

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Fishery Aggregation Limits – Revision 2009
Paper No: 05/09
Date: 29 January 2009
Report of: Director of Fisheries

1.0 Purpose

This paper proposes amendments to the Fisheries (Aggregation Limits) Regulations 2005. The intent is to make the operation and applicability of the aggregation limits clearer. In considering the proposed change to the regulations it has become apparent that the relevant section of the primary legislation; The Fisheries (Conservation and Management) Ordinance 2005, also requires amendment.

2.0 Recommendations

That Executive Council be advised to;

- a) Recommend the amendment of section 58 (Domination of fisheries sector) to allow aggregation limits to be applied both to a 'quota management stock' (current law) and an 'established fishery' (proposed amendment).
- b) Replace the current aggregation limits with the table set out at 4.3 below.
- c) Amend the aggregation limit on catch entitlement in the Restricted Finfish – Pelagic fishery to 100% to reflect current arrangements.
- d) Amend the aggregation limit on catch entitlement in the Restricted Finfish fishery to 50% which reflects the original recommendation for this fishery.

3.0 Summary of Financial Implications

None

4.0 Background

- 4.1 Aggregation limits were advocated in the original policy debate on the new fishery system and are provided for in the 2005 Fisheries Ordinance. The purpose of aggregation limits is to control the proportion of quota, total allowable catch, or total allowable effort

which any company can hold in a fishery, should such limits be desired. Provision for imposing aggregation limits is set out in Section 58 of the 2005 Fisheries Ordinance.

4.2 The original aggregation limits were set by way of Exco paper 302/05 which resulted in the current ‘aggregation regulations’. These are appended. The original policy discussion considered that aggregation limits should be related to the volume of catch of individual species. Hence, in terms of quota holdings low volume species may be owned 100% by a single company, whereas the limit on middle volume species is 40%, and 30% on high volume species. The current aggregation limits reflect this approach. These limits would work well if all species were controlled by total allowable catch and if most fisheries involved one or two species. In this scenario all fisheries could be controlled by total allowable catches and quotas and fishing companies could effectively have shares in individual transferable quota of quota management stocks, which would work with current regulations. In practice most Falkland Island fisheries are controlled by total allowable effort, and additionally a number of them are multi-species in nature. In order for aggregation limits to be applied effectively they need to be related to ownership of quota in established fisheries rather than proportion of catch. The volumes of catch of the main species on particular license types can be used to determine whether the limit should reflect a high, medium, or low volume species.

4.3 The ExCo paper which considered this issue originally also included the following table:

Aggregation Limits

Fishery	ITQ/PQ	CE
Finfish	40%	60%
Scallops	100%	100%
<i>Illex</i>	30%	50%
<i>Loligo</i>	30%	50%
Skate	40%	60%
Squid and Restricted Finfish	30%	50%
Restricted Finfish – Pelagic	30%	75% *
Restricted Finfish	30%	50%
Toothfish – Longline	100%	100%

* Adjusted in ExCo from 50%

The fisheries listed are those established by Schedule 2 of the 2005 Fisheries Ordinance.

It is considered that it would be preferable to amend the aggregation regulations to reflect the content of this table. The situation would be clear for all as limits clearly relate to ownership of quota or utilisation of catch entitlement. The percentage of catch entitlement which could

be used by a single company in the Restricted Finfish – Pelagic fishery would need to be set at 100% to reflect current arrangements. Fortuna Ltd holds 30% of the ITQ in the Restricted Finfish – Pelagic fishery. The Crown holds the remaining 70% of the ITQ and leases the full catch entitlement to Fortuna Ltd.

- 4.4** In making the change above it is also recommended that the aggregation limit on catch entitlement in the Restricted Finfish fishery be set at 50%. This was the original recommendation included in Exco paper 302/05 which resulted in the current aggregation regulations. It was in considering that paper and a related paper (319/05) that the limit was increased to 75% to allow for the situation in the Restricted Finfish – Pelagic fishery. If that issue is overcome by setting the aggregation limit on catch entitlement in the Restricted Finfish – Pelagic fishery at 100% as advocated above the limit on the Restricted Finfish fishery need not be as high as 75%.
- 4.5** The proposed change to the aggregation regulations has no immediate impact on current quota holders in the fishery. This proposal, with the exception of the issue set out in 4.4, was considered by the Fisheries Committee on 3 December 2008. The proposal had been circulated to FIFCA for comment, none were received. It was agreed the paper should go forward to Exco.

5.0 Financial Implications

There are no direct financial implications.

6.0 Legal Implications

- 6.1** If the recommendation is accepted the current aggregation regulations will require amending to reflect the table set out in 4.3. The aggregation limit on the use of Catch Entitlement in the Restricted Finfish – Pelagic fishery will need to be set at 100% to reflect current arrangements. The aggregation limit on the use of catch entitlement in the Restricted Finfish fishery could also be amended to 50%.
- 6.2** Principal Crown Counsel has considered the issue and has identified that section 58 of the primary legislation (The Fisheries Ordinance) will also require amendment to allow the regulations to be amended as desired. This will be necessary as the first step and will need to be the subject of a Bill to the Legislative Assembly. If the recommendations in this paper are approved the bid for drafting work will need to be added to a paper on legislative drafting priorities due to be considered by Exco in February.

7 Human Resources Implications

None.

SUBSIDIARY LEGISLATION

FISHERIES

Fisheries (Aggregation Limits) Regulations 2005

(S. R. & O. No: 28 of 2005)

Made: 22 December 2005

Published: 23 December 2005

Coming into force: 1 January 2006

IN EXERCISE of my powers under section 223(1) and (2) of the Fisheries (Conservation and Management) Ordinance 2005(a) and of all other powers enabling me in that behalf, I make the following Regulations —

Citation and commencement

1. This Order may be cited as the Fisheries (Aggregation Limits) Regulations 2005 and shall come into force on 1st January 2006.

Interpretation

2.—(1) For the purposes of regulation 3 “the prescribed percentage” has the same meaning as it has in section 58(1)(c) of the Fisheries (Conservation and Management) Ordinance 2005.

(2) For the purposes of regulation 4 “prescribed percentage” means the percentage appearing in relation to a quota management stock in question in the second column of Schedule 2.

(3) For the purposes of these regulations every stock described in the first column of each of Schedules 1 and 2 is to be taken to correspond to the species of a same name if it appears in the second column of Schedule 2 to the Fisheries (Conservation and Management) Ordinance 2005(b).

Prescribed percentages of ITQ

3. The percentages appearing in the second column of Schedule 1 in relation to a stock mentioned in the first column of that Schedule shall be the prescribed percentage (“the aggregation limit”) of Individual Transferable Quota in relation to that stock for the purposes of section 58(2) of the Fisheries (Conservation and Management) Ordinance 2005.

(a) No. 14 of 2005

(b) i.e. Schedule 2 to that Ordinance as replaced by SR&O No 26 of 2005

Prescribed percentages of Catch Entitlement

4.—(1) The percentage appearing in the second column of Schedule 2 in relation to a stock mentioned in the first column of that Schedule shall be the prescribed percentage (“the aggregation limit”) of Catch Entitlement in relation to that stock for the purposes of section 58(2) of the Fisheries (Conservation and Management) Ordinance 2005, as applied in relation to Catch Entitlements by subsequent paragraphs of this regulation.

(2) Section 58 of the Fisheries (Conservation and Management) Ordinance 2005 shall apply in relation to Catch Entitlement in relation to quota management stocks as it does in relation to Individual Transferable Quota in quota management stocks, and so that in the application of that section to Catch Entitlement —

(a) every reference to Individual Transferable Quota shall be replaced by a reference to Catch Entitlement; and

(b) every reference to the Individual Transferable Quota Ownership Register shall be replaced by a reference to the Catch Entitlement Register.

SCHEDULE 1

Aggregation Limits in respect of Individual Transferable Quota

Column 1 Quota management stock	Column 2 Prescribed percentage
1. Blue Whiting	30%
2. <i>Illex argentinus</i> and <i>Martialia hyadesi</i>	30%
3. <i>Loligo gahi</i>	30%
4. Hoki (<i>Macruronus magellanicus</i>)	40%
5. Red Cod	40%
6. Skate (<i>Rajidae</i>)	40%
7. Kingclip	100%
8. Hake (<i>Merluccius spp</i>)	100%
9. Toothfish (<i>Dissostichus Elginoides</i>)	100%
10. Scallops	100%

SCHEDULE 2

Aggregation Limits in respect of Catch Entitlement

Column 1 Quota management stock	Column 2 Prescribed percentage
1. Blue Whiting	75%
2. <i>Illex argentinus</i> and <i>Martialia hyadesi</i>	50%
3. <i>Loligo gahi</i>	50%
4. Hoki (<i>Macruronus magellanicus</i>)	60%
5. Red Cod	60%
6. Skate (<i>Rajidae</i>)	60%
7. Kingclip	100%
8. Hake (<i>Merluccius spp</i>)	100%
9. Toothfish (<i>Dissostichus Elginoides</i>)	100%
10. Scallops	100%

Made this 22nd day of December 2005

H.J.S. Pearce C.V.O.,
Governor

EXPLANATORY NOTE

(not forming part of the above Regulations)

The above Regulations fix aggregation limits (the maximum percentage a company and its associates are permitted to hold) in respect of Individual Transferable Quotas and Catch Entitlements in any specified quota management stock. It also applies, with the necessary modifications to section 58 of the Fisheries (Conservation and Management) Ordinance 2005 to Catch Entitlements.