

Fisheries Amendment Bill No 3

Notes for presentation to the Primary Production Select Committee from the Treaty of Waitangi Fisheries Commission

Thursday 20 May 2004 (12.40pm – 1.00pm)

Introductory comments

- Introduction of team: Robin Hapi (CEO from 1991 – 2004; now CEO of Commission's seafood group); Craig Lawson (Policy Manager); Kirsty Woods (Senior Policy Analyst for the Commission).
- This presentation is four parts as follows:
 - Introductory comments
 - Transitional arrangements
 - Provisions relating to mussel spat
 - HMS provisions
- Role of the Commission: a Maori statutory body empowered to secure the growth and development of assets managed on behalf of Iwi in accordance with the Deed of Settlement.
- Under the Deed of Settlement, the Crown gave to Maori certain assets and undertakings. In exchange, Maori agreed that their rights to take further claims in respect of commercial fishing would be fully and finally settled
- Extract from the Deed:

"New Quota for Additional Species

The Crown agrees that it will introduce legislation to amend the Fisheries Act to authorise the allocation of 20% of any new quota, issued as a result of the extension of the QMS to fish species not included in the QMS as at the date of the Settlement Deed (including any as yet unknown species) to the Maori Fisheries Commission for distribution to Maori. The Crown will consult with the Maori Fisheries Commission on the management regime to apply at the time of the extension of the QMS to the new species.

(Source: page 14, para 3.2 of the Deed of Settlement)

- Against this background, the Commission is bound to take a keen interest in the changes proposed in Fisheries Amendment Bill No 3.
- To a large degree, the Commission supports changes that are being made to our fisheries management system by the Bill. We also support SeaFIC submissions on:
 - the overall framework

- proposed transitional arrangement for dealing with allocation according to catch history years
 - provisions relating to mussel spat.
- We will focus now on:
 - additional comments about transitional provisions contained in the Bill
 - green-lipped mussels (including spat)
 - our perspective to the issue of Highly Migratory Species.

Transitional Schedule

- Refer to written submissions from us and from SeaFIC for background information.
- On the question of allocation of quota shares when species are introduced into the QMS, the Commission supports the longer term direction signalled by the Bill.
- The Commission also agrees that:
 - a transitional regime that moves in a principled way to the new regime should be provided for
 - The permit moratorium should be lifted for species managed outside the QMS, except for those that are subject to sustainability concerns. Those species should be introduced into the QMS as soon as possible.
- MFish intended that Schedule 4C of the Bill would list those species that should, as a transition to the new allocation regime, continue to be allocated on the basis of catch history. MFish structured it to include species that are subject to sustainability concerns, and those for which industry wishes to retain catch history rights, retaining the permit moratorium for both.
- For reasons outlined in our submissions, species identified by industry for the purposes of retaining catch history were not included in Schedule 4C.
- Both SeaFIC and ourselves have already identified the concerns of industry about the loss of what they consider to be a contingent property right.
- We believe there is a simple means of addressing the concerns of industry associated with catch history. It would involve honouring the catch history years for any species introduced into the QMS within a specified time-frame, say five years.
- Species with sustainability concerns should continue to be listed on Schedule 4C. The permit moratorium should be retained for those species until they are introduced into the QMS.
- The purpose of the Schedule should be re-stated to reflect the priority that should be given to the introduction of listed species, given the need for active management.
- In the case of all species managed outside the QMS, a more general provision could be made in the body of the Bill to the effect that catch

history will be honoured for any species introduced by a certain date – we suggest October 2009. This would mean that

- those with catch history could take the opportunity to promote introduction before that date
 - the permit moratorium would only apply to species managed outside the QMS that sustainability concerns.
- The Bill should be amended as follows:

Proposed amendment to Fisheries Amendment Bill (No 3)

Clause 7

Delete 29A (2) (a), and move (b) and (c) up to being the new (a) and (b)

Add to the proposed section 29A (2) the following paragraph:

“(c) any other stock in respect of which the Minister has made a declaration to make the stock subject to the quota management system before 1 October 2009.”

Spat catching permits – Part 2 of the Bill

- The Commission supports introduction of green-lipped mussel – including spat, into the QMS.
- We have concerns with the proposed transitional arrangement that requires the Minister of Fisheries to “allow for current amounts that have been determined as being available to holders of green-lipped mussel spat catching permits as if they constituted mortality to green-lipped mussel stocks caused by fishing”. For reasons set out in our submission, we believe that the approach taken by the Crown on this issue breaches the Deed of Settlement and other undertakings given by the Crown.
- Since lodging our submission, we have met with other affected parties, including the New Zealand Mussel Industry Council and holders of spat catching permits who also have concerns with the proposed transition.
- We have jointly agreed to support an alternative approach which would address our respect concerns, and enable all commercial catch to be allocated as ITQ from the date of introduction of green-lipped mussels into the QMS. The main elements of this approach are:
 - Introduction of mussels (including spat) in GLM 9 on 1 October 2004
 - All commercial harvest comes under a TACC and is allocated as ITQ from that date
 - Quota shares would be allocated as follows:
 - i. 20% to Iwi through the Treaty of Waitangi Fisheries Commission (in accordance with the Deed of Settlement)
 - ii. 70% to s 67 Q permit holders (with allocation to be agreed amongst permit holders)
 - iii. 10% to the Crown
- This approach would mean that the Bill should be amended to:
 - **Provide for the introduction and allocation of quota shares in GLM 9 by way of a Schedule to the Bill**
 - **Delete the transitional provisions currently in cl 63 and 64 of the Bill (concerning the savings of existing permits and the setting of the TACC to exclude the current commercial catch)**
 - **Revoke all s 67Q (2) (b) spat catching permits from 1 October 2004.**

Highly Migratory Species

The Commission's main submissions

- We wish to clarify our written submission on this matter.
- The Commission believes that the legislation should provide the tools for New Zealand to apply the QMS outside New Zealand fisheries waters, so that individual species can be introduced into the QMS at the appropriate time.
- The Government needs to establish a framework now to firmly remind industry of Crown obligations to Maori under the deed of settlement, so as to provide transparency and clarity for the industry to make economic decisions in light of these obligations for the future evolution of the QMS.
- Triggers for introduction of HMS species outside NZ fisheries waters could include a provision that QMS introduction occurs once New Zealand obtains a national allocation.
- The commission urges the Government to promote national allocations based on "output controls" (catch limit) not input controls (vessel days).
- Industry will benefit from more secure property rights when/if QMS is applied to HMS. If they choose to re-flag their fleet under other nation's flags that is their choice and they must take responsibility for doing so and the consequences that follow.
- Where the Crown agrees, as part of its negotiations, on an alternative international access arrangement then there is a need to provide an alternative means to delivering the equivalent 20% of commercial interests to Maori.
- The Commission urges a principled approach consistent with the Deed of Settlement. Extension of the QMS was contemplated in the Deed. New quota for additional species is covered in paragraph 3.2, page 14 of the Deed of Settlement.
- The QMS has already demonstrated that it has the capacity to evolve. It is not static and some have suggested that the QMS should not be locked into a time-warp. It is capable of flexibility in managing a whole range of species (eg. Beach cast seaweed and mussel spat, spiny dogfish, knobbed whelk etc.)
- We agree with the SeaFIC submission that the HMS provisions of the Bill are confusing. Links to other aspects of the Fisheries Act will need to be readily understood. However we are not convinced that a separate section is needed.

Points in support of the Commission's submission

"Blue Roughy" Issue

- Contemplated in 1992 by Sir Douglas Graham. Badge produced to signify the evolving nature of the QMS.
- The Deed provided Maori endorsement for the legitimacy of the QMS as the primary management tool. See paragraph 4.2, page 18 of the Deed of Settlement.
- Application of the QMS is contingent upon the Crown delivering 20% to Maori, so that wherever the QMS goes so do Maori (hand-in-hand with the Crown).

"...The Crown would introduce legislation to ensure that Maori were allocated 20 percent of all quota for species henceforth brought within the quota management system..."

(Source: page 4, para (L)(iii) of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992)

- The QMS is the basis for the Deed of Settlement! If the Government wishes to change that then it must be prepared to renegotiate the Deed.
- The Deed was not intended to limit the ability for Maori to expand economically, including internationally.

*"Interpretation of the Act Generally
It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the agreement expressed in the Deed of Settlement referred to in the Preamble to this Act."*

(Source: page 6, section 3 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992)

- The Courts have firmly agreed that Maori have a development right that is both commercial and non-commercial and which have past, present and future aspects creating development potential.

"...but Maori Treaty rights are not frozen as at 1840. Since 1840 there have been notable advances in the size and means of propulsion of fishing vessels; in fishing technology and in the discovery of species unknown to Maori and non-Maori at the time of the signing of the Treaty. One consequence of these developments has been the recent dramatic shift in fishing effort from the confines of the continental shelf to the offshore deepwater fisheries;"

(Source: para 13.11, Ngai Tahu Sea Fisheries Report)

- Neither the Deed nor the final Settlement fully quantified and compensated Maori for the loss of their fisheries rights. That matter was set aside in favour of finding a political compromise (see the preamble of the Settlement Act).

- The Commission has always argued that the Crown must not create any new grievance through the settlement of another. It is for the Crown to decide if these species become part of the 4th Schedule – where compensation to industry is provided.

Other issues to consider

- Implications of pre-empting international agreements on national allocations (eg example of SBN)
- implications of imposing rules on NZ fleet that will:
 - disadvantage NZ at international negotiations (i.e. restrain effort prior to national allocations) or
 - disadvantage NZ fleets establishing agreements with distant nations for fishing in their EEZs.
- Avoid resolving one grievance through the creation of another.