

Sustainable ingenuity



BY KARYN VAN WIJNGAARDEN, LLB, BSC, SOLICITOR WITH OCEANLAW NEW ZEALAND

Sustainability, in the world of commercial fishing operations is, and should be, the touchstone of all activities. Of course we all want our fishing sector to be profitable and internationally recognised, but such successes are rightly balanced against the on-going viability and sustainability of our fish stocks. Industry has long relied upon fundamental elements of the Quota Management System, such the setting of the annual Total Allowable Commercial Catch in fisheries management areas, to vouch for its sustainability, but with the voices of environmental activism getting louder and louder, it no longer seems the industry's shouts are being heard, and perhaps greater steps are necessary.

I was in attendance at the Seafood Industry Conference in Auckland recently, where the latest innovation, "Precision Seafood Harvesting" was unveiled. This revolutionary fishing equipment is the latest in cutting edge technology in the world of sustainable fishing. The innovation is being touted as a catalyst for the future, designed to enable fishers to land fish on the deck of a vessel alive, and in a state that allows the release of bycatch and undersize fish, reducing the overall impact of the fishing activity on various fish stocks.

A cod-end, like all trawl gear, is required to conform to the specifications set out in the Fisheries (Commercial Fishing) Regulations 2001 and has traditionally been constructed of single or double strand mesh. For those who haven't seen any of the press releases over the last week, the new technology employs a different cod-end system on a fishing net.

Traditional mesh cod-ends do not generally allow smaller fish to escape particularly well (if at all), and this has posed some long standing problems, such as the condition of fish by the time they are brought on board the vessel. The volume of fish compacted into a cod-end can result not only in quality issues in landed fish but any undersize fish, or fish not subject to the QMS that is caught in the net, may not be in all that healthy a state on its return to the sea.

The PSH effectively sizes fish at depth, allowing smaller fish to swim free through the "escape portals" in the net and enables species that are caught inadvertently to be returned to the sea in a more healthy state than would generally be expected from a traditional cod-end.

There are many questions raised by this revolutionary fishing equipment, and, from our perspective the legal and compliance questions are not insignificant. Current fisheries law is premised on the operation of traditional fishing

methods and equipment and is likely to require significant amendments, in order for this brave new world of fishing to become a reality.

It appears that the physical structure of the PSH is unlikely to comply with the specifications of the Fisheries (Commercial Fishing) Regulations at present, and that some amendment would be required to permit the general use of this type of fishing apparatus.


In addition, Section 72 of the Fisheries Act 1996 both prohibits the dumping of fish that is subject to the QMS and is of legal size, and requires the return of any species that is subject to the QMS, that is undersize, regardless of whether that fish is alive or not. Species that are in the QMS and are of legal size cannot be returned to, or abandoned in, the sea, save for those species that are listed in Schedule 6 of the act. If PSH is to realise its full potential, some amendments to this regime are likely to be required.

That in turn raises another complex legal issue, of when fish are "taken" for the purposes of the reporting requirements under the Fisheries Act. Historically, there has been little judicial agreement about when fish are "taken", for the purposes of the Fisheries Act. "Taken" is generally considered to occur when the fish is in the certain possession

A recent decision of the district court has taken the position that fish are "taken" for reporting purposes when they enter the net

and control of the fisher. When that possession and control is achieved can vary, depending on the type of fish and fishing method. Paua or scallops, for example, are almost certainly in the possession and control of the fisher when they are in that fisher's catch bag.

Interestingly, a recent decision of the district court has taken the position that fish are "taken" for reporting purposes when they enter the net, in the context of trawling operations. The differences between a traditional trawl net and cod-end and the PSH design, where the likelihood of fish escaping is significantly higher, will almost certainly require a reconsideration of that legal position.

New Zealand is again proving itself to be at the forefront of industry technology, and any required legal and regulatory changes should not provide a barrier to the successes of such endeavours, but only serves as a reminder of the vast considerations that such a development in technology requires. 

OCEANLAW NEW ZEALAND 
The only law firm in the South Pacific dedicated to the sea

14 New St, Nelson. PO Box 921, Nelson 7040. T +64 3 548 4136. F +64 3 548 4195. Freephone 0800 Oceanlaw. Email justine.inns@oceanlaw.co.nz www.oceanlaw.co.nz