

## SECTION 12: CONSULTATION

### Summary

1 Prior to the promulgation of the 1996 Fisheries Act, stakeholders were routinely consulted over a range of fisheries issues on the basis of administrative law consultation requirements, and those specified in the 1983 Fisheries Act. The inclusion of a more comprehensive range of explicit consultation requirements in the 1996 Fisheries Act formally acknowledges consultation is an integral part of the Act.

2 Under section 12(1)(a) of the Act the Minister is required to consult with those classes of persons having an interest, (including, but not limited to, Maori, environmental, commercial and recreational interests) in the stock or the effects of fishing on the aquatic environment in the area concerned. Section 12(1)(b) outlines the Crown's commitment to provide for the input and participation of tangata whenua. Involving tangata whenua in fisheries management decisions reflects the provisions in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and the Crown's commitment to its treaty partner.

3 There are three aspects of section 12, consultation with stakeholders, input and participation of tangata whenua and having particular regard for kaitiakitanga. The first two aspects of section 12 are diagrammatically represented in Figure 1. Statutory consultation only occurs after policy options have been developed (that is, once a proposal has been developed) while input and participation may include tangata whenua being involved in identifying concerns and developing proposals as well as being involved in the process of formulating possible outcomes. The third aspect of section 12, having particular regard for kaitiakitanga, requires that when the Minister makes a decision in relation to those sections specified in section 12 he or she must have regard for exercise of Kaitiakitanga in relation to the people of the area<sup>1</sup>.

4 Fisheries management proposals, relating to those sections outlined in section 12(1), can be developed in a number of different ways:

- Stakeholder organisations or tangata whenua defining and analysing the issue(s) and developing possible options (such as in the development of fisheries management plans)
- MFish developing possible policy options in response to the identification of an issue.

5 The more discussion and negotiation the organisation, that is developing the policy options, has with other interested groups the more likely the statutory consultation by the Minister under section 12(1)(a) will run efficiently and effectively.

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<sup>1</sup> *“Kaitiakitanga” is defined in the 1996 Fisheries Act as meaning the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Maori: where “tikanga Maori” means Maori customary values and practices.*

6 Regardless of the amount of discussion and negotiation prior to the development of the policy options, the Minister must consult those that are representative of people with an interest and provide for the input and participation of tangata whenua, before making a decision.

7 Tangata whenua, in relation to a particular area, means the hapu or iwi, that is Maori and holds mana whenua over that area<sup>2</sup>. That is, in relation to section 12(1)(b) the Crown's commitment is only to provide for the input and participation of iwi or hapu that have a non-commercial interest or an interest in the effects of fishing on the aquatic environment in the area concerned.

8 A working group within the Ministry of Fisheries, in conjunction with tangata whenua, is currently tasked with determining what is "input and participation". In relation to fisheries management decisions specified under section 12 the Ministry of Fisheries will seek advice from tangata whenua on how they wished to provide input and participation.

### **Purpose of this Policy Definition**

9 The purpose of this Act Policy Definition is to provide the Minister responsible for fisheries with a policy on exercising consultation before making decisions relating to sustainability measures as specified in section 12(1).

10 Although the consultation requirements set out in this policy definition for section 12 specifically relate to sustainability decisions the general principles outlined for section 12 could be applied to all consultation activities.

11 It should be noted that the Ministry of Fisheries, as the Ministry responsible for the administration of the Act, conducts consultation on behalf of the Minister.

### **Background and scope of legislative provisions**

12 The fundamental importance of the consultation principle has been acknowledged in both the Ministry of Fisheries' strategic framework document *Changing Course - Towards Fisheries 2010*, and the *Five Year Strategic Plan*. These documents promote greater collaboration and co-operation between the Crown, tangata whenua and stakeholders in managing New Zealand's fisheries resource.

13 The opportunity to incorporate the knowledge and views of tangata whenua and stakeholders on particular fisheries issues will result in robust decisions being made. It may also increase the likelihood that such decisions will be agreed to by those consulted. It is important to note that this latter point—agreement of consulted parties—is not the purpose of consultation but may, in some cases, follow<sup>2</sup>.

14 Although there are generally accepted principles that guide the consultation process (see section 5.1), from an operational perspective there is no prescriptive form that consultation

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<sup>2</sup> s 2 Fisheries Act 1996

<sup>2</sup> [\*Wellington International Airport Ltd v Air New Zealand and Others CA 23/92 -p 28\*](#)

must take<sup>3</sup>. For example there is no requirement as to duration. Simply put “the nature and the object of consultation must be related to the circumstances which call for it”<sup>4</sup>.

## Section 12 Consultation

15 Section 12 states

*Section 12 – consultation 1) Before doing anything under any of sections 11 (1), 11 (4), 11A (1), 13 (1), 13 (4), 13 (7), 14 (1), 14 (3), 14 (6), 14B (1), 15 (1), and 15 (2) of this Act or recommending the making of an Order in Council under section 13 (9) or section 14 (8) or section 14A (1) of this Act, the Minister shall—*

*Consult with such persons or organisations as the Minister considers are representative of those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Maori, environmental, commercial and recreational interests; and*

*Provide for the input and participation of tangata whenua having—*

*A non-commercial interest in the stock concerned; or*

*An interest in the effects of fishing on the aquatic environment in the area concerned— and having particular regard to Kaitiakitanga.*

*(2) After setting or varying any sustainability measure, or after approving, amending, or revoking any fisheries plan the Minister shall, as soon as practicable, give to the parties consulted in accordance with subsection (1) of this section reasons in writing for his or her decision.*

*(3) This section does not apply in respect of emergence measures under section 16 of this Act.*

16 The actions of the sections, that require consultation under section 12, are outlined in Appendix I.

### Section 12(1)

17 The key components of s 12(1) involve determining who are classes of persons who have an interest in a particular issue, the organisations or persons who are representative of those classes of persons, providing for the input and participation of tangata whenua and having regard for Kaitiakitanga.

#### *Having An Interest*

18 The Act does not define what “having an interest” means. The Oxford dictionary defines interest in the following way:

...”legal concern, title, right;.....pecuniary stake;.....thing in which one is concerned; principle in which a party is concerned;.....selfish pursuit of one’s own welfare; self interest.”

19 The definition of interest is broad and encompasses the types of interest the different stakeholder groups might have in a fishery. Whatever the type of interest a person or organisation has it must relate back to a stock, for the purpose of fisheries management or the

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<sup>3</sup> Ministry for the Environment, 1995. *Case Law on Consultation*, Working Paper 3, 24p.

<sup>4</sup> *Wellington International Airport Ltd v Air New Zealand and Others* [1993] 1 NZLR 671.

effects of fishing on the aquatic environment. This does not mean that people that have no interactive or extractive interest in a fishery are excluded from the sustainability measures consultation process. It simply means that their concerns have to relate to how fishing is having an effect on an area or stock.

### *Representation*

20 Once the classes of persons who have an interest in a particular issue have been identified, the statutory requirement is to only consult with the person or organisation who it considers to be representative of those classes of persons.

21 An important aspect of being representative is mandate. It is not sufficient for a person or organisation that has been given the authority to represent orange roughy fishers in the cost recovery process (for example) to say that they represent orange roughy fishers on all issues. This is not to say that this person or organisation would not be given the authority to represent them on other issues if it was sought. It is simply saying that that was not the purpose for the establishment of the group and that they could not be seen to be representative of orange roughy fishers on issues other than cost recovery until such time as they sought the authority to do so from their “constituents”.

22 Representation need not necessarily be restricted to formally structured organisations such as an incorporated society. Informal representation is acceptable as long as it is clear how that representation was established, on whose behalf and the scope of the authority of the organisation.

23 The views of a class of person can be represented by more than one organisation. For example, a Northland snapper fisher could be represented by a “Northland snapper fishers’ organisation” as well as a “National snapper fishers’ organisation”. A case by case approach will determine which organisation to consult or whether it would be more appropriate to consult with both organisations. Difficulty will arise if the organisations purporting to represent the same group of people provide conflicting submissions during a consultation process. In these cases the organisations will need to clarify to the Ministry the reasons for the discrepancy in the submissions.

24 Representation is important. In a judicial review of the Minister/chief executive’s decision to close areas to commercial fishing within Hauraki Gulf, the issue of representation was considered. Given the effects of the closures on the local snapper fishers represented by the Leigh Fishermen’s Association, Judge McGechan considered that this group should have been consulted directly and consultation with the Fishing Industry Board, as an umbrella organisation, was not adequate<sup>5</sup>.

25 An understanding of the organisational structure and manner in which the different stakeholders and tangata whenua are represented is important when embarking on consultation. A summary of these features has been compiled for each group and is contained in Appendix II.

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<sup>5</sup> *Leigh Fishermen’s Association Incorporated v The Minister of Fisheries*, HC, Wellington CP 266/95, 12 May 1997, McGechan J.

### *Input and participation of tangata whenua*

26 Section 12(1)(b) states that “the Minister shall provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned; or an interest in the effects of fishing on the aquatic environment in the area concerned—and have particular regard to Kaitiakitanga.”

27 The Ministry of Fisheries, through an informal working group, has recently initiated a project to establish how to incorporate the views of tangata whenua in developing proposals and making decisions relating to fisheries management. The group, in conjunction with tangata whenua, is tasked with determining what is “input and participation”. In relation to those fisheries management decisions, specified under section 12, the Ministry of Fisheries will seek advice from tangata whenua on how they wished to provide input and participation—this may differ from one tangata whenua organisation to another and may also depend on the issues being consulted on. The project is to be completed at the end of 2000.

28 Although the area of input and participation is still “under development” it is important that—at the very least—the following steps be taken to incorporate the views of tangata whenua in developing proposals and making decisions relating to fisheries management:

- Provide tangata whenua with information on the management measures that are being proposed, to enable them to consider the impact of those options on their community, as well as develop any alternative proposals that better suit their hapu or iwi.
- Allow sufficient time for tangata whenua to respond to Ministry proposals or develop new proposals.
- Provide an opportunity for representatives of an iwi or hapu to meet with the Ministry at a place they can reasonably attend, and consult with them on the measures being proposed.
- Conduct such consultation in good faith and consider their views with an open mind.
- Not take any actions that would cause a breach of the principles of the Treaty of Waitangi.
- Have regard to how the management proposals may effect kaitiakitanga in their area.
- Report back to the representatives that attended the meeting, on the decisions that are made and the reasons for those decisions.

29 It is important at this point to reiterate that the Crown’s commitment to tangata whenua in relation to section 12(1)(b) is a commitment to iwi and hapu. In line with that commitment more than 80 iwi or hapu are currently involved in fisheries management decision making.

### *Having regard for Kaitiakitanga*

30 When the Minister makes a decision, in relation to those sections specified in section 12, he or she must have regard for the exercise of Kaitiakitanga in relation to the people of the area.

## Section 12(2)

31 Subsection 12(2) confirms good practice by requiring the Minister to provide, to those parties consulted, reasons in writing for his or her decision.

32 The importance of providing, those consulted, with reasons for why certain decisions were made was highlighted in a survey of Department of Conservation (DOC) stakeholders. DOC stakeholders felt that inadequate feedback reflected a lack of appreciation of the time it takes to prepare submissions and make oral presentations. The stakeholders felt that in addition to feedback providing information on the decisions and the reasons for those decisions, feedback should also include information on the process of subsequent decision making, including delays and, if appropriate, reasons for delays and the sorts of issues and options raised by others<sup>7</sup>.

## Section 12(3)

33 The consultation provisions of Subsection 12(1) do not apply in respect of emergency measures under section 16 of this Act (see policy definition for section 16). However, it should be noted that before imposing emergency measures under section 16 the Minister is required to consult—to the extent reasonably practicable in the circumstances—with those having an interest in the stock or area affected. The general principles in this policy definition could be used to determine how to consult under section 16.

## Discretion

34 For consultation on issues relating to sustainability measures, as specified in section 12(1), the Minister has the authority to determine the criteria for the following:

- who has an interest
- who are representative of those having an interest
- how he or she consults
- what constitutes an emergency issue

35 Once the Minister has identified groups with an interest in an issue, and the people or organisations that represent those groups, he or she is required to consult.

36 As discussed earlier, although there are general principle relating to consultation, from an operational perspective, there is no prescriptive form that consultation must take. The Minister determines the “how and for how long” in relation to the application of the consultation process. As a result a case by case approach might result in oral rather than written exchange of information or a process that is limited to a matter of hours instead of a number of formal meetings.

37 For example, in relation to the “how long” component of the consultation process there are a number documented statutory and non-statutory requirements or guidelines that can give guidance when developing a consultation process (Table 1).

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<sup>7</sup> [Warren, J 1998. The fundamental processes of consultation and reviewing commonly used consultation methods. From: a Business Information in Action workshop entitled Ensuring Effective Policy Through Efficient Consultation and Accurate Evaluation.](#)

**Table 1: Appropriate consultation periods**

Title of Reference	Source of Reference	Comments
Guidelines for consulting community organisations	Ministry of Consumer Affairs	That you should <b>ideally</b> allow at least three months for comment on any discussion document.
Submissions of resource consent applications	Section 96 of the Resource Management Act 1991	Any person may make a submission to a consent authority about an application for a resource consent. The closing date for serving submissions on a consent authority shall be the 20 <sup>th</sup> working day after public notification
Notification of proposed national pest management strategies	Section 62 of the Biosecurity Act	People must be given at <b>least</b> 20 working days to make submissions on a national pest management strategy.

38 However, it should be noted that there are a number of equally recognised examples, that state that there is no critical time period for consultation. Three such examples are outlined below.

- *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671. No universal requirement as to duration of consultation.
- Best R, 1999. Consultation Obligations. NZLJ, June: 192-196. Consultation time frames should be set (although not in stone) at the outset of the consultation process but that the duration of the consultation will depend on the circumstances of the case.
- Resource Management Act. When the Minister is making regulations prescribing national environmental standards he or she must ensure that the process gives the public adequate time and opportunity to comment on the proposed subject matter of the regulations. However, there is no definition of “adequate time”.

39 To expand on Best’s (1999) point above, the duration requirement of consultation (as well as the other consultation requirements) will depend of the circumstances of the case. These “circumstances” could include the amount of discussion and negotiation that occurred on the issue with relevant stakeholders prior to the statutory consultation period, the effect the proposal will have on those being consulted or the organisational structure of those consulted.

40 Finally, the Minister has the authority to determine what constitutes issues that require imposing emergency measures under in s16 (see the relevant policy definition). Imposing emergency measures does not fall under the s12 consultation requirements.

### **Limitations on Discretion**

41 Although the Minister may have the authority to determine the criteria for who has an interest in an issue and who he or she considers representative of those classes of people, the Minister does not have authority to determine which issues need to be consulted on. Section 12(1) states that before doing anything under sections 11(1), 11(4), 11A(1) 13(1), 13(4), 13(7), 14(1), 14(3), 14(6), 14B(1) 15(1), 15(2), or recommending an Order in Council under sections 13(9), 14(8) or 14A(1) of the 1996 Act, the Minister shall consult.

42 An authoritative determination of the Courts interpretation of the obligation to consult is provided by *Wellington International Airport Ltd and Others v Air New Zealand* [1992] CA 23/92. p 28.

“Consultation must be allowed sufficient time, and genuine effort must be made. It is to be a reality, not a charade. The concept is grasped most clearly by an approach in principle. To “consult” is not merely to tell or present. Nor, at the other extreme, is it to agree. Consultation does not necessarily involve negotiation toward an agreement, although the latter not uncommonly can follow, as the tendency in consultation is to seek at least consensus. Consultation is an intermediate situation involving meaningful discussion. Despite its somewhat impromptu nature, I cannot improve on the attempt at description which was made in *West Coast United Council v Prebble*, supra, 405

“Consultation involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done.”

43 The Minister does not have discretion when it comes to the Crown’s commitment to Maori. Involving tangata whenua reflects the provisions contained in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Treaty of Waitangi and the Fisheries Act 1996. However, as discussed earlier, work is currently underway to define what is meant by “provide for input and participation” and to determine how tangata whenua wished to be involved.

44 After setting or varying any sustainability measure, the Minister is also required to write to each party consulted, stating the reasons for his or her decision. A recipient may possibly feel less aggrieved at an adverse decision if it is clear from the letter that his or her arguments were considered, and reasons for the decision are provided. If the matter is subsequently taken to Court, the letter from the decision-maker is the best evidence of the reasons in the decision-maker’s mind and becomes particularly important where departmental recommendations are simply noted “Approved”.



## Relevant policy issues and proposed policy principles

### Key components of statutory consultation

45 The key components that need to be incorporated into statutory consultation required by the Fisheries Act have been identified as follows<sup>8</sup>:

- A well defined proposal to be consulted on.
- Provision of appropriate information to those being consulted to enable them to effectively participate in the consultation process (this should include the particular proposals up for discussion as well as the consultation process to be followed).
- Adequate time allowed for those consulted to:
  - consider information provided
  - request further information or clarification
  - consult with those they represent
  - formulate their ideas and responses
- Appropriate opportunity must be provided for those consulted to convey their views and due notice must be taken of those views
- Responses must be received with an open mind and due respect accorded those views before the decision is made
- Provision of feedback on final decisions including how the views expressed in the consultation process have been incorporated or otherwise into those decisions.

46 The manner in which consultation is conducted can influence both the quality of the feedback and the contribution of the consultation to the final decision. The complex nature of many fisheries decisions has implications for the provision of information and receipt of feedback. Furthermore, the views of tangata whenua and the different stakeholder interests may be distinctly different, and yet must be canvassed and acknowledged for each provision requiring consultation. Time constraints and resource limitations provide additional challenges to both sides of the consultation process. The consultation components identified in section 6.1 are discussed below.

#### *Provision of appropriate information*

47 Those being consulted need to understand why their views are being sought and how the consultation process is to be conducted, including ground rules detailing the nature of the information to be provided, the method by which views will be received, and the time frames for responses.

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<sup>8</sup> [Wellington International Airport Ltd v Air New Zealand \[1993\] 1 NZLR 671.](#)

48 Conveying adequate information about the actual issue is likely to involve the provision of written material. The information needs to be presented clearly, concisely and written in straightforward, jargon-free language. When compiling such information, consideration should be given to:

- the technical understanding of those being consulted,
- what elements need to be included eg an analysis of the monetary and non-monetary effects of the proposed policy,
- how to express this information in the most concise and user-friendly manner
- the inclusion of specific questions to help focus feedback

*Reasonable opportunity to state views*

49 Providing an adequate period for those being consulted includes time to consider the information provided, time to request clarification or further details, time to consult those they represent and time to formulate their views and responses. What constitutes “adequate time” will vary according to the topic of consultation and how extensive consultation needs to be. With the exception of an emergency, providing information and expecting an immediate response, or feedback within 1-2 days, is probably unrealistic. Resource constraints and deadlines can both result in the “adequate time” provision being compromised. Furthermore, such constraints have the effect of excluding participation from all but those with immediate access to the material. Under these conditions representation is also likely to be compromised—something that could significantly affect the quality of the consultation and ultimately the decision.

*Consider with an open mind before decision is made*

50 Decision-makers must consider all views with an open mind. They should have no preconceived ideas of what the decision may be. However, an open mind is not the same as a blank mind—it is acceptable to have a previously formed view<sup>9,10</sup>. It is also “quite legitimate to conduct consultation by reference to a preferred option, provided that the decision-maker keeps an open mind and is prepared to depart from that option in favour of another if persuaded by” the arguments put forward<sup>11</sup>.

*MFish Feedback about the decision*

51 To adhere to the principles of good consultation, those that have provided input need to be informed about the decision and how their views were incorporated. Written feedback is not only good practice it is also a statutory requirement, under section 12(2), when setting or varying any sustainability measure stipulated in section 12(1).

**Fisheries Specific Consultation Issues**

52 Fisheries consultation is complex because of the number of different interest groups involved and the fact that issues can be local, regional or national. Effective consultation

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<sup>9</sup> [\*Auckland City Council v Auckland Electricity Power Board\* \(16 August 1993, HC Auckland, CP 26/93\)](#)

<sup>10</sup> [\*Devonport Borough Council v Local Government Commission\* \[1989\]2 NZLR 203, 207-808 \(CA\)](#)

<sup>11</sup> [\*R v Secy of State for Health, ex p London Borough of Hackney\* \(25 April 1994, QB, Lexis transcript\).](#)

requires the successful accommodation of this complexity. Issues that need to be considered include:

- how the proposal was developed
- whether it is more effective to consult with each interest group separately or together
- whether consultation should occur at the regional or national level

#### *How the proposal was developed*

53 The extent to which stakeholders develop solutions to issues in conjunction with each other may influence the consultation process undertaken. However, stakeholder involvement in developing policy options does not lessen the Ministry's statutory requirement, on behalf of the Minister, to consult with all interested people or organisations or the Crown's commitment to ensure that tangata whenua are involved in fisheries related management decisions. It may simply influence the time frame for the consultation process, the level of resources required for the process, the level of support the proposal will receive and even the compliance issues relating to the implemented proposal.

54 The Ministry's consultation process needs to ensure that when a proposal has been developed as a result of stakeholders getting together that it accurately reflects the views of those involved in its development and that the views of those not involved are considered in conjunction with the proposal. It is important that the Ministry seeks the input of tangata whenua on proposals directly—regardless of whether they were involved in the development of the proposal. The Crown is committed to involving tangata whenua—as its treaty partner—in fisheries management decisions.

#### *Consult interest groups individually or together*

55 When determining whether to conduct consultation with interest groups individually or together the following points should be considered.

A combined consultation round can:

- foster an understanding and perhaps acceptance of others' views
- provide a forum for position taking where unhelpful interactions can divert attention from the issue

An individual consultation round can:

- allow for an in-depth consideration of the issue(s) and how it impacts on the particular group
- opportunity for an individual group to share information with MFish that they may not wish to make available in front of other stakeholders
- provide less opportunities for stakeholders to understand each others points of view

#### *National versus regional consultation*

56 Generally, the issue to be consulted on and the location of those who “have an interest” will determine whether consultation would be more effectively and efficiently conducted at the national or regional level or as a co-ordinated approach across New Zealand.

## **Links to other parts of the Fisheries Act**

57 The purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. Section 12 is intimately involved with the purpose of the Act by requiring that consultation occurs before anything is done under 11(1), 11(4), 11A(1) 13(1), 13(4), 13(7), 13(9), 14(1), 14B(1), 14(3), 14(6), 14(8) 15(1), 15(2) or recommending an Order in Council under section 13(9), 14(8) or 14A(1).

58 The provisions under section 12 to “provide for the input and participation of tangata whenua”, reflect provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and the Crown’s commitment to the principles of the Treaty of Waitangi.

59 The consultation requirements stipulated under section 12 do not apply if the Minister is satisfied that there has been an outbreak of disease, a serious decline in the abundance or reproductive potential of one or more stocks or species, or a significant adverse change in the aquatic environment.

## Appendix I: Actions requiring consultation under section 12

- s11(1) - determining any sustainability measure
- s11(4) - setting or varying catch limits for any stock not within the quota management system
- s11A(1) - approving a fisheries plan
- s13(1) - setting of TACs
- s13(4) - varying TACs
- s13(7) - increasing TACs within a fishing year
- s14(1) - setting TACs for third schedule stocks
- s14(3) - varying TACs for third schedule stocks
- s14(6) - increasing the TACs, within a year, for third schedule stocks
- s14B(1) - setting an alternative catch limit
- s15(1)(a) - ensuring that the maximum allowable fishing-related mortality level set by a population management plan is not exceeded
- s15(1)(b) - taking other measures to further avoid, remedy, or mitigate any adverse effects of fishing on the relevant protected species
- s15(2) - taking measures to avoid, remedy or mitigate the effect of fishing related mortality on any protected species, including setting a limit on fishing-related mortality (the Minister of Conservation shall also be consulted)
- s13(9) - recommending the omission of any stock whose abundance is highly variable
- s14(8) - recommending the omission of any stock from the 3<sup>rd</sup> schedule
- s14(8) - recommending the addition of any stock to the 3<sup>rd</sup> schedule if it is not possible to estimate a maximum sustainable yield because of the biological characteristics of the species, a catch limit has been determined as part of an international agreement or the stock is managed on a rotational/enhancement basis
- s14A(1) - recommending an alternative catch limit

## Appendix II – Features of fisheries stakeholders

This appendix is not a checklist of all the different stakeholder groups that may need to be consulted. Rather it outlines a number of the key stakeholder groups and some of the elements of these stakeholders that may need to be considered when embarking on a consultation process.

### Māori

There are two aspects of Maori. The first is tangata whenua. Tangata whenua are the hapu and iwi that are Maori and hold mana whenua<sup>12</sup> over a particular area. Tangata whenua need to be involved in the development of all policies and practices to ensure that all decision recognise the use and management practices of Maori—having particular regard to Kaitiakitanga.

The second component of “Maori interest” is those Maori, who may or may not be tangata whenua, but who have an interest in the proposal up for consideration. The interest may include be, among other things, an environmental, recreational or customary interest. In this second subset, the key factor in determining whether or not they should be consulted is whether they can be considered to represent a class of person with an interest rather than whether or not they represent Maori *per se*.

### Environmental

Organised environmental groups with an interest in fisheries have been formed at the local, regional and national levels. Such groups include:

Royal Forest and Bird  
Ecologic Foundation (formally Maruia Society)  
Greepeace (NZ)  
Environment and Conservation Organisations (ECO)  
World Wildlife Fund (WWF)

ECO is made up of more than 70 organisations. The organisations making up ECO may represent themselves as well as being represented by ECO.

To ensure that consultation with environmental stakeholders is effective, two issues need to be addressed. Identifying how many within the wider group belong to an environmental organisation with an active involvement in fisheries is the first issue. The second involves ascertaining whether the views expressed by those who take part in consultation reflect the views of the wider group, and if so, how these views are canvassed and what feedback is provided.

### Recreational

The Act encompasses both marine and freshwater recreational interests. Although the majority of the Ministry’s recreational focus is towards the marine fisheries the Ministry is

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<sup>12</sup> s 2 Fisheries Act 1996. Mana whenua means customary authority exercised by an iwi or hapu in an identified area

involved with the eel fishery as well as working with other government and non-government organisations on issues such as salmon bycatch and fish passage.

A wide range of clubs, associations and councils provide opportunities for recreational fishers to belong to an organisation at the local, regional or national level. Marine recreational fishing surveys conducted in the South, Central and North regions between 1991-1994 indicated that 16 and 19% of fishers from the South<sup>13</sup>, and North<sup>14</sup> regions, respectively, were involved in such organisations, leaving the majority of recreational fishers without any affiliation.

At the local level, organisations such as clubs and recreational fishers associations provide some means for recreational fishers to have an input into decisions affecting their interests. Both the associations and regional branches of national recreational fishing organisations provide opportunities at the regional level. The national organisations for particular fishing interests include the NZ Big Game Fishing Council, NZ Underwater Association, Marine Transport Association (charter boat fishing), NZ Angling and Casting Association and the NZ Sports Goods Association. The NZ Recreational Fishing Council is comprised of representatives from these organisations and the regional Marine Recreational Fishers Associations. Other organisations, not directly related to recreational fishing, can also represent the views of recreational fishers, for example, ECO and rate payers associations.

The Ministry also consults, on specific issues, with freshwater fishing organisations such as Fish and Game and the NZ Federation of Freshwater Anglers.

Similar to issues raised in relation to environmental stakeholders, there is a very large number of this group who has no affiliation to the organisations with whom the Ministry consults. The low level of affiliation to recreational organisations makes it difficult to determine whether the views of the representatives actually reflect the views of the majority of recreational fishers.

### **Commercial**

In comparison to the other interest groups, identifying those with a “commercial interest” in fisheries is more straightforward. Every individual or company holds some form of authorisation by which they can be identified and contacted. Forms of identification include; quota ownership, quota lease arrangements, fishing permits, vessel registrations, fish receivers’ licenses, and marine and freshwater fish-farming leases and licenses, among others. The various forms of authorisation also facilitate the identification of selected groups where consultation needs to be targeted for a particular purpose.

A range of local, regional and national organisations represent the views of those with a commercial interest in fisheries. Recent changes in the way the fishing industry is structured are being accompanied by changes in representation. A transition is taking place from the network of fishing companies and commercial fishermen’s associations, which were represented nationally by the Fishing Industry Association and Federation of Commercial

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<sup>13</sup> Bell, J. D., Bell, S. M. & Teirney, L. D. 1993. Results of the 1991-92 marine recreational fishing catch and effort survey MAF Fisheries South region. New Zealand Fisheries Data Report No. 39. 79p.

<sup>14</sup> Bell, J. D. & Assoc. 1994. Saltwater recreational fishing catch and effort survey; findings from the telephone survey. MAF Fisheries North (unpublished report) 14p

Fishermen respectively to Commercial Stakeholder Organisations for specific fisheries. While the quota owner companies may more accurately reflect the views of fishers that own quota, some of these companies have developed policies that allow for the views of non-quota owners to be incorporated into any decisions that they make about the future direction of the fishery. Other avenues for representation for non-quota owners within the industry include networks such as the port association network.

The Seafood Industry Council's (SeaFIC) primary role is to promote the development of the New Zealand seafood industry as a whole. As a consequence, when consulting with SeaFIC thought needs to be given as to whether there would be a more appropriate body to consult either instead of or in conjunction with—as highlighted in *Leigh Fishermen's Association Incorporated v The Minister of Fisheries* (HC, Wellington CP 266/95, 12 May 1997, McGechan J.).

The interests of commercial fishing assets negotiated in the Treaty Settlement initially lies with Te Ohu Kai Moana (TOKM). The function of TOKM is to facilitate the entry of Māori into, and development by Māori of, the business activity of fishing. Eventually it is envisaged that TOKM will allocate the quota they hold in trust to tangata whenua. As a result tangata whenua need to be involved in issues that may effect their future commercial interests.

Aquaculture interests are represented nationally by the Aquaculture Council. The Aquaculture Council represents a number of smaller aquaculture/marine farming organisations and represents the aquaculture industry on national issues affecting all sectors of aquaculture. The Aquaculture Council plays a less active role in day-today aquaculture management.

### **Combined Tangata Whenua/stakeholder interests**

There are a growing number of groups that have, as its members, representatives of the different interests identified in the Fisheries Act. The status of these groups varies from statutory to informal advisory status. Taiapure management committees, which include stakeholder representatives as well as tangata whenua, also fall into this category. Where all interests are represented and those on the committee properly represent their wider group, consultation over fisheries issues that apply to these areas may be as straightforward as contacting the relevant advisory group and receiving their feedback.



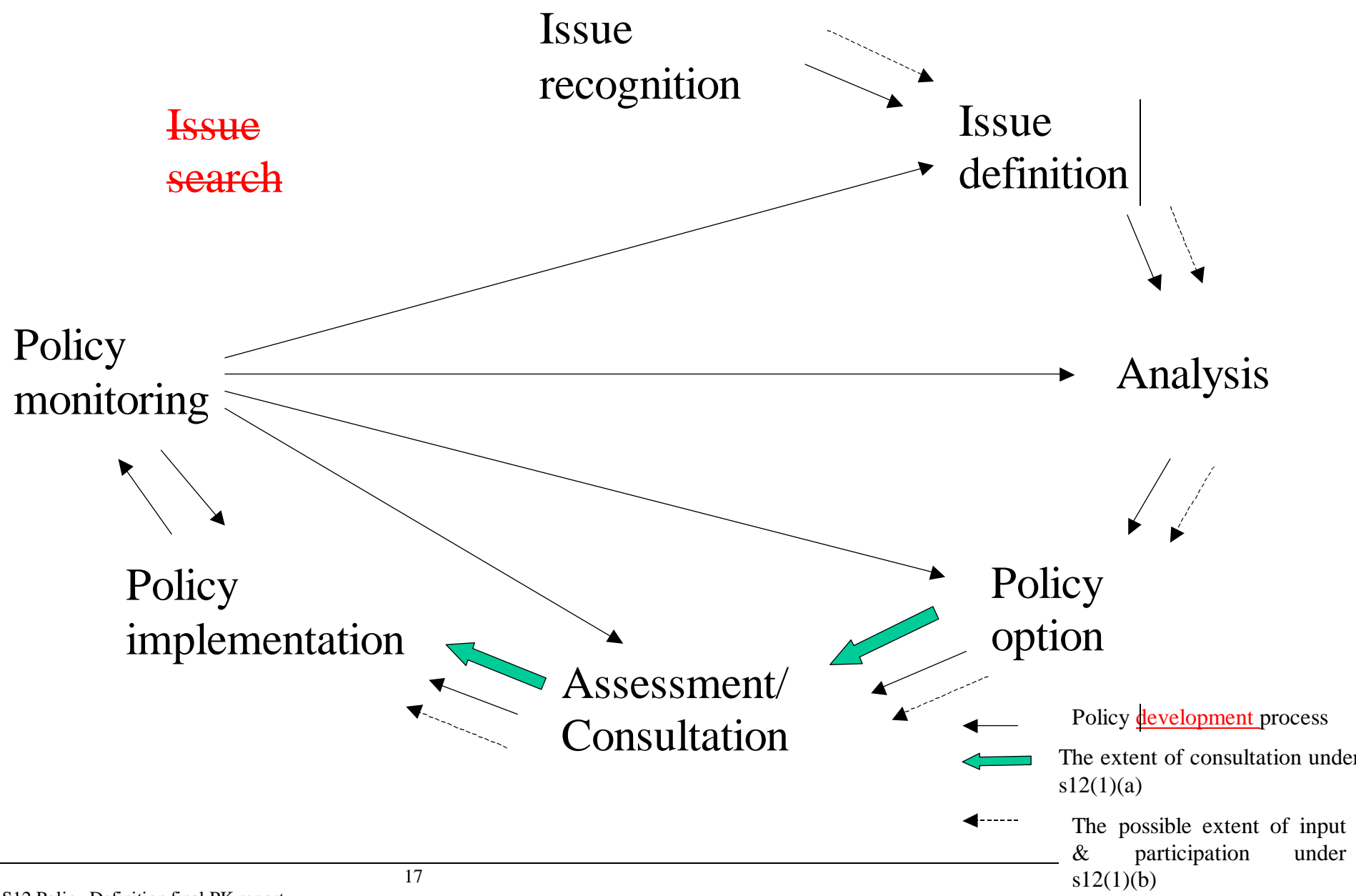


Figure 1: The policy development cycle

