

7 May 2008

S8460

Minister of Fisheries

IDENTIFICATION OF CANDIDATE STOCKS FOR QMS INTRODUCTION - STANDARDS AND ORGANISATIONAL PROCEDURES

FINAL ADVICE PAPER

Proposal

- 1 I propose that you approve the Ministry of Fisheries' "identification of candidate stocks for Quota Management System (QMS) introduction standard" and note the organisational procedures, which set out how the standard will be implemented.

Background

- 2 Fisheries standards are a key component of the objectives-based management approach being implemented by MFish. On 8 November 2006, MFish initiated consultation with fisheries stakeholders and tangata whenua on three draft fisheries standards – a harvest strategy standard, a consultation standard, and a QMS introduction standard.
- 3 Following consultation the QMS introduction standard has been redrafted to address issues raised by stakeholders. The standard has also been re-named a 'standard and organisational procedure' to reflect the fact that it contains both standards (i.e., a mandatory minimum of performance required to ensure outcomes are met), and also organisational procedures (i.e., the implementation framework for how a standard will be achieved to produce the required results).
- 4 These standards and organisational procedures dictate how MFish will undertake the annual assessment of non-QMS stocks or species to determine whether they should be considered for introduction into the QMS. The standards and organisational

procedures will also determine whether stocks listed on schedule 4C¹ of the Fisheries Act 1996(the Act) should be considered for removal from that schedule.

- 5 The standards and organisational procedures will –
- a) Set out the annual process for MFish to identify stocks or species to be considered for QMS introduction, or removal from Schedule 4C;
 - b) Establish outputs for each step in the process; and
 - c) Ensure that the process is consistent and transparent

Summary of submissions

6 Submissions commenting on the draft QMS introduction standard were received from:

- Challenger Finfisheries Management Company Ltd. (Challenger)
- G.A, O'Rourke (O'Rourke)
- New Zealand Big Game Fishing Council (NZBGFC)
- New Zealand Recreational Fishing Council (NZRFC)
- New Zealand Rock Lobster Industry Council (NZRLIC)
- New Zealand Seafood Industry Council (SeaFIC)
- Ngatiawa Trust Board (Ngatiawa)
- Sanford Ltd. (Sanford)
- Te Ohu Kaimoana (TOKM)

7 On 29 June 2007, TOKM made a submission on stocks considered for QMS introduction in 2008 that included comment on the QMS introduction standards and organisational procedures. MFish considers it appropriate to consider issues raised by TOKM in this paper.

8 One submitter (**O'Rourke**) expressed unqualified support and four expressed qualified support (**NZBGFC**, **Ngatiawa**, **NZRFC** and **TOKM**) for the draft standard. While **SeaFIC** recognized the need for a clear process for assessing which species should be considered for introduction into the QMS, it did not support the standard as drafted. The SeaFIC submission was supported by **Challenger**, **Sanford** and **NZRLIC**.

9 The key points raised in submissions relate to the interpretation of section 17B of the Fisheries Act 1996 (the Act), and concern by submitters at what they consider to be an excessive level of detail and prescription in the standard. These are discussed below

¹ Schedule 4C lists stocks and species subject to a permit moratorium

and the full extent of issues raised by submitters is presented and discussed in Appendix 3.

Interpretation of section 17B

- 10 The tests for you to consider when making a determination whether to introduce a stock or species to the QMS are contained in s 17B(1) and (2)² of the Act. Concerns raised by submitters (in particular SeaFIC) relate to the definition of ‘ensuring the sustainability of the stock or species’ in s 17B(1). At issue is whether this should be interpreted in a narrow or literal sense that focuses solely on the stock or species (SeaFIC’s position), or whether a broader approach should be taken that considers the definition of ‘ensuring sustainability’ contained in s 8 of the Act (the interpretation adopted by MFish). The key difference between these two interpretations is that the broader definition includes not only the maintenance of the potential of fisheries resources to meet the reasonably foreseeable needs of future generations (s 8(2)(a)); but also to avoid, remedy or mitigate any adverse effects of fishing on the aquatic environment (s 8(2)(b)).
- 11 This debate is not new and was covered in some detail in the Final Advice Paper (FAP) on species proposed for QMS introduction dated 10 December 2004. The basis of the MFish position is that the context and purpose surrounding s 17B must be a consideration in the interpretation of that provision. This position is consistent with principles of interpretation set out in s 5 of the Interpretation Act 1999 which states, amongst other things, that the meaning of an enactment must be ascertained from its text and in the light of its purpose. MFish therefore considers that the provision in s 17B(1)(a) must be read in the context of the Act as a whole.
- 12 The key contextual issue is the reference to ensuring sustainability in both the purpose statement of the Act (s 8) and in s 17B(1)(a). MFish considers that the use of the same wording in the two sections is deliberate and that the definition of ‘ensuring sustainability’ included in s 8 must colour the interpretation of s 17B. MFish notes that s 8(2) states that the definition of ‘ensuring sustainability’ applies throughout the Act.

Level of detail and prescription

- 13 A number of submitters (and again SeaFIC in particular) consider that the proposed risk assessment process is excessively detailed and prescriptive, and is an inefficient use of MFish resources. MFish disagree.
- 14 The aim of the standards and organisational procedures is to consistently and transparently analyse the best available information on the sustainability and utilisation risks non-QMS stocks or species are exposed to, and to decide on that basis

² S17B (1) The Minister must make a determination under subsection (2) if satisfied that the current management of a stock or species –
(a) is not ensuring the sustainability of the stock or species; or
(b) is not providing for the utilisation of the stock or species.
(2) The Minister must determine to make the stock or species concerned subject to the quota management system, unless he or she determines that the purpose of this Act would be better met by setting one or more sustainability measures under section 11 other than a total allowable catch set under section 13 or section 14).

which stocks warrant formal consideration. Those stocks for which the risk to their sustainability or utilisation is insufficient to warrant closer consideration for QMS introduction will not be considered through the formal, and relatively resource intensive, initial position paper / final advice paper process. This represents a considerable saving in Ministry and stakeholder resources while still ensuring that a robust process is run, and that stakeholders have an opportunity to contribute to the prioritisation process.

Conclusion

- 15 The revised standards and organisational procedures for the identification of candidate stocks for QMS introduction, addressing stakeholders concerns as appropriate, is attached as Appendix 1. A flowchart summarising their operation is included in Appendix 2.
- 16 If you approve the standard, MFish will prepare for your signature a letter to stakeholders informing them of your decision and responding to submissions.

Recommendations

- 17 I recommend that you:
- a) **Approve** the standards for the identification of candidate stocks for QMS introduction as set out in Annex 1; and
 - b) **Note** the organisational procedures, which set out how the standard will be implemented; and
 - c) **Note** that MFish will prepare for your signature a letter to stakeholders informing them of your decision and responding to submissions.

Russell Burnard
Manager Regulatory and Information

APPROVED/NOT APPROVED

Hon Jim Anderton
Minister of Fisheries
/ /2008

IDENTIFICATION OF CANDIDATE STOCKS FOR QMS INTRODUCTION – STANDARDS AND ORGANISATIONAL PROCEDURES

Purpose

- 1 This document defines the standards and organisational procedures that MFish will use to undertake the annual assessment of non-QMS stocks or species to determine whether they should be considered for introduction into the QMS. The standards and organisational procedures will also determine whether stocks listed on schedule 4C of the Fisheries Act 1996(the Act) should be considered for removal from that schedule.
- 2 The organisational procedure is risk-based and conforms to the Australian/New Zealand Risk Management Standard.³
- 3 This document will –
 - Set out the annual process for MFish to identify stocks or species to be considered for QMS introduction, or removal from Schedule 4C, each year;
 - Establish outputs for each step in the process; and
 - Ensure that this annual process is consistent and transparent

Scope

- 4 This document has been primarily designed to address obligations under the Act in relation to the introduction of stocks or species to the QMS. It also addresses issues relating to the ongoing permit moratorium that exists for species listed on Schedule 4C and provisional catch history implications of species on Schedules 4C and 4D. It does not address other aspects of the management of non-QMS stocks or species.
- 5 The standard and organisational procedures will contribute to management strategies for non-QMS bycatch and target species under the objectives-based fisheries management framework. They will not determine whether a stock meets the legislative criteria for QMS introduction, or should be removed from Schedule 4C. That is for the Minister to determine, based on advice from MFish and consultation with stakeholders, and will occur subsequent to the process outlined in this document.
- 6 The process outlined in this document is to be run annually. Each year the candidate selection data will be reanalyzed including updated catch information for the three fishing years preceding the review period. Should this process highlight stocks or species not considered in previous iterations of the process, new information briefs will be produced. Stocks or species that the Minister has decided to either introduce to the QMS and/or to remove from Schedule 4C, will be removed from the introduction schedule. Existing information briefs for stocks or species that remain on the schedule will be updated.

³ AS/NZS 4360:2004

Standards

- 7 Standards are defined as the mandatory minimums of performance required to ensure outcomes are met. They are a statement of what can be achieved. A standard can be expressed as:
- A qualitative description; or
 - A number; or
 - Criteria to determine how a numerical value will be arrived at.
- 8 For the purpose of QMS introduction, the standards are as follows:
- i) A risk assessment process will be run **annually** to determine what stocks or species will be considered by the Minister of Fisheries for QMS introduction.
 - ii) Where there is a **high** risk that the management of a non-QMS stock or species is not meeting the generic objectives;⁴ that stock or species will be included on the first year of the QMS introduction schedule and will be considered by the Minister of Fisheries for QMS introduction in the next available QMS introduction round;
 - iii) Where there is a **low** risk that the management of a stock or species listed on Schedule 4C is not meeting the generic objectives; that stock or species will be considered by the Minister of Fisheries for removal from Schedule 4C in the next available QMS introduction round.

Policy Background

Obligations to introduce stocks or species to the QMS

Fisheries Act

- 9 Section 17B of the Act requires the Minister of Fisheries to introduce a stock or species to the QMS if the existing management framework is not ensuring sustainability or is not providing for utilisation of the stock or species, unless the purpose of the Act would be better met by setting one or more section 11 sustainability measures.
- 10 The terms ‘ensuring sustainability’ and ‘utilisation’ are defined in section 8 of the Act. Ensuring sustainability means both maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations and avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment. Utilisation means conserving, using, enhancing and developing a fisheries resource to enable people to provide for their social, economic, and cultural wellbeing.

⁴ Three generic objectives have been derived from the criteria for QMS introduction in s 17(B)(1) of the Act. They are discussed in full later in the paper.

- 11 The statutory considerations as to whether a stock or species may be introduced to the QMS may therefore be summarised as:
- Whether existing management is maintaining the potential of the stock or species to meet the reasonably foreseeable needs of future generations.
 - Whether existing management avoids, remedies or mitigates any adverse effects of fishing on the aquatic environment.
 - Whether existing management provides for utilisation that enables social, cultural and economic well-being.
- 12 The Act does not impose any hierarchy on these considerations.

Statement of Intent 2007-2012

- 13 MFish's Statement of Intent 2007-2012 reiterated the Government's intention to maximise the value New Zealanders gain from fisheries resources through objectives-based fisheries management. Objectives-based fisheries management will be delivered through the development of fisheries plans.
- 14 All fisheries plans will need to consider the management of non-QMS target and bycatch species that are taken in the fishery, or fisheries, to which they relate. There are currently over 370 non-QMS species that are exploited (commercially and/or non-commercially).
- 15 The standards and organisational procedures will be applicable across all management frameworks, including fisheries plans.

ORGANISATIONAL PROCEDURES

16 Figure 1 sets out a flow-chart showing the procedural steps in the risk assessment process.

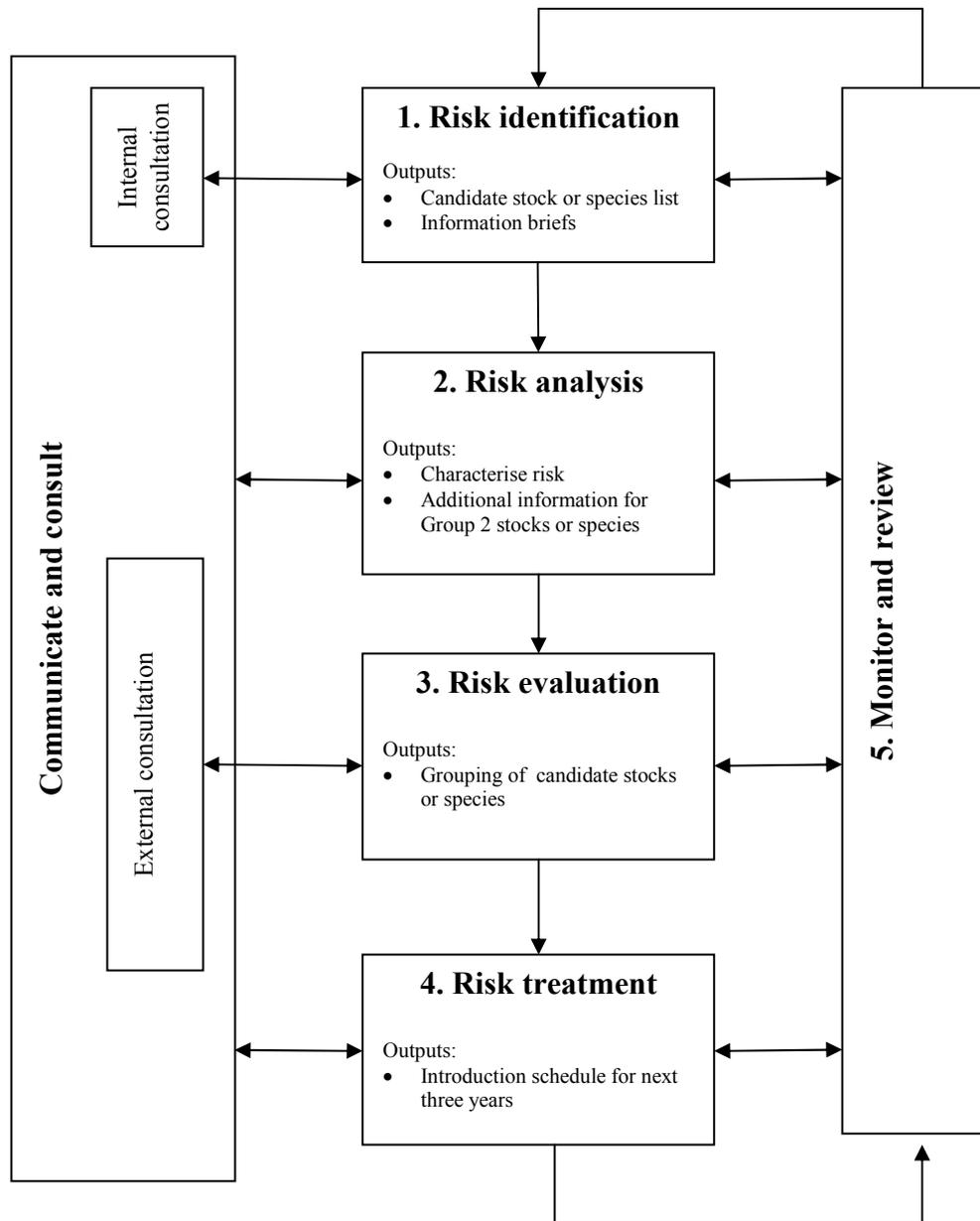


Figure 1. Framework for assessing non-QMS stocks or species to determine whether they should be considered for introduction into the QMS, or removal from Schedule 4C.

Step 1 – Derivation of Candidate Stock or Species List (Risk identification)

17 This step identifies stocks or species managed outside the QMS which exhibit potential sustainability and/or utilisation concerns. All non-QMS stocks and species will be considered against a set of broad criteria derived from the Act to create a list of candidates for QMS introduction. This list will be known as the candidate stock or species list. The criteria, which are discussed below, are designed to set a relatively low threshold for inclusion on the candidate stock or species list.

Criteria used to identify candidate stocks or species

Criteria 1: Schedule 4C species

18 All stocks or species on schedule 4C will be included on the candidate stock or species list.

Criteria 2: Schedule 4D species

19 All species on schedule 4D will be included on the candidate stock or species list.

Criteria 3: Variation in catch

20 Stocks or species where there has been a significant change in reported landings over time will be included on the candidate stock or species list.

21 Change in commercial landings will be assessed over the three years preceding each annual review. The analysis will be undertaken on landings for all non-QMS stocks or species, totalled for each 6 month period (1 October – 31 March and 1 April – 30 September) within this timeframe.

22 Two values will be used to define a significant change for a given stock:

- Landings of a species totalled over all Fisheries Management Areas (FMAs) exceeding 20 tonnes for any of the 6 month periods **and** the difference in catch between the minimum and maximum 6 monthly totals exceeding fifty percent of the minimum 6 monthly total;
- Landings of a species totalled over all FMAs exceeding 100 tonnes for any of the 6 month periods.

Criteria 4: Other information

23 Stocks or species where there is additional scientific or anecdotal information suggestive of a sustainability or utilisation concern (e.g. customary or recreational fishers concerns about declining customary or recreational catch or anecdotal information suggesting possible reporting issues in a commercial fishery) will be included on the candidate stock or species list.

Criteria 5: International obligations

24 International obligations that identify stock management issues may identify stock or species that will be included on the candidate stock or species list.

Criteria 6: Adverse environmental effect

25 Species where adverse effects of fishing may be addressed by QMS introduction will be included on the candidate stock or species list.

Criteria 7: Identification by stakeholders

- 26 Stocks or species identified by stakeholders as having sustainability and/or utilisation concerns will be included on the candidate stock or species list. Such stocks or species may be identified by;
- direct communication between stakeholders and MFish;
 - fisheries plans objectives relating to bycatch stocks and developing fisheries;
 - rohe moana management plans developed by tangata whenua to express their objectives, interests and expectations for the management of fisheries resources.

Information Briefs

- 27 To inform the subsequent risk analysis, an information brief will be compiled for each stock on the candidate stock or species list. Information briefs will collate known information from all available data sources. Data reliability may vary depending on the source of information, and how and when it was derived. The information brief will include the source and date of all information it contains.
- 28 The collation of an information brief is not intended to be an onerous task and will focus on providing the information necessary for the risk analysis. An information brief will only include information relevant to assessing a stock's or species' sustainability, utilisation and associated environmental effects. With this in mind, content may include (where available) the following information:

Biological information

Growth, reproduction and recruitment
Spatial and temporal distribution and key areas (feeding, spawning, migration)
Habitat interactions
Associated species (bycatch and target)
Environmental range
Protected species interactions
Stock Assessment
Environmental effects of fishing

Social, Economic, Cultural

Commercial fishery characteristics
Recreational fishery characteristics
Customary fishery characteristics

Management

Existing management information
International obligations
Treaty settlement obligations

Step 2 – Risk analysis of the candidate stock or species list⁵

29 The risk analysis process occurs in two stages, referred to as steps 2a and 2b. The analysis will be undertaken by MFish analysts. The risk analysis process compares the information contained in the information brief, against three generic management objectives to determine the risk a given stock faces to achieving these objectives.

30 The three generic management objectives are:

Generic objective 1 To maintain the potential of the stock or species to meet the reasonably foreseeable needs of future generations.

Generic objective 2 To avoid remedy or mitigate any adverse effects of fishing for the stock or species on the aquatic environment.

Generic objective 3 To provide for utilisation of the stock or species that enables social, cultural and economic well-being.

31 The two stage risk analysis process is detailed below.

Step 2a risk analysis

32 The first step is based on the severity of the possible impact on each objective, and the likelihood of this impact taking place.

33 ‘Severity’ is defined as the level of unwanted consequence related to an event. The level of unwanted consequence in this context is the degree that a generic management objectives is compromised. The event is maintaining the existing management regime.

34 ‘Likelihood’ is a qualitative description of the probability of an unwanted consequence occurring. The timeframe for assessing the likelihood of unwanted consequences occurring will be the period between risk assessments which is a single fishing year. Likelihood in this context is therefore defined as the probability of an unwanted consequence of maintaining an open access management regime taking place within a single fishing year. Where the information brief identifies unwanted consequences that have already occurred, these should be included and will return the highest level of likelihood.

⁵ The criteria used in the risk assessment in the first instance are described in this paper. The process will, however, be ongoing and is to be revisited annually. It is anticipated that the risk assessment criteria may evolve over time.

35 The levels of severity and likelihood to be used are defined below.

Severity

High	The impact of maintaining the existing management regime is likely to be total failure of the associated objective – e.g. stock collapse, serious and irreparable harm to habitat, exclusion of access to one or more sectors
Medium	The impact of maintaining the existing management regime is likely to significantly compromise the associated objective – e.g. significant stock decline, considerable and long-term harm to habitat, barriers exist to optimising economic return
Low	The impact of maintaining the existing management regime is likely to be minor – e.g. stocks or species temporarily decline, habitat temporarily disrupted, economic return temporarily reduced

Likelihood

High	Harm has already occurred; or will occur inevitably, or is highly likely to occur, within the period of a single fishing year.
Medium	Harm is likely to occur within the period of a single fishing year.
Low	Harm is unlikely to occur within the period of a single fishing year.

36 The levels of severity and likelihood are derived from the information brief. It is likely that, in many instances, the amount of data available will be minimal and consequently there will be an element of subjectivity to this assessment.

Severity	High	6	8	9
	Medium	3	4	7
	Low	1	2	5
		Low	Medium	High
		Likelihood		

Key	
	= High risk
	= Medium risk
	= low risk

37 Each stock or species is accorded a score for each of the three generic management objectives. The objective returning the highest score will be used as the basis for the subsequent assessment. Where two or more objectives return an equal highest score, all objectives achieving that score will be used in the subsequent assessment.

38 For stocks on Schedule 4C, if the exclusion of access caused by the permit moratorium may be restricting the commercial sectors ability to achieve social, cultural or economic wellbeing (i.e. if there exists a utilisation potential for the stock) then the stock will return a high severity score. If there is no utilisation potential that is being inhibited by the listing of a stock on Schedule 4C then the severity score will be low. How soon any utilisation potential can be realized will influence the likelihood score.

- 39 The highest scores returned for each stock or species will be used to characterize candidate stocks or species as facing high, medium and low risk based on severity and likelihood. Those stocks or species whose highest score is 7 or over will be considered high risk, those scoring 3 or below will be considered low risk. The remaining stocks or species face a medium level of risk and will be further analysed in the second step of the risk analysis.

Step 2b risk analysis

- 40 Candidate stocks or species at a medium level of risk based on the severity/likelihood analysis will be examined using additional criteria to provide a finer scale analysis of the risks to achieving the generic objectives. This analysis will only apply to the generic objective(s) returning the highest scores from the initial risk analysis. Step 2b risk analysis examines immediacy and uncertainty and essentially qualifies the results of the stage 1 analysis.

Immediacy

- 41 Immediacy is defined as the timeframe within which an impact will occur, assuming that the impact does occur.⁶ If the best available information suggests that an impact will occur in the next year it will return a high immediacy, impacts occurring in two or three years have moderate immediacy, and low immediacy will reflect impacts that will occur in over three years.

Uncertainty

- 42 Overall uncertainty of information will be rated as high, medium or low for each stock at a medium level of risk.

Additional information on management considerations

- 43 Additional information relating to management considerations will be collated by MFish analysts for those stocks or species that remain at medium risk following the risk analysis process. These considerations are relevant to the efficient deployment of MFish resources and an equitable assessment of provisional catch history implications. Information identified here will be considered in the risk treatment stage. Attributes to be considered are:

Ease of implementation

Ease of implementation will identify stocks or species that are likely to require limited MFish resources for their introduction to the QMS. Efficiency gains may be realized by including several stocks or species requiring few resources for their introduction into any given round, rather than a single stock requiring significant resources. Stocks or species likely to require few MFish resources for introduction to the QMS will return high ease of implementation scores.

⁶ Immediacy is not to be confused with likelihood, which is the probability that the impact will occur within any given fishing year.

Relationship with other QMS stocks or species

Relationship with other QMS stocks or species considers the synergies and efficiencies of introducing multiple stocks of a species, or stocks of associated or dependent species, in the same introduction round. It also considers the benefits of introducing a stock where other stocks of the same species, or stocks of associated and dependent species, are already in the QMS. Stocks or species where QMS introduction is likely to lead to such management benefits will return high relationship with other QMS stocks or species scores.

Deployment of MFish resources

MFish resources available to perform the risk analyses are deployed across seven fisheries management teams which have expertise and experience in specific fisheries groups. An even distribution of stocks or species across these groups will ensure the most efficient use of MFish resources.

Provisional catch history implications

If stocks or species on schedule 4C and 4D are introduced to the QMS on or before 1 October 2009, quota must be allocated on the basis of provisional catch history. This provision is extinguished after this date. Provisional Catch History implications exist for some stocks or species listed on schedule 4C and all stocks or species listed on schedule 4D of the Act. MFish will consider those stocks or species with provisional catch history implications for introduction into the QMS by 1 October 2009 and these stocks or species will be noted.

Output of risk analysis

- 44 Each stock on the candidate stock or species list is ascribed a risk level of high, medium or low based on severity and likelihood. Stocks or species with a medium risk level are also ascribed immediacy and uncertainty scores, and additional information on a suite of management considerations is collated for them.

Step 3 - Grouping of candidate stocks or species (Risk evaluation)

- 45 The risk evaluation stage assigns candidate stocks or species to one of three groups based on the results of the risk analysis process. These groups are:

Group 1

Stocks or species at high risk of not meeting one or more of the generic objectives based on the severity/likelihood analysis.

Group 2

Stocks or species at a medium risk of not meeting one or more of the generic objectives based on the severity/likelihood analysis, and have medium or high immediacy and/or uncertainty scores.

Group 3

Stocks or species with a low risk of not meeting one or more of the generic objectives based on the severity/likelihood analysis; or those that have a medium risk of not meeting one or more of the generic objectives based on the severity/likelihood analysis and have low immediacy and uncertainty scores.

External consultation

- 46 A list of the three groups is released for external consultation. Consultation documentation includes the information briefs and will detail the results of the risk analysis process. It will also encourage stakeholders to consider whether additional stocks or species should be considered for QMS introduction and to provide information in support of such recommendations.
- 47 The resulting stakeholder submissions are to be considered prior to the risk treatment stage. In the event that additional information is provided by stakeholders, either in relation to an additional stock or species recommended for consideration as a candidate stock, or additional information provided by stakeholders on one of the candidate stocks already considered, the risk analysis step will be reevaluated. This will ensure that the candidate stocks considered, and the grouping of candidate stocks or species reflects the best available information.

Step 4 – Creation of a QMS introduction schedule (Risk treatment)

- 48 Group 1 and 2 stocks or species are those the analysis identifies as requiring consideration for QMS introduction within the short to medium term. These stocks or species are matched to available resources to create an introduction schedule for the next three fishing years. Group 3 stocks or species will not be proposed for introduction at this time and will continue to be monitored along with other non-QMS stocks or species.
- 49 An exception is made for Group 3 stocks that are listed on Schedule 4C. For these stocks no sustainability concern has been identified and it is appropriate that they be considered for removal from the Schedule and management as an open access stock.
- 50 The introduction schedule is in the form of a three year rolling list. All stocks or species in Group 1 will be included in the first year of the introduction schedule and will be considered for QMS introduction in the next round. Group 3 stocks on Schedule 4C will also be considered for removal from the Schedule in the next round.
- 51 The two ‘out’ years are indicative of the likely stocks or species that will be considered in the subsequent two rounds. The timing for consideration of these stocks or species will depend on the availability of MFish resources. Decisions on the order in which Group 2 stocks or species are considered will be made by MFish analysts. Analysts will take into account the results of the risk analysis (severity/likelihood, immediacy and uncertainty) and the additional information on management considerations in making these decisions.

Step 5 - Monitoring and review process

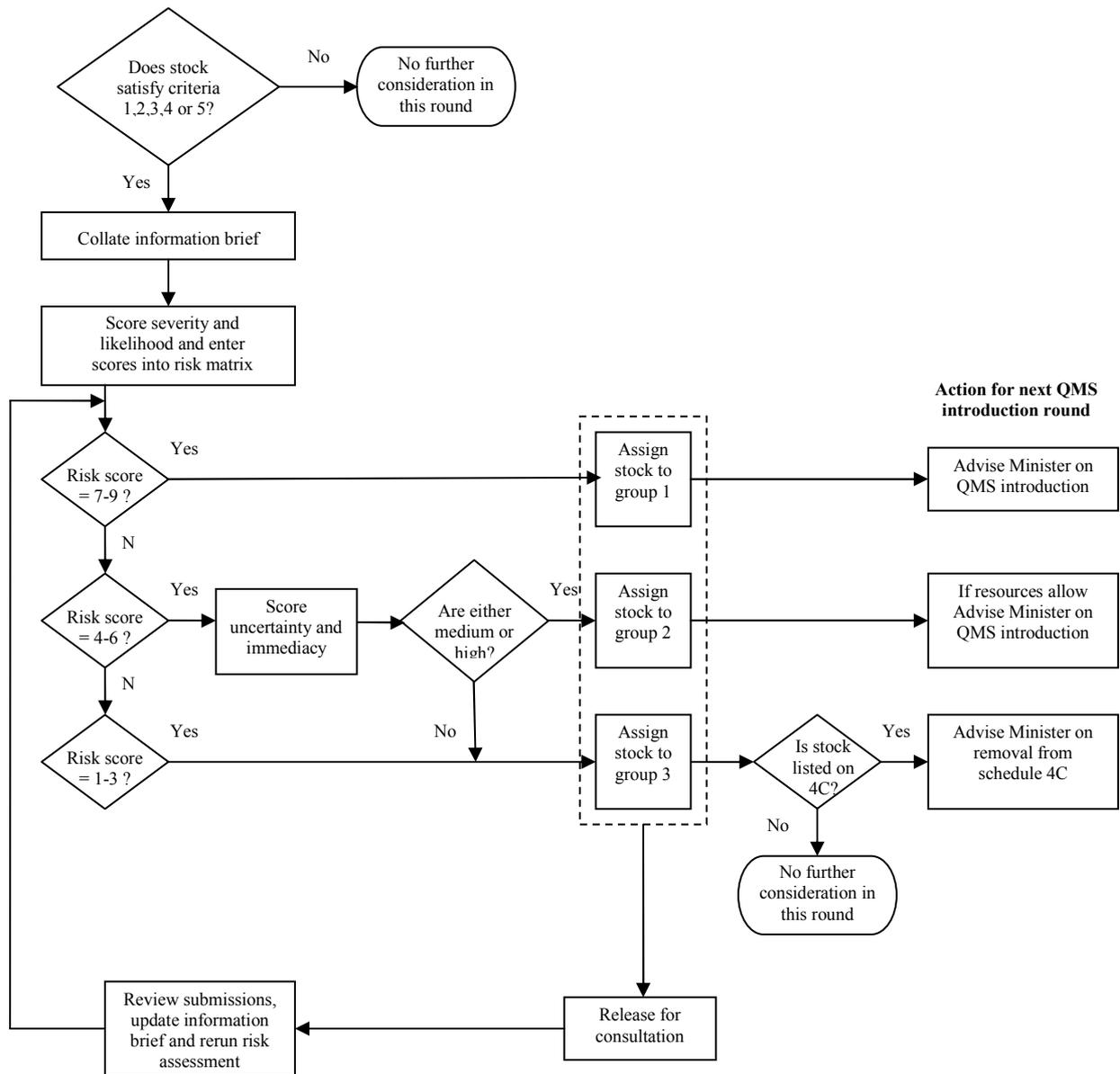
52 A review of the risk assessment criteria and process will be undertaken annually following release of the QMS introduction schedule. This review will take the following form-

- Consideration of any stakeholder feedback on the process;
- Consideration of any MFish business group feedback on the process;
- Consideration of Ministerial decisions on QMS introductions; and
- Consideration of any relevant legislative or policy change.

53 Following the annual review MFish will determine what changes (if any) should be made to the process, and it will be updated accordingly.

APPENDIX 1.

Flowchart of annual process



APPENDIX 2

Response to submissions

General comments

Additional consultation step

- 54 TOKM considers that incorporating a two step consultation process allows initial consultation on a list of entry candidates followed by consultation on the actual introduction proposals for each stock is a logical development that greatly enhances and clarifies the QMS introduction process.

MFish response

- 55 MFish notes the TOKM submission.

Fit with the standards framework

- 56 SeaFIC sees no value in including this process in the standards framework and submit that the standards and organisational procedures as written cannot be effectively monitored or audited. It contends that the only two components that are potentially able to be monitored and audited are that MFish will produce a three year schedule of candidate species for QMS introduction, and that MFish will review the list annually.

MFish response

- 57 MFish disagrees that the standards and organisational procedures cannot be effectively audited and monitored. The process as described in the standard is a 5 step process with completion of each step able to be monitored and audited. To address SeaFIC's concerns the final version of the paper is explicit about identifying what constitutes a standard within the overall process.

Interpretation of section 17B

- 58 SeaFIC disagrees with the MFish interpretation of s 17B. It contends that the Minister is required to make a determination to introduce a stock or species into the QMS if satisfied that the current management of a stock or species is “(a) not ensuring the **sustainability of the stock or species**; or (b) not providing for the utilisation of the stock or species” (emphasis added). Under SeaFIC's interpretation, environmental considerations such as any adverse effects of fishing are only relevant to QMS introduction decisions under s 17B(2) and not under s 17B(1)).
- 59 SeaFIC submits that the correct sequence for the decision maker's consideration (in relation to the 'sustainability' limb of the test) is firstly to ask whether the current management is not providing for the sustainability of the stock or species (s 17B(1)). If so, then (s)he must either introduce the stock or species into the QMS or implement a s11 sustainability measure if this would better meet the purpose of the Act (s 17B(2)). It contends that it is only in regard to the latter consideration where environmental effects of fishing are relevant. In their view a decision maker cannot

consider environmental effects unless either of the stock-related sustainability or utilisation criteria in s 17B(1) is triggered first.

- 60 SeaFIC further contends that there are practical reasons why their interpretation is preferable. If the harvesting of a non-QMS species raises no utilisation issues and no stock sustainability issues, but generates broader sustainability risks (e.g., seabird bycatch), then introducing the stock into the QMS will not, by itself, address the identified risks. SeaFIC contends that a s 11 sustainability measure (e.g., regulated mitigation measures) is likely to be the more effective management response in such circumstances.
- 61 In its submission, SeaFIC invite the Ministry to provide it with copies of any legal advice that supports the interpretation in the standard, and to embark on a process of dialogue with SeaFIC with the intent of resolving any outstanding differences in interpretation prior to finalising this standard.

MFish response

- 62 As noted by SeaFIC in its submission, this debate is not new and MFish's response to the points raised by SeaFIC were covered in some detail in the Final Advice Paper (FAP) on species proposed for QMS introduction dated 10 December 2004. As SeaFIC is aware, the MFish legal interpretation of s 17B has not changed and the standard has been derived consistent with this interpretation. MFish considers that the differences in the positions of MFish and SeaFIC have been well traversed over several years and does not propose further engagement with SeaFIC on this issue.
- 63 The issue that SeaFIC raises is essentially whether s 17B(1)(a) should be interpreted in a narrow, literal sense or whether a broader approach should be taken. SeaFIC supports a literal interpretation.
- 64 MFish does not agree with this position. Rather it considers that the context and purpose surrounding s 17B must be a consideration in the interpretation of that provision. This position is consistent with principles of interpretation set out in s 5 of the Interpretation Act 1999 which states, amongst other things, that the meaning of an enactment must be ascertained from its text and in the light of its purpose. MFish therefore considers that the provision in s 17B(1)(a) must be read in the context of the Act as a whole.
- 65 The key contextual issue is the reference to ensuring sustainability in both the purpose statement of the Act (s 8) and in s 17B(1)(a). MFish considers that the use of the same wording in the two sections is deliberate and that the definition of 'ensuring sustainability' included in s 8 must colour the interpretation of s 17B. MFish notes that s 8(2) states that the definition of 'ensuring sustainability' applies throughout the Act.
- 66 MFish considers that 'ensuring the sustainability of a stock or species' means maintaining the potential of the stock or species to meet the reasonably foreseeable needs of future generations and avoiding, remedying or mitigating the effects of fishing for that stock or species on the aquatic environment. This position is reflected in the standards and organisational procedures.

- 67 In terms of the practicality issues raised by SeaFIC, section 17B(2) specifically allows for the use of a s 11 sustainability measure in preference to QMS introduction if this would better meet the purpose of the Act. MFish also notes that the use of sustainability measures is not precluded under the QMS.
- 68 The decision on whether or not a stock or species is ultimately introduced to the QMS is for the Minister to determine and will occur subsequent to the operation of the standards and organisational procedures.

Level of detail and prescription

- 69 While **SeaFIC** agrees that MFish needs a clear process for assessing which species should be considered for introduction into the QMS, it considers that the proposed risk assessment process is an example of excessive detail and prescription. Specifically SeaFIC considers that:
- The process of identifying species for consideration for QMS introduction and producing a three year introduction schedule are both relatively straightforward tasks that do not require an extensive process around them, particularly as many of the candidate species are already identified on Schedules 4C and 4D of the Act;
 - Neither the identification of species for consideration nor the production of a three year schedule are statutory processes. These non-statutory processes are not a substitute for the analysis and consultation that would occur prior to a Ministerial decision on whether or not to introduce a particular stock or species;
 - The standards and organisational procedures entail the application of a complex risk assessment process, resulting in numerical rankings of risk that give a false impression of rigour given the paucity of information available for most non-QMS stocks;
 - The entire risk analysis process is based on the discretionary judgement of MFish analysts, yet the output of the process (a series of numerical scores) gives a spurious impression of objectivity; and
 - There is a relatively small number of species remaining outside the QMS and most of these species are of relatively low economic value.
- 70 In light of these comments, SeaFIC suggests that a simpler, lower cost process would be more appropriate and that it should be relatively simple to work out a priority list and then review and update it on an annual basis.
- 71 SeaFIC recommended an alternative approach that is essentially equivalent to “Step 1 criteria 1-5” of the draft standards and organisational procedures with the addition of a criterion of stakeholder-initiated consideration on utilisation grounds. It submits that if this preliminary analysis were to be carried out, a list could be developed, and stocks and species could then simply be grouped on pragmatic grounds (e.g., consider similar species together, give priority to any urgent sustainability or utilisation problems). The list could then be worked through as resources and other priorities allow. SeaFIC contend that in this way the analytical effort would be put into the actual advice and consultation process on the determination of whether to introduce a species or stock into the QMS.

MFish response

- 72 MFish acknowledges that the process outlined in the standards and organisational procedures is not a statutory process and this was never its intention. The process occurs prior to the formal QMS introduction process (i.e. the initial position paper /final advice paper process). In light of SeaFIC's concerns the standards and organisational procedures have been amended to better reflect their fit with statutory processes.
- 73 MFish agrees with SeaFIC that it would be helpful to include specific criteria to capture stakeholder views relating to the sustainability and/or utilisation of a non-QMS stock or species. Such objectives may be developed through fisheries plans and rohe moana management plans. An additional criteria (criteria 7) has been added to fulfil this role.
- 74 MFish considers that the approach taken in the standards and organisational procedures is essentially equivalent to the alternative approach recommended by SeaFIC. SeaFIC supports the use of the proposed criteria (apart from that relating to adverse environmental effects which has been discussed above). Where the standards and organisational procedures diverge from the approach suggested by SeaFIC is the subsequent analysis of the list of stocks and species derived from these criteria.
- 75 The aim of the standards and organisational procedures is to consistently and transparently analyse the best available information on the sustainability and utilisation risks non-QMS stocks or species are exposed to and to decide on that basis which stocks warrant formal consideration. Those stocks for which the risk to their sustainability or utilisation is insufficient to warrant closer consideration for QMS introduction will not be considered through the formal IPP/FAP process. This represents a considerable saving in Ministry and stakeholder resources while still ensuring that a robust process is run and that stakeholders have an opportunity to contribute to the prioritisation process.
- 76 The assessment as to whether a stock faces a sufficient sustainability or utilisation risk to warrant closer examination is undertaken by MFish analysts. By necessity this is subjective in the sense that stocks and species are assessed in the absence of full information and therefore relies on an analyst's interpretation of the best available information. The standards and organisational procedures seek to increase the objectivity of the assessments by providing, through consultation, a means for stakeholders to contribute to the assessment process and through the inclusion of a consistent and transparent risk assessment process.
- 77 SeaFIC suggests that species should be grouped on pragmatic grounds such as considering similar species together and giving priority to any urgent sustainability or utilisation problems. MFish considers that both the examples of a pragmatic approach provided by SeaFIC are captured in the standards and organisational procedures. MFish also considers that SeaFIC's concern that the process is based on a subjective assessment by MFish analysts would only be further exacerbated under their proposal.
- 78 MFish have used the risk assessment process to identify stocks and species to be considered for QMS introduction in 2008. While the process may at first sight appear onerous, analysts involved have not found this to be the case. Collating the best

available data into an information brief is a necessary first step for any process, regardless of whether it is that outlined in the standards and organisational procedures, a pragmatic prioritisation process as envisaged by SeaFIC or indeed the formal IPP/FAP QMS introduction process. The risk assessment process that follows essentially formalizes the prioritisation process that currently takes place while providing greater consistency (both between stocks and species and between years) and transparency to this process.

Terminology

- 79 **SeaFIC** raises concern that in places the standards and organisational procedures rewrite the words in the Act in a way that distorts and obscures the plain meaning of the legislative obligations. As an example it cites paragraph 24 where the requirement to provide for ‘utilisation’ is interpreted as a requirement to provide for ‘access’. It notes that there is no reference to ‘access’ in the definition of utilisation and the so-called ‘summary’ instead replaces the straightforward words of the Act with entirely different concepts. It contends that this amounts to reinterpretation of the Act.

MFish response

- 80 It was not the intention to rewrite the words in the Act in such a way as to change their meaning. Rather the wording used in the standards and organisational procedures aims to accurately interpret the Act with the intention of clarifying the process outlined in the standards and organisational procedures. Where appropriate the standards and organisational procedures have been amended to better reflect the wording used in the Act. Where it has been considered useful to provide greater clarity through the use of alternative wording this has been explicitly acknowledged.

Rationale for QMS introduction

- 81 **Challenger** considers that the standards and organisational procedures imply to some extent that species that would not have otherwise met the criteria for introduction to the QMS could now be introduced to serve a purpose for monetary gain by MFish.

MFish response

- 82 MFish refutes the contention that QMS introduction would be undertaken for monetary gain. The rationale by which a species is introduced to the QMS is restricted to sustainability and utilisation considerations and is clearly described in the standards and organisational procedures. MFish also notes that the standards and organisational procedures are not a statutory process and that the determination as to whether a stock or species is ultimately introduced is made by the Minister of Fisheries.

Interaction with the Harvest Strategy Standard

- 83 **Challenger** expressed concern at how the Harvest Strategy Standard would impact on the ability to set a reasonable TACC for low-knowledge/low information stocks that are introduced to the QMS.

MFish response

- 84 Concerns with regard to the application of the Harvest Strategy Standard to low knowledge/low information stocks will be addressed through that standard.

Highly Migratory Species

- 85 **NZBGFC** raises concern that the standards and organisational procedures must recognise that significant change in availability of HMS species in some 6 month periods is not a trigger for introduction under criteria 3 (Variation in Catch). Specifically it notes that New Zealand only fishes part of the natural range of these species and management will be the responsibility of the Western and Central Pacific Fisheries Commission (WCPFC).

MFish response

- 86 The criteria used in the standards and organisational procedures are intended to be inclusive. Where there are reasons for catch variability that do not indicate a sustainability concern, this will be determined through the risk assessment process. If no sustainability or utilisation risk is identified through this process then the stock or species will not be considered for QMS introduction. MFish also note that international obligations are considered under criteria 5.

Non-commercial species

- 87 Both the **NZBGFC** and the **NZRFC** consider that the QMS introduction process standards and organisational procedures need to include a mechanism or classification that will make it clear that non-commercial species are not eligible for introduction to the QMS. Specifically they raise concerns that the proposal will classify a species which has 'exclusion of access to one or more sectors' as high risk in the definitions of severity and likelihood, thereby making them candidate stocks for introduction. As examples they cite regulations which prohibit the retention of marlin on commercial vessels caught in New Zealand waters, and regulations prohibiting targeted commercial set-net fishing of reef fish in northern waters.

MFish response

- 88 In the case of the reef fish and marlin, sustainability measures under s 11 are in place. Section 17B specifically allows for the use of these measures if they better meet the purpose of the Act.

Specific comments

Step 1: Risk Identification

Criteria 1 and 2

- 89 **SeaFIC** agrees that all stocks or species on Schedules 4C and 4D should be on the candidate stock or species list (criteria 1 & 2) in order to ensure that catch history is protected in the event of a decision to introduce the stock or species into the QMS.
- 90 **TOKM** agrees that inclusion on Schedules 4C and 4D are relevant and priority considerations for the list of QMS entry candidates. However it considers that, although Schedule 4C nominally lists species for which MFish claims to have

sustainability concerns, this position is questionable as no evidence of overfishing, poor recruitment, population decline etc has been provided. TOKM recommends that all species on schedule 4C are advanced as a matter of priority and if the Minister determines that they should not be introduced to the QMS then they should be removed from this schedule.

- 91 **TOKM** also notes that there are few permits in existence for schedule 4C stocks and that those that do exist expire on 30 September 2007 under s 93B of the Act. TOKM therefore considers that there is a strong case for letting the catch history lapse.

MFish response

- 92 MFish acknowledged that Schedule 4C and 4D species should be prioritised for QMS introduction by the inclusion of criteria 1 and 2 in the standards and organisational procedures. Inclusion of these stocks and species on the candidate stock list will ensure that the best available information on their sustainability or utilisation is collated into the information briefs.
- 93 MFish agrees that Schedule 4C was not intended as a permanent management framework and intends to move stocks or species off this schedule as resources allow. The standards and organisational procedures will prioritise the deployment of these resources. The risk assessment process specifically considers risk to both sustainability and utilisation. If there is no sustainability risk and the risk assessment identifies that the permit moratorium is unnecessarily constraining utilisation potential, then the stock or species will be formally considered for QMS introduction. If the Minister subsequently decides not to introduce the stock or species to the QMS then it will be removed from Schedule 4C. The operational procedure has been amended to ensure that stocks on schedule 4C that do not exhibit a sustainability concern are prioritised for consideration by the Minister to ensure that, where appropriate, the Minister is asked to make a determination to remove species from schedule 4C.
- 94 MFish disagree with the TOKM contention that provisional catch history should be set aside prior to the expiry date of 1 October 2009. TOKM appears to interpret s 93B as stating that all fishing permits in existence for stocks on schedule 4C will expire on 30 September 2007. MFish interprets s 93B as meaning that only those permits where the original permit holder has died, and the permit has been passed onto a relative in accordance with s 93A will be revoked on 30 September 2007. Current fishing permits still being used by the original permit holder will remain valid and provisional catch history would still be used as the basis for allocating quota should these species be introduced to the QMS prior to 1 October 2008.

Criteria 3

- 95 **SeaFIC** agrees that variation in catch (criterion 3) is an appropriate criterion to examine, although SeaFIC has reservations about the level of prescription proposed. SeaFIC considers that it is ambiguous whether the references to “6 monthly total(s)” mean running 6 monthly periods, or 6 month periods from 1 October to 31 March and then 1 April to 30 September. It also considers that the draft standards and organisational procedures provide no justification for any of the proposed catch variation figures. SeaFIC considers it is not clear what the criteria are trying to capture

and why they have been selected in preference to other values. It questions what would happen if catch of a stock was 99 tonnes per 6 month period for years but once happened to be 101 tonnes. It suggests that, at a minimum, it would have been useful for the authors of the standards and organisational procedures to illustrate the effects that adoption of the criteria would have had on stocks introduced in the last few years.

- 96 **TOKM** questions the data used to evaluate stocks against criterion 3. It submits that if the catch data is derived from fisheries return forms such as the TCEPR form it will not include detailed information on non-QMS species discarded or mealed. TOKM further notes that only the top five species caught are recorded on these forms. It contends that this will create problems if the data is used to analyse stocks against criterion 3 as the number of occasions a species falls into the top five species will vary by fishing event, inevitably resulting in quite large year-on-year fluctuations in recorded catch.

MFish response

- 97 The six monthly totals referred to by SeaFIC are the two 6 month periods from 1 October to 31 March and then 1 April to 30 September. The standards and organisational procedures have been amended to better reflect this definition.
- 98 There is no strict rationale for the figures used in the standards and organisational procedures to define a variation in catch that MFish considers signifies grounds for a potential sustainability or utilisation concern. The numbers presented in the standards and organisational procedures are considered to be inclusive - that is they are set low to ensure that they capture all stocks or species where the catch variation is indicative of a real concern although they will also catch some stocks or species where the variation is caused by other reasons such as natural variation in stock levels or a change in fishing practices. For this reason MFish does not consider that a stock which just fails to meet the criteria is cause for concern and, from a practical perspective, it is necessary to set a limit.
- 99 SeaFIC suggests that considering the catch variations for species recently considered for QMS introduction may provide an insight as to the appropriateness, or otherwise, of the catch variation criteria provided in the standards and organisational procedures. Stocks and species considered for QMS introduction on 1 October 2007 included prawn killer, conger eel, albacore and seal shark. Analysis of catch data for 2003-2006 showed that for seal shark, stocks BSH 3 and 4 satisfied both the maximum catch⁷ and the catch variation⁸ tests and stocks BSH 2, 5, 6, and 7 satisfied the catch variation test alone; for prawn killer stock PRK 1 satisfied the catch variation test; for conger eel stocks CON 4 and 7 satisfied the catch variation test; and for Albacore stock ALB 1 satisfied the maximum catch test.
- 100 In regard to TOKM's concerns, the information used for the analysis of catch variation is taken from the landing forms rather than the catch effort forms. Data recorded on these forms includes all species landed and not just the top five species recorded on TCEPR forms. Landing codes on these forms record catch discarded,,

⁷ Catch exceeding 100 tonnes for any of the 6 month periods.

⁸ Catch exceeding 20 tonnes for any of the 6 month periods **and** the difference in catch between the minimum and maximum 6 monthly totals exceeding fifty percent of the minimum 6 monthly total.

eaten onboard and used as bait along with those processed at sea (including meal) or landed whole. The standards and organisational procedures have been amended to make it clear that information derived from the landing forms should always be used to analyse catch against criterion 3. Landing data were used in the identification of candidate stocks for the 2008 QMS introductions process.

Criteria 4 and 5

- 101 **SeaFIC** agrees that anecdotal information and international obligations (criteria 4 and 5) are appropriate criteria. **TOKM** however contends that these criteria make little sense. The specific concerns that TOKM has with these two criteria is unclear as they are not directly commented on further in their submission. TOKM does raise the issue of the inclusion of information in the information briefs detailing where a species under consideration has been included on various international conservation instruments that have no standing under New Zealand law (e.g. the IUCN Red List and the Australian Environment Protection and Biodiversity Conservation Act 1999).

MFish response

- 102 MFish considers that information from numerous sources may be valid in the prioritisation process outlined in the standards and organisational procedures. MFish acknowledges that New Zealand has a specific obligation to adhere to Conventions to which New Zealand is a signatory. Nonetheless other information derived from international conservation instruments such as the IUCN Red List may also be informative. Where available such information should be included in the information briefs although care should be taken that any uncertainty is characterised and that it is applied appropriately within the risk assessment process.

Information briefs

- 103 **Ngatiawa** notes that the standards and organisational procedures refer to ‘information briefs collating known biological, social, economic, cultural and fisheries management data’. It considers that is an appropriate range of data for environmental management decision making. However it suggested that MFish has historically lacked the expertise to sufficiently determine social and cultural data and that making a commitment to resourcing this aspect of the standards and organisational procedures has implications, which MFish needs to carefully consider.
- 104 Ngatiawa also considers that while the information requirements detailed in the standards and organisational procedures include biological data, it does not specifically refer to ecosystems. It considers that MFish policy documents, such as the *Fisheries Plan Framework* (6 October 2005) and the *Strategy for Management of the Environmental Effects of Fishing* identify the need for eco-system based management, and it should be one of the information requirements.

MFish response

- 105 The collection and analysis of social and cultural information is difficult, and particularly so in relation to non-QMS stocks and species where there is often little information of any kind. Nonetheless MFish remains committed to providing sufficient information to the Minister to enable his/her statutory obligations to be met

in relation to the social and cultural wellbeing aspects of the utilisation test under s 17B(1)(b).

- 106 The standards and organisational procedures provide a suggested list of information to be included in the information briefs. This was not intended to be an exhaustive list but rather to suggest the type of information that should be included. MFish notes that, although the term ‘ecosystems’ is not included in the description of appropriate information, suggested biological information includes habitat interactions, associated species, protected species interactions and the environmental effects of fishing.

Step 2: Risk analysis

- 107 SeaFIC considers that the section on “additional information on management considerations” (subsequent to risk analysis step 2b) is useful and contains pragmatic guidance on relevant factors that should influence priorities. It also has nothing to add to steps 3, 4 and 5 of the risk analysis process. Concerns that it does have are discussed below.
- 108 SeaFIC considers that the risk analysis matrix in step 2a is unacceptably biased towards QMS introduction. It is SeaFIC’s view that the presumption seems to be that non-QMS management will always be riskier than QMS management. It contends that the table should also include a ‘severity’ category of ‘no risk’ and a ‘likelihood’ category of zero.

MFish response

- 109 MFish acknowledges a policy preference to address sustainability and utilisation concerns through QMS introduction. This reflects the wording of s 17B whereby a stock or species must be introduced to the QMS unless a s 11 sustainability measure would better meet the purpose of the Act. The default action in light of sustainability or utilisation concerns is introduction to the QMS.
- 110 MFish does not consider that it is appropriate to provide a no risk category for severity or a zero likelihood category. Fisheries management decisions are, almost without exception, made in the absence of full information and this is particularly so when considering stocks or species that are currently managed outside the QMS. Given the lack of data for these stocks and species it is not credible to state that there is no risk or that an adverse impact is never going to occur. This applies to both sustainability and utilisation considerations.

Generic objectives

- 111 SeaFIC states that paragraph 63 demonstrates the self-perpetuating fiction of the ‘generic objectives’ in the sentence: ‘*As the Act provides no guidance as to a hierarchy of the three generic objectives each will be treated equally*’. It contends that the reason that the Act provides no guidance on the hierarchy of the objectives is that the Act doesn’t even mention the ‘generic objectives’ – they are purely a Ministry fabrication.

MFish response

- 112 The three generic objectives used in the risk assessment process are derived directly from ss 17B(1) and 8(2) of the Act. They are a necessary construct to enable the risk of failing to meet the statutory requirements to be assessed. The point the quoted paragraph makes is that no priority is assigned between the sustainability and utilisation limbs of the statutory tests in s 17B(1) that determine whether or not a stock or species should be introduced to the QMS. Similarly there is no priority assigned between the two components of ‘ensuring sustainability’ in s 8(2) – that is maintaining the potential of fisheries resources requirement to meet the reasonably foreseeable needs of future generations and avoiding remedying or mitigating any adverse effects of fishing on the aquatic environment.

Inappropriate complexity

- 113 SeaFIC contends that the paragraph quoted below from the draft standard illustrates the inappropriate complexity of the risk assessment process in comparison with the paucity of information. It suggests that the approach outlined in the paragraph gives an impression of rigour and precision when in fact none exists: -*“Those stocks or species whose highest score is 7 or over will be considered high risk, those scoring 3 or below will be considered low risk. The remaining stocks or species face a medium level of risk and consequently decision-making on whether or not to introduce these stocks or species to the QMS is likely to be particularly problematic. These stocks will be further analysed in the second step of the risk analysis”*. In SeaFIC’s view the authors have lost sight of the fact that these are not standards and organisational procedures about whether or not to introduce a stock to the QMS – it is simply a process to develop a list of species that will be considered for introduction.

MFish response

- 114 The use of the scores of one to nine is a function of the matrix approach and is not intended to suggest an inappropriate level of rigour or precision in the analysis. In fact stocks are never divided into any more than three groups. The scores of 1-9 simply make the assessment easier to perform and are not used as a basis for fine-scale differentiation between stocks or species.
- 115 MFish acknowledges that the standards and organisational procedures do not describe a statutory process. Language that may give this impression has been amended.