

Hokianga Accord

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

Sustainability and other Management Measures for 1 October 2007

Management of North Island Tuna (Eels)

SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS

27 July, 2007

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Introduction

1. The Ministry of Fisheries (MFish) has issued new proposals for the future management of North Island Tuna (Eels). The Initial Position Paper (IPP) has options for the four shortfin stocks and four longfin stocks. Options are to reduce the total catch in each fishery and then determine the reductions required in commercial catch and recreational allowances, if any. Any management changes will take effect as of October 1st 2007.
2. North Island tuna (eel) were introduced into the quota management system (QMS) in 2004 with total allowable catches (TACs) and total allowable commercial catches (TACCs) set at a 'starting point' level, in acknowledgement that further adjustments to catch levels may be required.
3. In recognition of the poor information, vulnerability of the fishery and tuna's (eel) cultural importance the TACs were set under section 14 of the Fisheries Act 1996 (the Act). This allowed the previous Minister of Fisheries (the Minister) to determine management objectives for the fishery. These were to improve the stock structure (i.e., size composition) and abundance of tuna (eels) over the medium term (10 years), while bringing to a halt any decline in the fishery over the short term. The Minister's intention was to ensure that:
 - The fishery is sustainably managed;
 - The fishery's availability to non-commercial fishers is improved;
 - The relationship with interdependent stocks is improved.
4. MFish believe the present management strategy and its intended outcomes are not presently being met, and further refinement of total catch levels is required.
5. A letter dated 15th June 2007 was sent to stakeholders asking for input, providing background information and outlining the current situation.
6. The deadline for submissions is 27th July 2007.
7. This document comprises the submission and recommendations from the Hokianga Accord, the mid north regional iwi fisheries forum, which represents around 200,000 non-commercial fishers. Both option4 and the New Zealand Big Game Fishing Council support the Forum. The Accord advocates for "*more fish in the water/ kia maha atu nga ika i roto te wai*" to enable New Zealanders to provide for their social, economic and cultural wellbeing.

Recommendations:

- No reduction of the recreational allowance on a proportional or non-proportional basis at this time. If any reductions are to be made they must be applied to the TACC first.
- Reduce the TACC for shortfin tuna (eels) by 30 percent.
- Reduce the TACC for longfin tuna (eels) by 50 percent, due to particular sustainability concerns.
- MFish to make adequate provision for tangata whenua to have input and participation into sustainability processes, and these tuna (eels) proposals in particular.

Submission

8. The Hokianga Accord supports reducing the TACC for both shortfin and longfin tuna (eel) stocks.
9. The Accord does not support any proportional or other reduction to the recreational allowance at this time, in recognition that tuna (eels) are used for both customary and subsistence purposes and provide for people's wellbeing.
10. Tuna (eels) are not a productive species as they only breed once. Tuna (eel) are also vulnerable to overfishing and are taonga (treasure) and should be managed conservatively.
11. Non-commercial fishers have expressed concerns about the state of the tuna (eel) fisheries for some time and are pleased MFish are now reviewing management measures.
12. Maori continue to emphasise that commercial use of the tuna (eel) fishery is secondary to their primary requirements to preserve the taonga, manaaki manuhiri (feed their visitors) and feed their people.
13. The Hokianga Accord agree with MFish that the eel fisheries need to be restored, in order to enhance non-commercial access to these important fisheries as per the Minister's management objectives for these fisheries in 2004.

Statutory Requirements

14. The Crown has obligations to tangata whenua based on Te Tiriti o Waitangi, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Fisheries Act 1996.
15. The purpose of the 1996 Fisheries Act is the foundation on which all fisheries management decisions made. That purpose is to provide for the utilisation of fisheries resources while ensuring sustainability.
16. Ensuring *sustainability* has two parts:
 - Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
 - Avoiding, remedying or mitigating any adverse effects of fishing on the aquatic environment.
17. *Utilisation* means conserving, using, enhancing and developing fisheries resources to enable people to provide for their social, economic and cultural wellbeing.
18. Supporting the Act's purpose are the environmental and information principles. Fishing has to be conducted in a manner that minimises the effects of that activity on the environment and other fisheries. Information principles enable the Minister to make management decisions in the absence of complete data. These principles have to be taken into account when fisheries management decisions are made.

19. All parts of the Act are connected and cannot be considered in isolation. They are interlinked and need to be applied together to achieve the purpose, which is sustainable utilisation *to enable people to provide for their social, economic and cultural wellbeing*.
20. Justice Rhys Harrison’s ruling from the High Court judicial review of the Minister’s 2004 and 2005 kahawai decisions (the Kahawai Legal Challenge) held that on a plain reading of section 8 of the Act, “***the bottom line is sustainability. That must be the Minister’s ultimate objective. Without it, there will eventually be no utilisation***”. Essentially the judge was saying if there are no fish then you cannot catch them.
21. The setting of a TAC under section 14 of the Act is a sustainability measure. Before setting the TAC, the Minister must also consider section 12 requirements.
22. Section 12:
- (1) Before doing anything under any of sections 11(1).....(sustainability measures), the Minister shall:
- (a) **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
- (b) **provide for the input and participation of tangata whenua** having—
- (i) a **non-commercial interest** in the stock concerned; or
- (ii) an interest in the **effects of fishing** on the aquatic environment in the area concerned—
- and have **particular regard to kaitiakitanga**.
23. The obligations to both consult and provide for the input and participation put in place a two-layered requirement on the Minister on the proposed sustainability measure, namely, the Minister must:
- a. consult and engage with a wide group of interests; and
- b. make the necessary arrangements, including adequate resourcing, to provide for the input and participation of tangata whenua,
- and have particular regard to kaitiakitanga.*
24. The courts have considered the term ‘consultation’¹ and although not defined in the Fisheries Act it is defined in at least one other statute (the Local Government Act). Consultation has to be a meaningful engagement with an open mind, not merely an offer of a proposal and disregarding people’s responses.
25. *Provide for* suggests:
- a. Positive steps or actions that need to be taken;

¹ Wellington International Airport Limited and others v Air New Zealand (CA 23/92, 73/92[1993] 1 NZLR 671)

- b. Adequate resourcing
26. *Input and participation* must include:
- a. the contribution of tangata whenua in formulating the sustainability proposal;
 - b. the act of taking part or being involved in the process to which the proposal relates.
27. Compared with consultation, input and participation means being involved in the formulation of a proposal.
28. Kaitiakitanga is described in the Act as:
*means 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*².
29. Despite the statutory requirements described above, the Accord has not been consulted in relation to the formulation of the tuna (eel) proposals. We expect more meaningful engagement with MFish before new catch levels are decided on.
30. The Hokianga Accord reiterates our objection to MFish not providing adequate provision for tangata whenua to have input and participation into sustainability processes, and these tuna (eel) proposals in particular. Circulating the IPP is not sufficient.

Total Allowable Catch

31. When deciding on the use of fisheries the Minister has to first decide on what the sustainable catch level will be in order to achieve the purpose and principles of the Act. This total catch limit is called the total allowable catch (TAC).
32. Within the TAC limit the Minister has a statutory obligation to ‘allow for’ non-commercial, both customary and recreational catch and also for an amount of fish that are killed during the process of fishing. This amount is called ‘other mortality’ and the rate varies depending on the fishery. In the case of tuna (eel) other mortality has been set at either two or four tonne in recognition that there is a relatively low mortality rate due to the fishing methods used.
33. Once the non-commercial and mortality allowances have been set the total allowable commercial catch (TACC) can be established. The TACC is supposed to represent the upper limit of sustainable catch from each fishery. In the case of tuna (eel) however the TACC has only proven to be an effective constraint in one fishery (SFE22), during the 2005-06 season.
34. An important factor in the Kahawai Legal Challenge decision was the clarification that it was open to the Minister to set the TACC at zero but not the allowance for recreational fishers. If non-commercial interests exist in a fishery then both customary and recreational interests **must be** provided for before a commercial catch limit is set.

² Fisheries Act 1996, Part 1, s2 Interpretation.

35. Setting the TAC is about sustainability whereas setting the TACC is about utilisation - the use of the fish available *after* non-commercial fishing interests and mortality have been taken into account and 'allowed for'.
36. The Hokianga Accord believes the approach the Minister and MFish must take, as laid down by the Court, has particular relevance to the management of a taonga such as tuna (eels).
37. As is evidenced in the other fisheries, an inevitable consequence of overfishing is that fish numbers and size decrease over time. Many people are bemoaning the lack of tuna (eel) in local rivers. Some waterways no longer have any tuna (eel) available of an acceptable size. Neither of these scenarios provide for the wellbeing of the people with an interest in tuna (eel) and the environment they live in.
38. It is difficult to determine the cause of depletion in local waterways, whether that is attributable to a high TACC, because of environmental damage or a combination of both these and other factors. We acknowledge that the commercial fisheries are predominantly in the larger catchments where there are tuna (eel).
39. Habitat degradation within the Wairua and Mangakahia catchment, including the Hikurangi swamp scheme, is of the utmost concern to Maori and others with an interest in these catchments. Significant modifications to the waterways over the years have impacted detrimentally on the freshwater fishery.
40. Habitat degradation is a major concern and hapu/Iwi, in reasserting their mana and exercising effective kaitiakitanga, recognise that restoring habitats is the foundation upon which the fishery can develop. Threats to native species particularly tuna, kawai, kokopu and inanga are a natural effect of habitat degradation.
41. Both Maori and non-Maori promote the protection and enhancement of freshwater fisheries habitat in lakes, rivers, and other water bodies.

Non-commercial Interests

42. Enabling people to provide for their wellbeing is a mandatory consideration for the Minister. During the High Court kahawai judicial review wellbeing was clarified as meaning the *state of people's health or physical welfare*. Almost all commercially caught tuna (eel) are exported and therefore do not provide for the wide-ranging social or cultural wellbeing of both Maori and non-Maori people in New Zealand.
43. In addition to the Minister's obligations Maori have tikanga which obliges them to protect taonga and the environment. This tikanga is centuries old and is not a 'take it or leave it' option - it is an expectation.
44. Customary regulations do not apply to North Island freshwater fisheries therefore tuna (eel) taken for customary purposes can be caught within recreational allowances. Most recreational tuna (eel) fishers are Maori with a traditional interest in tuna fisheries. This factor enhances the significance of the recreational harvest and therefore any reduction in the recreational allowance would impact on the social and cultural wellbeing of tangata whenua.

45. MFish has suggested that a rahui or some other initiative would be required to ensure that the recreational allowance is not exceeded. This outcome does not meet the statutory requirements of the Act, to 'allow for' non-commercial fishing interests in the tuna (eel) fisheries. Nor is it a realistic expectation for tangata whenua to implement a customary management measure to address the failure of MFish to manage fisheries in a sustainable manner.
46. In 2004 recreational allowances were set at levels below MFish harvest estimates. It is unrealistic to expect non-commercial fishers to now accept reduced allowances when the objective of managing eel under section 14 of the Act is *to ensure that the fishery's availability to non-commercial is improved*³.
47. Reducing recreational access is therefore contrary to the management objectives for these tuna (eel) fisheries. MFish cannot have it both ways, either we manage tuna (eel) according to the principles and purpose of the Act and the specific management objectives or we don't.
48. If the management objectives for tuna (eel) are going to change then that is a matter for further consultation.
49. The Hokianga Accord strongly objects to any proposals to reduce the recreational allowance on a proportional or non-proportional basis at this time. If any reductions are to be made they must be applied to the TACC first.

Total Allowable Commercial Catch

50. In order to achieve the management objectives for the eel fisheries we are firmly of the view that meaningful changes to the TACC are required as follows:
 - Reduce the TACC for shortfin tuna (eel) by 30 percent.
 - Reduce the TACC for longfin tuna (eel) by 50 percent, due to particular sustainability concerns.
51. After reviewing the MFish information and feedback provided by tuna (eel) fishers the Forum reinforces the view that the management objectives for these fisheries are not likely to be achieved unless cuts are made to *actual* catch levels.
52. When adjusting TACCs the purpose is to achieve a measurable and noticeable change in abundance that gives comfort to the notion of sustainability. MFish has already expressed concerns for both shortfin and more so for the longfin stocks.
53. The problem with reducing the TACC by less than 30 percent is that it tends to get lost in the noise of natural variations. Subsequently it is assumed the lower TACC has led to a rebuild, even though supporting data must be massaged to fit the view. It is far better to make a large change in TACC and then any effects should be clear and obvious.

³ Management proposals for North Island Eels (IPP), Ministry of Fisheries, June 2007.

54. The commercial value of tuna (eel) has collapsed due to enormous aquaculture production in Asia so now would be a great time to take the pressure off the stocks and see a return to abundance levels of 25 years ago.
55. If tuna (eel) stocks recover to levels that are sufficiently abundant to support increased TACCs then measures can be reviewed at that time. There is no tangible reason why a precautionary approach cannot be taken in the interim, particularly given that tuna (eel) are being managed under section 14 of the Fisheries Act, have specific management objectives and MFish' commitment to ongoing active management of this taonga.

Conclusion

The Hokianga Accord appreciates the opportunity to make comment on management proposals for tuna (eel) and await MFish confirmation on how they are going to provide for the *input and participation* of tangata whenua into further management of our taonga.

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