

“More fish in the water/Kia maha atu nga ika ki roto te wai”

Tracey Steel
Ministry of Fisheries
PO Box 1020
Wellington
tracey.steel@fish.govt.nz

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Dear Tracey

Setting of management controls to support the introduction of attached Bladder Kelp Seaweed (KBBG) in Fisheries Management Areas 3 and 4 into the quota management system on 1 October 2010.

Submission:

- ⇒ That management proposals for Bladder Kelp Seaweed, *Macrocystis pyrifera*, in Fisheries Management Areas 3 and 4 are unlawful, in that they breach the Purpose and Principles of the Fisheries Act 1996, and explicitly undermine stated government policy including Fisheries 2030;
- ⇒ That the concerns raised in the submission by the Wellington Marine Fishers Association are valid and ought to be addressed before the total allowable catch (TAC), the allowances and total allowable commercial catch (TACC) are determined for KBB 3G and KBB 4G stocks.
- ⇒ That the Minister set the TACC for KBB 3G after the TAC has been set and allowances made for other mortality and non-commercial fishing interests, both customary and recreational, and the TACC be set at:
 - Zero; or
 - 17 tonnes - Option 3, based on average annual catch, mostly from Akaroa Harbour, with input controls.
- ⇒ That the Minister set the TACC for KBB 4G after the TAC has been set and allowances made for other mortality and non-commercial fishing interests, both customary and recreational, and the TACC be set at:
 - Zero; or
 - 1 tonne - Option 2, based on an average annual catch of 200Kg from the Chatham Islands, with input controls.

Background

1. In September 2009 the option4 and Hokianga Accord Working Group teams (the joint submitters) submitted that Bladder Kelp Seaweed, *Macrocystis pyrifera*, in **all** Fisheries Management Areas is not introduced into the quota management system (QMS) on 1 October 2010¹. That was because there was, and still is, no suitable management mechanism that can protect species of such ecological and cultural significance.
2. The Minister was advised to continue the moratorium on commercial harvest of attached Bladder Kelp Seaweed until a suitable management mechanism was found.
3. We still strongly object to the creation of private property rights, by the issuance of any Individual Transferable Quota (ITQ), for this species after October 2010. That is because attached Bladder Kelp Seaweed has very high ecological, environmental, social and cultural values.
4. Attached Bladder Kelp Seaweed is a taonga [treasure] that needs to be conserved so the environment can sustain itself and future generations of New Zealanders.

QMS Introduction

5. In November 2009 the Minister of Fisheries, decided to introduce attached Bladder Kelp Seaweed in Areas 3 and 4 into the QMS on 1 October 2010². Phil Heatley noted in his decision letter that, *“submissions from both commercial and non-commercial stakeholders **overwhelmingly** support the decision to introduce bladder kelp in FMA 3 and 4 into the QMS in recognition of the important role seaweeds have in the marine environment”*.
6. This statement is a misconstruction of the truth. The Ministry of Fisheries (MFish) Final Advice Paper (FAP) notes that there were 26 submissions in response to the initial proposals as follows:
 - a. Five industry submissions in support of QMS introduction with higher commercial catch limits;
 - b. 14 submission in support of QMS introduction with a TAC set at zero; and
 - c. Seven submissions opposing QMS introduction. Some of those preferred a zero TAC if attached Bladder Kelp Seaweed was introduced into the QMS.
7. Distorting the facts at this early stage of managing attached Bladder Kelp Seaweed within the QMS does not inspire stakeholder confidence in the future management of this taonga [treasure].

Issues

8. The basis for QMS introduction for attached Bladder Kelp Seaweed is flawed.
9. Attached Bladder Kelp Seaweed forms an important part of the near-shore habitat.
10. MFish proposals lack any knowledge or assessment of the impact of increased commercial harvesting of attached Bladder Kelp Seaweed.
11. Attached Bladder Kelp Seaweed has many known, and unknown, interdependent species.
12. It is inevitable that commercial harvesting will occur closest to point of landing thus increasing the risk to productivity and ecological balance in these areas.

¹ http://www.option4.co.nz/Fisheries_Mgmt/documents/Joint_Bladder_Kelp_submission_909.pdf

² http://www.option4.co.nz/Fisheries_Mgmt/documents/Minister_decision_Bladder_Kelp_1109.pdf

13. There is no history of any substantial harvest of attached Bladder Kelp Seaweed in KBB 4G or 3G, except for Akaroa Harbour in 2007/08.
14. The TAC and TACC in option 1 for KBB 3G is based on a 1999 study limited to three areas within Akaroa Harbour.

Total allowable catch (TAC)

15. The MFish proposals assume a low sustainability risk. There is no evidence to support this assumption.
16. Section 13(2A) is being used to justify the TAC when no biomass or yield estimates are available. While sadly, this is now lawful under the Fisheries Act 1996 Amendment Act 2008, the Minister still has a statutory obligation to act in a precautionary manner.
17. Section 13(2A)(b) places a burden on the Minister, when setting a total allowable catch (TAC) to “*have regard to the interdependence of stocks, the biological characteristics of the stock, and any environmental conditions affecting the stock; and...*”. International literature suggests that large changes occur when kelp forests are cut, with direct consequences to associated species, and is undoubtedly responsible for significant changes to the environmental conditions of the area of harvest. It is not clear how the IPP meets this legal threshold. MFish will need to provide the Minister with this available information so that he can give regard to it and therefore ensure his decision fulfils the legal requirements.
18. MFish propose TACC option 3 for KBB 3G (17 t) and option 2 for KBB 4G (2 t), based on historical catch. MFish also suggest the total allowable catch (TAC) can be set on the basis of the total allowable commercial catch (TACC). This is an unlawful approach. The Fisheries Act 1996 obliges the Minister to set the TAC prior to considering the non-commercial allowances and an amount for fishing related mortality, and before setting the TACC.
19. MFish suggest (page 13) that in the absence of a reliable estimate of sustainable yield, the TAC options represent “*points on a continuum (from 18.2 tonnes to 377 tonnes for KBB 3G and 1 tonnes to 25 tonnes for KBB 4G). Each option represents a different balance in terms of risk to sustainability (including impacts on associated species) and benefits from utilisation*”. MFish continue, “*The Minister is **free** to choose any point on the continuum, having regard to information in this IPP and submissions from stakeholders*”. This is patently incorrect. The Minister has a legal obligation to manage fisheries sustainably, using the best available information, to enable people to provide for their social, economic and cultural well-being. This obligation does not extend to the Minister an opportunity to *freely* ‘pick a dot on a line’ and pretend that is good fisheries management. There are far too many risks involved with this approach, not the least of which is breaching the legislation. Hardly “world best practise”

Utilisation

20. After the Minister has set the TAC to ensure sustainability his next function is determine the level of utilisation. Section 8 of the Fisheries Act 1996 defines utilisation as meaning “*conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic and cultural well-being*”.
21. The Minister could lawfully set the Total allowable catch (TAC) at zero given that attached Bladder Kelp Seaweed is a species of environmental, social and cultural significance.
22. If attached Bladder Kelp Seaweed is to be harvested it ought to be used conservatively.

23. Given its importance the allowances for other mortality and non-commercial fishing interests, both Maori customary and recreational, also need to be set realistically.

Allowance for other mortality

24. Harvesting controls that require hand-gathering of Bladder Kelp Seaweed under the old permit system will no longer apply and mechanical gathering will be permitted from 1 October 2010.
25. The joint submitters have serious concerns about the use of industrial harvesting techniques on such an ecologically sensitive species. Given the likelihood of increased mortality associated with mechanical gathering the allowance for fishing related mortality needs to be higher than the MFish proposed 1 tonne.
26. Moreover, it is illogical for MFish to propose an allowance of 1 tonne for fishing related mortality under all the management options, irrespective of the proposed TACCs. Surely there will be more mortality when 375.8 t is harvested than if 1 tonne is harvested.
27. The Minister has a statutory obligation to ensure that all mortality is within the TAC, therefore he must 'allow for' the loss associated with the various management options.

Allowances for non-commercial fishing interests

28. Before the Minister can set the total allowable commercial catch (TACC) allowances must be made for non-commercial fishing interests, both Maori customary and recreational. MFish propose a nominal 0.1 tonne under all management options.
29. The Minister would be in breach of his statutory obligations if he only allows a nominal 0.1 tonne for non-commercial fishing interests because these environmental, cultural and social interests vary from area to area and could extend to the entire attached Bladder Kelp Seaweed population.
30. The joint submitters expect the Minister to make a realistic allowance that provides for these broad non-commercial interests and enables utilisation in terms of conservation.
31. The joint submitters await, with interest, the Minister's decision on allowances and reasons for those decisions.

Total allowable commercial catch (TACC)

32. In all five management options MFish propose a total allowable commercial catch (TACC) that equates to the total allowable catch (TAC) minus 1.2 tonne for the combined allowances. As noted previously, this is not a lawful approach.
33. The Minister cannot determine the allowances until after this consultation process is completed, a quantitative and qualitative assessment has been made and s12(1)(b) obligations have been met.

Other management measures

34. There are no other management measures proposed even though MFish identify there is a risk of localised depletion.
35. There are no proposed harvest method controls, strategy or fisheries plan to avoid, remedy or mitigate any adverse effects of fishing on the environment. The Minister must be advised that he is obliged to ensure sustainability by acting in accordance with ss 8, 9 and 10, the Purpose and Principles, of the Fisheries Act 1996.

Precautionary management

36. The notion that the Minister can allow increased commercial harvest of attached Bladder Kelp Seaweed on the basis that further controls can be introduced, by applying s11, if unacceptable adverse effects become apparent is contrary to the legal requirement on the Minister to act cautiously when information is poor (s10).
37. The unacceptable risks associated with this approach is that:
 - a. There is likely to be a high interdependence of species around attached Bladder Kelp forests, and these are not known, to the extent that MFish cannot describe these relationships;
 - b. That commercial harvesting will inevitably occur in localised areas resulting in huge loss of forest cover in some areas; and
 - c. In the absence of a harvest or fisheries plan there is no incentive or requirement to spread the commercial harvest over the wider KBB 3G or KBB 4G Fisheries Management Areas.
38. MFish has not provided the Minister or stakeholders with sufficient information that would enable an informed opinion to be made regarding the level of sustainable harvest for attached Bladder Kelp Seaweed and it's interdependent species.
39. Given the lack of available information, there is an extremely high risk in allowing expansion of the commercial harvest of attached Bladder Kelp Seaweed.
40. There is a clear need to manage the commercial harvest of attached Bladder Kelp Seaweed to mitigate the substantial risks associated with this MFish proposal.
41. A slow, controlled expansion of harvest with identified risks mitigated by input controls is the only acceptable, lawful approach the Minister can take if he is to comply with the Purpose and Principles of the Fisheries Act 1996.
42. The precautionary principle of the Act will be breached if the Minister sets the TAC and TACC with the view that future damage resulting from increased commercial harvest can be managed by applying section 11.
43. Intervention after the ecosystem has been damaged is too risky because it may take many years to determine that damage has occurred and may, by that stage, be too late to restore the ecological balance.
44. The Minister's obligation to act in accordance with the Fisheries Act precautionary principles is to avoid fishing-related adverse effects.
45. The MFish proposal identifies some of the risks associated with increasing commercial harvest of attached Bladder Kelp Seaweed, but makes no recommendations that will sufficiently manage those risks.

Section 12 obligations to Maori

46. MFish note on page 2 of the Initial Position Paper (IPP), that this process is in accordance with s12 of the Fisheries Act 1996.
47. The joint submitters note that section 12 has once again been omitted from the statutory considerations section in Appendix 1 of the IPP.

48. While MFish may consider that issuing an IPP is sufficient to fulfil the Minister’s obligation to consult with both Maori and non-Maori fishing interests, s12(1)(b) requires that the Minister, before making any sustainability decisions, shall –
- “provide for the input and participation of tangata whenua having –
- i. a non-commercial interest in the stock concerned; or
 - ii. an interest in the effects of fishing on the aquatic environment in the area concerned –
- and have *particular regard to kaitiakitanga*.”
49. There is no evidence to suggest that these s12(1)(b) obligations have been met. Kaitiakitanga [guardianship] is not even mentioned in the IPP. This is a serious breach of statutory duty.
50. Failure to fulfil the statutory obligations as required by s12(1)(b) leaves the Minister open to challenge.
51. This failure is also in contravention of government policy and the Ministry’s Statement of Intent, “*The Government has committed to specific obligations with tangata whenua, including their input and participation in fisheries management, particularly regarding sustainability decisions that affect their fishing interests*”³.
52. Given the ecological and cultural significance of attached Bladder Kelp Seaweed and the risks to inshore fisheries the joint submitters request details from the Minister and MFish as to:
- a. How and when input and participation has been provided for during this process to set management controls to support the introduction of attached Bladder Kelp Seaweed in FMA 3 and FMA 4 into the QMS on 1 October 2010; and
 - b. How, when and where *particular regard* has been given to kaitiakitanga during this process to set management controls to support the introduction of attached Bladder Kelp Seaweed in FMA 3 and FMA 4 into the QMS on 1 October 2010.

Government policy

53. Sound governance is a common theme in the government’s Fisheries 2030⁴ policy. To achieve the goal of *New Zealanders maximising benefits from the use of fisheries within environmental limits* there are two outcomes sought: use and environment. These proposals for attached Bladder Kelp Seaweed management contravene these outcomes, namely the following –
- a. Use – healthy fisheries resources in their aquatic environment that reflect and provide for intrinsic and amenity value; and
 - b. Environment – biodiversity and the function of ecological systems, including trophic linkages are conserved.
54. MFish appears to present a rosy economic future for the commercial harvesting of attached Bladder Kelp Seaweed and that a few hundred tonnes here or there are of little or no consequence. In the absence of more information these assumptions could be right, but nobody seems to know. Equally, MFish could be very wrong and significant ecosystem damage could occur.
55. By the time any adverse effects are noticeable, the opportunity to remedy or mitigate the damage could be lost. This is an unacceptable management risk that would not be condoned for any on-land resource.

³ Statement of Intent 2009-2014, Ministry of Fisheries, page 12.

⁴ <http://www.fish.govt.nz/en-nz/Fisheries+2030/default.htm>

Conclusion

The joint submitters reiterate the concerns expressed in other non-commercial submissions, particularly those made by Jim Mikoz in the Wellington Marine Fishers Association's document.

Extensive research of attached Bladder Kelp Seaweed is required before any harvesting is considered. This is particularly important in FMA3, where Dusky Dolphins are found.

Given the environmental, social and cultural significance of attached Bladder Kelp Seaweed we expect the Minister to take a precautionary approach to managing this species. In doing so the Minister must apply the statutory obligations to provide for the input and participation of tangata whenua having a non-commercial interest in seaweed and an interest in the effects of fishing on the aquatic environment in the area concerned, and have *particular regard* to kaitiakitanga [guardianship] in relation to this natural resource on which so many species rely on for health and abundance.

Our collective goal as joint submitters is to achieve "more fish in the water/kia maha atu nga ika ki roto i te wai".

We do not consider the proposed management controls for attached Bladder Kelp Seaweed will achieve this.

It is of great concern that the proposed management measures will actually result in less abundance and an unbalanced marine environment, particularly in heavily harvested areas.

As such, the joint submitters do not support the proposed management controls for attached Bladder Kelp Seaweed and highlight the various statutory breaches associated with the MFish proposals.

We appreciate the opportunity to submit on these proposals for attached Bladder Kelp Seaweed and would like to be kept informed of any future developments.

The joint submitters look forward to receiving timely answers to our questions, in paragraph 52, related to s12(1)(b) obligations.

Yours sincerely

Trish Rea
On behalf of the option4 team
PO Box 37951
Parnell, Auckland.

Paul Haddon
On behalf of the Hokianga Accord
PO Box 263
Kaikohe