

PROCESS ISSUES

- 1 A number of process issues were raised in submissions that are of a general nature, although many of the issues flow through into the individual fishstock and regulatory proposals:
 - a) Quality of advice;
 - b) Consensus decision making;
 - c) Economic analysis;
 - d) Consultation process; and
 - e) Decision to review stocks.

Quality of Advice

Submissions

- 2 The **New Zealand Seafood Industry Council** (SeaFIC) contend that the Ministry of Fisheries (MFish) has been remiss in not providing you with advice on the consequences of following particular policies. In particular, SeaFIC notes the consequences of a policy of non-proportional reallocation of catch between sectors, and the economic consequences of various management options
- 3 SeaFIC and **Aotearoa Fisheries Limited** (AFL) also raise questions about the objectivity of the advice presented in the IPP. In particular, these organisations draw MFish's attention to the following extract from the New Zealand Public Service Code of Conduct which it believes sets out clearly the standard of advice that should be expected:

Public servants are responsible for providing honest, impartial, and comprehensive advice to Ministers, and for alerting Ministers to the possible consequences of following particular policies, whether or not such advice accords with Ministers' views. However, final decisions on policy are the prerogative of Ministers, and public servants may not withhold relevant information from Ministers.
- 4 SeaFIC and **Northern Inshore Fisheries Management Company** (Northern Inshore) also submit that in a number of proposals MFish has failed to provide impartial and comprehensive advice to you by omitting to include the *status quo* as a valid management option, even where information supporting a sustainability concern is not compelling. Examples include FLA 1, GMU 1 and SNA 8. Failure to include the *status quo* as a management option biases the range of options put before the Minister by making extreme management measures appear less extreme. Including *status quo* as an option is consistent with the Court of Appeal decisions.
- 5 **Te Ohu Kai Moana Trustee Limited** (Te Ohu) submit the proposals in the IPP do not provide an objective analysis of the reasonable range of measures together with advice about the individual and cumulative effect of such measures being implemented.

- 6 Te Ohu does not see how fishstocks with no demonstrated sustainability concerns can arrive at this stage of the review process with such limited consideration of management options and their associated consequences. Te Ohu can therefore only conclude that invalid procedure has undermined objectivity in relation to these fishstocks.
- 7 They fully support and endorse the concerns raised by SeaFIC over the general quality of advice. Northern Inshore submit that there is a lack of consistency in approach to the evaluation and presentation of options for each review of the stocks. Northern Inshore believe that the reviews show undue weight and concern on unproven sustainability concerns which are not balanced against the positive obligation of the Minister to provide for utilisation.
- 8 Northern Inshore are also concerned where information is introduced as evidence of sustainability concerns that has either been rejected by the appropriate working group (e.g the use of revised MCY estimates for GMU 1) or cannot be substantiated (e.g. concerns over selective removal of female rig). This unbalanced advice supports the concerns of Northern Inshore that MFish are searching too hard to justify the use of blunt a sustainability tool to address utilisation issues and to deliver promised outcomes to certain stakeholder groups.
- 9 **Pagrus Auratus Company Ltd** (Pagrus Auratus) are concerned that MFish focuses on the use of a single tool, total allowable catch (TAC) reviews, to address perceived sustainability issues. The Fisheries Act is primarily a utilisation act. Reducing TACs have immediate effects on utilisation and economic returns. MFish fails to present alternative options for management intervention to achieve the (non-defined) management objectives to the stock whilst still allowing for utilisation. Other controls (e.g. MLS, recreational hook size, mesh size, seasons and area restrictions etc.) are not reviewed or considered by MFish in preparing advice which could equally give effect to stock rebuild goals.
- 10 Pagrus Auratus believe that all sustainability measures should be considered under a sustainability review. Preferably they would be options explored and prioritised under a management plan by all stakeholders to deliver required outcomes at the least utilisation and economic cost to stakeholders. Pagrus Auratus believe that MFish have been unnecessarily narrow in their consideration and that in the absence of an objectives based management plan, the status quo should prevail.
- 11 **Kaipara Harbour Sustainable Fisheries Management Study Group** state that the IPP contains some glaring inconsistencies. The report appears unwilling or unable to draw conclusions as to whether there are sustainability issues for FLA 1, GMU 1 and SPO 1, while acknowledging that areas such as the Kaipara are depleted. It uses a fundamentally different approach for each of these three species in recommending options for setting TACs, without explaining why a different process of analysis is appropriate in each instance. The report appears to be more focussed on defending the current total allowable commercial catches (TACCs) where possible, while ignoring the wider environmental, social and cultural, as well as economic well being of communities. If, as the report seems to imply, current levels of harvest are unsustainable, then it would appear to be logical that the options for setting TAC should revolve around reducing the current level of harvest.

MFish response

- 12 Three main issues are raised: the objectivity and impartiality of MFish and its advice; the need to present all or the full range of options; and, the imperative of advising the Minister on the full consequences or implications of the various options.
- 13 MFish consider the statements made in submissions by industry, regarding the lack of objectivity and bias are inappropriate and unwarranted. MFish strongly refutes any suggestion of bias, or lack of objectivity. MFish will address this matter directly with industry.
- 14 The purpose of the IPP is not to advise the Minister, but to provide sufficient clarity about the measures proposed by Government so that stakeholders can provide informed and informative submissions. It is the role of the Final Advice to provide you with the relevant information and competing factors that need to be considered as part of your decisions.
- 15 The FAP is written to provide you with the best information available to make a decision, your legal obligations, what options are available to you, and the risks/consequences of each possible course of actions. In short, MFish provides full information and ensures that the implications of actions are understood. Included in this analysis will be the possible consequences of leaving all management measures unchanged (the *status quo* option).

Consensus Decision Making

Submissions

- 16 **SeaFIC, Pagrus Auratus, Te Ohu and AFL** all submit that the approach taken in the IPP, and the management measures proposed, appear to be inconsistent with the MFish 2005/08 SOI which signalled a move to objectives-based management.
- 17 SeaFIC and Pagrus Auratus note that MFish's objectives-based approach to fisheries management outlined in the SOI entails setting agreed management objectives for a fishery, using risk assessment and analysis of costs and benefits to identify key management issues and evaluate alternative implementation strategies, and prioritising services and management interventions accordingly. Both SeaFIC and Pagrus Auratus support an objectives-based approach to fisheries management. Although the SOI uses an objectives-based approach specifically in the context of "management plans", the logic of the approach is equally applicable to all fisheries management interventions. SeaFIC considers that an objectives-based approach should therefore be applied, to the extent possible, during the transition to management plans. The SOI supports this approach.
- 18 SeaFIC state that it is therefore disappointing to see in the IPP proposals for significant changes in management approach for a number of stocks for which no agreed management objectives have been developed and no analytical process for evaluating management interventions has been undertaken. SeaFIC considers that embarking on a significant change in management for any stock in the absence of stakeholder agreement cuts across and potentially pre-empts and undermines the objectives-based approach to fisheries management set out in the SOI. It is also

inconsistent with the more general undertaking in the SOI that *“it is a worthy investment of time and energy to discuss and try to reach consensus on what stakeholders want to achieve from a fishery, before determining how a fishery should be managed”*.

- 19 SeaFIC questions where the incentives are for stakeholders to engage in a consensus-based “management plan” approach if MFish, by its advice and actions, continues to unilaterally propose significant changes to management under the guise of maintaining the current approach during the transition to management plans.
- 20 Te Ohu notes that the proposals contained in the IPP appear to be inconsistent with the MFish SOI, which signalled a move to objectives-based management.
- 21 Te Ohu recommends rescoping the problems (in the Kaipara Harbour and Kahawai stocks) and re-exploring the broad range of issues and measures that could be taken using an objectives-based management approach to address the problems identified. Te Ohu also recommends that these shared fisheries might be more productively progressed as important case studies through objectives-based management plans as proposed in the SOI.
- 22 Pagrus Auratus propose MFish should engage actively and constructively with all sectors to determine clear management objectives and strategies which would enable clarity of decision making.

MFish response

- 23 The SOI charts a new direction for managing fisheries and engagement between MFish and stakeholders. SeaFIC, Te Ohu, Pagrus Auratus and AFL all suggest that MFish is not acting in a manner consistent with that approach. MFish accepts that there is a period of transition involved in the move to implementation of management plans. The SOI clearly identifies that that transition will be gradual; it is not possible in the interim to adopt an objectives-based approach to all fisheries management interventions, nor is it the intention to do so. A number of the essential elements to implementation of an objectives-based approach are only being developed: the management framework is being finalised; the recreational and customary forums are being established; and, two to three plans are being identified to be undertaken in 2005–06 as proof of concept.
- 24 There is a need for the Minister, MFish, and stakeholders to continue to address fisheries management issues in the absence of management plans. The current process does not consist of a unilateral approach by MFish. MFish continues to consult on the Minister’s behalf in respect of a set of proposed management measures. The issues addressed in sustainability rounds are initiated not only by MFish, but also the Minister and stakeholders. The Minister acts as the final decision-maker on those measures. Although a number of processes will change under an objectives-based management approach, in many instances the Minister will continue to act as the final decision-maker.
- 25 MFish also rejects the contention that there is a lack of incentive for stakeholders to engage in a consensus-based “management plan” approach due to the advice and actions of MFish. MFish is willing to engage with stakeholders and ensure that

prudent and robust measures are implemented. The objectives-based approach will provide an opportunity for stakeholders to be involved in determining the underlying objectives for a fishery and the set of measures that will be used to manage the fishery. In MFish's view that will provide ample incentive for stakeholders to engage in the new approach signalled in the SOI.

- 26 MFish accepts that consensus is not always possible – such as where reasonably prompt management action is needed and unanimous agreement amongst stakeholders about the kind of action needed is unlikely. In these instances, MFish provides you with the divergence of views about the proposed actions in the fishery for your consideration. This is the approach taken in this FAP for many of the fishstocks. This does not preclude stakeholders subsequently engaging in an objectives-based approach in support of, or to supplement, any management action that you decide is needed now.

Economic Analysis

Submissions

- 27 **SeaFIC** and **Pagrus Auratus** commend MFish for increasing the amount of economic analysis of the impacts of management decisions that change TACCs or deemed values. However, the economic analysis in the IPP is still incomplete and inaccurate in some cases – particularly with regard to the significant reallocation and compensation liability arising from some of the SNA 8 proposals.
- 28 **SeaFIC** and **Pagrus Auratus** firmly support the need for MFish to undertake and provide to stakeholders and the Minister a careful cost-benefit analysis when proposing major changes to TACCs for important fisheries, including distributional impacts. The IPP notes that the Court of Appeal suggested a careful cost-benefit analysis needs to be undertaken to support a particular decision to reduce the TACC and in respect of a reasonable range of options available to the Minister in moving a fishery towards B_{MSY} . Further, where a major economic impact is considered necessary, the rationale for that decision should be clearly transparent, and that those affected ought to be able to establish that all other reasonable possibilities were analysed and that the decision adopted was the preferable option.
- 29 **SeaFIC**, with support from **Northern Inshore**, submits that a careful economic evaluation of alternative policy options would ideally include the following:
- a) Comparison of the present value of the stream of gross revenues based on projected future landings for at least 10 years;
 - b) Comparison of the present value of the stream of consumer surplus based on changes in projected domestic seafood sales for at least 10 years;
 - c) Comparison of the impacts of different options on the net present value of the stream of net revenues (port price minus ACE price) accruing to fishermen and potential impacts on employment and the ability of fishermen to service debt on vessels and other capital equipment;
 - d) Comparison of the present value of the stream of fishery rents accruing to quota owners based on the changes in the total value of quota or the stream of

ACE generated by that quota. This should include some attempt to determine (at least qualitatively) how the change in the TACC is likely to affect quota and ACE value. Research on quota markets by Resources for the Future and MOTU provides some basis of evaluating these impacts and MFish should continue to undertake research to understand the effects of changes in TACCs and other factors on quota and ACE prices;

- e) For species that are part of multispecies fisheries or are taken as bycatch with other species, calculation and comparison of the present value of economic impacts on those fisheries. Research done by SeaFIC on contract for MFish demonstrates that in some cases, even small changes in TACCs of bycatch species can have substantial economic impacts on related fisheries. A shortage of ACE to balance bycatch can shift fishery rents from the target fishery to the bycatch stock. MFish has a duty to evaluate and discuss these distributional impacts;
- f) For shared fisheries for which rebuilding plans are being considered, an analysis of the reallocation of fishery rents that may occur if increased biomass leads to increased recreational landings; and
- g) A qualitative analysis of the impact of decisions such as allocation shifts on the incentives of stakeholder groups.

30 **Sanford Limited** (Sanford) rejects the use of port price to determine annual earnings, as they are not a true reflection of the true annual earnings.

31 Sanford and the **Snapper 8 Company Ltd** reject that notion by MFish that the relative assessment of value is difficult. For example, they submit in the mixed inshore fishery that there is no uncertainty regarding value. For every 1 tonne of snapper caught, the associated bycatches are also reduced and the reduced value known.

32 For the reasons presented by SeaFIC, Northern Inshore rejects the economic analysis presented in the IPP, and submit that it is inadequate as cost benefit analyses when proposing changes to TACCs for these fisheries.

33 **New Zealand Big Game Fishing Council** and **TRAION** state that when setting TACCs/non-commercial allowances social, cultural and economic factors relevant to the non-commercial sector should be taken into account.

MFish response

34 The economic analysis provided by MFish is compromised by the lack of accurate and timely information. The economic data currently collected by MFish is limited to ACE and quota trade market information, ex-vessel value (port price), deemed value payments as well as cost recovery levies. As best as practicable, this information is included in the IPPs to assess the tradeoffs with regard to changes in the TAC, re-allocations, and deemed value adjustments. However, MFish agree that stakeholders themselves are best able to measure the effects (both positive and negative) on ITQ holders, ACE fishers and other stakeholders, and repeats that purpose of the IPP is not to advise the Minister, but to provide sufficient clarity about the measures proposed by Government so that stakeholders can provide informed and

informative submissions. It is the role of the Final Advice to provide you with the relevant information and competing factors that need to be considered as part of your decisions.

- 35 MFish does not collect, nor have the resources available, or regulatory and legislative support to gather other cost and earnings information that may provide more insight into the socio-economic effects from sustainability or utilisation changes as proposed in the IPPs. This information will need to be provided by the industry if they believe it would improve the sustainability round process and improve management decision options.
- 36 That said, MFish agrees with a number of the suggestions made by SeaFIC on improve economic assessment of options. The current capacity for economic analysis within MFish, apart from data availability, is limited. However, the socio-economic function within MFish is being strengthened, which will lead to improved and expanded analysis in the future.
- 37 With this improved capacity within MFish has also come better cooperation with stakeholders to share and discuss economic information (e.g. Joint Crown/industry deemed value working group). Although a discussion on how to increase the sharing of information and analysis in other areas of economics is outside the scope of this paper, MFish will only be increasing the level of interaction with socio-economic colleagues outside MFish.
- 38 Until such time as the economic analysis of management decision options has been improved, it is appropriate to include and share economic information that is already available from MFish and all stakeholders, so that the Minister can make informed management decisions. Noting Sanfords submission on the use of port prices, MFish will continue to characterise the limitations of available information in advising the Minister. Noting the Big Game Fishing Council and the TRAION submissions, MFish will continue to represent the available information on social, cultural and economic factors relevant to all sectors in its advice to the Minister.

Consultation Process

Submissions

- 39 Submissions from **option4, Taranaki Fisheries Liaison Committee, Te Runanga o Ngati Ruanui, Lady Marcella Fishing Ltd, Pete Saunders** all submitted that the timeframe for consultation was too short, and that MFish should consider a longer period, and discuss consultation options with stakeholders to ensure the timeframes are reasonable.
- 40 option4 states that at the time of writing this submission most non-commercial fishers were still unaware of any proposals to alter the management of fisheries they may have an interest in. Local coastal communities and other non-commercial stakeholders will be denied having input under the timeframe given.
- 41 The Taranaki Fisheries Liaison Committee noted that their committee meeting (19 July 2005) was the first that the quota holders knew of the proposals, yet

submissions were due on 5 August 2005. The Committee feels this limits the input MFish says it requires from stakeholders. The Committee believes that if MFish is unable to extend the submission cut off dates, MFish should ensure that the proposals reach interested parties immediately after they are drafted.

- 42 Te Runanga o Ngati Ruanui acknowledges the extension to closing date submissions. However, they submit that extensions are not an ideal option because they are reactive as opposed to proactive, and in their experience are based on timeframes that ask too much of key stakeholders. Ngati Ruanui note doubts about whether voluminous paperwork was a total answer to restrictive timeframes. Closer and more regular liaison is a step in the right direction. Ngati Ruanui submit they need more liaison and assistance in a technical nature from Head Office. For example if a technical report is provided to MFish on say the state of a national fishery and sustainability strategies, they would like to talk to the author. Similarly, if there appears to be not enough information or disputable information, then a simple recording in FCL minutes of concerns per se is not satisfactory.
- 43 Lady Marcella Fishing Ltd submits they are disappointed they didn't get notice that these proposals were in the pipeline and are very upset that this can happen. Lady Marcella Fishing Ltd thinks it is MFish's obligation to inform all quota holders of their intentions, not for the quota holders to find out through others and at very short notice that the submission can be put in.

MFish response

- 44 MFish is generally unable to extend the deadlines for submissions due the timing of the working groups and plenary, which are key information inputs to the process. The timing has been further complicated this year by the scheduling of the election. In addition, decisions need to be made and gazetted before the start of the 1 October 2005 fishing year.
- 45 MFish accepts that not all fishers receive copies of the IPP or notification of the issues being reviewed as part of the sustainability process. The general approach adopted is to forward the IPP directly to those organisations considered to be representative of the main fisheries sectors (Maori, recreational, environmental, and commercial) in accordance with the obligation under s 12 of the Act; those who have participated on a regular basis in the past in the sustainability round process; and to send the IPP to any party who directly requests a copy. Recipients of the IPP are informed that they can request a meeting with MFish staff to discuss the proposals. Attendees at scheduled fisheries liaison committee meetings conducted by MFish regional fisheries management staff are informed of the proposals.
- 46 MFish has also undertaken initiatives to develop recreational and customary regional forums. In several areas customary forums have been established. MFish's Pou Hononga staff (customary relationships managers) have assisted with providing interaction with Maori on the measures contained in the IPP. Over time, MFish envisages that the regional forums will provide an effective means to engage with recreational and customary Maori fishers on fisheries management issues.

Decision to Review Stocks

Submissions

- 47 **SeaFIC, Northern Inshore, AFL and Te Ohu** all submit that several of the reviews of fishstocks in the IPP (FLA 1, GMU 1, SPO 1) have been initiated through a political process, and that this undermines the standard Fishery Assessment Working Group and Assessment Plenary process and MFish's own Statement of Intent.
- 48 SeaFIC and Northern Inshore suggest that this has led to a proposed solution (TAC reduction) that is inappropriate for the nature of the problem (local access). They recommends that if the Minister becomes aware of a local issue that potentially merits a review of the fishstocks concerned, then this issue should be referred to the relevant Fishery Assessment Working Group for consideration. If the Assessment Working Group considers that there is no sustainability issue, then the matter should not proceed into the IPP.
- 49 While Te Ohu acknowledges that the Minister has the discretion to request a review, this process is also one way that MFish provides for the fisheries settlement input and participation obligation to allow iwi/Maori to engage in the decision-making. Once these stocks have been identified by the working groups they are prioritised in order of seriousness to create a basis for determining which stocks will be review given the limited resources available to MFish. It is important then to note that this process addresses both legitimate sustainability concerns and the input and participation obligation. In the case of both the Kaipara and Kahawai stocks no such objectivity has been demonstrated in these IPPs, there are no demonstrated sustainability concerns identified by the working groups and the Minister's request for a review of these stocks has subverted the prioritisation process.
- 50 Northern Inshore submit it appears that the motivation for the review of the stocks is primarily political and has little to do with concerns over the sustainability of the stocks. No credible evidence of sustainability concerns is presented anywhere in the IPP. The Inshore Working Group has not identified any need to review the stocks and neither have these stocks been considered as part of the normal risk evaluation and prioritisation processes at a national level. That the Minister requested a review of catch limits suggests both predetermination of both the existence of a sustainability problem (unsupported by MFish's primary system for providing technical advice on sustainability issues) and a preferred solution (i.e a review of catch limits).
- 51 Te Ohu disagrees with any process that distorts the presentation of the relevant issues, range of options and their subsequent consequences to the Minister that are procedurally invalid and have no sustainability basis.
- 52 **The Kaipara Harbour Sustainable Fisheries Management Study Group (KHSFMSG)** states that it was invited to participate in the Fisheries Assessment Working Group meetings in order to raise matters of local concern. However, during that process they were informed that these working groups are only intended as a platform to discuss *scientific* matters. It was explained to KHSFMSG that the 'Review of Sustainability and Other Management Measures' process is the appropriate forum to address any management concerns. The KHSFMSG has produced a comprehensive fisheries management strategy for the Kaipara Harbour. This strategy was requested

by the Minister of Fisheries and proposes a number of management measures. KHSFMSG is most concerned that no reference has been made to the Kaipara Harbour Strategy in the IPP. The group seeks a formal response to the strategy as part of the review of sustainability and other measures.

MFish response

- 53 The working groups do not fetter your discretion as to which stocks you determine should be reviewed or the reasons for that review. In the case of the area 1 stocks (FLA 1, GMU 1, SPO 1) you requested that these stocks be reviewed as part of a process to address management issues confronting the Kaipara Harbour. A review undertaken as a result of a Ministerial request does not somehow invalidate the process undertaken or the measures proposed.
- 54 Consideration of the status of a stock by a stock assessment working group is generally a useful step in the process when determining whether management intervention is required. Although the working group process has been used extensively in the past to recommend stocks for review in the sustainability round process, it is not mandatory. There is no legal requirement that a review of a stock is conducted by a stock assessment working group before measures can be considered.
- 55 Submissions contend that the inclusion of some stocks outside the working groups undermines that process. This indicates a fundamental misconception as to the nature of the role of the stock assessment working groups. The working groups do not act as the decision maker as to whether or not a stock is reviewed. They provide one input in that decision. The role of the working group is to ensure the best possible information is generated on stock status, and to inform Fisheries Operations where a sustainability concern exists. Irrespective of whether or not a working group discussion leads to a stock review, the current stock assessment information is taken into account, along with any other relevant information provided by the working group. All such information is summarised for your consideration in the specific advice on individual fish stocks and management proposals that follows this section on general issues.
- 56 There is also an element of inconsistency demonstrated in the SeaFIC's stance on this issue. On the one hand they criticise a review being undertaken without a recommendation of a stock assessment working group in respect of the area 1 stocks, but are supportive of the proposed TAC/TACC increases for the elephant fish stocks in areas 3 & 5, where no consideration of this proposal has occurred in the working groups.
- 57 MFish acknowledges the development of the Kaipara Harbour Strategy. However, the primary aim of the current initiatives is to review the TACs for three stocks in area 1. The intention was not to implement a fisheries management strategy for the Kaipara harbour in the course of the current sustainability process. This is not to dismiss the work or results of the Kaipara strategy; rather, MFish is approaching the issues by addressing the key sustainability measures for important Kaipara stocks first, and depending on the outcome of such consideration, then examining the need for further management measures.