/public/1996/0088/latest/DLM396514.html>

8. All infringement regime options assessed include the following common design features based on existing Government policy, fisheries legislation, and regulatory design guidance:
- a. the intent of the infringement regime being to deter the behaviour of illegal discarding.
  - b. development in accordance with Ministry of Justice guidelines and accepted regulatory criteria in New Zealand on infringements.<sup>3</sup>
  - c. a maximum fee of \$1000 for individuals, as advised by the Ministry of Justice for infringement regimes.
  - d. the commercial fishing permit holder being liable for paying the infringement fee.<sup>4</sup> The permit holder may be responsible for multiple offending persons, so could be liable for multiple infringement notices per day.
  - e. a maximum of one infringement notice issued per offending person, per day, when offending is detected. Limiting the number of infringement notices issued to one per offending person reflects the simple and pragmatic approach MPI is taking to implement the infringement regime initially.
  - f. prosecution remains an enforcement option.
  - g. the structure of section 72 of the Act, which provides for two levels of discard and retention offences and penalties, one for 50 or fewer QMS fish or animals that are aquatic life, and one for more than 50.
  - h. strict liability, as applicable to fisheries offences under Section 240 of the Act.<sup>5</sup>
  - i. that the infringement regime applies alongside existing reporting regulations that already require commercial fishers to account for the species and quantity of the discarded or abandoned catch through their Annual Catch Entitlement (ACE), or by paying the “deemed value” in cases where they do not have ACE.<sup>6,7</sup>

## MPI considered two options for infringement fees, in addition to the status quo

### Option one: Status Quo

9. This option involves no infringement regime for offences involving unlawful retention, abandonment, or return of QMS species. Prosecution would remain the only statutory sanction which, if pursued successfully, would result in potentially large financial penalties for relatively low-level offending.

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<sup>3</sup> <https://www.justice.govt.nz/assets/Documents/Publications/infringement-governance-guidelines.pdf>

<sup>4</sup> S72 of the Amendment Act references the ‘commercial fisher’, which is defined in the Act as — (a) means a person who holds a fishing permit issued under section 91.

<sup>5</sup> Strict liability means that it is not necessary to prove that a person intentionally broke the law. This is a feature of the Act and other infringement regimes. It recognises the responsibility of commercial fishers to adopt appropriate precautions and ensure they have robust systems to prevent breaches.

<sup>6</sup> [Fisheries \(Reporting\) Regulations 2017 \(LI 2017/154\) \(as at 28 October 2021\) – New Zealand Legislation](#)

<sup>7</sup> <https://www.mpi.govt.nz/fishing-aquaculture/commercial-fishing/operating-as-a-commercial-fisher/deemed-values-for-commercial-fishers/>

## Option two: Infringement offence with flat fee

10. Under this option, infringements would apply to unlawful retention, return, or abandonment offences involving 50 or fewer fish or other animals that are aquatic life that are subject to the QMS. The offence would carry a \$400 fee once, per day of offending. Under the option more serious offences involving more than 50 QMS fish or animals that are aquatic life would remain unchanged and liable for a full criminal penalty as set out in the Act.

## Option three: Infringement offence with proportional fee

11. This option proposes different infringement fees depending on the quantity and species of catch unlawfully retained, returned, or abandoned.

12. Species have been assigned to one of three categories, depending on thresholds related to their current annual average deemed value, as determined by MPI. This is useful because it means the values given to the stocks and species by the fisheries management system are consistent and determined by data.

13. Species in the higher categories would incur a larger infringement fee for fewer fish because of their higher relative value. In scenarios where offending involves different species from a range of categories, infringement fees for each species would be added together to make a total infringement fee.

14. Linking the size of the infringement fee to the species and quantity retained, returned, or abandoned makes this option more proportional to the scale of offending, relative to the other proposed infringement option.

**MPI prefers the flat fee option because it is simple to administer and understand, can more easily be adapted in response to what MPI will learn from implementation, and does not need to account for the differing values amongst catch.**

15. The flat fee option can be more easily adapted over time to ensure it remains effective and relevant, as MPI learns about the scale and type of offending from cameras and the infringement regime itself. In doing so, MPI will ensure that the flat fee option continues to meet its objectives and is appropriately set through monitoring and evaluation.

16. While potentially less proportionate than option three, this option would be simple for commercial fishers to understand and easier for MPI to administer. It also provides certainty about infringement fees, as it involves a flat fee and focuses on the offending behaviour without the complexity of considering the value of the fish involved.

17. MPI notes that existing total allowable catch setting or catch rebalancing regulatory tools could be considered for use to account for the species and quantity in the offending. This lessens the need to create a complex infringement offence regime that reflects the broad range of species values.

18. A decision to prosecute may still be taken if an infringement offence and fee is insufficient for the seriousness of the offending behaviour, such as multiple offences or large-scale offending. The decision to prosecute will be based on MPI's compliance team's prosecution and infringement policies. However, such a prosecution cannot result in a criminal conviction under the Criminal Procedure Act 2011.

MPI does not prefer the status quo because in the absence of an infringement regime the only way to penalise illegal discarding is through a full court process.

19. While prosecution is appropriate for serious or repeated offending, for example, it is generally not appropriate for low-level offending. This is because prosecution is costly, resource intensive, time consuming, and also often involves large financial penalties that are disproportionate to the offence. As the enforcement authority, MPI must also be satisfied that prosecuting would be in the public interest. In most instances, low-level discarding offences would not meet this test.
20. It would also limit MPI's ability to incentivise compliance. MPI would not have an appropriate tool for responding to less serious breaches of commercial fishing rules. Additionally, the resource intensive nature of prosecutions may result in fishers receiving warnings in situations where all but the most serious non-compliance is detected, limiting MPI's ability to incentivise compliance.

MPI does not prefer option three because it is more administratively burdensome and can result in higher fees for individual offenders

21. Changes over time to deemed values, which the fees would be based on, will result in more frequent updating of the fees specified in this option. As stocks and species change, the quantities used in this option would also need to change. This could become an administrative burden.
22. This option could result in fees per offence that exceed the threshold of \$1,000 for individuals as indicated in the Legislation Design and Advisory Committee Legislation Guidelines.

Consultation showed general support for a flat fee option, but less agreement on the fee amount.

23. Overall, there was more support for a flat fee than no regime or a regime that builds in species, species values and quantities. There was less agreement on what the infringement fee should be as some thought it should be higher than the \$550 that was consulted on, while others lower.
24. On balance, MPI proposes lowering the flat fee that was originally consulted on from \$550 to \$400, given the cumulative impact of wider fisheries management changes on industry, particularly smaller commercial fishers, including the financial impact of the infringement regime. A \$400 fee is based on MPI's existing (reporting) infringements and will be subject to review as MPI learns from implementation.

### Limitations and Constraints on Analysis

25. While the infringement regime applies to all commercial fishing operators, MPI's ability to use camera footage as evidence for offending under the infringement regime is limited to those vessels that have cameras, and which meet the standard of evidence for offending.<sup>8</sup> For other vessels MPI will continue to rely on the use of fisheries observers and fisheries officers to monitor fisher's activity and compliance with the rules.

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<sup>8</sup> Up to 300 inshore vessels at the end of implementation in 2024. Total number of fishing vessels changes from year to year, but 300 vessels with cameras could represent nearly one third of the active fleet.

26. The number of cameras on vessels and the amount of footage MPI is able to review will directly impact the detection of offending and therefore the number of infringements issued. Ahead of each subsequent stage of the camera rollout, MPI will reassess the footage review levels. The integrity or quality of the camera footage, as the main source of evidence for offending, will also influence the effectiveness of the infringement regime.
27. The new landing and discard rules mean it is likely that more unwanted or low-value catch will be returned to land.<sup>9</sup> However, the volumes of unwanted catch are expected to decrease over time due to regulatory and economic incentives for increased use of more selective fishing practices and gear by industry.
28. To be effective, an infringement regime needs to sufficiently deter the offender from doing the prohibited action. We consider that most fishers take the view that there are consequences if they break the rules and will potentially adjust their behaviour accordingly. The infringement regime is built in a way that allows us to adjust it if needed to increase its effectiveness.
29. Many of the quantitative data for the costs and benefits of the infringement regime are not known at this point. MPI will learn more about what these once the regime is underway and MPI has a body of compliance information from on-board camera footage.
30. MPI does not know the full future impact of the \$400 infringement fee on different fishers, apart from what submitters stated the impact will be for them, however the fee is considerably lower than the maximum available penalty under the status quo. Smaller commercial fishers that are issued infringements for offending, may be more financially impacted by the regime owing to their smaller operating margins compared to bigger operators.

### **Consultation**

31. MPI undertook targeted consultation through a series of hui (in person and on-line) with Mandated Iwi Organisations and interested stakeholders, including commercial fishers and industry representatives, recreational fishers, and environmental NGOs. In addition, 28 written submissions were received from a cross-section of those who would be affected by the regulations. The majority were from commercial fishers and industry representatives. Two written submissions were received from iwi.
32. Overall, as noted above, there was more support for a flat fee than a regime that builds in species values and quantities, or no regime at all. There was less agreement on what the infringement fee should be.

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<sup>9</sup> All fish caught, whether they are a QMS species or not, must be reported. All QMS fish caught by commercial fishing must be accounted for within the fisheries management system (i.e., balanced using ACE or through paying deemed values). All QMS species, live or dead, must be landed unless an exemption is issued by the Minister for Oceans and Fisheries. S72 of the Fisheries Amendment Act 1996.

### Responsible Manager

Anne Wietheger

Manager Fisheries Policy

Policy and Trade

Ministry for Primary Industries



09/05/2023

### Quality Assurance

Reviewing Agency:	Ministry for Primary Industries
Panel Assessment & Comment:	The Ministry for Primary Industries Quality Assurance Panel reviewed the Regulatory Impact Statement titled "Infringement regime for retention and discarding offences in the commercial fishing industry". The panel considers that it partially meets the Quality Assurance criteria.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

33. The Act requires that QMS species caught while commercial fishing must be reported, retained, and landed, unless an exception has been issued by the Minister for Oceans and Fisheries.
34. There is evidence that some commercial fishers illegally discard species caught at sea for which there is no legal exception.<sup>10</sup> Examples of drivers for this behaviour can include when fish has been harvested that exceeds catch entitlement thresholds under the QMS, when there is better financial return for catch of a certain size or different fish stocks (high grading), and for operational considerations, such as depleted storage space.
35. In the absence of an infringement regime for discarding and abandoning catch:
  - the only way to penalise illegal discarding is through prosecution. While prosecutions are appropriate for serious repeated offending, they are generally not appropriate for low-level offending. Prosecutions are costly, resource intensive, and time consuming. They also often involve large financial penalties. These factors mean that MPI must be satisfied that taking a prosecution would be in the public interest. In most instances, less serious discarding offences would not meet this test.
  - fishers may be less compelled to avoid low level offending if they perceive there is a lower likelihood of being held to account via prosecution.
  - negative impacts of discarding continue, including fish wastage, undermining of stock management measures and damage of New Zealand's reputation for sustainably producing high-quality seafood.

### What is the policy problem or opportunity? What objectives are sought in relation to the policy problem?

36. Currently, MPI has no proportionate enforcement response to penalise illegal low-level discarding or abandoning of QMS species at sea by commercial fishers.
37. The recently passed Amendment Act amended the Act to enable the creation of a new infringement regime to proportionately respond to this offending.<sup>11</sup> The infringement regime will be supported by the expansion of camera coverage on inshore vessels, by providing evidence of such offending.<sup>12</sup>
38. An infringement regime will provide MPI with an additional enforcement tool to address low-level discarding offences without the need for prosecution, enhancing MPI's ability to incentivise compliance.

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<sup>10</sup> <https://www.mpi.govt.nz/legal/legislation-standards-and-reviews/fisheries-legislation/independent-review-of-prosecution-decisions/>

<sup>11</sup> The amendments to the Act will also enable creation of a demerit point system to target repeated lower-level offending. However, this system is not proposed to be implemented at this stage to allow time for the establishment of cameras on vessels and the evaluation of the infringement regime so that MPI can assess its impact on rates of offending.

<sup>12</sup> <https://www.mpi.govt.nz/fishing-aquaculture/commercial-fishing/fisheries-change-programme/on-board-cameras-for-commercial-fishing-vessels/>

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

39. The following criteria were used to assess and compare the proposed infringement regime options, including the status quo. These follow the guidance from the Ministry of Justice. They also align with criteria used in the development of reporting-related infringement offences for commercial fishing in other countries, such as Chile, UK, and Australia.
- **Incentivises compliance or desired behaviour change:** the infringement fee is set at a level where it can act as an effective deterrent for the non-compliant behaviour.
  - **Administratively efficient:** the infringement regime is straightforward and easy to administer.
  - **Proportionality:** the infringement fee is proportionate to the offence.
  - **Simple to understand:** the infringement fee is clear and transparent and allows people to easily understand what the size of the penalty is for less serious offending.

### What scope will options be considered within?

40. The Ministry of Justice endorsed a distinction between individuals and corporations in determining a maximum infringement fee because the Fisheries Act 1996 allows the fee to be a maximum of \$3,000 for all offenders. However, it would be difficult to identify individual offenders through camera footage and would raise security and privacy concerns. The Act also states that the permit holder, who is an individual, receives the infringement, regardless of who actually offends within the business. MPI's view is that the permit holder's liability under the law means that they are responsible for all of their fishing operations, such as the education, training, and oversight of all of their employees so that they follow the rules.<sup>13</sup>
41. MPI's compliance strategy is driven by the VADE model.<sup>14</sup> VADE stands for Voluntary, Assisted, Directed, Enforced. This model considers the actions and behaviours that indicate a fisher's attitude to compliance and then sets out what the appropriate interventions are for encouraging compliance. The central principle of VADE is that compliance interventions should be proportionate with the level of offending.
42. The infringement regime will operate within MPI's compliance team's prosecution and infringement policy framework. MPI will consider whether to issue an infringement for an infringeable offence, only where the criminal standard of proof (beyond reasonable doubt is met) and where the offending is not in the public interest to prosecute. Factors that will be considered in determining the course of action can include (but are not limited to), the seriousness, continuity or repetition of offending, motivation (if any) of the offending (including whether it was deliberate or seriously negligent), despite fishing offences being 'strict liability', whether the defendant has relevant previous warnings or convictions, what penalty a court might impose, has the defendant rectified the loss or harm caused, and if there are any extenuating or mitigating circumstances.

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<sup>13</sup> This includes reference to defences available, including S241 S245 of the Fisheries Act 1996.

<sup>14</sup> [Compliance delivery model](#), Fisheries New Zealand (2019)



43. Infringement options could in the future be considered with existing total allowable catch setting or catch rebalancing regulatory tools. For example, reporting mechanisms may be a complementary deterrent for discarding and abandoning catch. Regulation 44 of the Fisheries (Reporting) Regulations 2017 allows MPI to direct fishers to re-declare their catch, and consequentially re-balance and account for their it against entitlements, when there is reason to believe reporting has either not occurred or is inaccurate.<sup>15</sup>

### What options are being considered?

44. MPI has developed two options for an infringement regime (in addition to the status quo) that could be used to enforce compliance for situations where commercial fishers retain, return, or abandon quota species in breach of the relevant requirements. These options have been compared with the status quo (proceeding without an infringement regime) and have been developed in accordance with the Ministry of Justice's guidelines.

#### Option One – Status Quo

45. This option involves no infringement regime for offences involving illegal retention, abandonment, or return of QMS fish or other animal that are aquatic life. This means that MPI would not have an appropriate tool for responding to less serious breaches of commercial fishing rules for retention, return or abandonment and prosecution would remain the only statutory sanction, limiting MPI's ability to incentivise compliance.

#### Option Two – Infringement offence with flat fee

46. Under this option, a breach of the rules by retaining, returning, or abandoning of 50 or fewer QMS fish or other animal that are aquatic life means a permit holder is liable for an infringement notice with a \$400 fee. However, prosecution would remain an enforcement option for serious offending, such as repeat offending. The \$400 is lower than the flat fee of \$550 that was consulted on. The fee level takes into consideration an appropriate penalty to provide sufficient incentives to discourage repeat offending and the cumulative impact of wider fisheries system reforms on industry.

47. MPI considers that the infringement fee of \$400 provides a reasonable deterrent in a range of scenarios, without being overly severe. For example, as a deterrent against offending to avoid costs associated with balancing catch with ACE or by paying deemed value.<sup>16</sup>

48. Assessment of other penalty regimes internationally shows that \$400 is considerably lower for comparable discarding offences. As this is often the only penalty for the offence, there is less accountability under legislation for the economic value of the discarded catch itself than there is in New Zealand. These countries also do not have on-board cameras to monitor fisher behaviour and therefore might rely on higher financial penalties to act as a deterrent to discard.

49. Under the option, offences involving more than 50 QMS fish or other animal that are aquatic life would remain liable for a full criminal penalty. This feature is consistent with the structure of section 72 of the Act which provides for two levels of offences and penalties, one for 50 or fewer QMS fish or animals that are aquatic life and one for more than 50.

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<sup>15</sup> This means that all fishers are financially accountable for what they catch in one of two ways: either by covering it with ACE or by paying the deemed value (as set by MPI) based on an estimation of the catch discarded or abandoned, provided by the fisher.

<sup>16</sup> ACE is the catch right, which gives the holder the right to take a certain weight of a fish stock during a fishing year. <https://www.fishserve.co.nz/information/annual-catch-entitlement>

### Option Three - Infringement offence with proportional fee

50. This option proposes different infringement fees depending on the quantity and species unlawfully retained, returned, or abandoned during the offending.
51. Species would be assigned to one of three categories, depending on thresholds related to their current annual average deemed value.
52. Species in the higher categories would incur a larger fee for fewer fish (see Table 1). In scenarios where different species from a range of categories have been unlawfully retained, returned, or abandoned in a single day, infringement fees would be added together (up to a maximum of \$3000, as provided for in the Act).
53. The infringement fees proposed in this option would exceed deemed values in most circumstances. However, the value of some catch, such as a single southern bluefin tuna, may exceed the maximum infringement fee of \$3000.
54. Linking the size of the infringement fee to the species and quantity retained, returned, or abandoned makes this option more proportional to the scale of offending.

**Table 1: example of species and quantity categories for determining infringement fee**

<b>Category one</b>	Number of fish	Less than 50	50 - 100	Over 100	
	Fee amount	\$200	\$400	\$1000	
<b>Category two</b>	Number of fish	Less than 10	10 - 50	50 – 100	Over 100
	Fee amount	\$400	\$600	\$1200	\$2000
<b>Category three</b>	Number of fish	Less than 5	5 - 10	Over 10	
	Fee amount	\$600	\$900	\$2000	

55. For example, a commercial fisher who illegally retains, returns, or abandons:
- 20 fish of a category one species (such as Red Cod) would incur a \$200 fee.
  - 20 fish of a category two species (such as Snapper) would incur a \$600 fee.
  - 7 fish of a category three specie (such as Kingfish) and 5 of a category one species (such as Kahawai) would incur a \$1,100 fee.

### How do the options compare to the status quo?

56. The criteria set out above has been used to assess the options and identify a preferred option. The table below provides a summary of the assessment of the three options.

## Options assessment table

- ✓ option meets the criterion (✓ meets, ✓✓ strongly meets)
- X option does not fulfil the criterion
- N/A criterion is not applicable to the option

Options	Criteria			
	Behaviour change	Administratively efficient	Proportionate to the level of offending	Simple to understand
Option 1 Status quo	X Without an infringement regime there are limited tools to penalise less serious offending and incentivise behaviour change.	X Enforcement will depend on education, warnings, or prosecution. Prosecution is administratively burdensome.	X Prosecution is the only enforcement tool available that involves a penalty. However, it is not appropriate for less serious offending.	X An infringement option is not in place for less serious offending. Is inconsistent with the enforcement approach described in recent Fisheries Act amendments.
Option 2 Infringement offence with flat fee	✓ Provides a compliance tool for addressing less serious offending and encouraging behaviour change. Doesn't assume specific penalties to disincentivise discard behaviour.	✓✓ A flat fee arrangement is relatively simple and has a relatively lower cost to administer.	✓ Will provide for more proportionate enforcement compared to the status quo. But the penalty itself may not be proportionate to economic consequence of the offence.  Prosecution remains an option for serious offending.	✓✓ Single fee for a range of less serious offending is simple to understand.
Option 3 Infringement offence with proportional fee	✓✓ Provides a compliance tool for addressing less serious offending and encouraging behaviour change. Will particularly incentivise compliance for high-value species.	X More prescribed and complex system will be less efficient determining which fee is appropriate for the offending.  Changes to deemed value over time may require update of species categories specified in the regulations.	✓✓ Provides discrete categories of offending and fees in proportion to the species and quantity of fish landed or discarded.  Prosecution remains an option for serious offending.	X System is more prescribed and complicated, involving different species and quantity categories, making it harder for parties to understand what their liability is.

## Consultation

57. MPI undertook pre-consultation mid-2022 to help develop the infringement options and test their workability before official consultation. These included with Māori through MPI's network of Iwi Fisheries Forums and with Mandated Iwi Organisations.
58. MPI also pre-consulted with key stakeholders, including: Te Ohu Kaimoana, fishing industry leaders, recreational fishing representatives, eNGOs (environmental non-government organisations).
59. MPI formally consulted on the proposals through the release of a public discussion document from 16 November to 15 December 2022. Consultation included 17 online meetings with interested parties, including one with Ngāi Tahu and two Iwi Fisheries Forums. MPI also received 28 written submissions, most from the fishing industry, many aligned to specific fishing groups. Ten were received from individual fishers, two from iwi, and one from the Environmental Law Initiative.
60. The two iwi submissions were from Ngāi Tahu and Ngā Kaihao and they raised no concerns about the infringement proposals.

61. Fishers wanted to know more of the rationale for the flat fee of \$550 and thought it too high for a low-level offence.
62. Smaller inshore fishers felt the Act unfairly targeted them because they have relatively lower means to pay an infringement than larger commercial fishers. Their operational costs are tighter and having to pay a \$550 infringement fee would be a significant additional cost. Post consultation, taking this feedback and other factors into consideration, MPI has proposed lowering the flat fee from \$550 to \$400.
63. Several fishers commented on how the proposed options did not offer realistic solutions to protect fishers in cases of accidental loss, such as in trawling in bad weather, where fish can be unintentionally lost during the net retrieval, and longlining where catch can be predated when being retrieved. This relates to the existing strict liability of fishing offences. This is a common feature in the Act (as well as in other resource legislation) and is meant to encourage fishers to optimise their fishing practises.
64. While some supported a regime that accounted for quantity, species, and their different values, they did not agree with the quantity of fish assigned to each category, nor the categorisation of those species used in the exemplars. While rationale for the practical exemplars was given, these were not necessarily the final settings of the option.
65. Environmental organisations thought the fee amount needs to be higher to better reflect the significant impact discarding can have on the marine ecosystem, and to discourage bad fishing practise. The best available tools MPI has had to reduce the impact unlawful discards has on the marine ecosystem is by continuing to improve fisheries management processes, including taking an ecosystem-based approach, and by enforcing the legal requirement for fishers to financially account for their unlawful discarding or abandoning of QMS catch. This happens through existing reporting regulations and will now be supported by the infringement regime.
66. Overall, there was more support for a flat fee than a regime that builds in species values, species, and quantities, or no regime at all. There was less agreement on what the infringement fee should be.

### **MPI prefers a flat fee option**

67. A flat fee would be administratively efficient to apply and easier to understand, compared to a tiered fee option (option 3). This provides certainty about the infringement fee amount, without the complexity of considering the value of the fish involved. Fishers favoured an option that was easy to understand and provided certainty about how the infringement regime works and its associated fees. This would not be the case with the fee option based on quantity and species as it may be reviewed whenever MPI reviewed deemed values. This is not always undertaken for all species at the same time.
68. The simple flat fee option can be more easily adapted over time to ensure it remains effective and relevant, as MPI learn more about the offending from camera footage review and the application of the infringement regime itself. In doing so, MPI would seek to ensure that the flat fee option continues to meet its objectives and is appropriately set.
69. A decision to prosecute the illegal retention, return, or abandonment of quota species may still be taken if an infringement offence and fee is insufficient for the seriousness of the offending behaviour.

### **Why MPI does not prefer the status quo**

70. In the absence of an infringement regime, MPI will not have a proportionate enforcement tool to address low-level discarding offences. Prosecution would remain the only option.

## Why MPI does not prefer a proportionate fee based on species and quantity

71. Option 3 could result in fees that exceed the Ministry of Justice’s preferred threshold of \$1000 for individuals and, in some circumstances, meet the maximum possible infringement fee of \$3000. While the Act allows for this, MPI initially prefers an option within the Ministry of Justice’s guidelines as this is a new regime and the extent of the impact of fees on fishers is unknown.
72. This option is administratively complex and may make it costly to implement. Each species discarded or abandoned would need to be confidently identified (e.g., by review of the camera footage) as the source of evidence for offending and to determine the appropriate penalty fee. This would likely require an increase in MPI resources.
73. Changes to deemed values over time may also require more frequent updating of the species categories, quantities, and fees specified in the regulations. As mentioned already, the fees based on quantity and species would be reviewed annually, or whenever MPI review deemed values.

## What are the marginal costs and benefits of the preferred option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Commercial Fishers	<ul style="list-style-type: none"> <li>Infringement fee for offending.</li> <li>One way an infringement is avoided is by changing the fishing practise and gear to fish more selectively. This means the fishing will need to invest in new technology or other means to help them do this.</li> </ul>	Impact on commercial fishers cannot be determined at this stage because: <ul style="list-style-type: none"> <li>There is currently no infringement regime for landing and retention offences.</li> <li>Level of impact will depend on level of low-level offending by commercial fishers.</li> <li>Infringement regime will be supported by the further rollout of on-board cameras.</li> <li>Level playing field: offending by those fishers with cameras will be equally detectable. However, note that the planned roll-out of cameras will not be completed until 2024.<sup>17</sup></li> </ul>	<ul style="list-style-type: none"> <li><b>High:</b> once cameras and regime are in place.</li> </ul>

<sup>17</sup> Notwithstanding cameras, breaches might also be detected by Fisheries Officers or Observers. MPI/Fisheries New Zealand will retain the ability to use enforcement discretion and to target enforcement activities according to compliance risks. Education and warnings will be an important part of the enforcement toolkit, particularly as cameras bed in.

		<ul style="list-style-type: none"> <li>Larger operators will likely have more ability to pay the infringement fee over those that are smaller</li> <li>Larger operators might have a better ability to improve their fishing practices and avoid the unwanted catch that creates the reason to discard in the first place.</li> </ul>	
Regulator (MPI)	<ul style="list-style-type: none"> <li>MPI Camera Review Team cost: resource to review camera footage and detect footage.</li> <li>MPI: resource demand/administration costs on the Courts when an appeal occurs.</li> </ul>	<ul style="list-style-type: none"> <li>Costs for the infringement regime will be met by baseline operational budgets.</li> <li>As this is a new regime, MPI will need to apply resources to its implementation. This will particularly be in the area of ongoing management of on-board cameras, detecting offences and processing infringements to ensure the regime runs efficiently.</li> <li>All infringement fees will be paid into the Crown account and not fund the regime.</li> </ul>	<b>High:</b> MPI is the regulator and funds the enforcement of the infringement regime
Others (e.g., wider govt, consumers, etc.)	<ul style="list-style-type: none"> <li>Consumers: the cost of not complying may be passed on to consumers</li> <li>The Courts resource demand/administration costs on the Courts when an appeal occurs.</li> </ul>	<ul style="list-style-type: none"> <li>This cannot be attributed dollar values yet as they may or may not occur. The level of impact will depend on the amount of low-level offending by commercial fishers. More offending will mean paying more infringement fees and this can have an economic flow on effect for consumers in raising prices</li> <li>If infringements are appealed, they may increase the Courts' workload.</li> </ul>	<p><b>Low:</b> has largely yet to be determined and costs to other government departments are likely to fund involvement as business as usual.</p> <p><b>Low:</b> large numbers of appeals and unpaid fees are not anticipated but remain to be seen.</p>
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	<ul style="list-style-type: none"> <li>Improved perception of the sector because of less discarding.</li> </ul>	<ul style="list-style-type: none"> <li>The positive perception may lead to better sales and markets may look favourably on New Zealand.</li> </ul>	<ul style="list-style-type: none"> <li><b>Medium.</b> It is not known if this will occur, but it has been a result in the past, especially with negative perceptions.</li> </ul>

Regulators	<ul style="list-style-type: none"> <li>• More accurate data to inform fisheries management</li> <li>• Improved compliance through a new tool to proportionately enforce compliance</li> </ul>	<ul style="list-style-type: none"> <li>• This should lead to a greater evidence base for decisions in the way fisheries is managed. E.g. stock management decisions.</li> <li>• Fishers will know that there is a financial consequence to this kind of offending and may adjust their behaviour to avoid this.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Medium.</b> While this will provide MPI with more and accurate data. The value of the data depends on the detail that MPI collects in administering the regime. A flat fee will give data that an offence has been committed, but not necessarily the species or quantity involved.</li> <li>• <b>Medium.</b> It is not known if this will be a sufficient deterrent for all fishers to adjust their behaviour.</li> </ul>
Others (e.g., wider govt, consumers, etc.)		<ul style="list-style-type: none"> <li>• Consumers can know that something is being done to penalise discarding.</li> <li>• Environmental benefits from fishers increasingly catching only the fish they want.</li> </ul>	

## Section 3: Delivering an option

### How will the new arrangements be implemented?

74. The timing of the proposed regime coming into effect is pending Cabinet decisions.

#### Implementation

75. Some key aspects for successful implementation are:

- Systems and processes for the infringement regime being operational, including integration into relevant information technology systems operated by Fisheries New Zealand for compliance actions.
- MPI's Prosecution, Legal, Compliance, and Monitoring teams finalising their systems and processes for the infringement regime.

76. The monitoring of discarding will come from reviewing footage from on-board cameras and other compliance monitoring. Concurrent catch and trip report information will form part of MPI's assessment to determine whether an offence has been committed.

77. When the infringement regime is in place and in the event MPI determines that an infringement penalty is the best form of intervention, a notice will be issued to the permit holder stating the nature of the offence and including the number of QMS fish, as well as photographic evidence from on-board cameras, if available.

78. There is a 28-day period during which the liable party may choose to appeal the penalty. If this period lapses without appeal, the infringement fee must be paid to the Ministry of Justice. The process will be outlined in correspondence when an infringement is issued. MPI will develop operational guidance on the full process.

79. Escalation of the penalty for an offence can occur in two ways. If a person challenges an infringement notice in Court and is convicted, the maximum penalty that can be imposed by the Court for these section 72(4) infringement offences (unlawfully returning, abandoning, or retaining 50 or fewer QMS fish or other animals that are aquatic life in any 24-hour period) is a fine not exceeding \$10,000.

80. Also, an escalated penalty provision for repeat offending contained in the Act (section 252(3A)) will be available to the courts where a defendant has been 'deemed convicted' by the Courts on more than one occasion in a three-year period.<sup>18</sup> Once a fisher has been deemed convicted once, then on a second and subsequent deemed conviction, a higher maximum penalty of up to \$250,000 and other sanctions, such as discretionary forfeiture and banning will remain available to the Court.
81. MPI may decide to use existing associated regulatory powers or mechanisms to improve behaviour relating to reporting and accountability for harvest and mortality of fish such as total allowable catch setting or catch rebalancing tools.
82. To support implementation, MPI will develop an education approach to assist fishers with the new regulation.

### **How will the new arrangements be monitored, evaluated, and reviewed?**

83. MPI is developing a monitoring and evaluation framework to support implementation of this regulation and track if new policies achieve the intended outcomes. The framework is made up of the following components:
- Measuring the short to medium term outcomes, and includes intervention logic models, and performance indicators.
  - Recording the baseline evidence methods and sources, this includes a collection of tools and methods to collect and evaluate data.
  - A plan to carry out monitoring and evaluation activities, this includes how and when to track progress using the indicators.
84. Monitoring and evaluation will use new and existing means of data collection, including the quantity and species being discarded illegally, the extent of illegal behaviour detected relative to the amount of monitoring, and analysis of compliance tools that have been used.
85. Periodic reviews will be scheduled to examine the effectiveness of the infringement regime and determine whether additional changes are needed, such as the fee amount and if it still achieves the desired behaviour change.

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<sup>18</sup> 'Deemed convicted' does not mean convicted. A fisher is deemed convicted when the court orders a penalty for an infringement offence via section 375 of the Criminal Procedure Act 2011; this can occur when an infringement offence is proceeded with by way of charging document and the fisher is found guilty or pleads guilty. It can also occur when an infringement offence is proceeded with by issuing an infringement notice, and the fisher is found guilty after defending the notice or if the fisher has requested a hearing as to the amount of the infringement fee. No criminal conviction is ever recorded for an infringement offence.