

SCHEDULE 1
LEGISLATIVE HISTORY FOR S.21(1) FISHERIES ACT 1996
(Key words shown in bold)

Fisheries Act 1983 (as amended by Fisheries Amendment Act 1986) -
1986-1990

s28C. Declaration of total allowable catch

(1) The Minister may, **after allowing for the Maori, traditional, recreational and other non-commercial interests in the fishery**, by notice in the *Gazette*, specify the total allowable catch to be available for commercial fishing for each quota management area in respect of each species of class or class of fish subject to the quota management system.

Fisheries Act 1983 (as amended by Fisheries Amendment Act 1990) -
1990-1992

s28D. Matters to be taken into account in determining or varying any total allowable commercial catch

(1) When setting or recommending any total allowable commercial catch under section 28C of this Act, or varying or recommending any variation in a total allowable commercial catch under section 28OB or section 28OC of this Act (other than a variation made or recommended pursuant to section 28J or section 28JA of this Act), the Minister shall -

(a) After having regard to the total allowable catch for the fishery, including any total allowable catch determined under section 11 of the Territorial Sea and Exclusive Economic Zone Act 1977, **allow for -**

(i) **Maori, traditional, recreational, and other non-commercial interests in the fishery**; and

(ii) Any amount determined under section 12 of the Territorial Sea and Exclusive Economic Zone Act 1977 as the allowable catch for foreign fishing craft:

Fisheries act 1983 (as amended by Treaty of Waitangi (Fisheries Claims) Settlement 1992) - 1992 - October 2001

s28D. Matters to be taken into account in determining or varying any total allowable commercial catch

(1) When setting or recommending any total allowable commercial catch under section 28C of this Act, or varying or recommending any variation in a total allowable commercial catch under section 28OB or section 28OC of this Act (other than a variation made or recommended pursuant to section 28J or section 28JA of this Act), the Minister shall -

(a) After having regard to the total allowable catch for the fishery, including any total allowable catch determined under section 11 of the Territorial Sea and Exclusive Economic Zone Act 1977, **allow for -**

(i) **non-commercial interests in the fishery**; and

(ii) Any amount determined under section 12 of the Territorial Sea and Exclusive Economic Zone Act 1977 as the allowable catch for foreign fishing craft:

Fisheries Act 1996 – October 2001-present

s21. Matters to be taken into account in setting or varying any total allowable commercial catch

(1) In setting or varying any total allowable commercial catch for any quota management stock, the Minister shall have regard to the total allowable catch for that stock and shall **allow for-**

(a) the **following non-commercial fishing interests in that stock**, namely-

(i) Maori customary non-commercial fishing interests; and

(ii) **recreational interests**; and

(b) all other mortality to that stock caused by fishing.

Schedule 2

Key passages from advice papers and decision letters found in Volume 4 of case on appeal:

2004 IPP

Para 33 There is information available for both catch history (current utilisation) and for utility value. In shared fisheries MFish has a policy preference in favour of the catch history allocation model in the absence of clear information to the contrary. While the utility based model is **not discounted** altogether its application to kahawai is problematic as the information is uncertain (Para 33).

2004 FAP

Para 11(J) There is **conflicting information** making it difficult to confirm either claim. However, clearly there are widespread non-commercial concerns about the fishing down of kahawai stocks. Equally there are commercial concerns about the impact of any reduction in catch to that sector.

Para 38 ...in this case MFish is not able to provide quantitative estimates for any stock and management above B_{MSY} becomes a largely theoretical exercise.

Para 69 **The limited scientific evidence** available **does not suggest** that there have been major changes in recreational catch rates or reductions in the size of kahawai available to recreational anglers. Recent recreational harvest survey estimates are now considered the best available information on recreational catch. The current estimate of 4,025 tonnes of kahawai (higher than the commercial catch) does not in itself support the widespread perception of respondents that the fishery has declined in availability.

Para 70 Equally there is only limited information to support the case that there has been no further decline in the kahawai stock. While perceptions of fishers may be considered to have a lesser weighting than the limited scientific information available they also constitute information. MFish **does not discount anecdote** but considers that you should **weight** it accordingly.

Para 166 If you accept the need for a reduction in the current level of utilisation to achieve levels of kahawai stocks that are sustainable in the long term you are required to have regard to such **social, cultural and economic** factors as you consider relevant when deciding on the rate at which stocks should rebuild. The interests of future generations are also an important consideration.

Para 180 In general, the Act provides no legal recognition of landings taken by a sector prior to introduction to the QMS. Your discretion to determine allocation of the TAC is **not fettered** by catch histories of any sector.

Para 196 Other recreational submissions generally refer to the fact that kahawai is highly valued by that sector citing either social or economic values associated with the fishery that they believe outweigh those of the commercial sector.

- Para 197 MFish notes that your discretion in regard to factors you can take into account when determining allocations is wide. These factors are outlined in the generic section of the IPP. **The utility concept is one of these relevant factors.**
- Para 198 Most recreational submissions strongly favour preferential access for the recreational sector on the basis that kahawai is more highly valued by them. Much is made in submission of the fact that kahawai caught commercially has a low value. Recreational groups **favour a qualitative** assessment of utility based on giving a preference to recreational fishers in a fishery that is **obviously** "more valuable" to them.
- Para 199 MFish considers that there is **subjectivity** attached to **both** consideration of catch history and utility... however MFish confirms its view (acknowledged in the IPP) that there is a great deal of uncertainty attached to quantitative assessments of value.
- Para 200 MFish considers that catch history information is a more certain basis for allocation than utility and has a policy preference for its use. Utility information for kahawai is uncertain. You should **weight this uncertainty** if you consider the use of utility information as a basis for allocations for kahawai.
- Para 219 There is **no constraint** (within the scope of the Act) on the basis upon which you can decide to allocate the TAC or on the quantum you elect to allocate to each sector. As noted previously, it is important for you to have regard to the relevant social, economic and cultural implications when making your decision. MFish considers that landings history information is a more certain basis for allocation than utility. Utility information for kahawai is uncertain. You should weigh this uncertainty when considering the use of utility information as a basis for allocations for kahawai.
- Para 308 ... information on recent trends and stock abundance is limited **but does not indicate a continued decline in stock size.** This needs to be considered in contrast to the recreational (and some customary) submissions that suggest the stock has declined below acceptable levels.
- Para 321 The IPP and this FAP contain discussion on the use of alternative options when considering how to allow for non-commercial use – the "claims based" and "utility" approaches. The policy discussion on utility and claims based approaches is **not intended to fetter your discretion**, but rather provides policy guidance in order to provide a more robust framework when considering allowances.
- Para 323 ...However MFish confirms its view...that there is a great deal of uncertainty attached to quantitative assessments of value. **You should weight this uncertainty** if you consider the use of utility information as a basis for determining allocations for kahawai.
- Para 325 On balance, MFish considers that the allocations shown in Table 12 appropriately reflect competing demands, current use in the fishery, and the socio-economic effects of current versus reduced use. To a large extent the options for determining allowances and TACCs will be driven by the TAC option you consider reasonable....

2004 Decision letter

Para 21 There are a number of competing demands for the available yield from kahawai stocks. This was clearly apparent from submissions. I recognise that there will be socio-economic impacts from making allowances and setting TACCs. I have noted in particular the potential of catch reductions on commercial operations that rely on kahawai as an integral component of their annual catch mix. I have carefully considered these impacts in coming to a decision. I have examined options for increasing the value to society from allocation decisions. However, in the case of kahawai, given the uncertainty in the available information I believe that the information on current use provides the best basis for allocating between each interest use in the fishery, reduced proportionally to fit within the bounds of the TAC set to ensure sustainability.

2005 IPP

Para 1(n) The Minister can take the following matters into account when reviewing the TAC:

- Uncertainty in information on status of kahawai stocks;
- **Anecdotal information** on decline in abundance from some non-commercial fishers;
- **Value of the fishery to recreational and commercial users;**
- Desire to provide a greater level of certainty that the stock biomass will at least maintain its current level and preferably provide for an increase in biomass;
- **Socio-economic** information including the potential impacts and benefits to all sectors; and;
- Availability of new information to support a stock assessment of kahawai in 2007.

2005 FAP

Executive Summary:

Para 10 MFish discusses both views in this advice and concludes that, based on current information it is not possible to determine the specific benefits of managing the kahawai stock above B_{MSY} . There is insufficient information available to determine where the current biomass of the stock is relative to any target level (although the plenary notes that the estimated 1996 biomass was still above B_{MSY}).

Para 21 It was recognised that a key issue in considering the different TAC options is the benefits associated with each option, relative to the socio-economic impacts if catch limits were reduced.

Para 27 MFish favours the adoption of a proportional policy as a baseline position where the TAC is being adjusted. As a default approach it reflects the case where there is no particular reason to reallocate between sectors. However, such an approach **does not fetter your discretion** to recognise the competing demands on a resource by changing the relative proportions of the TAC allocated to each sector.

Para 28 There are competing demands for kahawai. You are not required to fully satisfy the demands of any sector group. In determining allocations you **must consider**

competing demands for the resource and the socio-economic impacts of allocations proposed. The recreational sector considers that the historic effects of commercial fishing are responsible for what they perceive to be the poor state of kahawai stocks today. MFish considers that information does not support that view.

Para 29 **On balance**, MFish considers that the TACs, allowances and TACCs depicted in Table 1 appropriately reflect sustainability concerns and **competing demands**, **current** use in the fishery, and the **socio-economic effects** of current versus **reduced** use. To a large extent the options for determining allowances and TACCs will be driven by the TAC option **you consider** most reasonable. MFish support a proportional reduction to recreational allowances and TACCs for the kahawai fishery if the lower TAC option is chosen.

2005 FAP:

Para 6(d) You were aware of the widespread perception of recreational fishers that there has been a **marked decline in the amount and size of kahawai available** to them. While recognising that **anecdotal information was uncertain**, you considered these perceptions to be important given the number of recreational fishers making them.

Para 67 Recreational fishers have constructed a scenario seeking to explain the detrimental effects of commercial fishing on their current use. They reject MFish views that management of the kahawai fishery after 1991 was effective and that as a result no kahawai stock is depleted due to commercial fishing. However, they are **unable to explain** why the 1999-2000 recreational harvest estimates are so high.

Para 97 MFish notes submissions concerning the **benefits** of a faster or **more certain rebuild**, or greater certainty that stock will not decline, being a relevant factor for you to consider, given the **importance** of the fishery to the recreational and customary sector. This sector will also **gain benefits** from greater abundance. However, you will need to **consider the weighting** that you give to this benefit, **relative** to the impact on the commercial sector of any reduction to harvest levels.

Para 115 This option is intended to reflect a desire to introduce more certainty into the rebuild of kahawai stocks for all sectors with an associated economic cost to industry. If you were to provide greater **weight** to the following factors you may decide on this option:

- Uncertainty in information on **status** of the stock;
- **Anecdotal information** on declines in the abundance of kahawai from some non-commercial fishers;
- **Value of the fishery** to recreational and commercial use; and
- Desire to provide a greater level of certainty that the stock biomass will at least maintain its current level and preferably provide for an increase in biomass.

Para 146 MFish notes submissions concerning the benefits of a faster or more certain rebuild, of greater certainty that stocks will not decline as being **relevant factors for you to consider given the importance of the fishery to the recreational customary sector** and the benefits they will obtain from a higher abundance of kahawai. However, you will **need to consider the weighting that you give to this benefit** relative to the impact on the commercial sector of any reduction to harvest levels and the potential need for future constraints on recreational fishing.

Para 166 However, a proportional approach **does not fetter your discretion** to explicitly recognise the competing demands on a resource. The proportional approach is the starting point, against which MFish provides you with **relevant social, cultural and economic information to inform your decision** on whether a deviation from this position is warranted or preferable. This consideration of individual circumstances may lead you to decide to depart from a proportional approach. In doing so, those decisions can be made transparently.

Para 186 There is no constraint (within the scope of the Act) on the basis upon which you can decide to allocate the TAC or on the quantum you elect to allocate to each sector. As noted previously, it is important for you to have **regard to the relevant social, economic and cultural** implications when making your decision.

Para 187 There are **competing demands** for the use of kahawai. Non-commercial fishers constitute the largest fishing sector and account for about 60% of all kahawai currently caught. Kahawai is one of the few species that has this characteristic. It is highly sought after by recreational fishers... **Recreational fishers** express a **preference** for **increased abundance** and greater ability to catch large sized fish.

Para 188 Accordingly, MFish considers it is appropriate that **due recognition be given to the importance of the stock to recreational fishers**. This importance can be recognised in a number of ways including determination of target biomass levels, the weighting accord to uncertain information on stock size and in determining allowances within TACs. However, it is problematic to ascertain what the precise needs for recreational fishers are. While some recreational fishers remain critical of the 2004 decisions, the recreational position is far from clear.

Para 225 Accordingly, MFish considers that you can take the following matters into account when reviewing TACs:

- Uncertainty in information on status of the stock;
- **Anecdotal information** on declines in the abundance of kahawai from some non-commercial fishers;
- **Value of the fishery** to recreational and commercial use; and
- Desire to provide a greater level of certainty that the stock biomass will at least maintain its current level and preferably provide for an increase in biomass.
- **Socio-economic information** including the potential impacts and benefits to all sectors;

- The individual circumstances relating to sustainable utilisation of QMAs and;
- Availability of new information to support a stock assessment of kahawai in 2007.

Para 261 If you decide to reduce TACs for kahawai stocks you will need to decide on allowances and TACCs for relevant stocks. The policy discussion on utility and claims based approaches contained in this advice is **not intended to fetter your discretion**, but rather provides policy guidance in order to provide a more robust framework when considering allowances.

Para 262 There are competing demands for kahawai. You are not required to fully satisfy the demands of any sector group. In determining allocations you **must consider competing demands** for the resource and the **socio-economic impacts** of allocations proposed. The recreational sector considers that the historic effects of commercial fishing are responsible for what they perceive to be the poor state of kahawai stocks today. MFish considers that **information does not support that view**. Consequently, because kahawai have considerable value for all sectors, MFish considers that the proportional mechanism for reducing allowances and TACCs be **preferred** for kahawai, in the event that you decide to adopt Option 2.

Para 263 On **balance**, MFish considers that the TACs, allowances and TACCs depicted in Table 1 appropriately reflect **sustainability concerns** and **competing demands**, current use in the fishery, and the socio-economic effects of current versus reduced use. To a large extent the options for determining allowances and TACCs will be driven by the TAC option you consider most reasonable. As mentioned, MFish support a proportional reduction to recreational allowances and TACCs for the fishery if the lower TAC option is chosen.