

11 December 2015

FISHERIES INSHORE NEW ZEALAND'S RESPONSE TO THE OPERATIONAL REVIEW OF THE NEW ZEALAND FISHERIES MANAGEMENT FRAMEWORK

INTRODUCTION

1. At the September 2015 Seafood Conference, the Minister for Primary Industries announced the Ministry for Primary Industries (MPI) would undertake an operational review of the New Zealand fisheries management framework. The scope and nature of the review has evolved in the recent past from the narrow operational review announced by the Minister to a wider review where only the following are deemed out of scope:
 - sustainable utilisation of fisheries resources as set out in section 8 of the Fisheries Act
 - the Quota Management System (QMS) tools (quota and annual catch entitlements)
 - the rights of commercial quota ownership
 - the Crown's obligations under Treaty settlements
 - the rights and interests of tangata whenua, and customary management
 - the right to fish for recreation
2. Fisheries Inshore New Zealand Ltd (*Fisheries Inshore*) is the Sector Representative Entity for inshore finfish, pelagic and tuna fisheries in New Zealand. Its role is to deal with national issues on behalf of the sector and to work directly with, and behalf of, its quota owners, fishers and affiliated sector representative organisations. Its key outputs are:
 - developing appropriate policy frameworks, processes and tools to assist the sector to manage inshore, pelagic and tuna fishstocks more effectively
 - minimising fishing interactions with protected species and the associated ecosystems
 - working positively with other fishers and users of marine space where we carry out our harvesting activities
3. Collectively, Fisheries Inshore shareholders own more than 51% of the quota in 187 (of 239) inshore, pelagic and tuna stocks and have shareholdings in the remaining inshore stocks. This equates to approximately 80% of the inshore finfish sector by value and volume.
4. Fisheries Inshore welcomes the review and values the opportunity to contribute to the future-proofing of the New Zealand fisheries management framework.

SUMMARY STATEMENT

5. Fundamental to our submission is the strong belief that the New Zealand fisheries management framework as it relates to inshore finfish – the legislative structure and regulatory base – is not broken, nor in need of fundamental reform. However, it can be updated and amended to improve the performance and effectiveness of the overall management system.
6. With that in mind we support and endorse the submission of Seafood NZ that seeks to provide a more enabling Fisheries Act that recognises the variety of fisheries and that flexibility should be provided to optimise the sustainable use of those resources. We also recommend as compulsory reading the summary of the QMS and its evolution which is contained in the front sections of the Seafood NZ submission.
7. Further, we stress the view put forward in the Seafood NZ submission that any changes to the Act should be carefully considered within the context of the fisheries framework management as a whole. The Fisheries Act and QMS represent a complex suite of measures that provide valuable incentives to ensure wise resource use. Any interventions that increase uncertainty, erode current rights, or change desirable incentives should be avoided. Such changes would represent considerable risk to sustainability which is the cornerstone of the Fisheries Act.

8. We consider that the performance of inshore fisheries can be vastly improved for all sectors with very minor, if any, change to the current law. However, what is in need of substantial reform and improvement are the operational processes that give effect to the Fisheries Act.
9. While much of this submission might appear critical of MPI, that is not our objective or intention. We acknowledge that managing inshore fisheries is considerably more difficult than other sectors, and MPI has spent many of the past few years in a state of flux. This has resulted in high staff turnover, structural changes and a loss of institutional knowledge and capacity that has compounded an already difficult task. Our intention is to highlight deficiencies, provide the basis for discussion and action and work with MPI to improve inshore fisheries, not just for the commercial sector but for all those that value our fisheries resources.

BACKGROUND

10. New Zealand has earned a world-wide reputation for the quality of its fisheries management. It was an early adopter of Individual Transferable Quotas (ITQ) and the use of Maximum Sustainable Yield (MSY) as the bases for management of fisheries. Its position at the head of the pack has been maintained through the provisions of the Fisheries Act, the adoption of harvest strategy standards and the inclusion of ecosystem considerations in decision-making.
11. The provisions in Part Two of the Act containing the Purpose, the Environmental Principles and Information Principles are fundamental to the integrity and stability of the fisheries management framework. The Purpose statement in section 8 has been deemed out of scope; a decision we commend and consider wholly appropriate. However, we see no reason why, having served New Zealand so well to date, there should be any need to amend the other basic foundations that are reflected in the Principles in sections 9 and 10 of the Act.
12. The Information Principles embody the concept of a precautionary approach by ensuring decision-makers take into account the uncertainty in information and the need for caution when information is uncertain, unreliable or inadequate. The Environmental Principles require decision makers to take into account the need to ensure the long-term viability of associated or dependent species, maintain biological diversity of the aquatic environment and protect habitats of particular significance to fisheries management. Any attempt to finesse the current wording of Part Two or import additional and/or vague considerations should be avoided. Doing so would only serve to increase uncertainty, de-stabilise fisheries management and thereby undermine the Purpose of the Act.
13. Part Three sets out the sustainability measures that underpin the utilisation objectives of the Act. Section 11 provides the Minister with the powers and the process to be followed to introduce sustainability measures. Section 13 requires the Minister to set a Total Allowable Catch that maintains a stock at or above a level that will produce the maximum sustainable yield having regard to the interdependence of stocks. Section 14 allows for in-season adjustments to be made for stocks with highly variable abundance. Section 15 allows for the Minister to implement such measures considered necessary to avoid, remedy or mitigate the effect of fishing-related mortality on protected species. Section 16 allows for emergency measures to be implemented by the Minister.
14. These various sections are now well understood and work synergistically to deliver the Purpose of the Act. This applies not only to stock management but also to wider ecosystem considerations, for example through limiting the impact of fishing on the seabed and protected species. A significant element of the Industry's focus is on implementing measures to improve environmental performance through gear modification, and operation changes to deliver on environmental policies such as the National Plans of Action for Seabirds and Sharks.
15. There is no doubt that New Zealand's fisheries management framework is delivering sustainable fisheries management. By the end of 2014, for the stocks with known status:¹
 - 96.4% of the landings were from stocks above the soft limit
 - 99.5% were from stocks above the hard limit
 - 95.9% were from stocks below the overfishing threshold, and
 - 90.3% were from stocks above their management targets

¹ MPI. *The Status of New Zealand's Fisheries*, February 2015.

16. If there is a downside to that analysis, it is that only 72% of the landings come from stocks with a known status. That does not mean the other 28% of landings are from stocks that are being fished unsustainably, just that we have yet to specify appropriate management and monitoring measures to provide that information.
17. The number of stocks with known status has progressively increased, yet more pragmatic monitoring approaches are necessary to provide confidence in sustainable use. Many of the fisheries in question are inshore stocks under the purview of Fisheries Inshore.
18. Furthermore, in respect of the inshore finfish stocks:
- 86% of QMS stocks have never had a formal TAC/TACC review since their introduction to the QMS²
 - Less than two-thirds of inshore stocks have a recreational allowance set
 - There is no approved over-arching Fisheries Plan in place for inshore fin fish
 - There are no documented, stock-specific plans in place for any inshore fin fish stock (although progress has been made on SNA1)
 - The medium-term research programme in place is not informed by specified management objectives for inshore stocks
19. This has not been helped by the recent organisational changes within MPI. We are concerned that the current management and resourcing structure does not result in strong accountability or ownership of specific stocks by MPI staff. Prior to 2010, MPI had a management structure with regional analysts responsible for the management of stocks within that region. Those analysts were able to establish relationships with commercial and recreational sectors and obtain a detailed knowledge and oversight of the stock and all elements of the fishery. The replacement management structure provides for fisheries management staff to be pooled primarily in Wellington and Auckland and be assigned stocks as required to address emergent issues.
20. As a consequence, too many inshore fisheries are “under-managed” or not managed at all.
21. The discussion above illustrates that:
- a) when the current fisheries management framework is applied, and appropriate management and monitoring is in place, stocks are demonstrably sustainable; and
 - b) there is considerable scope for improvements within the current framework to increase the effectiveness and efficiency of management activities that are applied to inshore fisheries; this must of course be done in a cost-effective manner.
22. Those two points form the central thesis of our submission. Our focus is not on how New Zealand maximises the value it extracts from our fisheries resources as that ultimately depends on the value generated by the stakeholders and more widely from the international perception of New Zealand as a sustainable economy. Those matters are *Beyond Sustainability* and are discussed in Seafood NZ’s submission. Rather our focus is on the underlying foundation for that value – sound fisheries management for our inshore finfish stocks.
23. We devote much of the remainder of this paper to discussing possible improvements. Where we are able to do so, we have discussed these under the following five themes identified by MPI:
- Ensuring sustainability
 - Benefits for all New Zealanders
 - Decision-making processes
 - Monitoring and enforcement
 - Responding effectively to future challenges
24. Furthermore, we have attached as Annex One an integrated Six-Point Plan that we consider can go a long way to addressing many of the fundamental concerns that are often raised with respect to inshore fin fisheries. While the points set out in that Plan are raised under the various Themes in this submission, we consider it is critical to set these out in a stand-alone document as the Plan addresses several inter-related matters and, to make effective change, the Plan needs to be implemented as a whole rather than be viewed as potential interventions from which to choose.

² Fisheries Inshore acknowledges that many of these stocks have nominal TACs and that have yet to be proved up. If these developmental opportunities are removed (i.e. 10 t or less for the purpose of this rough analysis), the number of stocks that have never had TAC changes reduces to 62%. This is still too high.

RESPONSE TO THE THEMES

Theme One: Ensuring Sustainability

Sustainable Fishing

25. While it is unnecessary to repeat the statutory definition of ensuring sustainability, it is useful that MPI has paraphrased this in its definition of sustainable fishing to mean:
- making sure that enough of the fish population remains to breed in the future, and
 - not destroying the marine habitats essential for spawning, migration and feeding
26. As stated, Fisheries Inshore considers that the provisions in Parts Two and Three of the Act have provided, currently provide and will continue to provide an effective framework for the sustainable utilisation of New Zealand's fishstocks and protection of the aquatic environment. No substantive change is required to those provisions to future-proof the framework to ensure sustainable fishing. The use of the maximum sustainable yield and related proxies remains a leading edge management tool for fisheries management and the established Harvest Strategy Standard has contributed to the sustainability framework by providing measures against which the performance of fisheries can be assessed (although we consider more pragmatic measures should be specified for lower information stocks).
27. In concert with stock management, the Act addresses impacts on protected species and places fisheries management in the context of the wider aquatic environment. New Zealand's fisheries management framework has evolved to take the wider ecosystem into account.
28. However, implementation of the existing management framework has not kept pace with the demands for fisheries management, for example:
- 28% of landings come from stocks that have no assessed status
 - No inshore stocks have documented, stock-specific management criteria that direct fisheries research³
 - TACCs of most stocks have never been reviewed
 - On average, the TACCs of only six of c. 200 inshore fishstocks are reviewed each year⁴
 - A draft Inshore Finfish Fisheries Plan was released in July 2011 but had no stakeholder involvement, was not consulted on, nor was it approved by the Minister under section 11A
 - Annual Reviews of Inshore FinFish Fisheries were produced only for 2010/11 and 2011/12 and a draft Operational Plan was provided for 2012/13. None of these arose from participative processes and no updates have been undertaken
29. As a consequence of not putting in place well-specified, bespoke yet appropriately-pragmatic management plans, and having an appropriate accountable management structure, the management system is slow to respond (or not responsive at all), may forego value, may risk the sustainability of stocks and does not result in optimal service provision. While it is not necessary to provide detailed examples in addition to the bullet points above, we mention two recent instances by way of illustration and with a view to providing tangible suggestions to alleviate the issues raised.
30. In 2006, the management framework for FLA3 was moved from a TACC with headroom managed by fishers, to an in-season review of the TACC. We consider that change was not necessary given the system to that point had worked well and given rise to few, if any, sustainability concerns given the nature of the fishery. The new process involves an assessment of fishery for the first three months of the fishing year followed by full statutory consultation. As a result, rather than having the ability to respond to the natural biological variation between years, decisions on the TACC under the new framework are now often made too late in the fishing season and industry is unable to adjust its fishing operations to take advantage of the increased TACC – this means foregone economic opportunity where there are no sustainability issue. Recent decisions have been made on 9 July 2009, 17 June 2010 and 16 May 2013. Similar problems exist for RCO3, which is also subject to this framework, where decisions have been announced on 16 May 2013 and 24 July 2014.

³ Although we acknowledge the progress made on the SNA1 Plan.

⁴ While we acknowledge that capacity issues will limit the number of changes that can be advanced in any year, pragmatic changes to the decision-making processes and more specific management will assist.

31. Part of the problem lies in a legislative requirement that only allows abundance in the current fishing year to be taken into account, and part of the problem lies in the decision-making processes to amend the TACC. We consider that consideration should be given to restoring the headroom for these fisheries. Failing that favoured solution for these fisheries, or in addition, this problem could be overcome with two small amendments to the Act. First, section 14(6) of the Act could be changed to allow information from the previous fishing year(s) to be taken into account, thus allowing for the process of an in-season increase to commence earlier. Second, the decision to allow an in-season increase could be delegated to the Director-General of MPI with a truncated consultation process. We consider that this delegation to the Director-General (once the Minister has approved its general use) could have much wider application with significant cumulative economic benefits without endangering other sectors' access to their allowances and minimal risk to sustainability.
32. The second example relates to service provision – in this case fisheries research. For the past few years MPI has consulted on research on MOK1 and MOK3 stocks. These fisheries are small and have gross fisher revenues of \$676,060 and \$160,050 respectively, and ACE revenues of \$310,000 and \$40,000 respectively. Despite the small returns derived from these fisheries, MPI proposed undertaking research in 2015/16 totalling \$220,000 with \$133,037 allocated to MOK1 (44% of the ACE revenue) and \$31,446 to MOK3 (79% of the ACE revenue). Using a realistic estimation of profit in these fisheries, that proposal would have removed all profit for the next four years. After discussions with MPI, both parties agreed this was untenable and the proposal was withdrawn by MPI.
33. This illustrates the need for better-defined management objectives, and pragmatic harvest strategies that result in more appropriate and cost-effective fisheries monitoring. Fisheries Inshore has developed the concept of Management and Monitoring Plans (see Annex Two) to allow for better-specified management and is also detailing a range of monitoring approaches that could be applied to a variety of QMS stocks.⁵ We consider this would allow for more appropriate fisheries services to be delivered and more definitive and responsive management action upon receipt of that information.
34. One such example is the work conducted over the last three years by Fisheries Inshore on behalf of quota owners of BNS stocks. The industry has funded representative age and length sampling across all BNS stocks in conjunction with updated CPUE analysis and development of an evaluated management procedure. MPI's support for this work has been appreciated and allowed both industry and MPI to work toward a more comprehensive management approach for BNS. We would welcome the opportunity to expand that approach to other fisheries, ideally in conjunction with further policy work on third-party delivery through an Approved Service Delivery Organisation or other such structure; this is detailed in the Seafood NZ submission.

Aquatic Environment

35. While the preceding section discusses one aspect of sustainable fishing, it is important to consider the other dimension to *Ensuring Sustainability*, that being avoiding, remedying or mitigating any adverse effects of fishing on the aquatic environment. This is also touched upon in the following section but it is important to emphasise that those sections of the Act that more directly deal with the effects of fishing (e.g. section 15) cannot be divorced from the Purpose statement in section 8.⁶
36. For example, the Court of Appeal emphasised that section 15(2) only authorises measures that are “necessary” to avoid, remedy or mitigate the effect of fishing-related mortality. What is necessary is a matter for the Minister's judgement; this assessment should be guided by the Purpose and Principles of the Act. The Court itself commented that the Minister was required to balance utilisation objectives and conservation values.⁷
37. It should be apparent that, given section 8 is expressly excluded from the review of the Act, great care is needed if any change is contemplated to other sections that rely more directly on that section, and associated jurisprudence, for their interpretation.

⁵ FLA 3 is provided as an example of a Management and Monitoring Plan, this should not be taken as an endorsement of the current management approach; see paragraphs 30 and 31.

⁶ For example, see Supreme Court of New Zealand, SC 40/2008 [2009] NZSC 54 at [38]. We understand that judicial opinion offers no constraint on legislative change given the sovereignty of Parliament; however, we include such references sparingly throughout to offer support for our views and to demonstrate the interconnected nature of the Fisheries Act.

⁷ *Squid Fishery Management Company v Minister of Fisheries* (7 April 2004) CA 39/04 at [75, 79 and 103].

Beyond Sustainability

38. Of interest is the following statement that MPI has included on its website as part of the description of *Ensuring Sustainability*.

Local communities and international markets are taking a growing interest in the environmental impacts of fishing. Expectations of what a fisheries management regime can and should deliver, including resource sustainability and product traceability, are increasing. New Zealand's fisheries management system must be able to respond.

39. Fisheries Inshore considers that the answer to this statement is largely contained in the Purpose of the Act which is, as noted, out of scope.
40. The interest that local communities and international markets have in the environmental effects of fishing is addressed in the requirement to avoid, remedy or mitigate any adverse effects of fishing on the aquatic environment as set out in the Purpose of the Act.
41. Any market demands that extend beyond the Purpose of the Act, whether they relate to environmental effects of fishing or expectations of what a fisheries management regime can deliver, be that traceability or resource sustainability in excess of statutory requirements, are therefore out of the scope of this review.
42. Such additional demands are market-driven and *Beyond Sustainability*. Any response to these market pressures constitute a business decision to be taken by those rights holders that are in the business of catching and selling seafood. The reality of those market demands is evident in quota owners' decisions to invest in fisheries certification to the standards promoted by the Marine Stewardship Council for a variety of New Zealand fisheries. These standards are recognised as global best practice and require investment and practice in excess of New Zealand's statutory requirements.
43. To ensure New Zealand can respond to these market demands, the appropriate action is to amend the Fisheries Act only to allow for greater flexibility in fisheries management through better implementing the enabling framework referred to in the definition of *Utilisation*, viz:
- ... conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic and cultural wellbeing.*
44. It is this point that is central to the submission of Seafood NZ. That submission promotes the inclusion of enabling provisions in the Act that will allow for more nuanced and efficient management, and thereby raise the performance, profitability and environmental sustainability on New Zealand's fisheries.

Theme Two: Benefits for all New Zealanders

45. New Zealand's fish stocks are a common resource. The use of that resource is shared among all sectors, operating in a shared space, and, to a great extent, with shared aspirations.
46. While the details of those aspirations will vary, an abundant fisheries resource, within a healthy aquatic environment, should be a common aspiration to all those that use the resource or value it for its intrinsic qualities.
47. We submit that it is unhelpful to reduce discussions about the benefits that can be derived from fisheries to allocation of the TAC among sectors and "balancing competing interests". While that is an issue that is worthy careful consideration, it should not be the starting point.
48. If indeed there is a shared aspiration to have abundant fisheries and a healthy aquatic environment, it is imperative that our management system incentivises and delivers that before we consider resource allocation.
49. Much of the comment above in response to the *Ensuring Sustainability* theme is focused on providing a fisheries management system that delivers that aspiration. As the Seafood NZ submission highlights, interventions that increase certainty, strengthen rights and reinforce desirable incentives should be adopted to maximise the total benefits available before thinking about how those benefits are distributed.

Distribution of Benefits

50. The distribution of benefits, or “allocation”, can occur in several ways. In simple terms, one could adopt a market-based solution, or make a judgement about who should receive what benefit. Both approaches are evident in the Fisheries Act.
51. A market-based distribution is evident where ITQ and ACE are traded to enable the best use of that resource by the commercial sector. However, there is no mechanism to ensure that fisheries are being used in a way that maximises their value among sectors, including non-extractive sectors, other than by a subjective decision made by the Minister. “Best” is a dynamic concept that continuously changes based on more information and changing preferences. If we were serious about ensuring that “best use” was made of the resource (including non-use), we would out-source those difficult allocation decisions to the market. Importantly this would include recognising that, where access to resources is constrained for other purposes, a market-based adjustment should be provided in those instances.
52. Successive governments have declined to implement a market-based regime for all sectors. As such, we have allocation decisions among sectors based on the Minister’s judgement.
53. Given that Ministerial judgement is likely to remain the method for distributing benefits, we consider it is important that such decisions remain largely unfettered,⁸ with primary guidance provided to the Minister by the Purpose of the Act.
54. The Fisheries Act is non-prescriptive in how allocation decisions must be made and what must be taken into account. The Minister has a significant level of discretion in decision-making in respect of the setting of TACCs and allowances. We would be unwilling to see that level of discretion circumscribed or diminished by provisions giving preferential treatment to any sector (including commercial). For example, by changing the Act to provide recreational fishing with priority access to fisheries resources – either through preferential allocation of the TAC to fulfil recreational demand, or through exclusive spatial access for the recreational sector.⁹ We discuss each of these in turn.

TAC Allocation

55. All users of our fisheries should accept that the resource is limited at any point in time. As such, the biomass of fish that each sector is able to take must also be limited. As a consequence, all sectors must manage their extraction (or have it managed for them) within the limits provided by the Minister through the relevant allowances; be that through ACE, deemed values, seasonal closures, daily bag limits or minimum legal sizes etc.
56. It is only through the disciplines inherent in limited access to the resource, that the positive incentives associated with the QMS can operate most effectively. For example, if the law was to provide full satisfaction of recreational demand, there would be fewer incentives for commercial fishers to grow the resource as that investment would be wasted through an increasing share of the fishery being re-allocated to the recreational sector.
57. Such a policy would foster an oppositional and short-term approach to fisheries management. This is contrary to the incentives created through the QMS that provides a proportional and perpetual right to a share of the fisheries resource. It would also work against the recent work conducted in SNA1 where the recreational, commercial and customary sectors are investing time and effort to grow the fishery for the benefit of all users and also similar cross-sector initiatives in Hawke Bay that are aimed at increasing abundance for all sectors.
58. As MPI’s review website states, demands on the resource are likely to increase. While allocation decisions may provide a short-term and convenient way to manage those demands, it is no way to manage the resource (and does not in fact contribute to management of the resource in any material way). In fact it may undermine the resource as uncertainty over future access provides stronger incentives to maximise short-term catch.

⁸ Exceptions may be by agreement between or among sectors.

⁹ Exclusive spatial access for Maori through Mataitai or other customary tools is a different matter and provided for a different purpose.

Spatial Exclusivity

59. Exclusive spatial access for specific sectors also has initial appeal as a way to defuse so-called competing interests. However, any such approach must be very carefully considered to avoid unintended consequences. The announcement in August 2014 of two recreational fishing parks in Hauraki Gulf and the Marlborough Sounds is a case in point.
60. We suggest that this announcement was ill-considered and devoid of any serious thinking about the consequences of exclusive use of fisheries resources in those areas. For example:
- How would exclusive access for the recreational sector benefit the resource as a whole?
 - What would happen to Settlement Quota allocated to Maori in full and final settlement of an historic Treaty grievance?
 - How would removal of commercial effort impact on scientific data collected from commercial vessels used for stock assessment purposes?
 - Who would be compensated for lost access to the resource and how would that be calculated?
 - Snapper in the inner Hauraki Gulf is by far the most important recreational species, but why prohibit commercial catch in the same area of other species of little or no interest to recreational fishers (e.g. flatfish and mullet), but which supply both the domestic and export market, particularly given there is little suitable habitat nearby to fish for these species?
 - The vast majority of recreational effort (about 75%) occurs in the months between November and March, why contemplate a permanent commercial closure?
61. The commercial sector is not alone in questioning value of these spatial closures. One recreational group had the following to say on the matter:¹⁰
- ...small recreational-only fishing parks are largely irrelevant and a distraction. LegaSea is committed to staying focused on the more urgent and important task, to rebuild abundance and ecosystem strength in our depleted near-shore waters.*
62. The experience, where separate areas are used, is to create an ongoing “sore” at the boundaries. Separation of harvesters does not in itself create a better fishing experience. This is because abundance is an outcome derived from the cumulative activity across all areas. More commercial activity in a lesser area reduces abundance in that area and may draw fish from the “recreational area”. This in turn means recreational fishers complain that their experience is not improving and the area must increase – thereby creating ongoing “rub-points”.
63. As should be evident from our preceding comments, we consider Legasea’s view is the correct one. While the recreational and commercial sectors may have differing views about how we achieve better fisheries management outcomes, that should be the primary focus of the fisheries management regime. Undermining that work though politically-motivated, populist and expedient spatial “management” does us all a disservice.

Treaty Settlement

64. Of particular importance is explicit consideration of the Fisheries Deed of Settlement. This applies equally to resource allocation, spatial exclusion and marine protection initiatives (discussed below).
65. It well known that Maori accepted full and final settlement of Treaty claims in return for ITQ and funds to acquire a share in Sealord. ITQ was accepted as currency for that Settlement given its perpetual duration and strong property attributes creating strong sustainability incentives. Any decisions to reduce the value of that ITQ, for any reason other than protection of the resource, have serious implications for the integrity of the Deed of Settlement. This position was well summarised by McGechan J in the 1997 SNA1 case:¹¹

It is clear Maori negotiators in 1992 were aware that ITQ held by the Commission, and further ITQ to be received by the Commission and Maori, would be subject to reduction along with the TACC on biological grounds. Likewise, it might be increased. That risk and potential benefit were known and accepted. I accept Maori did not envisage, or accept, that TACC and quota might be reduced simply to enable a greater recreational allocation of the resource. It is highly unlikely Maori would have agreed to surrender Treaty rights for the better gratification of Auckland boatmen.

¹⁰ LegaSea Update 33, July 2015 edition.

¹¹ *New Zealand Federation of Commercial Fisherman (Inc) v Minister of Fisheries* CP 237/95, 24/4/97.

Desired Improvements – Legislative

66. Any changes to the Fisheries Act itself should be focussed on reducing uncertainty, strengthening rights and reinforcing positive incentives. We consider such an approach will improve the performance of our fisheries for the betterment of all those that use or value the resource.
67. As we noted above, we also consider that the Minister should retain the current discretion in the Act to allocate the TAC among sectors with contextual guidance provided by the Act's Purpose and supporting jurisprudence.¹² The Supreme Court has stated that the Minister makes a policy decision about the appropriate allocation for a fishery and that the Act does not confer priority for any interest over the other.¹³ It leaves that judgment to the Minister.
68. Such decisions should be based on accurate data about recreational demand and informed by ongoing work such as the Large-Scale Multi-Species Survey (LSMS). Opportunities to improve the precision of recreational catch estimates, such as recreational charter catch in particular, should also be implemented as a matter of priority. Where recreational catch is a significant part of a fishery, and that fishery requires data at more frequent intervals to make management decisions, we expect the Crown to adjust its purchasing of the LSMS to adequately provide the data for those decisions – these will obviously also reflect recreation fishing preferences.
69. Any change to the Fisheries Act to provide exclusive access to either the recreational or commercial sector is not supported without considerably more discussion on the purpose, costs and benefits of such an approach. To date the government has announced its intention to implement such areas in the Hauraki Gulf and Marlborough Sounds without that important detail or analysis. Furthermore, in recent months we have seen the announcement of a very large marine reserve in the Kermadec FMA without the level of detail, policy analysis and factual propriety one would expect from such a major initiative.
70. Given the precedent reflected in these two examples we can offer no support at this time for any amendment to the Act that would provide for exclusive spatial access to any sector without significant policy work to clarify the proposition.

Desired Improvements – Operational

71. Fisheries Inshore supports the provision for quality recreational fishing and, where necessary, collaborative processes to allow for sharing views and discussing fisheries management to improve the resource.
72. However, such processes should be carefully applied. We note that recreational fishing is very selective in the species targeted. This is illustrated in the LSMS where, for example, snapper made up 52.3% of the recreational finfish harvest by number and 51.4% of those finfish species for which the volume of the catch could be estimated. In contrast, blue cod made up 7.8% and 3.6% respectively and tarakihi 4.2% and 2.6%.¹⁴ Further data from MPI illustrating the selectivity of recreational fishers is provided in Annex Three.
73. There are a great many species that are of value to the commercial sector but of little or no interest to recreational fishers. As mentioned above, blunt spatial interventions in such circumstances destroy value without any countervailing benefit to recreational fishers; these interventions ultimately operate to the detriment of the resource and the flow of benefits to New Zealanders arising from access by all fishers.
74. Where important recreational fisheries do exist, and additional management is considered necessary, any differences in view can be resolved inside the current Act. We note that local disputes have been and can be resolved without legislative impositions. Such an approach has been in train for the SNA1 fishery for some time and is producing productive results in Hawke Bay.
75. Generally we consider that more specificity about how fisheries will be managed is an essential step in managing inshore fisheries, regardless of whether there is a significant recreational interest or not. The establishment of Fisheries Plans that provide the basis for the Management and Monitoring Plans we have proposed would provide an opportunity for all interested parties to understand the fishery, how it will be managed and what services will be required to do so.

¹² For example, see Supreme Court of New Zealand, SC 40/2008 [2009] NZSC 54 at [54].

¹³ Ibid at [65].

¹⁴ J Wynne-Jones, A Gray, L Hill and A Heinemann. 2014. *National Panel Survey of Marine Recreational Fishers 2011–12: Harvest Estimates*. New Zealand Fisheries Assessment Report 2014/67.

Comment on Marine Protected Areas

76. We have provided views above in opposition to spatial exclusivity as a way of managing access to fisheries resources by commercial and recreational fishers. Our concerns also extend to the imposition of marine protected areas (MPAs) without proper consideration of their purpose, efficacy, costs and benefits.
77. To be clear, we do not oppose marine protection. On the contrary, we consider it is essential to ensure the integrity of the aquatic environment that supports our fisheries resources. However, it should also be explicitly stated that marine protection does not necessitate the use of spatial tools at all and the use of such tools can detract from sound marine management.
78. Australia's experience in managing and protecting the Great Barrier Reef is a case in point. Earlier this year, UNESCO's World Heritage Committee considered whether to down-grade the Reef's status by adding it to the List of World Heritage in Danger. While the downgrade was avoided, the reason the Reef's status was in question was that management had prioritised perceived threats (that were easy to manage) over real ones (that were not). The most serious risks to the Reef come from pollution and the poor quality of water running onto the Reef, outbreaks of crown-of-thorns starfish, coastal development and dumping of dredge spoil.¹⁵
79. These risks have been understood for many years yet they are hard to manage. Central to the existing management of the Reef was a zoning approach whereby certain areas were zoned for specified activities. A key component of this zoning was the much-lauded decision in 2004 to increase the area where fishing is prohibited from 4.6% to 33%. However, in the marine environment, an approach to management by zoning areas for specific activities does not necessarily provide any protection from some of the most pervasive threats. Establishing fishing prohibitions did not (and could not) mitigate these threats.
80. As this example illustrates, the application of MPAs must be for a clear purpose, with a demonstrably effective management tool that will achieve the purpose, and with due regard for the costs and benefits of such an approach. Furthermore, if a choice is made to re-allocate the use of an area from current and/or future users for another purpose, those affected parties should be appropriately compensated. Above all, any imposition of spatial management must be evidence-based.
81. It is against this background that we raise our concern about the view that MPAs are fisheries management tools – most recently illustrated in the Cabinet paper suggesting that a proposed marine reserve in FMA10 is a sustainability measure.
82. There is very little empirical evidence that marine reserves provide additional benefits to the management of fisheries in areas where good fisheries management is in place. The literature (including one meta-analysis of 310 peer reviewed papers) states that proof that marine reserves benefit fisheries management is thin,¹⁶ (and largely limited to tropical reef systems where there is little sophisticated management), and furthermore, indicates that when stocks are not overfished, MPAs may have no effect, or even a detrimental effect on well-regulated fisheries like those in New Zealand.¹⁷
83. While we accept there may be other views, we consider that there is a significant body of literature that questions the intuitive, but likely incorrect, assumption that MPAs are good fisheries management tools in well-managed marine environments. We would expect a robust analysis of the efficacy of such interventions before any further work was undertaken to incorporate wider spatial management into New Zealand's fisheries regime.

¹⁵ B Kearney and G Farebrother. 2014. *Advances in Marine Biology* **69**: 253-288 at page 261.

¹⁶ A Caveen, N Polunin, T Gray, SM Stead. 2015. *The Controversy over Marine Protected Areas*. Briefs in Environmental Science. Springer International Publishing, Cham e.g. at pp 80 and 115.

¹⁷ BS Halpern and RR Warner. 2003. Review Paper. Matching marine reserve design to reserve objectives. *Proceedings of the Royal Society B: Biological Sciences* **270**: 1871–1878.

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M Haddon, C Buxton, C Gardner and N Barrett. 2002. Modelling the effect of introducing MPAs in commercial fishery: A Rock Lobster example. In: JP Beumer, Grant and DC Smith. *Aquatic Protected Areas – What works best and how do we know?* Proceedings of the World Congress on Aquatic Protected Areas pp 428-436.

Theme Three: Decision-Making Processes

84. The current fisheries management framework provides that almost all fisheries management decisions are the domain of the Minister. We consider it is unusual for a Minister of the Crown to be involved in such minute operational detail. In some circumstances this extends to Cabinet approval for relatively inconsequential regulatory amendments such as changes to bag limits or minimum legal sizes.
85. While this may have been appropriate when bringing in a new regime in 1986, it is entirely inappropriate at this time and limits the benefits from improved fisheries management. Current decision-making processes and procedures are slow, inefficient and limit the ability of the system to respond to opportunities and risks. This benefits no one.
86. We consider the appropriate role for the Minister is in setting the overall strategic direction for fisheries and approval of any plans to achieve those objectives. In other words, provide the constraints within which fisheries are to operate and allow officials and/or users of the resource the flexibility to manage fisheries within them. That approach will ensure sustainability and provide for value *Beyond Sustainability*.
87. We submit that much of the current operational detail considered by the Minister is rarely the domain of Ministers in other portfolios and is best delegated to officials and/or users of the resource as dictated by the circumstances. This matter is central to the Seafood NZ submission and we support the proposals therein to provide far greater flexibility in decision making. In addition to increasing the responsiveness and efficiency of decision making, it acknowledges that there is a vast variety among our fisheries. There is no rational reason why such a diverse range of fisheries should be subject to the same regime and decision-making processes.

Decision Content

88. We consider that not only is the decision-making process cumbersome, but the mandatory requirements in many circumstances are redundant and serve little purpose other than to bog down decision-making and reduce effective fisheries management.
89. For example, section 11 alone requires the Minister to consider all of the following before setting a TAC under section 13:
 - any effects of fishing on any stock and the aquatic environment
 - any existing controls under the Act that may relate to the stock or the area concerned
 - the natural variability of the stock
 - any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991
 - regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
 - any planning document lodged with the Minister of Fisheries by a customary marine title group under section 91 of the Marine and Coastal Area (Takutai Moana) Act 2011
 - any management strategy or management plan under the Conservation Act 1987
 - sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 that apply to the coastal area the Minister considers to be relevant
 - any conservation services or fisheries services
 - any relevant approved fisheries plan
 - any decisions not to require conservation or fisheries services
90. Many of these considerations are unnecessarily onerous if considered in full measure (e.g. all fisheries and conservation services, any existing controls that apply to the area, proposed regional plans etc.). Other considerations are largely irrelevant (e.g. the natural variability of a stock is considered in the science processes that assess potential yields).
91. Some submitters may consider that such considerations, and perhaps more, are desirable and form the basis of ecosystem-based fisheries management (although the concept itself is poorly specified and even less clarity is available about how this approach could practicably be applied).
92. Furthermore, our fisheries management regime has evolved considerably to the point where the effects of fishing are actively managed quite independently of the TAC decisions that are central to Part Three of the Act. The work being undertaken as part of implementing the National Plans of Action for Seabirds and Sharks are examples of this.

93. The Industry is pro-actively implementing a myriad of operational initiatives to reduce impacts on the marine environment, many of which are voluntary, and include:
- gear modification to improve fishing selectivity
 - implementing bird scarring devices to reduce risk
 - closing large areas to bottom-impacting fishing gear
 - avoiding areas where juvenile fish congregate and implementing move-on rules
 - refining and implementing sea lion exclusion devices
 - investigating the use of sub-marine line setting
 - experiments with trawl doors to reduce seabed contact
 - investigating the use of hook pods
 - implementing line weighting
 - using pingers to deter dolphins
 - camera monitoring
94. As this list demonstrates, the Industry undertakes a vast amount of work to ensure its activities are environmentally responsible; and will continue to do so. When this is coupled with a stock management regime that can respond to fluctuations in stocks biomass for more species, more quickly, that forms the core of an ecosystem-based approach to fisheries management.
95. We submit that consideration should be given to reducing the current burden on decision makers (and officials) to increase efficiency and efficacy. The statutory scheme has been built upon incrementally over time to the point where many considerations are irrelevant, redundant and can be advanced far more effectively outside Part Three of the Act.

Theme Four: Monitoring and Enforcement

96. Industry shares with MPI the objective of having a compliant industry and seeks changes to improve the effectiveness and efficiency of monitoring and enforcement activities.
97. The compliance model in the Fisheries Act was based on recognition that there would be a low level of monitoring and thus a limited prospect of detecting an offence. As such, to ensure adequate performance, high penalties were available to be imposed that were sufficient to deter offending. Since those early days, the capacity to observe and monitor fishing activity has increased significantly (and is likely to continue).
98. Monitoring was initially based on a low coverage by observers and audits of catch reporting and reconciliations. The following developments have occurred since those earlier times:
- systems that report real-time location and can detect fishing activity have been introduced for the deepwater fleet and are moving to the inshore
 - the number of fisheries officers and observers has increased
 - more sophisticated profiling of catches has been introduced to identify potential offences
 - naval and aerial surveillance systems have been enhanced as has naval capacity to intercept vessels
 - more recently camera monitoring has been introduced
99. All of these developments have led to an increase in the prospects of offending being detected. While we welcome many of these developments, as they can result in better fisheries management, we consider the penalty regime has not kept pace with these changes and requires reform.
100. In a climate of much better information, a more appropriate penalty regime should be addressed through the review. The current highest level penalties for significant offences should remain but the regime should also include an additional, measured and scaled set of responses to those who break the law, both upon conviction by the Court and, where appropriate, through a “misdemeanour” process. Lower level offences would attract infringement notices which would remove the requirement for convictions. This approach is likely to provide for a more effective deterrent to low level offending and thus improve compliance levels. Like other infringement notice regimes, should industry participants build this into the “cost of business” and become serial offenders, they should be elevated to the next level in the regime.
101. As noted, Fisheries Inshore is not seeking to remove offences or lower the thresholds for major breaches. Rather we propose adding penalties and ensuring these penalties are applied to appropriate offences – make

the punishment fit the crime. Nor are we suggesting that the first step in any concern be the imposition of penalties. The enhanced regime would also apply under the VADE framework that we comment on in paragraph 104 below.

Compliance Costs and Operational Matters

102. Fisheries Compliance costs have increased over the last decade and now amount to over \$35 m per annum – the single highest activity expenditure on fisheries management, exceeding the science spend by some 52%. Of the \$35 m total, \$10.5 m is recovered annually from industry. Setting aside for now the issue of whether compliance costs should properly be the subject of cost recovery or a Crown cost as for other branches of law and order, we are concerned about the lack of transparency for the activities undertaken and the value they provide to fisheries management. MPI now has no systems to identify the costs that are attributable to fishing activity. Further, there are no annual operational plans or annual reports that guide compliance activity. On an intuitive assessment, a resource allocation framework that favours compliance priorities over the need for science and informed management is not conducive to extracting value from resources.
103. In the past few years, there has been an improving relationship and more openness between the industry and MPI Compliance. We consider there would be significant value in formalising a broader Industry/Compliance engagement such as has been operating on an ad hoc basis in deepwater fisheries. In the deepwater sector, the initiative led to improved communications material being made available and the identification of strategic compliance targets.
104. A forum of this kind would provide both the industry and MPI with a more explicit and better-understood opportunity to implement MPI's VADE model that provides a graduated response: voluntary, assisted, directed and enforced compliance. While the industry is very supportive of MPI's VADE approach, its use seems to vary among regions and without closer engagement there is a lost opportunity to work together at the voluntary and assisted end of the VADE spectrum.

Enhanced Monitoring

105. Most recently, MPI has indicated a desire to introduce an Integrated Management and Reporting System which would see all vessels carrying locator beacons, being monitored by camera and reporting catch in real time.
106. The industry has had vessel monitoring systems onboard for many years, although only more recently in parts of the inshore fleet. Similarly, we have invested significant sums of money in integrated vessel position and camera systems to fulfil specified fisheries management needs. More recently, we have also integrated electronic data collection into that system.
107. While this work clearly demonstrates that we are receptive to this new technology, we do not consider a case has been made for compulsory use of vessel monitoring, and particularly cameras, across the entire commercial fleet. Before we could offer any support for widespread implementation of this initiative we would need to discuss with MPI a number of associated details. For example:
 - What is the purpose of making this technology fleet-wide? Bearing in mind risks and benefits, what are the critical factors that require this for all fleets in all inshore fisheries?
 - What is the purpose for which the data are collected? Is there a more efficient way to meet that objective?
 - What is the cost of fleet-wide implementation? Is this a cost-effective approach to meet the stated objective?
 - Who bears the costs: both capital and operational?
 - Who owns the data?
 - Who has access to the data and under what circumstances?
 - How long will the data be held, and by whom?
 - What protections are to be put in place to preserve fishers right to privacy in the workplace?
 - What protections are to be put in place to protect any intellectual property associated with fishing locations or techniques?
 - What exemptions would be made, if any (e.g. small vessels without a sufficient power supply)?
 - Is ubiquitous use of cameras in the workplace, and availability of that footage on request, a reasonable and justified use of the State's power? What implications might this have for other industries and the community?

Desired Improvements

108. Fisheries Inshore seeks to improve the performance of the monitoring and compliance activities through a number of initiatives including the following:
- The formation of a strategic compliance working group to identify compliance risks and seek joint solutions to compliance matters
 - The development of risk-based strategic and operational plans for compliance activities, akin to those produced for deepwater fisheries management activities
 - The introduction of infringement fees to deter low level offending
 - A review of the regulatory base to remove unnecessary and inappropriate restrictions or offences
 - A reduction in the level of expenditure for the sector
 - More explicit and consistent implementation of the VADE model to all compliance
 - The development of a strategic and operational plan and a cost benefit analysis of the IMRS project before any additional work commences
109. We consider that compliance is a joint responsibility but the current model largely excludes industry from compliance activities. Further, the imposition of draconian penalties will be less effective than working with the industry to improve communications to raise voluntary compliance. We would prefer to see fisheries compliance being considered as a service provider and thus working more closely with fisheries management.

Theme Five: Responding to Future Challenges

110. The existing fisheries management framework has shown its resilience and its ability to adapt to changing needs and challenges. As we highlighted in paragraph 15, MPI's own data show that when properly applied, the current management regime provides world-class results. MPI's Dr Pamela Mace has recently stated that:¹⁸

New Zealand's fisheries are performing extremely well overall, at least as good as, or beyond, the standards of the best in the world. I don't think there's any question about that.

111. In short, the Fisheries Act works, and will continue to do so. Current performance can be improved and increased flexibility through the changes suggested by Seafood NZ will assist. Many of the challenges identified on the MPI website can be appropriately managed within the current Act. For example, common interest in some fish stocks by recreational, commercial and customary fishers should be managed by way of sound resource management, not spatial exclusivity.
112. Other identified challenges exist *Beyond Sustainability* and should be met by the commercial sector, for example product traceability and various market demands (whatever they may be). This was discussed above at paragraphs 38-44.
113. Having said that, we wish to raise two specific issues for further comment.

Fragmentation of Jurisdiction

114. A key principle in the Fisheries Act is to manage the effects of all fishing so that fisheries resources are used sustainably. The Act should be the only mechanism used to manage fishing and the effects of fishing on both the fishery itself and its supporting environment.
115. Fisheries Inshore wishes to reinforce the schema behind the Fisheries Act – it must be the only legislation that deals with all aspects of fisheries. As we have illustrated, the Fisheries Act and QMS represent a complex suite of measures that provide valuable incentives to ensure wise resource use.
116. It has become increasingly common for central and local government to consider managing various aspects of fishing through different legislative instruments. For example, consider the following hypothetical: a new Marine Protected Areas Act is implemented that provides for recreational fishing parks, seabed protection areas and species-specific sanctuaries, all managed under different legislation and administered by different government departments. Under such a scenario, fishing activities could be impacted by all of these

¹⁸ Bill Moore. *New Zealand's fish stocks up with the world's best, says top scientist*. Nelson Mail, 24 August 2015.

- interventions, but as they occur within different legislative regimes, the current checks and balances in the Fisheries Act would not operate to preserve the integrity of the QMS and the positive incentives it creates.
117. Fisheries Inshore and Seafood NZ have highlighted the dangers of increased uncertainty and erosion of current rights. The interventions described above are likely to act to the detriment of both our fisheries resources and the marine environment that supports them. The irony is stark given a Marine Protected Areas Act would, we assume, be implemented to achieve precisely the opposite objective.
 118. This argument applies equally to any interventions by local government under the Resource Management Act 1991 that seek to control a harvesting activity because of its impact on the environment. The RMA was not intended as a statute to control fishing activities; it may be that the demarcation intended in the RMA needs further clarity.
 119. On the other hand we consider there is a valuable contribution that local government can make to improving fisheries and protecting the aquatic environment. That would be to take steps, both regulatory and non-regulatory, to ensure that land-based and other marine activities do not adversely impact on the estuarine and marine environment.
 120. NIWA has conducted research that shows sedimentation is likely the key land-based stressor on coastal fisheries with impacts including both suspended sediment and deposition effects, and associated decreases in water clarity.¹⁹ As the responsible agencies, we expect Regional Councils and MPI to work together to manage such threats. Where fishing activity is contributing materially to any environmental effects we would anticipate the industry working together with Councils and MPI, with any management of fishing impacts occurring under the Fisheries Act.

Intensive and Bespoke Management

121. MPI has noted the emergence “one off” fora, processes and groups that have begun to engage in fisheries management (or directly impact on it). While such processes *may* have their place, we consider that the formation of these groups should be considered very carefully.
122. Some of these groups have operated for inordinate lengths of time (e.g. c. 10 years in the case of the West Coast South Island MPA Forum and Kaikoura). This is not only inefficient and resource-intensive but diverts effort from properly undertaking MPI’s core role: management of all fisheries.
123. Further, we would emphasise that outsourcing management responsibility to self-elected community groups is quite different to consultation, collaboration and MPI’s statutory duty to provide for input and participation of tangata whenua; the former is not supported, the latter is.
124. With respect, community groups are often unsuited to make complex decisions about marine management and rarely have the necessary understanding of the technical, policy, economic and legal issues at play. While such groups can and do provide valuable perspectives, their role should be confined to consultative input rather than providing recommendations to government. The onus is on government to properly formulate robust and well-considered policy to guide the appropriate input from such groups.
125. The use of community groups for the provision of recommendations also provides a challenge that is allied to the point above on the fragmentation of jurisdiction. Such groups quite understandably consider that their recommendations should be implemented, yet without careful guidance from officials, these recommendations may not be consistent with the current law. In such circumstances there is pressure to use special legislation as we have seen in Fiordland, Kaikoura, and the Sub Antarctic Islands.
126. The use of special legislation again circumvents the checks and balances within the Fisheries Act and may undermine the Act’s purpose:

To provide for the utilisation of fisheries resources while ensuring sustainability

¹⁹ MA Morrison, ML Lowe, DM Parsons, NR Usmar and IM McLeod. 2009. A review of land-based effects on coastal fisheries and supporting biodiversity in New Zealand. *New Zealand Aquatic Environment and Biodiversity Report No. 37* at page 3.

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ANNEX ONE – A SIX POINT PLAN FOR INSHORE FISHERIES

Introduction

While New Zealand's fisheries management system generally works well, our inshore finfish and pelagic fisheries have been least well served. This is due to a range of factors including, but not limited to, their relative complexity, high number of stocks, small biomass of each stock, lack of targeted research or monitoring (due to affordability) and uncertainty about total fishing mortality. These problems are not new and these fisheries have been "under-managed" since the introduction of the QMS nearly 30 years ago.

These issues reduce our ability to optimise the value of these stocks to all sectors. However, they are not fatal; on the contrary, a limited number of targeted interventions could greatly assist with improving the biological, environmental and economic performance of these fisheries. This would be of benefit to all sectors.

What follows are six key work items that would begin the process to reform inshore finfish fisheries and bring their management into the 21st Century. These measures are put forward as a package to be implemented together rather than a suite of options from which to choose the most palatable. Many of the issues that face the inshore finfish sector are inter-related and as such will only be solved by changing several management settings, simultaneously, in a complementary manner.²⁰

Ultimately we are seeking a fisheries management system with the several key attributes. It must:

- be based on good (real) information
- be responsive to good information in a timely fashion
- provide incentives to comply with the law
- provide incentives to minimise the catch of unmarketable fish and to minimise waste
- build community trust, including with the recreational sector
- provide certainty of access

Most of the following matters are well understood by those experienced in fisheries management. What follows is not intended as a full-blown analysis of the issues and rationale behind implementing these measures. Rather it's intended as a summary and catalyst for action. There are solutions to the problems facing the inshore sector; all that's needed is the desire to solve them.

1. Management and Monitoring Plans

It has become increasingly clear that there is no explicit agreement about clear management objectives in each of our fisheries. If we are to improve the performance of our fisheries, a key initiative will be developing a comprehensive management and monitoring strategy. Such a strategy would clearly define the management approach and the services needed to implement that management. These management objectives should specify how we want to manage our stocks and consequently, what information we need to do so. The focus must be on management directing science, not science dictating management.

Fisheries Inshore has commenced a process of documenting what we are seeking to achieve for key fisheries. This should drive science and provide certainty for the industry about what information is to be collected, when, and most importantly, how this will be used to adjust TACCs, deemed values or other management measures (e.g. MLS, Schedule 6 etc.). The key purpose of collecting this information is to make timely management changes so that our fisheries are responsive to prevailing conditions.

In time, this would coalesce into a more comprehensive research/monitoring programme that would take a longer term view of research planning and help provide clarity on priorities. Longer term research planning also has the benefit of bundling several research projects into single contracts which may result in reduced transactions costs, a stronger negotiating position for the purchaser and increased certainty of longer term costs.

Next Steps

Fisheries Inshore is working with MPI to develop this idea and ensure it compliments other government management requirements and the needs of other resource users.

²⁰ The proposed measures are seen as work that should be conducted over and above much of the work currently underway. For example, the current focus on reducing impacts on protected species and continued engagement in spatial management or allocation processes are also vital. Fisheries Inshore considers that successfully implementing such measures, and those proposed herein, would provide significantly increased public confidence in inshore fisheries to the benefit of the Crown, the industry, the public, the marine environment and the resource itself.

2. Better Catch Information

Much work has been conducted over the past five or more years to obtain better information on total fisheries mortality and to ensure that information is used in monitoring and management. Much of this work has been conducted in collaboration with MPI.

The absence of more comprehensive catch reporting is both a symptom and a cause of much undesirable activity. For example, discarding fish can be a symptom of incorrect TACCs and DVs and may be unnecessary waste and a loss of economic value when fish is marketable. As a result of discarding, estimates of fishing mortality are inaccurate which results in incorrect CPUE and uncertain stock status information. If TACCs and DVs are not adjusted to reflect increasing abundance, TACCs remain incorrect and the cycle continues unabated.

There are numerous reasons why catch information may not be reflected accurately in MPI figures and subsequently considered in scientific processes. For example, catch that is less than the minimum legal size is required by law to be returned to the sea, yet in most cases there is no requirement to report this catch. Recent work in the SNA1 fishery has been undertaken to record that catch and ensure it is used in science processes.

Other reasons for discarding fish are not as well understood and may stem from a variety of drivers. Fisheries Inshore has commenced work to understand better the causes of discarding its nature and extent. Once this information is collected and analysed, more accurate catch information can be used in scientific assessments to ensure catch limits are set appropriately. Importantly, this information would be used when implementing the aforementioned Management and Monitoring Plans that should result in timely adjustment to TACCs and DVs and provide an early demonstration of the integration between the two workstreams.

Fisheries Inshore considers that this work is of vital importance to the future management of inshore fisheries and is fundamental to ensuring our fisheries perform better. However, as noted above, while it is necessary it is not sufficient in itself – it must happen in concert with the other proposals in this package.

Next Steps

Fisheries Inshore has commenced work to obtain more accurate information of catch. As more information becomes available, Fisheries Inshore will look to expand the data collection process if necessary and discuss the use of this information in future management and monitoring.

3. Electronic Monitoring

Electronic monitoring is used as a collective term for vessel monitoring systems (VMS), cameras and electronic reporting. However, it's important to distinguish between them as they serve different purposes and have different risks and opportunities associated with them.

- a. VMS: Vessel monitoring has been used almost exclusively in the deepwater fleet for many years and provides the ability to determine vessel position on a regular basis. However, MPI's current system cannot accommodate further expansion and cost-effective alternatives are actively being investigated.

Depending on the cost and objectives, Fisheries Inshore considers that VMS can offer some tangible benefit to the inshore sector as insurance against accusations of wrong-doing and as part of a package of measures to give the public confidence that inshore fisheries are operating responsibly.

- b. Cameras: Cameras on vessels could be used for a variety of purposes. While Fisheries Inshore has no fundamental objection to placing cameras on vessels, the rationale must be clear and well specified. Fisheries Inshore considers EM can be a tangible way to collect additional information and demonstrate the sustainability of inshore fishing practices and, if implemented efficiently and pragmatically, should be able to overcome the real practical and cost barriers that arise from placing human observers on small inshore vessels (assuming a clear and justifiable rationale for their deployment).
- c. Electronic reporting using fisher-friendly systems offers the opportunity to record far greater amounts of data (more easily, more accurately, and more cost effectively). At present the reporting forms limit the amount of information recorded by fishers. This leads, particularly for inshore trawl fishing, to inaccurate and incomplete assessments of both presence and levels of associated incidental by-catch. The current forms limit the fisher to recording between five and eight fishstocks whereas there may be more than 20 different species taken. Smart and robust fisher-friendly systems offer the opportunity to gaining vastly greater amounts of information at little extra time and cost to fishers. Any such adoption would need to be taken into account when developing other parts of the system.

While electronic monitoring has the potential to be useful in managing inshore fisheries, there are numerous policy and legal matters that also require close consideration. For example:

- Opportunities for quota owners and vessel operators to have input in the purpose/objectives of EM and decisions on whether to use EM and/or human observers
- Ownership, storage, use and external distribution of any video record
- Confidentiality and respect for the privacy of fishers
- Ensure EM is not used to unnecessarily increase observation and thereby increase costs to fishers
- On-going public-private investment in software and infrastructure
- Ensuring cost savings from using EM are directly passed on to the quota owner and/or vessel operator

Next Steps

Fisheries Inshore is working with other industry bodies to trial and assess the use of electronic monitoring; the primary fishery being SNA1. As part of that work, Fisheries Inshore is focussing on the policy and legal matters outlined above. In conjunction with this work, Fisheries Inshore is also working with Seafood NZ to consider a review of the penalties in the Fisheries Act (see below).

4. Penalty Regime

The existing penalty structure was introduced in the Fisheries Act 1983. It is based on the premise that with low levels of detection (limited observer coverage and technology), the prospect of a successful prosecution is also low. To provide an effective deterrent, the low level of detection was balanced by imposing very high penalties (in some cases the loss of business); even for offences that do not significantly impact on sustainability outcomes. These penalties include the automatic forfeiture of vessels and property (including quota) upon conviction of a fisheries offence.

As observer coverage increases and the industry moves towards electronic monitoring, and in particular cameras, the likelihood of detecting an offence increases greatly (the extent would be governed by the resolution of the policy and legal matters outlined above). As such, the original rationale for high penalties would cease to apply.

In a climate of much better information, a more appropriate penalty regime would implement an additional measured and scaled set of responses to those who break the law, both upon conviction in the court and, where appropriate, through a “misdemeanour” process. Lower level offences could attract infringement notices which would remove the requirement for convictions. This approach is likely to provide for a more effective deterrent and thus improve compliance levels.

Industry is not seeking to remove offences or lower the thresholds for major breaches. Rather it is proposed to add penalties and ensure these penalties are applied to appropriate offences – “make the punishment fit the crime”. It is also suggested that as with other infringement regimes, serial offending would result in ramped penalties.

Next Steps

Fisheries Inshore is working with Seafood NZ and the Deepwater Group to progress initial work on reviewing penalties.

5. Gear Trials and Benthic Research – Focus on Solutions

The fundamentals of fishing gear used by the New Zealand inshore and pelagic fleet have changed little in the past few decades. However, individual fishers have made many small modifications to gear for a wide variety of reasons. Such modifications may have been made to reduce fuel costs, reduce impacts on the benthic environment, improve fish quality or reduce unwanted by-catch.

Fisheries Inshore considers there is significant benefit from more formally investigating what modifications have been made to gear types in recent years and assessing the efficacy of those modifications against agreed objectives and ‘standard’ gear. Changes in fishing gear may have a range of benefits, such as:

- improving economic efficiency
- reducing unwanted by-catch of both fish and protected species
- reducing impacts on the benthic environment
- increasing yield-per-recruit
- increasing the value of catch

Where these outcomes occur, wider adoption may improve the performance of the fishery. In addition, where changes to gear increase or decrease CPUE, this information should be considered in scientific analyses to ensure TACCs are adjusted accordingly to ensure they remain appropriate.

To date some trials have been conducted but without any formal oversight or detailed project design. More recent work in Area 2 has moved to remedy this and more investigation is underway.

MPI has recently supported such work and Fisheries Inshore is promoting a focus on practical work on the water that will focus more explicitly on solving issues rather than continuing to investment in information solely to better understand them.

Next Steps

Fisheries Inshore continues to work with members in Area 2 and MPI to advance this work.

6. Re-balancing

Implementing the above work would result in acquisition of better information, more specificity about management and monitoring, more responsive TACCs and an improvement to the economic and environmental performance of inshore fisheries. To a large extent this would, over time, resulting in re-resetting the QMS.

Where information is not available, or sufficiently robust, more pragmatic decisions could be employed to ensure the QMS is performing closer to its optimum. Consider the following:

- There are c. 629 stocks in the QMS
- MPI generally changes about a dozen of 629 TACs each year
- Most stocks (86%) have never had their TACs changed since entering the QMS.²¹

Clearly there are vastly more stocks in the QMS than can be managed effectively using the current approach. As stocks fluctuate, static TACs result in two equally-undesirable scenarios:

- a. For stocks that decline in biomass, static TACs result in sustainability risks as TACs are not reduced accordingly; and
- b. When stock biomass increases, static TACs result in lost value to New Zealand, lost recreational opportunity, incentivise discarding, and require payment of unnecessary deemed values.

A more pragmatic and responsive approach is required for some stocks.

While some of the aforementioned changes would assist with this issue, Fisheries Inshore would like to explore the possibility of evolving our fisheries management by managing QMS stocks as specified complexes based on a two (or more) tier process: higher priority stocks and lower priority stocks.

Many stocks in the QMS are not a high priority for the commercial sector – these stocks may be by-catch that is taken incidentally with target fisheries as part of a fisheries complex.²² In most, perhaps all, cases there is no fishery-independent information to assess the status of these by-catch stocks. They are either not managed at all, or minor changes are made to their TACs based on no more information than (sometimes uncertain) catch records.

While such adjustments are a pragmatic management response, there is little by way of certainty, policy or rationale attached to these adjustments. However, if there was robust fisher-collected information that demonstrated linkages between these stocks, then this could be used through management procedures to make sensible adjustments to multiple stocks reflecting the same profiles. In essence, a pre-determined complex of stocks could be adjusted simultaneously based on the indicators derived from robust commercial data. Equally where these data are available and adjustments are made, these could then drive specific monitoring to check the accuracy of the analysis or provide evidence for further changes to TACs.

Next Steps

Fisheries Inshore is continuing to explore this idea with science advisors and members as part of a more comprehensive management approach that would deliver better management outcomes for low information stocks.

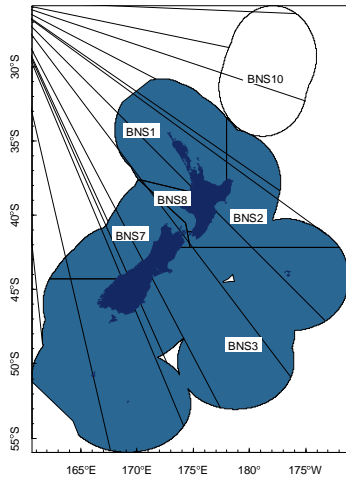
²¹ Fisheries Inshore acknowledges that many of these stocks have nominal TACs and that have yet to be proved up. If these developmental opportunities are removed (i.e. 10 t or less for the purpose of this rough analysis), the number of stocks that have never had TAC changes reduces to 62%. This is still too high.

²² Where such stocks are important to other sectors, management would be adjusted accordingly to reflect that value.

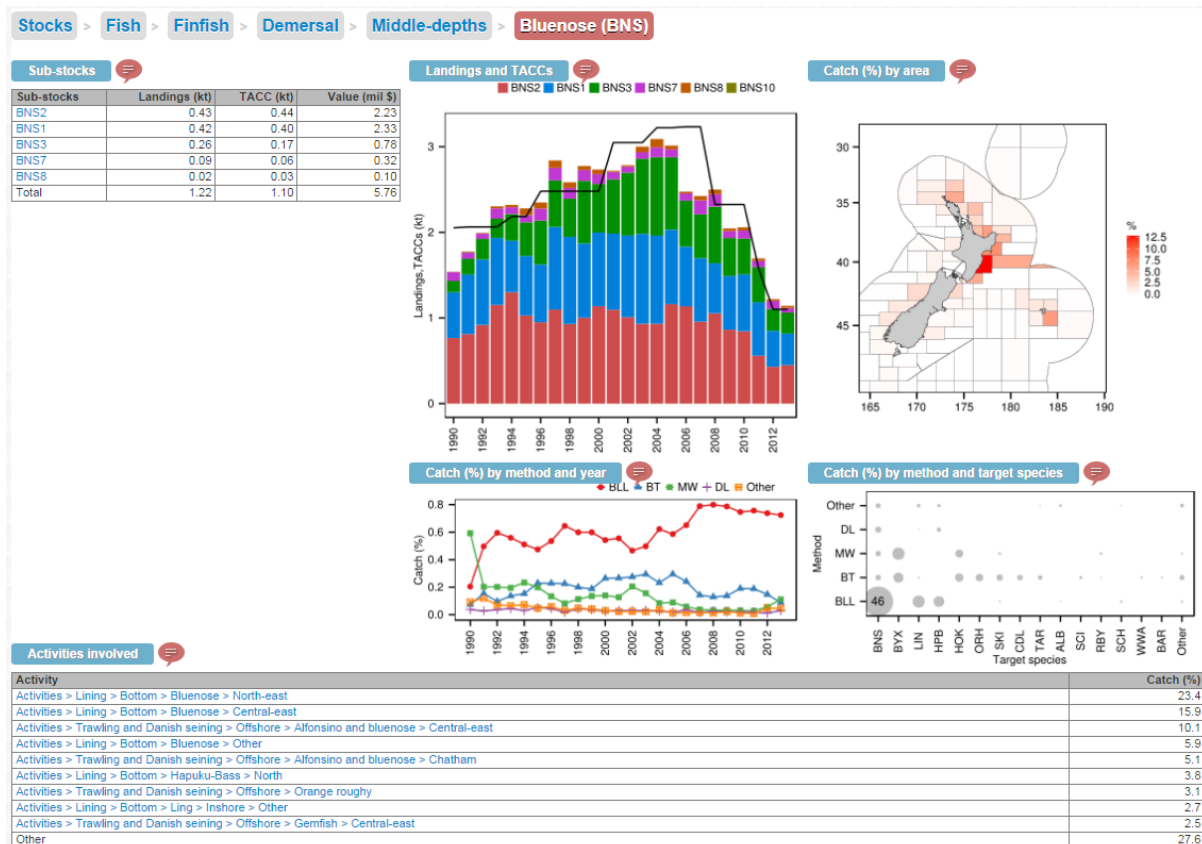
ANNEX TWO: BLUENOSE – BNS 1, 2, 3, 7, 8

Management and Monitoring Plan

FISHERY OVERVIEW

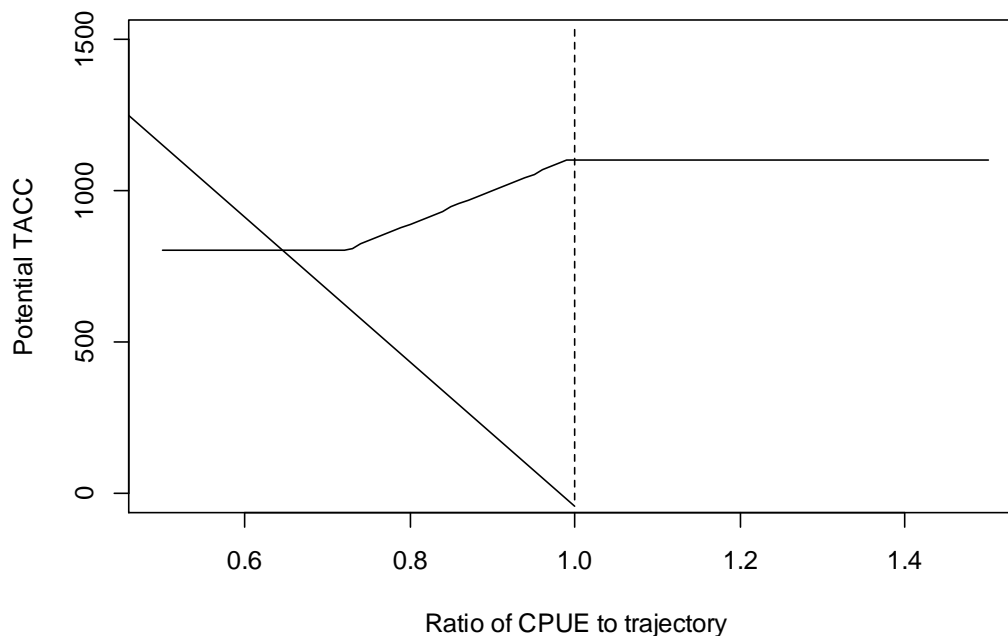


- BNS is managed as six QMS stocks, which are assessed as a single biological stock. For management purposes this biological stock is considered to include BNS 1, 2, 3, 7 and 8.
- BNS are taken primarily in target bottom longline fisheries. They are also commonly taken in LIN and HPB line fisheries, and in the BYX (BNS 2, 3) and HOK (BNS 7) trawl fisheries.



MANAGEMENT PROCEDURE

- The overall TACC for BNS 1, 2, 3, 7, and 8 is set using a Trajectory Status Adjustment Restricted (TSAR) management procedure (see Appendix) which defines a rebuild trajectory for CPUE, as a proxy for abundance. The rebuild trajectory was defined to be consistent with rebuild to 35% B_0 within 30 years, or better.
- The value of an annual, smoothed, CPUE index is assessed annually in relation to the rebuild trajectory, and the overall TACC varied (if required) in order to maintain the required rebuild.
- The overall potential TACC is set as illustrated below:



- The actual overall TACC is not varied if the potential TACC is within 5% of the current TACC, and changes are limited to a maximum of 50% of the current TACC.
- The TACCs for BNS 1, 2, 3, 7 and 8 are set by maintaining proportionality within the overall TACC.

ANNUAL MANAGEMENT CYCLE

- 15 Oct – Catch-effort data submitted to FishServe for fishing year ending 30 Sept.
- 30 Mar – Updated MP index (rapid CPUE update) and diagnostics calculated, and proposed TACC for next fishing year calculated.
- 15 Apr – 30 Jun – consultation on any proposed TACC change.
- 1 Sep – Minister’s decision announced.
- 1 Oct – updated TACC gazetted.

LATEST ANALYSES AND INFORMATION

- In 2012/13 the CPUE index, λ_t , was 0.713.
- The TACC for 2014/15 is 1,110 t.

FOR FURTHER INFORMATION

- 2014: Assessment and management procedure evaluation (**Bentley and Middleton, 2014**)
- 2014: Management procedure implementation report (**link**)
- 2014: MPI stock assessment plenary (**link**)

FUTURE MONITORING AND RESEARCH

- Annually: fishery overview updated in January
- Annually until 2018/19: management procedure implementation
- Annually 2014/15 to 2017/18: catch sampling of BLL fisheries.
- Feb - May 2016: examine patterns in catch @ length in 2014/15, 2015/16. Consider value of ageing for upcoming management procedure evaluation.
- Feb - May 2019: updated management procedure evaluation, for implementation from 2019/20.

OTHER MANAGEMENT INFORMATION NEEDS

- When updating the management procedure for 2015/16 onwards, the deemed value rates should be reviewed.
- Updated recreational harvest estimates, including charter vessels.

APPENDIX – DETAILED MANAGEMENT PROCEDURE SPECIFICATION

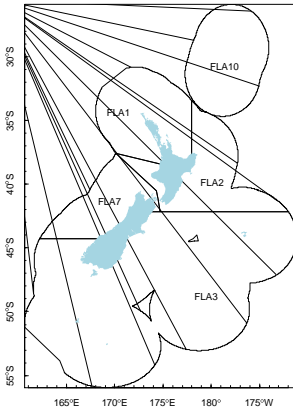
- The required rebuild trajectory (\bar{i}_t) is defined by three control parameters, *Initial* (I), *Slope* (S) and *Target* (T), with $\bar{i}_t = \min(I + St, T)$. For BNS, $I = 0.6$, $S = 0.02$, $T = 1$, and t is years since 2013/14.
- The TSAR management procedure is based on a smoothed CPUE index λ_t , calculated as $\lambda_t = i_t R + \lambda_{t-1}(1 - R)$, with responsiveness parameter $R = 0.675$.
- Current status relative to the trajectory is the ratio of the smoothed CPUE to the trajectory: $s_t = \lambda_t / \bar{i}_t$
- The potential TACC for the following year is calculated as $1110 \times s_t$, subject to a minimum TACC of 800 t, and a maximum of 1,100 t. If the potential TACC differs from the current TACC by less than 5% of the current TACC, no change is made. Changes are limited to a maximum of 50% of the current TACC.

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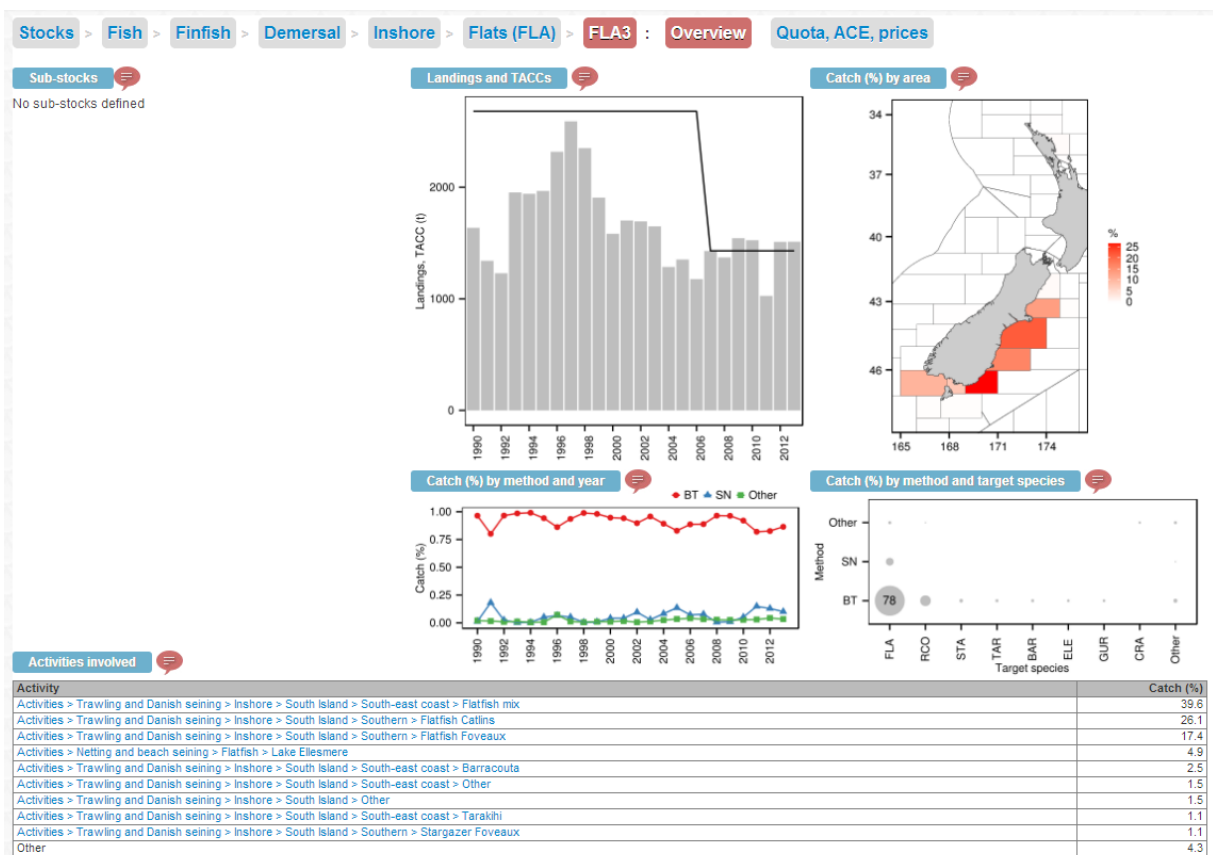
FLATFISH – FLA 3

Management and Monitoring Plan

FISHERY OVERVIEW

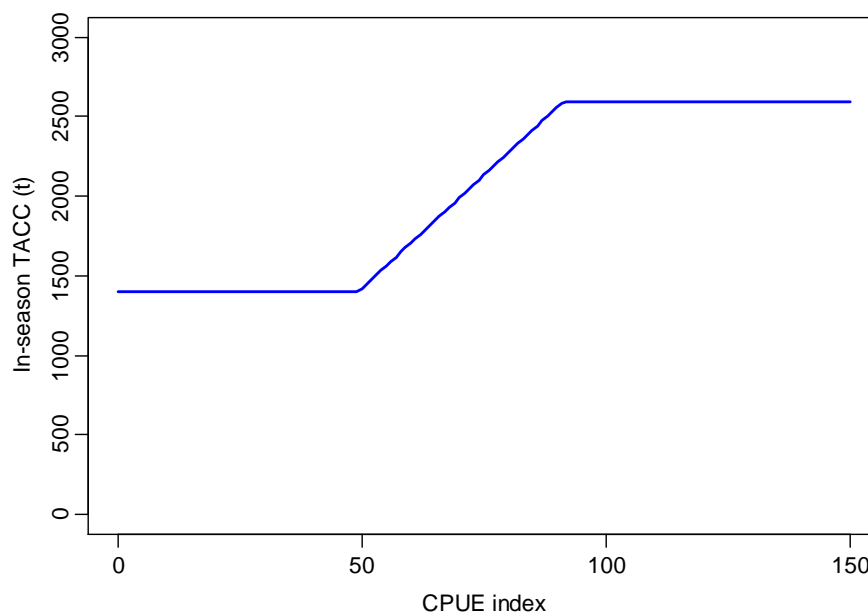


- The FLA 3 QMA covers FMAs 3 to 6.
- FLA 3 is a multi-species fish stock. The key species in the FLA 3 fisheries are lemon sole (LSO), New Zealand sole (ESO), and sand flounder (SFL).
- Flatfish in FLA 3 are taken primarily in localised target trawl fisheries.



MANAGEMENT PROCEDURE

- FLA 3 has a base TACC of 1,430 tonnes.
- Schedule 2 in-season increases in TACC are considered annually according to a management procedure based on CPUE in the first three months (Oct - Dec) of the fishing year (Bentley, 2011).
- The management procedure index, I , is a CPUE index derived by applying existing standardisation coefficients to the Oct - Dec catch and effort data.
- The TACC is set from this index as illustrated below.



ANNUAL MANAGEMENT CYCLE

- 15 Jan – catch-effort data submitted to FishServe for December.
- 7 Feb – catch-effort data transferred to MPI.
- 28 Feb – Updated CPUE and diagnostics calculated, and proposed TACC for current fishing year calculated.
- 1 Mar – 14 Mar – short and targeted consultation given the well-understood management regime.
- 31 Mar – In-season TACC increase (if any) gazetted.

LATEST ANALYSES AND INFORMATION

- In 2013/14 the Oct-Dec CPUE index, I , was 54.91.
- The TACC for 2013/14 is 1,400 t (baseline, no in season increase).

FOR FURTHER INFORMATION

- 2010: Assessment and management procedure evaluation (**Bentley, 2011**).
- 2014: Management procedure implementation report (**link**).
- 2014: MPI stock assessment plenary (**link**).

FUTURE MONITORING AND RESEARCH

- Annually: fishery overview updated in January.
- Annually until 2015: management procedure implementation.
- Feb - May 2015: updated individual species CPUE and management procedure evaluation for implementation from 2015/16.

OTHER MANAGEMENT INFORMATION NEEDS

- When updating the management procedure for 2015/16 onwards, the deemed value rates should be reviewed.
- If the 2015 assessment indicates that a significant proportion of estimated catches are still being reported using the generic FLA code rather than individual species codes then a review of reporting will be initiated.

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ANNEX THREE – COMPOSITION OF RECREATIONAL CATCH

Selectivity of Recreational Fishers species and percentage of harvest (by number)							
FMA1	FMA2	FMA3	FMA 5	FMA 7	FMA 8	FMA 9	TOTAL
Snapper 70%	Kahawai 24%	Blue Cod 46%	Blue Cod 72%	Blue Cod 29%	Snapper 31%	Snapper 49%	Snapper 52%
Kahawai 12%	Tarakihi 19%	Sea Perch 21%	Flatfish 16%	Snapper 18%	Kahawai 17%	Kahawai 15%	Kahawai 13%
Tarakihi 3%	Gurnard 11%	Flatfish 6%	Sea Perch 4%	Kahawai 15%	Gurnard 16%	Gurnard 13%	Blue Cod 8%
Trevally 3%	Blue cod 10%	Butterfish 3%	Trumpeter 1%	Tarakihi 8%	Blue Cod 16%	Flatfish 4%	Gurnard 5%
Gurnard 3%	Snapper 9%	Bream/Brim ¹ 2%	Kelpie ² 1%	Sea Perch 5%	Tarakihi 5%	Mullet 2%	Tarakihi 4%
Mackerel 2%	Mackerel 3%	Kahawai 2%	Red Cod 1%	Gurnard 4%	Mullet 2%	Trevally 2%	Trevally 2%
Mullet 1%	Butterfish 2%	Pilchard 2%	Rig 1%	Rig 3%	Flatfish 1%	Mackerel 2%	Sea Perch 2%
Kingfish 1%	Red Cod 2%	Mullet 2%	Barracouta 1%	Mullet 3%	Red Cod 1%	Mullet 1%	Flatfish 2%

Notes: ¹ While the survey respondents reported catches of Bream/brim, they are most likely snapper.

² While the survey respondents reported catches of kelpies, they are most likely wrasse.

Source: J Wynne-Jones, A Gray, L Hill and A Heinemann. 2014. *National Panel Survey of Marine Recreational Fishers 2011–12: Harvest Estimates*. New Zealand Fisheries Assessment Report 2014/67.