Fisheries Plans: A Path to Greater Stakeholder Responsibility?

Kim Drummond1 and Nick Wyatt2
Ministry of Fisheries
New Zealand

Abstract.

New Zealand’s fisheries legislation generally sets out a centralised and prescriptive management framework, predominantly based on annual decisions on both management measures and service delivery. A recent amendment provides for the Minister of Fisheries to approve fisheries plans, but does not specify what needs to be included in a plan or how one is to be developed.

Such open-ended enabling legislation may allow stakeholders to collectively develop initiatives for managing fisheries in which they have an interest. They can do so in a way that provides a long-term strategy for managing a fishery or fisheries, integration of decisions on management measures and service delivery, and some control over the management costs that they will face.

If a fisheries plan is to be an effective way to meet stakeholder needs, without compromising the Crown’s objectives, it is likely that stakeholder groups will have to lead the development and the implementation of the plan. This has implications for the institutional arrangements that allow groups to make collective decisions and ensure compliance with their initiatives. These criteria are proving to be a difficult barrier to overcome, but a number of groups have made a start in developing their own fisheries plans.

Keywords: fisheries plans, collective action, integrated decision-making

1. BACKGROUND

The principal piece of fisheries legislation in New Zealand is the Fisheries Act 1996. The purpose of the Act is:

“to enable utilisation while ensuring sustainability”,

the terms “utilisation” and “ensuring sustainability” each being defined within the Act.

The legislation sets out a framework that manages fisheries largely through centralised decision-making processes. The Minister of Fisheries makes the decisions on most important matters. These are the setting or amending of “sustainability measures” (statutory measures made for the purpose of ensuring sustainability, including the Total Allowable Catch (TAC)), the allocation of the TAC between commercial and non-commercial sectors, and the nature, extent and cost of the services required to support the decisions. The Minister makes these decisions following consultation with stakeholders, and upon the advice of the Ministry of Fisheries.

The nature of the legislation, and the processes that the Ministry has developed to support Minister’s decision making, means that different types of decision are often made in isolation. For example, annual decisions on sustainability measures are generally made prior to the decisions on the services that may support those measures. In addition, decisions are usually applied generally—the so-called “one size fits all” approach. In turn, this means that the Minister’s decisions are unlikely to meet all of the aspirations of stakeholders who utilise the resource, regardless of the extent of consultation that occurs beforehand.

1 Author for correspondence: drummonk@fish.govt.nz.
2 Now with the Ministry of Education, New Zealand
The Ministry has been reforming its internal processes, over the last few years, in order to facilitate better stakeholder participation, but there is a limit to how effective these processes may be. There are two main limiting factors:

1. As a government agency, the Ministry’s principal role is to achieve the Crown’s core objectives (in this case, provide access to fisheries resources within sustainable limits), at the minimum cost to the Crown. The Ministry is not resourced to carry out discretionary work on behalf of stakeholders.

2. Government processes revolve about the annual budgetary cycle. The timing of this cycle does not coincide with the fishing year for any of the commercial species. The annual nature of the decision making provides a barrier to the adoption of multi-year plans, while the mismatch in timing provides a barrier to co-ordinating decisions on government services with those on sustainability measures.

2. NEED FOR CHANGE

Over the last few years, the Ministry and other groups have considered alternative approaches to decision making. The idea of using multi-year plans had previously been attempted—the precursor to the Fisheries Act 1996, the Fisheries Act 1983, contained a sizeable section devoted to the development and approval of what were termed fisheries management plans (FMPs). However, the process for developing FMPs was centralised and cumbersome. A great deal of consultation was involved, a large amount of detail had to be prescribed and worked through, and consequently no plans were ever approved.

A simpler and more enabling approach was adopted in a 1999 amendment to the Fisheries Act 1996, which provided for fisheries plans. The amendment states:

(1) The Minister may from time to time approve, amend, or revoke a fisheries plan.

(2) A fisheries plan approved under subsection (1) may relate to 1 or more stocks, fishing years, or areas, or any combination of those things.

(3) Without limiting anything in subsection (2), a fisheries plan may include—
   (a) Fisheries management objectives to support the purpose and principles of the Act;
   (b) Strategies to achieve fisheries management objectives, which may include—
       (i) Sustainability measures set or varied under any of sections 11, 13, 14, and 15:
       (ii) Rules to manage the interaction between different fisheries sectors:
   (c) Performance criteria to measure the achievement of the objectives and strategies:
   (d) Conservation services or fisheries services:
   (e) Contingency strategies to deal with foreseeable variations in circumstances.

The new provisions offer suggestions as to what a plan may relate to, and what a plan may include, but they do not limit either the scope or the contents. The main constraint is that the plan must fall within the scope of the purpose of the Act. Nor does the amendment set out the process for developing the plan (although there is a statutory approval process involving consultation) or who is responsible for its development.

These omissions were not oversights. The intention was to allow flexibility in the approach taken to developing a fisheries plan, so that alternatives to the prescriptive, government-led processes could eventuate.

The lack of prescription does not mean that fisheries plans will lack power. An associated amendment to the Act provides that:

Before setting or varying any sustainability measure under this Part or making any decision or recommendation under this Act to regulate or control fishing, the Minister must take into account—
   (a) Any conservation services or fisheries services; and
(b) Any relevant fisheries plan approved under this Part; and
(c) Any decisions not to require conservation services or fisheries services.

This amendment firstly seeks to promote integrated decision making, within or without the context of a fisheries plan, but more importantly acts as a constraint on the Minister. Having approved a fisheries plan, the Minister will need good reason for not acting in accordance with the plan in subsequent decisions. That obligation, in turn, provides certainty for proponents of approved plans.

3. AN EMERGING FRAMEWORK FOR FISHERIES PLANS

Initially, it was anticipated that the Ministry of Fisheries might play an active role in the development of at least some fisheries plans, in consultation with stakeholders. The idea was that some active assistance from people who had some “front line” fisheries experience might assist in getting a particular plan up and running. However, this approach soon resulted in the identification of potential hurdles to successful plan development.

The first concern was that a principal driver for the introduction of fisheries plans was unlikely to be achieved. This was the hope that stakeholders could achieve their aspirations, without compromising the Crown’s objectives. The favoured view was that the plan had to be “owned” by the stakeholders, hence stakeholders needed to lead the development and writing of plans, not the Ministry. Since much of the experience and knowledge of how any particular fishery is managed resides within the Ministry, technical advice to those developing the plan still needed to be provided for. But it was considered that, if the Ministry took the lead in developing a plan, that approach would take ownership of the plan back into government.

A secondary concern was the potential for conflicts of interest to arise within the Ministry. The Ministry is expected to provide advice to the Minister of Fisheries on whether a proposed plan that has been submitted should be approved or not. If those people within the Ministry, with the best knowledge of the fishery, have been involved in developing the plan, there is a possibility that the proposal will not be exposed to the same degree of scrutiny as if it had been developed by a third party. Arguably, the same concern arises under existing regulatory processes, although less conflict might be expected when the government’s own objectives are the primary focus from the outset.

The initial considerations also led to the realisation that enabling the approval of a plan would not in itself bring about improved fisheries management. If the proposed implementation mechanism for a plan required a new regulatory framework to be established, then there would be a high risk of fisheries management costs escalating and a decreased potential of buy-in from many stakeholders. The history of fisheries management in New Zealand has largely been of government responsibility for making decisions, putting rules in place, determining and purchasing (and sometimes actually providing) services and ensuring compliance with rules and with service standards. The role of stakeholders has been restricted primarily to lobbying government to carry out its powers, duties and functions in ways that will most benefit the stakeholders. A plan, that has been proposed by stakeholders, but which contains only ways in which the government should act to meet the interests of the stakeholders, is no advance over the current regime, and will probably cost the Crown more.

Thus the Ministry concluded that, in addition to being responsible for writing a plan, stakeholders should be largely responsible for implementing it. This is an even bigger step for fishery participants to take, as it takes them outside their current operating modes. But it does not mean that the Ministry is looking to abandon stakeholders. New Zealand already has fisheries management processes, under government implementation, in which stakeholders can participate. Fisheries plans provide an alternative to these processes. Government will continue to run its own processes, and stakeholders can decide for themselves the processes (or mix of processes) they wish to participate in. The difference is that under the framework that the Ministry is settling on, stakeholders will be responsible for finding the resources needed to implement processes under a
fisheries plan, while government will be responsible for employing its own resources, according to its own priorities, to implement its own processes.

Of note is that fisheries plans do not change the responsibility for management decisions. The Minister of Fisheries still makes the important statutory decisions, but a fisheries plan provides an alternative path for advising the Minister on those decisions. Thus stakeholders can take on greater responsibility for satisfying the Minister that management decisions will be supported by appropriate services and rules, rather than relying on the Ministry for this.

Since an important Ministry role will be to advise the Minister on whether or not to approve a proposed plan, the Ministry needs to provide guidance on what it expects to see in a plan that is submitted by stakeholders. The desirable contents of a fisheries plan are seen to be those that one might expect to see in any high-quality planning document:

- **Scope**—since the legislation does not limit the scope, the plan itself should say what it is dealing with. It might be one or two fish stocks, or it might be the activity of fishing in a certain area, or it might have a scope that expands over time from a single stock to an entire ecosystem.
- **Goals and objectives**—the Fisheries Act and a range of strategy documents set out the government’s objectives for managing fisheries, but they do not pay as much attention to what stakeholders want. The plan should state what these objective are, and demonstrate that they are not incompatible with the government’s.
- **Strategies and rules**—the plan should describe how the objectives will be met, by setting out the steps needed to get there. These strategies will need to be implemented through rules that bind the people whose activities are covered in the plan.
- **Services**—what tasks need to be carried out to support the strategies? Research, for example, is required to support stock assessments that form part of a stock level strategy. A plan should set out what services are required, who will provide them, who will pay for them, and who will monitor performance to ensure standards are met.
- **Monitoring and review**—how will stakeholders and/or government know whether the plan is achieving its objectives? A plan should outline what is to be monitored, who is responsible for doing it, and how the results will feed into any necessary changes to the plan.

It might be argued that this is setting expectations too high, as the government’s own processes do not include all these factors in their documentation. But the aim of the framework is to assist stakeholders in putting together a plan that can demonstrate to the Minister that it has a good chance of succeeding. The aim is not to require stakeholders to achieve a higher standard of performance than the Ministry achieves through its own processes. Further, as noted, government processes are highly prescribed under legislation and there is consequently less opportunity to establish and operate a planned approach that is based on meeting stakeholder expectations in a manner that is consistent with government’s objectives for fisheries management. Any approach that attempts to do this would need to set out how the inevitable trade-offs between and within stakeholder groups are to be addressed.

But the question arises as to what it is that the Minister will really be looking for in a plan. The Ministry has indicated that it expects stakeholders to come up with goals and objectives for a fishery, with enforceable rules that fishers have to (and will) comply with, and adequate supporting services that someone is willing and able to pay for. So the writers of the plan should have the mandate of the stakeholders they claim to represent, and those making decisions under the plan that impact on other people, must have institutional arrangements that will ensure that those people have the opportunity to participate in the decisions and that the decisions can be enforced in practice. So the Ministry will “look behind” the contents of a proposed plan to examine the process through which it was developed (did all affected parties have the opportunity to participate?) and the governance arrangements of the group responsible for implementing the

---

3 It is perhaps a little disingenuous to talk of the government’s “own resources” under a cost recovery regime in which the majority of the government’s costs are recovered from commercial stakeholders. But providing the incentives for efficient and effective service provision is an important driver for fisheries plans.
plan. The sorts of questions that are likely to arise include: to whom are they accountable, and how can they ensure that their members will comply with their decisions?

4. THE PROSPECTS FOR FISHERIES PLANS

The framework for fisheries plans places high hurdles in front of many stakeholders, who have may little experience in supporting fisheries management decisions. The key consideration required of stakeholders is whether the benefits of a plan outweigh the costs they will face.

Potential advantages of a plan include:

- Achieving stakeholders’ goals—it has been noted above that government-led processes concentrate on the government’s goals, so a fisheries plan led by stakeholders might focus attention more on how to achieve the goals of the stakeholders in the fishery.
- Efficiency gains—government recovers much of its fisheries management costs from the fishing industry, but it does not necessarily have the same drivers that some stakeholders may have to ensure that services are provided efficiently. A fisheries plan provides an opportunity for stakeholders to provide services through alternative means to government purchase, subject to appropriate checks and balances.
- Certainty—ensuring that decisions are made in the context of a long-term plan can reduce the vagaries of annual decision-making. This also applies to decisions made under other legislation, such as under coastal plans prepared by regional councils, where decision makers must have regard to any relevant approved fisheries plan. As a consequence, stakeholders should be able to plan their own activities with more certainty.
- Reduced conflict—if different stakeholder groups can agree, through the development of a plan, how the resource is to be allocated amongst them, and how their activities are to be managed, this should reduce the conflict between sectors. A plan can provide an incentive to develop proposals collaboratively.

These benefits must be weighed against the costs and difficulties in even getting a plan off the ground. In the three years since the amendments to the legislation were passed, there have been no fisheries plans approved. In the absence of any approved plans, an examination of attempted plans or equivalent arrangements begins to shed some light on what might be possible through the fisheries plan initiative.

Probably the outstanding example is the southern scallop fishery, which occurs around the northern South Island of New Zealand (see Bull 1994 and Arbuckle and Drummond 2000). In this fishery, the commercial stakeholders have formed a registered company of quota owners and have established a governance structure capable of delivering on the responsibilities assigned to them. The process has involved the recreational and customary sectors in both development and implementation phases. Rules are enforced through civil contracts between members. The initiative has had strong driving forces, inside tangata whenua4, the industry, the recreational sector and the government, to ensure its success over the years. But it does not have an approved fisheries plan—stakeholders have achieved what they want without one. The Minister has sufficient confidence in the company to base his decisions on their advice, which is based on their co-operative planning regime, and enables them to get on with providing the supporting services and implementing their own rules.

There are a number of groups who have tried to develop fisheries plans, which have not made it to the Minister’s desk for approval. We do not know definitively how many such attempts there have been, but the Ministry has had a number of them submitted for initial comment.

One group of stakeholders has attempted to create an area-based plan, to advance the interests of local fishers. This approach ran into a number of problems. Firstly, the draft plan did not have any clear goals or objectives against which it could be evaluated. Secondly, it required government to implement a number of measures, all of which were on a finer spatial scale than the Ministry normally uses to manage fisheries, and had a number of implications for existing rights

4 Tangata whenua are the iwi (tribe) or hapu (sub-tribe) that are Māori and hold mana whenua (customary authority) over an area.
holders. Thirdly, it did not have buy-in from the commercial fishing sector. These issues continue to bog down progress with that particular plan.

Several commercial fishing organisations have drafted plans for individual fish stocks. These have tended to focus on managing the commercial part of the fishery, and have generally been developed in isolation from the other interests in the fishery. Thus a lack of involvement of other stakeholder groups, and particularly of tangata whenua, is a common problem. Some of the plans have also suffered from problems similar to those mentioned above: lack of goals or objectives agreed by stakeholders, vague strategies that describe what initiatives will be necessary but not how to implement them, reliance on government to enforce new rules, inconsistencies with existing rights and obligations, or lack of funding for the plan or any evaluation of its performance.

Clearly, passing legislation to enable fisheries plans has not, in itself, led to increased stakeholder responsibility. It has provided only an end point. What is now needed is a path to help stakeholders and tangata whenua reach the end point.

A direction for that path may lie in confidence building. Stakeholders need to develop confidence in each other, in the government, and in their own ability to take responsibility through collective action. This might best be done on an issue-by-issue basis, before embarking on a formal fisheries plan process. An example of this is occurring in a paua (abalone) fishery, in which commercial stakeholders have proposed and implemented an alternative approach to addressing a sustainability concern. Quota owners agreed to supplement a Ministerial decision to reduce the Total Allowable Commercial Catch by voluntarily putting aside a proportion of quota in a particular year so it was not harvested. This had the effect of providing the same reduction in catch as would be achieved by a more substantive reduction in the Total Allowable Commercial Catch, and may provide a more flexible approach to setting future limits than is likely to occur under Ministry-run processes. The ability to “shelve” quota in situations where the Fisheries Act requires Ministerial action requires further investigation. But if it can be shown to work, it would demonstrate that the quota owners are able to act collectively. Once the fishery has rebuilt to its former level, shelving would also allow stakeholders to redistribute the benefits of increased utilisation within their collective.

New Zealand’s Quota Management System provides a basis on which commercial stakeholders can act collectively. Collective decision-making amongst non-commercial stakeholders will be more difficult to achieve. In particular, it is difficult to see any significant progress towards the use of fisheries plans amongst recreational fishers, without clarifying the nature of their rights in legislation and establishing institutional forms through which they can manage their rights. In the interim, it is their ability to participate in plans being proposed by commercial stakeholders and potentially tangata whenua that needs further attention. Developing the capacity of recreational and environmental groups, so that they can contribute to fisheries management in a knowledgeable and productive fashion, might be a worthwhile investment by those who wish to see fisheries plans develop into a widely available tool in the not-too-distant future.

5. REFERENCES
