

Office of the Minister of Conservation

Chair

Cabinet Economic Development Committee

IMPORTATION OF TROUT MEAT AND TROUT PRODUCTS

Proposal

1. The Customs Import Prohibition (Trout) Order 2018 (LI 2018/165) expires on 29 September 2021. This paper seeks Cabinet's agreement to continuing the prohibition on the importation of trout meat and trout products.

Executive Summary

2. Trout have long been regarded as 'non-commercial' species in New Zealand. The sale of wild-caught trout and the commercial farming of trout are prohibited by the Conservation Act 1987 and Fisheries Act 1996. The legislative arrangements for the recreational trout fishery aim to protect its sustainability and values.
3. Controls on importing trout have been in place since 1998. The importation of trout meat is generally prohibited by the Customs Import Prohibition (Trout) Order 2018 (CIPO). The CIPO does, however, allow the Minister of Conservation to approve imports of trout and trout products, potentially subject to conditions that are not inconsistent with the import prohibition. The import of trout is also subject to import health standards (IHSs) under the Biosecurity Act 1993.
4. The current CIPO expires on 29 September 2021, and if a continuation of the controls on trout imports is desired, a new Order needs to be put in place.
5. The New Zealand wild trout fishery provides major recreational and economic benefits, but there are sustainability concerns for parts of the fishery. Allowing the importation of trout and trout products for sale, thereby creating a legitimate market for imported trout, could incentivise some people to illegally sell wild trout for financial gain. Any significant increase in take (anglers taking more fish or increased poaching) to service an illegal market could threaten the sustainability and associated recreational and economic values of parts of the wild trout fishery. Fish and Game Councils, recreational anglers, and businesses supporting them would strongly oppose changes that enabled the sale of trout.
6. There is some interest from the food industry in being able to import trout for the purpose of sale, but the extent of consumer demand is unknown. Allowing the CIPO to lapse would allow the import and sale of trout and provide greater consumer choice.
7. Expiry of the import prohibition would not allow domestic farming because of the other current legislative barriers. In response to a 2017 petition and subsequent select committee recommendation for a review of those barriers, the Government decided [CBC-21-MIN-0022] and publicly announced on 16 February 2021 that, "A review of legislation preventing trout farming is not a priority for the Government at this time." Consequently, no public consultation has been undertaken in preparing this paper as that would have amounted to a review of the non-commercial status of trout.

OIA section 9(2)(h)

9. Officials considered two main options:
- Option 1: Continuing the import prohibition using the statutory vehicle under the Customs and Excise Act 2018, with a new exemption from the import prohibition for petfood meeting certain criteria.
 - Option 2: Discontinuing the import prohibition. This would avoid OIA section 9(2)(d) and create new food industry opportunities, but would create risks to the wild trout fishery.
10. I consider that Option 1 – a continuation of the status quo – is the most appropriate, especially given the desirability of public consultation before changing the status quo.
11. Renewal of the CIPO for an indefinite period is recommended because limited time extensions are costly in terms of Cabinet and officials' time, and if a decision is made in future to amend legislation to allow trout farming, the new CIPO could be revoked at an appropriate time.

Background

12. Trout (including rainbow and brown trout) are introduced species now found in many New Zealand waterways. Arrangements governing trout are longstanding and, while they have evolved over time, are generally oriented towards protecting trout as a recreational sports fish. Wild trout are managed largely by Fish and Game Councils, which are funded through fishing licence fees.
13. No significant commercial trout farming operation has existed in New Zealand, having been prevented historically by various legislative and regulatory arrangements. The farming of trout and sale of wild trout is prohibited under the Conservation Act 1987¹ and Fisheries Act 1996².
14. Imports of trout are controlled under the Customs Import Prohibition (Trout) Order 2018. This prohibits the importation of trout and trout products, unless in quantities under 10 kilograms not intended for sale, except with the consent of the Minister of Conservation and subject to any conditions imposed by the Minister that are not inconsistent with the import prohibition.
15. Trout can be obtained only by sports fish licence holders who catch their own fish, or who are given such fish by someone who has caught them.

Biosecurity

16. Trout imports pose a risk of introducing trout pests and diseases. Imports of trout meat and trout products (if agreed to by the Minister of Conservation, where required) must meet import health standards (IHSs) under the Biosecurity Act 1993. Three current

¹ Section 26ZQ prohibits sale, and section 26ZI(4) prohibits commercial farming.

² Section 301(a) does not allow the licensing of fish farms for rearing and breeding trout for sale.

standards set out the biosecurity requirements for the import of all salmonid fish (which include salmon, trout, and char) from Australia, the European Union, Canada, Norway, and the USA. These standards do not allow the importation of live trout.

History of import prohibition

17. The first Customs Import Prohibition (Trout) Order (SR 1998/436) was made in 1998 under the Customs and Excise Act 1996, following the development of an IHS which would have allowed the importation of trout meat and trout products to begin. Since 1998, there have been 10 reviews of the restriction on trout imports. The most recent review resulted in the current Customs Import Prohibition (Trout) Order 2018 (LI 2018/165)
18. Periodic investigations by officials have found that alternatives to a Customs Import Prohibition Order to protect the wild trout fishery would require additional enforcement and fisheries management effort and be unlikely to be as effective.

Need to review CIPO

19. The Customs Import Prohibition (Trout) Order 2018 expires at the close of 29 September 2021. In the absence of further legislative action, trout meat in any form that complies with the IHSs could be imported for commercial sale after 29 September 2021.

Comment

Value of wild trout fishery

20. The wild trout fishery supports businesses and provides employment in small communities through the sale of fishing and boating equipment, the trout guiding industry, and providing accommodation and other facilities to anglers.
21. The Taupō fishery (which makes up about 28% of the nation-wide trout fishery) alone creates at least \$29 million per year in business turnover, adds \$11 million to the size of the economy, and sustains nearly 300 jobs³.
22. If the wild trout fishery was to be harmed as a result of the commercial sale of trout, then existing recreational, economic, and employment benefits derived from the wild trout fishery could be reduced.

Potential risks to wild trout fishery from importation

23. Allowing the importation of trout for sale would increase the incentives for some people to illegally sell wild trout for financial gain. Important parts of the wild trout fishery are under pressure from current fishing take, and any major increase in take or decrease in breeding success (such as from increased angler harvest or poaching impacts) may adversely impact on the fishery and could lower its recreational and economic values and benefits.
24. While the actual scale of any increase in poaching as a result of allowing trout for sale cannot be known, it is relatively easy for trout to be illegally taken in financially valuable (if trout could be sold) amounts by sweeping a spawning stream with a gill net in ways that harm fishery recruitment. Fish taken in this way can currently provide a cheap source of food but cannot readily be sold for financial gain.
25. If imported trout were available for sale, the illegal sale of wild trout would be much more difficult and costly to detect, and may not be as effective. Once any imported trout was removed from packaging, it would be very difficult to distinguish it from illegally acquired

³ Section 3B.2.5 *Review of the Taupō Sports Fishery 2013* (An independent report commissioned by DOC).

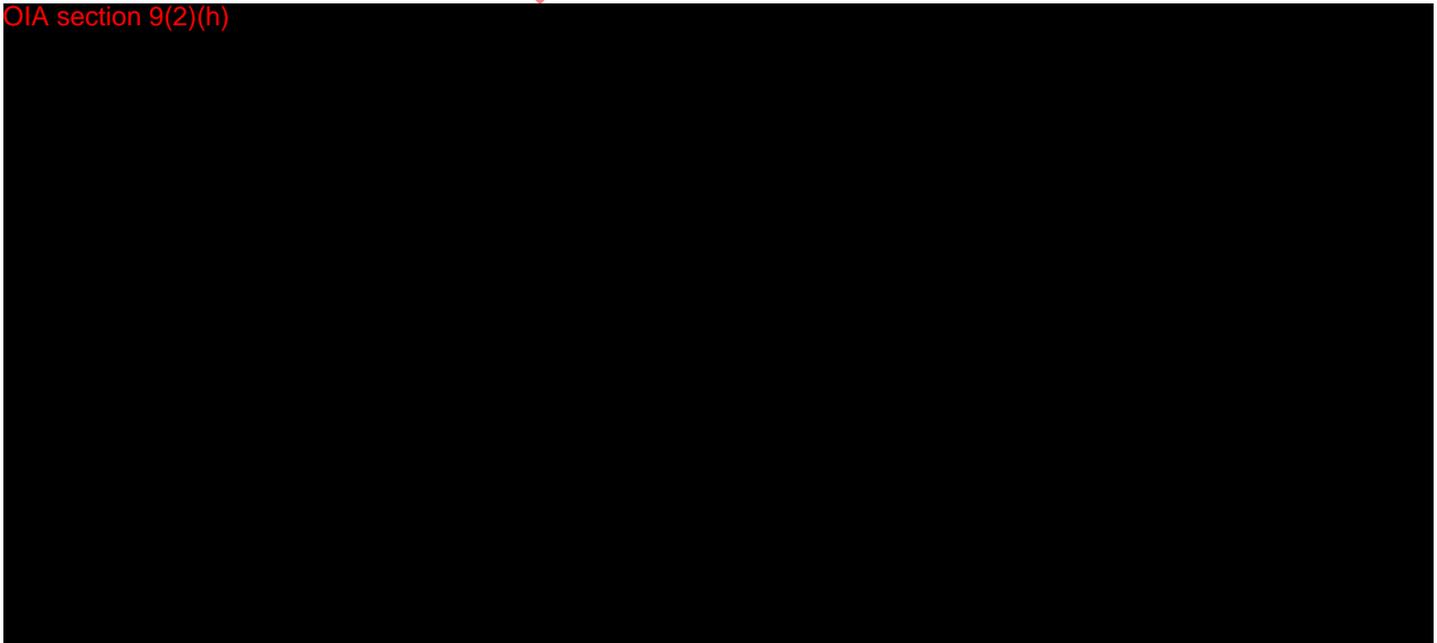
wild fish. Current trout fishery enforcement is straightforward, effective, and low cost, requiring only about 9% of sports fishery management budgets. Current poaching levels are very low, but a constant compliance effort is required.

26. If trout were available for sale, considerable additional enforcement would need to be carried out by fish and game councils and DOC, with the cost borne by recreational anglers through increased fishing licence fees.
27. The sale of salmon does not create problems because salmon in edible condition can be caught in large numbers only in the lower reaches of a few South Island rivers in areas where the illegal use of nets is easily seen. Spawning salmon, further up the rivers, are no longer edible as their flesh has begun to decompose. In contrast, edible trout can readily be caught in concealed spawning streams where detection is difficult.
28. Other countries have both trout sales and wild trout fishing. However, trout fishery managers advise that differences between those fisheries and ours means that the experience overseas is not directly applicable to this country.
29. The attached RIA contains further details on these values and risks.

Possible benefits to consumers and importers from importation

30. There is interest from food importers in being allowed to import trout meat, in response to an unmet demand among the public. While the extent of public demand for trout is unknown, Ministers of Conservation occasionally receive applications from interests wishing to import trout. There have been three applications in the last 14 years. However, informal feedback from food industry groups suggests the lack of import applications is not because of a lack of interest but, rather, there is considered no utility in applying to import trout. To date, only one application has been approved and there were unusual circumstances⁴ in that case.
31. Discontinuing the import prohibition would allow food importers to import trout and trout products, thereby meeting apparent consumer demand and providing greater consumer choice. Such trout purchases would be likely to replace other products rather than deliver significantly increased economic activity.

OIA section 9(2)(h)



⁴ See footnote on page 9 of attached RIA.

OIA section 9(2)(h)

Links to trout farming issue

34. The prohibition on trout imports has no direct effects on trout farming. However, if commercial trout farming was to be permitted in the future (for example, if an alternative way of protecting wild trout stock was to be found) then the need to maintain the prohibition on trout imports would fall away. [REDACTED]
35. A petition (2017/135 of Clive Edward Barker) requesting “That Parliament review present legislation on trout farming,” was recently considered by the Primary Production select committee. The committee reported back to Parliament on 7 August 2020, recommending “that the Government give serious consideration to commercialising trout farming.”
36. The Government publicly responded to the petition on 16 February 2021, advising that the Government had carefully considered the report on the petition and that –
- “A review of legislation preventing trout farming is not a priority for the Government at this time...” [CBC-21-SUB-0022 Appendix 1; CBC-21-MIN-0022; CAB-21-MIN-0013].
37. Not renewing the importation controls would not allow trout farming, as that is prohibited under law. There is some risk that allowing importation immediately would have some negative effects on development of a domestic industry if trout farming were allowed in future.

Other specific interests

38. The Taupō recreational trout fishery is of longstanding cultural and economic importance to Ngāti Tūwharetoa, and has been a key part of their relationship with the Crown since 1926. Trout are an important taonga to the iwi, provide an important food source for members, and improved (non-commercial) access to trout was provided by the Ngāti Tūwharetoa Claims Settlement Act 2018.
39. Some Māori – including several Ngāti Tūwharetoa entities, Ngāti Pīkiao, and Ngāti Ruapani ki Waikaremoana, have expressed an interest in farming trout for commercial sale. Allowing the import restriction to lapse without consultation with Māori may trigger concerns from some Māori for changing the status quo without consultation, particularly since allowing trout imports would not allow trout farming.
40. Allowing imports without allowing trout farming may also lead to a negative reaction from Trout New Zealand (a forum established to advocate for trout farming) and the Bay of Plenty Regional Aquaculture Organisation.

Recommended additional exemption for petfood

41. Officials recently identified a demand among petfood importers to import petfood containing generally small amounts of trout product as an ingredient. Officials understand that including very small proportions of “highly regarded” ingredients in processed petfood (e.g., venison, duck, trout, etc) improves its attractiveness to people buying the petfood for their cats and dogs. Officials believe that if an application were made to the Minister of

Conservation to import such petfood, officials would recommend that the application be approved, subject to conditions, as such imports would not be inconsistent with the objectives of the import prohibition.

42. Officials recommend that, in addition to the exemption allowing the importation of trout in quantities under 10 kilograms and not intended for sale, the following should also be exempt from the import prohibition to avoid unnecessary application processing costs:
“Petfood containing trout that:
(a) is commercially prepared and packaged for direct retail sale; and
(b) is labelled as petfood; and
(c) is in its original sealed packaging on arrival in New Zealand.”
43. “Petfood” would be defined in the CIPO as referring to “food intended for direct consumption by dogs or cats only”, which is the definition used in current IHSs.
44. This exemption would allow such petfood to be imported without requiring the consent of the Minister of Conservation (as is the case currently for trout in quantities under 10 kilograms and not intended for sale) and would provide increased consumer choice without unnecessary application processing costs.
45. Such an exemption would align with the current petfood IHSs, which would need to be complied with.
46. Officials are satisfied that the importation of petfood meeting the above criteria would not provide an opportunity for illegally caught wild trout to be substituted for imported product, and could therefore be exempt from the import prohibition without posing a risk to the wild trout fishery. It is unlikely that domestic petfood brands would be incentivised to source illegal trout to use in their products because the risk of being caught and prosecuted would be high. Domestic brands are readily recognisable, and officials understand that virtually all petfood imported into New Zealand currently is labelled as of non-New Zealand manufacture. This means that any use of wild trout in domestic petfood could be easily identified and prosecuted.

OIA section 9(2)(h)

48. The importation of raw materials containing trout for manufacturing into petfood in New Zealand would still require the consent of the Minister of Conservation.
49. For these reasons, officials recommend that, if the import prohibition is renewed, petfood meeting the above criteria be exempt from the import prohibition. As noted above, only a very small proportion of such petfood consists of trout product.

Use of Customs Import Prohibition Orders to enable import control

50. OIA section 9(2)(h)

OIA section 9(2)(h)

An import prohibition order can be made on the recommendation of the Minister of Customs. It should be noted that, under section 96(5) of the Act, the Minister of Customs cannot make this recommendation unless the Minister considers the proposed prohibition order is necessary in the public interest.

Timing of any CIPO renewal

51. The current CIPO will expire automatically at the close of 29 September 2021. A new Customs Import Prohibition (Trout) Order 2021 will need to be made by 1 September 2021 to comply with the 28-day rule, unless this rule is waived.

Options for renewal or non-renewal of import prohibition

52. Two main options have been identified and analysed by officials:
- Continue the import prohibition for an indefinite period, with a commencement date of any new Customs Import Prohibition (Trout) Order being 30 September 2021;
 - Take no action, which would result in the import prohibition ending when the Customs Import Prohibition (Trout) Order 2018 expires at the close of 29 September 2021.
53. Trout importation is a polarising issue that is strongly opposed by many people and supported by others. Given these strong views, and the potential significance of this issue to many Māori, I consider broad consultation would be required to ensure that any change to the status quo incorporated diverse views and achieved adequate buy-in.
54. The potential import and sale of trout is also a complex issue with potential benefits but also significant potential risks and costs. I consider that detailed analysis to examine risks and potential mitigation is needed before any decision to lift the prohibition on trout imports could be made. Such an analysis and public consultation has not been undertaken as part of preparing this paper because that would amount to reviewing the commercial status of trout, which the Government has decided is not a priority at this time. Reviewing imports should be undertaken as part of any future review of trout farming.
55. Option 1, renewing the existing CIPO (for the 11th time) for an indefinite period, would maintain the status quo and retain the longstanding government policy of trout being a non-commercial species in this country.
- OIA section 9(2)(h)
56. Option 2, expiry of the Customs Import Prohibition (Trout) Order 2018 without a new CIPO in place to continue the current restriction, would allow trout meat and trout products to be imported for sale. All imports would have to meet the requirements of the relevant IHS for salmonid fish under the Biosecurity Act 1993. The sale of domestic wild trout would, however, continue to be prohibited, as would the commercial farming of trout.
57. Another option, of renewing the CIPO for a limited time period, has not been pursued as each reconsideration of the CIPO is costly in terms of officials' and Cabinet time, and a CIPO can be revoked at any time if circumstances change.
58. More detailed analysis of these options is provided in the attached RIA.

59. In the absence of an appropriate statutory vehicle administered by DOC to prohibit the importation of this class of goods, a CIPO is the only mechanism available to continue the import prohibition.
60. Customs Import Prohibition (Trout) Orders have been renewed every 2–3 years since 1998. In part, this was due to the Customs and Excise Act 1996 allowing a maximum three-year duration for any prohibition order made under it. Under the Customs and Excise Act 2018, prohibition orders are now permanent by default, although they can be written to include explicit expiry provisions.
61. I consider Option 1, renewal of the CIPO for an indefinite period, to be the appropriate way forward.

Consultation

62. The NZ Fish and Game Council, which has a statutory function to advise the Minister of Conservation on issues relating to sports fish (section 26C(1)(b) of the Conservation Act refers), advises that fish and game councils unanimously support the continuation of the import prohibition due to the risks imports pose to the trout fishery, the difficulty in distinguishing imported from wild fish, and the cost to licence holders of increased compliance.
63. No other formal consultation has been undertaken with non-governmental interests as this would amount to reviewing the non-commercial status of trout, which the Government has decided not to undertake at this time. I consider that engagement with Māori and public consultation would be appropriate before a change to the status quo was implemented.
64. The following departments have been consulted in the preparation of this paper: Ministry of Foreign Affairs and Trade (MFAT), Ministry for Business, Innovation and Employment (MBIE), Ministry for Primary Industries (MPI), Te Puni Kōkiri, Te Arawhiti, The Treasury, Parliamentary Counsel Office, and New Zealand Customs Service. The Department of Prime Minister and Cabinet has been informed.
65. The views of MFAT, including on potential legal risks, are set out in the body of this paper. MPI and MBIE consider that work should be undertaken to quantify the likely impacts of allowing trout imports, and determine whether ways to address such impacts can be identified, before the CIPO is removed.

Financial implications

66. If the import prohibition is discontinued, DOC and the 12 regional fish and game councils would need to increase their compliance efforts to protect the wild trout fishery. Sports fish licence fees may need to be increased to meet these costs. There are unlikely to be significant costs for any other agencies or groups.
67. Greater consumer choice in the food industry would be provided by non-renewal of the import prohibition. This may not, however, offset the potential decreases in employment and commercial activity in industries dependent on the wild trout fishery if the fishery declined.
68. If the import prohibition on trout and trout products is continued, Customs NZ will continue to enforce the import prohibition within existing baselines.

Human Rights

69. This proposal has no human rights implications.

Legislative implications

70. An extension of the restriction on the importation of trout would require a new Order in Council under section 96 of the Customs and Excise Act 2018. This Order would be a regulation for the purposes of the Regulations (Disallowance) Act 1989. The Regulations Review Committee might draw any such Order to the attention of the House under Standing Order 382.
71. Any new Order in Council to continue the restriction on the importation of trout would need to comply with the 28-day rule (unless that is waived).

Public interest

72. The Customs and Excise Act 2018 provides that the Governor-General may, by Order in Council, on the recommendation of the Minister of Customs, prohibit the importation into New Zealand of:
 - (a) any specified goods; or
 - (b) any specified class or classes of goods,if, in the opinion of the Minister of Customs, the prohibition is necessary in the public interest.
73. I seek Cabinet's agreement that continuation of the trout import prohibition is in the public interest of New Zealand for the following reasons:
 - The wild trout fishery is a unique asset to trout fishers in New Zealand from a cultural, recreational and tourism perspective.
 - To protect this asset, current legislation prohibits the buying and selling of New Zealand wild trout and domestic farming of trout.
 - There are risks that importation and sale of trout may result in increased recreational harvest or poaching which could affect the sustainability of the wild trout fishery unless effective mitigation measures were imposed.
 - A decline in the fishery could impact on New Zealand's recreational, tourism, and domestic economic interests centred on the trout fishery.

Regulatory impact analysis

74. One of the options considered in this paper (that involving continuing the import prohibition) involves extending the life of secondary legislation that is a regulation for the purposes of the Regulations (Disallowance) Act 1989. A regulatory impact statement is therefore required and is attached.
75. The Department of Conservation Regulatory Impact Assessment Panel has reviewed the Regulatory Impact Summary and considers that it partially meets the Quality Assurance criteria.
76. The Government's recent decision not to undertake a review of trout farming means the proposal in this RIA has not been consulted on. The RIA explains that the issue of trout imports is inextricably linked to trout farming and that consultation on trout imports could not be separated from a trout farming review. However, the known views of Māori and stakeholders are reasonably well articulated.
77. Because the proposal is to renew long-standing restrictions on the importation of trout meat, there is limited data available to understand the impacts of lifting the restrictions.

The risks of not renewing the Order, particularly in the absence of a wider review and consultation are well articulated.

78. The Panel supports the assertion that new monitoring is required for any unforeseen problems arising from any new exemption for petfood.

Publicity

79. If the status quo is to be continued, I do not intend making any public announcements. If a decision is made for the import prohibition to end, I will prepare a communication plan, in consultation with other relevant Ministers.

Recommendations

I recommend that the Cabinet Economic Development Committee:

1. **Note** that the importation of trout and trout products in any form for sale is generally prevented by the Customs Import Prohibition (Trout) Order 2018 (LI 2018/165), which expires at the close of 29 September 2021.
2. **Note** that if imports and sale of trout or trout products are allowed there could be risks to the recreational trout fishery and supporting businesses if the fishery declines as a result of impacts from illegal poaching of trout.
3. **Note** that there will be ongoing restriction in consumer choice and may be [REDACTED] OIA s.9(2)(d) if the trout import prohibition continues.
4. **Note** that some Māori have interests in wild trout fisheries and some are interested in commercial farming of trout, and wide consultation would therefore be appropriate before changing the status quo.
5. **Note** that a Customs Import Prohibition (Trout) Order 2021 may be made under section 96 of the Customs and Excise Act 2018 only if the Minister of Customs considers the prohibition is necessary in the public interest.
6. **Note** that any Customs Import Prohibition (Trout) Order can, if required, be revoked by a subsequent Order.
7. **Agree** that it is in the public interest to continue the prohibition on the importation of trout and trout products for an indefinite period, and acknowledge that the mechanism available under the Customs and Excise Act 2018 is the only available statutory vehicle.
8. **Agree** that the import prohibition no longer apply to petfood containing trout that is commercially prepared and packaged for direct retail sale, is labelled as petfood, and is in its original sealed packaging on arrival in New Zealand.
9. **Invite** the Minister of Customs to submit drafting instructions to Parliamentary Counsel Office to draft an Order in Council giving effect to these recommendations to come into effect on 30 September 2021.
10. **Invite** the Minister of Conservation to prepare and implement a communication plan in relation to these decisions, if the import prohibition is to cease.

Authorised for lodgement

Hon Dr Ayesha Verrall
Acting Minister of Conservation