

Tuesday, 17 August 2010

File: F108-02/TM

Trudie Macfarlane
Ministry of Fisheries
PO Box 1020
WELLINGTON

trudie.macfarlane@fish.govt.nz

Review of Sustainability Measures and other Management Controls for all Kahawai stocks (KAH 1, 2, 3, 4, 8, 10) for 1 October 2010

1. This submission is from Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) in its role as corporate trustee of Te Ohu Kai Moana Trust and responds to the above consultation document released by the Ministry of Fisheries (MFish) on 25 June 2010.
2. This submission does not remove the responsibility for MFish to consult with Iwi (and their hapu) and other stakeholders in the appropriate manner. Nor does it seek to undermine any submission that you may receive from individual Iwi or Iwi collectives.
3. Te Ohu Kaimoana was not given notice of additional consultation material that MFish posted on its website for consideration. As we found out about this additional material late last week, and as MFish have advised that it was not used to inform the IPP, we do not comment on it in this submission. Should we have sufficient time to consider the information and make comment, we will make a supplementary submission.

Summary

4. The IPP notes that at current TAC (TACC and allowances) the KAH 1 fishery is at or above Bmsy and the biomass will continue to increase over the next 5 years at current removals. It also notes that there is no new information to inform whether altering the TACs of the other kahawai stocks is appropriate.
5. Options contained in the IPP propose the taking of shares of some of the kahawai fishery from one sector and giving them to another without justifiable reason or credible information. They are also based on a judgement as to which sector

values the fishery most. Te Ohu cannot support such an approach. Thus we recommend that:

- the *status quo* is maintained for all kahawai stock TACCs and the sector allocations be set at the most plausible levels
- that the situation be reviewed following the next stock assessment ; and
- that any proposals for a change of sector shares are backed up with credible information and analysis.

Maori expectations of the Fisheries Settlement and the QMS

6. Te Ohu considers it useful to reflect on what Maori expected when they endorsed the Quota Management System (QMS) as part of the Fisheries Settlement, as it has a bearing on the issues we raise in this submission.
7. The Fisheries Act allows - and the Court has confirmed - that the Minister may adjust allowances between sectors when he needs to make changes in the Total Allowable Catch for sustainability reasons.
8. Iwi understood this when they endorsed the QMS as part of the Fisheries Settlement – all parties should ride up and down on the tide of sustainability. However iwi did not contemplate that there would be re-allocation between sectors where there is no sustainability issues with a fishery. As was noted by the Court:

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. The thought did not cross the tangata whenua mind.¹

9. The Court further noted that the QMS “*is not a system set up to be dismantled or tinkered with by a Minister as a matter of whim*” and set down a series of disciplines that needed to apply if a Minister sought to make changes to sector shares. In addition to this, Parliament in 1996 enacted section 308 which provided protection for the Crown from compensation for any changes to TACC where these arose from sustainability measures or the initial setting of the TACC when introducing a new stock in the QMS. There has been no deliberate re-allocation between sectors by a Fisheries Minister in the 18 years since the Deed of Settlement was signed.
10. Te Ohu Kaimoana considers that the proposals to re-allocate catch from the commercial sector to the recreational sector as set out in the IPP stray across this threshold and the Minister should be advised that the Crown may be required to address compensation issues should he proceed with those proposals viz Option 1 for KAH 1, and Option 2 for both KAH 2 and KAH 3.

¹ McGechan J, High Court Snapper 1 Decision, 1997

There is no evidence of sustainability problems to justify a change from the *status quo* TACCs

11. The status of KAH 1 reported in the 2010 Plenary Report section for kahawai is as follows:
- Biomass is at or above maximum sustainable yield (Page 452)²
 - While the fishery showed a gradual decline in spawning biomass during the initial fishing down period this was then followed by a period of increase and then relative stability over recently assessed years. These trends are typical patterns in any well managed fishery (Page 453)³
 - Stock projections indicate that biomass is predicted to increase for all scenarios considered over the next five years, with the probability of decline below B_{MSY} at current catch levels being unlikely (Page 453).
12. We note that according to Figure 2 of the IPP that under both options 1 and 2 for KAH 1, the biomass - already above B_{msy} - will continue to increase. Option 3 is shown to move the stock towards B_{msy} (assumed to be 35% of B_0) which we understand is consistent with MFish's harvest strategy standard. In these circumstances we would normally support a change to Option 3 because of its consistency with the standard and the lack of any clear justification to do otherwise.
13. However given the ongoing uncertainties around the recreational catch, we are prepared to support the status quo (Option 2) until better information is obtained. At the same time, we acknowledge that information from fishing companies may support the need for a more immediate increase in the TACC - along the lines of Option 3.
14. Once MFish has carried out new survey work into the recreational fishery and carried out the next stock assessment (due 2012), we recommend the situation be reassessed in accordance with the harvest strategy standard.
15. As far as the other stocks are concerned, the IPP states that there is no available stock assessment and that the state of the stocks in relation to B_{msy} is unable to be estimated (para 66). A national stock assessment is expected in 2012 and should provide new information for reviewing these stocks at that time (para 67). Given this Te Ohu Kaimoana recommends the *status quo* TACCs are maintained for all kahawai stocks.

Clarifying the status quo

16. Our understanding of the *status quo* option for KAH 1 as set out by MFish in the IPP is not in fact the "Current management" described in table 1 on page 5 of the IPP but Option 2 set out in table 2 of the IPP which has the same TACC (1,075t) in both instances.

² "based on [several] scenarios examined, it is Likely (>60%) that current spawning biomass is at or above B_{MSY} , but it is uncertain how far above."

³ "...spawning biomass is estimated to have declined gradually from 1975 to 1990, to have increased somewhat from 1991 to 1995 and to have remained relatively stable until the end of the assessment period in 2007"

17. We note that the reductions in the recreational allowance are intended to reflect a more accurate assessment of recreational catch. That said, there are unexplained inaccuracies in relation to the recreational and customary allowances proposed for KAH1. MFish states that it has recommended a single option for the recreational allowance across all options for KAH1 (Para 54). This option amounts to 900 tonnes (see table 2 page 5). However, this amount does not reflect the amount that the Northern Inshore Working Group concluded was a “more plausible” estimate of 800t compared to their earlier estimates. This is set out in the Kahawai Plenary 2010 (see the qualifying comments on page 454). We cannot see the justification for altering the option put forward in a robust plenary process.
18. In addition to this it is also unclear how MFish calculated the customary (non-commercial) allowance. MFish state that in the absence of better information, its policy is to set the customary non-commercial allowance at 25% of the recreational allowance. If the recreational allowance was to be set at 800t as agreed by the Northern Inshore Working Group, then 25% of that amount is 200t as the IPP proposes. However on that basis, a recreational allowance of 900t should then generate a 225t customary allowance.
19. As for our understanding of the status quo in relation to KAH 2 and 3 we support option 1 in both cases as option 2 simply represents a straight forward reallocation of sector shares from the commercial sector to the recreational sector without justification.
20. Finally in relation to KAH 4, 8, and 10 we support the status quo which is the only option presented.

We can see no justification for changing the sector allocations within the TAC

21. The information and approach taken to justify MFish’s preferred options can’t be justified for a number of reasons. Including:
- lack of any clear utilisation problems
 - an unreasonable bias towards the recreational sector
 - a valuation methodology that is not robust
 - a failure to understand the full scope of Maori values
 - use of information that is out of date.

Lack of any clear utilisation problems

22. Simply because MFish asserts that one sector desires to see more and bigger fish in the water should not necessarily mean that other sectors should be required to provide for this. The recreational sector can achieve an increased number of larger fish in the water if they are prepared to properly manage their sector’s current and ongoing fishing effort (i.e. take less fish now to allow some to grow and reproduce for the future) within current allocations.
23. The difficulty that the recreational sector has in achieving this aim themselves is that they have no system in place to manage their sector’s catch within their allowance or share of the TAC, unlike the other sectors. Moreover in this set of

proposals we do need see consideration of other measures – for example using bag limits – to enable the recreational sector to contribute to the achievement of their goals. We consider the Ministry’s attempt to shift the burden of providing for the recreational sector’s demands onto the other sectors is unacceptable.

An unreasonable bias towards providing for the recreational sector at the expense of the other sectors

24. The allocation of the kahawai TAC among sectors is highly contentious and political. Simply because one sector demands a greater share of the TAC and for the fishery to be managed above B_{MSY} does not mean that they should get it at the expense of the other sectors. Several statements appear in the IPP that suggest MFish are biased towards this viewpoint without clear justification.
25. First, the Ministry dismissed the need for the recreational sector to take any responsibility for managing its extractions within its allowance, or at the very least within sustainable limits (see para 5). However, we consider that this is exactly what is needed if the recreational sector wishes to achieve their aims.
26. Second, the Ministry dismisses the need to reconsider the effects of previous decisions that have taken place since the introduction of Kahawai into the QMS in light of its current proposals. This position compounds our concerns about MFish seeking to re-allocate shares of the TAC between sectors without proper justification or consideration. The consultation document sets out the previous reductions that involved:
- an initial 15% reduction to the combined level of commercial and recreational catch at QMS entry
 - a further reduction of 10% of the same nature in 2005 (see para 23-24).

These reductions to the TACC were not matched by a proportional reduction in the recreational allowance or bag limits. Against that backdrop MFish now proposes a further reduction to the TACC (i.e. its preferred Option 1 for KAH1) without explaining the overall context and consequences from those previous decisions, while acknowledging that the recreational allowances had been set far higher than the probable recreational catch.

27. What is not explained is that the only sector to materially feel the effects of these reductions is the commercial sector. As a consequence of those earlier decisions the previous Minister was directed by the courts to consider what measures were to be put in place to constrain the recreational sector within the overall allowance that it was provided comparable with the reductions placed on the commercial sector. However, the Minister failed to introduce any such measures (for example through the use of bag limits) and this issue has been dismissed in this IPP.
28. Te Ohu Kaimoana considers that the effect of previous ministerial decisions is a matter that the current Minister should take into account when making his decisions at this time. When seen in the context of previous decisions Option 1 for KAH 1 represents a clear long term erosion of the commercial sector’s share of the fishery. We consider the Minister needs to understand this decision in that context.

29. Third, without clear knowledge of the factors that may be affecting recreational catches in the Hauraki Gulf Marine Park, MFish simply assume that constraining the commercial sector will resolve the problems of the recreational sector (see quote below). MFish clearly articulates a preference to provide for the recreational sector's demands for more and bigger fish in the water despite any clear knowledge of the dynamics that are operating to suppress the recreational sector's aspirations. The paper infers that the commercial sector is to blame for the recreational sector's plight (if indeed that exists).

If commercial catches within KAH1 have affected non-commercial fishers' access to the resource within the Hauraki Gulf, it might be more appropriate to set a TAC towards the lower end of the range to try and address this (Para 35, Emphasis added).

30. Finally the MFish evaluation of costs and benefits for each option (pages 9-11) taken together with their stated preference for Option 1 as the most "appropriate option" without any robust justification clearly shows a preference by MFish to maximise benefits to the recreational sector (see benefits of option 1 relative to the other options) at the highest possible cost to the commercial sector (see costs of option 1 relative to the other options).

Lack of a robust basis for determining who values fish the most – particularly from a Maori point of view

31. MFish makes a number of statements in the IPP that suggest they can identify who values the fish the most, but none of these statements are supported by credible information or rationale. Examples include:

- a) The assumption that the volume of fish extracted by one group of people as compared to another can be used to determine who values the fishery the most. This proposition is tenuous at best as MFish have no means or expertise to determine the "value" extracted from fish caught for one reason compared to another (particularly in relation to Maori values). This assumption taken together with the statements set out below suggests that Sports fishers value kahawai more than customary fishers who fish for food. We contest both of these assumptions.

Kahawai is an important traditional and customary food fish for Maori non-commercial customary fishers. (Emphasis added, Para 11)

Kahawai are fished mostly for sport. Accordingly, kahawai have a much higher value as sporting fish than fish caught mainly for the table (Emphasis added, Para 9)

- b) The assumption that the recreational sector values kahawai more highly than the other sectors is not backed up with credible information. Simply stating it to be true does not make it so. We would expect to see the premises upon which this assertion is based set out clearly and rationally in the IPP, backed up with evidence and analysis. Examples of statements made within the IPP that have no credible evidence or information source include:

Kahawai are highly sought after by recreational fishers who employ a range of shore and boat-based fishing methods. Recreational fishers account for a

large proportion of the total kahawai catch by all sectors and it is one of few species that has this characteristic (Emphasis added, Para 9).

...non-commercial fishers continue to highlight the value of the kahawai resource to them (Para 10).

- c) The assumption that Maori interests are restricted only to customary non-commercial interests is a common misunderstanding reflected in many MFish consultation documents. This is certainly inconsistent with the scope of Maori interests addressed through the Fisheries Settlement (see our paras 6 – 10). The only context in which Maori interests are given consideration in the IPP relate to non-commercial customary interests. It notes that Maori take will be an element of the recreational take. The fact that the IPP does not consider Maori commercial or environmental interests completely misses a key point that Maori interests and their values associated with those interests span the full range of considerations (i.e. sustainability, commercial, customary and recreational). In this context the Ministry has misrepresented Maori interests and values and has set itself up to be the judge of whose values are most important. However, the Ministry has no place in determining what Maori consider is most valuable to them given all their interests.

A valuation methodology that is not robust

32. The methodology MFish uses to make comparisons between how the commercial and recreational sectors value kahawai is based on a direct comparison between non-market values and market values. This is like comparing apples with oranges. In this case the non-market values were estimated using a method called the marginal willingness to pay (MWTP) method. This method is a subjective and theoretical amount that a fisher would be prepared to pay in addition to the amount that he or she has already paid (e.g. Costs of petrol, food, bait etc) to go fishing again if the costs of these items were to increase. The fisher is therefore asked to state the additional amount they would be prepared to pay in theory. The method does not estimate the amount that they would actually pay in reality.
33. The method that MFish used to estimate how the commercial sector values kahawai is based only on the Annual Catch Entitlement (ACE) price. The ACE price is the amount of money that a fisher pays to purchase each tonne of ACE that is available for sale so that he or she can go fishing. However the ACE price is only one very narrow view of how the industry value Kahawai and we are surprised to see MFish make this comparison with full knowledge that other market values such as retail price, quota value, and export value might provide a much more optimistic estimation of overall market value. In addition to this, these estimates do not include the other wider wellbeing issues that the Minister is required to take into account such as the seafood sectors overall contribution to export earnings and GDP, industry employment, job satisfaction throughout the value chain (i.e. from the quota owner right down to the supermarket sales person or restaurant waitress and waiter) and also consumer satisfaction with fish provided by the commercial sector (both domestically and internationally) – all of which have value that have not been taken into account.
34. Given this context MFish makes an inappropriate comparison between the recreational sector who they say value kahawai at \$3.50 per kg based on the

MWTP method compared with the commercial sector who they say value kahawai at between 23-28 cents per kg based on ACE price. As we have stressed this is not comparing apples with apples and as such holds no validity or credibility for the purpose of consultation or properly advising the Minister of his considerations. Furthermore the fact that these comparisons are presented in an official MFish document suggests – wrongly in our view – that this assessment is credible when it is not.

35. Te Ohu Kaimoana does support the doubtful analysis contained in this IPP. The approach highlights the difficulty the government faces in determining who values fisheries the most. As you will be aware, we consider these kinds of determinations are best left to the sectors themselves to resolve. What the sectors need is a framework that provides the right incentives for them to do so. As discussed earlier these incentives needs to be focussed primarily on the recreational sector.

Information that is out of date or inappropriate

36. The two pieces of recreational information provided and upon which MFish attempts to build its case that the recreational sector values Kahawai more than the industry are more than ten years old. Subjective assessments of value that were made ten years ago have no sound basis for management today.
37. In addition the very report that the Ministry uses from the South Australian Centre for Economic Studies clearly states that:

It is important to note that the Centre was not commissioned to estimate the commercial economic value of the five fisheries in question. Therefore, the Ministry of Fisheries needs to be extremely careful when they utilise the values of recreational fishing as estimated within this report. These values are not directly comparable to gross production commercial value – hence any policy decision based on this would be misleading. (See page (i) under the heading “Value and Policy” - emphasis added)

We are concerned about the way this information has been used by MFish to justify its preference for Option 1, and recommend that information of such a doubtful nature not be used in this way in future.

Conclusions

38. There is no evidence of any sustainability concerns with the kahawai stocks. In fact all scientific reports and assessments suggest the opposite to be true. Given this we don't accept that there is any basis to change the TACC beyond the *status quo* at this time. We also consider that allowances for non-commercial catches should be set at the most plausible limits.
39. As for the allocation of the TAC amongst the sectors, Te Ohu Kaimoana:
- rejects MFish's assumptions and analysis of who values the fish the most
 - challenges the role MFish has taken to judging Maori values against other values

- recommends that the *status quo* option is maintained and the situation reviewed following receipt of more robust information on recreational harvest and the next stock assessment
- that any proposals for a change to sector shares this fishery are backed up with credible information and analysis.

We would be happy to discuss any questions that you may have in relation to this submission.

Kirsty Woods
Manager, Fisheries Development
Te Ohu Kaimoana Trustee Ltd

Contact Person:

Tania McPherson Senior Policy Analyst Te Ohu Kaimoana Trustee Ltd DDI: (931) 9533 Cell: (021) 667798 E-mail: tania.mcpherson@teohu.maori.nz
--