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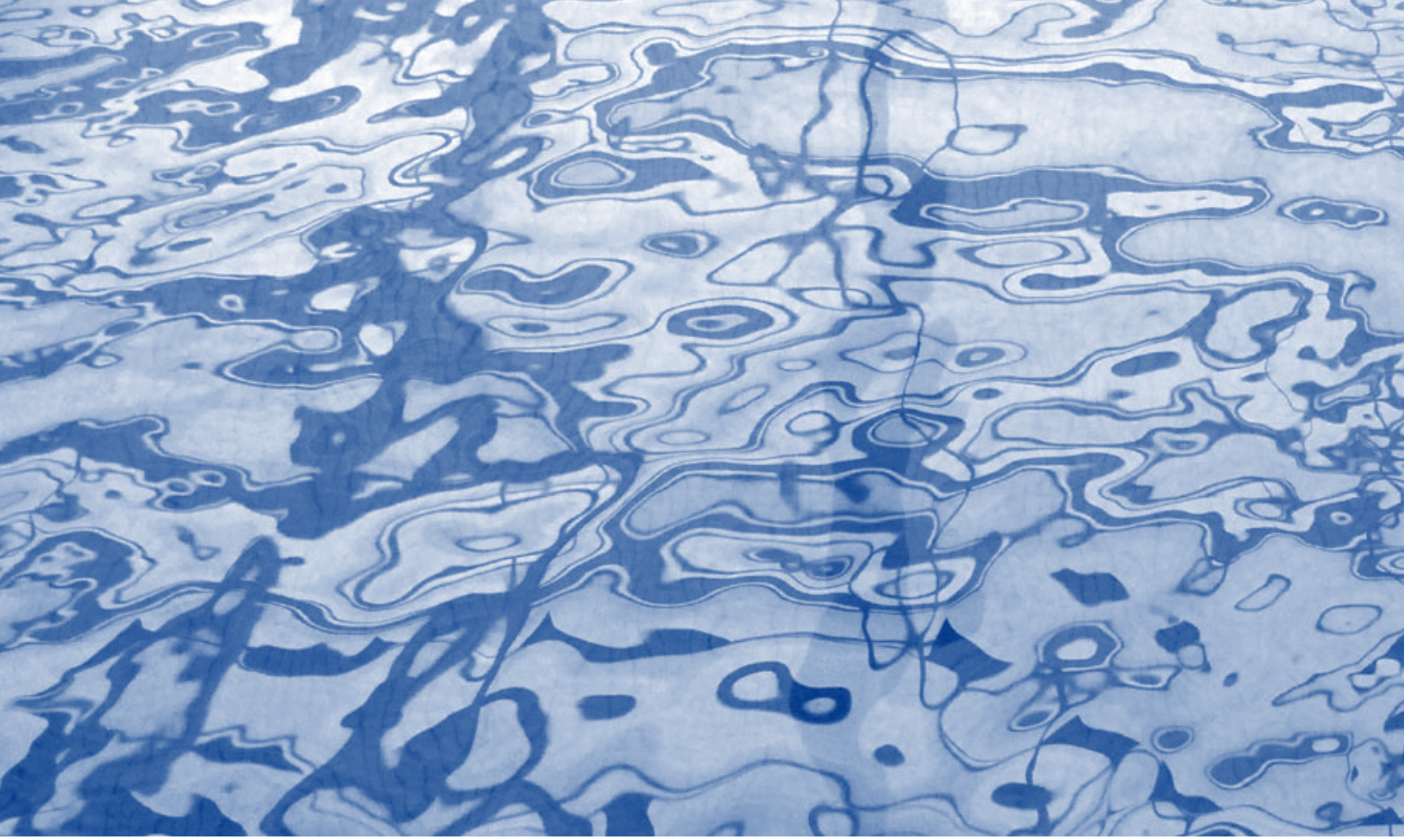

Spatial conflicts in New Zealand fisheries

Spatial conflicts in New Zealand fisheries: the rights of fishers and protection of the marine environment[1]

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Abstract

New Zealand fisheries legislation provides commercial fishing rights to holders of individual transferable quota (ITQ). The settlement of fisheries claims against the Crown by Mäori, New Zealand's indigenous people, brought about the transfer of ITQ holdings to Mäori, and an obligation on the Crown to recognise and provide for indigenous (customary) fishing rights over traditional fishing grounds and other areas that have been of special significance to Mäori. Some types of customary fishing areas exclude commercial fishing and could affect recreational fishing. Fisheries legislation requires that regulatory measures be put in place to avoid, remedy or mitigate the adverse effects of fishing. The Government also aims to protect marine biodiversity by having 10% of New Zealand waters in some form of protection by 2010. The legislative processes for protecting the marine environment and establishing customary fishing areas include assessment of effects on fishing rights. This paper explores the conflicts that arise from legislative obligations to uphold the rights of fishers, to sustain fishstocks and to protect the marine environment. The paper concludes that inconsistent legislative obligations and their disparate processes have led to spatial conflicts and a race for the allocation of space. Legislative obligations need to be integrated to maintain a balance between use of fisheries resources and protection of the marine environment.

Introduction

As fisheries resources become scarce, near-shore marine areas become increasingly coveted by competing sectors (Baker 2000). Despite allocations of fish stocks that limit each sector's catch, conflicts occur over the amount allocated to each sector and access to the most valued fishing grounds. These conflicts intensify as coastal populations increase and the public becomes increasingly aware of the cumulative effects human activities have on the marine environment. At the same time, the public is placing higher value on marine biodiversity and complexity of marine communities, while considering some species to be worthy of moral concern (de la Mare 2005).

Spatial conflicts are a world-wide problem. A primary challenge for coastal nations is the trade-off between utilising and protecting the marine environment. The need to protect the marine environment from overuse has led governments to place higher priority on setting aside considerable portions of the marine environment in some form of marine protected areas (MPA). Closing parts of the coastal marine environment inevitably displaces some resource users, increases congestion on the remaining open fishing grounds, increases variable costs associated with the choice of fishing grounds, and adversely affects coastal populations by restricting or prohibiting access to local fisheries (Sanchirico 2000).

Governments are increasingly recognising the need to develop policy frameworks that address the wide-ranging effects that establishing MPAs have on marine activities. For example, the Australian Government has developed a framework that outlines a commitment to conserve marine biodiversity and secure fisheries access for displaced fishing activities (Australian Government 2004). The lack of such an MPA policy framework in other nations, such as New Zealand, increases the difficulty government agencies have in explaining how the effects of establishing MPAs are addressed satisfactorily, even though they have successfully met relevant legislative criteria. The situation is more difficult in New Zealand where there is no provision for compensation paid

to affected parties, and it is unlikely such provisions will be enacted in the future, despite their success in other nations.

Like other coastal nations, New Zealand uses a range of legislative processes for utilising fisheries resources and protecting the marine environment, some of which are inconsistent and result in spatial conflicts between competing rights. While individual transferable quota (ITQ) holders often accept restrictions on their catch to ensure sustainable management of fishstocks, they generally view proposals to protect the marine environment or recognise indigenous (customary) fishing rights as an erosion of their rights when these proposals affect commercial activities. Similarly, recreational fishers typically object to any proposals that affect their rights to fish. Mäori, New Zealand's indigenous people, often express opposition to proposals that they consider interfere with customary fishing rights. At the same time, as society places greater expectations on protection of the marine environment, the Government places increasing emphasis on meeting this expectation when developing policies and legislation.

The first section of this paper outlines the relevant legislative obligations in New Zealand to utilise and protect the marine environment. The second section explores the causes of spatial conflicts and the resulting race for the allocation of space. The final section outlines the Government's solutions to the spatial conflicts and race for space, which focus on integrating inconsistent legislative obligations and their disparate processes so that competing rights to utilise fisheries resources are balanced with protection of the marine environment.

Legislative obligations in New Zealand

Commercial fishing rights

The rights of ITQ holders were secured under the Fisheries Amendment Act 1986 (the 1986 act) and subsequently the Fisheries Act 1996 (the 1996 act), with respect to initial ITQ allocations and their legal definition. While the courts have determined that ITQs have many of the characteristics of property rights, and these rights cannot be rendered ineffective, ITQ holdings are subject to the provisions of the legislation under which they were established.[1] ITQ holdings allow commercial fishers the right to harvest a proportion of the total allowable commercial catch within the relevant quota management area (QMA). These QMAs are not exclusive to commercial fishers as other commercial, including marine farming, and non-commercial activities (customary and recreational fishing) are allowed in the same areas.

Marine farming provides the right to establish structures and occupy coastal space. In practice, these structures exclude or impede other fishing activities. The quota management system (QMS) and the allocation of ITQ is less suitable for managing the marine farming sector since it does not have a fixed output as do wild stock fisheries (Bess and Harte 2000). In late 2004 aquaculture reforms were enacted to reconcile spatial conflicts between wild stock and farmed fisheries and to improve the planning process for use of coastal space, which is now the responsibility of local government authorities (Bess 2005). Marine farms have been established throughout coastal waters and the total area is 121 km^2.

Recreational fishing rights

New Zealand's significant recreational and charter boat fisheries are managed outside the QMS by a range of species-specific input and output controls and

1 New Zealand Fishing Industry Association Inc & Ors v Minister of Fisheries (CA82/97-CA83/97, 22 July 1997).

do not require individual licenses or permits. Although the 1996 act does not explicitly provide for recreational fishing rights, the Minister of Fisheries (the minister) makes allowances for recreational fishing when allocating a total allowable catch (TAC) (Ministry of Fisheries 2005a). Approximately one-third of the population fishes for recreational purposes, and many regard 'fishing for food or fun' as something akin to a 'birthright for all' (Ingram and Barnes 2006). This perspective continues to hinder the Ministry of Fisheries' (the ministry) efforts to more clearly define recreational fishing rights. As a result, the allocation of TACs between commercial and recreational sectors has been a source of longstanding tension.

The 1996 act allows for fisheries regulations to be made that close areas to commercial fishing for a stock or prohibit a commercial fishing method in an area for the purpose of better providing for recreational fishing, provided certain criteria have been met. The regulations have been used to establish two 'marine parks' that are closed to commercial fishing and, with local support, further restrict recreational fishing. Special legislation has been used to establish three other areas that exclude commercial fishing and further restrict recreational fishing.

Customary fishing rights

During the colonial settlement of New Zealand, Mäori viewed the signing of the Treaty of Waitangi 1840 (the treaty) as a way to preserve their autonomy and retain control of their land and sea. The treaty explicitly states that Mäori have rights to their natural and cultural resources. Soon after the treaty was signed, Government actions and legislation began to erode Mäori rights until most, if not all, that were guaranteed by the treaty were alienated from them (Ward and Hayward 1999). Subsequently, Mäori and the Crown entered into negotiations which resulted in the 1992 Fisheries Deed of Settlement (the deed of settlement), under which the Crown recognises the importance of commercial and non-commercial customary fisheries to Mäori. The deed of settlement and the treaty of Waitangi (Fisheries Claims) Act 1992 (the settlement act) provided for the full and final settlement of Mäori fishing claims and confirmed that Mäori customary fishing rights had not extinguished and continued to give rise to obligations on the Crown. The settlement placed an obligation on the Crown to recognise and provide for Mäori customary fishing rights. These obligations led to enactment of customary fishing regulations to establish areas for customary food gathering.

Customary food gathering is defined as the traditional take of fish, aquatic life, or seaweed or management of fisheries resources to the extent that it is neither commercial in any way nor for pecuniary gain or trade. Local Mäori can propose customary food gathering areas (mätaitai reserves) and the minister approves them if they meet the requirements in the customary fishing regulations. Non-commercial fishing in mätaitai reserves is managed by bylaws approved by the minister. Commercial fishing is excluded from

mätaitai reserves; however, it can be reinstated by making of regulations. There are six mätaitai reserves that range from 0.3 km^2 to 77 km^2, totalling 136.8 km^2.

Under the 1996 act, taiäpure -local fisheries can be established in relation to areas of New Zealand waters (being estuarine or littoral coastal waters) that have customarily been of special significance to Mäori either as a source of food or for spiritual or cultural reasons. All fishing activities within the taiapure-local fishery continue unchanged until the minister approves any recommended changes to fishing regulations. There are eight taiapure-local fisheries that range in size from 3 km^2 to 137 km^2, totalling 328 km^2.

Protection of the marine environment

New Zealand waters include any areas of the sea between the landward side of the 12-mile territorial sea and the 188-mile Exclusive Economic Zone (EEZ) and comprise 4.8 million km^2, which is the fourth largest area under national jurisdiction in the world. The government aims to protect marine biodiversity by having 10% of New Zealand waters within some form of protection by 2010, although the overall objective is for a comprehensive and representative MPA network in place by 2020 (Ministry of Fisheries 2005b). Protection of 10% of New Zealand waters is in line with the international obligations set out in the United Nations Convention on Biological Diversity (CBD) to promote conservation of biological diversity and sustainable use of its components, which New Zealand ratified in 1993. The ministry estimates that 2.6% of New Zealand waters are in some form of protection. However, this estimate is understated, as it only includes the area within marine reserves and seamounts where trawling is prohibited.

The marine environment is generally protected by marine reserves. The Marine Reserves Act 1971 (the 1971 act) provides for the establishment of marine reserves within the 12-nautical mile territorial for the purpose of preserving areas in their natural state for "scientific study". While the 1971 act provides for limited fishing within marine reserves at the discretion of the Minister of Conservation, the government has a no-take policy for marine reserves (i.e. prohibition on all extractive activities). Currently there are thirty-one marine reserves, range in size from 0.93 km^2 to 7,480 km^2. The ministry estimates that approximately 7.3% of the 12-nautical mile territorial sea is fully protected with marine reserves, though heavily weighted by two island-based marine reserves that together occupy 99.5% of the area.

The QMS has played a significant role in improving the biological status of fisheries resources (Annala 1996). The purpose of the 1996 act is to provide for sustainable utilisation of fisheries resources, which includes avoiding, remedying or mitigating the adverse effects of fishing. Regulatory measures under the 1996 act for this purpose provide varied levels of protection for the marine environment. Fisheries regulations have been used to protect seabirds,

marine habitats and ecosystems by restricting fishing methods and prohibiting bottom disturbing fishing methods over sensitive habitats. The ministry's Strategy for Managing the Environmental Effects of Fishing incorporates some aspects of ecosystems-based management into single-species management by identifying habitats or species at risk from fishing and establishing environmental performance standards that are used to inform decisions about the delivery of regulatory measures, such as area closures and restrictions or prohibitions on fishing methods (Ministry of Fisheries 2005c).

Causes of spatial conflicts

Spatial conflicts occur when there is competition between the different sectors to utilise the same marine area and with those who propose some form of protection for the same area when the protection would exclude or restrict some or all utilisation. Spatial conflicts also arise from inconsistent legislative obligations and their disparate processes to uphold the rights of commercial, recreational and customary fishers, to sustain fish stocks and to protect the marine environment.

Inconsistent legislative obligations and their disparate processes

Spatial conflicts intensify when competing uses of fisheries resources and varied levels of protection for the same area are recognised in legislation. The purpose of the 1971 act requires the Department of Conservation (the department) to give priority to setting aside areas as marine reserves for scientific study. The establishment of a marine reserve, along with the government's no-take policy prevents the ministry from taking actions to uphold the purpose of the 1996 act to provide for sustainable utilisation.

Legislative obligations are inconsistent in the way fishing rights are defined. An ITQ holder's right is defined as a proportional quantity of a fish stock. This right only applies to the relevant QMA, but does not provide exclusive access to the QMA, as recreational and customary fishers can also access the area. Customary fishing rights are not defined by quantity, and fishing for customary purposes is not subject to size restrictions, bag limits and other regulatory measures, as are commercial and recreational fishing. Customary fishing rights do not provide Mäori with exclusive access, although mätaitai reserves exclude commercial fishing unless the minister agrees to reinstate it. Both mätaitai reserves and taiäpure-local fisheries have the potential to affect recreational fishing through the making of regulations or bylaws.

Marine reserves exclude all fishing activities. Similarly, some areas closed under the 1996 act exclude all fishing activities, while other areas restrict or prohibit particular fishing methods. Marine farming provides the right to establish structures and occupy coastal space. In practice, these structures exclude or impede other fishing activities.

ITQ holders generally consider their rights have been continually eroded through the reallocation of space within QMAs for customary fishing areas, marine reserves and marine farms. At the same time, some Mäori may conclude that the recognition and provision for customary fishing areas addresses the perceived shortcomings of the QMS when it was first implemented. Similarly, the department, conservation groups and others might conclude that the government's priorities for protecting the marine environment are needed to restore a balance between utilisation and protection.

The processes to establish spatial tools that restrict or prohibit utilisation of fisheries resources or protect the marine environment are demand driven, in that the relevant process must commence upon receipt of a proposal. However, the processes are disparate with respect to each requiring discrete and separate ministerial decisions, and any consideration of outstanding or possible future proposals for a given area is generally regarded as irrelevant to the ministerial decision. This situation exacerbates existing spatial conflicts, as the public realises allocations are also based on spatial access. This realisation sends the clear signal that proposals for spatial tools are addressed on a first-in, first-served basis, which then causes those who can to race for the allocation of space.

Opposition to spatial tools

The common public response to a race for space is that each user group advocates for its preferred spatial tool and objects to other types of proposals. Even though some may support the concepts behind proposals for particular spatial tools, they may respond with 'not in my backyard'. Some object to any proposal, as they perceive no end to the use of more spatial tools that would, or have the potential to, encroach on their fishing areas and activities. Such objections have some merit in light of the ad hoc approach to determining where marine reserves and customary fishing areas are proposed. Marine reserve proposals can be put forward by any of the thirteen regional offices within the department, as well as other government and non-government agencies, including fishing interests that meet the applicant criteria in the 1971 act, which has resulted in some regions having several marine reserves and others having none. Similarly, the treaty obligations on the Crown could conceivably allow Mäori to propose that customary fishing areas be established over most, if not all, coastal areas, and with some areas extending offshore. However, their proposals must meet the relevant legislative or regulatory criteria. In so doing, the minister may require amendments to proposals to reduce or mitigate the effects on particular fishing activities.

Marine reserves

Many commercial fishers consistently oppose marine reserve proposals, as they perceive no direct benefits for their fishing activities, though at least two marine reserves had commercial fishing interests as applicants. Commercial fishers largely do not accept that areas should be set aside in their natural

state for scientific study, as allowed under the 1971 act. Commercial fishers typically contend the QMS provides sufficient protection for all species managed within it, and that the QMS, along with other regulatory measures under the 1996 act, can be used to protect the marine environment. For example, in early 2006 a draft accord was reached between the minister and deepwater commercial fishers to close 1.2 million km^2 to bottom trawling and dredging. The draft accord demonstrates commercial fishers' contention that the marine environment can be protected without use of marine reserves, though it would only protect deepwater benthic habitats and demersal species, not the ecosystem. Recreational fishers generally object to marine reserves for the same reason as commercial fishers, although they have also been joint applicants and have supported some marine reserve proposals. A significant number of Mäori express fundamental opposition to the very concept of marine reserves on the grounds that they interfere with customary fishing rights, though in at least three cases Mäori have been joint applicants for marine reserves. Mäori typically prefer to manage the marine environment by way of taiapure-local fisheries and mätaitai reserves.

Customary fishing areas

Some commercial fishers do not accept that recognition and provision for customary fishing rights was a critical component of the deed of settlement. Nonetheless, a failure to provide the redress required by the deed of settlement and the Settlement act has the potential to undermine both the deed of settlement and the QMS on which the interests of all fishers depend. Both customary fishing rights arising from the deed of settlement and commercial fishing rights provided under the QMS cannot veto the other; legislation requires these rights to co-exist (Ministry of Fisheries 2005d). Other commercial fishers do not object to the establishment of customary fishing areas, so long as they exclude highly productive and commercially valued fishing grounds. Commercial fishers have also expressed concern about the recent increase in the number and size of mätaitai reserve proposals.

Competition with marine farming

The new management system promulgated through the aquaculture reforms addresses spatial conflicts when assessing proposed aquaculture marine areas. The system provides for consideration of effects marine farming has on existing fishing activities. Since marine farming requires use of coastal space, the sector's continued growth will contribute to the cumulative effects utilisation of space has for a given area.

Cumulative effects

The pace of competition for coastal space has increased due to the heightened awareness amongst Mäori about the availability of customary fishing areas, the growth in the marine farming sector and the government's actions to protect more of the marine environment. There is no legislative prohibition against establishing multiple customary fishing areas, marine reserves,

aquaculture ventures and other regulatory measures within a given area. As each additional proposal succeeds, spatial conflicts with other users increase, likely causing subsequent proposals to require amendments to reduce or mitigate effects on particular fishing activities. Eventually a point will be reached when a given area cannot include any further proposals that have an effect on some or all fishers in that area. However, there is no legislative guidance regarding when this point will be reached and what social and economic tradeoffs should be made.

Nonetheless, the criteria contained in the legislation to establish marine reserves, mātaitai reserves, taiapure-local fisheries and aquaculture marine area recognise existing rights and allow a level of impact to occur when establishing these areas. The criteria require the minister to use judgement about future effects on existing rights. Ultimately, determining when, or if, a competing right has had too much effect on an existing right can be based on quite different perspectives.

Solutions to spatial conflicts

It could be argued that solving spatial conflicts involves reviewing and redefining fishing rights for all sectors so that these rights have greater similarity with respect to access to particular areas. Exclusivity and perhaps tradability between rights could form the basis for the review. Some within the seafood industry advocate fish stock allocations be based on a 'common currency' to facilitate negotiated settlements between fishing sectors 'without political interference' (Sykes 2006). While some recreational fishers would support redefining all rights, others would likely resist due to concern that their perceived 'birthright' to fish might be successfully challenged. Similarly, some Māori might resist reviewing customary fishing rights out of concern that the right could be curtailed in some way. However, no plans have been made to review the basis to all rights for utilising fisheries resources.

The government's solutions to spatial conflicts and the race for space seek to integrate inconsistencies in the legislative obligations and their disparate processes. This integration will occur primarily through the ministry's use of fisheries plans and the ministry and the department working to establish a network of MPAs, as well as legislative changes and policy developments to improve cooperation between government agencies and clarify priorities for management of the oceans.

Fisheries plans

The ministry, with the involvement of stakeholders, is developing a more integrated approach to the management of fisheries through the development of fisheries plans (Ministry of Fisheries 2005e). Fisheries plans could also facilitate commercial and non-commercial fishers putting forward

specific management proposals that better meet the needs of particular fisheries and the aspirations of those who use them (Bess 2006). There are no strict legislative requirements regarding what fisheries plans should include. However, they must meet all relevant legislative obligations, such as sustainable management of fish stocks and putting in place measures to avoid, remedy or mitigate the adverse effects of fishing, including effects on other species and their habitats. The process for developing fisheries plans is expected to address some spatial conflicts from a fisheries management perspective, which may include use of voluntary agreements within and among fishing sectors.

Marine protected areas policy and implementation plan

In early 2006 the Ministers of Fisheries and Conservation launched the Marine Protected Areas Policy and Implementation Plan (the MPA Policy). The MPA Policy is the first step in shifting the focus for establishing marine reserves from setting aside areas for scientific study to biodiversity protection (Ministry of Fisheries 2005b). This shift began with the development of the New Zealand Biodiversity Strategy, which fulfilled, in part, the international obligations set out in the CBD and established the government's aim to have 10% of New Zealand waters in some form of protection by 2010 (DOC and MFE 2000). The MPA Policy outlines a nationally consistent basis for planning and establishing a network of MPAs. The MPA network will include marine reserves, as well as the use of regulatory measures available under the 1996 act, customary fishing areas and other legislative measures, so long as they provide sufficient protection for habitats and ecosystems.

It is conceivable that the MPA Policy planning process could lead to reconsideration of existing MPAs and establishment of new MPAs to achieve better biodiversity protection. The challenge to the MPA Policy planning process is in instilling a formalised structure for government agencies to facilitate consideration of the most appropriate spatial tool, or combination of tools, for an area, although the legislative processes for establishing these tools can occur without regard to the MPA Policy.

Because the MPA Policy does not have legislative status, it cannot supersede existing rights recognised in legislation. For this reason, the MPA Policy cannot be used to make allocation decisions on the use of the marine environment. Provided users of the marine environment participate in the MPA planning process, they can assist with the identification of habitats and ecosystems that would have the least effect on their fishing activities and, therefore, be considered first for possible MPA designation. For this reason, the value in implementing the MPA Policy planning process is the likelihood that it will ameliorate future conflicts.

However, the value of the MPA Policy depends largely on the willingness of people to defer taking action on their right to apply for particular spatial tools

until the planning process has occurred for a given area. As the race for the allocation of space intensifies, some will likely opt to propose their preferred spatial tool sooner rather than later, knowing the cumulative effects in a given area lessen the chance that subsequent proposals will succeed. For this reason, the MPA Policy planning process may well encounter exogenous shocks that disrupt the expected systematic consideration of the most appropriate spatial tools to be applied to under-represented habitats and ecosystems.

If implemented, the draft accord to prohibit bottom trawling and dredging would contribute greatly towards meeting the objectives of the MPA Policy, provided that the protection standards are met.

New marine reserve legislation

Development of the New Zealand Biodiversity Strategy led to a review of the 1971 act and drafting of a new Marine Reserves Bill, which is currently before a parliamentary select committee. A primary purpose of the review was to align marine reserve legislation with implementation of the MPA Policy. Some of the provisions in the Bill have attracted considerable debate among the fishing sectors, particularly on the role of the Minister of Fisheries, Mäori input and participation, and the extent that consideration is given to the regulatory measures available under the 1996 act when establishing the MPA network (Ministry of Fisheries 2005f).

Oceans policy

Currently the various activities undertaken within New Zealand waters are managed under a wide range of legislation administered by numerous national and local government agencies. The management of these activities fails to address some operational issues, and is not well placed to manage opportunities and challenges for the future, particularly allocations between competing user groups. An overarching framework is needed to guide decisions on competing rights to utilise marine resources and to manage increasing demand for resource use (Ministry of Fisheries 2005g; Peart 2005).

The government has agreed to develop an overarching management framework, referred to as the Oceans Policy, to ensure integrated and consistent sustainable management of New Zealand waters and to better ensure the greatest benefits are obtained from resource use. The Oceans Policy is intended to provide guidance on Crown regulatory and allocation decisions and the inevitable economic and social tradeoffs that must be made to resolve spatial conflicts and avoid the race for the allocation of space. The Oceans Policy will likely include a combination of policy and legislative initiatives that subjugate inconsistent legislative obligations for oceans management and better align their disparate processes, while also upholding individual rights on resource use and managing the risks associated with inappropriate exercising of those rights.

Compensation

Maintaining a balance between competing rights to utilise fisheries resources and legislative obligations to protect the marine environment could be facilitated by provisions that allow compensation to be paid to affected parties. However, compensation is not a relevant consideration to ministerial decisions on the establishment of marine reserves and customary fishing areas, despite some arguing the criteria for establishing them expropriate commercially valued fishing grounds without compensation. The 1996 act provides a general presumption that the Crown will not be liable for compensation with respect to a wide range of regulatory measures (Ministry of Fisheries 2005a). Whether this presumption applies to the establishment of customary fishing areas is questionable. Those affected by establishment of either type of reserve can seek recourse through civil proceedings. To date, there have been no legal challenges to the establishment of a customary fishing area. The sole legal challenge regarding the effect that establishment of a marine reserve had on commercial fishers was dismissed.[2]

2 CRA3 Association Industry Association Inc v Minister of Fisheries (CP317/99, 24 May 2000).

Conclusion

Inconsistent legislative obligations and their disparate processes have led to spatial conflicts and a race for the allocation of space. Legislative obligations need to be integrated to maintain a balance between use of fisheries resources and protection of the marine environment. Currently, all competing fishing rights and legislative obligations to protect the marine environment cannot be simultaneously upheld to the extent possible and to the satisfaction of all parties. With hindsight, perhaps the recognition of particular fishing rights and protection of the marine environment could have been accomplished in ways that provided greater integration of competing rights and less social and economic upheaval in the recognition and exercise of those rights at different timeframes.

Development of fisheries plans and implementation of the MPA Policy are the government's first steps in addressing some of the causes of spatial conflicts and the race for the allocation of space. The process of developing fisheries plans is expected to address some spatial conflicts. The MPA Policy planning process will help avoid future spatial conflicts by identifying as potential MPAs those habitats and ecosystems that have the least effect on users of the marine environment. However, the MPA Policy cannot change the basis and timing of ministerial decision-making on spatial tool proposals.

Resolution of spatial conflicts will likely require completion of the draft Oceans Policy, which to some extent will subjugate some legislative obligations so they work together to meet stated priorities. The Oceans Policy may not be required to protect 10% of New Zealand waters by 2010, particularly if the minister approves the industry-proposed draft accord, though it may be needed to ensure full, comprehensive representivity of the MPA network by 2020. The challenge for the Oceans Policy is to address fundamental inconsistencies in the bases for allocating fishing rights and obligations to protect the marine environment. This challenge includes increasing all sectors' awareness of each other's right to fish. The question remains, however, whether or not the proposed solutions will be sufficient to resolve the spatial conflicts and end the race for space.

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