

3 May 2004

Members
Primary Production Select Committee
c/- R J Bunch
Select Committee Office
Parliament Buildings
WELLINGTON

Tena koutou katoa

Fisheries Amendment Bill (No 3)

1.0 Introduction

This submission is made by the Treaty of Waitangi Fisheries Commission. The Commission is a Maori statutory body empowered, among other things, to:

- develop, in consultation with Maori, proposals for the allocation of the various assets and benefits that are derived from the 1989 interim and 1992 final settlement of Maori claims in respect of commercial fisheries
- facilitate the entry of Maori into, and the development by Maori of the business and activity of fishing
- secure the growth and development of assets managed on behalf of Iwi collectively in recognition of the rights confirmed and guaranteed by the Treaty of Waitangi.

It is of paramount concern to the Commission that statutory reforms that affect fisheries support the principles of the Deed of Settlement, entered into by the Crown and Maori to finally resolve Maori claims to fisheries.

The Fisheries Amendment Bill (No 3) deals with a number of important changes to New Zealand's fisheries management regime, management of some specific fisheries as well as some tidying of technical matters. In general, the Commission endorses the policy objectives of the Bill and many of its provisions. In most respects, we endorse the submission of the Seafood Industry Council. However we would like to provide additional comments on some specific matters covered by the Bill.

Te Ohu Kai Moana wishes to appear before the Committee to speak to our submission. We can be contacted through Kirsty Woods (Senior Analyst) on 499-5199 or direct dial 931 9534.

Comments in this submission are made against the relevant objectives as stated in the explanatory note to the Bill.

2.0 Reinforcing the QMS as the preferred framework for managing fisheries resources and improving certainty in identifying species for QMS management.

The Commission's views on the provisions of the Bill that relate to the above objectives are largely consistent with those of SeaFIC. In summary we support:

- Removal of ICE
- Amendments to the introduction process as proposed by SeaFIC, including:
 - the need to clarify the proposed triggers for consideration of QMS introduction
 - the need to retain the requirement to consider the costs and benefits of introduction (note that this provision is the only provision in the Act that places any form of commercial restraint on the Minister's decision-making relative to QMS introductions)
 - that the Minister should be required to consult representative persons or organisations prior to making a determination about QMS introduction
 - the application of the triggers to species listed on schedule 4C
 - providing for fisheries users to request a determination. In many cases, those who wish to develop fisheries will be better placed than the Crown to recognise where management in the QMS will provide for utilisation. This proposal would also enable Maori to signal where they have an interest in developing commercial species and where the Crown is obliged to provide access.

A copy of the submission made by the Commission on the general policy direction of the Bill is attached at Appendix One.

3.0 Improving the means of allocating quota when a species is introduced into the QMS

The Commission agrees with the move to change the basis for allocating quota when species are introduced into the QMS, and:

- the removal of catch history as a means of allocation (except for tuna, HMS outside the EEZ, and stocks listed on new Schedule 4C)
- provision for new stocks introduced into the QMS to be allocated 20% to the Treaty of Waitangi Fisheries Commission (as happens now – see below) and 80% to the Crown (apart from the species named above, for which an amount up to 80% is allocated on the basis of catch history).

As a point of clarification, the allocation of 20% to Maori is a requirement when any new species enter the QMS, regardless of whether allocation of the remaining 80% is

by means of PCH under the current and proposed transitional regime under new Schedule 4C, or through tender of Crown quota.

The Commission has been directly involved in discussions with the Ministry of Fisheries on this issue. At the end of December, Cabinet invited SeaFIC and the Commission to provide the Ministry of Fisheries with a list of species for which catch history based quota allocation will continue to apply. It was proposed that these species should be listed on the new Schedule 4C. The Commission and SeaFIC submitted a list to the Ministry, along with some specific comments on how the structure of the Schedule might be amended to deal with the two different objectives that it was designed to achieve:

- to protect those species that are subject to a sustainability risk by ensuring they are subject to the permit moratorium until they are introduced into the QMS
- to identify those species for which industry wishes to retain their catch history rights, pending introduction into the QMS.

The Ministry did not accept our advice on species that should be listed for catch history purposes and as a result, the only species listed on the Schedule 4C are those identified by the Ministry as having sustainability risks.

An alternative means of providing for the transition, by means of a modified Schedule 4C was developed by SeaFIC and the Commission. This is fully outlined in SeaFIC's submission. We continue to support this approach, which would involve dividing Schedule 4C into two parts:

- Part I would list all species for which there are sustainability risks. All those provisions that relate to the current Schedule 4C would apply in the case of these species.
- Part II would list all species not currently within the QMS (aside from those listed in Part 1) with eligible catch history in 1990/91 – 1991/92. For these species:
 - the permit moratorium would not apply
 - access would be provided through the new regime for authorising commercial fishing through permits
 - the species would be introduced into the QMS only if the thresholds in new s 17B (1) are triggered
 - 1990/91 – 1991/92 catch history would apply should the species be introduced

Part II of the Schedule would expire, say in five years.

It seems logical to the Commission that if the permit moratorium is to be retained, then it should only be the case for those species that are subject to a sustainability risk. We see no reason to retain the permit moratorium for species that will be allocated according to PCH where there is no sustainability risk.

Copies of information and submissions prepared by the Commission (as well as SeaFIC) on this matter are attached at Appendix 2.

3.1 *Specific matters*

- **Clause 13 (1) and 14 (1):** These provisions may be meaningless as there is no “section 33(a)(i), nor is one inserted by the Bill.
- **Clause 14 (2 and 3):** Currently s.35(3) requires the chief executive to provide individual notice to people he considers eligible to receive PCH of their rights, and to repeat that notification 10 days after the first notice.

That approach was debated at length between the industry advisory committee (established to assist in the design of the QMS now in the Act) and the officials involved in the 1996 legislation’s preparation. This was adopted to ensure there was time for persons affected by a QMS entry declaration to pursue remedies if mistakes were made.

This sub-clause, without industry consultation, seeks to change the approach to one where prospective PCH holders have to do all the research work themselves and have only 10 – previously 20, days in which to do it. This provision risks depriving prospective PCH recipients of their rights.

The sub-clause should be deleted and s.35(3) left as it is. In consequence, *sub-clause (3)* can also be omitted.

- **Clause 15:** The Commission agrees with the repeal of sections 39 to 41 of the Act but sees no reason for section 38 to also be repealed. That section deals with disputes over the transfer of provisional catch histories, while sections 39 to 41 deal with PCH for stocks managed under individual catch entitlements (“ICE”).

This Bill removes ICE from the systems of management available for non-QMS species, so the removal of sections 39 to 41 is logical (see comments above). However, transfers of PCH, and therefore prospective disputes, will continue for those species listed on the new Schedule 4C, and so section 38 needs to continue.

These comments also apply to related clauses in the Bill that affect s 38 (see also clause 25, sub-clauses (1 – 3); clauses 26 – 27; clause 41; clauses 54 – 55).

- **Clause 24 (2) (b):** As PCH will continue under Schedule 4C, the link to permitted overseas persons in s 39 (1) (b) should be retained.

4.0 **Revising the current regime for authorising access to commercial fisheries.**

The Commission endorses the comments made by SeaFIC in respect of:

- Support for the removal of the permit moratorium
- Preference for regulation rather than permit conditions.

5.0 Extending the QMS to cover the management of highly migratory species outside New Zealand fishing waters

Highly Migratory Species (HMS) caught in New Zealand waters (for example tunas), range over vast distances in the Pacific region. Where a common and agreed regime exists between countries in the region, New Zealand should have at its disposal all possible management tools to enable it to meet the management commitments it has made in respect of that regime. For example, in the case of Southern Bluefin Tuna (SBT), New Zealand has a national allocation under the Convention for the Conservation of Southern Bluefin Tuna ("CCSBT"). The QMS provides an appropriate framework for managing and allocating New Zealand's share. This share is managed within one Quota Management Area that extends into the High Seas, as the CCSBT provides that all catch by New Zealand nationals is counted against the New Zealand catch limit.

In the view of the Commission the proposals to bring other HMS into the QMS outside New Zealand's EEZ are premature at this time. The Western and Central Pacific Fisheries Convention ("WCPFC") has not yet been ratified by New Zealand or by sufficient other prospective Member States to bring the Convention into force. As a result, the Commission to be established under the WCPFC does not yet exist.

In addition, even if sufficient national signatures and ratifications were filed in the next few months to activate the Convention, there is little likelihood that the new Commission could be established in less than a further 12 months time. Establishment of the Commission even still takes us no further in implementing the WCPFC: it will take at least 3 – 5 years after establishment of the Commission for Member States to:

- evaluate the state of the HMS stocks covered by the WCPFC in the Convention area;
- agree on appropriate management measures for those stocks;
- agree on the application of those management measures; and
- design and implement appropriate systems for the application of those measures.

The Treaty of Waitangi Fisheries Commission suggests that the introduction of particular HMS species beyond the EEZ should occur once national allocations for each have been established by the new Regional Fisheries Management Organisation (RMFO). This will allow New Zealand-registered vessels to establish fishing histories in international and other Nations waters which will be beneficial in this country's negotiations in the WCPFC context.

Where, at any stage, HMS species fished outside New Zealand's EEZ are introduced into the QMS, Maori expect to be allocated 20% of any new quota, in accordance with s 44 of the Fisheries Act 1996, and with the Deed of Settlement.

Attached is a copy of a previous submission on this issue made by the Commission to the Ministry of Fisheries (see Appendix Three).

6.0 Introducing scampi into the QMS

The Commission supports the introduction of scampi into the QMS.

7.0 Addressing the transition from management by spat catching permits to management under the QMS for green-lipped mussel spat

The Commission supports the inclusion of green-lipped mussel spat within the QMS, which in practical terms, applies only to the Kaitaia spat fishery at this time.

The Commission recognises that provision needs to be made to effect a transition from the current s 67Q spat catching permits (for beach-cast spat) to management within the QMS. However the Ministry chose to introduce its proposed transition arrangements in legislation without prior consultation with the Commission or other affected parties. The short time-frame for making submissions, both on the management proposals and the legislation, make it very difficult and challenging for us to propose more acceptable alternatives.

7.1 *Implications for the Fisheries Settlement 1992*

The Deed of Settlement provides for the allocation to Maori of 20% of any new quota issued as a result of an extension of the QMS to fish species not included in the QMS at the date of settlement. The Deed requires the Crown to consult with the Commission on the management regime to apply at the time of the extension of the QMS to new species.

The provisions of the settlement that relate to commercial fishing are based on an assumption that all commercial fishing that takes place under the QMS is managed through the allocation of ITQ and within the TACC. It is unprecedented to use what has habitually covered biological values and an assessment of the effect of illegal take on the fishery to provide for legal commercial fishing. We know of no other cases where this occurs. While the Ministry of Fisheries' proposal is intended to deal with a transitional problem only, the Commission is concerned that the principle of Maori access to 20% of the commercial fishery is compromised, and that undertakings provided to the Commission by the Crown have been breached.

7.2 *Other transition options*

The Commission has always put forward the view that the settlement of one grievance should not create another. Thus any alternative transitional arrangement should respect the existing rights of s 67Q permit holders until they expire. However we have also stated that Maori should not continue to wait for access to commercial rights in fisheries.

We are aware that other participants in the mussel industry have concerns about the transitional proposal, but for different reasons. In meetings with other participants over the last few weeks, a number of alternative proposals for managing the transition, as well as other issues such as the TACC, have been generated. We believe these options are worthy of exploration as an alternative to the current proposal. A copy of a more detailed submission on this matter, made to the Ministry of Fisheries on 27 April 2004, is attached (see Appendix Four).

We recommend that the provisions of the Bill that relate to this issue be withdrawn to enable the Ministry to engage with us and other parties to develop an alternative proposal that is consistent with the undertakings of the Deed of Settlement and the Crown's policy statement to the Commission.

8.0 Other technical amendments

We refer you to the matters set out in Part 8 of SeaFIC's submission.

9.0 Concluding comments

Te Ohu Kai Moana wishes to appear before the Committee to speak to our submission. We are also happy to provide any further information if the Committee requests. We can be contacted through Kirsty Woods (Senior Analyst) on 499-5199 or direct dial 931 9534.

Craig Lawson
General Manager, Policy

Appendix One: Submission on proposed changes to the Fisheries Act 1996

31 October 2003

Access project
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Ministry of Fisheries
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WELLINGTON

PROPOSED CHANGES TO THE FISHERIES ACT 1996

Introduction

1. This submission is made in response to the Ministry of Fisheries consultation document on proposed changes to the Fisheries Act 1996, dated 9 September 2003.
2. Normally, Te Ohu Kai Moana would have forwarded a draft of this submission to Iwi for comment. However due to resource constraints it has not been possible to do so and the submission only represents the view of Te Ohu Kai Moana. Nevertheless, a copy of this submission has been forwarded to all Iwi with the request that if they have any concerns, they should contact us and the Ministry of Fisheries as soon as possible.
3. Te Ohu Kai Moana has worked closely with other industry participants to explore some of the issues that have been raised by new species introductions over the last 2 years. We have participated in industry workshops on many of these matters, including a workshop held to discuss the above proposals, and largely endorse the comments contained in the submission made by SeaFIC on 24 October 2003. The following comments are made to complement rather than repeat or substitute the contents of that submission.

General comments

4. As part of the Fisheries Settlement, Maori endorsed the QMS and acknowledged that it is a lawful and appropriate regime for the sustainable management of commercial fishing in New Zealand. The settlement also provided for Maori to have access to 20% of commercial access rights in relation to all new species introduced into the QMS.
5. A key issue for Maori is the need to maintain the integrity of the Fisheries Settlement. That settlement put in place a framework to resolve fisheries claims, specifically as far as commercial and non-commercial customary fisheries rights are concerned. To that extent,

and in light of section 5 (b) of the Fisheries Act (referring to the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992), Maori would expect a number of rights and responsibilities to be supported through New Zealand's fisheries management system, including:

- Kaitiakitanga
 - Input and participation of Maori in the management and conservation of New Zealand's fisheries
 - The sustainable utilisation of fisheries resources
 - The overall social, economic and cultural well-being of Maori (as one of the matters that are included under section 8 of the Fisheries Act 1996)
 - Implementation of the QMS
 - Implementation of the Customary Fisheries Regulations
6. Since 2001 when MFish began the process of introducing 50 new species into the QMS, Te Ohu Kai Moana identified the following policy issues as needing to be addressed:
- an open and transparent process for assessing the costs and benefits of introducing new species which includes consideration of issues relevant to the Fisheries Settlement
 - flexibility within the QMS
 - flexibility in managing by-catch species
 - clarity about how species that are not managed under the QMS will be managed once the permit moratorium is lifted and the existing provisions of s 89 (2A) expire
 - a policy for undeveloped and developing fisheries
 - better integration between customary non-commercial and commercial fishing, and an improvement in the implementation of Customary Fisheries Regulations.
7. Early this year, Te Ohu Kai Moana recommended that "MFish, in consultation with ourselves, Iwi, industry representatives and other interested parties, commence policy work to clarify the future components of New Zealand's fisheries management system, including the Non-QMS management component, its relationship to the QMS, and policies on flexible implementation of management tools within the QMS" (see submission April 2004 introductions, dated 17 January 2003).
8. Te Ohu Kai Moana endorses the overall approach set out in the consultation document, as it provides a means of addressing many of the concerns that have been raised by Te Ohu Kai Moana and other industry participants over the last two years. However there are some areas that we believe require further development and discussion, as

set out below.

The assessment of costs and benefits

9. Te Ohu Kai Moana supports the concept of criteria that trigger consideration of stocks or species for introduction into the QMS, but to enhance and not replace the requirement for the Minister to have regard to the costs and benefits of introducing stocks into the QMS (section 19 (8) of the Fisheries Act).
10. The consultation document states that there are two drawbacks with the current process of assessing costs and benefits that justify removing the requirement to have regard to the costs and benefits of introducing a stock into the QMS (section 19 (8) of the Fisheries Act). These drawbacks are stated to be:
 - the amount of time and effort required to carry out an assessment
 - the uncertainty that exists around the timing of species' introduction.
11. We acknowledge that a lot of time and effort has been spent on the process. However this has partly been caused by a number of factors including:
 - dissatisfaction by the industry about the way the process has been carried out, resulting in time spent debating the process
 - lack of two clear alternatives as a basis for comparison (viz what is the counterfactual to the QMS)
12. The criteria used to assess the costs and benefits of introducing species in October 2004, along with the commitment by the Ministry to revise the current fisheries management framework appear to resolve these issues.
13. In our view, the concept of a trigger goes hand in hand with an assessment of the costs and benefits of introduction. As we see it, the process would be set in train when a need for more active management is identified. A process of consultation should follow, with the aim of generating information to assess the costs and benefits of introduction to the QMS, compared to continued management outside it.
14. The process must include an assessment of the implications of introduction for the Minister's obligations under the Fisheries Settlement.
15. Te Ohu Kai Moana endorses the idea put forward by SeaFIC that those with an interest in a stock or species should be able to initiate the process, and that they should demonstrate that the benefits of introducing a stock of species into the QMS exceeds the costs. We

would envisage that such a process would create an incentive for proponents (who could be non-commercial or commercial) to work out ways of minimising costs on other parties, and enhancing overall benefits. This is good policy process which has precedent elsewhere. That requirement places on them an incentive to avoid, remedy or mitigate any negative effects of their proposals on the environment and affected parties before the formal decision-making process even begins. It is important that it is recognised that introduction could impose costs and while these may be acceptable to a proponent, they could be damaging as a whole and frustrate utilisation rather than promote it.

16. This approach could do two things that would be of benefit to Maori. First, it would enable Maori to trigger the introduction process themselves, and, where they wish to develop a stock or species, to benefit from the provisions of the Fisheries Settlement. Second, it would create incentives for anyone else who wishes to trigger the process to work with Maori in advance of any formal decision-making process, particularly given the automatic allocation to Maori of 20% of the quota once introduction occurs.

Criterion b)

17. Te Ohu Kai Moana accepts the submission of SeaFIC that criterion b) conflates two distinct issues:

- the effect of catching non-QMS species on another species that is commercially taken, and
- the effect of catching non-QMS species on species that are not commercially taken, or on biological diversity.

18. Te Ohu Kai Moana suggests that if the second issue is to continue to be reflected in the criteria, the assessment of costs and benefits will be crucial for determining whether the best management response is inside or outside of the QMS.

Open access

Implications for sustainability

19. While the proposals for open access outside the QMS appear sensible from a utilisation point of view, Iwi would wish to be assured that there are sufficiently robust monitoring and reporting requirements in place to identify potential sustainability issues when or if they arise. Clearly sustainability is a key objective for Maori. The concept of kaitiakitanga referred to in section 12 (b) (ii) of the Act denotes a responsibility to look after natural resources in return for obtaining the benefits of use.

Implications for other aspects of fisheries management

20. Open access to commercial fishing of non-QMS stocks or species has the potential to place pressure on customary non-commercial fisheries. If kaitiaki are concerned about the effect of commercial fishing on non-commercial traditional fishing, they need to be able to use all the available tools quickly and efficiently. In theory, local pressures on customary non-commercial fisheries that are created by commercial fishing could be addressed in part through the application of the customary fisheries regulations, including mataitai, taiapure and section 186A/B of the Fisheries Act 1996. However as you are aware, existing problems with the implementation of the customary regulations mean that an imbalance could be created. The issue highlights the need to place an equivalent priority on the review of the customary regulations to ensure that kaitiaki can respond quickly and effectively to pressures that occur.

Allocation and developing fisheries

21. Te Ohu Kai Moana agrees with the comments that have been made by SeaFIC about the complex issues surrounding the allocation of quota following introduction into the QMS – particularly in the transition to a post moratorium environment.
22. Given the commitments that have been made to the 1990/91 – 1991/92 catch history years, Te Ohu Kai Moana supports those with significant catch history in those years having the opportunity to benefit from it. However we agree that over time those years will become increasingly irrelevant.
23. Any new regime for allocating quota must clearly specify the rules, removing the scope for the kinds of problems that have prevented the introduction of species that are a priority for Maori, such as scampi. Clearly some of these problems have involved decisions over permitting, compounded by the moratorium on new permits. Similar problems should be avoided in future.
24. A key issue in implementing a tendering approach to allocating the TACC once Maori have received their 20% is the need for a sound policy for undeveloped or developing fisheries. Such a policy needs to ensure that good incentives are in place for information to be collected.
25. If stocks or species are introduced very early in their development, it is unlikely that sufficient information will have been collected to establish realistic TACs/TACCs, and have confidence that benefits from management within the QMS will accrue rather than costs. Unless the QMS contains a sound framework for undeveloped and developing fisheries, there will be little incentive for anyone to develop new fisheries. This situation will be of little benefit to Maori, or anyone else.

26. The alternative is to introduce species into the QMS once they are partially developed and information about biological and commercial potential has been gathered. In this case those who have invested in the development of the fishery will expect some form of reward (perhaps through a catch history approach, or by preferential tender).
27. Te Ohu Kai Moana urges MFish to develop a policy on undeveloped or developing fisheries so as to ensure that all aspects of the new fisheries management regime are well integrated. Ultimately, incentives for development will be created where those who invest in development are secure in the knowledge they will receive a return. A policy for development within the QMS might include a form of Adaptive Management Programme for undeveloped fisheries within the QMS, using a fisheries plan framework, coupled with a tendering process for the allocation of 80% of the TACC once 20% is allocated to Maori.
28. Te Ohu Kai Moana welcomes the opportunity to work with MFish and industry representatives on this issue before final decisions are made.

The process from here

29. Since MFish commenced with the introduction of new species in 2001, Te Ohu Kai Moana has worked as far as possible with the rest of the industry to resolve issues of common concern. We have also participated in the Joint Working Group between the industry and MFish to share information to assist the assessment of costs and benefits.
30. We acknowledge the comments that SeaFIC has made about the inadequacy of this process from the point of view of the industry generally, and urge MFish to take a more open and consultative approach to developing the policies that flow from the proposed amendments to the Fisheries Act.

31. Clearly the Fisheries Settlement places a responsibility on the Ministry/Minister of Fisheries to work with us when any changes to the fisheries management system are planned. A more constructive approach would involve us early in the scoping stage of policy development, for example using a joint working group, followed by a process that takes the issues to a wider forum.

Naku noa, na

Kirsty Woods
Senior Policy Analyst

Appendix Two: SeaFIC and TOKM proposal on the transitional schedule

5 March 2004

Tom Chatterton
Manager Standards
Ministry of Fisheries
PO Box 1020
WELLINGTON

Dear Tom

Revisions to the Fisheries Act 1996: Transitional Schedule

1. Your letter of 23 December recorded that Cabinet has decided that, with the exception of species listed on a new Transitional Schedule to the Fisheries Act 1996, all species introduced into the QMS will be allocated 80% to the Crown and 20% to Te Ohu Kai Moana. The species listed on the Transitional Schedule will retain the current allocation mechanism – that is, allocation based on catch history in 1990/91 and 1991/92. Cabinet invited SeaFIC and Te Ohu Kai Moana to provide the Ministry of Fisheries with a list of species for which catch history based quota allocation will continue to apply. This letter, on behalf of both SeaFIC and Te Ohu Kai Moana, responds to that invitation.
2. Please note that while Te Ohu Kai Moana has distributed information about the transitional schedule as widely as possible, including through Iwi networks, this letter does not purport to represent the views of Iwi. Rather, consistent with the Ministry's request, it provides information on the views of industry, including Maori participants in the industry.

Summary of response

SeaFIC and Te Ohu Kai Moana:

- a) Support a managed transition away from the historical catch-history years as a basis for allocation of quota;
- b) Submit that this transition would be achieved more effectively by splitting the proposed new Schedule into two parts – one part dealing with species that, in the transitional period, may be subject to sustainability concerns and continue to be subject to the permit moratorium, and the second part dealing with

species that are significant to the industry purely for catch history reasons, where open access will apply;

- c) Emphasise that, should our proposal in b) above not be accepted, the Ministry has an obligation to consult directly with holders of catch history and other affected rights holders prior to any legislative repeal of catch history rights (with a minimum requirement that the Ministry sends each permit holder with catch history a copy of the government's proposal);
- d) Emphasise that, regardless of the approach taken to the Schedule, it is essential that issues of how to best provide for utilisation within the QMS are addressed in line with the new access regime (ie, issues around incentives for fisheries development within the QMS, the operation of the balancing regime, TACC setting, etc);
- e) Recommend that the management intervention of "closing an area to harvesting by one or all fishing methods" be replaced with "using appropriate input controls";
- f) Put forward a suggested approach for listing species on the Schedule should our proposal in b) above not be accepted (based on the policy set out in the December Cabinet decisions); and
- g) Note that points a)-e) above have a high level of support within the industry, but that point f) has mixed support and should not be regarded as an agreed "industry position".

General support for managing a transition away from the 1990-92 catch history years

- 3. You will be aware from SeaFIC's earlier submission to you (24 October 2003) on the 9 September Discussion Document, that the industry has expressed a number of concerns about the removal of catch history as a basis for allocation. The concept of catch history has, since the inception of the QMS, been the basis for the allocation of the ITQ property right to all (except for the agreed allocation to Maori through Te Ohu Kai Moana). Nevertheless, the industry acknowledges that the further removed we are from 1990-92, the less relevance catch history in those years has to current fishing patterns and to future fisheries development. We also acknowledge that it would be desirable to move towards an allocation mechanism that minimises opportunity for costly disputes around allocation.
- 4. SeaFIC and Te Ohu Kai Moana therefore support the general direction of Cabinet's decisions as outlined above – ie, to move away from 1990-92 catch history as a basis for allocation, using a new schedule to manage the transition.

Schedule serves two purposes

- 5. Although SeaFIC and Te Ohu Kai Moana support the use of a schedule to manage the transition, we have significant concerns about the unnecessary tension that has been created by using a single schedule to manage two distinct issues. These two issues are:
 - fisheries management issues (for those species to be listed because of sustainability concerns) where a moratorium must continue to protect the species and the environment; and

- allocation/property rights issues (for those species to be listed in order to protect catch history) where there is no need to restrict access.
6. It makes no sense to apply identical management provisions to two groups of species that are included on the schedule for totally distinct reasons.
 7. In particular we see no logic in retaining the permit moratorium for species that are included on the schedule simply to protect 1990-92 catch history rather than for any sustainability or utilisation reasons. Retention of the permit moratorium in these circumstances is surely in conflict with the purpose of the Act. We do not accept the argument that a desire to protect catch history in a particular stock or species “suggests the existence of economic rent in fishing for that species/stock¹”. The desire to protect catch history simply reflects the industry’s desire, *as a matter of principle*, to protect the basis of their property rights, particularly given the climate of uncertainty and disagreement about several of the historical and more recent introductions into the QMS.

Separating the two purposes of the Schedule

8. As a variation to the approach set out in the December Cabinet decisions, SeaFIC and Te Ohu Kai Moana propose dividing the Schedule into two parts.
9. Part 1 of the Schedule would list all species for which there are sustainability concerns. For these species, as provided in the current Cabinet decisions:
 - the permit moratorium would continue to apply;
 - the s89(2A) “inevitable consequence” bycatch provisions would continue to apply;
 - the species would be introduced into the QMS as soon as practicable unless the purpose of the Act would be better met by an open access/input control management regime; and
 - 1990/91-1991/92 catch history would apply should the species be introduced into the QMS.
10. Part 2 of the Schedule would list all species not currently in the QMS (aside from those listed in Part 1 of the Schedule) with recorded catch history in 1990/91-1991/92. For these species:
 - The permit moratorium would not apply;
 - Access would be provided through the new regime for authorising commercial fishing through permits (ie, “open access”);
 - The species would be introduced into the QMS (or subject to input controls) only if the new sustainability or utilisation thresholds in the Act are triggered (otherwise the species would not attract additional management intervention); and
 - 1990/91-1991/92 catch history would apply should the species be introduced into the QMS.
11. We suggest that Part 2 of the Schedule could expire in a specified time frame (possibly 5 or 7 years). By this time it would be expected that, if a species is a candidate for development or if sustainability concerns arise, it would have been

¹ Email from Paul Wallis, MFish, to SeaFIC, 5 February 2004

introduced into the QMS (with catch history intact). For other species, the eventual expiry of catch history would presumably be of less concern because it would no longer realistically carry with it any expectation of a property right arising from QMS introduction. Any person holding catch history will have had adequate notice of this expiry and the opportunity to act if there is realistic development potential.

12. We believe that this approach meets everyone's objectives more effectively than the current proposals. Our alternative approach:
 - achieves a managed transition away from the old catch history years;
 - protects species with sustainability concerns;
 - does not unnecessarily constrain utilisation (through continuation of the permit moratorium) in situations where there are no sustainability concerns;
 - enables the new "QMS thresholds" in the Act to be applied to those species that are not included on the first part of the Schedule (rather than deeming those thresholds to have already been triggered); and
 - does not extinguish catch history rights while there remains any expectation of those rights being transferred into ITQ.
13. It is our strong recommendation that this alternative approach is re-presented to Cabinet and forms the basis of the proposed amendments to the Act.

Current Cabinet decisions extinguish property rights

14. If the alternative approach recommended above is not acceptable to the Government, the Ministry should be aware that, under the current Cabinet decisions, existing catch history rights (ie, the expectations of holders of recorded catch history in the years 1990/91 and 1991/92) for species not listed on the new Schedule will essentially be legislated out of existence. While there is room for debate about the exact nature and strength of these rights and expectations², the removal of what has always been a fundamental aspect of the ITQ property right should not be undertaken lightly. The issue of which species should be listed on the Transitional Schedule (should the current decisions stand) is, therefore, an extremely significant one.

Consultation with holders of catch history

15. In these circumstances (ie, the legislated removal of existing rights) it is not sufficient for the government to allow just one month over the holiday season for SeaFIC and Te Ohu Kai Moana, on behalf of the industry, to provide an agreed list of species for the Schedule. Our email message to you of 24 December made it clear that we cannot, in the short time provided, consult with the industry and build consensus around what is an inherently complex and contentious issue.
16. SeaFIC and Te Ohu Kai Moana are not prepared to endorse any process by which the catch history rights of individual fishers are extinguished by legislation without those individuals being given the opportunity to respond directly. It is not sufficient that the Select Committee is the only forum for response. We believe it is an obligation of the Ministry to carry out this consultation with rights holders.

² For instance, the catch history years become increasingly less relevant as time passes, catch history amounts are in many cases very small, and in some cases the species are unlikely to ever be introduced into the QMS since they are unlikely to trigger any sustainability or utilisation criteria.

We suggest that any Draft Schedule that is developed in line with the current Cabinet decisions should be used as a basis for further, targeted consultation with holders of catch history and other rights holders affected by either the continued permit moratorium or the presumption in favour of QMS introduction inherent in the Schedule.

17. The Ministry is the only agency that has names and addresses of those who hold catch history. Though we noted earlier³ the advisability of informing all those who hold catch history of changes that could diminish their rights, the Ministry chose not to make the contact information available to us. Having restricted our ability to inform all affected parties, the Ministry must now carry out that consultation themselves. This consultation should occur in parallel with the drafting of the new legislation, so as not to delay the timetable for 1 October enactment.
18. At the very least, the Ministry has an obligation to inform all holders of catch history and all other potentially affected rights holders of:
 - the species on the proposed draft Schedule;
 - the consequences of the proposed new legislation for them as owners of catch history; and
 - the opportunity for them to make submissions to the Select Committee.

The importance of fine-tuning QMS management

19. SeaFIC and Te Ohu Kai Moana emphasise that, regardless of the approach taken to the new schedule, it is essential that issues of how to best provide for utilisation within the QMS are addressed in line with the new access regime. We consider that the various mechanisms in the Act provide sufficient flexibility to sensibly manage the full range of species consistent with the purpose of the Act. If operated this way, the QMS remains SeaFIC's and Te Ohu Kai Moana's preferred management system.
20. The industry's confidence in the ability of the Ministry to apply the QMS in a flexible, rational manner, taking account of mixed species fishing regimes has, however, been shaken by decisions made in 1998 and by some of the more recent decisions on managing newly introduced species. While we acknowledge that there has been some evidence of increased flexibility in the Ministry's approach since 1998, the potential is not always matched by the reality. Unnecessarily low TACCs, formulaic QMA decisions, little opportunity or incentive for development, inconsistent deemed value setting and mismatched TACCs in mixed fisheries (see SeaFIC's submission on the recent IPP for species to be introduced on 1 October 2004) do not leave the industry confident that the QMS is being implemented in a manner that best meets the purpose of the Act.
21. If the set of policy decisions that are embodied in the proposed Bill are to work effectively as a package and gain industry support, it is crucial that improvements to the application of management measures within the QMS are made (and are demonstrated to be made) in a parallel process. SeaFIC and Te Ohu Kai Moana would like to discuss these matters in more detail with the Ministry at the earliest opportunity.

³ Meeting of 27 February, Ministry of Fisheries, SeaFIC & Te Ohu Kai Moana.

“Closed areas” or input controls?

22. The Cabinet decisions refer to the two potential management interventions as “introduction into the QMS” or “closing an area to harvesting by one or all fishing methods”. SeaFIC and Te Ohu Kai Moana consider that the term “closed area” is misleading and potentially dangerous. It is our understanding that, encompassed within this rather extreme-sounding management intervention, are a broad range of measures such as closures to particular fishing methods, area-based gear restrictions (eg, mesh sizes), seasonal closures and so on. It is also possible that an assessment might be made that existing “closed areas” or other input controls are sufficient to ensure the long term viability of the species in question and that no additional interventions are required.
23. SeaFIC and Te Ohu Kai Moana recommend, therefore, that “closing an area to harvesting by one or all fishing methods” be replaced with “using appropriate input controls”. The key point is not closing areas to fishing but, rather, making it clear that output controls are not generally appropriate in a non-QMS environment. To leave the reference to closed areas in the Bill raises the risk that over time, administrators of the legislation will lose sight of the intended broad meaning of the concept and focus purely on closing areas to fishing.

Industry response on the Transitional Schedule

24. In the limited time available, SeaFIC and Te Ohu Kai Moana have undertaken a number of steps to determine industry views on the proposed Transitional Schedule. These include:
- Memo to commercial stakeholder organisations (CSOs) proposing an approach to developing the Schedule (5 January 2004);
 - Discussion at Policy Council (12 February);
 - Memo to CSOs (16 February) and panui to Iwi organisations (23 February) providing further information and a revised approach to developing the Schedule; and
 - Industry workshop (2 March).
25. As a result of this process, we can confirm that there is a high degree of industry support for:
- Separating the management of species at risk for sustainability reasons from the protection of catch history;
 - Improving the operation and flexibility of the QMS to ensure that all species introduced into the QMS are managed in a way that enhances rather than detracts from utilisation of the wider fisheries of which the species is a part;
 - Focusing, where necessary for non-QMS species, on appropriate input controls rather than closed areas; and
 - Protecting catch history as a matter of principle.
26. There is, however, no consensus around the proposed Transitional Schedule (assuming the December Cabinet decisions stand). For example, some industry participants consider that every species with 1990-92 catch history should be listed on the Schedule because the principle of property rights protection is so central to the integrity of the management regime. Others consider that the consequences of listing all species (ie, continued restrictions on access through the

permit moratorium, followed by introducing many more species into the QMS) are unacceptable from a utilisation and management perspective.

SeaFIC and Te Ohu Kai Moana proposed principled approach to developing a Schedule

27. Should our proposed variation on the December policy decisions (paragraphs 7-12 above) not be accepted, and in order to suggest a pragmatic way forward consistent with the December policy decisions, SeaFIC and Te Ohu Kai Moana have proposed a “principled” approach to the identification of species for the Schedule.
28. A principled approach is proposed in preference to a case-by-case consideration of species because inevitably different individuals and companies will have their own views on each species. The three suggested principles for listing species on the Schedule are:
- i) Species that are likely to have more than 10 tonnes of catch history in 1990-92 (note that the 10 tonne threshold is arbitrary);
 - ii) Non-QMS stocks of those species that already have some stocks managed in the QMS; and
 - iii) Species that are likely to be considered by MFish for introduction into the QMS in the next couple of years.
29. In proposing this approach, we have assumed that:
- Tuna species will be allocated based on specified catch history years;
 - All other (non-tuna) species gazetted for introduction on 1 October 2004 will be allocated by way of catch history in 1990-92, as currently provided in the Act;
 - Any species gazetted for introduction on or before 1 October 2004, but not actually introduced by that date due to outstanding legal action, will be allocated as currently provided in the Act; and
 - Scampi will be introduced into the QMS and allocated by way of legislation by 1 October 2004. If, for any reason, this does not occur, we note that scampi would fall under principle i) above and would therefore be included on the schedule.

Not an agreed industry position

30. SeaFIC and Te Ohu Kai Moana note that the approach suggested above is not an agreed industry position and should not be referred to or represented by the Ministry as such. We suggest this approach simply as a basis for further consultation with affected rights holders and note that – since this issue potentially involves legislative extinguishment of property rights – the obligation to consult rests with the Crown (not SeaFIC or Te Ohu Kai Moana).

Results of applying the principles

31. For your information we have attached some tables indicating the species identified by applying the principles proposed above. It is important to note that these tables are indicative only and should not be seen as being complete or definitive⁴. You will be well aware of the difficulties of working with “uncleaned”

⁴ Although all efforts have been made to ensure that the tables are as accurate as possible, SeaFIC and Te Ohu Kai Moana make no warranties express or otherwise, or representations regarding the quality,

data sets from the catch effort data base for non-QMS catch. If the principles outlined above are to be applied accurately, further analysis of the database will need to be undertaken in order to confirm and amend, as required, the attached tables.

Species to be listed for sustainability reasons

32. SeaFIC and Te Ohu Kai Moana appreciate being supplied with the Ministry’s preliminary list of species proposed for inclusion on the Transitional Schedule for sustainability reasons⁵. We have not had the opportunity to analyse this list, and note for the record that nothing in this letter should be read as endorsing this aspect of the Schedule. We consider, however, that the listing of species with sustainability concerns does raise some important issues that will need to be addressed, including:

- The difficulty of identifying species for the Schedule when the “sustainability” threshold has not yet been defined (ideally, species listed on the Schedule should be those that would trigger the threshold for QMS introduction);
- The need for consultation with those affected by the listing of these species on the Schedule (including those affected by the continued permit moratorium, and those affected by QMS introduction or input controls). It is our understanding that, for species not on the Schedule, the Bill will contain consultation requirements related to the determination that a threshold has been breached. The species on the Schedule are deemed to have already breached a threshold, yet no consultation has occurred. Again, we consider the Select Committee to be too late in the process for this type of consultation to occur and urge the Ministry to communicate with affected permit holders as soon as possible.

Concluding comment

33. SeaFIC and Te Ohu Kai Moana staff (Nici Gibbs, Craig Lawson, Kirsty Woods) are available to discuss any of the matters raised in this letter. In particular, we look forward to making progress with the Ministry on ensuring the pragmatic and flexible application of management measures to species already managed in and still to be introduced into the QMS, so that the system overall provides incentives for all participants to advance the purpose of the Fisheries Act 1996.

Yours sincerely

Nici Gibbs SeaFIC	Craig Lawson Te Ohu Kai Moana
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accuracy or fitness for purpose of any of the information in the table. Under no circumstance will SeaFIC or Te Ohu Kai Moana be liable for any loss or damages resulting from any use of this information.

⁵ Memo “Transitional Schedule Species” from Steve Halley to Mike Arbuckle, 18 February 2004.

Indicative tables

The tables below are based on an extract from the catch effort database for non-QMS catch from 1990-1992. The weights are greenweight (kg) from the landing section of fishing returns in the period 1 October 1990 – 30 September 1992. Because actual catch history figures are not available, the highest recorded catch in a single year (ie, either 1990/91 or 1991/92) is used as a proxy of likely catch history. The species are listed in order from those with the highest amount of likely catch history to those with the lowest.

In all the following tables:

- Species marked “S” are being considered by MFish for listing on the schedule for sustainability reasons (based on information supplied to SeaFIC and Te Ohu Kai Moana by MFish);
- Species marked “Q” are being considered by MFish for QMS introduction in 2005 or soon after (based on information supplied as above);
- Species marked “R” have previously been considered for QMS introduction and rejected.

Table 1: Species likely to have more than 10 tonnes of catch history (to be included on Schedule)

Species Code	Species name	Catch history (kg) (highest of 1990/91 or 1991/92)	
RAT	RATTAILS	715786	
RBT	REDBAIT	665868	R
OCT	OCTOPUS	214280	
SDO	SILVER DORY	189627	Q
BSH	SEAL SHARK	188300	R
JAV	JAVELIN FISH	140458	R
PMA	PINK MAOMAO	122274	
OPE	ORANGE PERCH	98650	
NOT	PARANOTOTHENIA SPP.	94892	
BSK	BASKING SHARK	90672	SQ
CON	CONGER EEL	86823	Q
BAT	LARGE HEADED SLICKHEAD	86118	
TUA	TUATUA	82736	SQ
RMO	RED MOKI	68701	RQ
JGU	JAPANESE GURNARD	67327	
SPZ	SPOTTED STARGAZER	53383	
EPT	DEEPSEA CARDINALFISH	51089	
NSD	NORTHERN SPINY DOGFISH	46649	R
OFH	OILFISH	38166	
CAR	CARPET SHARK	28362	
THR	THRESHER SHARK	22179	
BRC	NORTHERN BASTARD COD	21953	
RRC	RED SCORPION FISH	21744	
SSI	SILVERSIDE	18032	
BWH	BRONZE WHALER SHARK	14978	Q
BOA	SOWFISH	13885	
WIT	WITCH	12794	
BMA	BLUE MAOMAO	12368	

PRK	PRAWN KILLER	11274	
BRZ	BROWN STARGAZER	10957	

Table 2: Non-QMS stocks of species that are already in QMS (to be included on Schedule)

COC	COCKLE	Catch history can't be determined from available data.	SQ
PPI	PIPI		SQ
WHE	WHELKS		S
OYU, OYS	DREDGE OYSTERS		Q
SCA	SCALLOP		SQ

Table 3: Other species likely to be considered for QMS introduction in 2005 or soon after (to be included on Schedule)

Species Code	Species name	Catch history (kg) (highest of 1990/91 or 1991/92)	
WSE	WRASSES	6114	Q ⁶
DRU	SILVER DRUMMER	4032	Q
ROC	ROCK COD	3780	Q
KOH	KOHERU	3628	Q
GTR	MARBLEFISH	2599	Q ⁷
PRA	PRAWN	2270	Q ⁸
KEL	KELPFISH	908	Q
CTU	COOKS TURBAN SHELL	261	Q
RMU	RED MULLET	139	Q
SPF	SCARLET WRASSE	129	Q
BPE	BUTTERFLY PERCH	103	Q
RPI	RED PIGFISH	78	Q
BPF	BANDED WRASSE	76	Q
SHO	SEAHORSE	48	Q

⁶ various wrasses are proposed for introduction.

⁷ 2 species of marblefish are proposed for introduction.

⁸ 9 species of deepwater prawn are proposed for introduction.

Table 4: All other species with 1990/91 or 1991/92 catch history (proposed to be NOT on provisional schedule)

Species Code	Species name	Catch history (kg) (highest of 1990/91 or 1991/92)	
MAO	MAOMAO	9975	
EGR	EAGLE RAY	9422	
POT	PARROTFISH	9122	
BSQ	BROAD SQUID	8505	
RAY	RAYS	8333	
HHS	HAMMERHEAD SHARK	8316	S
GRC	GRENADIER COD	8134	
RUD	RUDDERFISH	8117	
SND	SHOVELNOSE SPINY DOGFISH	7877	R
STR	STINGRAY	7543	
SCG	SCALY GURNARD	6882	
CAT	CATFISH (FRESHWATER)	6563	
PIG	PIGFISH	6358	
FLY	FLYING FISH	6150	
DIS	DISCFISH	5935	
RPE	RED PERCH	5067	
POY	OYSTERS PACIFIC	4958	
PTE	PTEROCLADIA	4771	S
DWD	DEEPWATER DOGFISH	4488	
MDO	MIRROR DORY	4007	
POP	PORCUPINE FISH	3935	
SAM	QUINNAT SALMON	3144	
STY	SPOTTY	2655	
HAG	HAGFISH	1962	
SUN	SUNFISH	1817	
CGR	CONVICT GROPER	1273	
WRA	WHIPTAIL RAY	1183	
DEA	DEALFISH	958	
LYC	LYCONUS SP.	930	
SEV	BROADSNOUTED SEVENGILL SHARK	870	S
KOI	KOI CARP	866	
SBO	SOUTHERN BOARFISH	571	
KBB	BLADDER KELP	480	
SQX	SQUID	466	
STM	STRIPED MARLIN	395	
SAL	SALPS	383	
MAR	MARLIN	375	
SNS	SUNSET	353	
WSQ	WARTY SQUID	279	
BSP	BIG-SCALE POMFRET	266	
SMC	SMALL-HEADED COD	246	
CMO	COPPER MOKI	238	
EEL	EELS, MARINE	233	
LCH	LONG-NOSED CHIMAERA	232	
SLK	SLICKHEAD	192	
SCO	SWOLLENHEAD CONGER	180	
SLO	SPANISH LOBSTER	169	

GRA	GRACILARIA WEED	166	S
PER	PERSPARSIA KOPIUA	144	
SSF	SHORTBILL SPEARFISH	112	
PLS	PLUNKETS SHARK	102	
FHD	DEEPSEA FLATHEAD	79	
ERA	ELECTRIC RAY	56	
SRH	SILVER ROUGHY	46	
BBE	BANDED BELLOWSFISH	45	
DCK	DOG COCKLE	45	
HEX	SIXGILL SHARK	40	
MOR	MORAY EEL	37	
MUN	MUNIDA GREGARIA	33	
JFI	JELLYFISH	26	
BRA	SHORT-TAILED BLACK RAY	23	
TOA	TOADFISH	16	
TRI	TRIPOD FISH	13	
BAF	BLACK ANGLERFISH	11	
SPL	SCOPELOSAURUS SP.	10	
CDO	CAPRO DORY	8	
DOF	DOLPHINFISH	5	
BCR	BLUE CUSK EEL	2	
LIM	LIMPETS	2	S
SOP	PACIFIC SLEEPER SHARK	2	
SAI	SAILFISH	1	

Appendix three: Submission on Highly Migratory Species

Q 108 – 14 - 08

7 March 2003

HMS Project
c/- Policy and Treaty Strategy
Ministry of Fisheries
PO Box 1020
WELLINGTON

MANAGEMENT OF HIGHLY MIGRATORY SPECIES

Te Ohu Kai Moana's comments on the discussion paper on the management of Highly Migratory species, dated December 2002, are set out below.

1.0 Obligation for the Crown to provide access for Maori

Clearly the Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act envisage that all commercial species will be managed within the Quota Management System (QMS) and that Maori gain access to 20% of the quota once species are introduced. If introduction of commercial species into the QMS is not the most practical means of providing for sustainable utilisation in the short term, alternative arrangements should be made for Maori to gain access to the equivalent of 20% of the ITQ so that Maori benefit in a manner that is consistent with the fisheries settlement.

Te Ohu Kai Moana seeks to ensure that Maori gain access to all HMS species, including the tunas.

2.0 Overall management approach

Te Ohu Kai Moana supports the submission made by SeaFIC on the overall management approach that should be taken for HMS species. As they note, the key issues are:

- *Leadership by the Government*: the need for the Government to take a proactive role in regional fisheries organisations, in order to achieve outcomes that are beneficial to New Zealand in future negotiations. This role should include active participation by the Government and industry in negotiations under the WCPFC

- *Sustainability*: in relation to HMS, sustainability can only be achieved through a multilateral approach, and rules for these species will ultimately be determined through the WCPFC. Moving to limit ourselves unilaterally will have little benefit for sustainability overall, and only act to constrain reasonable expansion in these fisheries
- *Development of HMS catch*: domestic policy should encourage the reasonable expansion of these fisheries within our EEZ and by NZ vessels beyond our EEZ
- *Opening of opportunities for the commercial harvest of billfish*. We note the concern identified by SeaFIC that it will be possible in future that other nations are licensed to target these stocks within New Zealand's EEZ while New Zealand operators are prevented from commercial harvest. We agree that a more rational approach is required.

3.0 Management options

Te Ohu Kai Moana supports the introduction of Southern Bluefin Tuna into the QMS as soon as possible. New Zealand already has a national catch limit for this species which makes entry into the QMS practical (however we note that the catch limit itself does not reflect what we understand was a commitment for New Zealand's catch limit to be returned to 1000 tons).

We recognise that in the case of other HMS species, there are advantages from a national point of view in not imposing catch limits, and enabling catches to increase given:

- the benefits of developing a national catch history to support an appropriate national catch limit.
- the fact that there do not appear to be any sustainability concerns in these fisheries at present
- regional management measures have yet to be determined by the relevant Regional Fisheries Management Organisation (RFMO)

While it is premature make a final decision on what is the most appropriate management option for these species some of the options presented in the paper are worthy of exploration.

The "status quo, then QMS" may be the simplest means of allowing the fisheries to develop, however a means of providing access to Maori would need to be explored. A number of the other options put forward in the discussion document are worthy of further consideration, particularly as they could provide a practical vehicle for enabling Maori to gain access to 20% of the fisheries concerned. These options include the modified QMS (allocation of shares, or establishment of an "aspirational" TACC within New Zealand's EEZ).

It is not yet clear to us whether these options are practical.

4.0 Issues to be addressed

As well as the question of Maori access, a number of other problems will need to be considered in the case of all options:

Catch history years: the Minister's letter of 26 November 2002 signals that catch history years will not include any fishing after 30 September 2002. If a national allocation is not made within a reasonably short time-frame, the incentives to maximise New Zealand's overall catch history could be reduced - particularly within our EEZ.

Bycatch: The management of bycatch is an issue that has been raised by industry in the context of the introduction of new species. Concern has been expressed that the costs of introducing such species into the QMS exceed that benefits without necessarily improving environmental performance.

These questions have also been raised in the context of HMS species for some low value bycatch species. Particular issues include:

- Whether there are any sustainability concerns that warrant management within the QMS
- Whether the species are valuable to the extent that they will be more intensively fished for their own sake
- The mismatch between prospective tunas catch history years and HMS bycatch catch history years.

If such fisheries are to be introduced, careful consideration will need to be given to the setting of TACCs. If TACCs are unnecessarily conservative, New Zealand's ability to establish a national catch history could be unjustifiably constrained. The potential mismatch of catch history years between tunas and other species could have the same effect.

High value bycatch: As noted earlier, we agree that the management of billfish and other high value species such as marlin needs to be reconsidered. We believe these species should be considered for commercial fishing.

While the paper states that marlin are outside the scope of this consultation exercise, we believe that a review of their management is warranted. Marlin are sometimes taken during commercial tuna fishing activities in New Zealand waters, principally on longlines. Currently any New Zealand commercial operator who takes a marlin must release it - whether it is dead, moribund or alive at the time.

That rule though only applies in New Zealand waters – the same vessel capturing a marlin as bycatch either in international waters or in the EEZ of another Pacific nation is entitled to commercialise the catch, provided the animal is not landed into New Zealand. The rule also does not apply in New Zealand waters to catches of marlin by non-commercial fishermen or to catches by foreign licensed vessels fishing commercially here under a bilateral arrangement.

We note that:

- No economically valid assessment of the respective benefits to New Zealand nationally of recreational vs. commercial marlin fishing has ever been conducted – although unproven assertions have frequently been made;
- The regulatory ban on commercial retention of marlin – dead, alive or moribund – generates waste.

Longer term management regime: The issues raised above need to be considered as part of policy on the shape of our future management regime. As we noted in our submission on the introduction of new species in April 2004, there is no clear policy on the shape of our future fisheries management regime. Relevant issues include:

- the role of the non-QMS component of the fisheries management system in future;
- its relationship with the QMS
- flexible implementation of management tools within the QMS (e.g. in relation to setting Total Allowable Catches (TACs), management of developing species, tools for adapting QMS boundaries, and son on).

To complicate matters, we assume that there will continue to be circumstances in which species that are not managed within the QMS will be taken as an inevitable consequence of taking fish under a current fishing permit. The implications of removing s 89 (2A) in October 2004 need to be further explored as part of this policy work.

Management inside/outside New Zealand's EEZ: Te Ohu Kai Moana considers that 20% of any national allocation made to New Zealand should be made available to Maori. Ultimately, we would expect that once a catch limit is established, HMS species would be introduced into the QMS. It is logical to expect that Maori would have access to their share of the total TACC on the same basis as any other New Zealand rights holder, whether or not:

- it is allocated between separate QMAs
- it is taken within or outside our EEZ.

Application of QMS Rules: We understand that, as currently written, there may be some difficulty in applying the QMS rules contained in the Fisheries Act 1996 outside New Zealand waters. The discussion paper infers that QMS application is possible - and we would agree where a national allocation has been made under a RFMO structure that it should be possible⁹. However given some of the difficulties that might arise in applying the rules, we would recommend that the scope for QMS application outside our waters be fully explored jointly by industry, Te Ohu Kai Moana and MFish representatives.

Clarification of the status of other regional initiatives: We note that a number of regional initiatives have not been identified in the consultation paper. These include:

⁹ In this regard, it is of some concern to us that Maori were denied access to 20% of New Zealand's national allocation for the South Tasman Rise Orange Roughy Fishery, which was agreed to under a "Government to Government" agreement with Australia

- The Forum Fisheries Agency Agreement
- The South Pacific Commission Agreement.

Both these agreements relate to the West Central South Pacific areas tunas and HMS and we understand that New Zealand has been actively involved in both. The significance of these commitments for the development of future management options needs to be clarified.

5.0 Concluding comments

Te Ohu Kai Moana welcomes the opportunity to consider options for management of HMS early in the process. Clearly the issues are complex and more time is needed to develop options and analyse their implications. We look forward to further involvement in this issue.

Kirsty Woods
Senior Policy Analyst

Appendix 4: submission on the transition from management by spat catching permits to management under the QMS for green-lipped mussel spat

27 April 2004

Kristin Philbert
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WELLINGTON

Introduction of green-lipped mussel into the QMS

1 Introduction

This submission from the Treaty of Waitangi Fisheries Commission responds to MFish's Initial Position Paper (IPP) on management measures for green-lipped mussel, including all its life stages, scheduled for introduction into the QMS in 1 October 2004. Consistent with MFish's IPP, the bulk of this submission focuses on GLM 9, and the inclusion within the QMS of the Kaitaia mussel spat fishery.

2 Summary of submission

The Commission supports the introduction of GLM into the QMS. However, aspects of the current proposals prepared by MFish that relate to GLM 9, particularly the proposed transitional proposal to allocate 180 tonnes for commercial harvest to "other sources of mortality", are unacceptable to us. We are concerned that these proposals are inconsistent with the Deed of Settlement and in breach of undertakings given in 1997 by the Crown to the Commission about introduction of new species into the QMS. The Commission recommends that MFish:

1. urgently explore alternative arrangements for providing a transition for s 67 Q permits holders, including:
 - a. The use of a strike price tender process that enables permit holders to purchase quota, or
 - b. The use of Crown ACE to enable s 67 Q permit holders to cover their harvest until their permits expire in October 2006, or
 - c. Use of compensation to buy out existing s 67 Q permit holders

2. establish a TACC of 180 tonnes, and make provision for in-season adjustments

3. adopt a “high value single species fisheries” approach to establishing a deemed value for GLM 9, based on average port price
4. utilise the regulatory change process necessary for the introduction of new species to provide MFish with legal authority for its decisions on method controls, with an expiry date of three years from the date of introduction
5. remove the current prohibition on the commercial take of adult GLM in GLM 9
6. remove the prohibition on removal of seaweed on 90 Mile Beach
7. use the regulatory change process necessary for the introduction of new species to provide legal authority to the proposed 50:50 ratio (spat to seaweed) for reporting purposes
8. urgently meet with the Commission to discuss options for management as agreed by the Crown in 1997, and a process for MFish, the Commission and other affected parties to work together to resolve the outstanding issues identified in this submission in time to introduce GLM 9 into the QMS on 1 October 2004.

3 General comments

The Commission supports the introduction of wild green-lipped mussel into the QMS. We agree with the general approach that is proposed to setting TACs, which means that TACs for GLM 1, 2, 3, 7B, 8 and 10 are set under s 13 of the Fisheries Act 1996, while GLM 7A and 9 are set under s 14. We agree that this approach best meets the purpose of the Act.

The Commission also agrees with the proposal that the customary allowance for GLM should be 50% greater than the recreational allowance, given the significance of this fishery for non-commercial customary purposes.

4 GLM 9 and “Kaitaia spat”

The Commission supports the inclusion within the QMS of GLM in all its life stages. In our view, the establishment of ITQ in the Kaitaia spat fishery will create incentives for quota owners to invest in new technologies, carry out research, rationalise their operations and provide the basis for more secure and cooperative relationships with other participants in the mussel industry. Providing the framework for management is established in a sensible way, Maori gain in two respects:

- Iwi, through the Commission, gain 20% of the commercial rights in the fishery

- Our subsidiaries who are involved in mussel farming benefit from the greater incentives for efficiencies that can be created.

4.1 Proposed transitional arrangement for commercial harvest

The Commission notes the approach that MFish has taken to provide an allowance of 180 tonnes as “other sources of mortality” for two years, alongside a TACC of 70 tonnes. We strongly oppose this approach.

We also note that the following amendment has been included in the Fisheries Amendment Bill No 3:

- 64 **Spat catch limits may be taken into account when setting total allowable commercial catch for green-lipped mussels**
 When setting a total allowable commercial catch for green-lipped mussels under Part IV of the Fisheries Act 1996, the Minister must under section 21 (1) of that Act allow for any 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.

MFish did not consult with the Commission before proceeding with the option in the IPP or in this legislation. The Commission regards this as a serious breach of the Deed of Settlement and undertakings given by the Crown to the Commission in 1997.

The reason for this approach is said to arise from a particular set of issues associated with the management of the Kaitaia spat fishery that complicate its introduction into the QMS. These include the status of permits held by current harvesters, issued under s 67Q of the Fisheries Act 1983 and the effect that QMS introduction, as well as proposed amendments contained in Fisheries Amendment Bill No 3, will have on them. We understand that the use of “other sources of mortality” is intended to maintain a temporary allowance for s 67Q permit holders to enable them to continue to harvest under their permits until they expire in October 2006.

4.1.1 Implications for the Fisheries Settlement 1992

The Deed of Settlement provides for the allocation to Maori of 20% of any new quota issued as a result of an extension of the QMS to fish species not included in the QMS at the date of settlement. The Deed requires the Crown to consult with the Commission on the management regime to apply at the time of the extension of the QMS to new species.

The provisions of the settlement that relate to commercial fishing are based on an assumption (certainly on the part of Maori) that all commercial fishing that takes place under the QMS is managed through the allocation of ITQ and within the TACC. It is unprecedented to use what has habitually covered biological values and an assessment of the effect of illegal take on the fishery to provide for legal commercial fishing. We know of no other cases where this

occurs. While MFish's proposal is intended to deal with a transitional problem only, the Commission is concerned that the principle of Maori access to 20% of the commercial fishery is compromised, and that undertakings provided to the Commission by the Crown have been breached (see below).

4.1.2 Policy Statement from the Crown to the Treaty of Waitangi Fisheries Commission

As part of a policy statement issued by the Crown in 1997 arising from the introduction of Foveaux Strait oysters into the QMS, the Government acknowledged that the continuing relationship between itself and the Commission on behalf of Maori was a key aspect of the relationship between the Crown and Maori (see Annex One). The Crown stated that it had an obligation to:

- acquire and deliver to TOKM 20% of those commercial species outside the QMS no later than the introduction of those species into the QMS
- implement such processes as are necessary to effect the inclusion of all commercial non-QMS species into the QMS as soon as is practicable
- Consult with TOKM on the processes and timing of introduction of new species into the QMS.

In addition, the Crown agreed to develop an implementation protocol including:

agreement on the appropriate management of the species under a QMS regime including consideration of all available options.

There is no evidence that MFish has canvassed other options, and there has been no agreement with us.

5 Other transition options

The Commission has always put forward the view that the settlement of one grievance should not create another. Thus any alternative transitional arrangement should respect the existing rights of s 67Q permit holders until they expire. However we have also stated that Maori should not continue to wait for access to commercial rights in fisheries.

We are aware that other participants in the mussel industry have concerns about the transitional proposal, but for different reasons. The New Zealand Mussel Industry Council (NZMIC) is concerned about the lack of any certainty that the proposed TACC of 70 tonnes will be increased in time for the October 2006 fishing year. Some participants are also concerned about the potential for ITQ property rights to be undermined by the existence of an alternative arrangement for commercial harvest, and the lack of incentives that provides for ITQ holders to begin to develop an agreed framework for management, including arrangements for adjusting TACCs, managing the effects of

harvesting on the aquatic environment and the relationship between the harvest of adult and juvenile GLM.

In meetings with other participants over the last few weeks, a number of alternative proposals for managing the transition, as well as other issues such as the TACC, have been generated. The Commission believes the following options are worthy of urgent consideration by MFish, in consultation with ourselves and other parties.

5.1 *Strike price tender*

One option that could achieve that outcome is use of a “strike price” tender process. In such a process, s 67 Q permit holders who chose to bid for quota would have the option of buying quota to the level of their current allowance (where such an allowance is specified) or to the level of their reported catch in a specified year or years, as long as they pay the strike price identified by the tender process.

The s 67Q permit holders would in effect hold a Right of First Refusal but would have to participate in an open tender. This would have the effect of making the strike price a true commercial price so the Crown would receive the revenue it is due while permit holders would trade the current permit for an ongoing legal right to continue in, and develop the fishery permanently. Any quota they are not successful in bidding for within their current allowance could be made available to them through provision of Crown ACE for two years as their transition out of the system (see Annex 2).

5.2 *Make Crown ACE available to s 67Q permit holders*

If the Minister were to place the full commercial allowance under a TACC, it could be allocated as follows:

- Te Ohu Kai Moana: 20%
- PCE holders: eligible catch history
- Crown quota: make ACE available to permit holders to a level of 180 tonnes (proposed TACC – see below), minus 20% for Maori as well as eligible catch history, until October 2006. PCH holders would be required to balance catch with their own ACE first.

Any additional quota could be tendered now, and the rest in October 2006.

If necessary, the Crown could make ACE available on the condition that harvesters comply with a number of conditions, for example that specify reporting requirements, method restrictions and so on. For those who harvest against Crown ACE, this provision would help to overcome some of the technical difficulties associated with the transition to a fishery in which rights holders take a more active role in management. However it would not cover those who harvest against ACE generated by other quota holders.

5.3 Compensating s 67 Q permit holders

This option would involve the Crown revoking s 67 Q permits in exchange for compensation. It is understood that 4 permit holders hold PCH while another 9 do not. We understand that only one of the 9 permits is actively fished. Permit holders maintain that the costs of buying out their permits would not be prohibitive.

In conclusion, the Commission does not accept the use of an allowance for “other sources of mortality” to allocate commercial harvesting rights, as it does not meet the obligations of the Deed of Settlement and is inconsistent with undertakings given by the Crown in 1997. We urge MFish to consider the above alternatives in consultation with participants in the industry. On our side, it is pointless for us to put further effort into developing alternatives without a commitment from MFish to participate in the process. Ultimately, MFish will be responsible for making recommendations to the Minister, and for implementing his final decision.

We note that the time-line for introduction means that the Minister is scheduled to make final decisions towards the middle of June 2004, following which the regulatory change part of the process commences. We urge MFish to meet with us as soon as possible to develop a way forward. For example, the establishment of a small working group involving all parties is an approach that would be acceptable to us and is in our view consistent with undertaking given to us by the Crown in the policy statement referred to above. We believe it is possible to resolve this and other outstanding issues in time for introduction in October 2004.

6 An appropriate TACC

There has been vigorous debate between current harvesters (particularly PCH holders), the NZMIC and mussel growers on an appropriate TACC for GLM 9. Spat harvesters consider it should be at the low end of the spectrum (somewhere between 100 - 140 tonnes) and argue that amount will more than meet the needs of the industry for many years, based on trends in their reported catch since 1991. They maintain that the current commercial catch limit of 180 tonnes of pure spat (when using a 50:50 ratio of spat to seaweed) has never been harvested and that on average, they normally harvest around 90 tonnes a year. In years of high demand they have harvested up to 135 tonnes. They argue that an excessive TACC will only encourage intensive competition on the beach – as numerous parties who hold ACE compete with each other for seaweed and spat when it is washed up on the beach.

The NZMIC argues that the TACC should be at the higher end of the around 250 tonnes, to ensure mussel growers have ready access to spat. They argue that applications for new farms that were not caught by the moratorium are being approved and that the biotoxin closures of the last year means that mussel growers will require a higher than average amount of spat in the next few years.

The Commission has interests on all sides of the debate:

- the Commission, and eventually those lwi who will be allocated quota in GLM 9, have an interest in ensuring that the value of their quota is not undermined by an excessive supply of ACE that they cannot sell.
- those of our subsidiaries, as well as any lwi involved in mussel farming want certainty that they can continue to obtain spat when needed, and at a reasonable price
- the Commission and lwi wish to ensure that the effects of harvesting on the environment are acceptable.

Ultimately, we believe that a regime needs to be established by quota holders setting out a process for making adjustments to the TACC when necessary, subject to any sustainability concerns. It would be desirable to establish a regular planning process (perhaps every 1 – 3 years), in which mussel growers, through their representative organisations, set out their requirements for the following year(s). This could then feed into a TACC setting process managed by GLM 9 quota holders within a fisheries plan approved by the Minister of Fisheries.

In the interim, and assuming (as the Commission insists) that all commercial harvest is managed under a TACC from the date of introduction, the challenge of setting the initial TACC remains. The Commission believes that the most practical approach is:

- establish a TACC of 180 tonnes
- make provision for in-season adjustments – particularly in the first year of management within the QMS

This approach transfers the current Competitive Catch Limit across to a TACC, which is above the average, or even the highest reported catches in any one year since the early 1990s. In our view, it provides room for growth, while providing for adjustments as necessary during the transition to a fisheries plan.

7 Deemed values

In this fishery, a key objective is to create greater efficiencies that will ultimately benefit quota holders and mussel growers alike. If this objective is to be achieved, the quota right needs to have value. In this fishery, it will depend upon:

- A flexible regime for managing the TACC (as recommended above)
- Sufficient incentives for harvesters to obtain ACE to cover their catch.

The competitive and opportunistic nature of this fishery means that it will be vital, if the value of the quota right is to be maintained, that those who harvest

spat cover their catch with ACE. Current permit holders maintain that they receive prices of anything from \$6 to \$8 kg for their product. This being the case, option one, set out in MFish's proposals (annual deemed value of \$2.61 kg) provides little incentive for harvesters who do not hold ACE to go ahead and purchase it.

While MFish notes that there are no sustainability concerns, we believe that the accessibility of this fishery, the fact that it is reasonably lucrative for a small number of participants and the improbability that "accidental" harvest would occur, means that greater incentives to protect the value of quota need to be put in place. For this reason, the Commission supports option two for GLM 9 spat, which applies the "high value single species fisheries" approach.

8 Method controls and the effects of harvesting on the environment

The Commission notes that at present, harvesting is controlled via conditions on permits, and that methods of harvest are restricted to hand gathering or the use of hand-held tools. We envisage that there would be benefit in opening up new methods that may, in the end, be far more efficient and less intensive than current methods.

The Commission believes that it is in the interests of quota holders to develop more efficient methods for harvesting spat that have less impact on the surrounding environment. We agree that quota holders should carry out an investigation into the potential adverse effects of new harvesting methods before they utilise them, and demonstrate how any adverse effects will be avoided, remedied or mitigated. We also agree that these matters can ultimately be managed within the framework of a fisheries plan. However the process of developing a plan containing an agreed set of practices is likely to take time.

In the meantime, MFish's proposal to require quota holders to seek their approval before implementing new methods is problematic, as there does not appear to be any legal authority in place to enforce MFish's proposed approach. We note that MFish will regulate if necessary, however by the time any regulation can be implemented, unacceptable adverse effects on the environment may already have occurred. We are aware that Iwi in GLM 9 have expressed concern about the effects of harvesting on 90 Mile Beach.

The Commission believes that it will be important, if MFish intends to maintain a role in approving harvesting methods, to develop clear criteria for decision making, and to have some form of legal authority for its decisions. We recognise that regulation is ultimately undesirable and that quota holders should take more responsibility for these matters. However, until quota holders are in a position to develop a fisheries plan, the Commission recommends that MFish utilise the regulatory change process to provide legal authority to their proposed approach, and that criteria are developed in consultation with us and other parties. The recommended legal authority could contain a sunset clause – say three years from the date of introduction –

in order to provide an incentive for quota holders to develop a replacement regime.

9 Relationship between adult mussel, mussel spat and seaweed

Current and future participants in this fishery have raised concerns about the relationship between adult mussel, mussel spat and seaweed.

The first is the potential for the development of a local market for wild adult green-lipped mussel. If such a fishery were to develop, the TACC would need to accommodate an amount that meets the needs of the fishery while ensuring sustainability. As with some of the other issues we have discussed, we agree that these issues can ultimately be accommodated through collective management by quota holders within the framework of a fisheries plan. The advantages of this approach include:

- Incentives to invest in research into the location of “parent stocks”
- Flexibility to focus investment on the most profitable outcomes (whether that be the juvenile or the adult fishery)
- Flexibility to accommodate the utilisation of both adult and juvenile fisheries, within agreed parameters.

The second issue that has been raised is the need for integration in management of GLM spat and seaweed, which are harvested together. The NZMIC has proposed both be classified together as one stock within a smaller QMA. While the proposal appears to have some advantages in terms of reporting and ACE, we believe that lack of integration between the management of adult and juvenile GLM could cause greater problems for quota holders in the long term as collectively, they will have:

- no control over the biological resource within the current GLM 9
- little incentive to invest in research into the “parent stock”
- no effective control over management of the parent stock
- less flexibility in determining the greatest benefit from utilisation of the biological stock.

One option that warrants further consideration, and that could address the concerns of the NZMIC about the effect of harvesting adult stock on the availability of ACE for mussel spat would be to subdivide the TACC between adults and spat, within the existing QMA. This may mean a TACC of 190 tonnes, with up to 180 tonnes to be reported against MSP, and say 10 tonnes reported against MSG. Adjustments would eventually be provided for in a fisheries plan.

10 Existing area closures

The Commission agrees that the QMS should provide flexibility for rights-holders to utilise the stock at different life stages and we therefore support removal of the prohibition on the commercial take of wild adult green-lipped mussel.

We note the proposal to retain the prohibition on mussel spat in GLM 9 and GLM 1 apart from the area from Cape Reinga to the North Head of Hokianga Harbour, however the rationale for this proposal is unclear to us. We recommend that MFish clarify the reasons for the closure and consider whether such a closure is the best means of achieving the original objective.

11 Removal of prohibition of taking beach cast seaweed from 90 Mile Beach

The Commission supports the removal of this prohibition. We understand that its objective was to ensure that only seaweed taken under s 67Q permits for harvesting GLM spat was permitted. If retained past the introduction date of spat into the QMS, those who harvest spat against ACE would be taking seaweed illegally. Those who target seaweed will be required to cover their harvest with ACE for GLM spat.

12 Reporting

The Commission agrees with the concerns that other parties have raised about the need for a legal basis for the 50:50 reporting ratio for GLM spat (under the "MSP" reporting code) and seaweed. We share the concern that harvesters run the risk of prosecution unless reporting requirements are formalised. While these matters can ultimately be addressed in a fisheries plan, such a plan is likely to be some years away, as noted earlier.

13 Biosecurity

We agree that industry protocols covering spat transfer are sufficient to address biosecurity concerns associated with transferring spat.

14 Concluding comments and recommendations

The Commission supports the introduction of GLM into the QMS. We firmly believe that the QMS is sufficiently flexible to cater for different management objectives, and that the spat fishery in GLM 9 contains unique characteristics that provide us with an opportunity to learn about new approaches to management within the QMS. It will require good will and flexibility on the part of all parties.

That said, aspects of the current proposals prepared by MFish that relate to GLM 9, particularly the proposed transitional proposal to allocate 180 tonnes for commercial harvest to “other sources of mortality”, are unacceptable to us. We are concerned that these proposals are inconsistent with the Deed of Settlement and in breach of the Policy statement from the Crown to the Commission, referred to earlier.

We recommend that MFish:

1. urgently explore alternative arrangements for providing a transition for s 67 Q permits holders, including:
 - a. The use of a strike price tender process that enables permit holders to purchase quota, or
 - b. The use of Crown ACE to enable s 67 Q permit holders to cover their harvest until their permits expire in October 2006, or
 - c. Use of compensation to buy out existing s 67 Q permit holders
2. establish a TACC of 180 tonnes, and make provision for in-season adjustments
3. adopt a “high value single species fisheries” approach to establishing a deemed value for GLM 9, based on average port price
4. utilise the regulatory change process necessary for the introduction of new species to provide MFish with legal authority for its decisions on method controls, with an expiry date of three years from the date of introduction
5. remove the current prohibition on the commercial take of adult GLM in GLM 9
6. remove the prohibition on removal of seaweed on 90 Mile Beach
7. use the regulatory change process necessary for the introduction of new species to provide legal authority to the proposed 50:50 ratio (spat to seaweed) for reporting purposes
8. urgently meet with the Commission to discuss options for management as agreed by the Crown in 1997, and a process for MFish, the Commission and other affected parties to work together to resolve the outstanding issues identified in this submission in time to introduce GLM 9 into the QMS on 1 October 2004.

The Commission urges MFish to consider these recommendations favourably. Please don't hesitate to contact either myself or Kirsty Woods of this office to progress this issue as soon as possible.

Craig Lawson,
General Manager, Policy

Annex One

Policy Statement from the Crown to the Treaty of Waitangi Fisheries Commission

The Crown affirms its commitment to the Deed of Settlement. The Crown also affirms its current policy that all commercial non-QMS species should be introduced into the Quota Management System as quickly as practicable.

In particular the Crown affirms its commitment to acquire 20% of those commercial species outside the Quota Management System upon, or before, the introduction of those species into the QMS and to deliver that 20% to the Treaty of Waitangi Fisheries Commission (the Commission) for Maori, no later than upon the introduction of those species into the QMS.

The Crown intends to implement such processes as are necessary to effect the introduction of all commercial non-QMS species into the Quota Management System as quickly as practicable. It accepts that it has an obligation to consult with the Commission on such processes, and on the timing of the introduction of species into the Quota Management System.

The rights of the Commission under the Deed of Settlement constitute a central part of the context in which the Crown consults on, and makes decisions about, the management of fisheries, in so far as such decisions would affect the rights of the Commission under the Deed of Settlement.

The Crown acknowledges the continuing relationship between itself and the Commission on behalf of Maori is a key aspect of the relationship between the Crown and Maori.

Appendix B: the Crown's Obligations to Maori

The Crown's obligations to Maori are articulated in the three separate statements.

- a) The Deed of Settlement to the Treaty of Waitangi Fisheries Claims Settlement Act 1992 requires the Crown to acquire and deliver to TOKM 20% of quota in each new fishery introduced into the QMS
- b) In 1997 the Crown issued a policy statement affirming the Crown's commitment to the Deed of Settlement and acknowledging that the relationship between the Crown and TOKM is a key aspect of the relationship between the Crown and Maori. The policy statement accepted and confirmed that the Crown had an obligation to:
 - Acquire and deliver to TOKM 20% of those commercial species outside the QMS no later than upon the introduction of those species into the QMS
 - Implement such processes as are necessary to effect the inclusion of all commercial non-QMS species into the QMS as soon as practicable
 - Consult with TOKM on the processes and timing of introduction of new species into the QMS

- c) In addition to the Crown's policy statement, the settlement included an implementation protocol to establish and operation framework through which the Ministry and TOKM would work toward the inclusion of new species in the QMS. The protocol is intended to cover:
- The manner and timetable for acquisition of interests in Fourth Schedule stocks
 - Consultation as to the means of managing species prior to their inclusion in the QMS
 - Agreement on the appropriate management of the species under a QMS regime including consideration of all available options
 - The role of TOKM in assisting the Ministry in the processes necessary to effect the inclusion of new species in the QMS.

Annex Two: Proposed Strike Price Tender

- 1 Assume a TACC of 180 tonnes

Allocation would be carried out as follows:

20% to Te Ohu Kai Moana	36 tonnes
PCH	¹⁰ 11 tonnes
Crown quota	133 tonnes
	180 tonnes

- 2 Tender out Crown quota of 133 tonnes and gain a strike price.
- 3 Award quota to s 67Q permit holders up to each permit holder's allowance, or reported catch within a specified year (where there is no specific allowance) where that permit holder's bid matched or exceeded the strike price.
- 4 Where the s 67Q permit holder's bids do not meet the strike price, then they are given a right of first refusal to purchase quota to the amount specified above, at the strike price.
- 5 The maximum that s 67Q permit holders would get is 122 tonnes of quota (133 tonnes minus 11 tonnes (PCC)) – however they may get 0 tonnes, depending upon how they bid, and whether they chose to purchase at the strike price.
- 6 Assume they are successful in bidding for only a portion of 122 tonnes – then the remaining amount can be made available as Crown ACE for two years as a transition out of the system.

¹⁰ Assumption at this stage – may be disputed