Te Ohu Kaimoana's specific comments on Fisheries New Zealand's Draft Inshore Finfish Fisheries Plan

Te Ohu Kaimoana

Contents

Our specific comments

Fisheries Plans as an empowering tool

1. Section 11A was purposefully drafted so that either fisheries right holders or government could lead the development of a particular fisheries plan. But if fisheries plans were to be a primary tool for government then they would have been more prescriptive – such as in the Fisheries Act 1983 or like the planning regime in the Resource Management Act 1991. Instead they were meant as an empowering position consistent with the purpose of the Fisheries Act 1996.

2. Following the amendment, the Ministry of Fisheries (MFish) worked with the Minister of the day to develop and (extensively) consult on a framework for giving effect to the new provision. The agreed framework set out the case for rights-holders to be the primary promoters of fisheries plans. A key characteristic of property rights is flexibility of management. Underpinning the preferred approach was a concern that it would be ultra vires the Fisheries Act to utilise fisheries plans in a prescriptive way. This risk must still exist.

3. A paper on the MFish approach to giving effect to the S11A provision was presented at the 2002 IIFET conference. It sets outs some of the rationale behind the choice of the approach and the challenges for rights-holders. (https://ir.library.oregonstate.edu/concern/conference_proceedings_or_journals/w0892c34d?local e=en)

4. MFish set about reorganising its fisheries management system around an approach that provided for their own stock strategies to be prepared for fishery complexes and enabled fisheries plans prepared by rights-holders to add value in a way that worked for them.

5. All MFish processes (TAC/TACC and management control setting, research planning, fisheries services etc) were mapped against the agreed approach and aligned to deliver on three core objectives:

    a. Aquatic environment protected
    b. Sustainable utilisation
    c. Obligations to Māori met

6. The fisheries plan/stock strategy approach was abandoned in 2005 with the arrival of a new Chief Executive. He decided to have fisheries plans prepared by MFish. No consideration was given as to whether the top down approach to utilising fisheries plans in that way was consistent with the purpose of the Act.

7. We understand that the first government-led fisheries plans were eventually approved in 2011 (for deepwater and HMS) and ran for a period of five years. We are unaware of any analysis of the benefits of government-led fisheries plans from that time. However, we understand that the deepwater and HMS fisheries plans were subsequently revised and put out for consultation in 2017.

8. Following MIO approval of the Māori Fisheries Strategy and three-year plan in 2017, Te Ohu Kaimoana was restructured and a new Fisheries and Aquaculture Policy unit established. As part of our interactions with the newly formed Fisheries New Zealand (FNZ) we made it clear that we had reservations over government-led fisheries plans. However, despite our reservations, the Minister approved updated fisheries plans for both deepwater and HMS stocks (some two years after they were consulted on).

9. A key reservation over government-led fisheries plans is that they may be ultra vires the purpose and principles of the Act. The purpose of the Act does not imply a wide unfettered discretion. The purpose is enabling, and the fisheries plan provision was introduced during a period where the focus was on devolution. Iwi are predisposed to better understand the long-term benefits of devolution given the experience with political process over the past 190 years. Further, during the period where the Fisheries Act 1983 provided for centralised planning (ie fisheries plans developed through a top down process), inshore fisheries declined dramatically.

10. Environmental groups seem to understand that the Fisheries Act 1996 is enabling and are seeking opportunities to tie it down in a prescriptive way. This seems to be at the heart of the Forest and Bird judicial review of the east coast tarakihi decision. They are seeking to cement a Harvest Strategy Standard (that we consider to be implicitly loaded with value-judgements) as the basis for statutory decision making.

11. While there is reference in the text to the potential for rights-holder developed fisheries plans to coexist in a world of FNZ-led plans, there is no clarity around how this would happen in practice. History would suggest that it won't mesh and rights-holders will be frustrated in their attempts to add value.

12. If FNZ is to persist with the idea that it will develop inshore fisheries plans then we consider that there should be a clear pathway set out to show how this will work alongside rights-holder led fisheries plans. Importantly it should be made clear how this approach will not act as a barrier to innovation.

Alternative approaches

13. Fisheries Plans are something that the Minister must take into account when making decisions under the Fisheries Act. This brings into question how to support management approaches that could better meet the purpose of the Act than the status quo can achieve. If the Minister approves the draft FNZ plan, it may make it difficult for the Minister to override it in favour of an alternative approach that may or may not be packaged up as a fisheries plan.

14. We agree that there is considerable merit in FNZ setting out its approach towards meeting its obligations for administering inshore fisheries under the Fisheries Act. This could potentially be done in accordance with s32(1) of the State Sector Act (or where that obligation is moved to under any restructuring of that Act). The key thrust of that requirement is to make it clear that it is the Director-General (DG) of MPI that is the steward of the legislation he is responsible for. Hence there is an argument that it should be the DG that sets out how inshore fisheries are to be administered.

15. In addition to meeting associated expectations for regulatory stewardship developed by Treasury, such an approach would mean State Sector Act obligations that apply to the DG are met. It would also align with guidance provided by the Chair in regulatory practice co-funded by agencies with Victoria University. A more complete outline of the rationale for this approach was provided to FNZ on 24th October 2019.

16. But there is also another way to improve the management of inshore fisheries. Rather than try to plan, a more coherent and proven approach would to assess the risks of the current management arrangements against achieving core objectives (ie protecting the aquatic environment, providing for sustainable utilisation and meeting obligations to Iwi).

17. A risk assessment framework has previously been developed by MFish and the methodology for that approach is still available. Most recently we have been involved in its application to the Southern Scallop Fishery. That process has resulted in a draft fisheries plan that has been consulted over. We await the Ministers decision as to whether the plan will be approved. If approved, that plan will also be supported by an annual operating plan.

Looking at the Plan itself

Overall effect

18. As previously noted, one of the key issues for us is whether this draft plan has provisions within it that go beyond the purpose of the Act. The Act is very clear on how spatial separation of commercial and recreational separation of fishing activity can occur, and the considerations that must be applied before the Minister decides how to allocate the Total Allowable Catch (TAC). The construct of the draft plan follows a top down approach and this clashes with the obligation to enable people to provide for their own social, cultural and economic well-being under the Act.

19. We consider many of the proposed actions in the plan to be allocative in nature. They are packaged up under concepts like "enhancing benefits to the recreational sector" and "improving local fisheries". Having Ministerial approval of non-transparent approaches to fisheries management is not in the best interests of rights-holders.

20. Another of the key cornerstones of the plan is that it will in some way give better effect to an ecosystem approach. Yet the draft plan sets up arbitrary limits seaward of the Territorial Sea (TTS) and breaks down stocks into groupings based on criteria that are not based on ecosystem considerations. In this way it serves to distract from meeting implied objectives for fisheries that fall within the Purpose and Principles of the Fisheries Act.

Section by section analysis follows

Purpose

21. The draft fisheries plan is intended to be supported by an Annual Operational Plan (AOP) but there is no sense of what an AOP might look like or contain. This serves to provide a free license to develop an AOP that suits FNZs interests and dilutes the ability for consultation to impact on its content - due to the overriding requirement for the Minister to "take into account" an approved plan that seeks to mandate an AOP without signalling what will be in it.

22. The concept of an Iwi Forum Fisheries Plan is puzzling. We understand that FNZ supports forums to meet its obligation for input and participation for tangata whenua[1] in accordance with s12 of the Fisheries Act 1996. At the time that the Act was enacted the statutory entities that were to be derived from the Deed of Settlement (DOS) had not been determined. That duly happened with the passage of the Māori Fisheries Act 2004. As a result, Mandated Iwi Organisations (MIOs), their Asset Holding Companies (AHCs) and Te Ohu Kaimoana are the appropriate entities for the Crown to deal with on fisheries-related issues in the context of the DOS.

23. FNZ argues that MIOs/AHCs/Te Ohu Kaimoana do not speak for customary interests. This is countered in the first instance by referral to the statutory purpose of Te Ohu Kaimoana that links directly to Te Tiriti o Waitangi and the DOS without qualification. The customary fisheries regulation process was agreed as part of the Settlement by the representatives of the parties to that settlement (who were subsequently confirmed as MIOs). The fact that the regulations preceded the identification of MIOs does not mean that kaitiaki appointed by the Crown under those regulations are parties to the Settlement in the same ways that MIOs are.

24. Finally, we consider treaty obligations to Māori have been undermined in decisions made around inshore fisheries. Examples include the way s28N rights have been allocated and in the reallocation of available catch to the non-commercial sector (example being SNA7). This brings into question including "Treaty Obligations to Maori" alongside the Fisheries Act 1996 in the diagram. It implies a hierarchy of considerations that has not been evidenced in practice.

Scope

25. Our view is that a plan of this nature could have three implicit objectives. In addition to protecting the aquatic environment and achieving sustainable utilisation, it should also ensure obligations to Māori are met.

26. We question whether the arbitrary boundaries on the area covered by the plan are even sensible. The approach begs the question as to the status of a fish once it swims outside of the TTS but is still within the EEZ and hence the QMA it is part of. Has it left the ecosystem?

27. There is no active management outside the QMS. The Act requires that commercial management is via the QMS. The Courts found that attempts to manage outside the QMS were problematic in Scampi-related High Court and Court of Appeal decisions.

[1] Tangata whenua, in relation to a particular area, means the hapū, or iwi, that is Maori and holds mana whenua over that area

Legal status

28. The statement that the draft plan will be approved by the Minister implies preconceived intent. The Minister has an obligation to consult with an open mind and hence needs to be open to an alternative approach.

Relationship to other Fisheries Plans

29. Clarity to Iwi/Māori comes from meeting the Purpose and Principles of the Act and acting consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act and the subsequent legislation that revoked and replaced parts of that Act (being the Māori Fisheries Act 2004).

30. Reference is made to a relationship with "fishery specific management plans". We ask if this is intended to mean other Fisheries Plans approved under s11A or whether another type of plan is envisaged? Fisheries management plans were government plans under the Fisheries Act 1983 and failed to arrest the decline in inshore fisheries.

31. We have noted our concern over the prospect of a rights-holder led plan of any form being approved by the Minister if the default of an FNZ-led plan is already in place. We are also concerned that FNZ will prioritise its resources to focus on the plans it develops and not support the consultative obligations that come with rights-holder led plans.

Strategic Context

A time to reshape, improve and modernise fisheries management

32. Most of the text in this section does not fit into a strategic context but serves to deal with operational detail that will soon be out of date. Hence, we query the rationale behind including much of it at all, let alone running with the chosen heading.

33. We ask where the evidence has come from to place Aotearoa New Zealand's leadership of the world in fisheries management ("we have led") into the past tense? The most recent published review of any note has been conducted by The Nature Conservancy (TNC) and it identified both opportunities and challenges. It is more appropriate in our view that FNZ focus on building on a foundation of success.

34. Regardless, in our view Aotearoa/New Zealand should aspire to maintaining and developing an approach that reflects the commitments in Te Tiriti o Waitangi and the DOS and so celebrate our countries uniqueness. We would leave it to others to judge us as to where we sit in a world pecking order.

35. We do not consider that the management of our fisheries are going through a significant change. The TNC report found that the QMS had evolved throughout the first 30 years and needed to continue to do so.

36. The claim as to what New Zealanders may or may not be demanding is highly subjective and will depend on the audience. We are well aware of the advocacy from the recreational (who want more fish) and ENGO sectors (who often don't want any fish) in particular who both regard further investment in a rights-based system as undermining their aspirations.

37. The statement that "new and improved approaches to the management of inshore fisheries are needed" seems emotive and to lack a foundation. A risk assessment would most likely reveal where any problems are. The solutions could then be tailored to the problems. Te Ohu Kaimoana has invested in a review of international good practice and we have found that further investment in a rights-based approach offers the greatest potential.

38. The new technology being introduced into commercial fisheries serves to support the existing approach and is not an example of a new approach. The QMS framework encourages investment and we are seeing that play out. Supporting regulation has served to fast track the uptake of electronic reporting but the way it is being implemented is coming at the cost of time series data.

39. The reference to the roll out of on-board cameras seems misleading. Its purpose is not so much to verify fisher catch reporting as to explicitly verify the absence of Māui dolphin captures.

40. Reference is made to a "fisheries change programme" which has changed very little over a period of 18 months. The text seems out of place in a document that is intended to survive through time and remain relevant. Further, our response to the "fisheries change programme" suggests that it missed the big issues and got bogged down trying to address symptoms - without identifying and addressing underlying problems.

Advancing ecosystem-based fisheries management

41. We ask whether "progressing New Zealand towards ecosystem-based fisheries management" is actually a coherent idea in the context of the draft plan. A policy framework that supported such an approach would be expected to set out how such a concept is proposed to be integrated into how we manage fisheries. The international literature suggests the term is a concept without a real meaning and is being used to substantiate a range of positions that ultimately track back to the biases held by their proponents.

42. In line with our assessment above, we note there are no changes being proposed to give effect to the terminology being used. The Fisheries Act has explicit considerations that relate to environmental considerations. The requirement to integrate across legislation has also been built into our resource management legislation. It seems to us that the core issue is a lack of integration across agencies, and it is not the nature of the legislation that is the cause.

43. We note that the text is talking about what the draft plan will do before establishing what the plan is. This serves to highlight an overall deficiency of the draft plan in that it does not set out a pathway for building on progress.

44. We are unsure what the last three paragraphs are saying.

Legislative context

45. There is a crucial omission from the legislative context. Both the Fisheries Act 1996, and the Treaty of Waitangi (Fisheries Claims) Settlement Act (TOW(FC)SA) 1992 that is referred to within it, were only part of the legislative response required to give effect to the DOS.

46. At the time of the enactment of the Fisheries Act 1996, MIOs had yet to be identified as the beneficiaries of the Settlement and obligations to tangata whenua were identified under s12 of the Act. However, 12 years after the TOW(FC)SA the allocation and Iwi beneficiaries were agreed in the context of the Maori Fisheries Act 2004. As a consequence, much of the TOW(FC)SA 1992 was able to be repealed and the new provisions replace them.

47. The lack of inclusion of the Maori Fisheries Act 2004 into the legal context is significant in that it signals the lack of consideration given to the full significance of the obligation to give effect to the DOS, and to work with Te Ohu Kaimoana in doing so.

Strategies, Standards, Policies

48. It is in the context of the above that we also question the relevance and significance of the FNZ Treaty Strategy. We understand the significance of giving effect to Te Tiriti and the DOS. But that is the task required – to give effect to those agreements between the Crown and Iwi/Māori.

49. Having not previously sighted the "Treaty Strategy", we asked to be provided with a copy of it. We were subsequently provided with a package of documents that in combination made up a Treaty Strategy. It was also noted the Treaty Strategy was being "refreshed". We were aware of a refresh process being signalled some 12 months previously and offered to assist at that time.

50. It appears that it is the incomplete Treaty Strategy that provides the rationale for the FNZ reliance on Iwi Fisheries Forums and Iwi Forum Fisheries Plans. But the questions raised earlier about the role of both still remain. To us, the Treaty Strategy seems to be more of an approach for giving effect to input and participation obligations, than it is a strategy.

51. Our reading of the documents provided suggest that the Treaty Strategy concept dates back to at least 2005. However other documents published at that time (such as the policy definitions for the front end of the Fisheries Act, the fisheries plan framework and Fisheries 2030) seem to have been discarded.

52. A second key document referred to in the draft plan is the Harvest Strategy Standard. Te Ohu Kaimoana has provided feedback to both FNZ and the Minister on the inadequacy of this 2008 document as a guide to decision making. We consider that the Minister is obliged to explicitly consider the requirements of the Fisheries Act when setting or varying TACCs. In contrast the Harvest Strategy Standard is loaded with implicit allocation and value judgements.

53. The risks of the standard is that it becomes the defacto guide for the Minister. This risk is playing out in the legal challenge being mounted by Forest and Bird to the east coast tarakihi decision. It will likely require considerable resource on behalf of any respondents to ensure the court has all the deficiencies of the standard explained.

54. The QMS Introduction process standard is not known to us. However, following the scampi case the Fisheries Act was amended to make it clear that once active management of a fish stock was identified as necessary, introduction to the QMS should follow. So, we assume the standard is process orientated and not a policy setting one.

55. The NPOAs and TMP referred to are either being consulted over or under development. So, it is hard to guage what sort of guidance they will provide. We consider that the draft TMP in particular fails to address the real threats to Māui dolphins and if implemented will risk unduly impacting on the sustainable utilisation of fisheries resources.

Focus areas for inshore fisheries

56. This section isolates elements of the fisheries management system and presents as stand-alone considerations (we evaluate each). But we consider that all components need to be woven together and the structure of the Fisheries Act requires that to be done. That is what fisheries management requires.

57. In summary, our assessment is that the approach laid out in the draft plan sets the scene for reallocation (away from commercial), and for underpinning value judgements to be made non transparently.

Managing individual stocks

58. This heading is misleading in that no stock can be managed in isolation to the stocks that it has interdependencies with or species it is associated or has dependencies with.

59. The groupings themselves make no sense. In the context of quota ownership, management is an investment. Investments are made on the expectations of getting benefits down the track. Investors look for maximum returns on investments and will focus on the opportunities that provide the return. What we see in the draft plan is an arbitrary assignment of stocks to three categories. It is unclear how this links to ecosystem-based management drivers.

60. Further approaches like "greatest benefit" signal that FNZ may be positioning itself as an arbitrator of value. While there is a discipline in the Fisheries Act to guard against that, it may require redress through the courts to realise it. This whole idea is made all the more problematic as there is no indication of how value will be measured.

61. The reliance on a Harvest Strategy Standard is repeated here. It adds to an overall impression of FNZ promoting a prescriptive approach. This is problematic given FNZ lack the information on which to maximise value. In our view the core role of FNZ should be to establish the frameworks and keep extractions within the limits set, or (in the case of the commercial fishery) ensure there is no economic incentive to exceed them.

Management objectives and deliverables

62. We do not agree that there is a case for FNZ to set objectives beyond the three core areas: protection of the aquatic environment, enabling sustainable utilisation and meeting obligations to Iwi/Māori. We consider that the proposed objectives that go to the group level go beyond the duty that FNZ have to administer the Act.

63. The services provided under the Fisheries Act are subject to cost recovery. Hence it is important that the administrators of the Act commit to following the Treasury Guidelines for the operation of cost recovery systems.

64. The desire to understand climate change, misses the point that the immediate challenge is to respond/adapt to the changes in fish stock distributions and abundance. In the current situation whereby the TAC/TACC setting process are not responding to observed changes. This does not impact on the recreational sector who seem to be able to keep fishing to their overly generous daily limits without consequence. But the commercial sector are subject to deemed values. These are often ramped within a system that does not review shared fisheries in a timely manner – seemingly for fear of political ramifications of the decisions that need to be made.

65. The reality is that fishers, fishery managers and administrators have to deal with an array of exogenous effects and they cannot all be set out in a plan. Management requires catch and effort information to be collected and made available to those who can use it. This fundamental role is not covered. The draft plan is essentially about what FNZ can do to others not what it can do for them.

Enhancing benefits for customary, recreational and commercial fishers

66. The draft plan makes assumptions on what is best for the different sectors and places a reliance on harvest control rules. This assumes that there are equal considerations and FNZ is well placed to be the arbitrator.

67. The examples of "discrete sector needs" reflect allocation issues that should be addressed in a way that reflects what the DOS stood for. That should have put an end to open access fishing under government administration of fisheries. In our view that means that recreational fishing needs to be managed to the levels that applied at the time to DOS was signed.

68. The sort of outcome that can occur in the face of strong advocacy from the recreational sector can be seen in SNA7. In this fishery, the Minister at the time rewarded the recreational sector for overfishing their allowance by increasing it. The current allowance is much higher than any estimated catch and so sets a precedent. Rather than agree to review that decision FNZ have formed a "collaborative" working group to advise on management options.

Enhancing benefits to tangata whenua

69. We have enquired as to how and when Iwi agreed to a Treaty Strategy as is stated. No response has been provided to that enquiry.

70. It is apparent that it is the Treaty Strategy that provides the basis for fisheries forums and plans are being developed in those forums under the direction of FNZ. However, there is no indication of how this approach fits in with MIOs and hence the degree of alignment with the Māori Fisheries Act 2004. As noted, that Act is not mentioned in the legislative context section of the draft plan.

Enhancing benefits to the commercial sector

71. The purpose of the Fisheries Act is enabling. The commercial sector should have the freedom to invest in the rights to harvest that they hold. We do not see that translating into an FNZ-led planning approach.

72. We agree that rapid monitoring and assessment is both required and enabled by improved technology. But we consider the focus for FNZ should be on making the data available for those tasks to be performed in a cost-effective manner.

Enhancing benefits to the recreational sector

73. In our view it is the commercial and customary non-commercial sectors that have rights. Recreational fishing is a privilege that is extended to all persons who choose to fish in the marine area (it applies to both nationals and non-nationals and even extends to people who earn a living from providing that service). When a privilege can be exercised to that degree it requires careful oversight and that is a legitimate role for FNZ.

74. When it comes to allocating the TAC not all extractive interests are equal. Our view is that the signing of DOS meant the recreational allowances were essentially capped at that point in time, notwithstanding that the actual decisions on what to set the allowances at were yet to occur. Accepting the reality that would happen over time as TACs were set (not enabled until the 1996 Act came into effect) is a pragmatic response.

75. We observe that the general approach from the recreational sector is to lobby FNZ/Minister for more fish as technology increases fishing power and the number of participants grows. However, to respond to that lobbying in that way would serve to undermine the DOS. The alternative approach is for the sector to become organised and work collaboratively with the commercial and customary non-commercial interests.

76. In our view a more constructive role for FNZ/Minister would be to devise a framework that brings the recreational sector into a rights-based system in a way that is acceptable to the Treaty Partner. However political pressures seem to act against that. The last time this was tried, the government announced it would not invest any more time in that approach until the sector itself proposed it.

77. An alternative is for the recreational sector to work more collaboratively with rights-holders. We acknowledge that where negotiated agreements are reached, there is scope for increasing the recreational allowance in accordance with those agreements. This should act as an incentive to become involved in collective action.

78. MPI (and DOC) sanctioned (and funded) a workshop amongst all extractive interests in fisheries in 2013 and the outcome of that workshop was to support the establishment of a national representative body for recreational fishing. However, once a Committee was formed and the entity established an Incorporated Society both agencies walked away from their commitments.

79. A similar opportunity now exists for Fish Mainland. We suggest that FNZ should be paying attention to this initiative and support the formation of a peak body for Te Waipounamu. This would be a more constructive approach.

80. If FNZ were to invest in supporting the development of capacity within the recreational sector, we could foresee a role in FNZ facilitating the development of a fisheries plan with an objective of managing the recreational sector.

Optimising benefits from high-valued shared stocks

81. Value optimisation is not something that FNZ is positioned to do. We do not consider that FNZ has the degree of fine-scale information required to make value assessments. The risk is that the estimates of value of recreational fishing will be overstated in order to appease a perceived political appetite.

82. The concept of FNZ positioning themselves to be the distributer of benefits between the sectors is problematic for rights-holders.

83. We also question the level of "experience" that FNZ has. The draft Fisheries Plan appears symptomatic of a loss of memory around what has been tried (and failed) before. It also lacks an understanding of what was in train as the alternative before that was shut down in 2005.

Enabling integrated multi-stock management

84. The view that management has a single stock focus needs to be retired. The Fisheries Act 1996 is structured to support a rights-based system and through that delivery of ecosystem-based fisheries management. Aotearoa New Zealand does not need a plethora of international definitions to wrestle with when we have ours embedded in an Act that is underpinned by a Treaty Settlement.

85. The bullet point examples of what a fisheries stock complex approach will entail could be more accurately described as a list of supporting processes. It has long been suggested that the single species focus of the fishery assessment and research planning processes need upgrading to support the multi-species focus of the Act. Yet we are told they are best practice and it is the management that needs to change.

86. We do not understand what "The fishery stock complex approach is not an "*indicator approach*" where management settings for an indicator stock are directly applied to other similar stocks within the fishery" means.

Defining stocks to include within a fishery stock complex

87. We question the use of phrases that have no applied meaning – "A flexible and tailored approach is required…"

88. We understand the concept behind "the biological range of stocks caught" has been trialled in the Falklands but has failed.

89. The suggestion that "fishing methods used to target stocks" being the focus of management would only lead to unwelcome distortions.

90. Where is the thinking underpinning "the proportion of a biological stock caught by method within an area" going? How would/could it integrate with the QMS?

Stocks not managed within a fishery complex

91. The Fisheries Act 1996 does not permit a single stock approach. But also talk of "complexes" within an ecosystem is off the mark. Complexes do not come up in trawl nets or get caught on longlines or in set nets. These methods pick up a collection of stocks and/or species that are vulnerable to that method in that area at that time and that is what needs to be managed.

92. Marine systems are complex systems. Species have different parts to play at different stages in their life cycle. In our view the approach of stock complexes has little merit and could lead to work that would be better done in areas where the need for it is more obvious. A risk assessment would quickly highlight that one the biggest issues for fisheries management is the need to complete the reforms to support managing all extractions through a rights-based approach. A second area of key focus would be the management of land-based effects.

Fishery stock complexes

93. The government of the day tried fisheries management plans in 1983 and even persisted with it into the 1990s, before abandoning it entirely because it recognised it did not fit in with a rights-based approach or the DOS.

Management objective and deliverables

94. This section seems to set out rather hollow commitments to align services with the requirements of the draft plan. It seems undeveloped after decades of operating cost recovery. There is no attempt to map services to outcomes in a transparent and cost-effective manner.

Improving local fisheries

95. This section attempts to develop a concept that was introduced earlier in the document. Moving into local management suggests an interventionist role for FNZ.

96. The Fisheries Act is quite explicit around how management for the benefit of the recreational sector can be dealt with in a rights-based system, and in the case of spatial separation that is particularly so. We consider the same discipline should be applied to allocation of catch to give full effect to the DOS

97. The impacts from the two trends of population growth and increasing fishing power of recreational fishing through technological advancements, pose real risk to Settlement interests. Just as application of 28N Rights serves to decrease the proportional share of the TACC, increasing the recreational allowance can have the impact of decreasing the share of the TAC. Further, there is no proportionality component to a recreational allowance under the Act, so it should not be argued that increases/decreases should be proportional across the commercial/non-commercial sectors.

98. In our view the appropriate response would be to manage the recreational sector to the allowances set within a QMA. The policy side of MPI could then work in partnership with Te Ohu Kaimoana towards developing a framework that could lead to the development of a proportional recreational right. From there, adjustments between the sectors could occur on agreeable terms.

99. Apart from threats of reallocation, the key issues for inshore fisheries are land-based impacts and the increasing catching power of the recreational sector. In our view those issues need to be confronted.

Improving environmental performance

100. There are some statements made here with little to back up by way of action. The Crown can and should do more to manage land-based effects. Climate change impacts require the dual responses of adaptation at the operational level and developments of frameworks that reduce emissions at the policy level.

101. Te Ohu Kaimoana is actively investing in an Endeavour Fund project alongside GNS/NIWA to assess the past and present changes in primary production. This project will link to the Moana Project.

102. The desire to have the draft plan approved will almost certainly hinder rather than support innovation. Once it is in place, a plans requirement will need to be taken into account by the Minister before considering an alternative approach. In this way the bar is set higher for subsequent plan proponents than it is for FNZ. Hence the barriers to innovation are likely to increase.

Protecting significant habitats and benthic environments

103. We support some of the long overdue actions. But it should not require an inshore fisheries plan in order to get on with it.

104. We are unsure what "Explore the role of protecting marine biodiversity as a strategy to build the resilience of marine ecosystems and fish stocks to buffer the effect of climate change" means. Is this FNZ suggesting additional tools are required to what is available under the Fisheries Act?

Endangered, threatened and protected species interactions

105. We support attention being given to these actions that are mostly in train.

106. Regulation is about changing behaviour and there are statutory and non-statutory approaches to achieving that. Both forms are part of the regulatory spectrum. In many instances what are pitched as voluntary are in fact compulsory, albeit delivered outside of government.

107. We recommend avoiding the use of the term "best-practice" because any approach will quickly become outdated. Suffice to refer to "good practice" and acknowledge it will evolve as new information comes to light and technological advances are made.

Incidental catch of fish species

108. We reiterate that the Fisheries Act assumes that active management of a species occurs within the QMS. We are unclear as to what sort of management outside the QMS is being considered.

109. We agree that making information available in an aggregated form to those who provided it at a vessel level is an important service.

Implementing the plan

110. We consider that the processes that are required to give effect to the Crown's responsibilities to operate fisheries management processes do not require a fisheries plan to be approved by the Minister. As noted, the effect of that would include crowding out rights-holders and putting up additional barriers to innovation.

111. The guidance that is said to be provided in other planning documents does not appear to be available to the mandated entities that have come out of the DOS.

112. In addition to the above, we note a number of documents are referred to that are unlikely to even exist at this time – as it is the draft plan itself that provides the only known basis for their existence. In particular, regional/local area fisheries management plans were a failed product of the Fisheries Act 1983 now repealed.

Annual Operating Plan

113. We consider an AOP could be a minimum level of service produced by FNZ without requiring the backing of a fisheries plan approved by the Minister of Fisheries.

Annual Review Report

114. We support FNZ producing an AOP and measuring their performance against it the following year. But this in itself does not justify having the draft fisheries flan retained in its current form.

Engagement to support annual planning

115. We understand that "a number of objectives and deliverables in this draft Plan provide increased opportunities for Iwi and Māori…" The draft plan itself was produced entirely by FNZ without involvement of the entities mandated under the Māori Fisheries Act 2004 to be the beneficiaries under the DOS. Te Ohu Kaimoana would have preferred engagement commencing at the problem definition phase, rather than being presented with a draft plan for comment.

116. On this occasion Te Ohu Kaimoana was approached for comment on a final draft of the plan. Our written feedback suggesting an alternative approach was neither acknowledged nor responded to prior to our follow up. In that light we ask how FNZ can ensure that "engagement is meaningful and delivers on the needs of Iwi and Māori…"?

Annual planning with tangata whenua

117. We have set out our comments in response to FNZ having "a Treaty Strategy in place to ensure that Iwi and Māori participate and have input into FNZ's planning processes".

118. We also note the lack of consistency around how the draft plan portrays obligations to tangata whenua. For example, under this heading the commitment to provide for input and participation of tangata whenua does not seem to align with the wording of, and definitions in, the Act.

119. The obligation to tangata whenua in the Fisheries Act 1996 relates to the s12 requirement to provide for input and participation in relation to the setting and varying of sustainability measures or varying the TACC. We understand that the key mechanism that FNZ have in place to meet this obligation is through the formation of regional forums.

120. Te Ohu Kaimoana has asked FNZ to discuss he connection between the tangata whenua members of the forums and the MIOs that are mandated under the Māori Fisheries Act (and to which Te Ohu Kaimoana is accountable to).

121. We note that the Fisheries Act 1996 was enacted during a period when the Treaty of Waitangi Fisheries Commission was tasked with working with Māori to develop an allocation procedure in order to distribute Settlement assets. It was not until 2004 that the actual entities that the Crown were obliged to work with in a post settlement context were confirmed – MIOs, AHC's and Te Ohu Kaimoana.

122. While obligations exist for FNZ to work with tangata whenua, we consider that to fully meet Settlement obligations also requires working with the mandated Settlement entities. As already noted, the express mandate of Te Ohu Kaimoana relates to Te Tiriti o Waitangi and the DOS.

123. We have suggested to the FNZ management team that we work together to improve alignment between the Forum (s12) and MIOs (DOS) as we have in relation to a refresh of the FNZ's Treaty Strategy.

124. The text here also refers to "Iwi Plans" and we assume they are the plans provided for under customary regulations and are different to "Iwi Forum Fisheries Plans". However, given the confusion over the terminology used throughout the draft plan we suggest greater clarity is required around the different type of plans being referred to in the document and how they can all be integrated to improve fisheries management outcomes.

125. Further, we note the narrow role assigned to Te Ohu Kaimoana in the text and our connection to the "1992 Fisheries Settlement". We suggest that the draft plan ought to refer to the statutory role that Te Ohu Kaimoana has under the Māori Fisheries Act 2004 and the non-statutory mandate from MIOs under the Māori Fisheries Strategy. This goes well beyond the role of being "the trustee for Iwi" and "may represent Iwi for other purposes".

126. Te Ohu Kaimoana have proactively sought to develop a memorandum of understanding with FNZ to assist with clarifying respective roles and enhancing the way we work together. This has been on the basis that FNZ is the agent of the Crown and Te Ohu Kaimoana is the agent of MIOs, and it is the Crown and MIOs that represent the Treaty Partnership for fisheries. However, progress has stalled.

Annual planning with national and regional stakeholders

127. This section introduces the concept of a "National Inshore Finfisheries Plan Advisory Group." There is no real sense of how this group would be structured and what role it would have in decision-making over resourcing. We would prefer to discuss this idea further before commenting further.