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Minister of Fisheries

## **DECISIONS ON MANAGEMENT OF HIGHLY MIGRATORY SPECIES**

### **Purpose**

1. This briefing makes recommendations on the future management framework for tuna and other highly migratory species (HMS), including proposing the use of the Quota Management System (QMS) for all tuna species, and signals the subsequent steps required to implement decisions on these matters.

### **Summary**

2. After two rounds of consultation with stakeholders, the Ministry of Fisheries has concluded that the QMS is the appropriate management framework for HMS fish stocks<sup>1</sup>. It is proposed that, with the exception of southern bluefin (STN) (for which there is already a national allocation), Total Allowable Commercial Catches (TACCs) within New Zealand fisheries waters should be set to allow the fisheries to develop further. However, also with the exception of STN, it is proposed that HMS fisheries outside the EEZ should not be brought into the QMS until national allocations are determined through negotiations in the Western and Central Pacific Fisheries Commission (WCPFC) or there are other reasons to support introduction.

3. The species that would most benefit from introduction to the QMS are STN, bigeye (BIG), Pacific bluefin (TOR), yellowfin (YFN), and swordfish (SWO)—the latter primarily because of problems with the no-targeting rule under the existing management framework and the resulting tensions with the recreational sector. These species and several bycatch species are currently being assessed for QMS introduction, and other tuna species would be assessed as resources allow. The timing of QMS introductions would be determined by the s.18 process. The s.18 consultation document, likely to be released in June, will provide a further opportunity for stakeholders to comment on the details of QMS management.

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<sup>1</sup> Highly migratory species are defined as those included in a list in Annex 1 of the United Nations Convention on the Law of the Sea (UNCLOS) and include tuna species, billfish, oceanic sharks and a range of other species, many of which have little or no commercial value at present. However, the discussion in this paper excludes marine mammals that are listed on Annex 1 of UNCLOS.

4. Most commercial fishers and their representative groups support the immediate introduction of STN into the QMS. However, for other species, fishers do not want the Ministry to impose catch limits until national allocations are determined in the WCPFC, although many of them want the Ministry to address the management problems in the domestic tuna longline fishery. Some support bringing other tuna species into a 'modified QMS'. This would involve allocating quota shares but not setting a TACC until national allocations are determined. Further discussion with industry representatives has clarified that the key objection to immediate introduction of all tuna species to the standard QMS is that they do not have confidence that TACCs would be set high enough to allow further development.

5. MFish considers that New Zealanders will ultimately derive maximum value from fisheries through collective action by stakeholders, e.g. for the commercial fishery, through a cooperative company model as presented in an HMS consultation paper in December 2002. However, there are practical impediments to such a model in the HMS fisheries, and stakeholders were strongly opposed to being forced into a cooperative company. On the other hand, the QMS, by giving fishers a defined share, provides a framework in which stakeholders can work together when they are prepared to do so.

6. The Ministry considers that standard QMS management would generate more long-term benefits to fishers and New Zealand generally than the modified QMS option, and that TACCs can be set so as to not unduly constrain appropriate development. Under the modified QMS, it would be difficult to limit entry by fishers without a long-term interest in the fishery. This option would require significant legislative changes that would delay entry of tuna species into the QMS and would be in effect only until such time as national allocations are determined.

7. Three other issues are of particular concern to stakeholders. The first is the selection of catch history criteria years for tuna, which are exempt from the statutory years for other species. The Fisheries Act empowers you to set the years by *Gazette* notice. This briefing outlines factors to consider and makes recommendations for the various tuna species.

8. The second issue is the need for continued access to a range of bycatch species. Most tuna fishers will receive no provisional catch history for bycatch species because they started tuna fishing after 1992. The majority of bycatch quota will be allocated to the Crown, and the industry has requested that this quota be made available in some preferential manner to tuna fishers. Most independent fishers believe that they would be forced out of business if they had to compete with large companies in an open tender for bycatch quota. Disposal of Crown quota is an issue that affects many fisheries, not just tuna. The Ministry is currently developing proposals for the disposal of Crown quota and impacts on the tuna fisheries will be considered.

9. The third issue is whether Maori should get 20% of any quota that is allocated based on catch outside the NZ EEZ; some fishers have indicated they will consider re-flagging their high seas vessels if this is the case. Crown Law has advised that the Deed of Settlement encompasses *all* introductions to the QMS, regardless of whether the quota is for fish caught within or beyond New Zealand fisheries waters. This issue is unlikely to arise for southern bluefin, because there is little or no catch history beyond the EEZ, but will arise in the future if and when fishing beyond the EEZ for other species is brought within the QMS. The Ministry recommends that you announce the Crown's position so that fishers can make decisions accordingly.

10. Some minor legislative amendments would be necessary to use the QMS to manage tuna outside the EEZ and to ensure provisions on foreign licensed access are consistent with international obligations. Officials will advise you on recommended amendments in the next few months, with a view to introducing amendments via the Fisheries Amendment Bill planned for later this year.

## ***Future management of HMS fish stocks***

### **Background and Process**

11. By definition, HMS fish stocks swim widely in the Pacific Ocean, and variable numbers of tuna enter New Zealand waters in any given year. HMS can only be managed effectively through regional co-operation. New Zealand catches of albacore represent about 10% of catch from the South Pacific stock, our catches of southern bluefin tuna are about 2.5%, and for other tuna species we have less than 1% of the regional catch. In addition, New Zealand companies have developed distant water fishing in recent years to the point where their catch of yellowfin tuna beyond the EEZ (the vast majority in EEZs of other states) is up to 50 times what is taken within the NZ zone. For skipjack tuna, catches beyond the EEZ are two to three times the catch taken within the NZ zone.

12. STN stock size is well below the size that will produce the MSY. Current catches exceed the level that would allow the stock to rebuild toward MSY in the next 20 years, but at about the level of current replacement yield. Current catch levels for most other HMS stocks are considered sustainable. Recent reports note that yellowfin and bigeye tunas may be nearing full exploitation. There are also some concerns about catches of juvenile yellowfin and bigeye tunas (mainly beyond the NZ EEZ) and the potential for localised depletion of swordfish. Little is known about bycatch species such as sharks, but New Zealand catches are unlikely to be having a significant impact on the viability of these species. There are reports of overcapitalization, spatial competition and poor economic returns in tuna longline fisheries and a race to catch the 420 t competitive catch limit for STN.

13. Commercial fishing regulations prohibit the targeting of swordfish but allow it to be landed as bycatch. Recreational interests, whose landings are very low, have become concerned about increased landings of swordfish in recent years, while commercial fishers are concerned that New Zealand will receive a low national allocation for swordfish if we do not develop this as a commercial fishery as other nations are doing. In addition to swordfish and marlin (the commercial landing of which remains prohibited), there is considerable recreational interest in yellowfin tuna, pelagic sharks (primarily mako and blue) and to a lesser extent other species.

14. The Commission for the Conservation of Southern Bluefin Tuna has determined catch limits and allocations for STN. The WCPFC has been established to manage other HMS in the region but the Convention has not yet entered into force, and it could well be 5–10 years before national allocations are agreed in that forum. Other conservation measures, including global catch limits and technical measures, are likely to be introduced sooner. We have an interest in fully developing New Zealand's tuna fisheries prior to national allocations by the WCPFC, but also have an obligation to exercise reasonable restraint.

15. In November 2001, the Ministry of Fisheries advised stakeholders that several tuna species, swordfish and several other HMS were under consideration for introduction into the QMS on 1 October 2004. On 24 December 2002, the Ministry

of Fisheries released a stakeholder consultation paper on options for future management of tuna and other HMS, setting out various options in addition to the QMS. Stakeholder meetings were held in February 2003 and 27 submissions were received. A second consultation paper was released on 21 March 2003. Further meetings were held in April and 38 submissions were received. A summary of submissions from the 2<sup>nd</sup> round of consultations is attached. Officials have subsequently held further informal discussions with stakeholder representatives.

16. The consultation process has involved industry stakeholder groups, numerous commercial fishers, Te Ohu Kai Moana, representatives of environmental groups, different business groups within the Ministry of Fisheries and other government departments. Recreational interests were sent consultation papers and invited to meetings, but none made submissions or attended any of the meetings.

### **Objectives for HMS management**

17. The Ministry proposes to adopt the following objective for HMS management:

*To maximize the value that New Zealanders obtain through the sustainable utilisation of highly migratory species, within the New Zealand EEZ and beyond, by measures including --*

- *implementing effective arrangements to provide for commercial and non-commercial utilisation and to manage New Zealand's rights and responsibilities pertaining to highly migratory species, and*
- *representing New Zealand's interests in regional fisheries management organizations including in (i) the establishment of, and compliance with, regional measures to ensure the sustainability of HMS stocks, (ii) the determination of national allocations and (iii) the determination of conditions of access to HMS resources in the region,*  
*subject to --*
- *ensuring the viability of associated or dependent species; avoiding, remedying or mitigating adverse effects of fishing on the wider aquatic environment; and complying with international obligations arising from agreements on biodiversity, fisheries management and related issues,*
- *providing for foreign licensed access as appropriate, and*
- *meeting the Government's obligations to Maori under the Deed of Settlement.*

18. Stakeholders have endorsed similar versions of this objective, which at their request includes increased emphasis on obtaining value from HMS beyond as well as within New Zealand waters.

19. Consistent with these objectives, the Ministry will work within the Convention for the Conservation of Southern Bluefin Tuna to increase New Zealand's STN allocation at an appropriate time, which stakeholders consider of paramount importance. However, given the severely depleted state of this stock, increases are unlikely in the medium term. The CCSBT Scientific Committee advised last year that, at current catch levels, there is little chance of the stock being rebuilt by 2020.

## **Management framework for HMS stocks**

20. In the December consultation paper, the Ministry put forward several options for how New Zealand might manage its share of highly migratory stocks. These included the status quo and variations to it, the QMS, a 'modified QMS proposal', transferable effort controls and a 'co-operative company' model. The paper noted that different options might be best suited to different species.

21. In the Ministry's view, the status quo is not a viable long term option for HMS fisheries of commercial or recreational value, as it does not encourage rational investment in fisheries that will, at some point in the future, need to be constrained for biological reasons or to comply with international obligations. For STN, where such constraints already exist, the status quo has caused an inefficient race for catch that prevents fishers from maximizing value. Some fishers favour a permit moratorium as an answer or at least an interim step, but moratoria have proven ineffective at limiting effort in other fisheries and would likely be ineffective for HMS. Effort controls, with transferable licenses, have been advocated by some fishers, but the Ministry considers that these would be only partially effective at limiting effort, would entrench existing gear and fishing practices, and could prove expensive to administer.

22. The Ministry considers that New Zealanders will obtain maximum value from fisheries through fisheries rights holders acting collectively. Collective action can entail co-operation on research, marketing strategies, negotiation of foreign access arrangements, optimal deployment of vessels to maximise catch or avoid inefficient spatial competition, and investment in further capacity to expand catch, among other things. A single commercial company model provides one option for such co-operation because all shareholders would share in the returns in proportion to their investment in shares (which would replace individual quota and could be tendered or based on catch history). Under the QMS as it currently exists, by contrast, if one company invests in research or expanding catch, all other quota holders benefit e.g. from a larger TACC, and this free-rider effect can inhibit some forms of investment.

23. However, there are a number of factors currently impeding a co-operative company model in the HMS fisheries. Rights are not specified adequately, industry lacks the capacity and incentives for collective action, and there are significant transaction costs due to the large number of fishers in fisheries that are distinct (surface longline, troll and purse seine) but nonetheless share catch of certain species. Commercial fishers are strongly opposed to being forced to co-operate in a single company.

24. Thus, the Ministry considered further the following three options:

- a. the standard QMS, i.e. as it currently exists (as soon as practicable);
- b. a 'modified QMS' without a TAC until national allocations are determined or there are sustainability or other imperatives for catch limits; and
- c. the standard QMS but with introduction deferred until national allocations are determined or there are sustainability or other imperatives for QMS introduction.

25. Where New Zealand has a national allocation for an HMS (currently only STN), the Ministry considers that the QMS as it currently exists is the preferred option. The QMS enables New Zealand to meet its international obligations, provides access to

Maori, provides security of access to commercial fishers, incorporates an explicit allowance for recreational and customary fishing, and it removes the race for catch, thereby enabling fishers to obtain maximum value from the fishery, consistent with the proposed objective. Virtually all stakeholders (of those who have expressed a view) support introduction of STN into the QMS, and most have also indicated that the QMS is appropriate for other HMS once national allocations have been determined.

26. Where New Zealand does not have a national allocation, each of the three options above would enable the Ministry to ensure sustainability, meet international obligations, and provide access for recreational and customary fishing. However, only by implementing the current QMS can the Government directly meet the Crown's Treaty obligations to Maori in the short to medium term.

27. In terms of the stated objective, a key question is which option best enables New Zealand to obtain maximum value from HMS fisheries, given that for all of these species there is, to a greater or lesser degree, potential for further development inside and beyond the EEZ. To explore this question requires first a discussion of how each option might be implemented and how this would affect incentives and therefore investment and other responses by fishers.

#### *Managing HMS in the QMS*

28. For HMS fish stocks for which a New Zealand allocation has not yet been determined internationally, the QMS would operate as for other fisheries with the possible exception of setting the TAC. For highly migratory species that swim over wide portions of the Pacific Ocean, and for which New Zealand takes only a small percentage, it is not biologically possible, and makes little sense, to set TACs based on maximum sustainable yield (MSY). On this basis, and using s.14(8)(b)(i), officials consider that HMS stocks should probably be added to the Third Schedule of the Fisheries Act 1996, which would then enable the Minister to set an alternative TAC that "he or she considers appropriate to achieve the purpose of the Act". This would, where appropriate, include an explicit allowance for recreational and customary take. Having a stock on the Third Schedule would also enable the Minister, under s.14, to vary the TACC during the season based on the current abundance of the stock.

29. For these fisheries, the lower the TACC relative to likely annual catches, the more likely it is to constrain a fishery or require frequent in-season TACC adjustments to avoid this constraint. Fishers are clearly concerned that this would be an outcome of bringing these species into the QMS at this time and have therefore suggested 'aspirational' i.e. high TACCs. Nonetheless, one advantage of a constraining TACC is that quota would have significant value and would be a more bankable asset for obtaining loans or to be sold by those wishing to exit the fishery.

30. Conversely, the higher the TACC, the less value quota will have and the easier it will be for fishers to enter the fishery on a short term basis by acquiring Annual Catch Entitlement (ACE). In other words, the higher the TACC the more a fishery will resemble an open access situation. This might lead to more effort and therefore more development of HMS fisheries in the short term, but could also discourage longer-term investment because fishers would have less certainty about the ultimate value of their quota and also less ability to use quota as a financial asset. Fishers might invest to obtain or increase a share of existing value, as has occurred in the longline fishery to date, but might be less likely to explore untested areas or otherwise seek to create

new value in the fishery. More open access for fishers without a long-term stake also makes it difficult for established fishers to co-operate on fishing practices to reduce seabird bycatch or manage spatial competition.

31. Officials have discussed with industry how a TACC might be set for HMS stocks to create the best environment for development. One approach proposed by stakeholders would take the total of Provisional Catch History (PCH) for all fishers and add 25% (to allow for a 20% allocation to Maori), thus generating an 'aspirational TACC' that takes into account historical catch. Using this approach (but depending on what catch history years were used), the resulting TACCs would be up to 2.5 times the maximum catch in the past 5 years. However, if only two years catch history were used, the TACC for skipjack would be only 0.7 times the maximum catch in the past five years. Many fishers have suggested a longer catch history period, with a resulting higher total PCH, for species without national allocations.

32. An alternative approach would be to set the TACC at 1.5 times the maximum catch of a species in the past five years. This would take into account the amount likely to be available given fishing practices, and yet allows for allocation to Maori and for development of expanded catch, e.g. in underutilised areas. There would generally be sufficient ACE available so that catch was not constrained, and yet not so much ACE that it was practically worthless and rendered the fishery essentially open access. However, using a 1.5 factor might not be appropriate for fisheries in which there is a significant non-commercial interest, most notably swordfish.

33. Table A2 in Annex 1 shows estimated New Zealand landings of tuna since 1990 and potential TACCs for several tuna species using alternative methods of setting TACCs under s.14.

34. Using a factor of 1.5 to set TACCs, in-season TACC changes under s14 might be required in a very good year. To instil confidence in fishers and increase security for investment, the Minister could establish some decision rules, possibly in the context of an agreed fisheries plan, that would trigger an in-season TACC increase if total catch reached, say, 90% of the TACC. This would of course only apply prior to national allocations. A preliminary trigger, say at 80%, could trigger discussions and preparations between the Ministry and fishers.

35. Note that this approach could apply equally to target and HMS bycatch species, unless or until there were national allocations determined internationally, sustainability concerns, or other management imperatives to impose constraints on catch. There are reasons to set non-constraining TACCs to allow for commercial development, but as catch approaches the amount reasonably available within New Zealand waters, this could impact on availability for non-commercial fishers. At that time, the TACCs could be reconsidered or other measures, e.g. spatial controls, could be implemented to take into account non-commercial interests.

#### *The 'Modified QMS'*

36. The Ministry presented a 'modified QMS' option in the December 2002 consultation paper. This option would require legislative amendments to enable allocation of quota shares, based on catch history, without setting a TACC until a national allocation is determined through negotiation in the WCPFC. Managing a species under a modified QMS would create some security for fishers by defining their share of the fishery, and would ensure that development was not unnecessarily

constrained by TACCs prior to national allocations. Non-commercial interests would have access, but not an explicit allowance. However, this option is unlikely to satisfy Maori that the Crown has met its treaty obligations.

37. Under a modified QMS, there would be no ACE and no balancing regime. However, in order to land a given species, a fisher would need to have at least some quota for that species or be fishing under the authority of someone who had quota. In the extreme, this might be as little as one share (i.e. one-hundred millionth of the fishery), in which case the results would be similar to having a very high TACC. That is, there would be essentially open access for those without a long-term stake in the fishery. As noted under the standard QMS above, this might encourage more entry but it is not clear that it would actually add value to the fishery.

38. Alternatively, some minimum amount of quota could be required to enter the fishery. There are practical difficulties in determining what that minimum should be, given that most if not all target HMS are also taken as bycatch in other target fisheries. Thus, a minimum amount that seemed reasonable for the target fishery could impose high costs for the same species taken as bycatch in another fishery, and thus encourage dumping. New systems would be required to enforce minimum holdings, which would come at some cost in terms of resources. The Ministry has moved away from suggestions that it set minimum holdings for entry to fisheries, as these are commercial judgments the Ministry is not well placed to make.

39. Notwithstanding these considerations, a minimum holding could be set for a species managed under a modified QMS. This would give quota somewhat greater value and ensure that those in the fishery had a long-term stake. Once a national allocation was determined or other management concerns warranted it, a TACC would be set and the minimum holding would be removed.

#### *Status quo then QMS*

40. A further option is to delay QMS introduction of tuna and other HMS until a national allocation was determined or other management concerns warranted it, and to leave the fishery as open access in the meantime. As long as catch history years were defined and in the past, to prevent a speculative rush for quota, this option would have similar outcomes as either the standard QMS with a very high TACC or the modified QMS with no minimum holding of quota. That is, established fishers would know they would eventually get a defined share of the fishery based on their catch history (although it would be somewhat less certain than the other two options since they would not have yet received shares), but other fishers without a long-term stake would have open access to the fishery in the meantime. However, the longer the time before QMS introduction, the greater the dislocation that would result as catch history diverged from current involvement. This option would also not address the current issues over swordfish between the recreational and commercial sector.

#### *Recommended management framework*

41. In submissions and in meetings with officials, fishers have requested that, apart from STN, the Ministry not constrain New Zealand catch of tuna species, either within NZ fisheries waters or beyond, prior to the determination of national allocations. Industry stakeholders prefer to either maintain the status quo for HMS until national allocations are determined by regional agreement, or amend legislation and enable a 'modified QMS' involving quota shares without a TACC. They do not

have confidence in the Ministry to set TACCs that do not constrain catch. However, many submitters noted the management problems in the domestic longline fishery that are currently preventing maximum value from being obtained. Most agreed that issuing quota or other form of fishing rights would help to resolve this and would promote more orderly development of the tuna fisheries.

42. Having considered stakeholder views, the Ministry considers that New Zealand would obtain best long-term value from HMS fisheries by introducing tuna and other valuable species into the standard QMS, with TACCs set so as to not constrain catch but to give more than marginal value to quota and ACE. We consider that a TACC on the order of 1.5 times the maximum catch in the past five years would provide the appropriate balance until national allocations are determined through the WCPFC. In the interim, the TACC could be raised if increased catches warranted this (including possible in-season increases under s.14); alternatively a lower TACC could be set if needed to address sustainability concerns, allocation between sectors or other management issues.

43. Officials consider that the modified QMS would provide insufficient investment certainty and, unless minimum holders were set at a relatively high level, would allow continued entry by fishers without a long-term stake in the fishery. It would also require significant legislative amendments, whereas similar and probably better outcomes for New Zealand can be achieved under the standard QMS with only minor legislative changes.

44. The Ministry recommends that you confirm that the QMS as it currently exists is the preferred management framework for all HMS species requiring management intervention. This is likely to include all tuna species and at least some bycatch species. As noted in the following section, the merits of QMS introduction will be considered for each species individually under the s.18 process. Those species that do not meet the criteria for QMS introduction will be managed in the non-QMS environment unless or until circumstances change.

### **Timing of QMS introductions**

45. Timing of actual introductions will be determined by the QMS introduction process, governed by ss.18 and 19 of the Fisheries Act 1996. Subject to your confirmation of the QMS as the preferred management framework, the Ministry intends to include southern bluefin tuna, Pacific bluefin, bigeye, yellowfin, and swordfish in the s.18 consultation document on introductions for 1 October 2004, which is likely to be released in June. Only for STN would the QMS be extended to encompass fishing beyond the EEZ at this time. Management of fishing beyond the EEZ is discussed further below.

46. Three pelagic sharks and two other pelagic HMS bycatch species are currently under consideration for QMS introduction in October 2004, based on latest scientific information from NIWA and using criteria the Ministry has developed to determine whether a species requires management intervention. At least some of these five species are likely to be included in the s.18 document proposing QMS introduction in October 2004.

47. QMS introductions of other HMS species would be considered for future years in light of the urgency of management issues relative to priorities for other species.

## **HMS management beyond the EEZ**

48. Apart from STN, fishing for HMS beyond the EEZ would most likely not be introduced into the QMS until national allocations for these species were determined regionally through negotiations in the Western and Central Pacific Fisheries Commission. This has the effect of creating separate Quota Management Areas (QMAs) for in-zone and out-of-zone fishing for these species, which raises efficiency and management issues.

49. All HMS that are found in New Zealand waters are part of stocks that range beyond the EEZ, some throughout the Western and Central Pacific and others over a wider range. Once fishers have individual quota, efficiency is best achieved by allowing fishers to catch their quota wherever harvest costs are lowest and/or returns are highest. Having a single QMA encompassing both in-zone and out-of-zone fishing would also simplify reporting and avoid the cost of having an observer on board if carrying fish across the EEZ boundary.

50. Some stakeholders have argued that quota that has been developed in New Zealand waters should be caught here. However, the Ministry considers that, for a given biological stock, maximum value is generally obtained in the long term by allowing fishers to take fish wherever it maximizes their returns. Forcing fishers to fish in NZ waters is akin to putting a tariff on imported inputs – it supports local provisioning businesses in the short term but inhibits New Zealand companies from becoming internationally competitive and keeps resources in inefficient sectors. In principle, therefore, HMS should be managed within a single QMA that encompasses the entire stock range. On this basis, the Ministry proposes that STN have only one QMA and that this include both in-zone and out-of-zone catch.

51. However, for fisheries that have not been developed, there are considerations other than minimising harvesting costs. In particular, a separate QMA can create better incentives for investment by lowering the transaction costs for quota holders to work together. As noted above, fishers can best maximise value from a fishery by co-operating, because this removes uncertainty about who will benefit from the investment. In a fishery with a large number of incumbents, the transaction costs can be a significant obstacle to co-operation. Identifying an under-utilised area, e.g. the area beyond NZ fisheries waters, as a separate QMA with a smaller number of incumbents can lower transaction costs and therefore facilitate co-operative behaviour and investment.

### *Uncertainty regarding how the WCPFC will address fishing in other EEZs*

52. There remains considerable uncertainty about how fishing in the EEZs of other states will be managed under the WCPFC. For example, if a NZ vessel fishes in the EEZ of another state, does it contribute to catch history for New Zealand or for the coastal state? After national allocations are made, would fish be caught against New Zealand's allocation or that of the coastal state? The WCPFC has yet to address these issues and until they are resolved, it will be difficult for New Zealand to determine out-of-zone catch history of permit holders.

53. For STN, national allocations have already been made, so there is no difficulty in determining catch history outside NZ fisheries waters. Thus, the Ministry intends to propose for STN, in the s.18 document, a single QMA that encompasses the high seas. The Ministry is still considering how it might account for STN taken by New Zealand

nationals in the EEZ of another country. Such STN could be treated as reportable against New Zealand quota if the New Zealand government had a written agreement with the coastal state government for that purpose. The agreement would provide for the coastal state to ensure that all reporting and other requirements were met, etc. However, there are legal uncertainties about whether New Zealand could require its nationals fishing in a foreign jurisdiction to count their catch against New Zealand quota. The Ministry will need to give further consideration to how this might be addressed, as the same issue could arise for other species once national allocations are determined.

54. Apart from STN, the Ministry proposes that HMS fishing beyond the EEZ would remain under non-QMS management for the time being. When national allocations are determined for a given species, or when other circumstances warrant, the Ministry will propose introduction of out-of-zone fishing for these species into the QMS, initially as a separate QMA with out-of-zone quota. If reductions in New Zealand catch are necessary at that stage, the Minister would need to decide how to apportion this reduction between fishers operating in NZ fisheries waters, on the high seas and in the EEZs of other coastal states. Because this will depend in large part on the criteria WCPFC members agree to use to determine national allocations, it is not possible to provide guidance now on how such a decision might be made. We are also not able to make decisions at this stage on whether fishing by New Zealand nationals in the EEZs of other states would have implications for NZ quota or would remain completely outside of the QMS.

#### *Incentives for fishing beyond the EEZ*

55. These proposals will also create incentives for fishing beyond the EEZ, as fishers may be able to gain catch history by doing so. In addition, provided fishers had STN quota, they could fish for southern bluefin beyond the EEZ without being constrained by lack of quota for bycatch species. As long as we exercise reasonable restraint, fishing beyond the EEZ will help build New Zealand's case for a greater national allocation of species under the WCPFC. The Maritime Safety Authority (MSA) has noted, however, that it has had concerns for some time about tuna vessels operating beyond their operational limits and without qualified personnel. MSA considers that increasing the incentives to fish beyond the EEZ would increase those safety concerns. It may prove necessary to remind fishers of safety considerations and possibly for MSA to increase its compliance efforts aimed at the tuna fishery. It is also possible that, once these fisheries are within the QMS, there will be some re-organisation towards vessels that are better suited for fishing beyond the EEZ and have appropriately qualified personnel.

#### *Merging in-zone and out-of-zone QMAs in future*

56. QMS introduction of in-zone fishing now and out-of-zone fishing later will almost certainly result in separate in-zone and out-of-zone QMAs for HMS species other than STN. While this might have the benefit of facilitating investment, it could create some longer-term inefficiency. It could also create pressures to protect in-shore fishers by denying access to foreign vessels that wish to come into the New Zealand EEZ to fish against their own national allocation. While there may be cases where this is warranted, New Zealand should be careful about creating precedents that will make it more difficult for New Zealand vessels to gain access to the EEZs of other states in the region. We have an obligation under UNCLOS to manage for optimal utilisation. New Zealand is at the edge of the range of most HMS, so foreign interest

in fishing here is likely to remain low. Conversely, New Zealand fishing companies that are internationally competitive have much to gain from access to EEZs of other coastal states. (Foreign access to NZ waters is discussed further below.)

57. Thus, when QMS management of these species is extended beyond the NZ EEZ, consideration should be given to merging in-zone and out-of-zone management into a single QMA. The Fisheries Act 1996 enables QMAs to be merged if necessary on sustainability grounds, or if holders of 75% of quota in each QMA agree. The threshold for agreement by quota holders could be difficult to meet because of concerns by within-EEZ fishers of increased competition. The Ministry intends to consider whether amendments are warranted to give greater scope for merging QMAs to enable New Zealand to obtain maximum value from HMS fisheries.

58. In summary, due to unresolved issues in the WCPFC, the Ministry proposes to limit QMS introduction of HMS (other than STN) to fishing in NZ waters. When these issues are resolved and national allocations are determined, or earlier if circumstances warrant, the Ministry will propose QMS management for out-of-zone fishing for these species as well. The Ministry will report back at a future date if it considers legislative amendments are warranted to give greater scope for merging in-zone and out-of-zone QMAs.

### **Catch history years for tuna**

59. Tuna species are exempt from the catch history years specified in the Fisheries Act – the Minister is to set the qualifying years by notice in the *Gazette*. In November 2002 you advised tuna permit holders that you intend to set criteria years ending no later than 30 September 2002 but you have not set the actual criteria year period. You also indicated a willingness to consider exempting out-of-zone fishing, and possibly skipjack tuna within the zone, from this decision. Once the qualifying years are set, permit holders would be allowed to choose their best consecutive 12 months within the criteria period to determine their provisional catch history.

60. The Fisheries Act 1996 provides no criteria or other guidance on setting of catch history years for tuna other than the overarching Purpose of the Act, i.e. to provide for utilisation while ensuring sustainability. The Ministry considers that sustainability will not be materially affected by how tuna quota is allocated, and any allocation will provide for utilisation. However, allocation does have some implications for both efficiency and equity.

61. In broad terms, allocation will maximise efficiency if it distributes quota to those who are able to obtain the highest net returns from that quota, e.g. by tendering quota to the highest bidder. However, the Fisheries Act 1996 provides for allocation by catch history, and the Ministry has not given further consideration to tendering or other possible allocation methods for tunas. Catch history recognises existing participants and investment in the fishery and reduces dislocation costs that might otherwise occur. Efficiency is achieved over time as less efficient incumbents transfer quota to more efficient operators.

62. The choice of catch history years will still have some implications for efficiency, however. The more widely dispersed quota is, and the more quota that is allocated to those who are no longer active in the fishery, the more transaction costs and the longer it will take for quota to be transferred to those who are best able to maximise its value. This would suggest a relatively short period using the most recent years would be the most efficient. On the other hand, the availability of tuna species can vary substantially from year to year, so a longer period gives fishers a better chance to

pick their best 12 months. Note that some fishers have argued that it is unfair to exclude those who helped to develop the fishery even if they are no longer active in the fishery.

63. Also, the longer the catch history period, the greater the costs faced by the Ministry in extracting, validating and allocating catch history data. The Ministry has not fully quantified these additional costs but believes that, for STN and for other QMS introductions within NZ waters, these costs can be managed within existing Vote: Fisheries baselines. There could be some additional cost associated with processing catch history for future QMS introductions beyond the EEZ. The Ministry will take those costs into account when considering those future QMS introductions.

#### *Views of submitters*

64. Submissions from stakeholders expressed a wide range of views regarding preferred catch history years, which was to be expected given the different lengths of time fishers have been in the fishery. There was almost complete agreement among commercial submitters that the criteria years should include the final year specified in your letter—the year ended 30 September 2002—to recognise those who commenced fishing in recent years. However, there are large differences amongst fishers on the number of years prior to 2002 that should be included.

65. There are also several fishers who entered the fishery in late 2002. They will get little or no catch history under the proposal to stop catch history at 30 September 2002. Submissions from these fishers or their representatives said that they would suffer hardship if this proposal is implemented, and generally asked for the catch history years to be extended, possibly just for the new entrants.

#### *Multiple permits held by related permit holders*

66. A further complication is that a number of fishers operated under different legal entities in different years and, under the Fisheries Act 1996, will be eligible for catch history for each entity. While many entity changes were no doubt made for legitimate business reasons, those who made such a change will effectively be “double-dipping” and will be advantaged relative to fishers who operated as the same entity throughout the criteria period. Ministry officials have done some rough analysis of the 227 permit holders who have landed southern bluefin tuna during the five years ended 30 September 2002. From initial inspection, 42 of these permit holders appear to have some connection with at least one other permit holder. A ‘connection’ was identified when, during the five years ending 30 September 2002, the same vessel fished for two or more permits in which the same person or an apparently related person had an interest in the permit.

67. In one example, four permit holders who appear to be related each owned at least one of several vessels that were, at another time, owned by a related company. If each permit were treated as a separate entity (and at this stage the Ministry has no legal basis to do otherwise), the total entitlement over 5 years, for this group of permits, would be 28.5 t of STN. This compares to only 12.7 t if they were treated as a single entity that was required to choose its single best 12 months; i.e. there is an apparent gain of nearly 16 t. With a tonne of southern bluefin quota likely to trade for anything between \$20,000 and \$200,000, the financial implications are significant.

68. It must be stressed that the Ministry has done this analysis on the basis of superficial appearances only. The four permit holders noted above might or might not be closely related and, even if they are, they may well have had legitimate business reasons for changing the structure of their businesses and the ownership of their vessels. On the other hand, there are probably other close relationships between

permit holders that were not immediately evident and which officials have not identified and assessed.

69. Over five years, for STN, the total entitlement for all of the entities that have an apparent relationship with at least one other permit holder, using the best year for each entity, would be 52 t greater than if each group of related permit holders were treated as a single entity. This ‘apparently related’ catch history would represent 6.3% of the total catch history. If a three-year catch history period were used, there would be an estimated 22 t of this ‘apparently related’ catch history, which would be 3.3% of the total catch history. For a two-year catch history, the estimates are 11.6 t, comprising 2.1% of total catch history. In practice, the actual amounts of ‘apparently related’ catch history are likely to be higher, because fishers are able to optimise over their best twelve months rather than just their best fishing year, and because the rough analysis has probably failed to identify some related entities.

70. The Ministry has considered whether there is merit in proposing to amend legislation to require associated entities to aggregate their catch history before choosing their best twelve months. However, attempts under past legislation to determine “associated persons” gave rise to considerable legal difficulties. Further, given that the eligibility criteria are in legislation and that some fishers may have made legitimate decisions based on them, the Ministry considers that trying to change the criteria retrospectively would probably cause as many problems as it would solve. Nonetheless, the Minister could take this issue into account in deciding the length of the catch history period to declare, in that a shorter period will reduce, though not eliminate, the inflation of catch history as a result of multiple permits held by related entities.

#### *Shorter vs. longer catch history periods*

71. There are a number of factors to consider when setting criteria years for tuna species:

- a. Use of earlier years would better recognise those who developed the fishery even though some of these are no longer active in the fishery. For example, some fishers participated in the handline fishery for STN in the 1980s and early 1990s but have not caught STN since the mid 1990s, reportedly because the fishery was closed before fish became available to handliners off the South Island West Coast.
- b. Use of a wider range of criteria years takes into account the often-variable nature of tuna fisheries, giving fishers more scope to choose their best year.
- c. Use of a narrower range of criteria years would reduce the incidence of multiple permits for related entities.
- d. Use of a wider range of criteria years will inevitably result in a greater reduction of STN provisional catch history to achieve the 420 t TACC and the additional 20% reduction to provide quota shares to Maori. Use of the 5 most recent years would see a total reduction of approximately 60% from the cumulative total of the best 12 months for each participant that would form provisional catch history (PCH); use of the 3 and 2 most recent years would see total reductions for STN of approximately 50% and 40%, respectively.
- e. For other tunas, were TACs to be set at approximately 1.5 times the maximum catch in the last five years, as suggested above, then a 5-year catch history period would result in pro rata reductions of PCH on the order of 40% for albacore and bigeye, and little if any reduction for skipjack. A 3-

year period would involve reductions in the order of 15% for bigeye and albacore. With a 2-year period, there would be a significant reduction for STN only, and the Crown would receive about 15% of yellowfin quota and 45% of skipjack quota. (Note these estimates are based on unaudited data.)

- f. Use of a shorter period, including the more recent catch history years, would mean more current fishers would have sufficient quota shares to remain in the fishery without additional purchases. Such an approach would therefore better recognise fishers currently in the fishery. While this is not generally a Ministry objective in fisheries subject to the permit moratorium, tuna fisheries are exempt from the moratorium and entry remains unrestricted.

*Analysis regarding catch history years for tuna*

72. Setting catch history years will inevitably disadvantage some fishers. This will include those who made investments very recently unless fishers are given substantial prior notice of the actual closure date, but such notice would almost certainly create a race for quota and cause management problems if not sustainability concerns in the fishery. The Ministry announced in November 2001 that it was considering introducing tuna species into the QMS. While it is unfortunate that some fishers appear to have been caught unawares by your announcement last year, the Ministry considers it could not have given much greater notice without creating a race for quota. If you agree to the recommended approach in this paper, these new entrants will still be able to access ACE and continue fishing, and they will also be able to fish beyond the NZ EEZ for species other than STN without needing ACE.

73. Recognising fishers who helped to develop the fishery in the 1980s and early 1990s would require using a catch history period of ten or more years, or excluding some of the more recent years from the criteria period. The former would inflate the total catch history, requiring a greater pro rata reduction for STN especially and distributing smaller and often uneconomic portions of quota in more hands. The latter approach would exclude many current participants in the fishery. The Ministry considers that both would create significant dislocation and are therefore not recommended.

74. For tuna species without national allocations (i.e. all tunas except STN), the arguments in favour of a shorter period have somewhat less weight. While a longer period (e.g. five years) would in likelihood require some pro rata reductions in PCH, the TACC is not likely to be unduly constraining and therefore quota and ACE are likely to trade at prices that are accessible to most fishers. The multiple permit issue is also of less concern because these species have less commercial value, a constraining TACC is likely to be sometime in the future, and as a result quota and ACE are likely to trade at considerably lower prices than STN quota. A longer catch history period for these species will also reduce the likelihood of any quota allocation to the Crown, but the Ministry does not consider Crown revenue a relevant factor in determining what period will provide for the best fisheries management outcomes.

75. The Ministry recommends that you set the catch history criteria years for tuna species as either the 2 years, 3 years, or 5 years up to 30 September 2002, depending on the weighting you give to the factors listed above. The Ministry considers that catch history years should be set so as to minimise the number of quota transactions required to distribute quota to current fishers. This would mean aiming to match the sum of catch histories plus 20% for Maori with the future TACC. Of course, it is not possible to say what the future TACC will be. However, based on the suggested

approach of setting the TACC at 1.5 times the maximum catch in the past five years, aiming to match total allocations with the future TACC would indicate a two-year period for albacore, bigeye and southern bluefin tuna, and a three-year period for skipjack and yellowfin. (This is based on analysis of unaudited catch data, with catch history optimised based on fishing years rather than best 12 months.) We have not done the analysis for Pacific bluefin but consider that three years would be more appropriate than two years given that there have been reporting problems with this species in the past.

76. Officials also recommend that, apart from STN, this announcement would not apply to out-of-zone fishing. Although defining out-of-zone catch history years now would provide more certainty for incumbents, there are difficulties in determining how catch histories might relate to an allocation to New Zealand, due to unresolved issues in the WCPFC. Setting out-of-zone catch history years later also provides scope for new entrants to obtain catch history outside the EEZ. On balance, the Ministry recommends leaving out-of-zone catch history undefined until there is more certainty about allocation issues from the WCPFC. However, as discussed below under “Allocation to Maori”, the Ministry recommends confirming that catch history will be the basis for allocation of out-of-zone quota.

### **Bycatch species**

77. One of the major concerns for fishers is the need for continued access to a range of bycatch species, which in longline tuna fisheries may cumulatively comprise more than half of the catch by number of fish caught, although generally much less by value. Catch history criteria years for non-tuna species are set as the two years ending on 30 September 1992 and many, perhaps most, tuna fishers will receive no provisional catch history for bycatch species because they started tuna fishing after 1992. If these species are introduced into the QMS, the Crown will be allocated most of the quota. In submissions and meetings, most stakeholders requested that, apart from swordfish, bycatch species be left as open access. A few fishers supported QMS introduction of several bycatch species.

78. Apart from swordfish, the HMS bycatch species are of relatively low commercial value. (Moonfish has high value but is caught in low volumes.) Despite this, bycatch quota could sell for high prices because it could control access to the tuna fishery. In effect, the value of tuna quota could be transferred to bycatch quota. Most fishers have accepted that the 1990-92 criteria years will not be changed for tuna bycatch species but want the bycatch quota that will be allocated to the Crown made available in some preferential manner to tuna fishers. Most independent fishers believe that they would be forced out of business if they had to compete with large companies in an open tender for bycatch quota. The Ministry acknowledges that such an approach could cause dislocation in the longline fishery especially.

79. Disposal of Crown quota is an issue that affects many fisheries, not just tuna. MFish is currently considering options for the disposal of Crown quota and impacts on the tuna fisheries will be considered in this process. Most tuna fishers will be opposed to bycatch species going into the QMS unless they have an opportunity to obtain bycatch quota at what they consider a reasonable cost.

### **Allocation to Maori**

80. Several stakeholders have questioned whether Maori should get 20% of any quota that is allocated based on catch outside the NZ EEZ. Crown Law has advised

that the Deed of Settlement encompasses *all* introductions to the QMS, regardless of whether the quota is for fish caught within or beyond New Zealand fisheries waters. The Settlement provided compensation for fisheries grievances; it did not seek to return, in whole or in part, fisheries to which Maori had a demonstrated claim. The compensation included 20% of quota for any fish stocks introduced into the QMS, without regard to the EEZ boundary, and the Fisheries Act 1996 has been worded accordingly. **[One sentence withheld under s 9(2)(h) of the Official Information Act 1982 (legally privileged information).]** Some fishing companies have indicated that they have contrary legal advice, but have not indicated the basis for this.

81. Some fishers have indicated that, if 20% of their out-of-zone catch history will be allocated to Maori, they will consider re-flagging their vessels to another country. Other fishers have commented that a relative certainty of 80% of their catch history might be better than the uncertainty they would face if they re-flagged, i.e. operating under the flag of a Pacific Island state or even Australia, New Zealand vessels would still face uncertainty as to the extent of credit they will get for their catch history. Regardless of the re-flagging issue, short of seeking to re-negotiate the Deed of Settlement the Ministry sees little option but to include out-of-zone catch in the allocation to Maori if and when this catch is eventually brought under QMS management.

82. Fishers are keen to have the issue resolved. They note that this will affect fishing for other species, e.g. toothfish in the Southern Ocean, as well as tuna. The Ministry recommends that you announce the Crown's position but that you also state an intention to recognise catch history for out-of-zone catch, so that fishers would have relative certainty of at least 80% of their out-of-zone catch history.

83. This question is unlikely to arise when STN is introduced into the QMS because virtually all STN catch history is in NZ fisheries waters and because STN is explicitly provided for in the 4<sup>th</sup> Schedule of the Fisheries Act 1996. Because the Ministry does not propose to introduce out-of-zone fishing for other HMS into the QMS until national allocations are determined, it might be several years before an actual quota allocation for out-of-zone catch could be legally challenged. It is possible that industry interests will seek a declaratory judgment on this matter to resolve the uncertainty.

### **Foreign licensed access**

84. As noted in earlier briefings, the provisions of Part V of the FA96 regarding foreign licensed access to New Zealand's EEZ would be inconsistent with New Zealand's international obligations if HMS are introduced to the QMS. The Ministry proposes that the Act be amended to exempt HMS from the existing calculations for foreign allowable catch, and to provide criteria that give the Minister discretion to allow foreign access where this is appropriate to enable 'optimal utilisation' consistent with the United Nations Conventions on the Law of the Sea (UNCLOS).

85. Legislation would provide scope for the Minister to impose conditions to prevent undue interference with fishing by New Zealand fishers. As noted earlier, this discretion should be exercised carefully in light of New Zealand's interests in gaining access to fishing in the zones of other coastal states. Officials will provide further detail in subsequent advice on proposed legislative amendments.

## **Next steps**

86. Most elements of HMS management in the QMS, including probably all decisions that would take effect on 1 October 2004, could be accomplished under the current FA96. However some arrangements will need to be explicitly provided for via legislation. The Ministry will provide further advice on these legislative proposals in the coming months, with the objective of getting legislation introduced in 2003 and enacted early in 2004.

87. The s.18 consultation document, which is required prior to introduction of a species into the QMS, is likely to be released in June. The document will discuss proposed QMA boundaries, fishing year, and benefits and costs of introduction into the QMS, among other things. Following consideration of submissions on that document, the Ministry will advise you on a s.18 declarations around 1 October. This declaration would typically be made 12 months prior to introduction.

88. The Ministry recommends that you announce to stakeholders your decisions on matters covered in this paper, as some fishers have put investment decisions on hold pending the outcome. Following your decisions, the Ministry will prepare a decision letter for your approval.

## Recommendations

89. The Ministry of Fisheries recommends that you:

### *Objective for HMS management*

a. **Agree** to the following objective for management of highly migratory species (HMS):

“To maximize the value that New Zealanders obtain through the sustainable utilisation of highly migratory species, within the New Zealand EEZ and beyond, by --

- implementing effective arrangements to provide for commercial and non-commercial utilisation and to manage New Zealand’s rights and responsibilities pertaining to highly migratory species, and
- representing New Zealand’s interests in regional fisheries management organizations including in (i) the establishment of, and compliance with, regional measures to ensure the sustainability of HMS stocks, (ii) the determination of national allocations and (iii) the determination of conditions of access to HMS resources in the region,

subject to --

- ensuring the viability of associated or dependent species; avoiding, remedying or mitigating adverse effects of fishing on the wider aquatic environment; and complying with international obligations arising from agreements on biodiversity, fisheries management and related issues,
- providing for foreign licensed access as appropriate, and
- meeting the Government’s obligations to Maori under the Deed of Settlement.”

### *Regarding the management framework for HMS*

- b. **Agree** that the QMS is the preferred framework for managing tuna and other HMS fish stocks, with TACCs set based on national allocations from regional fisheries organizations where these allocations exist;
- c. **Note** that, where national allocations do not yet exist, the Ministry considers that TACCs for HMS should be set above recent catch levels to allow the fisheries to develop further unless or until sustainability concerns, allocation between sectors, or other management concerns justify some constraints on catch;
- d. **Note** that, where national allocations do not yet exist, the Ministry considers that setting TACCs in the order of 1.5 times the maximum catch in the most recent five years would provide appropriate incentives for development that maximizes long term value to New Zealanders;

- e. **Note** that the Ministry will recommend TACCs only after decisions are made on QMS introductions, based on provisions of the Fisheries Act and after consultation with stakeholders;

*Timing of QMS introductions*

- f. **Note** that the timing of QMS introductions will be determined through the s.18 process;
- g. **Agree** that, apart from STN, out-of-zone fishing for HMS will be managed in the non-QMS environment until WCPFC decisions have progressed sufficiently to enable introduction of these species into the QMS;

*Catch history years for tuna*

- h. **Note** that:
- i. In November 2002 you advised tuna permit holders that you intend to set catch history criteria years ending no later than 30 September 2002 but you have not set the actual criteria year period. You also indicated a willingness to consider exempting out-of-zone fishing, and possibly skipjack tuna within the zone, from this decision.
  - ii. There is a wide range of views on catch history years for tuna, although nearly all fishers support inclusion of the most recent year, i.e. the year ending on 30 September 2002;
- i. **Note** that the Ministry considers that catch history years should be set so as to minimise the number of quota transactions (buying and selling) required to distribute quota to current fishers, i.e. aiming to match the sum of catch histories plus 20% for Maori with the future TACC, but that different weighting of factors might lead you to a different conclusion;
- j. **Agree** to set the catch history criteria years for **southern bluefin tuna**, for fishing both within and beyond New Zealand fisheries waters, as the **2 years** up to 30 September 2002;
- k. **Agree** to set the catch history criteria years for **bigeye tuna** and **albacore**, for fishing within New Zealand fisheries waters, as the **2 years** up to 30 September 2002;
- l. **Agree** to set the catch history criteria years for **yellowfin tuna**, **skipjack tuna**, and **Pacific bluefin tuna**, for fishing within New Zealand fisheries waters, as the **3 years** up to 30 September 2002;
- m. **Agree** that, apart from STN, catch history years for out-of-zone fishing for tuna species would be set at a future date;

*Bycatch species*

- n. **Note** that most tuna fishers will receive no quota for any HMS bycatch species introduced into the QMS because they were not fishing for tuna during the catch history years for those species, i.e. 1990-92;

- o. **Note** that the Ministry of Fisheries is currently considering options for the disposal of Crown quota, and that impacts on the tuna fisheries will be considered in this process;

*Allocation to Maori*

- p. **Note** that, based on Crown Law advice, the Ministry of Fisheries considers that the Deed of Settlement requires that Maori receive 20% of quota for *all* species or stocks introduced into the QMS, regardless of whether the quota is for fish caught within or beyond New Zealand fisheries waters;
- q. **Agree** to announce the Crown's position on allocation to Maori and that, in doing so, you state an intention to recognise catch history for out-of-zone catch, so that fishers would have relative certainty of at least 80% of their out-of-zone catch history;

*Next steps*

- r. **Note** that the Ministry is due to release in June a s.18 consultation document on proposed introductions to the QMS for 1 October 2004;
- s. **Note** that some minor legislative amendments will be required to implement QMS management for highly migratory species, including changes to the provisions governing foreign licensed access;
- t. **Note** that the Ministry will provide further advice on these legislative proposals in the coming months, for inclusion in the Fisheries Amendment Bill scheduled to be introduced later this year and enacted early in 2004;

*Communications*

- u. **Agree** that officials prepare a decision letter to announce to stakeholders the Crown's position on allocation to Maori and your decisions on matters covered in this paper, as some fishers have put investment decisions on hold pending the outcome.

**Mark Edwards**  
for Chief Executive  
Ministry of Fisheries

**APPROVED/NOT APPROVED/APPROVED AS AMENDED**

Hon Pete Hodgson  
Minister of Fisheries

/ /2003

## **Annex. Recorded landings of HMS from NZ waters**

Table A1 provides catch data for six tuna species and swordfish taken within New Zealand fisheries waters since 1990. Prior to 2002, the data reported below include minor amounts of fish taken on the high seas. For 2002, the first full year for which high seas reporting was mandatory (and hence the first year significant catches were reported), high seas catch (290 t of yellowfin and 401 t of skipjack tuna) is excluded from the table, to provide a more accurate picture of catch in New Zealand waters.

For each species, the highest recorded catch during the period is shown in bold. Table A2 shows potential TACCs for certain tuna species that might result from using three different approaches to setting TACs under s.14 of the Fisheries Act 1996. These approaches are described in more detail in paragraph 28 of this paper.

**Table A1. Estimates of New Zealand catch<sup>a</sup> of tuna species and swordfish, 1990 – 2002.**

Year	ALB	BIG	NTU/				
			TOR	STN	SKJ	YFN	SWO
1990	3011	30	0	529	4079	18	80
1991	2459	44	2	165	5259	6	42
1992	3487	39	0	279	988	20	29
1993	3387	74	6	217	946	34	93
1994	5317	71	2	277	3137	53	94
1995	6295	60	2	436	1729	141	108
1996	6346	89	4	139	3652	<b>198</b>	182
1997	3628	142	14	334	6570	143	282
1998	<b>6526</b>	388	20	337	8156	127	564
1999	3903	421	21	461	5688	154	1004
2000	4500	422	21	380	<b>9699</b>	107	975
2001	5353	<b>480</b>	50	359	3692	137	<b>1029</b>
2002 <sup>b</sup>	5829	286	<b>59</b>	<b>466</b>	3725	61	973

ALB = albacore; BIG = bigeye tuna; NTU/TOR = Pacific bluefin tuna, previously thought to be northern bluefin tuna; STN = southern bluefin tuna; SKJ = skipjack tuna; YFN = yellowfin tuna; SWO = swordfish.

### **Notes:**

<sup>a</sup>All catches are reported in tonnes of greenweight. 0 = less than 100 kg. For 1990-2001 data include minor amounts of catch taken on the high seas, but exclude catch taken in the fishing waters of other states. Data are based on calendar years except for 2002.

<sup>b</sup>Preliminary data, based on fishing year 1 October 2001 to 30 September 2002 (other years are on calendar year basis); includes catch taken on high seas but not catch taken in EEZs of other states.

Source: Murray et al., 2002; analysis of unaudited data from catch returns (2002 only).

**Table A2. Potential TACCs using alternative methods of setting TACC under s.14 of the Fisheries Act 1996 for tunas without national allocations from international agreements (tonnes greenweight, based on unaudited data optimized over fishing years rather than best 12 months)**

	NTU/				
	ALB	BIG	TOR	SKJ	YFN
1. Total Optimised PCH for 2 years + 25% for allocation to Maori	9,681	669	na	6,438	185
2. Total Optimised PCH for 3 years + 25% for allocation to Maori	11,333	885	na	15,184	231
3. Total Optimised PCH for 5 years + 25% for allocation to Maori	15,994	1,168	na	16,305	420
4. Maximum catch in past 5 years x 1.5	9,789	720	86	14,549	231

## Annex 2

### Summary of Submissions-2<sup>nd</sup> Round

Consultation Paper on Proposed Management Framework for Highly Migratory Species: 21 March 2003

<b>Section/Issue</b>	<b>Comment</b>	<b>Submissions Nos.</b>
Consultation process Not satisfied	Consultation rounds are going too fast. Fishers are out fishing during summer months.	36, 38, 41, 48, 50, 66, 67
	Time is NOT of the essence. Need more research and in depth consultation.	67
Outcome has been predetermined	Ministry needs to be seen to be open to stakeholder views rather than having set views prior to consultation.	38, 50, 56, 64, 67
	No credible genesis of Ministry proposal from original paper given submissions received. Concerned that Ministry has closed mind to finding better management approaches; outcome has been pre-determined. Profoundly disappointed that Ministry's proposals fail to reflect the content of submissions.	41, 44, 53, 57, 59, 62
	Feel that the Ministry has made up its mind to use QMS; hope that it takes small operators into account when finalising proposals.	49, 67
	Quality of submissions has been high. But instead of involving industry in cooperative investigation of future management of HMS fisheries, process has only incensed them.	57
Insufficient notice or opportunity to attend meetings	Disappointed at having only one West Coast meeting. People's livelihoods are at stake. Large number of albacore trollers were limited in ability attend, but Nelson and Greymouth were still best attended of all the meetings. Should be meeting in each place next round.	38
	Many fishers are unaware of consultation process and proposals.	36
	Not notified of dates of consultation meetings. Only learned of them from other fisher. For Ministry to rely on word-of-mouth is not sufficient consultation.	64
	Large companies are more able to attend consultation meetings during fishing season, so result may be a framework that reflects what they and bureaucrats want. This is not proper consultation.	66

Largely satisfied	Satisfied with consultation process so far.	31, 39	
	Pleased that Ministry appears to be giving industry a voice in determining future management and allocation process.	33	
	Appreciate the process followed in consultation.	47	
<b>Objectives for HMS management</b>	Agree with the general objectives as stated.	46, 47, 48, 53, 59, 62	
	Context needs to make clear that 'HMS' are as defined in UNCLOS.	44	
	Definition of benefits	Objectives only valid in light of value of jobs in New Zealand. No value in forcing fishers out of business by tendering quota, or allowing NZ quota to be fished overseas.	41
	NZ's STN allocation	Government should only be managing fisheries on behalf of fishers, the true stakeholders. Rights belong to stakeholders, as it is obvious that responsibilities are already considered to belong to stakeholders.	36
		Returning NZ STN allocation to 1000t should be included in objectives.	41, 44, 47, 53, 59
		Legal status of Objectives is unclear, as is how they fit in overall MFish framework.	53, 59, 62
		If significant changes are to be made by the Minister, then should be further consultation.	53, 59, 62
	Issues to be addressed in management framework	Four main issues to be addressed: <ul style="list-style-type: none"> <li>• Ensure sustainability</li> <li>• Ensure access to HMS fisheries within and beyond EEZ</li> <li>• Ensure development of NZ fisheries before national allocations</li> <li>• Ensure consultation process considers and incorporates submitters' views.</li> </ul>	53, 59, 62
		Ecosystem issues	Objectives are weak and do not give priority to ecosystem protection and sustainable management. Article 5 of UN Fish Stocks Agreement includes applying the precautionary approach, protecting biodiversity etc.

<b>QMS management</b>	Supportive	Proposed management structure looks reasonable; proposal coming along well.	31, 39
		Management proposals are generally acceptable, but some issues need further development eg bycatch quota.	46, 58
		Previously opposed to bringing tunas into QMS, but Minister's letter forced us to change our position. Effect has been to severely reduce value of fishing assets, and has put sector in limbo pending implementation of a new management regime.	58
<b>QMS management (cont'd)</b>	Opposed	Opposed to tuna or other HMS coming into the QMS.	35, 51, 56, 60, 63
		Should be no catch limits within or beyond EEZ before national allocations.	35, 44, 47, 50, 65
	Opposed (cont'd)	Proposal ignores inherent uncertainty of the HMS fishery. It is so unworkable that the industry is concerned that the Ministry does not understand the HMS fishery. Quota shares in a highly variable fishery do not create certainty. Certainty can only be provided by the ability to catch whatever fish happen to arrive in a given year, including billfish. QMS is not suitable.	41
		STN being rushed into the QMS. Would be detrimental to albacore fishery if ALB were also rushed in and forced to use same criteria as STN.	38
		STN is only species with excess effort, and that is result of MFish policy of encouraging continued entry.	41
		Proposed framework, by setting TACs, will restrict expansion of the fishery within EEZ and should not proceed. Limiting catch prior to national allocation has no benefit for sustainability or for NZ; it simply transfers economic opportunity to other nations.	44, 50
		QMS has not worked well for other species. TACCs are rarely increased.	48
		QMS will result in rationalisation of fishery – big will get bigger and small to medium fishers will be forced out.	49
		If fishers do not have sufficient quota for bycatch, it will lead to inefficiencies as fishers release species for which they don't have quota.	49
		QMS will lead to high grading, especially with deemed values that are likely to be high. Rather than protect sustainability the QMS could actually threaten it.	51, 60

	ACE prices will drive fishers away from low value species, eg bycatch. This will not help NZ national allocations for these species. Look at Ribaldo 1 and Pilchards 1, where TACCs are not being caught after QMS introduction.	52
	QMS won't work if fishers don't support it.	57
	Only after NZ domestic fishery is fully developed and international frameworks are agreed should a management regime be applied to HMS fisheries. This will benefit NZ catch history and national allocation.	53, 59, 62
Mixed views; prefer modified QMS	If Ministry is determined that QMS is best management system, then all HMS should come into QMS at once, including bycatch. This would give maximum certainty to fishers. But bycatch must be treated fairly or the fishery will collapse.	40
<b>QMS management (cont'd)</b>	All tunas should come into QMS together, but some could be in a 'modified QMS'.	43
	All tuna longline species should come into QMS together, or as soon as feasible.	58
	Modified QMS preferred. Standard QMS with 'aspirational' TACC has merit but will not gain support until industry knowing what the TACCs will be.	47
	Status quo might be preferred except that some management necessary to maximise NZ allocation under WCPFC. Prefer modified QMS.	48
Other comments re QMS	If Ministry sets high TACCs for stocks other than STN, this allows for expansion.	40
	No certainty in how the fishery has been managed to date, except for charter fleet. This explains level of investment and type of vessels in the fishery.	41
	Under QMS proposal, ACE would be very difficult to access in an abundant year.	41
	Sustainable management requires having TAC both inside and outside the EEZ. Don't agree with submitters who oppose catch limits outside of the zone.	45

	Accept inevitability of tuna coming into QMS but fishers should be notified in advance of setting of catch history years.	64
	Once a species is inside QMS, cost of ACE or quota is a critical factor. Without potential of security of access, the risk involved in developing new fisheries becomes far less tenable. Ministry has an obligation to encourage utilisation, and fairest way to do this is to apply catch history to those who catch in the developing fishery.	65
	Introduce tunas that have sustainability issues, eg STN, and see how that works for a few seasons before introducing the other species.	66
<b>Benefits of QMS management</b>	HMS has had minimal management to date; could not be less. Fishery needs security of access and catch planning. QMS proposal would create mismatch between target and bycatch quota and volumes, differences between in-zone and out-of-zone for the same species, reliance on tender process to get bycatch quota, etc.	41
	merits of QMS	Agree that the status quo is not an option.
	Benefits of QMS are overstated. Codes of practice are unenforceable under current fisheries law, and have mostly been developed without input from environmental organisations.	45
	Setting catch limits does not require the QMS; non-QMS can have limits also.	45
	Agree with setting TACs for tuna species, but must be room for development.	36
Should not limit NZ catch	No need to rush into QMS. NZ vessels are not impacting on sustainability of HMS. Possible exception is NZ purse seiners out-of-zone catching juvenile BIG and YFN. They can have more impact on a fish stock in one trip than entire NZ fleet in one year.	41
	Actual catch is likely to have most influence on national allocations from WCPFC, not whether NZ has set a TACC.	44
	Ministry cites several benefits of QMS management. Modified QMS could equally deliver on all these benefits, and has crucial added benefit of no cap on catch.	44, 50
	There is scope for considerable expansion of tuna fisheries within the EEZ. Past catches by foreign vessels greatly exceeded current catches by domestic fleet.	44

	Limiting catch prior to national allocations will just transfer benefit to other nations. Chosen management framework must provide incentives <i>now</i> for development by NZ fishers. Should not discriminate against those who have just invested to do this.	65
	NZ is at southern extremity of tuna species and availability can vary greatly from year to year. This makes it very hard to set a TAC that takes advantage of a good season.	66
Effects on spatial competition and race for catch	Putting STN into QMS will eliminate spatial conflict as it will become largely a bycatch of BIG. And it will not be feasible to target BIG unless you have STN quota. Do not need to introduce BIG or other tuna sp into QMS at this stage.	41, 57
	QMS introduction will not remove spatial conflict/overcrowding.	36
	Excess effort and competition has been taken out of context. It is localised, occurs in only part of the season, and related primarily to STN. To the extent there are problems (and this is not agreed within the industry), there is evidence that the proposed QMS introduction of STN has already altered behaviour of fishers and may be sufficient to address any problems.	44, 57
	Minister's letter and likely QMS introduction of STN has already stopped race for fish. Brokers have surface longline vessels for sale with no takers.	57
	Agree with Minister's announcement to stop the race for fish, but this should apply outside the zone as well.	45
	QMS does not restrict access in absolute sense, just as modified QMS would not.	44
Seabirds	Want to see paper on how QMS will reduce seabird bycatch. In small surface longline fishery, there is no evidence of a seabird bycatch problem. DOC/MFish etc could do more for fish and seabirds by addressing other nations' overfishing than by restricting NZ fishers, who do not affect MSY one jot.	41
	QMS introduction not necessary for seabirds. Ministry has not recognised that fishers are already making significant efforts in this regard and are among world leaders.	36

<b>Assessment of modified QMS and other options</b>		Agree that one problem of modified QMS would be continued access by those without a long-term interest in the fishery. Could lead to uncertainty and difficulty implementing codes of practice.	46
	Modified QMS	Ministry's arguments dismissing modified QMS are not persuasive.	44, 47, 50
		Huge difference between announcing catch history years and distributing quota shares. The latter provides much greater certainty. New entrants would understand they would not gain a share of a future allocation, and are unlikely to create uncertainty or excessive competition in the fishery. They would not adversely impact on rights and incentives of quota holders.	44, 47
		Industry wants to work with the Ministry to develop the modified QMS option.	44, 50
		Well-designed management framework should include: <ul style="list-style-type: none"> <li>• Sustainability ensured via strong WCPFC</li> <li>• Certainty for fishers through clear allocation processes</li> <li>• Opportunity and incentives for investment and development of fisheries</li> <li>• Package of measures for managing billfish, other HMS and incidental bycatch</li> </ul> Modified QMS could deliver greater benefit to NZ than standard QMS.	44, 50
	Permit moratorium	Should use a permit moratorium and commercial catch limit for STN. Race for catch is not the best but the fish has to get caught sometime, and this way has nil dumping. This system is used all over the world.	60
		Orderly development could include permit moratoriums and catch limits.	65
	Transferable licenses	My "List One" proposal would result in about 80 permits/vessels, which is about right. Maori could purchase vessels from existing fishers, ready to go, providing way for existing fishers to exit with dignity and value.	41
		Options ignore the fact that fishers can work collectively to mine a fish stock. In addition, tuna fishers are the most diverse and divided sector of fishers.	45
	Collective action		

<b>QMS beyond the EEZ</b> (see also comments under Management Zones)	Agree that, for outside of EEZ, should not introduce into QMS now (except SBT).	36, 44, 46, 53, 59, 62
	Any catch limits must apply outside of EEZ.	45
	Agree that NZ should expand its catch beyond EEZ, but this should not be done in a way that puts in-zone allocation at risk.	48
<b>Proposals for specific species</b>		
<i>Southern bluefin (STN)</i>	Should be introduced into QMS (some submissions explicitly support introduction on 1 Oct 2004).	36, 41, 44, 45, 47, 50, 52, 53, 57, 59, 62, 66, 67
	Support TACC that applies outside of zone as well as inside.	45
	Details of management, such as QMAs and fishing year, should be discussed in Pelagic Fisheries Assessment Working Group, to ensure science-based decisions.	53, 59, 62
	NZ Government should seek confirmation from CCSBT that NZ allocation will be reinstated to 1000 t should the stock be in recovery.	53, 59, 62
	Should not require minimum holding of 3 t of STN quota once it is in QMS, as some have suggested. What would happen to those who cannot buy more quota?	67
<i>All other tuna species generally</i> (other than STN)	All other tunas should remain status quo for now.	52, 53, 57, 59, 62, 65
	Opposed to standard QMS for other tunas at this time. Modified QMS is an option.	36, 44, 50, 59
	Modified QMS proposal should be developed to provide management framework, with catch limit when national allocations are determined.	44, 47, 48, 59
	Once national allocations are determined, then consider appropriate management framework on a case by case basis.	53, 59, 62

	Manage as HMS List One, control by permit and method. Only those with 3 tonnes of STN quota permitted to fish for List One species by surface longline. This would define participants and create certainty. Re-assess QMS introduction when national allocations are determined.	41
	Support TACC that applies outside of zone as well as inside.	45
<b><i>Pacific bluefin (TOR)</i></b>	Until other countries also differentiate TOR from STN, NZ fishers must have unconstrained access to TOR both within and beyond EEZ.	41, 47
	Introduction of TOR into QMS would be contrary to stated objectives.	41, 47, 50, 53, 59, 62
	NZ fishers are able to distinguish TOR and STN. Linkage of two sp is not necessary.	41, 43, 44, 47
	SeaFIC/SITO material could be developed for international use, to lobby CCSTN to differentiate between species.	41
	TOR should be left out of QMS. Very few currently caught but could be developed, especially outside EEZ. Has been constrained by catch limit on STN.	43, 44, 47, 53
	Support introduction of TOR into modified QMS, i.e. with no TAC.	36
	Agree that TOR should be managed separately from STN.	45
	TOR not listed in UNCLOS Annex 1. Not currently covered in proposed WCPFC?	47
	Support introduction of TOR into QMS.	66
	Fishers would be sold short if TOR catch history were included with STN, as now being identified as separate species.	67
<b><i>Bigeye (BIG)</i></b> Support introduction to QMS  Opposed or prefer modified QMS	Any extra effort within EEZ will be detrimental to bigeye stocks.	30
	Support introduction of BIG into QMS.	66
	Support introduction of BIG into QMS, but with high TAC or modified QMS.	36
	Industry opposes standard QMS for BIG, suggests modified QMS.	44
	Opposed to BIG being introduced into QMS. There is no world catch limit and no national allocations.	67 & others (see “all other tuna species”)

	MFish has misunderstood BIG fishery. Considerable scope for expansion, which has been constrained to date by race to catch STN in south while BIG is in north. Then by abundance of STN running with BIG after STN limit has been reached. A lot of scope for BIG in Kermadec region, and west and east of NZ.	41, 50
	Disagree that there is little scope for expanded catch of BIG within EEZ.	44, 46, 47, 50, 53, 59
	Catch within EEZ could be expanded by <ul style="list-style-type: none"> <li>• Current vessels using more hooks per set</li> <li>• Upgrading to more seaworthy vessels, able to spend more days at sea</li> <li>• Improvement in coordination, codes of practice etc to reduce crowding.</li> </ul>	46
	Internationally, BIG may be nearing full exploitation but this is not the case in NZ, where we take less than 1% of total catch. Historical records of foreign vessels and experience of NZ skippers suggest there is room for expansion of effort in outer EEZ.	65
	Expanded catch by NZ would help our case for larger national allocation, and given our conservation record, would be a positive factor for the entire stock.	65
	Need to stop purse-seining of juvenile bigeye. This cannot continue.	67
<p><i>Yellowfin (YFN)</i></p> <p>Support introduction to QMS</p> <p>Opposed or prefer modified QMS</p>	Support introduction of YFN into QMS, but with high TAC or modified QMS.	36
	Yellowfin may be less common now due to pressure from purse seiners.	36
	Concerned about massive tonnage catch of juvenile YFN.	67
	Industry opposes standard QMS for YFN, suggests modified QMS.	44
	Similar to BIG, there is scope for expansion because fishers currently targeting TOR when YFN is most abundant.	41, 44, 47, 50, 53
	Opposed to YFN being introduced into QMS.	66, 67 & others (see “all other tuna species” above)

<i>Albacore (ALB)</i> Support introduction to QMS	Agree ALB should come into QMS. As a long term company, have seen decline in stocks due to drift net fishing. Proposals in effect acknowledge that fishery did suffer during the drift netting period, hence TAC would be set using already reduced catch rates.	33	
	Opposed or prefer modified QMS	Support introduction of ALB into QMS, but with high TAC or modified QMS.	36
		Industry opposes standard QMS for ALB, suggests open access (status quo) or modified QMS so that NZ can develop this fishery rather than curtail effort and let other countries get bigger allocations.	44, 50, 52
		Opposed to ALB being introduced into QMS.	66, 67 & others (see “all other tuna species” above)
	Scope for expansion <b>Albacore (ALB) cont’d</b>	Trolling only takes 10% of biomass, and surface LL takes similar amount, so about 80% of fish that come into NZEEZ swim back out again.	41
		Trollers not spatially constrained. If its not broke, don’t fix it. No QMS for ALB.	41, 57
		There is scope for expansion of ALB fishery. No reason to limit catch.	44, 50, 52, 53
		Ministry has given no viable reasons for capping ALB fishery. It is still undeveloped and requires more effort rather than less.	64
		Tuna is last open access fishery in NZ. Many fishers rely on ALB as a backup if their main fishery does not perform. This keeps crews employed.	50, 52, 57
	Open access keeps crews employed	Open access to ALB relieves stress on QMS fisheries and acts as a ‘safety valve’.	57
Open access to ALB provides stepping stone for new entrants. Without this our inshore fleets will be deprived of new entrants.		57	
<i>Skipjack (SKJ)</i> Prefer modified QMS	Support introduction of SKJ into QMS, but with high TAC or modified QMS.	36	
	Believe SKJ is fully utilised in-zone and has been for many years. But given variability of catch, modified QMS is most appropriate way to manage fishery.	48	
	Opposed to QMS	44, 50	
	No reason to limit catch in this fishery. Industry opposes standard QMS for SKJ, suggests open access or modified QMS.		

	Opposed to SKJ being introduced into QMS.	66, 67 & others (see “all other tuna species” above)
	Highly variable fishery. No value in introducing into QMS.	41
	Recent arrival of super-seiners within EEZ has caused conflict and disadvantaged local seiners that fish in NZ waters year round.	48
	However managed, primacy of domestic vessels must be protected.	41
<b>Bycatch species generally</b>		
	Leave out of QMS unless some fair way is devised to allocate quota to tuna fishers.	35
Arguments against QMS introduction	Except SWO, there is no need to bring bycatch species into QMS. Would cost more than they are worth.	43, 46, 67
	Limiting the take of bycatch species could restrict the development of target fisheries, so default should be to leave these as open access fisheries until they are subject to national allocations under the WCPFC, or sustainability issues.	44, 46, 50
	Agree that tuna longliners are not a threat to shark stocks. This is not an artefact of distribution of observers.	44
Bycatch species generally (cont'd)	Do not introduce bycatch species into QMS. Treat them as a suite of species associated with tuna fishing.	57
Introduce at appropriate time	QMS introduction of bycatch species should be triggered primarily by national allocation by WCPFC. Should therefore not introduce these in near future.	44, 50
	Criteria proposed in para 19 are excellent benchmark for QMS introduction. No need to introduce bycatch species at present apart from SWO.	47
Support QMS introduction	Support use of an appropriate management regime to manage bycatch species.	59
	Support QMS introduction of bycatch species; this is appropriate management regime.	53, 62
	Note the list of bycatch species is incomplete: rudderfish, lancetfish, oilfish, marlin etc	44, 53, 59, 62

<i>Swordfish (SWO)</i> Support QMS introduction	SWO within EEZ should be introduced into QMS (on 1 Oct 2004).	47, 66	
	Configure SWO areas and TACCs so that foreign fishing cannot come in 'back door.'	41	
	Prefer modified QMS or other option	Concerned about long term viability of SWO. Crucial to avoid incentives for over-fishing or over-capitalisation associated with this species.	45
		Apart from ECNI inside 100nm, all TACCs for SWO should be provisional.	41
		Welcome Ministry's recognition of commercial importance and potential of SWO.	44, 46
		Catch limit could restrict the development of fishery for SWO; suggest modified QMS.	44
		There is potential for voluntary or other agreements under Fisheries Act to provide recreational access as well as commercial development of SWO.	44
		Needs different management to recognise commercial fishery, but should not be brought into QMS until it is fully developed and there is a national allocation.	67
		If there is evidence of commercial targeting of SWO, where are the prosecutions?	67
		Introducing SWO into QMS will effectively remove it from many fishers catch plans, making their businesses non-viable.	41
		No recreational conflict outside 50nm. Scope for expanded catch outside 100nm. No current science to support constraining catch.	41
<b>Sharks</b>	Pleased that MFish is going to formulate a national plan of action for sharks.	31	
	Need a National Plan of Action on sharks with consideration based on threat ranking and listing by CITES and Convention on Migratory Species. NPOA should be developed to come into force in early 2004.	45	
	Low priority unless it can be shown that NZ could make a material difference to sustainability by altering its level of catch. If so, then develop National Plan of Action.	41	
	Do not support QMS introduction for seal shark (BSH), spiny dogfish (SPD) or other sharks and dogfish (OSD) in 2004. Worth less than the cost of bait. Tuna fishers will get no quota and be disadvantaged.	41	
<b>Other bycatch species</b>	Marlin need to become commercially available catch. They are a legitimate species and a natural part of the HMS suite that a longliner needs to be viable.	43	

<b>Setting of TACs</b> Southern bluefin  Species with scope for expanded catch – need TAC that does not constrain catch or effort	Agree that TAC for STN must be set at 420 t, but need to seek increase to 1000 t.	44, 50
	TACC for STN should be set at 1000 t, not 420.	67
	Agree with proposed approach re use of Third Schedule and s.14 to set TAC.	36
	Industry strongly opposed to relying on s.14 to increase TAC in-season. No evidence of Ministry’s ability to manage a fishery in real time. Little faith that this process would work effectively or in a timely manner. It is unworkable and implausible, and would tend to encourage setting initial TACCs too low.	41, 44, 50
	Proposal gives conflicting indications about how TACCs would be set. Industry agrees that TACC should be based on the amount reasonably available in NZ EEZ. Referring to historical catch could limit development of the fishery.	44
	Concerns about potential excess effort are overstated. Should not drive HMS policy.	44
	Apart from STN, should use Modified QMS and then don’t need to set TACs.	44, 47, 48
	Proposal is unclear about how TACC would be set using s.14. For tuna sp other than STN, should be total of all PCH plus 25% to allow 20% to Maori. No need for pro rata reductions, no excess quota to distribute, and TACC can be increased as capacity expands. Also can defend this internationally better than an optimistically large TAC not based on catch.	46
	If TACCs are to be set, then must ‘aspirational’ to allow for further development. Otherwise it will reduce the economic benefits to NZ.	50
	If TACCs must be set for stocks without sustainability concerns, should be 100% over catch histories, plus allowance for Maori.	53, 59, 62
Set TAC to constrain effort	TACs should be set with consideration of bycatch issues so that catch limit is less than what can be sustained by target species. Research requirements of any TAC should also be considered along with biological characteristics.	45
Allowance for recreational	TACs should be used to constrain catch both within and beyond EEZ – no reason for NZ to support unconstrained catch outside the EEZ. That would be irresponsible and inconsistent with sustainable management.	45
	TAC needs to make allowance for recreational catch.	45

<b>Management zones</b> Support separate zones inside & outside EEZ	Separate QMA outside of zone is appropriate, but leaving catch history years open will create irresponsible behaviour, e.g. using fish aggregation devices for juvenile stocks.	30
	Support having in-zone and out-of-zone QMAs for management purposes.	53, 59
	Keep outside-EEZ and inside-EEZ QMAs separate. Merging them could result in massive pro-rata cuts in quota, with effort from outside the zone transferring inside.	30, 39
	Any reduction in catch to meet national allocation should be taken from outside-EEZ QMA first, before inside QMA is penalised.	39
	STN quota generated in NZ EEZ should be caught in NZ EEZ or high seas, not in other nation's EEZs. Should seek reciprocal agreement from other CCSTN members.	41
	Apart from SWO, all species should have one management zone only.	41
	At time of QMS introduction, need to consider matching QMAs for target and bycatch.	44
	Do not support use of a single QMA for both in- and out-of-zone; likely to lead to localised depletion eg for swordfish.	45
	Concerned by suggestion that in-zone and out-of-zone QMAs could face equal pro-rata reductions. Given that catch history years for beyond EEZ are undetermined and the expansion of effort this could create, this proposal could undermine the stability and direction that the QMS could otherwise provide to the in-zone fishery.	46, 48
	Quota from catch inside the EEZ should be fished inside EEZ to ensure NZ benefit.	46

Support one combined zone	Should be one QMA inside EEZ for both tunas and bycatch.	43, 47
	STN and all other HMS should have one zone, so fish can be caught anywhere. This will keep value on the quota.	67
<b>Allocation to Maori</b>	Obligation to provide 20% of new species into QMS does not create obligation to introduce species into QMS. There is an important distinction.	57
Obligations to Maori not a reason to introduce tuna to QMS	Honouring obligation to Maori is not a valid reason for implementing an unworkable and inefficient QMS in the HMS fishery, which will adversely impact on small fishers (including Maori) that Government says it wants to help grow.	41
Support full 20% of all species	Government must meet obligations to Maori. No half measures. 20% of all species.	36
	4 <sup>th</sup> Sch compensation rate for STN is inadequate.	46
Compensation	Value of STN quota is about \$50,000 and should be compensated accordingly.	41
	Disagree with compensation – would rather receive bycatch quota.	36
	Modified QMS can easily accommodate 20% allocation to Maori.	44
Other ways to meet obligations	Charter vessels should get only 50% of catch history; balance used for Maori 20%.	46
	List One proposal: Maori would have 85 tonnes of STN, could break this down into 38 permits with 3 tonnes of STN each.	41
	Maori should get 20% but on a pro rata basis, same as the fisher.	67
<b>Maori allocation beyond EEZ</b>	Agree with 20% allocation to Maori, including out of zone.	36
Agree	Proposals are consistent with the Deed of Settlement and Waitangi Tribunal reports.	45
Disagree	Disagree with 20% allocation to Maori for out of zone quota.	47, 53, 62, 66
	Specific reference in Act to STN confirms it is the exception.	47
	Industry members hold different views on whether Maori should get 20% allocation for quota outside the NZ EEZ.	44, 59
	Have difficulty understanding why obligations extend to quota beyond EEZ.	48
	Giving Maori 20% of out-of-zone quota could discourage development and/or cause vessels to re-flag.	46, 66
	This issue has implications beyond tuna; needs to be resolved.	47

	Need to look for alternative ways to provide access to Maori.	46
<b>Catch history years for tuna</b> General comments	Catch history years should be the same for all tunas.	43
	Need to consider different years for STN (see comments re STN below).	44, 47
	Whatever the decision, there will be casualties. Try to make them as few as possible. Good luck.	40
	Broad range of years is appropriate as it provides for existing and long term fishers.	48
	We note Minister's letter of 27.11.02 and charter policy statement that catch history years will not go beyond 30.9.2002.	50
	Dissatisfaction with integrity of past allocation decisions, including ability of some players to manipulate the system to the detriment of others.	54
	No basis in Act to favour one group of fishers over another. Primary considerations must be sustainability and utilisation, not to whom it is allocated, but then subject to the principles of fairness where possible.	65
	Dates in Minister's letter are fine but not ideal for undeveloped stocks, eg ALB.	48
	It is not orderly development to unilaterally close fisheries retrospectively causing significant loss of effort, financial input and opportunity, let alone the social implications that such arbitrary destruction of economic investment causes.	65
Shorter period	Use 2 years ending 30.9.2002, so there is less pro rata reduction.	30
	Use only 1 year: 12 months ending 30.9.2002.	35
	Suggest 3 years ending 30.9.2002.	39, 41
	Having many fishers with small quota holdings will not encourage development of fishery. Use recent years and focus on those active in fishery now.	41
	Take best of last 2 years; if fisher has ceased fishing, then use average of previous three years.	51
	Use recent years only to limit the advantage to those with multiple permits and to ensure fairness to those who have fished against a single permit.	54

<b>Catch history years for tuna (cont'd)</b>	5 years	Agree with proposal to use most recent 5 years ending 30.9.2002 for tuna.	34, 49, 53, 62
		5 yrs reflects those currently involved and allows choice of best year.	30
		Disadvantage of 5 yrs is that it leaves loopholes for double- and triple-dipping by those who have used multiple permits. This will cause greater pro-rata reductions on those who fished the entire period using one permit. This is a serious problem.	30, 54
		Use 1 year to 30.9.2002 for STN. Best of 5 years to 30.9.2002 for other tunas.	36
		Industry reps aware that criteria allow potential for multiple eligibility, but consider that it is not a sufficient problem to change the Fisheries Act.	44
		For non-STN, no reason to constrain catch so an expanded range of catch history years leading to a higher PCH would be an advantage in these fisheries.	44, 47
		Current proposal, because of pro rata reductions, will approximate fishers' average catch. But unfair to recent entrants who have low catches in their first year due to experience factor.	51
		Should take average of 5 years, not best year. Current proposal would allow new entrants to get catch history far in excess of fishers who have been in fishery for greater period of time.	67
Longer period		Trollers missed out on finfish quota when fishing for tuna in early 1990's, now will miss out on tuna quota as well because STN limit is reached before fish reach West Coast. Latest 5 years would cut out those who helped to develop the fishery.	32, 38, 56, 61
		Wrong to exclude early fishers from catch history, even though we have switched to other fisheries that are now our mainstay. Should allow choice of best 12 months from 1980s or 1990s.	33
		Proposed years will disadvantage many who developed the fishery. Of 5 years proposed, all of them have been poor for most fishers.	43, 46
		Prefer to have 12-year period from 1990, but understand concerns about big pro rata reductions. Would accept 8 years from 1994. Brings in good years for STN and ALB.	43
		Favour a 10-year period, but 7 years would be a reasonable compromise.	46
		Albacore should have ten year period; five years is a minimum.	38

	10 or 12-year period would be fair to longer term participants.	48
	Catch history period should be not less than 10 years.	50
	Longer period creates higher PCH, though TACC might still need to be increased more to allow for full development of NZ capacity.	50
	Should use the period 1986-2002 for catch history to recognise all involved in developing the fishery.	56
<b>Catch history years for tuna</b> (cont'd)	Proposed catch history years unfair to those who just purchased vessels.	42, 55
New entrants	Allow new entrants to scale up their 2002 catch to equivalent of a full year.	42
	Those few fishers proposing future years are new entrants who have added to the present overcrowding problem; many of them are large enough to fish out of zone.	40
	Just purchased a vessel for albacore. See no reason for QMS introduction or other restriction, especially when it will impose hardship on new entrants.	55
	New entrants should get special dispensation to get catch history beyond 30.9.2002, alternatively impose moratorium and extend the catch history years into the future.	55, 64
	In 2001-02, several fishers invested heavily in modern vessels that can fish in outer EEZ and beyond EEZ, capable of fishing where only foreign vessels have previously fished. They will be unfairly disadvantaged by Minister's arbitrary decision on catch history years.	65
	Since Ministry says it is concerned about inefficiency, it should not discriminate against new modern vessels that are more efficient than existing vessels.	65
	Extend catch history years (except for STN) to at least 30.0.2005 to allow for efficient development and utilisation of these fisheries and to avoid arbitrary decisions that unduly prejudice current participants in the fishery.	65
	Ministry would fail in its duty to provide for utilisation if it does not extend CH years.	65
	New entrants have shown "commitment and dependence". Despite repeal of those provisions, they are still relevant as principles of fairness. Ministry needs to give fair warning that it intends to limit access.	65

	Retrospective management, where not necessary for sustainability, will give rise to legal challenges.	65
	Closing catch history at 30.9.2002 will exclude new entrants to this fishery unnecessarily.	48
STN and other bluefins	STN is different than other species due to catch limit. Should provide a reasonable range of years for fishers to choose best 12 months in what are variable fisheries, but too wide a period gives fishers progressively less reward and dilutes the allocation to all participants.	44
<b>Catch history years for tuna (cont'd)</b>	If a 5-year period is used, some fishers with more than one permit will claim twice their share. This is ok for other species, but not for STN.	36
	Agree that NTU should be treated as TOR (para 26)	36
	Use 1 year to 30.9.2002 for STN.	36
	5 years will cause too big a reduction for STN, creating many non-economic parcels and causing a major re-jig of the industry. Suggest 3 years for STN.	47
Beyond EEZ	Same years should apply outside the EEZ as inside, otherwise there will be race to catch outside the zone.	45
	Agree with postponing setting of catch history years for out-of-zone fishing.	36

<b>Bycatch quota</b>  General comments	Fishers involved in the fishery today have created the catch history that will generate 'excess quota' to Crown. Fishers need a viable mix of target and bycatch quota. Crown should not put the excess up for tender.	30, 39, 46, 49, 52
	Small companies cannot match the prices that some can pay for quota. Fishers concerned that small companies won't get access to quota if it is tendered.	33, 34, 35, 39, 44
	Lack of bycatch quota could significantly limit the development potential of the tuna fisheries.	46
	Doug Kidd's speech in early 1990s excluded tuna from catch history years. Clear that his intent was to exempt all associated species because he wanted to encourage development of the tuna fishery.	40
	Industry reps acknowledge that catch history years apply as specified in Fisheries Act.	44, 50
	Industry welcomes Ministry's acknowledgement that fishers will need bycatch quota for future conduct and development of the fishery.	44
	Preference to existing fishers	Should be preferential allocation of excess bycatch quota to existing fishers.
	If fishers are charged for bycatch quota, should be allowed to pay for it over 5 years.	52
Give to existing fishers at no cost	Some bycatch landed with all tuna, including albacore. Bycatch quota should be allocated based on a fixed ratio to all tuna quota received, at an agreed industry rate.	33
	Bycatch quota should be allocated at no cost to fishers, based on same catch history years as tuna.	34, 36, 40, 52
	Bycatch allocation for tuna sp. is different than other allocation concerns eg paddle crabs, which have been developed as target fishery in their own right. In HMS fisheries, bycatch are intimately linked with tuna. Fishers consider there is a strong case for allocation at no cost to fishers.	44
Sell to existing fishers at fixed price	Existing fishers should be able to purchase their individual catch history of bycatch at a fixed price, eg similar to formula used to set STN compensation.	30, 39, 46, 49, 52, 58
	Although not an agreed industry position, suggest following for further discussion. After initial allocations based on existing catch history years and 20% to Maori, excess quota could be offered to fishers at a fixed price (eg based on formula used to set compensation to fishers for STN quota). Remainder could be tendered.	44

Preferential tender	Once all tuna are in QMS, allocate bycatch quota using catch history for 1990-92 then preferential tender acknowledging catch history during tuna years.	47
Open tender	Different catch history years for tuna and bycatch does not assist rational management. Propose same catch history year be applied and all TAC be tendered.	45
	Support use of CH years in Fisheries Act. Acknowledge the difference with current catch but do not support any preferential allocation process for Crown quota. Preferential allocation could create perverse incentives in this or other fisheries.	53, 62
<b>Swordfish quota</b>	Support view that allocation should not reward any targeting of SWO, but fishers need a reasonable quantity of SWO to be viable.	30, 47
Do not reward targeting	Vessels that received formal warnings re targeting swordfish should not get large allocations; perhaps they could get allocation based on other similar vessels.	34
	Suggest using catch history with a cap on the amount that could be received.	30
Preferential access to SWO quota for existing fishers	CH years for SWO should be amended to 1990-2002. Otherwise, excess quota must be made available to existing fishers based on catch history during same years as tuna, at nominal price with payment over time.	46
	Recognise 1990-92 catch history then allocate on catch history for STN years at no cost to fishers.	67
	SWO should be given to fishers not sold. Allocate fixed amount per tonne of quota for STN, BIG etc, or at least offer in closed tender to those who landed SWO during tuna catch history years.	43
	Recognise 1990-92 catch history, then allocate excess with preferential tender.	47
<b>Eligibility criteria</b>	Agree with criteria as proposed.	41, 53, 59, 62
Agree with existing criteria	Agree with first criterion and second (as long as this is not too strictly enforced). Third one is not clear.	36
	Important to have consistent approach to eligibility criteria. Do not want to repeat scampi problems.	45

	Industry reps aware that criteria allow potential for multiple eligibility, but consider that it is not a sufficient problem to change the Fisheries Act.	44
Multiple permits	Using current eligibility criteria in Fisheries Act 1996 a lot of lapsed fishing permits would qualify for provisional catch history, to detriment of active fishers. Change criteria so that fishers must have held permit on last day of qualifying period.	30, 37, 39
	Only allocate quota to those permits active in 2002 to solve issue of multiple permits.	49
	Ministry should use extended definitions in the Fisheries Act to aggregate catch history of related entities.	54
Charter boats	Under no circumstances should JV fleet receive more quota than their voluntary catch limit of 160 tonnes.	30
<b>Foreign licensed fishing</b>	Domestic vessels must have primacy. Do not set TACCs or otherwise manage fishery in a way that allows foreign access. That would create spatial competition and exclude NZ vessels from best areas.	41
	Do not estimate seasonal abundance, because that could require allowing foreign access. For once, doing nothing will be a good thing.	41
	No room in NZ for foreign vessel permits. Underutilised areas should be kept as a safety buffer for our fishers.	36
	Conditions of access should include foreign vessels subject to same rules, eg NPOA for sharks and seabirds. Observer coverage must be adequate. Consider recreational fishing. Need to exclude those engaged in IUU fishing, etc.	45
	Agree that how NZ manages this depends on RFMO decisions. Question the immediate need to amend legislation. Should seek common access provisions across RFMO members. NZ does not need to act unilaterally.	47
	Foreign vessels should not be allowed inside 12-mile zone. They cause undue interference with local vessels and upset the public.	48
<b>Charter vessels</b>	Charter vessels do not maximise value to NZers.	41
	Maori allocation should come from charter vessels' catch history.	36

	Good that NZ has area restrictions that keep charter vessels out of FMA1. Otherwise we would have no marlin left at all.	36
	Charter vessels will end up with too much catch history if period is 5 years.	36
	Question of JV vessels still unresolved. Not an issue if everyone had equal access to charter boats, but do not believe this was the case. Looks like unequal treatment.	50
	Support the continued legitimate use of charter vessels.	53, 59, 62
<b>Fishing in other nations' EEZs</b>	There is scope for considerable expansion beyond NZ EEZ, but limited incentive unless coastal states agree that NZ vessels would get any catch history, which seems unlikely.	41
	Need to align proposals re foreign access to NZ EEZ to policy on NZ access to other nations' EEZs.	44, 47
	Prior to national allocations, there is no impediment to requests for access, eg by NZ government to another coastal state, based on Article 62 of UNCLOS.	44
	Need to ensure that NZ quota is not all caught offshore, eg for tuna farming operations, with economic benefits transferred to other nations and no benefit to NZ.	46
	Any arrangements need to be transparent or NZ industry could be disadvantaged.	48
	Any catches taken inside EEZs of other states should be subtracted from that state's allocation, not from flag state (NZ) allocation. Likewise, if foreign vessels are fishing inside NZ EEZ they should fish against NZ allocation.	62
<b>Cost recovery</b>	Should only be on STN, and must note there is little margin for a big levy if fishery is to remain economic.	41
	If TACC increased to 1000t in future, would be scope for levy increase.	41
	Conservation levy has saved no seabirds, in fact it has deprived funds from mitigation. Levy is just a way for DOC to prop itself up with a tax on fishing.	36
	Any projects funded by cost recovery must go via review process to determine appropriate funding source.	44

	Do not support current rules; cost recovery should apply outside the zone as well. Otherwise there is perverse incentive to fish outside the zone.	45
	Industry should not bear cost of WCPFC research until Commission is formally established.	50
<b>Fishing year</b>	Support 1 October fishing year.	36, 41, 47
	April 1 would also be ok; would help to coordinate with other CCSBT members.	47
<b>Scientific information</b>	Observer coverage and research have received inadequate attention. Need to resolve the issue of lack of coverage on small vessels. Perhaps Ministry could consider making this service contestable.	31
	Observer coverage on bycatch species should be at least 20%.	45
	Agree that NZ needs to conduct its own research on swordfish.	31, 45
	Need research on characteristics of HMS fishery in general, both targets and bycatch.	31
	There is a need for more information, but funding should be regional.	36, 41
	For NZ to conduct its own research programme would cost too much.	36
	Industry has been leading the way with swordfish tagging programme.	36
	Research also required on a range of shark species, eg porbeagle.	45
	Need to be cautious about what research we support at WCPFC if costs are to be loaded onto industry. Other governments fund their share; not fishers.	47
	At present scientific information is minimal, so how can Ministry measure MSY and Minister set TACs?	50
<b>Changes to Fisheries Act</b>	May need to ensure that HMS stocks fit criteria for adding to Third Schedule.	44
<b>WCPFC &amp; CCSBT</b>	NZ needs to take active role in WCPFC to protect NZ interests in development and participation in these fisheries. Industry should be involved in this process.	53, 59, 62
	Need an aggressive approach to international negotiation of national allocations.	57

	NZ representation at CCSBT is working to detriment of fishers' interests. Other countries overcatch with no repercussions. We should raise our TACC to 1000 t.	67
<b>Next steps</b>	s.18 consultation seems to be a quick, uninforming process.	36

## **Annex 2. Summary of submissions on 2<sup>nd</sup> consultation document**

### **Submissions by number**

<b>No.</b>	<b>Names</b>	<b>Company or Organisation</b>	<b>City</b>
30	B Turner, J Dyer, C Collecutt, & J Mason		Auckland & Whangarei
31	Jenny Whyte	Ministry for the Environment	Wellington
32	R A Fishburn		Greymouth
33	Darren Guard	Guard's Fisheries Ltd	Nelson
34	Kerrin & Stephen Nalder	Nalder Fishing Partnership	Gisborne
35	Dale Connor	Waikawa Fishing Co.	Tauranga
36	Karl John Bennett		Gisborne
37	M J Middleditch		
38	Cheryl Thomson	West Coast Fishermen's Association	Greymouth
39	Dean McCashin & Greg Stewart	Poseidon Fishing Co Ltd	
40	Colin Kerr	Caroline Fishing 2001 Limited	Gisborne
41	Daren Coulston	Tamatea Management Services Limited	Gisborne
42	Paul Rees		Nelson
43	Mike & Soo Wells	Equinox Fishing Ltd	Nelson
44	Bruce Chapman	NZ Seafood Industry Council	Wellington
45	Barry Weeber & Cath Wallace	Royal Forest and Bird & ECO	Wellington
46	Steve Coles	EcoFresh Tuna Ltd	Bay of Islands
47	Charles Hufflett	Solander Bluefin Partnership	Port Nelson
48	J P Meikle	Nelson Fisheries Ltd	Wellington
49	Tama Brown	Te Runanga O Turanganui A Kiwa	
50	Mitch Campbell	NZ Tuna Trollers Assoc	Nelson
51	Joe Cave		Stewart Island
52	Peter Jones	Federation of Commercial Fishermen	Wellington
53	Eric Barratt	Sanford Ltd	Auckland

54	E W Gartrell	On behalf of a number of entities	Wellington
55	Justin Searle	Integrity Fishing Ltd	Nelson
56	Dennis Wells	Port Nelson Inshore Fisherman's Association	Nelson
57	Doug Saunders-Loder	Golden Bay/Motueka Fisherman's Association	Motueka
58	Graham Webb	Marpax Fishing and GF & JL Webb Partnership	Picton
59	Tom Birdsall	Pelagic & Tuna New Zealand	Auckland
60	Jim Peterson	Tuson Fishing Limited	Auckland
61	T A Fishburn		Blenheim
62	Vaughan Wilkinson	NZ Far Seas Tuna Association	Auckland
63	Shane Wakelin	Fortune Fishing	Nelson
64	Tim Spear	Ocean Law NZ on behalf of Crusader Fisheries Ltd	Nelson
65	Tim Spear	Ocean Law NZ on behalf of Gisborne Fisheries Ltd and others	Nelson
66	Sean McCann	NZ Fishing Industry Guild Inc	Auckland
67	S P Destounis and others		

