

Section 4

Priorities for allocating the Total Allowable Catch

The present approach to making allocations of the Total Allowable Catch for shared fisheries lacks certainty. Priorities in the allocation process and the criteria for changing allocations between sectors need to be clarified. The allocation proposals and options in this section are intended to increase certainty. They would:

- Protect the basic right of the public to go fishing; and
- Clarify the provision for Maori customary food gathering to recognise obligations under the Fisheries Deed of Settlement.

These points are developed below. [48]

Footnote introduction

Query how MFish presently applies section 21 to “allow for” (not ‘allocate’ as for quota under the quota management system – QMS) non-commercial fishing interests - information on non-commercial catch, and pressure from commercial fishers;

Possible s21 directions from Kahawai judicial review;
Again, reference to section 21 FA – full and proper application of the purpose, principles and fisheries management tools of the FA;

Present ability to ‘change allocations’;

Does not explain the present right of all New Zealanders to catch fish for food not for sale without a permit as regulated by amateur fishing regulations as recognised, protected and preserved in the FA;

Intention to include amateur in the ‘allocation’ process the so-called ‘basic right,’ – see Minister’s Cabinet letter.

[48] Basic right’ - devalues recreational fishing and is quite different from the present public non-commercial right which must be allowed for according to social, economic and cultural needs subject only to sustainability.

4.1 The basic right to catch fish

Many New Zealanders feel that the freedom to cast a line to catch a fish is a cultural tradition that should be maintained. They are concerned that changes to the management of shared fisheries might mean restrictions or limitations were placed on this tradition. This value is part of our national identity and should be protected.

The proposal in this section is intended to reassure amateur fishers that the basic right to catch fish will be retained and protected in the new regime.

Footnote introduction

No explanation of the existing right of New Zealanders to fish for food not for sale without a permit as regulated by amateur fishing regulations, recognised, protected and preserved in the FA;

Again does not explain the existing ‘right’ of New Zealanders to fish, as above;

Refers to such ‘right’ as a ‘tradition’ rather than fishing for food being a ‘public right’ which is ‘part of the New Zealand way of life’;

Refers to concerns that fisheries management changes – those proposed in the discussion paper? – may threaten such ‘right’ – perhaps a reference back to ‘increasing (unspecified, that is threatened by the effects of either commercial fishing or amateur fishing) pressure’ in Section 1;

Why change things? - from (unexplained) changes to the management of fisheries;

Is ‘the freedom to cast a line to catch a fish...’ under threat?

MFish, in the discussion paper, is proposing ways to recognise and administer not the present right of New Zealanders to fish, but a **new and lesser** ‘basic right’?

Government’s National Identity theme - Minister’s Cabinet letter;

Does not explain the existing public right to fish, but instead uses the term ‘the basic right’ as described in the proposal;

Refers to the legislative reform – ‘the new regime’ - which, as explained in the proposal would include ‘the public right’ to fish as part of the allocation of the TAC process.

Proposal: Priority for amateur fishing over commercial fishing

The Government would protect and maintain a basic level of amateur take by establishing a minimum tonnage for the amateur sector in each shared fishery. This would have priority over commercial take. The tonnage would be reduced only if all commercial fishing had already ceased in the fishery and a further reduction in take was needed to ensure sustainability.

The minimum tonnage for each stock could be set at 20 percent of the baseline amateur allocation in each fishery (*see next section*). [49]

Footnote introduction

This is the modification proposed by MFish to the existing right of New Zealanders to fish for food not for sale without a permit as regulated by amateur fishing regulations, recognised, protected and preserved in the FA;

A ‘key’ part of the discussion paper.

[49] This definitely calls for a case study - to be completed.

The concern is that the MFish has suggested a “basic right to catch fish” concept and is attempting to define this as 20% of a minimum tonnage allocation in only six fish stocks. Why?

Risk & Benefit Analysis for Priority Proposal - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
4.1 Basic right	<p>There is a real danger that uninformed recreational fishers will view this as a real priority instead of the removal of the present public non-commercial right to fish and substituted with a 'baseline allocation' (see below) and 'a basic right' as above.</p> <p>Fisheries are in a state of collapse before the priority clicks in. A rough SNA8 case study indicates the biomass would be around 3.5% of the virgin stock size before it comes into effect.</p> <p>This would only leave around 20% of the stock size required to produce MSY.</p> <p>This is not the same priority as offered by Moyle's Promise.</p> <p>An actual priority to 20% will never become a reality as the fish stock would be so low as to require all fishing to stop to prevent recruitment failure and stock collapse.</p> <p>Removing the present public non-commercial right to fish and substituting 'a basic</p>	<p>MFish's suggestion made at a meeting with officials in Auckland, whereby it would be possible for the Minister to completely stop commercial fishing while leaving the 20% recreational allowance in place to achieve a faster rebuild in a fishery that was valued much higher to recreational fishers than it was to commercial fishers.</p> <p>However it is difficult to think of a fishery where this could apply?</p>	<p>Yes, see SNA1 (High Court and Court of Appeal), namely, set the TACC at 0, and 'allow for' greater recreational interest.</p>	<p>Very Poor</p>

	<p>right' of 20% of the current recreational allowance (which could be an under-allowance) while leaving the remaining 80% available for commercial nets coupled with questionable valuation methodology would neither improve our fisheries nor 'allow for' the social, economic and cultural non-commercial needs of New Zealanders to fish.</p>			
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4.2 Customary take

Under current legislation customary fishing must be conducted in accordance with permits issued under regulations and cannot be for sale or trade. Customary take is already highly regulated and represents a small percentage of the overall shared fisheries take. The permits require quantity, area, method and species to be harvested to be specified, and either reporting or recording of take. Permits can only be issued by persons approved by tangata whenua and notified to the Minister. The Minister of Fisheries retains the ability to constrain customary take for sustainability purposes.

The Fisheries Act 1996 does not provide clear guidance on how the obligations under the Fisheries Deed of Settlement need to be effected in the provision made for customary fishing when allocating the Total Allowable Catch.

Footnote introduction

'Social, economic and cultural well-being' criteria in the definition of 'utilisation' in section 10 FA?

Present ability to constrain for recreational and commercial

Reference to s21 FA: does not say how the Minister must 'allow for' customary non-commercial fishing interests when 'setting or varying' TACC;

Consider the purpose – sustainable utilisation – and environmental and information principles contained in the FA which when combined with the other fisheries management tools and mechanisms contained in the FA provide the 'guidance' MFish refers to;

Refer also to the awaited outcome of the Kahawai judicial review

Proposal: Clarify provision for Maori customary take

Allocation rules should recognise that actual customary take authorised under the customary fishing regulations (or regulation 27 or 27A of the amateur fishing regulations) is to be provided for before allocation to the amateur and commercial sectors in order to align the Fisheries Act with the obligations created by the Fisheries Settlement. This clarification is consistent with MFish practice. [50]

When reporting or records suggest authorised customary take exceeds the allowance, the customary allowance would increase, subject to overall sustainability limits ultimately set by the Minister. There could be some increases in customary take where inshore fisheries that are important to Maori are rebuilt from depleted states.

Footnote introduction

The language used differs from that used in the FA. Under the FA quota under the QMS is 'allocated', whereas non commercial fishing interests such as customary and recreational are 'allow(ed) for' when the Minister sets or varies the TACC;

The Government's intention to include 'recreational' and 'commercial' in allocation - Minister's Cabinet letter.

- 'could' be some increases..... – a possibility only?

MFish's intention is to 'allow for' only for fish reported or recorded as part of the customary take, namely, actual take, possibly to eliminate the gap MFish sees between what the Minister presently 'allows for' for customary against reported or recorded take;?

Consider – practice of kaitiakitanga (guardianship/stewardship) may explain low reported/recorded take?

Stipulates priority allocation for customary

[50] This section is unclear

A concern for Maori is that on the one hand the discussion paper suggests reducing the customary allowance to reflect actual customary take, whilst on the other hand fails to explain how Maori will be provided for in the future after this perceived over allowance has been taken from Maori.

Maori are a fast growing sector of New Zealand's society and have the highest participation rates in recreational and customary fishing. They also have extensive commercial fishing interests. How can Maori have an opinion on this proposal when the document does not explain where the extra fish will come from if there is an increase in customary fishing or how the process will work? There is insufficient detail as to how these increases are going to be accommodated in the future to ensure sustainability.

Decreases in Customary Allowance

The first objective is to reduce the customary allowance to the actual/reported customary catch. This will create an apparent surplus of uncaught fish available within the TAC.

However because these fish have never been caught, no such surplus actually exists, the extra fish are an illusion, MFish has not explained what will happen to this apparent surplus of fish.

Will the “surplus” be allocated to commercial fishers as quota, and if so, will commercial fishers be required to pay for the right to catch the surplus?

Other alternatives are:

- will the surplus be transferred to recreational fishers, and if so, how?
- will the surplus be distributed proportionally between commercial and recreational fishers?
- will the surplus be held over by the Government so that at least the Government retains a portion of the TAC possibly for environmental and sustainability reasons?

Reducing Maori customary allowance to the actual level of customary take:

- assumes all customary take is taken under the customary provisions.

Maori have been preoccupied with the Treaty of Waitangi fisheries settlement issues. By and large, tangata whenua have not turned their attention to this most complex debate. Some have however. The Hokianga Accord has held 7 hui with the Shared Fisheries issues to the fore. Please note that the Chairman of Ngapuhi and the Chairperson of Ngati Whatua have both been heavily involved in the development of this preliminary view.

In many cases, Maori have been duped into thinking that their total non-commercial needs from the fisheries are catered for under the Customary regulations. This is as far from the truth as one can get

Now that the Treaty of Waitangi Fisheries Settlement issues have been dealt with (by and large) Maori have woken up to the fact that 99.99% of the time that they go fishing to feed their families they are categorised as recreational fishers.

Some would say Maori have been hoodwinked. It must be remembered that the idea of customary catch being limited to customary permit holders is an MFish concept. Is a process of having to get a customary permit to provide for the purposes of the marae giving full effect to the words “full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession”

It has also been said that things cannot change because the Deed of Settlement and the Sealord Settlement were final settlement of these issues. However, Parliament realised

and stated as these provisions went through the House that the customary fisheries issues remained unfinished and needed to be further developed. It would be totally unjust to see the allowances for customary fishing reduced to what is actually reported just as tangata whenua appreciate what they have and develop the necessary understanding and process to work with their fisheries

Nowhere in this document is kaitiakitanga mentioned and yet it is very much a part of the FA. In fact, kaitiakitanga has more potential to deliver good fisheries management outcomes for many coastal fisheries than anything else on the statute. To not discuss kaitiakitanga in the context of “Shared Fisheries” is unacceptable. Watch this space. For further background material please go to www.hokiangaaccord.co.nz

A chronology for Maori fishing rights is being developed.

Conservation Efforts by Kaitiaki

Maori customary may not be fully satisfied if kaitiaki have imposed a rahui, issued customary permits for less fish than required for sustainability reasons, or refused to issue a permit on the grounds that there were insufficient fish and the resource needed to be conserved.

If all of the fish allocated within the TAC are caught then how will Maori customary be satisfied?

Maori must have a provision for retaining a surplus over and above their current catch to properly accommodate their full interest. The amount is a matter between Maori and the Government. It is a simplification for the Maori customary right to be expressed as a ‘tonnage.’

Increases in Customary Take

The discussion paper fails to explain:

- whether increases in Maori customary catch will be deducted from the recreational allowance, commercial allocation or both;
- whether commercial will receive compensation for their reduced quota;
- if recreational fishers will receive compensation for their reduced allowance.

Illegal Take

Illegal take is a significant problem in certain shared fisheries and specific initiatives by MFish are underway to reduce it. Estimates of illegal take are allowed for before allocating the available catch. [51]

Managing customary take

A record of take is needed to ensure the allowance reflects actual take and so that a response could be made should reported customary take exceed the allowance.

Allocation for customary take requires the setting of allowances within the Total

Allowable Catch. Currently some reporting of actual take is incomplete and MFish makes assessments of likely harvest based on criteria and available information. Reporting of customary take needs to be improved to ensure that information on total take is as complete as possible, so that the sustainability of resources can be protected. [52]

Managing amateur take

Amateur take will continue to be managed using bag limits, minimum legal sizes, and gear restrictions. As information is improved, changes may be necessary to these settings to ensure the total amateur take for a stock does not exceed the amateur allocation. [53]

Managing commercial take

Under the Quota Management System, all commercial catch must be reported. It must be counted against the Annual Catch Entitlement held, or a deemed value must be paid. A concern is that in some shared fisheries, commercial operators have regularly exceeded the Total Allowable Commercial Catch. Management changes to the deemed value regime are under discussion at present and have good potential to bring commercial overcatch more strictly under control [54]

Accountability for total fishing mortality is also a concern in some shared fisheries. Changes could be made to improve this, for example, by removing minimum legal size limits so that all catch is counted against the commercial allocation. Changes in fishing practices may be possible to avoid unwanted catch. This could promote faster stock rebuilds and so reduce the severity of any cuts needed to the Total Allowable Catch. [55]

Various controls are already possible under the current management framework, and fisheries plans would provide a good context to evaluate further controls.

[51] Fails to explain/differentiate whether commercial, recreational or customary fishers are considered by MFish to be illegally taking fish yet explicitly states that it does not deal with illegal fishing.

[52] For MFish to suggest that the MFish “makes assessments of likely harvest based on criteria” demonstrates an unsatisfactory process.

There is neither reference to the Ministers obligation to “allow for” under section 21, nor any explanation of the Ministers statutory obligations ‘to provide for the input and participation’ of tangata whenua on sustainability measures both under s12 FA (and regulation 14 of the customary regulations) and to have particular regard to ‘kaitiakitanga’.

Poor estimates of customary and recreational catch translate into lower allocations for non-commercial with the balance allocated to commercial.

Estimates of customary catch may not reflect customary interest in fish stocks where kaitiaki have constrained customary catch to conserve fish stocks.

Once commercial quota has been allocated it will be a very difficult process to get that fish back for reallocation to non-commercial fishers.

[53] Having modified the present right of all New Zealanders to catch fish for food recognised, preserved and protected in the FA, by the proposal referred to in section 4.1 of the discussion paper MFish would also use these measures, namely, bag limits etc to manage the public's right to fish at the new modified and lower level?

[54] Will the depleted SNA8 be addressed by MFish this year?

[55] No explanation given why this is not occurring as provided for under the FA?