

## Introduction

1. This submission is from option4 (the submitters), an organisation which promotes the interests of non-commercial marine fishers in New Zealand, to the Ministry of Fisheries (MFish) in response to the Initial Position Paper (IPP) proposing regulatory changes to manage the Blue Cod 7 (BCO7) fishery in the Marlborough Sounds (the Sounds).
2. option4 advocates for the sustainable utilisation of fisheries for the benefit of all New Zealanders. option4 continues to work with the Council of Outdoor Recreation Associations of NZ (CORANZ), the Hokianga Accord (the mid north iwi fisheries forum), the New Zealand Big Game Fishing Council and other environmental and fishing interest non-government organisations (NGOs) to achieve “*more fish in the water/kia maha atu nga ika i roto i te wai*”.
3. MFish has proposed a number of measures to rebuild the depleted Blue Cod 7 fish stock within the Marlborough Sounds. The management proposals seek to reduce both the recreational harvest of Blue Cod and the incidental mortality associated with amateur fishing.
4. Proposals include areas closures, reduction of the daily bag limit from three to two, a daily boat limit, no accumulation on multiple-day trips and a land-all-fish policy for blue cod over the minimum legal size (MLS).
5. MFish also propose to give regulatory effect to the voluntary agreement to prevent commercial fishers from targetting blue cod in certain areas within the Queen Charlotte and Pelorous Sounds.
6. Submissions are due by 23<sup>rd</sup> April 2008. Any management changes are due to take effect from October 1<sup>st</sup> 2008.
7. There are some references in this submission to the High Court rulings regarding the Kahawai Legal Challenge<sup>1</sup> (KLC) and the more recent *Anton’s Trawling*<sup>2</sup> case. option4 acknowledge commercial interests have appealed some aspects of the High Court’s KLC judgment and would note that both the Minister and MFish have previously accepted Justice Harrison’s March 2007 KLC decision. A decision from the Appeal Court is pending.

## Submission

8. option4 does not support the 2008 MFish proposals for Blue Cod 7 (BCO7).
9. option4 endorse the submission written in the interests of Marlborough Sounds fishers by CORANZ.

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<sup>1</sup> CIV-2005-404-44495 heard on 6,7 and 9 November, and 11 December 2006.

<sup>2</sup> CIV-2007-485-2199 heard on 28 January 2008.

10. There is a wealth of knowledge and hundreds of years of fishing experience within CORANZ team which MFish ought not to ignore. That expertise has been offered to MFish in the interests of the long-term sustainability of the Marlborough Sounds Blue Cod fishery.
11. Historically MFish has regarded information from CORANZ and other fishers, both commercial and non-commercial, as anecdotal, while treating their own information as being the only valid source of data because of its 'scientific' nature. It is hard to quantify the effects of ignoring this localised information however, it seems the management measures instituted since 1993 have not been as effective as hoped and recommend MFish give more consideration to local solutions.
12. The debate surrounding the validity of the details and management proposals within the Blue Cod IPP has been covered in the CORANZ and other Marlborough fishers' submissions.
13. option4 supports real management measures that would reduce the incidental mortality of Blue Cod and rebuild stocks within the Marlborough Sounds. However, with a daily bag limit of three Blue Cod per person option4 agree that there is very little scope for reducing amateur catch without instituting area closures and other limitations. The objections to reducing amateur catch are discussed later in this submission.
14. Blue Cod is an iconic species targetted by both commercial and non-commercial fishers. Commercial potting of Blue Cod is limited within some areas of the Sounds.
15. It is the Minister of Fisheries' responsibility to manage fisheries according to the purpose and principles of the Fisheries Act 1996 (the Act). That purpose is the sustainable utilisation of fisheries to enable people to provide for their social, economic and cultural wellbeing.
16. During the Kahawai Legal Challenge the High Court described wellbeing as the *state of people's health or physical welfare*. Clearly the wellbeing of non-commercial fishers is not being met due to the management of Blue Cod and MFish ought to advise the Minister that his statutory obligations are not being met and need to be remedied.
17. option4 also note that none of the eight Blue Cod stocks have a Total Allowable Catch (TAC) nor any allowances for customary Maori, amateur fishers or other mortality. However, all have Total Allowable Commercial Catch (TACC's) limits set.

## **Total Allowable Catch**

18. The Total Allowable Catch (TAC) is set by the Minister to maintain the fish stock at or above a level that can produce maximum sustainable yield (MSY). The TAC is the total of all mortality in the fishery including non-commercial catch, both customary and amateur, commercial catch and other mortality caused by fishing.
19. As noted above, there has been no TAC set for BCO7 despite the historical utilisation of this fishery and two reductions to the TACC since 1986.
20. option4 note it has only been a requirement since 2001 that a TAC be set for fisheries when a TACC is set or varied.

21. MFish manage inshore fisheries by way Quota Management Areas (QMAs). BCO7 is within the Challenger management area and extends from the northeastern coast of the South Island, across the top and down to Fiordland. The TAC and TACC applies to the entire area.
22. Bycatch associated with the inshore fleet of trawlers has increased in recent years yet this factor has not been taken into account in the discussion of Blue Cod depletion. Any management changes need to take into account the fishery on a QMA-wide basis.
23. There is also no consideration given to habitat degradation despite the 2007 Plenary report acknowledging that Blue Cod catch and productivity may be affected by disturbance of benthic habitat. CORANZ has already raised issues regarding the commercial targeting of spawning Blue Cod populations on the northeastern coast.
24. It is a major concern that there is no estimates of current and reference biomass for any of the Blue Cod stocks including BCO7, particularly so given the recent High Court ruling in the *Anton's Trawling* case.
25. In a fishery such as Blue Cod the Minister has historically set TACs using section 13 of the Fisheries Act 1996. These decisions have been based on MFish advice to the Minister. Since the *Anton's Trawling* ruling it seems there is no lawful way of setting TAC within section 13 unless there is legislative change.
26. The only reliable harvest data in BCO7 is from commercial catch landings. There is no quantitative data on the levels of illegal catch nor are there any estimates of how much is used for bait. Blue Cod has traditionally been used as a source of bait in the rock lobster fishery.
27. There is also no quantitative data on historical or current Blue Cod Maori customary catch. MFish' estimate of 159 t of catch by amateur fishers is not accepted by some fishers.
28. In the 2007 Plenary report MFish state, "*for BCO7 it is not known if the combined recreational and commercial catches are sustainable or if they are at levels that will allow the stock to move towards a size that will support the MSY*".
29. Sustainability is being compromised by the lack of catch data for this fish stock.
30. Clearly more information is required and if this is not available a more precautionary management approach needs to be applied in BCO7.

## **Total Allowable Commercial Catch**

31. At the outset of the Quota Management System (QMS) in 1986 the Total Allowable Commercial Catch (TACC) for BCO7 was set at 110 tonne (t). This gradually increased to 136 t by 1989. There have been two TACC reductions since, down to 95 t in 1993 and 70 t in 1995.
32. option4 object to the mismanagement of BCO7 when the TACC has never constrained commercial catch in BCO7. In two seasons, 1994-95 and 1996-97, the TACC was exceeded. In two other seasons over 90 percent of the TACC was caught. In all other years since 1986 the catch has ranged between 37 and 85 percent of the TACC.

33. There may be reasons why commercial catch has been low in some seasons, including the current voluntary closure measures however, as the High Court ruled during the Kahawai Legal Challenge, the *TACC is a means of 'providing for the utilisation of a fisheries resource.....the criterion of enabling people to provide for their social, economic and cultural wellbeing is a mandatory consideration at this stage of allowing for recreational interests in the stock.* [para 55].
34. In the same judgment Justice Harrison also agreed with the submission from recreational interests that *a TACC cannot be set without the Minister first allowing for non-commercial fishing interests in the stock. It would be open to him or her to set the TACC at zero but not the allowance for recreational fishers. In that sense non-commercial interests, both Maori and recreational, must be provided for where they exist. The same does not apply for commercial interests.* [para 24].

## **Non- Commercial Fishing Interests**

35. Non-commercial fishing interests are broader than just what can be caught. It encompasses environmental, social, economic and cultural factors. CORANZ has raised some valid concerns, including environmental, which need to be addressed.
36. Blue Cod fishing opportunities attracts many visitors to the Marlborough region every year. A substantial charter fleet operates in the Sounds and numerous businesses rely on the revenue derived from this fishing activity. Sustainable management of BCO7 is paramount to their wellbeing.
37. The Minister also has a statutory obligation to provide for the non-commercial fishing interests of Maori customary fishers, irrespective of whether MFish can quantify that interest or the amount of actual catch taken. MFish know Blue Cod was historically important and state in the 2007 Plenary report that *"bones found in middens show that Blue Cod was a significant species in the traditional Maori take of pre-European times"*. Clearly the Minister's mandatory obligation to provide for Maori's current and future wellbeing stands.
38. It must be also noted that any MFish data derived from Blue Cod taken using customary permits will not necessarily reflect the full Maori customary interest in BCO7.
39. While amateur fishers can, and often do, target other species Blue Cod is the major-interest fishery in the Sounds. The current bag limit of three per person does not fulfil the non-commercial fishing interests of most fishers. Clearly a two-bag limit will not provide for the wellbeing of current fishers nor will it meet the reasonably foreseeable needs of future generations, as per section 8(2)(a) of the Fisheries Act 1996. The non-commercial fishing interests in BCO7 must be provided for as per the legislation and as confirmed by the High Court during the KLC.
40. MFish estimate amateur fishers catch 159 tonnes of Blue Cod in BCO7. If so, this interest must be allowed for as per the legislation.
41. The lack of provision for non-commercial interests in the form of an allowance for Maori customary and recreational fishers is a major flaw in the management of the BCO7 fishery.
42. In our opinion the BCO7 fishery is not being managed according to the statutory requirements because the non-commercial fishing interests of both Maori customary and amateur fishers are not being met.

## Summary and conclusion

43. The submitters share the concerns about the long-term sustainability of Blue Cod within the Marlborough Sounds and are keen to support measures that will address the long-term sustainability of BCO7, including a more precautionary management approach.
44. It is totally unacceptable to discuss reductions to amateur catch in isolation of any discussion to reduce commercial catch. This is particularly so given that a TAC has not been set for BCO7, the TACC is not constraining commercial catch and that non-commercial fishing interests and the mortality associated with all fishing has not been taken into account in the sustainability equation.
45. option4 does not support the MFish proposals for Blue Cod 7 (BCO7) when there is no consideration given to the current commercial utilisation of the fishery and the effects of habitat degradation.
46. option4 strongly objects to the consultation process executed by MFish regarding the proposals for future management of such an important food fishery. option4 recommends a more thorough process, including public meetings, be conducted before any management changes are implemented.
47. The submitters recognise the Minister of Fisheries' obligation to manage fisheries to provide for the social, economic and cultural wellbeing of all New Zealanders when considering the sustainable utilisation of fisheries. All of these wellbeing factors apply to the Blue Cod fishery in the Marlborough Sounds.
48. option4 supports and reiterates the principles established in the High Court judgment in regards to the Kahawai Legal Challenge, namely:
  - That all New Zealanders have a well-settled common law right to fish;
  - Sustainability is the bottom line and must be the Minister's long-term goal; and
  - That fisheries must be managed to enable people to provide for their social, economic and cultural wellbeing.
49. A return to previous abundance levels and the need to ensure enough fish is left in the water for future generations' interests must be uppermost in the minds of those making decisions for the future management of BCO7.
50. option4 thank MFish for the opportunity to have input into the process for the future management of BCO7.
51. option4 want to be kept informed of further consultation on this matter of importance to non-commercial sustenance fishers, both customary and amateur interests.

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