

## Creating Value ‘Beyond Sustainability’

11 December 2015

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### In a nutshell...

1. The fundamental framework of New Zealand’s fisheries management regime – as embodied in the Fisheries Act 1996 and the Quota Management System (QMS) – is sound and has produced remarkable outcomes for New Zealand. In stark contrast to the position in 1986 when the QMS was introduced, New Zealand now has sustainable fisheries and a healthy aquatic environment. The QMS has generated significant benefits from our fisheries; improving the opportunity for New Zealanders to catch a fish, providing a currency for settling Treaty claims, improving the quality of our marine environment and our international reputation as a responsible and innovative manager of natural resources as well as increasing export receipts, asset value and regional employment.
2. No management system is static and the QMS has evolved significantly since its establishment. It is no coincidence that each of the main reforms over the last thirty years has served to reinforce the original set of incentives behind the success of the regime. Over time, sustainability and environmental responsibility have become inextricably part of commercial harvest rights, ITQ has become more secure as a property right and, as quota owners have accepted and taken on more responsibility for administration and management of their rights, elements of the QMS have become more efficient.
3. Notwithstanding this progress, New Zealand has only started to tap the potential value that could be generated now that our fisheries are managed sustainably and in an environmentally responsible manner. The next challenge in the evolution of the QMS is how to operate ‘beyond sustainability’ – in other words, how to move beyond minimum sustainability standards and into the realm of value-addition. This next, critical, step will require more sophisticated, fine-scale management that is market-oriented and responsive to consumer-driven preferences in relation to the environmental effects of harvesting, human rights and social values. This step forward will necessarily involve real-time, direct control of harvesting activity which is feasible only with a high degree of engagement throughout the industry.
4. This type of management is typically local in scope (i.e., below the scale at which sustainability is ensured under the Fisheries Act) or based on value judgements that target some consumers and not others. The benefits derived are clearly in the nature of private or club goods and are not so universal as to be a public good to be delivered by Government. Enabling more sophisticated management may well enhance sustainability in the public interest (this would be a positive spinoff), but its primary purpose will be to significantly increase the benefits available from fisheries. The adoption of more sophisticated management measures for commercial fishing is therefore rightly a matter for quota owners (not Government) to pursue and take responsibility for delivering.
5. This insight forms the basis of the seafood industry’s initial contribution to the review process. Simply put, in order to continue to enhance the benefits New Zealand obtains from its valuable fisheries resources, our fisheries management regime needs to evolve to enable fisheries rights owners to adjust their activities in response to changes in the demands of markets for fisheries goods and services within government-set bottom-line sustainability standards.

6. The statutory amendments proposed in this paper will enable a sustained, long-term lift in the economic contribution the seafood sector makes to the New Zealand economy by 'future-proofing' the Act so as to enable fisheries, on a case-by-case basis, to be managed under appropriate governance approaches that can deliver beyond sustainability, as follows:
  - *Status quo*, whereby government makes all management decisions and purchases all the required services (e.g., research) for a fishery;
  - *Approved Management*, whereby fisheries management measures and services for the commercial share of a fishery are defined in a fishery plan developed by quota owners and approved by the Minister, and delivered in whole or in part by an Approved Service Delivery Organisation (ASDO); and
  - *Authorised Management*, whereby an authorised group of quota owners purchases specified fisheries services and performs specified management functions for the commercial share of a fishery using binding industry-developed rules within government-set standards.
7. With an updated legislative framework that enables smarter, more efficient fisheries management, the seafood industry can build on its current achievements, enhance its engagement and relationships with those who share and value New Zealand's fisheries and marine environment, and make an even more significant contribution to the Government's Business Growth Agenda. The anticipated outcomes of legislative and operational reform include:
  - greater certainty for government and quota owners, leading to higher business confidence;
  - more efficient, cost-effective and flexible fisheries management and service delivery;
  - more seafood-related jobs across New Zealand, particularly in coastal communities and regions that currently struggle to achieve a spread of successful business opportunities;
  - a significant boost to Māori economic development as an integral part of a successful seafood industry;
  - enhanced ability for the seafood sector to produce high-value products that are responsive to market demands, thereby increasing export revenue; and
  - higher levels of collaboration within the seafood sector, between the seafood sector and Government, and with communities and groups who share interests in New Zealand's fisheries resources.
8. These outcomes will establish an environment in which the industry has both the incentive and the opportunity to invest in taking New Zealand's fisheries 'beyond sustainability', thereby enhancing overall wellbeing and the value that New Zealanders obtain from our fisheries resources. The scale of these benefits is hard to predict, but is likely to be significant. For instance, a \$1 billion increase in the quota value of New Zealand's fisheries (assessed by Statistics NZ at \$4 billion in 2009) could be achieved through a combination of increased benefit and reduced risk. Such a change in quota value would also indicate a similar increase in wellbeing derived from fisheries by all New Zealanders.

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## **(1) Introduction: the importance of history and context**

1. New Zealand has a remarkably successful fisheries management system. The two key building blocks of this system are the QMS (introduced in 1986) and the Fisheries Act 1996. It is easy to forget the size of the sustainability crisis and the extent of destruction of potential fisheries benefit that characterised New Zealand fisheries by the mid-1980s. This generation owes a considerable debt to the politicians, officials and stakeholders who designed, implemented and fine-tuned the QMS. Not only did the QMS successfully avert the looming sustainability crisis, it also provided the foundation for over a generation of expanding fisheries utilisation benefits including the Maori Fisheries Settlement.
2. It is also easy to overlook the fact that the QMS today is far more sophisticated than its original form and that evolutionary change has been a constant theme in the story of the QMS. The current legislative review is therefore the latest of many reviews and modifications, rather than the first. This raises the issue overhanging all projects to modify sophisticated systems which is; how to avoid changes that have unintended adverse consequences? All change carries risks but these risks are reduced if we understand both what works well (and why) as well as what does not work well (and why). It is crucial to be able to distinguish 'the baby from the bathwater'. To give one example, the connection between the integrity of the QMS and the ongoing integrity of the Maori Fisheries Settlement is a compelling reason to ensure that any changes to the QMS reinforce rather than revise or undermine its original tenets.
3. In other words, we need an agreed understanding of the critical foundations underpinning the historical success of the New Zealand fisheries management system so that we can guarantee that those foundations support a new era of even greater success. The clear identification of these foundations becomes more difficult with the passage of time as the architects and builders of the original system are steadily succeeded by those who are its inheritors and present custodians. For this reason:
  - **Part 2** of this paper focuses on the evolution of the QMS and what we can learn from its successes and challenges;
  - **Part 3** contains high-level reform proposals to future-proof the QMS so it continues to enable New Zealanders to derive benefits from our fisheries; and
  - **Part 4** sums up how the reform proposals will contribute to the Government's wider objectives, including the Business Growth Agenda.

## **(2) The QMS: evolution, lessons and opportunities**

4. With hindsight, it is evident that the success of New Zealand's fisheries management regime is due to the fact that changes over the last thirty years have carefully built upon the original foundations of the regime so that the incentives on quota owners to be mindful of sustainability and value creation have been progressively strengthened. Those incentives are embodied in the legal characteristics of ITQ and the legal security of those characteristics, all of which is firmly embedded in the Fisheries Act.

### **(i) The purpose of the Fisheries Act 1996 provides the foundation for the successful operation of New Zealand's fisheries management regime**

5. New Zealand's first fisheries management statute was the Oyster Fisheries Act 1866. However, it was 130 years before we had a statute with a meaningful statement of purpose. It was worth the wait. Part

2 of the Fisheries Act 1996, *Purpose and Principles* provides an outstanding overall framework for the fisheries management system we enjoy. The purpose of the Act is “to provide for the utilisation of fisheries resources while ensuring sustainability”.<sup>1</sup> This purpose and its associated principles provide a benchmark against which all existing or proposed fisheries management processes and actions can, and should, be assessed.

6. The concise nature of the purpose belies its wisdom about the appropriate and realistic role of Government in fisheries management in relation to **providing for** utilisation and **ensuring** sustainability. This realism is a critical success factor that sets New Zealand apart from other nations with fisheries legislation that promises far more but delivers far less in practice.
7. The Act defines ‘ensuring sustainability’ as “(a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment”. On the Review website, MPI usefully paraphrases this definition as:<sup>2</sup>
  - Making sure that enough of the fish population remains to breed in the future; and
  - Not destroying the marine habitats essential for spawning, migration and feeding.
8. The significance of ‘providing for utilisation’ is succinctly explained in a 2001 Ministry of Fisheries policy interpretation of the purpose of the Act:<sup>3</sup>

*... ‘provide for utilisation’ means, in New Zealand’s liberal democracy, to provide people with the opportunity to maximise their utility (as in the definition of ‘provide for their social, economic and cultural wellbeing’)... This implies that the **core role for those exercising powers** under the Fisheries Act is to **establish the framework within which people can make their own utilisation decisions**. This framework includes sustainability constraints and **the specification of property rights** of those entitled to utilise fisheries resources.*
9. The definition of utilisation – “conserving, using, enhancing and developing fisheries resources to enable people to provide for their social, economic and cultural wellbeing” – reminds us of the multiple dimensions to the ‘wellbeing’ or benefits that can be derived from fisheries (social, economic and cultural) and that such wellbeing is produced by distinct processes (conserving, using, enhancing and developing fisheries). These processes and their associated outputs are often mutually exclusive and that is why the utilisation purpose of the Act is necessarily an enabling one. People (meaning individuals) are the only authoritative arbiters of what constitutes the right mix (for them) of all of the things that comprise wellbeing.
10. Once it is understood that the utilisation purpose of the Act includes conservation (a deliberate choice about use and non-use) it becomes clear that the sustainability and utilisation components of the purpose are not polar opposites. Rather, they denote a demarcation between two types of fisheries management processes and mechanisms:

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<sup>1</sup> Fisheries Act 1996, Section 8 (1)

<sup>2</sup> MPI website <https://www.mpi.govt.nz/law-and-policy/legal-overviews/fisheries/fisheries-management-system-review/future-proofing-fisheries-management/>

<sup>3</sup> Ministry of Fisheries (2001), emphasis added. The MFish ‘front end’ policy interpretations were developed following an extensive programme of workshops and engagement with fisheries stakeholders.

- Determination by the Government of minimum standards for the maintenance of fisheries and the aquatic environment (sustainability); and
  - Enabling choices by individuals and groups about conservation, use, enhancement and development of fisheries so as to provide for wellbeing (utilisation).
11. An important insight from this analysis is that in order for the Act to achieve its carefully calibrated purpose, the legal and operational definition of 'sustainability' must remain focused on the determination of minimum standards (as is currently the case). If 'ensuring sustainability' is allowed to expand beyond "*making sure that enough of the fish population remains to breed in the future and not destroying the marine habitats essential for spawning, migration and feeding*", there is a real risk that the total benefits available from the utilisation of New Zealand's fisheries will be compromised by government decisions that deliberately or inadvertently limit the choices that may be made by New Zealanders about utilisation.
12. This risk is apparent in the Government's proposal to close all of FMA 10 to fishing by establishing the Kermadec Ocean Sanctuary. The proposal has been erroneously characterised as a 'sustainability measure' even though the sustainability purpose of the Fisheries Act has already been well and truly achieved within FMA 10. For Fisheries Act purposes, the proposed closure of FMA 10 is correctly characterised as a tradeoff between competing utilisation objectives.

## **(ii) The QMS has evolved over time to strengthen the security of quota and transfer risk and responsibility from the Crown to quota owners**

13. The QMS was introduced in October 1986 by way of amendment to the Fisheries Act 1983. Since that time, the QMS has continued to evolve and develop as a result of statutory amendment, litigation and case law. Although many of these changes occurred in an environment of considerable uncertainty and tension, in retrospect it is apparent that over the past thirty years the changes made to the QMS have carefully and deliberately moved the regime in a clear direction of strengthening the ability of the QMS to contribute to achieving the purpose of the Act by ensuring sustainability and providing for utilisation. The six main reforms of this period are summarised here.

### ***i) The change to proportional quota in 1990***

14. Under the QMS as introduced in 1986 quota owners received the right to a certain tonnage of catch based on government estimates of the sustainable catch. The Crown was required to pay quota owners full compensation in the event of any TAC reduction but was able to sell any additional quota generated through a TAC increase. In 1990, after vigorous debate and litigation, the industry agreed to move to a proportional quota regime – a fundamental shift in the nature of the ITQ right which shifted stock sustainability risk from the Crown to quota owners. Quota value therefore came to be related at least in part to the observed current abundance and perceived future abundance of a fish stock. As a result, the economic risk and benefit for the seafood industry was directly linked to the productivity of fisheries, further strengthening the incentives on quota owners to be mindful of stock sustainability.
15. Quota owners took on board these changes and adjusted their activities in response – for example, by taking a direct and active interest in fisheries research and management and by forming Commercial Stakeholder Organisations (CSOs)<sup>4</sup> through which their collective shareholdings in a fishery could be protected and enhanced. These organisations formed in recognition that, although ITQ rights are

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<sup>4</sup> Also referred to as Sector Representative Entities (SREs).



individual, the resources are common. Industry organisations have directly invested millions of dollars in fisheries research and management, as illustrated in the attached case study of direct purchase and innovation in orange roughy fisheries (see **Appendix 1**).

**ii) The settlement of Maori fisheries claims in 1992**

16. Soon after the QMS was introduced, the issuing of the Maori fisheries injunctions in November 1987 heralded a period of considerable uncertainty in its implementation. Although the introduction and implementation of the QMS initially sparked the Treaty claim, ultimately it also provided the means for full and final resolution of Maori commercial fishing claims. The characteristics and integrity of ITQ (in particular, its strong property attributes such as perpetual duration), together with the sustainability mechanisms embodied in government policy and law, were sufficient for Maori to accept ITQ as the 'currency' for the settlement of claims in the 1992 Deed of Settlement.<sup>5</sup> The Settlement itself further increased the security and value of ITQ by removing the uncertainty that had been generated by the longstanding grievance, and setting a precedent whereby the Crown purchased much of the ITQ required for the Settlement from the incumbent rights holders.
17. Maori are now major asset owners and participants in the commercial fishing industry, owning in excess of 30 per cent of all quota (valued at over NZ\$1 billion). Maori have a reasonable expectation that the Crown will maintain the value of their fisheries assets by protecting the integrity of quota rights and the QMS, not least because the settlement provided that all current and future claims in respect of commercial fishing rights were fully satisfied and discharged. These expectations align with the Crown's responsibilities under the Treaty as set out by the Supreme Court, including responsibility for 'active protection'. Quota rights, the QMS and the operation of the Fisheries Act that allows the expression of commercial fishing rights, have together become the currency of the Settlement.

**iii) The replacement of resource rentals with cost recovery in 1994**

18. At the time of the Settlement a system of resource rentals applied. With the claims of ownership of fish by Maori supported by the highest courts in the land, resource rentals could not be continued and changes were required. The agreed replacement – cost recovery – is not simply a mechanism to enable the Crown to recover a portion of the costs of providing fisheries services; it is an integral aspect of the economic incentives that underpin the successful operation of the QMS. The replacement of resource rentals with cost recovery in 1994 was intended to encourage greater industry responsibility, less regulation and lower management costs. The industry and government both anticipated that levies would reduce over time as cost recovery brought about efficiency gains within the Ministry and as the industry took on a more direct role in fisheries management and the purchase of research.<sup>6</sup> However, the anticipated changes to the operational and institutional arrangements under which fisheries services are determined and provided never eventuated, hindering quota owners in their attempts to take up these opportunities.
19. Today, cost recovery remains a 'rub point' between industry and the Government – but the underlying aggravation is, in reality, the inflexible and inefficient manner in which fisheries services are determined and provided. For example, the current recovery of costs from quota owners of around \$10 million per year for commercial compliance services is inconsistent with the generally accepted notion that 'law and order' services are a public good that is provided to protect New Zealand's fisheries resources and should therefore be funded by general taxation. Furthermore, the industry is not able to influence the

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<sup>5</sup> "Maori endorses the QMS and acknowledges that it is a lawful and appropriate regime for the sustainable management of commercial fishing in New Zealand." Her Majesty the Queen and Maori, Deed of Settlement, 23 September 1992, Section 4.2.

<sup>6</sup> See Harte, M. *Funding commercial fisheries management: lessons from New Zealand*. Marine Policy (2007).

nature or level of compliance services that are provided by MPI and, with the removal of the disciplined systems to record effort following the incorporation of MFish into MPI, cannot assess whether the levies have been directed towards commercial fisheries compliance or other MPI activities. In this example, the ongoing recovery of costs in the absence of any opportunity to influence the level of service provision or transparency in the use of levies means that fisheries cost recovery has simply become a tax on the fishing industry.

**iv) *The environmental principles in the front end of the 1996 Act***

20. The introduction of the new Fisheries Act in 1996 foreshadowed a suite of changes to the QMS itself, and the statutory context in which the QMS operates. For the first time, the 1996 Act set out a clear purpose and principles to guide the implementation of the QMS. In particular, the environmental principles in section 9 meant that ITQ rights were now to be exercised within the wider ecosystem context of associated and dependent species, biological diversity and habitats of particular significance for fisheries management.
21. As a result, quota owners have increasingly taken on board responsibility for avoiding, remedying or mitigating any adverse effects of fishing activity on seabirds, marine mammals and the benthic environment. For example, quota owners have developed and implemented effective mitigation measures to reduce incidental interactions with seabirds (e.g., Vessel Management Plans) and New Zealand sealions (e.g., SLEDs and Marine Mammal Operating Procedures).
22. The deepwater fishing industry's initiative to establish a network of benthic protection areas (BPAs) is a prime example of the alignment of public policy objectives and private incentives for marine biodiversity protection made possible by the QMS. The BPA network was conceived by deepwater quota owners as a means to address uncertainties about the environmental impacts of bottom trawling and to enable the ongoing sustainable utilisation of deepwater fisheries. The recognition and maintenance of the integrity of the BPA network by successive governments in turn sends positive signals to the seafood industry that industry initiatives to manage the environmental impacts of fishing activity are a valued component of New Zealand's fisheries management regime.

**v) *The securitisation of quota in the 1996 Act***

23. The 1996 Act also provided for the development and implementation of a secure quota registry system (increasing both the security and transferability of ITQ) and the ability to raise a mortgage against ITQ. These changes enabled quota owners to treat their quota holdings like any other bankable asset, and significantly enhanced the security and value of quota. This feature of the legislation supporting the QMS is envied by fishers in many other countries which have introduced quotas of one kind or another as it provides quota owners with the ability to access funding for growth and innovation.

**vi) *Ongoing improvements to the efficiency of the QMS***

24. Many provisions of the 1996 Act were not able to be implemented immediately due to the need for new computer systems to be developed. Further legislative amendments were also required in order to address outstanding issues and allow the Act to be more fully implemented in 2001. Once the necessary changes were in place, the administration of the QMS was significantly streamlined and simplified by:
  - the creation of a single catching right (Annual Catch Entitlement, or ACE) which replaced a multitude of earlier types of catching right; and
  - the introduction of a new catch balancing regime.



25. These changes improved both the rigour and the efficiency of the QMS so that quota owners could focus on adding value. The establishment of an Approved Service Delivery Organisation (ASDO) under Part 15A of the Act successfully transferred QMS administrative functions from the Crown to the seafood industry and enabled the devolved and contracted services to be delivered in a more cost effective manner (as discussed further below).

#### ***Four key trends***

26. This evolutionary pathway illuminates four main trends in the development of the QMS, i.e.:
- Sustainability and environmental responsibility have become inextricably part of the ITQ right;
  - ITQ has become more secure as a property right;
  - Quota owners have accepted and taken on more responsibility for administration and management of their rights; and
  - Elements of the QMS have become more efficient.

### **(iii) Thirty years after its establishment, the QMS has successfully ensured the sustainability of New Zealand's fisheries and generated significant benefits**

27. New Zealand's QMS and the attributes of ITQ, as defined in the Act and associated case law, have created a set of incentives that have helped assure the sustainability of New Zealand's fish stocks and have significantly increased the wellbeing that New Zealanders are able to derive from our fisheries.

#### ***Measuring sustainability***

28. As MPI confirms on the Review website, New Zealand is fishing sustainably. Dr Pamela Mace, MPI's Principal Advisor Fisheries Science, told attendees at the 2015 Seafood Industry Conference that "*New Zealand's fisheries are performing extremely well overall, at least as good as or beyond the standard of the best in the world*". She noted that around 83 percent of individual fish stocks of known status and 96 percent of landings of known status are above or well above the level where sustainability issues might be a concern.<sup>7</sup> Stocks of known status account for around 80 percent of total landings by weight and value and include most of the main commercial fish species. Where stock status is unknown, the best available information – i.e., commercial landings data – suggests that there is no cause to doubt that these stocks are also being fished sustainability. In the small number of cases where fisheries are considered to be below stock sustainability limits, corrective management action has been, or is being, put in place to rebuild the stocks.
29. Overseas commentators have endorsed the strengths of New Zealand's fisheries management regime. In 2009 Dr Boris Worm and Professor Ray Hilborn, along with 19 marine and ecosystem scientists from around the world, gave the New Zealand fisheries they assessed the highest possible rating for ecologically sustainable management.<sup>8</sup> And in 2011, the Fisheries Centre at the University of British

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<sup>7</sup> <http://www.seafoodnewzealand.org.nz/media-centre/media-releases/media-release/item/august-19-2015/>

<sup>8</sup> Worm, B., Hilborn, R., et al. (2009). Rebuilding Global Fisheries. *Science*, 325 (5940):578–585.

Columbia, Canada, rated New Zealand as the leading country among 41 surveyed for the quality of its fisheries monitoring, control and surveillance.<sup>9</sup>

### ***Measuring wellbeing, benefits and value***

30. Wellbeing (or, as MPI puts it on the Review website, 'benefits') is not as straightforward to measure as sustainability. In the discussion below we use the concept of *value* – i.e., a measure of what people are prepared to forego in order to achieve a benefit or a feeling of wellbeing – as a realistic and measurable proxy for enabling people to provide for their wellbeing and obtain benefits from fisheries resources. Used in this way, quota value is effectively the 'canary in the coal mine' that can tell us a lot about the value of fisheries more generally, including value that is more challenging to quantify, such as the value of a recreational fishing experience, or the value of New Zealand's international reputation.
31. Statistics NZ has calculated an aggregate estimate of quota value in 2009 of NZ\$4 billion.<sup>10</sup> This valuation is based on a formula where value is a function of expected ACE price (annual benefit) divided by a discount rate (a measure of risk). This same general relationship also applies to the valuation of all other types of fisheries benefit – i.e., conservation, customary and recreational benefit – but there are no observed data on annual benefits or discount rates outside of the commercial sector with which to populate the valuation equation. However, it is reasonable to assume that if quota value is increasing, so too is the overall value of fisheries and hence, the wellbeing that can potentially be provided by fisheries for all users. This assumption is possible because high quota value requires sustainable, abundant fisheries and reduction of risk and uncertainty. Where fisheries are abundant and future risk to abundance is perceived to be low, the benefits able to be obtained by non-commercial users of the same fisheries (including those who favour non-extractive use) will be correspondingly high.
32. The use of quota value as a proxy for the total wellbeing from fisheries is consistent with the World Bank's guidance on national wealth accounting. Following the 2007 economic crash the World Bank recognised the need to look past GDP as a measure of economic wealth. As Joseph Stiglitz, recipient of the Nobel Prize in Economics, puts it: "*Gross domestic product, the leading economic measurement, is outdated and misleading...It's like grading a corporation based on one day's cash flow and forgetting to depreciate assets and other costs.*" New Zealand's National Accounts which, in line with World Bank guidance, have already moved beyond GDP as a measure of the country's wealth, now equate quota value with the value of the fisheries natural asset.

### **(iv) ... but there are still opportunities to enhance the value that can be obtained from fisheries**

33. The bulk of New Zealand's current quota value was generated in the first decade of the QMS as the New Zealand seafood sector went through a rapid process of value creation and cost reduction driven by individual companies but made universal through market competition. In recent years, however, aggregate ACE and ITQ value has stabilised or even declined in real terms.
34. It is therefore worth considering how quota value can be further enhanced in order to continue to achieve the utilisation purpose of the Act and enable New Zealanders to provide for their wellbeing. An

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<sup>9</sup> Pramod, G. (2011). Evaluations of Monitoring, Control and Surveillance in Marine Fisheries of 41 countries, MCS Case Studies Report, Fisheries Centre, University of British Columbia.

<sup>10</sup> [http://www.stats.govt.nz/browse\\_for\\_stats/environment/environmental-economic-accounts/fish-monetary-stock-account-1996-2009/introduction.aspx](http://www.stats.govt.nz/browse_for_stats/environment/environmental-economic-accounts/fish-monetary-stock-account-1996-2009/introduction.aspx)

analysis of the historic and current performance of the QMS identifies two main lessons relating to the conditions under which quota value has been created or eroded – i.e., value is enhanced when management is more ‘enabling’ and value is eroded where rights are insecure.

## **(v) Value is enhanced when management is more enabling**

35. Although the purpose of the Act pre-supposes an enabling approach to the utilisation of fisheries resources, much of the current fisheries law supporting the operation of the QMS reflects pre-QMS (1970s and 1980s) views on the appropriate approach to fisheries management and compliance. As a result, New Zealand still has a highly centralised model of operational decision-making which creates a cumbersome and costly fisheries management burden for the Crown and the industry and which is very difficult to reconcile with the enabling approach required since 1996.
36. A handful of successful alternative management arrangements that are more enabling of quota owners have been implemented under existing law, including:
  - the devolved and contracted services performed by FishServe;
  - the collaborative fisheries management arrangements under the National Rock Lobster Management Group and the management agreement between the Deepwater Group and MPI;
  - industry non-regulatory management measures such as ACE shelving in rock lobster, paua and deepwater fisheries, fine-scale (within QMA) management in paua, orange roughy and hoki fisheries, and catch reporting and monitoring programmes such as the SNA 1 Fisher Agreement; and
  - the direct purchase of additional monitoring and research in several fisheries, including an additional \$1-3 million of science annually in deepwater fisheries (see case study in **Appendix 1**).
37. However, the uptake of these innovative approaches has not been widespread. To a large extent this is because – with the exception of FishServe – alternative governance arrangements are enabled not by the law, but only by the individual efforts and good will of the participants. In the absence of legislative support, these voluntary governance arrangements are vulnerable to uncertainty and do not encourage optimal levels of commitment and investment by either industry or government.
38. In contrast, FishServe, which is supported by the legislative framework for ASDOs in Part 15A of the Act, has not only been able to prosper and develop over time, but delivers fisheries services with significantly greater efficiency than equivalent government providers. Prior to 1999, registry services were delivered by the Ministry of Fisheries, with annual costs of around \$8.6 million recovered from the industry. Following the devolution of services to FishServe in 2001, costs steadily decreased to current levels of around \$4 million, with corresponding increases in customer satisfaction, technical innovation and quality of service delivery (see FishServe case study in **Appendix 2**).
39. The value enhancement achieved under non-statutory governance arrangements has not been systematically quantified but is evident from the fact that the industry continues to invest in these arrangements even though they entail upfront costs in excess of the default management settings. The higher cost of these alternative arrangements is in part a consequence of legislative uncertainty. In the absence of a firm statutory basis for alternative governance arrangements:
  - quota owners are often reluctant to invest in the direct purchase of fisheries research and monitoring services out of concern they may be required to ‘pay twice’ for similar services; and

- the transaction costs for quota owners and commercial fishers of developing and complying with non-regulatory management agreements can be extremely high. The lack of sanctions means that non-participating quota owners and fishers benefit from the actions of those who do participate but bear none of the costs themselves (the 'free-rider' effect), which in turn creates disincentives for full participation.
40. The value that is able to be created by enabling quota owners to manage harvesting activity, and the barriers to taking this approach further in the absence of statutory support, are both illustrated in a case study of ACE shelving in rock lobster fisheries in **Appendix 3**.

## **(vi) Value is eroded where rights are insecure**

41. A recent international study of the linkage between the security of property rights and asset value in fisheries regimes found that the market value of property rights is significantly reduced by insecurity arising from ownership disputes, illegal extraction and the possibility of government revocation of rights (Grainger and Costello 2014).<sup>11</sup> Grainger and Costello used data from New Zealand to demonstrate that the 1992 Maori Fisheries Settlement, which resolved a key source of insecurity in the ownership of commercial harvest rights, resulted in a marked 3.5 percent decrease in the dividend/price ratio of ITQ, signaling a significant (approximately \$1 billion) increase in quota value.
42. Under New Zealand's QMS, ownership claims have now been settled and ITQ is issued in perpetuity, reducing the risk of government revocation of rights. Nevertheless, the results of Grainger and Costello's study are informative in relation to the remaining sources of insecurity of rights, which include:
- the risk that spatial access to fisheries will be reduced by government decisions to allocate marine space exclusively to non-commercial fishing sectors, non-fisheries users, or marine protection;
  - the risk that the current commercial share of the catch of particular species (i.e., the TACC) will be reduced by government decisions to allocate a greater share of the catch to non-commercial fishers (exacerbated by the lack of specification of recreational fishing rights); and
  - illegal fishing, particularly for high value species.
43. The very fact that New Zealand's QMS has been so successful at creating value from fisheries means that the potential costs of reallocation are now higher for all existing and future users. Any risk of reallocation of this value is now a true 'rub point' in the system. Whereas prior to the QMS competing users had little to compete for, the stakes are now more significant for everyone.
44. For example, in the CRA 5 (Canterbury Marlborough) rock lobster fishery, from 1999 onwards, quota owners decided to 'bank' the increases in rock lobster abundance and take no TACC increases in order to achieve stability, security and enhanced economic performance. As a result, stock abundance is well above statutory minimum levels. The quota owners' strategy has benefited customary and recreational fishers by making it easier for them to harvest their entitlements. High abundance has contributed to an expansion of recreational catch well beyond the recreational allowance, heightening concerns among all sectors about how the TAC will be allocated in future. Unsurprisingly, CRA 5 quota owners now feel that their long-term commitment to and investment in their management

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<sup>11</sup> Corbett A Grainger and Christopher J Costello. Capitalizing property rights insecurity in natural resource assets. *Journal of Environmental Economics and Management* 67 (2014) 224-240

strategy may no longer return to them the benefits that they anticipated. Stability, security and enhanced economic performance will be compromised if increases in stock abundance are simply absorbed by other sectors in a 'passive' reallocation of fisheries benefits.

45. Grainger and Costello's findings suggest that as long as insecurity about reallocation remains unresolved, the value that New Zealand obtains from our fisheries resources, and hence the ability of our fisheries management regime to enable benefits to be provided to all New Zealanders, will be impaired. The objective is to find ways of enabling reallocation that do not destroy value.
46. The erosion of quota value is also inextricably linked to sustainability risk, particularly at the extremes. For example if quota value is declining (e.g., as a result of uncertainty about future catch allocation in a fishery with substantial recreational fishing), quota owners will benefit little from investing in the long term health of the fishery. As a result, they may become increasingly focused on short term gain at the expense of the resource, as is the case in many fisheries around the world where open and free access to the fishery resource prevails. Similarly, where quota value is increasing, the incentives to look after the capital that is creating that value (i.e., the fish stock) are strengthened. The converse is also true – i.e., for stocks subject to sophisticated (but costly) management that takes them well above and beyond bottom-line sustainability standards, significant additional value can be created – but the conditions for such investment will arise only if rights are perceived to be secure.

**vii) Once sustainability is ensured, two general courses of action are available to increase value: increase annual benefit and reduce future risk**

47. The lessons above about the creation and erosion of value are practical illustrations of the valuation formula used by Statistics NZ – i.e., that value is a function of expected ACE price (annual benefit) divided by a discount rate (a measure of risk). The first lesson describes ways in which annual benefit has been increased by enabling more sophisticated management arrangements, and the second shows how the risks associated with insecure rights have eroded, and can continue to erode, value.
48. Using value as a proxy for the wellbeing that can be derived from New Zealand's fisheries, it is therefore apparent that wellbeing can be maximised under two general courses of action, i.e.:
  - increasing annual benefits from fisheries; and
  - reducing the risk to the future production of those benefits.
49. The most important way of maximising wellbeing is to ensure that fisheries are used in a way that reflects their 'highest and best' use at any time. Within the commercial sector, or within the TACC, this is achieved through the provision of ITQ and ACE markets. However, New Zealand's fisheries management regime currently has no mechanisms to ensure that fisheries are being used in a way that reflects their most valued use between sectors, including non-extractive sectors.
50. In this respect we dispute the statement on MPI's Review website that "*the Fisheries Act 1996 provides a framework for **balancing** those often competing interests so that all can benefit.*" Under the heading 'Balancing competing interests' MPI goes on to explain how TACCs and allowances are set. However, there is no statutory basis for equating the determination of these allowances with some indeterminate process of 'balancing' competing interests. Our earlier analysis of the purpose of the Act makes it

clear that ‘balancing’ of this type would destroy wellbeing and the value of fisheries resources without any sustainability benefit.<sup>12</sup>

51. A similar analysis applies in relation to Government decisions made under the Fisheries Act (and other legislation) that purport to ‘balance’ various rights and interests by spatially separating different uses (including conservation or preservation) of marine resources. Although these decisions are sometimes presented in the guise of ensuring sustainability, in a Fisheries Act context it is clear that decisions of this type are utilisation decisions as they relate to choices about how to use fisheries resources and who should use them (including choices not to use a resource). It follows that the appropriate role of Government in these circumstances is to establish frameworks to enable individuals and groups to make these choices. Any other solution will destroy wellbeing for all New Zealanders without providing sustainability benefits.
52. The second way of encouraging the maximisation of benefit is to enable fisheries rights holders to adjust fisheries uses in response to changes to the needs or wishes of markets in fisheries goods and services. These changes must always preserve the sustainability ‘bottom-line’ but may involve dynamic or localised changes to fishing technology, product forms or market certification – for instance, by adopting management practices that are fine-scale, timely, and ecosystem-based. Sometimes these opportunities to capture value are ephemeral, available only until competitors respond to the same opportunity. Other times they involve significant investment with long pay-back periods. In these cases, rights owners need the security and confidence to make such investments.
53. The main ways to reduce risk to the future production of benefits focus on minimising the risk of expropriation of rights through reallocation of spatial access or catch shares to other users or uses. These are political rather than biological risks, although they may have biological (sustainability) consequences, as outlined in the above discussion on the relationship between low quota value and sustainability risk.

### (3) Creating value beyond sustainability

#### The concept

54. The narrative above describes New Zealand’s fisheries management regime as having been successful in ensuring sustainability, but still having some way to go in terms of getting the best value from our fisheries resources. MPI, on the Review website, notes that although New Zealand is fishing sustainability, “*local communities and international markets are taking a growing interest in the environmental impacts of fishing*”. These matters of ‘growing interest’ generally go beyond what it means to fish in a sustainable way.
55. The cutting edge matters of interest in fisheries management are more and more concerned with local effects, effects of harvesting on non-target associated species, benthic effects and community values and expectations. These concerns are increasingly local in scope or based upon value judgements that are of interest to some consumers but are not so universal as to be clearly an expression of the public good. The more sophisticated handling of these issues may well enhance sustainability (this would be a positive spinoff), but its primary purpose will be to significantly increase the benefits available from fisheries management and utilisation. These are value benefits from going beyond

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<sup>12</sup> See paragraphs 5 – 12 of this paper



sustainability and past the protection of the public interest in fisheries management which is, by its nature, always a guarantee of a minimum outcome rather than a maximum or even optimal outcome.

56. The challenge for the next stage of evolution in the New Zealand fisheries management system is therefore how to take it beyond sustainability. How do we identify and produce the 'icing on the cake' once sustainability has been ensured? From the analysis above it is clear that moving fisheries management beyond sustainability necessarily moves it beyond the realm of minimum standards, standardisation and the public interest (the role of the Crown) into the realm of enabling patterns of utilisation to evolve in a dynamic way in order to produce greater wellbeing, more benefit and higher value (the role of quota owners).
57. Statutory reform is required to enable quota owners to take these next steps, while maintaining a core government role of setting, auditing and enforcing bottom-line sustainability standards. The industry's reform concept is therefore to future-proof the Act so as to enable fisheries, on a case-by-case basis, to be managed under improved governance approaches:
- that enable greater flexibility in the way management functions are undertaken and services are purchased and delivered;
  - while also providing government, industry and other stakeholders with greater certainty that service delivery and implementation of management measures will meet sustainability and performance standards set by government.

## The anticipated outcomes

58. Appropriate enabling legislation will enable New Zealand's fisheries to evolve over the next decade to encompass governance and management approaches that enhance the value New Zealand obtains from its fisheries resources. For some fisheries, the Crown will continue to undertake all management functions from standard setting through to implementing management controls and delivering services. However, an increasing number of fisheries will be managed under improved governance models, in which the Crown has primary responsibility for the setting and auditing of appropriate standards and high level management strategies, and industry has a primary role in managing commercial activity within the government-set standards. Non-commercial stakeholders will share responsibilities, via mandated representative bodies, in fisheries which are also valued for their customary and recreational fishing opportunities.
59. This transition will promote:
- More efficient management systems, as a result of a focus on standards-setting rather than prescriptive management, and a stronger business focus in decision-making on commercial matters such as the purchase and delivery of fisheries services;
  - Innovative and 'fit for purpose' management as a result of the statutory provision for improved fisheries governance arrangements;
  - Increased annual harvestable surplus derived from the industry's \$4 billion capital base in quota as a consequence of the higher level of certainty created by the use of standards and industry engagement in the management of commercial fishing; and
  - Increased export returns and economic growth within New Zealand, particularly in regional New Zealand where much of the seafood industry and associated businesses are located.

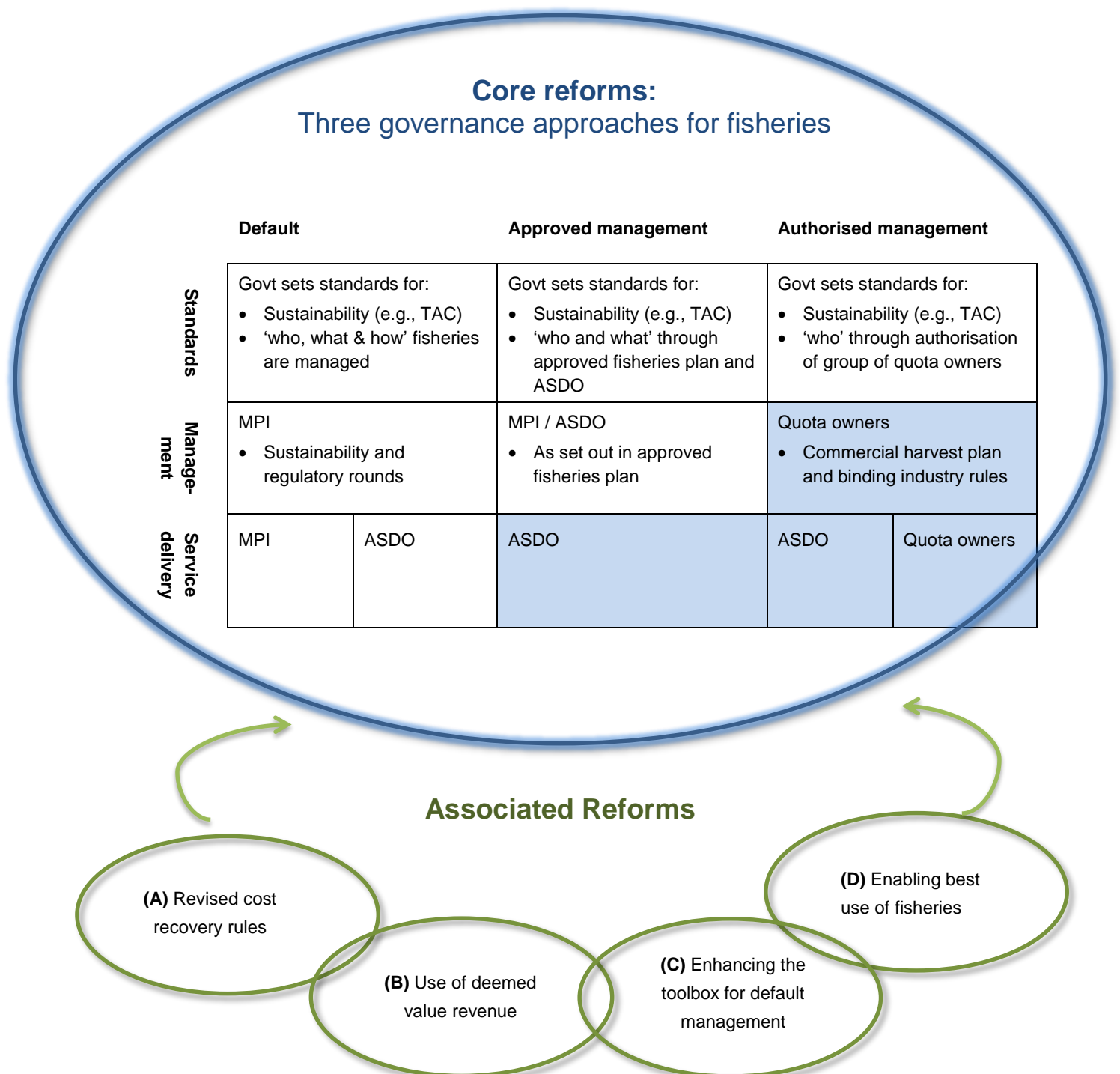
60. These outcomes will not only enhance the quota value of New Zealand's fisheries – they will also enhance the wellbeing that fisheries can provide for all New Zealanders.

## Overview of reform proposal

61. A snapshot of the reform proposal is provided in **Figure 1**. The centerpiece is a set of self-contained amendments to the Fisheries Act that will enable fisheries, on a case-by-case basis, to be managed under one of three governance arrangements (including the *status quo*, which will remain available). The three governance arrangements sequentially provide greater opportunity for value addition. They are:
- ***Status quo*** (default management regime), whereby government makes all management decisions and determines and purchases all the required services (e.g., research, monitoring, compliance) for a fishery;
  - ***Approved management***, whereby management measures and services for the commercial share of a fishery are defined in a fishery plan developed by quota owners and approved by the Minister, and delivered in whole or in part by an ASDO; and
  - ***Authorised management***, whereby an authorised group of quota owners purchases specified fisheries services and performs specified management functions for the commercial share of a fishery within government-set standards. The quota owners are authorised to use a statutory decision making tool to make rules by super-majority, subject to statutory checks and balances to prevent inappropriate behaviour. The rules would bind all quota owners and commercial harvesters in a fishery so as to provide MPI and fisheries stakeholders with confidence that industry management measures will be implemented in a transparent and enforceable manner.
62. A crucial aspect of the reform proposal is that the Crown remains responsible for ensuring sustainability, notably by setting the TAC and TACC. For example, industry measures implemented under Approved or Authorised Management could set a commercial catch limit that is lower, but not higher, than the TACC. No regulatory powers are transferred or devolved from the Crown.
63. The enabling design of the proposed amendments means that the statutory reforms will not by themselves alter the *status quo* management approach in any existing fishery. Together, the three governance arrangements provide options for fisheries management in the future. The improved governance approaches are not intended to be progressive or sequential, but instead recognise that one size does not fit all – different fisheries face different challenges and require different management approaches.
64. Moving from left to right in Figure 1, the governance approach becomes increasingly enabling and management more sophisticated. Management becomes finer in scale, more timely, more efficient, and more responsive to contemporary market demands. For these same reasons, management at the right hand side is also likely to cost more than default management systems. More sophisticated management approaches will therefore be adopted by quota owners only where there is clear value to be gained from making the additional investment. Fisheries with insufficient value or opportunity to justify more intensive management are more likely to remain within the *status quo* regime.
65. Importantly, the scope of activities that may be undertaken by quota owners under an Approved or Authorised Management regime is no greater than the activities available to them individually today. For example, quota owners can already individually make decisions on matters such as purchasing fisheries research services, using or not using their harvest rights, deciding where and when to fish, what to catch and how to catch it (all within the constraints of regulations), collecting fisheries data beyond regulatory requirements, and protecting the aquatic environment, seabirds and marine

mammals. Access to improved governance arrangements will enable quota owners *collectively* to manage this limited set of matters which they can already manage as individuals. This means that that there is no reduction whatsoever in the ability of the Government to regulate fishing to achieve the purpose of the Fisheries Act. Instead, quota owners will be enabled to adopt improved governance arrangements that better achieve the purpose of the Act and continue to create benefits 'beyond sustainability'.

**Figure 1: Snapshot of Reform Proposal**



66. Details on how Approved Management and Authorised Management are anticipated to work in practice are set out in **Appendix 4**.

## Targeted legislative changes

67. Amendments to enable Approved and Authorised Management can be inserted into the Act as self-contained enabling provisions, similar to the way in which fisheries plans are currently provided for in section 11A without interrupting the existing provisions of the Act. While Authorised Management will require a separate new enabling provision, the Act already goes a long way towards providing for Approved Management and the necessary statutory amendments are likely to entail only:
- minor changes to the scope of the functions, duties or powers that may be transferred to an ASDO under Part 15A; and
  - linking the expanded scope of ASDO functions to a fisheries plan approved under section 11A of the Act.
68. To the extent more detail is needed to enable specific aspects of the proposed reforms (for example, the prescription around how quota owners can make decisions that will bind all quota owners and commercial harvesters in a fishery), this can be set out in regulation rather than in the Act itself.

## Looking after other interests

69. The Approved and Authorised Management regimes are designed to ensure that economic benefits can be achieved without threat to other fisheries interests – in fact, as outlined earlier, the growth in quota value that is anticipated as a result of enabling more sophisticated management is indicative of enhanced fisheries benefits for all fisheries users, including those who favour non-extractive use of fisheries resources.
70. In addition to generally adding value to New Zealand's fisheries, the proposed reforms contain specific safeguards to protect the interests of other groups and individuals with an interest in fisheries resources, including:
- no changes in fisheries governance take place without the **approval or authorisation of the Minister** for Primary Industries;
  - existing **consultation opportunities** for non-commercial fishers and ENGOs, such as consultation by MPI prior to the approval of fisheries plans, will continue to apply. Representatives of the full range of fisheries interests will also be consulted when the Minister is considering a request from quota owners to move into an Approved or Authorised Management regime;
  - the management measures enabled under the improved governance regimes **apply only to commercial harvesting** and are **constrained entirely by government-set standards** such as the TACC, service performance standards, and the existing commercial fishing regulations; and
  - rather than immediate, widespread reform, the new empowering provisions will enable a **gradual, managed reform process** which builds on existing successful initiatives.

## Supporting reforms

71. The alternative governance approaches are supported by and complement four associated reforms, as follows.

### **A. Revised cost recovery regime**

72. Revised cost recovery rules are required for *status quo* fisheries management in order to properly reflect the cost recovery principles in section 262 of the Fisheries Act and to provide appropriate incentives for each fishery to move to an optimal management approach. The industry is engaged in the concurrent review(s) of cost recovery and anticipates that these matters will be satisfactorily addressed in due course.
73. For fisheries managed under Approved or Authorised Management, services delivered by an ASDO or purchased directly by quota owners will be removed from the cost recovery regime, significantly reducing a major 'rub point' between industry and the Crown.<sup>13</sup>

### **B. Return of deemed value revenue**

74. The setting of appropriate deemed value rates and the distribution of revenue from deemed value payments are two matters which are central to the effective operation of the Act's catch balancing regime. Revenue from deemed value payments is currently transferred to the consolidated fund as tax. This represents a loss of economic value to quota owners and reduces the capital value of quota across the whole fishery.
75. Ongoing discussions on a more appropriate distribution and use of deemed value revenues culminated in a proposal, jointly developed by the Crown and industry in 2005, that a portion of deemed value revenues should be returned to quota owners, as follows:
- **Commercial Only Stocks** — Deemed values for catch in excess of the TACC or agreed and binding lesser catch limit should be returned to quota owners in proportion to quota ownership;
  - **Shared stocks** — The proportion of deemed values for catch in excess of the TACC equal to the TACC/TAC ratio should be returned to commercial quota holders. The remaining portion of the deemed values on catches above available ACE should be tagged for provision of research and services for the stock that improve management of recreational and customary fisheries, and might be considered for such activities that contribute to the reduction of commercial over-catch.
76. The rationale behind this proposal is that where catch for a stock exceeds the TACC, this has a negative impact on the interests of the quota owners (who are often not those catching the fish) and, therefore, that the deemed value revenue collected by the Crown for such over-catch should at least in part be paid to quota owners in recognition of such impacts.<sup>14</sup>
77. Once alternative governance arrangements are enabled, the returned portion of deemed value revenue could be used by quota owners to assist fisheries to transition to optimal alternative

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<sup>13</sup> For services jointly funded by the Crown and quota owners, the agreed Crown share of funding would be transferred to the purchasing entity (e.g., the ASDO).

<sup>14</sup> The purpose of the deemed value regime is to make it easier to balance catch and ACE within the TACC – not to enable catching beyond the TACC. When the TACC has been exceeded, the deemed value regime has undercut the legitimate ACE market to the disadvantage of quota owners. In 'shared stocks', customary and recreational fishers may also be disadvantaged if deemed value settings allow the TACC to be exceeded, hence the proportional treatment (using the TACC/TAC ratio) of deemed values for catch in excess of the TACC in these stocks.



governance arrangements. This is primarily a policy decision and would require only minor legislative change to implement.

### **C. Enhancing the status quo toolbox**

78. Adding improved fisheries governance arrangements to the Act will address a large proportion of the management challenges currently facing fisheries by enabling 'tailor-made' management approaches. However, for many fisheries including those of lower value, the *status quo* is likely to remain the preferred management approach. There is therefore a need to review current management techniques, regulations and operations to determine whether minor changes to the Act or regulations (or to their implementation) can enable additional value to be obtained from these fisheries. For example, the increasing use of new technology and higher degree of transparency in fisheries operations (and, hence, more effective offence detection) means that it is appropriate to review the penalties regime so as provide a proportionate and scaled set of responses to those who break the law.
79. In particular, there remains a plethora of fisheries regulations, many of which have persisted for 30 years since before the QMS was introduced and are now redundant. These regulatory redundancies represent an unneeded business compliance cost to the industry. The introduction of improved governance approaches will put even more focus on redundant regulations. A programme of regulatory review linked to the implementation of Approved and Authorised Management would therefore be timely.
80. Further examples of enhancements to current fisheries management arrangements are provided in the submissions of Sector Representative Entities and seafood companies.

### **D. Enabling best use**

81. Enabling fisheries to be used in a way that reflects their highest value is an issue that would benefit from further policy development and, ultimately, legislative reform. Our preliminary analysis indicates that there is significant scope for developing solutions based on the stronger specification of all types of rights in the marine environment (including recreational fishing rights and non-extractive use rights) and enabling reallocations to occur in ways that add, rather than erode, value. Successful mechanisms for allowing fisheries to transition to their 'highest and best' use must build on the foundations of the QMS, rather than – as is currently the case – detracting from it.
82. Such solutions may be beyond the scope of the current reforms, but the review process nevertheless provides an opportunity to set in place measures that can move New Zealand's fisheries management regime in the general direction of the required reforms (even if only incrementally), rather than allowing value-destroying aspects of the current regime to endure or multiply.

## **(4) Alignment with broader Government objectives**

83. The alternative fisheries governance arrangements proposed in this paper are grounded in an analysis of the purpose of the Fisheries Act and the underlying principles of the QMS. However, the reform proposals will also enable New Zealand's fisheries resources to contribute more effectively to wider Government policy objectives. This is not surprising, given the alignment between the twin objectives of the QMS (creating value and ensuring sustainability) and the objectives of the Government's

Business Growth Agenda (BGA) – “*Improving resource base key to sustainable growth*” is the headline of a recent press release by Ministers Steven Joyce and Nathan Guy.<sup>15</sup>

84. The seafood industry is already committed to the BGA through a range of strategies including:
- building product value and securing international market access by gaining third party certification or other independent assurance;
  - moving up the value chain from commodities to premium products, and from frozen to fresh products;
  - investing in PGPs with the Government (Precision Seafood Harvesting, Greenshell mussel spat production);
  - investing in new technology, facilities, plant and vessels to support regional economies and employment; and
  - developing uses for all parts of fish to improve returns from more diversified products.
85. All these initiatives require significant industry investment which in turn, requires certainty in our operating environment and efficient, value-creating management regimes. We are confident that with an updated legislative framework that enables smarter, more efficient fisheries management, the seafood industry can make an even more significant contribution to New Zealand's growth. We anticipate that the reforms outlined in this paper will enable fisheries wealth to increase by NZ\$1 billion within five years through a combination of increased benefit and reduced risk.
86. Consistent with Statistics NZ's valuation formula, approximately half of the anticipated increased value would arise from a reduction in the discount rate for quota. Currently discount rates of eight to ten percent are typically used to calculate net present value of expected cash flow from an investment in quota. The ability to better manage fisheries risks through more sophisticated management under improved governance approaches will immediately reduce the discount rate. Even a relatively modest one percent reduction would add around \$400 million to quota value. The remaining increase in value would accrue over future years as value-adding management initiatives are implemented, generating increased annual benefits through reductions of costs (e.g., co-ordinated harvesting strategies that result in better vessel utilisation, lower labour and fuel costs) and increases in revenue (e.g., through improving fish availability and quality).
87. More generally, the proposed reforms will:
- create a **sustained long-term lift in growth rate** by future-proofing the Act with a suite of alternative management approaches, rather than providing a 'one off' growth opportunity;
  - encourage **business confidence** by setting clear standards and enabling fit-for-purpose fisheries governance arrangements, both of which improve certainty for businesses. For example, the anticipated increased use of harvest control rules specified in fisheries plans or commercial harvest plans will increase certainty around commercial catch limits;

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<sup>15</sup> Steven Joyce, Nathan Guy – 12 November 2015

- enable more **cost-effective service delivery** (e.g., for fisheries research, conservation services and observer services) by introducing alternative, more efficient means of purchasing and delivering services;
- enhance opportunities for **third party certification** of New Zealand seafood (as demanded by wealthy EU and US markets) by providing clear standards, tailored fisheries management, and improved science-based data collection and monitoring;
- create a **more certain regulatory environment** through alternative ways of making fisheries rules, ultimately improving the quality of fisheries regulation, and encouraging innovation; and
- enable a **more collaborative fisheries management environment** among firms, between government and industry, and with other fisheries users, thereby:
  - aligning Government and industry objectives;
  - taking some of the political heat out of fisheries decision-making;
  - reducing the cost of disputes for all parties;
  - facilitating industry participation in local and regional marine management initiatives; and
  - enabling the industry to pursue growth opportunities that require collaboration among quota owners (e.g., co-ordinated harvesting to make more efficient use of the fleet).

88. The proposed reforms also contribute to the cross-cutting themes of the BGA as follows:

- **Maori economic development:** The anticipated growth opportunities will provide a significant boost to Maori economic development directly through iwi quota holdings as well as through the 50 percent Maori ownership interest in Sealord;
- **Greening growth:** The 'beyond sustainability' concept builds on the existing environmental safeguards of New Zealand's fisheries management regime and will enhance the ability of seafood exporters to market the environmental pedigree of our seafood products;
- **Regulation:** The seafood sector is currently among the most highly regulated in the economy, so the regulatory reform that is anticipated to flow from effective implementation of improved governance arrangements is likely to have a profound positive effect on industry profitability; and
- **Regional economic growth:** The seafood industry provides jobs and good living conditions for local communities around the country, both directly and through flow-on effects. Around 20,000 New Zealanders are currently employed directly and indirectly by the seafood industry and a 2013 Government report identified that the bulk of these jobs are spread throughout the regions.<sup>16</sup> Examples of recent seafood industry investments in regions with limited employment opportunities include:
  - Westfleet Seafoods' \$12 million new fish processing factory in Greymouth, opened in 2014. The 3000sqm factory is a joint venture between Westfleet and Sealord and follows the \$14.5 million investment in the construction of a new wharf, the purchase of an additional vessel, and

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<sup>16</sup> iFAB 2013 Seafood Review

an increase in quota to be caught and processed on the West Coast. The Mayor Tony Kokshoorn said at its opening that the new factory was a turnaround for the Coast and predicted fishing was among the industries that would lead the coast's future; and

- Aotearoa Fisheries' new \$3 million fish factory at Waitangi on Chatham Island, due to open in December 2015. The iwi-owned company is the single largest employer on the island.

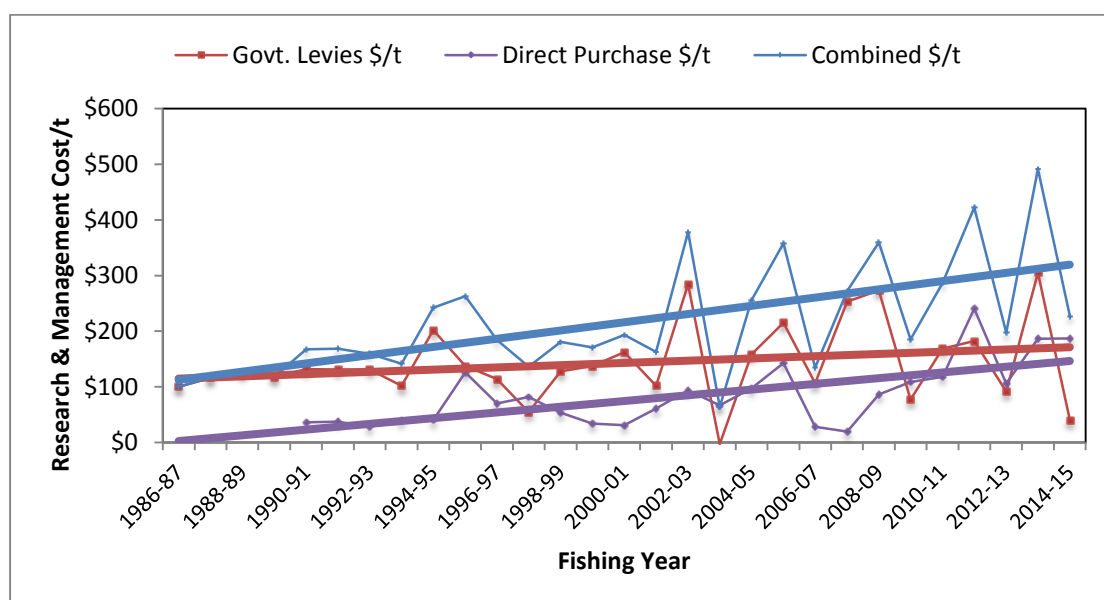
Legislative and policy reforms which enable the industry to continue to invest and grow sustainably will contribute to the BGA's focus on ensuring that regions have a spread of successful businesses.

## Appendix 1: Orange Roughy Case Study – direct purchase and innovation of effective management and science

Orange roughy quota owners have a long history of collaborative work to improve the sustainable management of New Zealand's orange roughy fisheries and enhance quota value. Their direct and collective actions have been successful over a period of 24 years, through the vehicles of The ORH3B Exploratory Fishing Company (1992 to 2000), The Orange Roughy Management Company (2001 to 2005) and now the Deepwater Group Limited (2006 to the present time).

In addition to the research, science and information required by government to provide for sustainable utilisation (for which quota owners have been levied ~\$100 million during the period 1984-85 to 2014-15), industry has invested an additional \$31 million in order to secure the certainty that key orange roughy fisheries not only meet New Zealand's standards but also to meet the more rigorous and higher standards demanded by the Marine Stewardship Council (MSC).

Over this time, the cost per tonne of orange roughy quota for government research and management has been relatively flat while the direct investment by quota owners into research, science and management has increased to the same level (see Figure 1).



**Figure 1:** Government levies and industry research and monitoring costs per tonne of quota for orange roughy fisheries 1986-87 to 2014-15

Through these additional investments, orange roughy quota owners have funded and delivered a wide variety of science and management initiatives, including:

- Undertaking collaborative exploratory fishing surveys leading to the discovery and scientific assessment of new orange roughy fishing grounds and stocks;
- Implementing adaptive management approaches for orange roughy through formal collaboration with government;
- Managing separate biological stocks within the TACCs set by government, by implementing Designated Sub-areas within QMAs and carefully managing ACE and spreading fishing effort to maintain collective

catches within the agreed sub-area catch limits and TACC. Performance within the agreed catch limits is monitored by MPI and relied upon by the Minister when making his sustainable utilisation decisions. Sub-area management has been successfully and progressively implemented by quota owners in a number of key fisheries since 1992: ORH3B (currently four stocks), HOK1 (two stocks), ORH2A (two stocks), ORH MEC (three QMAs amalgamated into a single stock), ORH1 (four management areas);

- Reducing catches (i.e. below the TACC), at times including fisheries closures by quota owners, has proven to be successful in promoting rapid rebuilding where the stock size has declined below the management target. ACE has been shelved in three fisheries since 1992, two of which have since rebuilt, have been reopened and are now under assessment by MSC. In addition, quota owners collectively shelve ACE to provide an allowance for research surveys in key fisheries;
- Since 1998, commissioning research and development of innovative acoustic survey methods to estimate orange roughy biomass and target strength, consequent to the ineffectiveness of traditional trawl surveys due to the aggregated distribution of orange roughy;
- Pioneering the use of industry vessels as acoustic research platforms to undertake biomass surveys – monitoring the recovery of closed fisheries and assessing current spawning biomass for key fisheries;
- Engaging in an industry research partnership with CSIRO to develop and implement multi-frequency acoustic survey technology on the head-line of bottom trawls to better estimate biomass, refine target strength estimates, and to discriminate between orange roughy and swim-bladdered species in mixed species aggregations;
- Commissioning aging studies, environmental risk assessments, stock assessments and management strategy evaluations to address information deficiencies and to meet the environmental sustainability requirements of the MSC certification;
- Supplementing regulated management controls with non-regulated controls, implemented by agreement between quota owners with support (and verification) by government and relied upon by the Minister for their effectiveness to support his sustainable utilisation decisions. These additional non-regulated controls include measures to avoid mitigate or remedy incidental interactions with seabirds, marine mammals and benthic habitats and the engagement of a full time Environmental Liaison Officer to educate, innovate and monitor deep water fleet activities; and
- Enhancing conservation and biodiversity protection through the development and promotion of large representative spatial closures, implemented by government as Benthic Protection Areas which collectively close 30% of the New Zealand EEZ to bottom trawling.



## Appendix 2: FishServe case study

Commercial Fisheries Services Ltd (FishServe) is a wholly owned subsidiary of Seafood New Zealand, which has been providing excellent registry, data management and fisheries administration services for the past 17 years.

FishServe operates under a unique set of service delivery arrangements which allow commercial participants to have increased control and authority over the administration of their property rights, while operating within a rules framework set and monitored by the Crown.

### Establishment of FishServe

In August 1998, after several failed attempts, FishServe was outsourced from the then Ministry of Fisheries, when the government and the industry worked in partnership to successfully implement a new service delivery paradigm.

In the first instance, a tri-partite contract was established between the Crown, Commercial Fisheries Services Ltd and a third party outsourcing agent. For approximately 12 months this model provided the Crown assurance that the industry had sufficient maturity to take such a responsibility, but it became apparent that the incentives of the three parties were not well aligned. Industry soon realised that greater efficiencies could be made if profit was not a motivation for the service provider, and as a result agreed with the Crown that it was not necessary for the tri-partite arrangement to continue, and the relationship with the outsourcing agency was terminated.

In 2001, the next stage in its evolution was the introduction of devolved responsibility, which involved the transfer of responsibility for a large portion of the outsourced services to the designated Approved Service Delivery Organisation (ASDO). Effectively this meant that the Ministry of Fisheries no longer had any statutory responsibility, obligation or mandate to deliver the identified services, and instead the ASDO (operating as FishServe) was directly accountable to the Minister of Fisheries (in the stead of Ministry of Fisheries) for the prescribed services.

The services provided by FishServe are either still performed under contract to MPI or are devolved to the ASDO as follows:

Contracted (Crown Responsibility)	Devolved (ASDO Responsibility)
Quota Allocation	Quota <ul style="list-style-type: none"><li>• Register Management</li><li>• Property Rights Transfers</li></ul>
Fishing Permits	ACE <ul style="list-style-type: none"><li>• Register Management</li><li>• Property rights transfers</li><li>• Annual Allocations</li></ul>
Crown Revenue Management <ul style="list-style-type: none"><li>• Cost Recovery levies</li><li>• Deemed Value invoicing</li><li>• Debt management</li></ul>	Client Registration/Management

Aquaculture Registers	ACE Balancing <ul style="list-style-type: none"> <li>• Monthly Harvest Return Processing</li> <li>• Calculating Catch against ACE</li> </ul>
Foreign Licensed Access and Special Approvals	Licensed Fish Receiver Licensing Returns processing
High Seas Fishing Permits	Fishing Vessels <ul style="list-style-type: none"> <li>• Register Management</li> <li>• Certificates of registration</li> </ul>
Catch Effort Returns <ul style="list-style-type: none"> <li>• Data Entry</li> <li>• Validation</li> <li>• Overdue management</li> </ul>	Caveats and Mortgages <ul style="list-style-type: none"> <li>• Registration</li> <li>• Removal</li> </ul>

### Governance of the ASDO

Critical to the success of FishServe has been the rigor of the appointment process for the ASDO, which requires, amongst other things:

- Demonstrated support of the majority of quota owners;
- Financial viability – including willingness to re-invest;
- Independence; and
- Policy neutrality.

To ensure FishServe is removed from inappropriate influence and can maximise its service efficiency, its constitution determines that it must have an independent chair and none of its directors may be industry sector representative executives and only one director may be a director of its parent (SNZ).

This governance has unburdened FishServe from the potential influence of individual commercial participants and from industry politics at large.

### Performance Framework

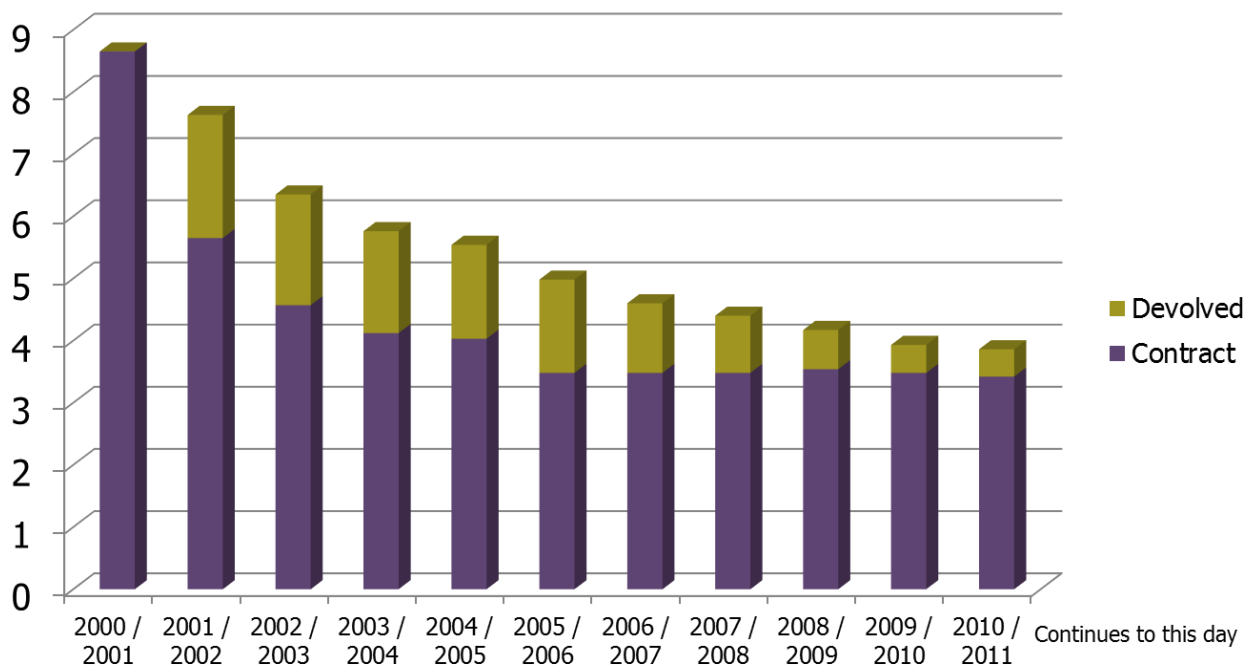
To give both the Crown and the industry confidence that the services are being delivered with integrity and to a minimum quality standard, a performance framework underpins the provision of all services.

This framework includes standards and specifications set by the Crown to determine information, process and performance minimums. FishServe must operate in accordance with these specifications and report monthly to MPI on any discrepancies. To be assured that the organisation continues to deliver according to these requirements, FishServe undertakes a comprehensive internal audit programme which traverses all aspects of its business. FishServe continues to meet industry expectations that it will provide services well in excess of these minimum standards.

The Crown has a regulatory penalty regime which it may impose for any breach of standards and specifications. In the 17 years of its operation FishServe has never been penalised for a breach of standards.

## What has been achieved?

At the time of its first outsourcing in 1998, FishServe employed 85 staff and cost the industry \$8.65 million. Over the past 17 years constant improvements in service delivery and investment in technology means that FishServe now has a staff of 35 and costs the industry \$4 million. The following graph plots the period of the largest cost reductions. Since 2011 savings have levelled off as there is additional work to be done in improving services which are still contracted (rather than devolved), so it can be expected that there are still further benefits to be had.



One of FishServe's greatest achievements has been the establishment of its subsidiary company, FINNZ Ltd. It became apparent that following the design and build of software to support its services, FishServe staff had built a significant IT capability which could be leveraged for the benefit of industry. As a result, FINNZ was established to use those skills either offshore, or in other sectors within New Zealand, with any profits being used to offset the cost of FishServe's statutory services. Today, FINNZ makes a significant contribution to the reduction in costs recovered from industry, and in the year 2014/15 paid a dividend of \$430k to FishServe.

FishServe's success would not be possible without the full support of its levy payers. The industry has on many occasions expressed its support of the organisation and its satisfaction with the quality of service FishServe provides. More specifically however, two recent situations have arisen in which industry has been asked to provide more than just lip service to this support. The first was in 2012 as part of FishServe's application to renew its ASDO status. Every sector representative entity and commercial stakeholder organisation was asked to document its support for FishServe as part of the application. Everyone did so. The second was in early 2014 when industry was asked to fund a \$5 million re-investment in new systems. This required the introduction of a new levy, recovering an additional \$300k per annum over the next 6-7 years. The consultation process garnered nearly 100 percent support.

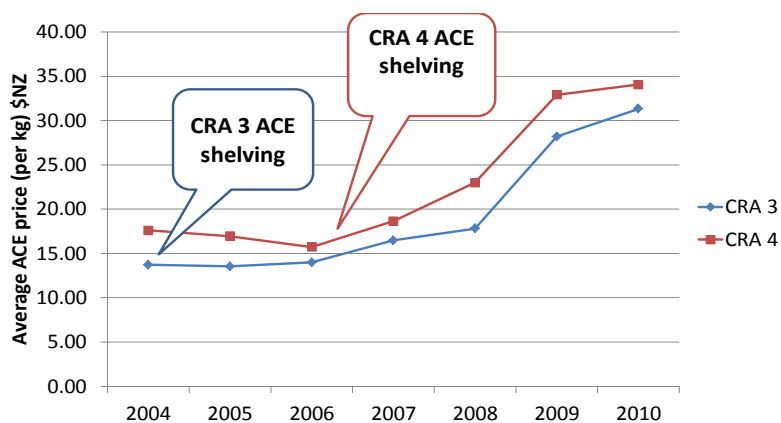
The support of levy payers allows FishServe to continuously improve its services and look for opportunities to work alongside industry to add value to the business beyond the statutory services for which it was established.

## Appendix 3: Rock lobster ACE shelving case study

'ACE shelving' is achieved by each quota owner in a stock voluntarily transferring an agreed portion of their ACE to a single (non-fishing) third party so that it is unavailable to harvesters. In order to be effective, shelving requires a high level of support across all quota owners in a stock. Quota owners will not shelve their ACE unless they are confident that the other quota owners are also foregoing a share of their catch. Experience over the years has shown that where a strong case for shelving is made, obtaining the agreement of the owners of the first 75 percent of quota shares is relatively straightforward, but that significant time and effort is required to secure the support of the remaining quota owners.

In 2004, industry participants in the Gisborne (CRA3) rock lobster fishery observed that catch per unit effort (CPUE) was declining and ACE price was low. The quota owners took action and agreed to shelve around 42 percent of their ACE with the aim of rebuilding the fishery. The shelving was continued in the 2005 season. However, a difference of opinion over legal interpretation led to the Minister of Fisheries reducing the TACC from 327 tonnes to 190 tonnes – bringing it down to the level achieved by the ACE shelving. The Minister's TACC decision was perceived by the industry as indicative of a lack of government confidence in industry management. This caused the CRA3 industry group to implode. It took at least three years for a new industry group to form and gain the confidence to once again embark on industry management initiatives.

Several years later, a decline in stock abundance was observed on the Wairarapa coast. In response, the CRA4 industry participants successfully shelved 42 percent of their ACE in 2007 and in 2008 increased the level of shelving to nearly 58 percent of the TACC. In 2009 the shelving was replaced with a TACC cut. The industry agreed that a TACC cut was preferable to shelving the same amount of ACE because the localised rebuilding of the fishery meant that some individual quota owners would no longer voluntarily support shelving.



The catch reductions enabled CPUE to rebound in both fisheries, resulting in subsequent TACC increases and significant economic benefits for CRA 3 and CRA 4 quota owners. Increases in ACE and quota value following the shelving more than compensated for any loss of catch during the shelving, as shown in the diagram.

These economic benefits were greater than would have been achieved had the industry relied only on a TACC cut because quota owners were able to immediately respond to the observed decline in CPUE by shelving at the beginning of the next season, whereas the government process of altering the TACC entails a time lag of around 18 months. The ability to shelve ACE within the 'bottom-line' sustainability standard of the TAC/TACC provided greater certainty, resulting in reduced risk to the stock and higher economic value for the industry.

## Appendix 4: Approved and Authorised Management in practice

Details on how Approved Management and Authorised Management are expected to work in practice are set out in 'Question and Answer' form below. While considerable initial policy development has been undertaken, further discussion and fine-tuning of the details is required both within the industry and between the industry and MPI before the mechanics of the improved governance arrangements can be confirmed.

### a) What checks and balances will apply?

Standards are an important part of the framework for improved governance arrangements as they help provide certainty for all parties (government, quota owners and others with an interest in fisheries resources) that the purpose of the Act will continue to be achieved under alternative governance arrangements. Standards, together with performance monitoring and statutory consequences of non-performance, create the necessary checks and balances around the use of Approved and Authorised Management. The checks and balances need to provide certainty for both the Crown and industry, while also encouraging innovation and enabling a transition to optimal management approaches. In order to achieve the desired mix of certainty and enablement, standards should be outcome-focused and high-level.

It is therefore proposed that standards for Approved or Authorised Management should be straightforward (i.e., a relatively low barrier to entry) but the consequences of failing to perform should be significant. Severe consequences for poor performance provide a strong incentive to drive performance, rather than front-loading the system with unachievable entry criteria and prescriptive performance standards.

Consequences of non-compliance with the performance standards by the quota owner group would be specified in law and may include the ability for the Crown to remove the authority of the group and revert to *status quo* management and to implement any necessary corrective actions to ensure the purpose of the Act continues to be met.

Crucially, the Minister will continue to be responsible for setting sustainability standards. The regulatory framework will continue to operate, subject to any revisions to update fisheries regulations, as will agreed service level standards such as MPI's *Research and Science Information Standard*.

In addition, government may also set standards for the 'who, what and how' of fisheries management – i.e., standards for: *who* has responsibility for particular functions (providers); *what* is to be achieved (outcomes); and *how* it will be achieved (inputs). These additional standard-setting roles vary across the three governance arrangements as follows (and as illustrated in Figure 1):

- **Status quo:** Government sets provider, outcome, and input standards ('who, what and how') so that fisheries users can be confident the government is delivering services efficiently and effectively. Many of these standards are already in place and working well (e.g., MPI's *Research and Science Information Standard for New Zealand Fisheries*) but in other cases greater transparency is required;
- **Approved Management:** Government sets provider standards through the approval of an ASDO under Part 15A of the Act ('who') and approval of a fisheries plan outlining management and service delivery outcomes ('what'), but the details of 'how' the services will be provided are the responsibility of the approved providers; and
- **Authorised Management:** Government sets standards that a group of quota owners must meet in order to satisfy the Minister that they have the mandate to take on this responsibility ('who'). It is

then the responsibility of the authorised group to determine what services they will purchase or provide and management measures they will implement ('what' and 'how') within the constraints of the regulatory framework.

## b) How would a fishery move to a new governance approach?

Quota owners may apply to the Minister to use one of the improved governance approaches. The application may relate to a single stock, a species, or a group of stocks in an area. Standards that must be met in order for the Minister to consent to the application will be clearly specified, as follows:

- For Approved Management, the standards that the fisheries plan must meet in order to be approved by the Minister as a basis for management of the fishery, plus any applicable standards relating to ASDO service delivery;
- For Authorised Management, the standards that the quota owner group must meet in order to operate under Authorised Management. It is likely that this will be specified as a proportion of quota ownership support – for example, section 25 of the Fisheries Act (alteration of quota management areas) currently requires the agreement of owners of at least 75 percent of quota shares in affected stocks.<sup>17</sup>

The Minister will assess the application against the standards, consult under section 12 of the Act and, if approved, add the fishery to a Schedule to the Act (as is the case, for example, for Third Schedule stocks managed with an alternative TAC).

The Minister's consent will identify any terms and conditions as well as arrangements for Crown monitoring of the performance of the relevant services and functions. The consent would have the effect of either:

- approving a fisheries plan under section 11A of the Act (which then forms the basis of an Approved Management regime, with specified services delivered by an ASDO); or
- authorising management by a quota owner group, including authorisation to purchase specified services and use a binding majority decision-making tool.

## c) What would an application cover?

For **Approved Management**, a fisheries plan forms the basis of the application. The fisheries plan would be developed by quota owners, consistent with the requirements of any outcome standards set by MPI. The fisheries plan would specify only the services and measures necessary to manage the commercial share of the fishery.<sup>18</sup> The quota owners would be required to consult with MPI to ensure that the services and measures to be delivered by an ASDO under Approved Management complement the services and measures that continue to be provided by the Crown and that the division of responsibilities is specified to the satisfaction of both parties.

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<sup>17</sup> The required level of support may also be specified as a proportion of quota ownership as well as a proportion of quota owners (e.g., 50 percent)

<sup>18</sup> In an ideal world, all rights holders in a fishery (commercial and non-commercial) would participate directly in the development of a fishery plan. However, recreational stakeholders currently lack the mandate and capacity to participate in planning, fund service procurement, and implement management measures for their sector. In the longer term, non-commercial stakeholders may be in a position to participate in Approved Management.



The fisheries plan would specify:

- management objectives and strategies – including for example, harvest control rules to generate TAC/TACCs based on modelled outputs, or adaptive management programmes where a fishery is managed under a higher TACC (consistent with sustainability standards) and more intense data collection; and
- the services that will be delivered, and who will purchase and deliver the services (including identification of services to be provided by an ASDO).

For **Authorised Management**, quota owners may choose to set out their management strategies and services within a Commercial Harvest Plan, but the approval of such a plan lies with the quota owners, rather than the Minister. An application for Authorised Management would need to satisfy the Minister that the applicants:

- have secured the required level of support from quota owners;
- have worked alongside MPI to ensure that:
  - the management measures for the fishery (as specified in the Commercial Harvest Plan and any applicable MPI planning document) are compatible; and
  - the service procurement and delivery responsibilities are clearly specified and agreed between the quota owners and MPI.

For both Approved Management and Authorised Management, quota owners would be expected to develop detailed specifications for service delivery as part of their application. MPI would then evaluate the application against the relevant output standards.

#### **d) What services can be delivered under Approved or Authorised Management?**

The set of fisheries services which may be purchased or provided under the improved governance models initially includes research services (fisheries research and conservation services) and data collection (observers and other information gathering and monitoring activities), but could be expanded further in time.

Services delivered under Approved or Authorised Management would be required to comply with government-set service delivery output standards. For example, industry-purchased research would be required to meet standards for peer review consistent with those applying to government purchased research.

A fishery managed under Approved or Authorised Management need not have all services delivered by an ASDO or purchased by quota owners. For Approved Management, the fisheries plan provides for services to be delivered, as specified, by either MPI or an ASDO. For Authorised Management, quota owners are authorised to reach agreement with MPI on which services will be purchased directly and which will continue to be provided by MPI.

#### **e) What else is required for Approved Management?**

Approved Management has two key components – the approval of a fisheries plan by the Minister, and the delivery of services by an ASDO. The Act already provides for both fisheries plans and ASDO service delivery, although to date they have not been implemented in a way that fully meets the original intent and potential of the statute.

Section 11A (fisheries plans) was inserted in a 1999 amendment that was developed against a background of debate on the future role of key institutions in fisheries management. At that time the Ministry of Fisheries argued that "*rights holders should be given increased responsibility to collectively manage fisheries within appropriate sustainability and service parameters*".<sup>19</sup> However, the opportunity provided by section 11A was not able to be readily taken up by rights holders, in part because of significant uncertainty about the standards that a fisheries plan would have to meet in order to be approved by the Minister. Enabling an Approved Management approach therefore entails:

- a policy shift and the development of standards to enable section 11A (fisheries plans) to be used in a manner consistent with its original intent;
- development of MPI operational processes to facilitate plan approval; and
- targeted amendments to Part 15A to optimise the transfer of service provision to an ASDO.

#### **f) How does Authorised Management differ from Approved Management?**

In contrast to Approved Management— where the Minister approves a fisheries plan and a service delivery agency – under Authorised Management, the Minister authorises a group of quota owners to take responsibility for managing commercial harvesting activity within the constraints of the regulatory framework. Authorised Management enables quota owners to:

- purchase specified fisheries services (the scope of services is described above); and
- use a binding decision making tool to:
  - make rules to manage commercial harvesting – for example, rules for commercial catch spreading, area and seasonal closures, specification of harvesting practices to meet consumer expectations, data collection, and other management adjustments within the constraints of the regulatory framework; and
  - adjust annual commercial harvest levels within a baseline TACC, whereby every quota owner in the relevant stock formally foregoes the opportunity to harvest an agreed proportion of their ACE for the fishing year. For example, ACE management measures may be used to increase stock abundance or to more effectively reconcile individual stock harvest levels within mixed species fisheries.

These types of management activities are already implemented in a range of fisheries on a voluntary or non-regulatory basis. However, voluntary management measures are constrained by their inability to deal with free-riders or those who simply decide not to comply with non-binding industry arrangements. The transaction costs of obtaining and maintaining the agreement of all affected quota owners and commercial fishers to comply with non-binding industry-developed rules has proven to be extremely challenging. Successful implementation of Authorised Management therefore depends on authorised quota owners being able to make binding decisions so as to provide MPI and fisheries stakeholders with confidence that industry management measures will be implemented in a transparent and enforceable manner.

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<sup>19</sup> Ministry of Fisheries. *Vision for Fisheries Management* (1997)

### **g) How would the binding decision-making tool work?**

The proposed approach to the development of binding rules is one of super-majority decision-making, whereby harvest rules approved by owners of, for example, at least 75 percent of quota shares in the affected stock bind all quota owners and commercial fishers in that stock. This type of decision making is based on company voting procedures and reflects quota owners' collective interests in the management of their harvest rights, which are akin to owning shares in a company. Industry harvest rules would be proposed by groups of quota owners, typically following discussions with harvesters.

Procedural checks and balances would ensure that the regime is not discriminatory or oppressive on any party affected by the harvest rules. For example, the legislation would provide any quota owner, commercial fishing permit holder, or industry representative body with the right to object to the introduction of a proposed industry rule that affects them. Grounds for objections to proposed industry rules would be set out in law and objections would be investigated and resolved by an independent authority.

Rules would be approved either directly or indirectly by the Minister for Primary Industries and then notified in the Gazette and to affected parties. A register of rules and proposed rules would be maintained by FishServe.

It is proposed that an independent compliance regime would operate (i.e., independent of both MPI and the quota owners who set industry rules), together with a tiered penalty system for breaches of industry rules. The exact form of the independent compliance regime requires further consideration, but key features are that it should be streamlined and efficient, fully industry-funded, well aligned with (but not duplicating) existing government compliance services, and should make use of existing structures and judicial processes where possible.

### **h) Where does collaborative management fit?**

Although Approved and Authorised Management are focused on enhancing the management of commercial fishing, the use of explicit fisheries plans or commercial harvest plans (and, in the case of Authorised Management, binding industry rules), will facilitate alignment of government and industry management measures, and improve relationships between the commercial sector and non-commercial sectors. Once quota owners are able to bind each other and those who fish their quota to agreed management measures, the industry will have a secure and meaningful basis from which to:

- participate in collaborative management arrangements, alongside MPI and other fisheries stakeholders; and
- participate in local marine management initiatives, together with other fishing sectors and local communities.