



Review of the Governance of Fish and Game New Zealand and the Regional Fish and Game Councils

**Prepared for the
Minister of Conservation**

February 2021

Contents

Executive Summary	3
Introduction	4
Part I: Governance and Structure	8
Part II: Treaty of Waitangi: Implications and Issues	22
Part III: Other Issues	32
1. Electoral System and Eligibility to Vote	32
2. Representation of Wider Community Interests/Community Engagement ...	34
3. Organisational Policies and Procedures and Meeting Procedures	37
4. Funding and Revenue	38
5. Advocacy	39
Full List of Recommendations	41
Transitional Arrangements	44
Appendices	45
▪ Appendix One: Terms of Reference	46
▪ Appendix Two: List of species covered by Fish and Game	49
▪ Appendix Three: Key legislative provisions	50
▪ Appendix Four: List of those interviewed	54
▪ Appendix Five: Summary of feedback submitted to the Review	55

Executive Summary

This Ministerial Review was prompted by longstanding reports of dysfunction within Fish and Game. It has provided an opportunity to review an organisation which has changed little since its establishment 30 years ago.

The Review has necessarily focused on the negatives and deficiencies of the organisation since they were the impetus for the Review. However it should be noted that there is much public good in the activities of Fish and Game, most notably in the area of environmental protection. In particular, Fish and Game fulfil a crucial role defending waterways and water quality in Environment Court processes – a role for which arguably they should receive more support from other organisations, both governmental and non-governmental.

The Review has tried to balance the need for the NZFGC (the national council) to enjoy greater and more explicit powers in order for it to fulfil its mandate of co-ordination and audit in respect of the FGCs (the regional councils) while at the same time recognising the need to preserve the regional presence and local knowledge which makes Fish and Game effective.

Belinda Clark, QSO

John Mills

February 2021

Introduction

Purpose of the Review

This Review of the governance of the New Zealand Fish and Game Council (the NZFGC) and the regional Fish and Game Councils (FGCs)¹ was commissioned by the Minister of Conservation, the Hon. Eugenie Sage in June 2020. The Minister said that given that the laws governing the FGCs were enacted some 30 years ago, it was timely to review the governance arrangements of the NZFGC and the 12 regional FGCs in order to ensure Fish and Game's governance and organisational arrangements were "fit for purpose" today.

The Minister appointed Belinda Clark and John Mills to conduct an independent review.

Review Terms of Reference²

The Review has two primary areas of focus. These are to:

- establish if the functions, powers and organisational structure of the NZFGC and the regional FGCs are fit for purpose for a modern regulatory and management Crown agency, identifying any changes required; and
- provide recommendations how Fish and Game can better implement its responsibilities under section 4 of the Conservation Act 1987 to give effect to the principles of the Treaty of Waitangi.

The terms of reference also invited the reviewers to consider the following specific aspects:

- **Organisational structure:** Review the current organisational structure, respective roles, and responsibilities and determine if it is appropriate for a modern regulatory agency;
- **Functions and statutory responsibilities** – Assess whether current statutory functions and responsibilities are fit for purpose and identify any changes needed to ensure Fish and Game operates as a modern and effective manager of sports fish and game birds.
- **Governance structure and accountability:** Assess the current governance and accountability structure and determine if it is appropriate for a modern regulatory agency; identify the most appropriate relationship between NZ Fish and Game Council and regional Fish and Game Councils; between the councils and licence holders; and accountability to the Minister
- **Electoral system and representation:** including the timing and process for elections for the New Zealand and regional Fish and Game councils; whether the current electoral system provides stability, accountability and transparency.
- **Representation:** how the interests of licence holders, Treaty partners and the wider community are best represented in Fish and Game's governance structure;
- **Treaty partnership:** how Fish and Game can better implement the responsibilities under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi.

¹ In this report the NZFGC refers to the New Zealand Fish and Game Council; FGC refers to any of the 12 regional Fish and Game Councils, and Fish and Game refers collectively to the NZFGC and the 12 regional FGCs.

² The full terms of reference are appended as Appendix I.

- **Organisational policies and practice:** whether there are effective policies and practice for organisational management, i.e. good employer requirements, staff management and accountability.
- **Funding and revenue:** Assess the adequacy of current financial and strategic planning and budget management; understand the current challenges to the financial stability of the national and regional councils; consider the policies for an allocation of licence revenue and identify the appropriate revenue sharing arrangements between national and regional Fish & Game councils; determine whether a clear revenue sharing formula should be established in legislation; and identify other potential revenue raising opportunities beyond increasing licence fees.
- **Community engagement:** Identify any opportunities to increase licence holder, Treaty partner and community engagement in the management of sports fish and game birds.
- **Meeting procedures:** for both the national and regional councils and whether changes are needed to the meeting rules.
- **Advocacy:** the significance of Fish and Game's advocacy and whether any changes are needed to increase its effectiveness.
- **Management planning:** Identify if the current statutory process in sections 17L and 17M of the Conservation Act for the preparation, approval, review, and amendment of sports fish and game management plans are fit for purpose; and any changes needed.

Out of scope

Material change to the current set of statutory responsibilities for sports fish and gamebird management is out of scope, as is allocating these responsibilities to other agencies. The principle of a regional structure is to be maintained.

Background

The importance of game bird hunting and sports fishing was recognised with the establishment of the acclimatisation societies in the 1860s. The acclimatisation societies were involved in the introduction and acclimatisation of a number of species, including salmon, trout, deer, chamois, pheasant, quail, Canadian geese and mallard ducks.

In 1990³ the 24 acclimatisation societies⁴ were replaced by 12 independent regional FGCs and the establishment of a national body, the NZFGC, to represent the interests of game bird hunters and sports fishers nationally, and to coordinate the management, enhancement and maintenance of sports fish and game. The councils are funded by a licencing regime and their legislative mandate is captured in Part 5 of the Conservation Act 1987 which sets out the functions, powers and structure of the NZFGC and the 12 FGCs.

Sports fish include introduced trout, salmon and some coarse fish⁵, such as perch and tench. Game birds include introduced bird species such as Mallard ducks, Canada geese, black swans, upland

³ Conservation Law Reform Act 1990

⁴ More precisely, 22 acclimatisation societies, 2 conservancy councils and 2 Island councils.

⁵ Coarse fish are freshwater fish other than trout or salmon

gamebirds and some native species such as pūkeko, paradise shelducks, grey ducks and New Zealand shovellers. A full list of the gamebird and fish species under Fish and Game’s management is appended at Appendix Two. FGCs do not manage or control any game mammals or threatened species.

In a speech to the inaugural meeting of the transitional NZFGC in July 1990, the then Minister of Conservation, Hon Philip Woollaston⁶, reminded the NZFGC members (i.e. the national body) that they were not the representatives of the regional FGCs, but members of a body charged with administering sports fishing and game hunting nationally. “Your decisions must be made in the best interests of anglers and hunters without letting parochial interests colour your judgement,” the Minister said. He said the role of the national body was to set out the policies and guidelines for FGCs to follow in carrying out their functions. The Minister also signalled the NZFGC’s audit function. In the past, the [acclimatisation] societies had seen themselves as being autonomous. “This is one of the significant changes of the new system,” he said.⁷

The Minister highlighted that the role for the FGCs was a more specific one, namely the management and enhancement of sports fish and game in the recreational interests of anglers and hunters.⁸

The Lake Taupō sports fishery is an exception to the Fish and Game structure. It is managed by the Department of Conservation (DOC) in association with Ngāti Tūwharetoa. The NZFGC is an official observer on the Taupō Fishery Advisory Committee.

While game bird hunting and sports fishing are important activities for many New Zealanders, the number of participants reflected in licence holders has not moved significantly in the past 20 years, despite the increase in population.

In addition to the continuing decline in participation (and thereby revenue) various concerning factors led to this review. These were primarily around governance issues as evidenced by:

- Audit reports. Audit reports of three FGCs⁹ were commissioned from independent, external reviewers between September 2018 and April 2019. A range of issues were identified as being cause for concern, particularly dysfunction at board level; conflict of interest issues, and staff and employment issues.
- Relationship between the NZFGC and the FGCs. From the beginning of Fish and Game’s establishment there has been significant tension between the NZFGC and the FGCs. These tensions had intensified to the point where it appeared to be an organisation at war with itself.

⁶ Hon Philip Woollaston, *Address to the inaugural meeting of the Transitional New Zealand Fish and Game Council*, 24 July 1990.

⁷ *IBID.*

⁸ *IBID.*

⁹ The three audit reports are:

- a) Review of North Canterbury Fish and Game Council, 27 November 2018
- b) Review of aspects of governance and management of Central South Island Fish and Game Council, 2 April 2019 (“CSI Review”)
- c) Audit Report in Relation to the Hawkes Bay Fish and Game Council, 8 August 2019

Discussions with Key Groups and Individuals

The Reviewers met with the councillors of the NZFGC and councillors of all 12 regional FGCs; management and staff of all the councils; and representatives of other interested parties. A dedicated email address was established to receive input from any person or organisation who wished to contribute. More than 200 people and organisations availed themselves of this opportunity. A list of the organisations and individuals who met with the Review is at Appendix Four. A summary of the input from submitters is included at Appendix Five.

It must be recorded that the Review received unstinting cooperation from the NZFGC and all of the FGCs. The Review is appreciative of all who made themselves available and who were generous in their provision of background information and documentation, analysis and views.

The Shape of the Report

The structure of this report follows the Terms of Reference, with the two key issues – governance matters and Treaty relationship – discussed first. Then follows comments on other aspects the Review was invited to consider. Since there is considerable overlap in these topics, some are grouped together for discussion.



Part I: Governance and Structure

This section responds to the following parts of the Terms of Reference: Part I: whether structure and powers are fit for purpose of a Crown Agency; and subpoints 1-3: organisational structure, functions and statutory responsibilities; governance structure and accountability.

These points substantially overlap so are treated together in the following discussion.

Enabling legislation and place within government

(a) Statutory Parameters

While Fish and Game, particularly the FGCs, generally emphasise their independence from government, the fact is that they are creatures of statute and part of the wider state sector, albeit with considerable autonomy.

FGCs are statutory bodies with statutory powers to charge (or tax) people for the use of a public recreational resource, and with powers to set regulations and to prosecute those who transgress the regulations. It is comparatively rare for organisations outside core government institutions to have delegated powers of enforcement.

Several key statutory provisions govern the status and powers of Fish and Game. They include:

- Conservation Act 1987
- Crown Entities Act 2004
- Public Finance Act 1989

The Conservation Act 1987 is the primary statute so is referred to hereafter as “the Act”¹⁰.

(b) Place of Fish and Game in Government

Prior to 2005, the NZFGC and the FGCs were all “Crown entities” for the purposes of the Public Finance Act 1989 (“the PFA”) and were “public entities” under the Public Audit Act 2001. They ceased to be Crown entities in 2005 when the Crown Entities Act 2004 came into force, but by virtue of being listed in a new Schedule 4 to the PFA, they remain part of the government reporting entity under the PFA, as well as remaining public entities under the Public Audit Act 2001. This means that the provisions of the Crown Entities Act listed in section 45M of the PFA apply to them.

The recently passed Public Service Act 2020 (“the PS Act”) establishes that as PFA Schedule 4 organisations, all the councils are part of “State services” (section 5 PS Act). This means they are instruments of the Crown, in respect of executive Government.¹¹

¹⁰ The Wildlife Act 1953 is also germane.

¹¹ As are the Game Animal Council and the NZ Game Bird Habitat Trust

In summary, all the Councils (the NZFGC and all FGCs) are:

- part of “State services” (section 5 PSA 2020);
- subject to specified provisions of the Crown Entities Act 2004. Key provisions enable the Minister to request any information relating to the operations or performance of the organisation (section 133) and require the Minister to present to Parliament a Statement of Performance with accompanying financial statements in respect of the Councils (this provision is echoed in sections 261 and 26X of the Conservation Act);
- part of the government reporting entity under the PFA (section 27(3));
- public entities under the Public Audit Act.

This makes it clear that the NZFGC and the FGCs are all government bodies. This is important for a number of reasons, particularly in terms of the context in which their powers (to licence; to collect fees and to set regulations) are granted. It also goes to standards of reporting and accountability, and Ministerial powers. As noted elsewhere, some members of Fish and Game do not see themselves as a part of government at all and resent Ministerial or departmental “interference”. While this is not a large group, it is sizeable enough to warrant these notes.

FGCs and Membership

There are 13 Fish and Game Councils established under the Act: 12 regional councils (FGCs) in each of the 12 fish and game regions defined by the Minister (sections 26P(1) and 26A(1)(c) of the Act), and a national council (the NZFGC).

The 12 regional FGCs are responsible for managing, maintaining and enhancing the sports fish and game resource in the recreational interests of anglers and hunters. Anyone wanting to fish for freshwater sports fish or recreationally hunt game birds must first purchase a licence from a FGC. The regional FGCs are elected by the holders of whole season sports fishing or game bird hunting licences, and all FGC councillors must hold a sports fish or game licence (sections 26Y and 26U of the Act).

The NZFGC represents nationally the interests of anglers and hunters and provides co-ordination of the management, enhancement, and maintenance of sports fish and game resources (section 26B(1) of the Act). Each of the 12 regional FGCs appoints one of its members to NZFGC (section 26D of the Act). All NZFGC councillors are therefore also regional FGC councillors and holders of a whole season sports fishing or game hunting licence.

Fish & Game New Zealand refers collectively to the NZFGC and the 12 FGCs. DOC refers to the Department of Conservation.

Role of the Minister

The Minister of Conservation is responsible for overseeing the administration of sports fish and gamebird¹² management (mainly under the Conservation Act 1987 and the Wildlife Act 1953), but has only a limited role in management policy. The Minister has a role to approve, or decline to approve, sport fish and game management plans and the setting of licence fees but cannot determine management policy relating to sports fish or game birds. FGCs are the primary decision-makers on game bird management. Whether or not a game bird population is managed

¹² “game” is the term defined in the Act

in ways that meet the needs of non-hunting interests largely depends on the views of the local FGC at the time.

The Minister has some ability through indirect means to ensure that game management plans are adhered to since an FGC can be removed by the Minister for failure to carry out any of its functions under the Conservation Act or the Wildlife Act, including adherence to such a plan - section 17N(1) and (2) of the Act.

Narrow Statutory Focus

FGCs are required by the Act to:

“manage, maintain and enhance the sports fish and game resource in the recreational interests of anglers and hunters” (section 26Q(1)).

If a conflict arises between on the one hand managing sports fish and game resource in the interests of recreational hunters and anglers, and on the other hand, managing game in the interests of non-hunting or angling interests (such as Māori land-owners; protectors of native species; managers of urban parks, those responsible for aviation safety and other users), section 26Q requires that the interests of recreational hunters take precedence. However, this does not mean that the interests of anglers and hunters are the **sole** consideration, or necessarily paramount, as is sometimes asserted by FGC councillors.

When preparing management plans, FGCs are required by section 17L(4) to:

- (a) *have regard to the sustainability of sports fish and game in the area to which the plan relates; and*
- (b) *have regard to the impact that the management proposed in the draft is likely **to have on other natural resources and other users of the habitat concerned;*** [emphasis added] and
- (c) *include such provisions as may be necessary to maximise recreational opportunities for hunters and anglers.”.*

Thus, while FGCs have a statutory responsibility to ‘manage, maintain and enhance the game resource in the recreational interests of hunters and anglers’ and to ‘maximise recreational opportunities for hunters’, they are **also required** to **‘have regard to’** any adverse impacts that the game species may be having on the interests of “other users” of the habitat concerned.

This is a lesser obligation than to consider the interests of hunters and anglers and it is up to an individual FGC to decide for itself how to discharge it – they are sole arbiters. However, the section as drafted is adequate to protect the interests of other users as long as the FGCs apply it and are mindful of paragraph (b). To mitigate against the risk of paragraph (b) not being adequately regarded, the Minister should be able to make an enforceable direction in appropriate cases.

Recommendations

- 1) that the Minister has the power to require adherence to an approved management plan; and
- 2) that the Minister’s powers be expanded to include a mandatory power of direction for an addition or amendment to a draft management plan.

Governance Issues

Major governance issues plague Fish and Game's operations. There are a number of these issues. Firstly, the top-heavy layer of councillors (governors). Secondly, the unclear relationship and accountabilities between the NZFGC and FGCs. This issue itself has two dimensions – the makeup of the NZFGC and the federal structure between all 13 councils. Thirdly, a lack of good governance practice at all levels and in particular with the management of conflicts of interest. These factors have a compounding effect on each other.

Issue I: Number of Governance Roles

It is an extraordinary and unnecessary level of governance to have 144 governors (councillors of the regional FGCs and the NZFGC) for an organisation with a turnover of around \$11 million, approximately \$40 million in assets and 70 or so staff. It was pointed out by several parties that this means there are more Fish and Game councillors in New Zealand than there are Members of Parliament. The governor-to-staff ratio of 2:1 is not in line with best practice about governance ratios and effective teams.

With approximately 70 staff over 13 organisations there is about 5.3 staff available to service each council of 12.¹³ This disproportion is problematic. It leads to a blurring of roles between governance (councillors) and management or operations (staff). As volunteers, councillors are passionately invested in Fish and Game and often want to be more involved in management or operations than is appropriate for a governance role. Many councillors interact and communicate directly with staff rather than observing normal governance practice which requires a more formal demarcation whereby interaction and communications to staff are either conducted through the Chair, or by a formal delegation from the Council. This can lead to conflicting messaging from councils as to priorities or direction, and to too many demands on staff. It has also led in a number of cases to councillors trying to engage staff in their own conflicts with other councillors.

There are two ways to reduce the number of councillors. Firstly, by reducing the size of councils. Even leaving aside the question of the disproportion, twelve members on a council is too many for effective decision-making. A better number would be seven to eight. The second way to reduce the number of governors would be to reduce the number of FGCs (discussed later).

Issue II: Relationship between the NZFGC and the FGCs

A major difference between the old (Acclimatisation Societies) and new (Fish and Game) was the establishment of the national body – the New Zealand Fish and Game Council (NZFGC). This differed from the previous situation where the informal national association of acclimatisation societies was controlled by the regional societies. This legacy informs the deep divide that currently exists in which one school of thought considers that the proper role of the NZFGC is to “serve” the regions and perform a purely co-ordinating role. The other side of the divide sees the NZFGC more as a “head office” with the CE performing a role similar to a corporate CE. Tensions over this issue have been at an all-time high for the past 2-3 years.

¹³ Staff are however not evenly distributed between the 13 bodies – which is another issue of contention within Fish and Game.

Ever since the establishment of Fish and Game, however, there have been concerns expressed about the relationship between the NZFGC and the FGCs, and their respective roles. The FGCs complain about the “centralisation approach” of the NZFGC and the NZFGC considers itself thwarted by the FGCs in the legitimate exercise of its power.

The function of regional FGCs is “to manage, maintain and enhance the sports fish and game resource in the recreational interests of anglers and hunters in that region”.¹⁴ In comparison, NZFGC was established to “represent nationally the interests of anglers and hunters and provide co-ordination of the management, enhancement and maintenance of sports fish and game”.¹⁵

The legislation clearly intended that the regional bodies be responsible for the day-to-day management of the habitat and species of their particular region, while the national body would be concerned with the overall national interest of anglers and hunters. While this is a neat demarcation in theory, in practice within Fish and Game the respective roles of the NZFGC and the FGCs have been the subject of debate and disagreement from the beginning.

Despite the issues around the NZFGC-FGC relationship, it was clear to this Review that the FGCs play a key role not just in the maintenance of hunting and angling habitats, but in the preservation and protection of water quality throughout the country. The regional presence is Fish and Game’s most valuable characteristic. The principle of regional presence should be maintained. There is no substitute for on-the-ground familiarity with local habitats and species; their health and challenges; the relationship at a local level with licence holders and wider stakeholders.

The regional presence is the lynchpin of Fish and Game’s effectiveness and it should be maintained. That said, on-the-ground presence is a separate matter from the governance structure, and the number of regions (and thereby councils) should be reduced. The reduction could be done in a number of ways, with each method having advantages and disadvantages. This Review suggests that the simplest and most straightforward way to achieve this would be by amalgamations to produce three regions in the North Island and three in the South.¹⁶

(a) Makeup of the NZFGC and Role of NZFGC Councillors

Members of the NZFGC are **not** representatives of regional councils but are elected to be part of a nationally focused body (section 26D of the Act). However, they are all also councillors of FGCs and this system whereby the national councillors do not represent their FGC; together with the high ratio of councillors-to-staff; and the federal structure; constitute three of the unusual features which make Fish and Game unique.

In theory the NZFGC council members, who are all drawn from the 12 FGCs (but who are not the FGC chairs)¹⁷ represent the national interests of Fish & Game on the NZFGC, and not the interests of their “home” FGC. In practice, this does not work as council members are under pressure to act in the interests of their own FGC – on pain of being replaced if “their” FGC considers they are failing to do this. Despite this, for the most part, councillors express support for this system, seeing it as an essential characteristic of Fish and Game.

¹⁴ Section 26Q of the Conservation Act. 1987.

¹⁵ Section 26B of the Conservation Act 1987.

¹⁶ From a habitat management point of view, there is a strong argument for aligning FGC boundaries to catchment boundaries. However, this would be considerably more complex to achieve.

¹⁷ Other than in some exceptional cases where lack of numbers or availability on councils has resulted in the Chair also being the NZFGC representative but this has generally been for short periods.

From a legal perspective, if a NZFGC council member was to promote as a paramount concern a regional interest rather than the national interest, they would be generally acting improperly.¹⁸ However, the general rule is that NZFGC members are to act in the **national** interest and are required to bring an independent mind to the decision-making table. The promotion of regional interests when these are not relevant considerations, would make a decision liable to judicial review under administrative law principles. Yet the near unanimous feedback to this Review was that the principle (of acting solely in the national interest) is honoured in the breach more than the observance.

While a sizeable proportion of councillors support the feature that means the NZFGC councillors are not representatives of their FGCs, it is also the case that nearly everyone the Review spoke to (including councillors) agreed the system did not work. There is continual tension over the question of whether the NZFGC is able to fulfil its mandate of acting in the national interest when the role of councillors is inherently compromised by the pressures on councillors, whether real or self-imposed, to act in the interests of their region.

(b) Federal Structure

The model of a federation with 13 autonomous councils does not naturally promote co-operation, efficiency or clear accountability.

Formal accountabilities are as follows:

- FGC staff are accountable to the FGC council.
- FGC staff have no accountability to the NZFGC or the national executive.
- FGCs are not directly accountable to the NZFGC.
- FGCs and the NZFGC are all accountable to the Minister of Conservation.

Because of this federal structure, there is no basis on which to establish shared priorities, or common and consistent standards, policies, practices and procedures. The power of the NZFGC to “direct” nationally enforceable practices or policies is hotly contested. The autonomy of the FGCs means, that while their agreement to national policies or standards is required; the policies cannot be enforced.

A PriceWaterhouseCoopers report in 2002¹⁹ (“the PWC Report”) stated that “*none of the issues identified are new and that [Fish and Game] has been grappling with them in some form for a number of years*”. Indeed, that report was commissioned precisely to look at organisational structure and examine alternative structures²⁰ so as to improve this situation. Even the architects of the model were frank in saying the relationship between the NZFGC and FGCs and the ambiguous nature of the NZFGC’s powers with respect to FGCs, had always been a problem and had been left for later resolution.

¹⁸ There are a small number of issues where it would be legitimate and proper for a NZFGC councillor to argue a regional interest.

¹⁹ Fish and Game New Zealand Organisational Structure Proposals: PriceWaterhouseCoopers March 2002.

²⁰ The report assessed four options, including the status quo, against various criteria including ease of application of best practice; effectiveness; removal of duplication and staff development but did not reach a conclusion as to the preferred option.

In addition to the governance issues created by this structure there are considerable inefficiencies and barriers to effectiveness which also result from it. The Review found that issues identified in the PWC report in 2002 still persist, particularly:

- since each council must comply with legislative requirements such as reporting, each council has its own infrastructure in place to enable compliance;
- while there is some co-ordination and co-operation between FGCs, it is not systematic or comprehensive.

The resulting duplication of resources is very inefficient for an organisation under financial and staffing constraints.²¹

No Consensus on Way Forward

Various suggestions were made to this Review as to how to ensure the NZFGC truly acts in the national interest, or how to clarify the roles of the NZFGC and the FGCs. There was no consensus and the suggestions ran the gamut of possibilities. They included:

- (a) make some or all NZFGC members Ministerial appointees to ensure a focus on accountability to the Minister and better distinguish the role from FGCs' focus on their local region and the interests of licence holders in that region. Several variants of this proposal were put forward. The appointees could be recommended by each FGC but subject to Ministerial approval or be appointed by the Minister on some other basis.

This would align with the NZ Game Bird Habitat Trust whereby members are nominated by a range of organisations (three by the NZFGC, one by Ducks Unlimited and one by the Director-General of DOC).

- (b) Elect the NZFGC councillors by separate vote i.e. at the same time that elections are held for FGC members – licence holders would vote from a separate pool of nominees for NZFGC. It would be a requirement that a licence holder could not stand in both elections at the same time so that a person could be a FGC Councillor or a NZFGC Councillor but not both. This has the advantage of making councillors' priorities and role clear but has the disadvantage of risking a further disconnect between the NZFGC and the FGCs.
- (c) The NZFGC be comprised of the chairs of each FGC (i.e. no separate role). This would replicate a more orthodox structure for an organisation with a regional presence and purpose, but would signal the end of a much-loved feature of the organisation
- (d) Disestablish the NZFGC altogether. Proponents of this option envisaged the FGCs being able to resolve issues by co-operation and consensus.
- (e) Disestablish the FGCs and have a single structure with the regions becoming branches answerable to the Head Office as in a corporate model.

These suggestions are reported to illustrate the wide spectrum of views and the fact that there is no consensus within the organisation on the way forward.

As previously noted the regional presence is Fish and Game's most valuable and valued feature. It is crucial to retain a regional presence where staff have an understanding of both local environmental conditions and issues, and Māori/iwi issues at the local level.

²¹ See page 6 of the PWC Report.

Staffing Implications of a Reduction in FGCs

It is not envisaged that a reduction in FGCs would result in a reduction in the number of field staff (and this Review does not recommend any reduction in field staff). With the savings in administration costs from fewer FGCs it may even be possible to increase the number of field officers. The distribution and location would need to be decided in the setting up of a new structure – with bigger regions it is likely that satellite sites would be required. These would be a base for field staff, but not comprise any management functions.

This would also increase the efficiency of the organisation since, at the moment, there is considerable duplication of management and administrative resources – each FGC has its own manager, for example – whilst there is an agreed undersupply of employees allocated to operational and/or Resource Management Act (RMA) matters.

Reducing the number of FGCs would also act as a catalyst for a **national** approach to resourcing.

The combination of:

- reducing the number of regions;
- reducing the number of councillors; and
- a method to assign staff expertise and resources across the country

would optimise the effectiveness and efficiency of the organisation. At present the lack of scale combined with the autonomy of each FGC creates pressure for most staff to be generalists and makes it difficult for Fish and Game to support a sufficient number of specialist roles which it needs to perform its role.

Powers and Responsibilities of the NZFGC

Even if the NZFGC truly acts in the national interest, in terms of its deliberations and decision-making, it struggles to be effective because it cannot ensure its decisions are implemented. At present while the NZFGC is obliged to develop national policies for carrying on its functions and to audit the activities of the FGCs, it has limited or no ability to effectively sanction FGCs that do not comply with its recommendations.

There is no legislative guidance as to whether the NZFGC can or should prevail in a conflict of views with an FGC. In effect, the NZFGC is expected to operate at best, as “*first among equals*” but there is no authority to override the FGCs. Each FGC and the NZFGC are treated as Crown entities, independent of each other.

The Review considers that the NZFGC should retain its key roles of national policy development, budget allocation and advocacy. Therefore, along with the changes in structure and composition there needs to be greater clarity about the NZFGC’s role and powers.

The role of the NZFGC could be clarified by amendments to section 26C which specify that it is to develop corporate policies which apply to itself and to all the FGCs covering all “corporate” functions such as: health and safety; brand development and protection; purchasing; employment; governance policies including conflict of interest; policies around IT systems, products, archive and user and edit protocols; communications policy.

The NZFGC should monitor the budgets of the FGCs, conduct regular audits of itself and FGCs, undertake regular reviews of operational performance, set KPIs for its CE and so on.

It makes sense for these functions to be managed by the national office i.e. the NZFGC staff, under the direction of the CE of the NZFGC. This would produce economies and efficiencies and free the FGC staff to focus more on habitat protection and fieldwork. Thus, policies for purchasing vehicles and plant, policies for data management (including licence holder information), legislative compliance policies (Privacy Act, Holidays Act, and so on) should all be developed by the NZFGC. It would also make sense for the staffing complement to be managed as a single resource. With fewer FGCs more staff time should be available for operational activities. In addition, a national approach could be taken to identify the ideal skills profile that would fulfil the organisation’s mandate including the optimal ratios of various competencies e.g. scientists and researchers, generalists (including habitat management and compliance), RMA expertise and so on.

Issue III: Lack of Good Governance Practice

In addition to the structural difficulties identified above, Fish and Game has been plagued with problems around governance practice since its inception. Despite having the services and assistance of an experienced governance expert for the whole time, there is near universal agreement that the organisation still lacks good governance.

There are pockets of good practice. For example, Central South Island’s suite of recently adopted governance policies.²² Other FGCs such as North Canterbury are also making a concerted effort to implement good governance practice.

However, practice is not consistent and under the current federal structure each FGC is autonomous. This means that even where work has been done to develop a comprehensive modern suite of governance documents, as in Central South Island, they do not apply to other FGCs and there is limited or no sharing of such material. Governance material is one of the areas which should be governed by consistent national policy.

The boundaries between governance and management are poorly understood, or if understood are honoured more in the breach than the observance. It is a problem in the FGCs where councillors (i.e. governors) tend to intrude into operational matters. Problems have also been evident in the NZFGC where there have been disagreements between the council and the CE over their respective roles.

There are also issues around a lack of conformity with, or inconsistent application of, governance policies even where these exist.

²² Notably this occurred in response to a critical audit.

A frequently-cited contributing factor to the poor governance practice in FGCs, is the fact that councillors are all volunteers, i.e. unpaid, and rarely if ever, sufficiently trained or experienced in governance. This situation raises questions of reasonableness about the workload on unpaid people (particularly for Chairs) and also about the appropriateness of a government organisation with regulatory and enforcement powers being entirely governed by volunteers. This is out of step with governance best practice.

While the recommendations of this Review will address most if not all of these issues, particularly the recommendation to have appointed councillors with governance experience on each council, Fish and Game should nonetheless consider accessing external professional guidance in a structured and comprehensive way.

The Review is mindful of Fish and Game's financial pressures and of the impact that comprehensive governance training could represent. We note the following cost-effective or free options Fish and Game could avail itself of:

- The Institute of Directors (IoD) publication *“The Four Pillars of Governance Best Practice”* provides a comprehensive overview of governance in the New Zealand context and is the IoD's cornerstone publication. It is available to IoD members and it is suggested that the NZFGC become a member.
- While IoD resources are only available to IoD members (and therefore for a fee), comparable guidance is also available online for free from sources such as the AICD (Australian Institute of Company Directors) or Boardworks International.
- The Public Service Commission also issues guidance²³ which states, among other things, that the Chair of a statutory crown entity is tasked with:
 - “ensuring effective accountability and governance of the entity, consistent with the requirements of relevant legislation”;*
 - “acting as a leader of the entity, presenting the entity's objectives and strategies to the outside world”;*
 - “providing guidance and support to the Chief Executive to ensure the entity is managed effectively. This includes establishing and maintaining an effective working relationship with the Chief Executive while also taking an independent view to challenge and test management thinking”.*

In its guidance, the Commission states that *“It is important that the board and chief executive are clear about the boundaries between governance and management and what duties have been delegated to the chief executive”.* *The board and chief executive should also be clear on who is the public face of the entity. If the role is shared, protocols are required”.*²⁴ Observing these basic principles would greatly improve the organisation's governance practice.

²³ Public Service Commission: *Resources for Guidance for Statutory Crown Entities*

²⁴ Excerpts from Public Services Commission's *Resources for Guidance for Statutory Crown Entities*.

Conflicts of Interest

Managing conflicts of interest has been a matter of recurrent concern with FGCs. Issues around conflicts were raised in an audit of the Hawkes Bay FGC and in a review of the Central South Island FGC (and to a much more limited extent in a review of the North Canterbury FGC). While conflicts of interest policies and procedures should comprise only part of a complete suite of governance policies, they merit particular mention here because of these past issues.

The Auditor-General's 2020 Guide: Managing Conflict of Interest – a Guide for the Public Sector (“the Guide”) defines a conflict of interest for a statutory or public sector organisation as “any situation where your duties or responsibilities as an employee or office holder in a public organisation conflict, or could be seen to conflict, with some other interest you might have outside of work”.²⁵

Fish and Game like most organisations will from time to time have governors or staff who find themselves in a potential conflict of interest situation. This of itself is not a problem. It is how these situations are managed that determines whether there is a problem. Conflicts of interest that are poorly or inadequately managed may undermine the standing and reputation of the organisation.

The Review considered how conflict of interest was dealt with generally by Fish and Game. This included reviewing policies where they were available, and looking at their implementation and effectiveness. The Review interviewed staff; councillors; and interested parties, and specifically considered the recent auditors' reports and the outcome from those reports.

The Guide recommends that all public organisations have policies and procedures to identify and deal with conflict of interest²⁶. However, the Guide also notes that policies on their own are insufficient and they cannot anticipate every situation. Policies and procedures need to allow for some flexibility for judgement in individual cases. This judgement needs to be guided by ethical principles. A lack of integrity in relation to conflicts can impact the culture of the entire team. At an extreme end, the normalising and acceptance of conflicts can permeate throughout a team and facilitate criminal corruption. The Review is not suggesting this has occurred in Fish and Game.

The Guide recommends techniques that can be used to give confidence to the public, such as not participating in decision making; not voting on certain topics; and making declarations of interests, as measures that can be used to give confidence to the public. In particular the Guide recommends that aspiring councillors or senior staff disclose interests before appointment in a register of interests and/or at relevant meetings.

Two of the three recent independent audits of FGCs²⁷ dealt, at least in part, with possible or perceived conflicts of interest. The conflicts were related to breaches of Fish and Game policy or the accepted practice of the FGC. The Review understands that all FGCs have policies on managing conflicts of interest and in the case of the three audited FGCs they had implemented some of the measures recommended. The findings (generally) of the audits were that conflicts existed but the FGCs were managing them satisfactorily. One audit found that in hindsight one example of “perceived” conflict of interest was not managed “as well as it could have been”.²⁸

²⁵ Office of Controller and Auditor General: Managing Conflict of Interest- a Guide for the Public Sector 2020. page 7 para 2.1

²⁶ Ibid page 23 para 5.1

²⁷ The three FGCs were: North Canterbury; Central South Island and Hawkes Bay (see footnote 9).

²⁸ CSI Review, page 68, at 164.

The Review looked beyond these individual cases and considered how the organisation's management (or lack of) of conflict of interest issues impacts on Fish and Game's delivery of statutory functions. The Review's concern is that some conflicts, particularly perceived conflicts, cannot be adequately managed. Some roles or occupations outside Fish and Game are incompatible with Fish and Game office-holding and/or employment, due to the perception of conflict of interest that they create. In particular, outside roles and interests that have a substantial commercial interest in the use or management of the resources that Fish and Game is responsible for, by their nature create actual or perceived conflicts of interest. Even if individuals are confident that they are able to compartmentalise these interests, and even if the relevant FGC employs techniques to manage the actual conflict, the impact of perception is harder to manage. The damage from such perception is a real and current issue for Fish and Game.

The Review considered ways to address conflict of interest in Fish and Game. The presence of professional directors on all councils and the reinstatement of regular rolling audits of all FGCs and the NZFGC will assist in identifying and managing conflict of interest situations early (or ideally, before they arise). It is recommended that a programme of scheduled rolling audits is instituted by the NZFGC to keep the issue of conflict of interest under review.

It is further recommended that the management of conflicts of interest be a standing item on council meeting agendas, and that aspiring officeholders and applicants for senior staff positions be required to declare their interests prior to voting or appointment.

Recommendations

- 3) The Chair of the NZFGC be a Ministerial appointee. While the Chair could be drawn from the pool of FGC councillors, it would be preferable for the Chair to be completely independent of the organisation such as an independent or professional director, at least as an interim or transitional measure.
- 4) The Chair of the NZFGC be a paid position.²⁹
- 5) Reduce the size of the NZFGC from 12 to 8.
- 6) The NZFGC to comprise 4 appointed and 4 elected members. This ensures a degree of professionalism around governance and decision-making whilst still retaining a fishing and hunting ethos. The Ministerial appointees could be appointed with consideration being given to candidates with expertise in one or more of the following areas:
 - te ao Māori
 - governance experience
 - RMA or legal experience
- 7) Appointees to be paid. Elected members would continue to serve on a voluntary (unpaid) basis.³⁰
- 8) Elected NZFGC councillors to be elected by Fish and Game licence holders (rather than appointed by FGCs as is currently the case).

²⁹ This would require an amendment to section 26H of the Act which specifies that no remuneration shall be payable to members.

³⁰ The Cabinet Fees Framework provides guidance as to payment rates.

- 9) Retain the regional structure but reduce the number of regions (and thereby FGCs) to 6 by the following amalgamations:
 - i Southland and Ōtago
 - ii Central South Island and North Canterbury
 - iii West Coast and Nelson/Marlborough
 - iv Wellington and Taranaki
 - v Eastern and Hawke's Bay
 - vi Auckland/Waikato and Northland
- 10) Each FGC should itself comprise 8 members, comprising:
 - 4 members elected by licence holders;
 - 3 members appointed by the Minister
 - 1 iwi nominee/appointee

The Chair of the FGC to be elected by councillors.
- 11) Terms of office on the NZFGC or an FGC for both appointed and elected officeholders should be fixed for 3 years with a limit on serving no more than two consecutive terms.
- 12) The Minister to have powers of removal of any councillor, whether appointed or elected.³¹
- 13) Co-opted councillors can be invited and/or removed by the Chair of a Council be it the NZFGC or an FGC, following resolution of that Council. Co-opted councillors to have equal voting rights with other councillors. NB: this requires an amendment to section 26V(2) of the Act.
- 14) A councillor could not be a member of both the NZFGC and an FGC at the same time. If elected to both, that person would have to choose one of them.³²
- 15) Members of both the NZFGC and an FGC to be elected by licence holders casting two votes: one for the NZFGC and one for the FGC.
- 16) The NZFGC to establish a programme of professional development for its elected members, such as IoD or AICD accredited training.
- 17) The NZFGC to adopt a full suite of governance and corporate policies which are binding on itself and all FGCs.
- 18) In particular the NZFGC should adopt and implement a robust Conflict of Interest policy which reflects good practice as set out in the Auditor General's 2020 Guidance.

³¹ See discussion on page 33.

³² Candidates should indicate their preference prior to voting in the event they are successfully elected to both the NZFGC and an FGC.

- 19) The Conflict of Interest policy should, in particular, provide for:
 - (a) Conflicts of Interest being a standing item on the NZFGC and FGC agendas;
 - (b) a programme of periodic audits of FGCs be conducted by the NZFGC; and
 - (c) aspiring officeholders or applicants for senior staff positions be required to declare their interests prior to voting or appointment (in respect of officeholders these interests should be published as part of the information provided to electors).
 - 20) The NZFGC to produce a consolidated annual report for the Minister covering its own and all FGC activities.
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Part II: Treaty of Waitangi: Implications and Issues

This section responds to the part of the Terms of Reference which asked how Fish and Game can better implement its responsibilities under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi; and to subpoint 6: Treaty Partnership.

Section 4 of the Conservation Act

Section 4 of the Act states “This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi”.

Over the years, the NZFGC has commissioned a number of legal opinions on how it could comply with section 4.³³ The thrust of the advice was that Māori should be fully consulted when matters of interest to them are involved and that the NZFGC should, in consultation with the FGCs, develop a national policy to implement a system of consultation with Māori to ensure all relevant concerns of Māori under the Treaty are weighed by the FGCs in their decision-making processes and activities. For reasons unknown, such a policy has never been developed and Fish and Game still has no framework for considering Treaty issues. Nor does it have a consistent approach to engaging with Māori.

While the Review considers the advice to develop a consultation policy to be sound, it recommends that the development of such a policy should itself be the subject of a genuine and considered consultation with Māori (see following discussion). Furthermore, the engagement should be expanded to cover the application of section 4 generally and not be restricted to a pre-determined outcome such as a consultation policy (although that may well be an outcome).

Current Situation

While there is a wide variation in circumstances throughout the country a number of observations can be made. These are:

- overall there is a low level of awareness of section 4 and its significance to Fish and Game;
- there is a somewhat limited appreciation of the range and complexity of Treaty and partnership issues;
- there is a low level of representation of Māori on councils;
- there is a lack of awareness of how Fish and Game is perceived by Māori;
- there are wide variations in levels and quality of engagement; and
- there is a lack of policy guidance;

The policy lacuna is exacerbated by the wording of section 26Q(1) which states the functions of FGCs “*shall be to manage, maintain and enhance the sports fish and game resource in the recreational interests of anglers and hunters*”. This has led FGCs to view **licence holder** concerns as paramount in every way, including in a situation where there was a conflict between section 4 and section 26.

³³ In the period 1994-1996 at least four comprehensive opinions were provided by Chen Palmer.

In such a case, Fish and Game personnel assume that section 26 prevails. However, this is the opposite of Māori and Government expectations, which are that section 4 has an overarching, all-encompassing application such that all other sections of the Act including section 26Q(1), “*shall be so interpreted and administered to give effect*” to Treaty principles, i.e. in cognisance of **Māori** interests.

This illustrates the need for a policy on how to give effect to section 4. A conceptual appreciation about what Treaty issues might exist, and how should they be approached from a Fish and Game perspective could provide a basis for the development of a consistent philosophy approach, and thus inform practical guidance and operational policies.

Two further factors affect the current situation. Firstly, the staff of FGCs are generally (but not always) more attuned than are the councillors to iwi aspirations, and more accepting of the legitimacy of Māori interests. This may reflect the age profile of both groups and/or the fact that staff in their course of their day-to-day activities are naturally more aware of the perspectives of other users of the habitats.

The second factor is the difference between the North Island and the South Island. Each of the six South Island FGCs has a Ngāi Tahu appointee to the Council. These appointees serve on the councils by virtue of Ngāi Tahu’s Treaty settlement and are nominated by Ngāi Tahu.³⁴ The presence of a Ngāi Tahu member means that the South Island FGCs are overall more used to recognising a Māori viewpoint (although the question of how much is understood or incorporated, might be answered differently by the Ngāi Tahu representatives compared to the other councillors). Some of the South Island FGCs have interpreted the electoral provisions (“*a co-opted member shall be entitled to attend and speak at any meeting of that Council, but shall not be entitled to vote on any question*”: section 26V) strictly and consider that the Ngāi Tahu representative is ineligible to vote. Others take the view that notwithstanding the wording of section 26V, the Ngāi Tahu nominees should operate as full members of the FGC. This may or may not mean formal voting rights – in those FGCs where the Ngāi Tahu representative is considered a full member of the council the councils strive for consensus decisions so formal voting is not required. This obviates the need to take a formal position as to whether the Ngāi Tahu nominee has voting rights.

The North Island is not a uniform situation and a range of different situations exist across the FGCs. One or two have close and constructive relationships with iwi while in other regions the relationships are very limited, or even fractious. Many of the North Island FGCs referenced the complex nature of Māori interests in their region, and the large number of mana whenua groups and/or overlapping or contested boundaries and disputed mandates, which made them cautious and uncertain as to how to proceed. They all said they would welcome guidance as to how to proceed.

³⁴ It should be noted that the Nelson/Marlborough region is in a different position than the other South Island FGCs as in addition to Ngāi Tahu at least eight other iwi have manawhenua in the rohe.

A Wide Range of Issues Are Pertinent to the Treaty Partnership

In developing a policy or framework to meet the needs of section 4, Fish and Game would need to develop an organisation-wide understanding of how te ao Māori, or the Māori worldview, impacts them. Part of that process would involve an exposure to the range of aspects and issues that could arise.

The starting point is Article II which confirms tino rangatiratanga (variously translated as self-management, self-determination, absolute chieftainship or sovereignty) over taonga – such as native species and lands and fisheries within a tribal rohe.³⁵ Interests arising under the Treaty are several and varied. Some directly impact on, or even conflict with, the interests of licence holders while others are of a more conceptual nature. It is not possible to list all issues that can arise. However, as an indication of the wide range of potential issues, some issues are noted below:

- (i) intrinsic value versus utility for fishing and hunting: understanding of the value to Māori of natural features such as rivers or lakes in and of themselves, and not just as habitats for Fish and Game's purposes. The significance of a site might also be relevant for example, to plans for fencing or other habitat management proposals which impact natural features, or to the effect of issuing licences on the numbers of people accessing a particular location.

The lenses through which natural features are seen are fundamentally different. Iwi give elements of the natural environment a focus in themselves - as a resource or a taonga or both (an element or feature can have multiple significances). FGCs, on the other hand, being very conscious of the rights and views of the **licence-holders** see a site in terms of its utility for another purpose e.g. fishing. A waterway may have ancestral and spiritual significance. For this reason, there may be objections to the restocking of waterways with introduced fish, over and above any impact on native species. It is the **waterway** which is the focus, not the particular **usage** or purpose (such as fishing), nor which **agency** of the Crown manages it (FGC, DOC, local authority).

There is a need to respect sensibilities that may attach to land and waterways under Fish and Game purview. Areas may no longer be in Māori ownership or control, but may still be of deep significance to Māori e.g. significant sites (urupā, other wāhi tapu or sites of historic significance) and thus give rise to views on the way Fish and Game staff conduct field operations, scientific surveys etc.

- (ii) customary harvest of native species. There is continued interest among Māori to be able to harvest wildlife traditionally gathered. As evidenced in various Waitangi Tribunal reports³⁶ Māori traditional freshwater fisheries and birding resources formed a key component of the pre-European Māori diet and, as such, were guaranteed protection as taonga by the Crown under Article II (in addition to being food sources, fish and birds had other value such as the use of feathers in woven clothing and for adornment or fish gut for string and bones for tools).

³⁵ The obligation to consult, referred to in the legal advice tendered to Fish and Game, is a procedural duty arising from recognition of tino rangatiratanga rights and interests

³⁶ e.g. Muriwhenua, Te Roroa, Ngai Tahu

In addition to providing sustenance and useful objects for everyday life, the rituals and customs surrounding hunting or harvesting, and the eating of the catch formed a further taonga – being the culture, practice and belief systems of pre-European Māori. Thus, it is difficult to overstate the importance of mahinga kai to Māori.

The harvest of seven native bird species has been shown to be sustainable. Five³⁷ are listed on Schedule 1 of the Wildlife Act (game species) and can be hunted recreationally, and a further two species³⁸ are listed on Schedule 3 and can be harvested by certain iwi groups.

The current game bird hunting regime does not adequately provide for customary harvest nor meet Māori aspirations for Māori management of customary resources. While the customary harvest of freshwater fish is provided for through fisheries regulations and the Conservation Act, the customary harvest of native game birds is generally not provided for.

The current statutory settings do not provide for a game species to be managed both for recreational hunting and Māori customary use. Further policy work would be required to develop options for a regime to allow the shared management and harvest of those native birds currently listed on Schedule 1 by recreational hunting interests and iwi groups, including allowing Māori customary harvest using traditional methods. If a native species is to be harvested, there may be interest from iwi wanting to undertake harvest using customary methods rather than in accordance with recreational hunting regulations.

- (iii) the impact of Fish and Game activities on indigenous species is of key importance to Māori. The predation of native species by those introduced species which FGC issues licences to hunt or fish for, is a major concern for Māori. While Fish and Game are very aware of this particular issue, its importance to Māori should not be underestimated (see following discussion on Kai Iwi Lakes).
- (iv) rights to non-native species. There is a widely-held view amongst iwi that Māori interests (and the protection afforded to them under Article II) extend not only to indigenous species which were not traditionally exploited by Māori (e.g. deep-sea fisheries – see Muriwhenua Report), but **also** to introduced species, on the basis that the “fisheries” protected by the Treaty included the places where Māori fish regardless of the species present there. This would suggest that all introduced, as well as indigenous species present in those places, are subject to Article II protection. Some argue that Treaty rights over introduced species would be a kind of compensation for the loss of traditional species and fishing opportunities.³⁹ Others claim that the practice of pre-European Māori was to be predatory (in an ecological sense) over natural resources, and to make the most of whatever food resources presented themselves. As species mutated or as population patterns changed, so practices adapted. In this view, introduced species become part of the food resource to which customary harvest rights can attach.

³⁷ Black swan, Australasian shoveler, grey duck, paradise shelduck and pukeko

³⁸ Titi: Grey-faced petrel (northern mutton bird) and sooty shearwater (mutton bird).

³⁹ See Report on Māori Customary Freshwater Fishing Rights, compiled for DOC in March 1994 by IKA Consultants.

- (v) The concept of customary harvest leads to questions around concessionary licences for Māori to fish and hunt introduced species. The argument has been made that Māori should receive licences on concessionary terms or should be exempt from being required to hold a licence altogether. Preferred access for Māori to introduced species may be founded on other bases also e.g. utilised by the Crown as compensation for past Treaty breaches by the Crown.
- (vi) The issues of prosecution of Māori for hunting or fishing without licences. While it is a matter for the courts to decide whether there is a defence, be it based on statute, the Treaty or common law aboriginal title, rangers have powers (exercisable by a warranted officer under the Conservation Act or the Wildlife Act) to issue infringement notices and ensure compliance with these two Acts and regulations made under them. The issuing of infringement notices (and subsequent liability to prosecution) to Māori is a contentious issue.
- (vii) co-management of the habitat. It should be noted that some species of gamebird on the schedule list, i.e. under the purview of Fish and Game, are in fact indigenous species e.g. pūkeko, paradise shelduck. Iwi maybe interested in co-management because of the species present, the intrinsic value of the area or a combination of both.
- (viii) representation of Māori on the NZFGC and FGCs, and position of Māori members of councils. This Review considers that all councillors should have equal status and it is untenable for those who are members of FGCs through a Treaty settlement commitment made by the Crown (as with Ngāi Tahu) not to have full voting rights.
- (ix) other issues associated with representation. A Māori councillor on an FGC, elected by licence holders (as opposed to being an iwi nominee or a co-opted councillor) sits on the FGC in their individual capacity. While in the eyes of Fish and Game (and the enabling legislation), they represent all the licence holders of the region, one such councillor commented that there's "no such thing as sitting in your own capacity if you are Māori - the tribe expects you to represent their interests". A related point is that an FGC may consider it has discharged its section 4 obligations by virtue of having an (elected) Māori councillor which person is able as a matter of knowledge and experience to speak to mana whenua issues. However, the presence of an elected councillor who is there to represent all licence holders in the area does not obviate the need for a section 4 obligation.
- (x) Māori interests in establishing commercial trout fisheries. Fish and Game have previously been opposed to commercial trout fisheries (although this opposition appears to be softening latterly) whereas Māori have expressed interest in developing commercial operations.
- (xi) While the Treaty relationship is generally focussed on Article II type issues, it should be noted that Article III rights also exist. Article III guarantees Māori the same access to hunting and fishing habitats managed by Fish and Game as for non-Māori. Ethnicity data is not collected for licence holders so it is not possible to state the proportion of Māori licence holders and councillors. However, all parties the Review spoke to said the numbers were "low". Māori communities may consider the low number of Māori councillors is itself an issue in terms of whether Fish and Game is a culturally safe organisation and whether it should be doing more to encourage Māori to be licence holders and/or to put themselves forward for election as councillors.

The Review notes that these issues do not need to be resolved or determined by Fish and Game or by this Review – they are set out simply to indicate the breadth of iwi interests and to show the difference in perspective between iwi and Fish and Game. In particular, the issue of Treaty rights over introduced species is a major one, with significant legal and policy implications that Fish and Game could not be expected to resolve or address in a vacuum. Even the technical aspects of this issue are not straightforward - species definition or classification is scientifically complex and open to different views as species evolve and mutate. For example, grey teal duck have bred extensively with Mallard ducks which has created a distinct taxonomic entity. Grey teal are now classified as “nationally critical” whereas the hybrids are classified as “not threatened”.

Two Scenarios

Two scenarios, one historic and one current, give some illustration of how these issues can manifest in real life.

Historic Case: McRitchie Case

The issue of fishing without a licence was the subject of a landmark Court of Appeal decision in *McRitchie v. Taranaki Fish & Game Council* in 1998.⁴⁰

Mr McRitchie fished for trout in the Mangawhero River which was in the rohe over which Mr McRitchie’s hapū (Ngāti Hine, Ngāti Ruawai and Ngāti Waikarapa) had manawhenua. He did not have a licence but fished on authority from his hapū. The District Court found him not guilty as he was exercising a Māori fishing right which in terms of section 26ZH provided a defence to the charge: *“nothing in this part of this Act shall affect any Māori fishing rights”*.⁴¹

This was overturned by the High Court. The Court of Appeal confirmed the High Court’s decision and found that the terms of the statute precluded attaching Māori fishing rights to the new species imported from abroad; therefore Mr McRitchie could not claim such a right.

The case contains many interesting aspects. Trout were introduced in about 1937 for sportfishing. Mr McRitchie had fished for eel, tuna, trout and freshwater crayfish since he was a child and was fishing for food for his family on authority from his hapū and had followed local kawa (protocols). He believed he was exercising a traditional “*Māori fishing right*” according to proper protocol. The Court of Appeal judgement quotes extensively from the evidence of Mr Niko Tangaroa, a Kaumatua of Otoko Marae. Much of that evidence explains the reasoning behind some of the points listed above as Treaty issues. Mr Tangaroa said *“our iwi and hapū have a very close relationship with Te Awa. We hold Manawhenua and Tino Rangatiratanga over the river. Our Iwi have held Rangatiratanga over the Awa since time immemorial. Our use of the Awa is governed by our own tikanga. Kirk McRitchie has always observed our tikanga and he is the tohunga for fishing in our rohe. The river is the main provider of food within our rohe – we have very little land left and for that reason it is especially important whatever fish that are in that Awa come under our Tino Rangatiratanga and we have the right to gather. It does not matter what the species is because it is our Awa and we exercise our Rangatiratanga to fish in it”*.⁴²

Mr Tangaroa went on to say that *“our hapū have never had licences to fish in the Awa and we never will. Any licence would mean placing our rangatiratanga under someone else and means we would be subservient to someone else. We are not prepared to give away our rangatiratanga”*.

⁴⁰ *McRitchie v. Taranaki Fish and Game Council* [1999] 2 NZLR, 139

⁴¹ Now S.26ZH(1) of the Act.

⁴² *McRitchie v. Taranaki Fish and Game Council* [1999] 2 NZLR, 139 at 143

Mr Archie Taiaroa, Chairman of the Whanganui River Māori Trust Board, emphasised three justifications for Māori to fish for trout:

- ❖ As an unqualified exercise of Tino Rangatiratanga;
- ❖ As a food source because of the depletion of native species.
- ❖ Because non-Māori have damaged traditional fisheries.

With regard to the latter, he noted that Whanganui River iwi had objected to the introduction of trout into the river system – “*we did this because we were concerned at the effect trout would have on the habitat of native species such as tuna. Trout also eat eel elvers*”. Mr Taiaroa went on to say “*no one asked us if they could put trout in our rivers. They just went ahead and did it*”.⁴³ This statement shows how longstanding are Māori grievances over the introduction of trout. This grievance has not gone away or been fully addressed. The evidence presented in the case illustrates many of the issues which are still live. While the Court of Appeal overturned the District Court’s ruling, many observers believe the case would be decided differently today.

Current Case Study: Kiwi Iwi Lakes

There are currently several areas of particular tension throughout the country. One concerns the Kai Iwi Lakes – a recreation reserve in Northland⁴⁴. The Kaipara District Council’s Draft Management Plan 2015 proposed to cease the releases of exotic fish if such releases were “deemed detrimental to the ecology and health of native fish”. Northland FGC opposed this proposal, arguing that the release of trout into, and their retention in, the lakes was consistent with the purpose of a recreation reserve (which, inter alia, is to provide areas for the recreation and sporting activities and the physical welfare and enjoyment of the public).

NFGC argued that the presence of trout is not proven to be detrimental to the ecology and health of native fish. It stated that trout, gambusia (also exotic) – formerly known as mosquito fish – and a native galaxiid fish, all co-exist in lakes Waikare and Taharoa. In Lake Kai Iwi itself there were/are no trout or galaxiids only gambusia. It was posited that trout restrict gambusia to shallow lake-shore vegetation, but with no such restriction the gambusia colonise the lake more completely and eat all the galaxiids. In other words, the stocking of trout in Lakes Waikare and Taharoa was thought to balance the interrelationship of gambusia and galaxiids by having a protective effect on galaxiids. NFGC’s submission was at pains to point out that these statements could not be seen as definitive because the scientific factual study of the interrelationship between the three species in the lakes had not been conducted. The key point, however, was that the effect of trout on native galaxiids⁴⁵ may be a complex equation, which depends on a number of circumstances, and which is not yet totally understood. It was thus NFGC’s view that it was not necessary to cease stocking the lakes with trout in order to protect galaxiids, and indeed the opposite may have been the case given that gambusia are a major threat to the ongoing survival of the dune lakes galaxias populations.

⁴³ Ibid, at 144

⁴⁴ Taharoa Domain is a recreation reserve under the Reserves Act 1977.

⁴⁵ The dwarf inanga (*galaxias gracilis*) is a small native galaxia fish found only in Northland lakes. Genetic analyses indicated that the Kai Iwi Lakes populations were older and differed genetically from other dwarf inanga populations. As a consequence, the populations of dwarf inanga in the Kai Iwi Lakes were regarded as a separate species termed “dune lake galaxias”. Research shown to the Review suggests that now only 2 of the 4 populations of dune lakes’ galaxias remain in New Zealand and that these two extant populations have both experienced a decline in abundance since 1968, **related to the introduction of both trout and gambusia** (emphasis added).

Lengthy discussions with the Kaipara District Council and the Taharoa Domain Governance Committee appeared to produce an agreement (or at least in NFGC's understanding) that the proposal (to cease the release of exotic fish) would not be adopted, and that in the meantime NFGC would continue to obtain research data that would hopefully provide a clearer understanding of the dynamics of the life cycle of Dune Lake Galaxia. However, local iwi chained the gates to the reserve and opposed the restocking.

This example illustrates a number of things, including:

- the galaxias in Kai Iwi Lakes are not only native but are genetically distinct. The dwarf īnanga (dune lake galaxias) has evolved in isolation and is regarded as New Zealand's only true lacustrine (lake dwelling) fish. Their value as a taonga is therefore indisputable. They have been afforded special conservation status by DOC.
- The Kai Iwi Lakes are themselves a notable taonga being deeper, pristine and notably more ancient (older than 10,000 years) than other lakes. As such, they have a need for special respect and protection.
- While trout – part of Fish and Game's purview – can be detrimental to galaxiid populations, they potentially also protect galaxiids by preying on gambusia that have an even greater detrimental effect on galaxiid populations.
- Misunderstandings and lack of shared understandings between humans abound. This is an example where an FGC believes it has conducted itself in good faith, having engaged in considerable dialogue and consultation with local iwi and sharing its data and research findings. Relations between Northland FGC and iwi over this matter have become strained and at the time of writing, matters were at an impasse.

Current Situation: Convergence of Interests

Having set out areas of potential and then actual divergence of interests, it should also be recorded that there are many areas where Māori interests and FGC interests converge – most notably in the habitat protection and water quality areas. Indeed, powerful allegiances have been formed between FGCs and iwi in the presenting of submissions and/or evidence, to local territorial authorities and to the Environment Court both in RMA consenting hearings, and in trying to bring hīpressure to bear on territorial authorities to adhere to Regional Plans.

The Taranaki FGC-Ngati Ruahine partnership and the Southland FGC-Ngāi Tahu relationship are two standout examples of constructive and effective collaboration, but they are not the only ones.

Taranaki FGC works closely with Ngati Ruahine in reviewing resource consent applications to the Regional Council (Ngati Ruahine has a right of first review of such applications under its Treaty Settlement). It also sits on Te Ara Tupua (the Whanganui River Authority established by Treaty Settlement) and as such the FGC is involved in the strategy being drawn up for the future of the catchment - meeting 6-weekly with the Authority's iwi members for the past two years. This example shows a positive Treaty partner relationship is possible. Trust, availability and consistency are critical to the success of such relationships.

It is often said by FGCs that the protection and enhancement of the habitat for those species under Fish and Game purview, also protects and enhances the habitat for indigenous species. An example is shown in recent research conducted by Southland FGC which found that around 7600 duck ponds in Southland supported upwards of 120,000 shortfin (introduced) and 80,000 longfin

eels (endemic) with a collective weight of over 150,000 kgs. This is particularly significant since the longfin eels are at risk and the population has been in decline. Generally, loss of wetland habitat and historical commercial fishing has negatively impacted eel numbers. Southland FGC's work in wetland habitat protection has significantly contributed to efforts to reverse the decline in health of the long fin eel population.

The Way Forward: Next Steps

For the Treaty partnership to thrive, Fish and Game personnel (both councillors and staff) need to be available, consult, listen and work with Māori. This is not necessarily a structural thing but more a matter of behaviour and values. For example, while there is currently no iwi representative on the Taranaki FGC nonetheless a strong and constructive working relationship has been forged.

Although it is not a uniform situation across the country and there are considerable differences between FGCs, overall it can be said that there is a dissonance between the perceptions of the FGCs and Māori as to the state of the relationship between Fish and Game and Māori. There is a widely held view among Māori that Fish and Game as an organisation does not adequately recognise, let alone accommodate, Māori interests in freshwater and the protection of native species, whether those interests arise generally through Treaty partner status, or more specifically through legislation or binding arrangements (such as in the Waikato River Treaty Settlement), or referenced in non-binding findings (such as Waitangi Tribunal reports). Māori have a keen awareness of such commitments and findings⁴⁶. In contrast, FGCs generally see the relationship in a much more positive light than do Māori. The Review considered a number of ways in which this gap might be closed and how Fish and Game could give better effect to Treaty principles. The Review recommends the following key changes:

Firstly, making the obligation in section 4 explicit and specific to Fish and Game, by amending sections 26C and Q – functions of the NZFGC and FGCs – to include the need to have regard to Māori interests.

Secondly, by the establishment of a national sub-committee or advisory panel to advise the NZFGC on Treaty issues and consultation with Māori

Thirdly, to provide for Māori membership of all councils by way of Ministerial appointment – as previously discussed (Recommendations 6 and 12 refer). In addition, all Māori members who are nominated by their tribe, such as the Ngāi Tahu nominees, to have full voting rights.

Fourthly, the adoption by the NZFGC and all FGCs of a national policy on consultation and engagement with Māori.

The second and fourth measures would best be progressed in a collaboration between Fish and Game and the Treaty partner. Given Māori oral and collective traditions and a strong preference for kanohi-ki-te-kanohi (face to face dealing) this could be advanced by convening a Hui Wananga.

⁴⁶ In the Ngai Tahu report the Tribunal found that, due to the lack of a conservation ethic in respect to Māori resources, on the part of settlers and their descendants, Ngai Tahu had lost much of their mahinga kai (p.895). Similarly, in the 1992 Te Roroa Report, the Tribunal upheld a claim that the Crown was in breach of the Treaty in failing to protect the traditional eel fishery in the Kai Iwi Lakes.

From Fish and Game it is suggested that the Hui be attended by the full National Council (NZFGC) and the Council's Chief Executive, together with one or more representatives from each FGC and as many FGC staff as can be made available.

From iwi it is suggested that DOC's Māori Directorate, Kahui Kaupapa Atawhai, in consultation with Te Arawhiti and Te Puni Kōkiri (TPK) establish a list of invitees. The invitees should include all iwi known to be previously or currently impacted by Fish and Game operations or policy. It might be useful to also create a number of places available by direct application i.e. interested parties can apply to be included citing their backgrounds, interests and expertise and any mandate or group whose interests they represent.

Recommendations

- (21) Section 26C(1)(a) be amended by the insertion of a new clause to read: "The functions of the NZFGC shall be to develop, in consultation with Fish and Game Councils, **and having regard to the interests of Māori as Treaty Partner**, national policies for the carrying out of its functions for sports fish and game, and the effective implementation of relevant general policies established under the Wildlife Act 1953 and this Act" (words in bold added to existing provision).
- (22) Section 26Q(1) be amended by insertion of a new clause to read: "The functions of each Fish and Game Council, shall be to manage, maintain and enhance the sports fish and game resource in the recreational interests of anglers and hunters and, **having regard to the interests of Māori as Treaty Partner**, and in particular ..." (words in bold added to existing provision).
- (23) The NZFGC establishes a standing advisory panel on Treaty issues and engagement with Māori.
- (24) The Minister in making appointments to councils to consider Māori representation – this recommendation is provided for previously (Recommendations 6 and 10 refer) but is repeated here for completeness for this topic. In making such appointments, the Minister could seek the views of DOC, TPK, Te Arawhiti and/or receive nominations directly from iwi.
- (25) Councillors holding office by nomination (e.g. as a result of Treaty settlement provisions) to have full voting and participation rights – the same as elected or appointed councillors.
- (26) Fish and Game urgently initiate a dialogue with Māori with a view to developing a national policy governing a system of consultation with Māori to ensure all relevant Treaty concerns are addressed by Fish and Game in the conduct of its business. That policy should guide protocols and procedures at a local level for day-to-day operations.
- (27) With respect to the above recommendation, as a first step in initiating this dialogue, a national hui should be held as soon as possible. The Hui Wananga should be facilitated by DOC (as the Department serving the Minister in the relevant portfolio) and chaired by a person with credibility and mana to both parties.

Part III: Other Issues

1. Electoral System and Eligibility to Vote

This section responds to subpoint 4 of the Terms of Reference.

(a) Timing Issues

Eligibility to vote to elect FGC members is covered by section 26Y of the Act. To be eligible, a licence holder must be a New Zealand resident, and must hold an adult whole season licence that entitles them either to hunt or fish in a particular FGC region in the season immediately preceding the next election, or in the period of three months before the close of roll for any election.

This requires a fishing licence holder to indicate a year in advance that they wish to vote or, in the case of gamebird hunters⁴⁷ in April of the election year. These requirements reflect an earlier time when voting was a manual process. This means a person who has only bought a licence that (current) fishing season is not eligible to vote. Now that rolls can be updated electronically, a better approach would be to specify a cut-off date prior to the date of the election, rather than to require the voter hold a licence for the preceding season.

(b) Opt-in Requirement

At present, licence holders must opt-in to be on the electoral roll when they buy their licence. To do this they must tick a box specifying this choice.

Only 30% of eligible licence holders opt to go on the roll. Compounding this, only 29% on the electoral roll actually vote which means only 8% - 9% of eligible licence holders are participating in the elections. It would increase participation and representivity if all licence holders were automatically eligible to vote.

(c) Type of Licence

Only full season licence holders can vote. There is a question whether this unfairly disenfranchises short term licence holders. The NZFGC's own research indicates that licence holders come and go from the licence holder database for a variety of reasons (family commitments, financial pressures) while nonetheless still being committed to the sport. A full season licence holder from the previous season may be no more appropriate an elector than a person who, for example, bought short licences for a number of years. The Review considers that the NZFGC at its earliest convenience, should address the question whether any type of licence holder should be eligible to vote with a view to enlarging the electoral franchise.

⁴⁷ By way of illustration a person buying a 2020/21 fishing season licence who wishes to vote in the 2020 election would not be eligible to vote in that election unless they had bought either a 2019/20 fishing licence or a 2020 gamebird licence.

(d) Criteria to Stand for Election

Currently the only eligibility criteria for councillors is they must hold a whole season licence; not have been adjudged bankrupt; and not have been convicted of a fish or game or protected wildlife offence (section 26Z).

Candidates with criminal histories and professional misconduct sanctions are currently eligible to stand and, if elected, cannot be removed by either Fish and Game⁴⁸ or the Minister. It is recommended that candidates be required to meet a “fit and proper” test (e.g. by making a declaration) and that the Minister also be enabled to remove a councillor in appropriate circumstances for example if a councillor was convicted of a criminal offence during their term of office, or if found in breach of the Code of Conduct (see below).

(e) Code of Conduct

As discussed in the section on governance, the NZFGC and each FGC should have a full suite of governance policies and a Code of Conduct for both councillors and staff. Such codes should stipulate grounds and process for removal.

Representation

There is a lack of engagement with female anglers and hunters and a corresponding dearth of representation of female anglers and hunters on the councils. In the last fishing season and gamebird seasons, 24% of angling licence holders and 3.9% of gamebird licence holders were female and yet only three councillors are female (two elected, one appointed). This perpetuates “the old boys’ club” image of Fish and Game. Comparable conservation focussed organisations have a much high proportion of female members and better reflect society as a whole. Fish and Game’s R3 Strategy (recruitment, retention and reactivation) is aimed at combatting the trend of declining participation by growing the licence-holder cohort generally, but also at attracting younger people and people from diverse backgrounds particularly those who may have had no prior engagement with hunting or fishing. The Review commends these initiatives and encourages their continuation and expansion.

Recommendations

- (28) The electoral roll to automatically include any NZ resident licence-holders from the previous year (i.e. no opt-in requirement).
- (29) The NZFGC should review the eligibility requirements for voting in respect of type of licence held.
- (30) There be provision for the removal of councillors, including Chairs, both by the NZFGC and the Minister.
- (31) There be a requirement for candidates for election to meet a “fit and proper” test.
- (32) A person cannot hold office as a councillor or Chair and simultaneously be employed as a staff member by an FGC. If an elected office holder takes up employment as a FGC employee, they should be required to step aside from their governance role.

⁴⁸ At present, the NZFGC has no statutory powers to require the resignation of an FGC chair.

2. Representation of Wider Community Interests and Community Engagement

This section responds to subpoints 5, 9 and 12 of the Terms of Reference.

Lack of Diversity

There is a notable lack of diversity in council membership, something generally acknowledged within Fish and Game itself. For example, the number of women councillors is currently three. Māori councillors and young councillors are also few in number. Representation from other ethnic groups is very low⁴⁹.

These factors give rise to the perception of Fish and Game as being very “clubby” and not welcoming of outsiders. It is widely acknowledged that Fish and Game does not reflect the wider community. Since Fish and Game are a government body (see earlier discussion) and in effect have a monopoly⁵⁰ this is not appropriate. As part of the work the organisation has been doing to expand its licence holder base through the R3 Strategy, increased efforts have been made over the past 2-3 years to engage a wider base. This has had some success (notably with increasing participation of women) but there is still a considerable way to go before Fish and Game could be viewed as a representative organisation.

Engagement and Responsiveness

As noted earlier, while the Act requires that the interests of licensed recreational anglers and hunters take precedence, in preparing management plans, FGCs are nonetheless required to **have regard to the impact on other natural resources and other users** (section 17(L)(4)b). It appears that FGCs rarely, if ever, take into account the impact or concerns of other users. This paragraph of Section 17 is mostly ignored.

In some regions, the relationships between FGCs and non-hunting or non-fishing interests are good, but this can and does vary depending on the views of the FGC councillors holding office at the time. The Government and non-hunting sectors of the community with interests in game bird management have no direct input to policy or decisions regarding game bird management.

The Review spoke to a range of third parties who represented other users. The majority of the feedback was that Fish and Game was very difficult to deal with, being unnecessarily aggressive and confrontational. The single-minded focus on the interests of anglers and hunters has detrimentally affected community relations and engagement. Where Fish and Game’s interests align with that of another person or group, the relationship is generally harmonious. However, where interests are not convergent with those of Fish and Game, relations are usually described as “difficult”, “uncooperative” “aggressive” or “belligerent”.

If a person who is not a licence holder is dissatisfied with Fish and Game policy or management (e.g. the Treaty partner, a landowner, an aviation interest, or some other interest) there is no vehicle for relaying those concerns other than by a relationship of goodwill with the local FGC. This is a

⁴⁹ Data is hard to come by as licence holders are not asked to identify ethnic background but the homogeneity of Fish and Game councillors is not disputed, and in fact was raised by many councillors the Review spoke to. The term “old boys club” was frequently used to describe FGCs.

⁵⁰ With the exception of the Taupo Catchment which DOC manages.

very person-dependent mechanism - while there is the direction for FGCs to have regard to other interests set out in section 17(L)(4)(b), the provision nonetheless leaves the discretion with the FGC as to what extent or how it has regard to those interests. The Review does not consider any legislative change to be required. Rather it is a case of making sure that section 17(L)(4)(6) has been adhered to. This should be evident (and be able to be seen by the NZFGC in the preparation and development of each FGC's Annual Work Plan). Furthermore, the adoption of Recommendations 1, 2 (powers of Minister to direct Work Plan), 34 and 35 (NZFGC to develop guidelines for FGCs and set the Chief Executive a KPI regarding community engagement), should in their cumulative effect, address this issue.

The other side to the situation above is that FGCs are sometimes expected to undertake control of game birds at their own expense, or to volunteer effort for the benefit of other parties (e.g. as part of an obligation under a game management plan). Such work is often to the detriment of hunting opportunities as it can make hunting poorer. Furthermore, where gamebird control provided by an FGC costs farmers or other users nothing, those other users have an incentive to seek a higher level of control, regardless of the marginal benefit to them or of the costs to the FGC. Again these competing interests can be managed by thoughtful and considered Annual Work Plans, and by the provision for the Minister to direct⁵¹.

Interaction with Regional Authorities

Regional authority chairs that the Review spoke to said that it was very hard to have a constructive relationship with Fish and Game at the national office level. They also raised the problem of the inconsistency of views and approach between the NZFGC and the FGCs which makes it very hard for third parties (often with their own complex constituencies) to know if they have a solid agreement on an issue.

FGCs were seen to be active on legal issues around consents, Environment Court processes and the like - which was valued - but had next to no engagement with regional authorities at the operational level. CEEEF⁵² representatives noted that FGCs were not part of the \$1.3 billion habitat improvement/nature projects plan that the Minister and regional councils were working on.

These issues point to behaviour rather than governance but do suggest that relationship building and wider community engagement (not just environment groups) needs to be a focus for the NZFGC and its CE.

Recommendations

- (33) The NZFGC should build on its existing programmes to build its licence holder base, and in particular to attract a broader demographic. Consideration should be given by the NZFGC for the setting of appropriate targets in this area.
- (34) The NZFGC should develop guidelines to guide a process for community input for FGCs to follow in developing management plans. At a minimum there should be a requirement to demonstrate that the provisions of section 17(L)(4)(b) have been complied with i.e. that the impact on other natural resources and/or other users has been considered.

⁵¹ e.g. to direct a goose cull for the purposes of aviation safety.

⁵² CEEEF is the Chief Executives' Environment and Economy Forum; a meeting of Chief Executives including from all regional councils.

- (35) A KPI for the CE should be to develop a community and stakeholder relationship strategy (e.g. with a 10-year horizon) that is independently evaluated and then reported on annually to the Board.
- (36) The NZFGC as part of its co-ordination role should assure itself that the duty set out in section 17M2(ii) which requires the FGC to *'give notice of the draft plan ... so far as is practicable, to representatives of the appropriate iwi authorities and to the appropriate regional councils and territorial authorities'* has been adequately discharged.

3. Organisational Policies and Practices, and Meeting Procedures

This section responds to subpoints 7 and 10 of the Terms of Reference.

Commonality of policies and monitoring of adherence to them

As noted earlier, each FGC is an autonomous organisation and, as such, is responsible for its own organisational policies. There is no “Fish and Game” way of doing things. Lack of standard operating models, particularly in management areas also makes it difficult for the NZFGC to audit and monitor FGC operations. It is also very inefficient – a major issue for an organisation struggling with resource constraints. This means there is considerable variability in policy and practice. It is recommended that as part of its functions, the NZFGC sets policies on all corporate or management functions (see page 16). This would not require starting from scratch since some FGCs (such as CSI) have recently developed fairly comprehensive governance policies which could be used as a template.

Publicly Excluded meetings

There is an issue with the use by FGCs of “public excluded” meetings; a highly contentious topic. Fish and Game (all 13 councils) are subject to the Local Government Official Information and Meetings Act 1987 (LGOIMA), one of the purposes of which is “*to provide for the admission of the public to meetings ...*”⁵³. Section 4(a) of LGOIMA states its purpose is to “*promote the open and public transaction of business at meetings ...*”. Section 48(i) allows the exclusion of the public from the whole or any part of the proceedings of any meeting on specified grounds. The grounds are fairly restrictive while section 48(1)(d) provides for cases where “*the exclusion of the public ... is necessary to enable the [council] to deliberate in private ...*” this is generally in respect of a matter subject to a formal enactment or regulation. There is widespread criticism that these provisions had been repeatedly abused and that “public excluded” meetings were frequently held without justification. The Review notes that this contributes to the perception of Fish and Game as a club, and is contrary to the spirit of the LGOIMA which envisages business being conducted in a transparent fashion. The overuse of public-excluded meetings also undermines efforts at community engagement and outreach.

Fish and Game has Standing Orders for Rules for the Conduct of Meetings⁵⁴ which apply to NZFGC and are model rules for FGCs. FGC can use these standing orders or adopt their own. The Standing Orders reference the provisions of the LGOIMA and state “Meetings normally to be open”.

The Review does not consider any specific recommendations need to be made about this matter since the combination of the presence of professional or professionally trained governors on FGCs with the robust oversight of the NZFGC⁵⁵ - both provided for in earlier recommendations – makes it unnecessary.

⁵³ Head note to Local Government Official Information and Meetings Act 1987.

⁵⁴ Gazetted in 2017.

⁵⁵ To whom complaints of misuse of “public excluded” meetings could be made.

4. Funding and Revenue

This section responds to subpoints 8 of the Terms of Reference.

Section 26C1(f) of the Act provides for the NZFGC to determine allocation of revenue. As signalled in the introduction to this Review, participation in sports fishing and game bird hunting in New Zealand along with a number of other recreational activities, has declined in recent years.

Revenue Pressure and Funding Allocations

Significant fiscal pressure was a common theme in the Review's discussions with FGCs throughout the country, as was the perceived unfairness and/or irrationality of budget allocation decisions. There was widespread dissatisfaction with:

- a) the fact that around 20% of the budget in recent years has been allocated to the NZFGC (i.e. the National Office)⁵⁶ and
- b) the allocations between FGCs and the perceived subsidisation effects whereby higher "earning" FGCs consider they "subsidise" the lower earning ones.

The NZFGC has embarked on a national strategy designed to lift participation and income. The 'R3' strategy – Recruitment, Retention, Reactivation – adapted from a US/Canadian model, focuses on growing Fish and Game's customer base. The strategy is being piloted in a small number of FGCs and while it is too early to measure the Strategy's impact on Fish and Game's bottom line, early indications from FGCs participating in the pilot programmes are positive. The Review acknowledges the initiative and the NZFGC's commitment to it. It will require concerted and sustained effort however to achieve a meaningful impact on Fish and Game's funding. At present some FGCs do not want to enlarge the licence holder base since they do not want to "share" the resource.

Resource Allocation Project

During the period of this Review, the NZFGC commissioned a report from Concept Consulting to examine the question of how Fish and Game's resources should be allocated between the FGCs and the NZFGC, and following from that how should the individual FGC allocations be determined.

The report notes that to date resource allocation decisions seem more closely tied to where licence sales occur rather than where fishing or hunting activity occurs. It proposes a framework to enable Fish and Game to make future decisions by looking at:

- (a) measures of relative need between regions based on fishing and hunting activity (need); and
- (b) costs relative to the fishing and hunting activity in each region (costs).

In addition to proposing a model by which to determine future budget allocations, the report recommends a percentage of core budget being allocated to a common "flex" pool; a separate contestable fund to be reallocated based on strategic priorities, which are periodically reviewed and are quality assessed by assurance mechanisms. This report is now before the NZFGC for its consideration. This Review considers that if it is wholly or substantially adopted it will meet the concerns which led to its commissioning.

⁵⁶In 2019 FGCs paid \$3.1M levies to the NZFGC but recovered \$0.8M in budget allocations.

5. Advocacy

This section responds to subpoint 11 of the Terms of Reference.

In the list of 15 functions assigned to the NZFGC by section 26C(1) of the Act, the function of advocacy is ninth⁵⁷. It is the contention of most FGCs that the National Office i.e. the executive arm of the NZFGC, has in recent times elevated this function beyond what was envisaged in the legislation and at the expense of the other functions.

The NZFGC functions listed in the Act which precede that of advocacy mostly concern policies for sports fish and game and all the functions necessarily incidental to this main aim, such as advising the Minister, electing councils, setting fees and preparing Angler Notices. It is worth restating section 26C(1)(g) which provides that the functions of the NZFGC shall be:

“to advocate generally and in any statutory planning process the interests of the New Zealand Fish and Game Council, and, with its agreement, of any [FGC] in the management of sports fish and game habitats”.

Most of the advocacy in “statutory planning processes” (which generally takes place in the Environment Court) is carried out by FGCs rather than the NZFGC. Generally speaking this type of advocacy is not in contention. It is the interpretation and implementation of the phrase “advocate generally” which has created tension within Fish and Game. There are two related issues. One is the method and style, and the second is the governance implications for the relationship between the NZFGC and the FGCs.

Method and Style

The first Chief Executive (who was Chief Executive of the organisation for 30 years) was a recognised and respected advocate for water quality, over many years. The “dirty dairying” campaign which began in his tenure has been credited by many environmental advocates as being instrumental in raising public awareness about the damage done to waterways by intensive and/or poor farming practices, and as being a building block for the current national water management and protection regime.

While the second Chief Executive⁵⁸ conducted the advocacy role in a similar fashion, the FGCs signalled that they considered that approach had outlived its usefulness and it was time for a new strategy. This was to create a dialogue and generate solutions, while still issuing targeted statements which address specific issues or specific habitats.

Both the FGCs and Federated Farmers considered there should be greater acknowledgement of positive farming practices and of the number of interests that the two organisations have in common⁵⁹.

The Review heard allegations that Federated Farmers had “infiltrated” the FGCs in order to change Fish and Game’s stance and prevent or moderate future anti-dairying statements. The Review did not find this allegation to be borne out, either in terms of numbers (about 15% of the 144 councillors

⁵⁷ It is mentioned in the 8th point (s.26C(1)(f)(iii)) but only as one of the activities the levy is meant to cover.

⁵⁸ The second Chief Executive resigned at the end of 2020 and a new Chief Executive is yet to be appointed.

⁵⁹ Since this was written and following a series of changes at the NZFGC, the NZFGC has initiated a dialogue with Federated Farmers to canvas these issues.

are farmers)⁶⁰ or in terms of there being any evidence of a farmer-driven campaign at the NZFGC level. Indeed, it was more likely to be FGC staff than elected councillors who were unhappy at what they saw as unjustifiably negative anti-farmer statements, since it affected them in the day-to-day conduct of their jobs.

Governance Implications

The conflict over how the advocacy function should be conducted highlights the issues around the role of the NZFGC and the relationship between the NZFGC and the FGCs, discussed earlier. The FGCs consider the NZFGC should be the “servant” of the FGCs and not the “master” and accordingly expressed frustration that their views on Fish and Game’s public utterances were not taken into account.

No Recommendation

The Review does not consider that the wording of section 26C requires amendment. It quite clearly envisages advocacy as a function of the NZFGC. Equally clearly it is not a pre-eminent function which supersedes other functions.

Accordingly, no Recommendation is made. The Recommendations about governance and structure would provide greater role clarity and accountability thereby obviating the need for a separate recommendation. It will be for the NZFGC to properly consider its approach to the advocacy function and to then direct its Chief Executive as to how this function should be discharged. As with other matters of the Chief Executive’s performance, it should be reviewed by the NZFGC as part of the Chief Executive’s annual assessment.



⁶⁰ As at 2019.

Full List of Recommendations

- (1) That the Minister has the power to require adherence to an approved management plan.
- (2) That the Minister's powers be expanded to include a mandatory power of direction for an addition or amendment to a draft management plan.
- (3) The Chair of the NZFGC be a Ministerial appointee. While the Chair could be drawn from the pool of FGC councillors, it would be preferable for the Chair to be completely independent of the organisation such as an independent or professional director, at least as an interim or transitional measure.
- (4) The Chair of the NZFGC be a paid position.
- (5) Reduce the size of the NZFGC from 12 to 8.
- (6) The NZFGC to comprise 4 appointed and 4 elected members. This ensures a degree of professionalism around governance and decision-making whilst still retaining a fishing and hunting ethos. The Ministerial appointees could be appointed with consideration being given to candidates with expertise in one or more the of the following areas:
 - te ao Māori
 - governance experience
 - RMA or legal experience
- (7) Appointees to be paid. Elected members would continue to serve on a voluntary (unpaid) basis.
- (8) Elected NZFGC councillors to be elected by Fish and Game licence holders (rather than appointed by FGCs as is currently the case).
- (9) Retain the regional structure but reduce the number of regions (and thereby FGCs) to 6 by the following amalgamations:
 - i Southland and Ōtago
 - ii Central South Island and North Canterbury
 - iii West Coast and Nelson/Marlborough
 - iv Wellington and Taranaki
 - v Eastern and Hawke's Bay
 - vi Auckland Waikato and Northland
- (10) Each FGC should itself comprise 8 members, comprising:
 - 4 members elected by licence holders
 - 3 members appointed by the Minister
 - 1 iwi nominee/appointeeThe Chair of the FGC to be elected by councillors.
- (11) Terms of office on the NZFGC or an FGC for both appointed and elected officeholders should be fixed for 3 years with a limit on serving no more than two consecutive terms.
- (12) The Minister to have powers of removal of any councillor, whether appointed or elected.

- (13) Co-opted councillors can be invited and/or removed by the Chair of a Council be it the NZFGC or an FGC, following resolution of that Council. Co-opted councillors to have equal voting rights with other councillors. NB: this requires an amendment to section 26V(2) of the Act.
- (14) A councillor could not be a member of both the NZFGC and an FGC at the same time. If elected to both, that person would have to choose one of them.
- (15) Members of both the NZFGC and an FGC to be elected by licence holders casting two votes: one for the NZFGC and one for the FGC
- (16) The NZFGC to establish a programme of professional development for its elected members, such as IoD or AICD accredited training.
- (17) The NZFGC to adopt a full suite of governance and corporate policies which are binding on itself and all FGCs.
- (18) In particular the NZFGC should adopt and implement a robust Conflict of Interest policy which reflects good practice as set out in the Auditor General's 2020 Guidance.
- (19) The Conflict of Interest policy should, in particular, provide for:
 - (a) Conflicts of Interest being a standing item on the NZFGC and FGC agendas;
 - (b) a programme of periodic audits of FGCs be conducted by the NZFGC; and
 - (c) aspiring officeholders or applicants for senior staff positions be required to declare their interests prior to voting or appointment (in respect of officeholders these interests should be published as part of the information provided to electors).
- (20) The NZFGC to produce a consolidated annual report for the Minister covering its own and all FGC activities.
- (21) Section 26C(1)(a) be amended by the insertion of a new clause to read: "The functions of the NZFGC shall be to develop, in consultation with Fish and Game Councils, **and having regard to the interests of Māori as Treaty Partner**, national policies for the carrying out of its functions for sports fish and game, and the effective implementation of relevant general policies established under the Wildlife Act 1953 and this Act" (words in bold added to existing provision).
- (22) Section 26Q(1) be amended by insertion of a new clause to read: "The functions of each Fish and Game Council, shall be to manage, maintain and enhance the sports fish and game resource in the recreational interests of anglers and hunters and, **having regard to the interests of Māori as Treaty Partner**, and in particular ..." (words in bold added to existing provision).
- (23) The NZFGC establishes a standing advisory panel on Treaty issues and engagement with Māori.
- (24) The Minister in making appointments to councils to consider Māori representation – this recommendation is provided for previously (Recommendations 6 and 10 refer) but is repeated here for completeness for this topic. In making such appointments, the Minister could seek the views of DOC, TPK, Te Arawhiti and/or receive nominations directly from iwi.
- (25) Councillors holding office by nomination (e.g. as a result of Treaty settlement provisions) to have full voting and participation rights – the same as elected or appointed councillors.

- (26) Fish and Game urgently initiate a dialogue with Māori with a view to developing a national policy governing a system of consultation with Māori to ensure all relevant Treaty concerns are addressed by Fish and Game in the conduct of its business. That policy should guide protocols and procedures at a local level for day-to-day operations.
 - (27) With respect to the above recommendation, as a first step in initiating this dialogue, a national hui should be held as soon as possible. The Hui Wananga should be facilitated by DOC (as the Department serving the Minister in the relevant portfolio) and chaired by a person with credibility and mana to both parties.
 - (28) The electoral roll to automatically include any NZ resident licence-holders from the previous year (i.e. no opt-in requirement).
 - (29) The NZFGC should review the eligibility requirements for voting in respect of type of licence held.
 - (30) There be provision for the removal of councillors, including Chairs, both by the NZFGC and the Minister.
 - (31) There be a requirement for candidates for election to meet a “fit and proper” test.
 - (32) A person cannot hold office as a councillor or Chair and simultaneously be employed as a staff member by an FGC. If an elected office holder takes up employment as a FGC employee, they should be required to step aside from their governance role.
 - (33) The NZFGC should build on its existing programmes to build its licence holder base, and in particular to attract a broader demographic. Consideration should be given by the NZFGC for the setting of appropriate targets in this area.
 - (34) The NZFGC should develop guidelines to guide a process for community input for FGCs to follow in developing management plans. At a minimum there should be a requirement to demonstrate that the provisions of section 17(L)(4)(b) have been complied with i.e. that the impact on other natural resources and/or other users has been considered.
 - (35) A KPI for the CE should be to develop a community and stakeholder relationship strategy (e.g. with a 10-year horizon) that is independently evaluated and then reported on annually to the Board.
 - (36) The NZFGC as part of its co-ordination role should assure itself that the duty set out in section 17M2(ii) which requires the FGC to *‘give notice of the draft plan ... so far as is practicable, to representatives of the appropriate iwi authorities and to the appropriate regional councils and territorial authorities’* has been adequately discharged.
-

Transitional Arrangements

The adoption of some or all of these Recommendations would represent a significant change, or series of changes, for Fish and Game and the organisational impacts would be felt throughout the country. Accordingly, if they were to be implemented, an appropriately resourced programme of work is required.

The Review recommends that DOC establish an implementation team, preferably under the leadership of the Director-General, or another member of the Senior Leadership Team acting as the Director-General's delegate in this matter. The Chair of the NZFGC should be consulted on the design of the work programme. It is suggested that at least four workstreams are mapped being:

- ◆ Legislative amendments
- ◆ Provision of governance support
- ◆ Creation of new regions (including locations of site offices and distribution of resources)
- ◆ Human Resources (HR) matters

A particular note about staff needs emphasis, namely that it is not the intention of the Review that any staff be made redundant as a result of these recommendations.





Appendices

Appendix One – Terms of Reference

Purpose

1. This document describes:
 - context about Fish and Game
 - the objectives and terms of reference for the Ministerial review
 - review process including resourcing, timeframes, obligations and further information.

Context

2. Part 5A of the Conservation Act 1987 sets out the functions, powers and structure of the New Zealand Fish and Game Council and regional Fish and Game Councils to manage sports fish and gamebird across New Zealand.
3. The sports fish and gamebird resources which Fish and Game manage are highly valued by licence holders.
4. The habitats for some sports fish and gamebirds are under greater development and use pressure, than when Fish and Game was established.
5. Fish and Game has had a central role in establishing water conservation orders to protect waterways; and their outstanding amenity and other values.
6. The regional structure is an important element of Fish and Game's organisational structure and management of sports fish and game birds.

Purpose of the Review

To establish if the functions, powers and organisational structure of the New Zealand Fish and Game Council and the regional Fish and Game Councils in Part 5A of the Conservation Act 1987 are fit for purpose for a modern regulatory and management Crown agency; and identify any changes required.

To provide recommendations on how Fish and Game can better implement its responsibilities under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi.

Review Panel

The review will be objective and undertaken independently of Fish and Game. The following arrangements reflect this.

A two-member Panel will be appointed by the Minister of Conservation comprising persons with expertise in the following:

- a) Governance of public bodies and/or public administration.
- b) Financial and strategic planning and management.
- c) Public law, including an understanding of conservation and resource management legislation.

Terms of Reference

7. In undertaking the review, the review panel should consider:
- **Organisational Structure:** Review the current organisational structure, respective roles, and responsibilities and determine if it is appropriate for a modern regulatory agency;
 - **Functions and Statutory Responsibilities** – Assess whether current statutory functions and responsibilities are fit for purpose and identify any changes needed to ensure Fish and Game operates as a modern and effective manager of sports fish and game birds.
 - **Governance Structure and Accountability:** Assess the current governance and accountability structure and determine if it is appropriate for a modern regulatory agency; identify the most appropriate relationship between NZ Fish and Game Council and regional Fish and Game Councils; between the councils and licence holders; and accountability to the Minister
 - **Electoral System and Representation:** including the timing and process for elections for the New Zealand and regional Fish & Game councils; whether the current electoral system provides stability, accountability and transparency. The Conservation Act provides little guidance.
 - **Representation:** how the interests of licence holders, Treaty partners and the wider community are best represented in Fish and Game’s governance structure;
 - **Treaty Partnership:** how Fish and Game can better implement the responsibilities under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi.
 - **Organisational Policies and Practice:** whether there are effective policies and practice for organisational management, i.e. good employer requirements, staff management and accountability.
 - **Funding and Revenue:** Assess the adequacy of current financial and strategic planning and budget management; understand the current challenges to the financial stability of the national and regional councils; consider the policies for an allocation of licence revenue and identify the appropriate revenue sharing arrangements between national and regional Fish & Game councils⁶¹; determine whether a clear revenue sharing formula should be established in legislation; and identify other potential revenue raising opportunities beyond increasing licence fees.
 - **Community Engagement:** Identify any opportunities to increase licence holder, Treaty partner and community engagement in the management of sports fish and game birds
 - **Meeting procedures:** for both the national and regional councils and whether changes are needed to the meeting rules (s26A Conservation Act).
 - **Advocacy:** the significance of Fish and Game’s advocacy and whether any changes are needed to increase its effectiveness.
 - **Management Planning:** Identify if the current statutory process in sections 17L and 17M of the Conservation Act for the preparation, approval, review, and amendment of sports fish and game management plans are fit for purpose; and any changes needed.

⁶¹ Section 26(1)(f) of Conservation Act provides for the New Zealand Fish & Game Council to determine allocation of revenue.

Out of Scope

8. Material change to the current set of statutory responsibilities for sports fish and gamebird management is out of scope. Allocating these responsibilities to other agencies is also not within the scope of the review.
9. The principle of a regional structure is also to be maintained.

Resourcing and Support

10. The cost of the Review will be met by the Department of Conservation.
11. Costs will include:
 - review panel fees to be agreed with panellists;
 - expenses incurred, such as travel and accommodation;
 - salary for secretariat support (provided by DOC) and expenses associated with functions.
12. The Department of Conservation will provide the reviewers with administration and secretariat support; which will include organising engagement and may include assisting with drafting the review report
13. The panel can commission independent advice if required; subject to its budget and approval of expenditure of more than \$5,000 by the Chief of Governance.

Timeframe

14. It is anticipated that the panel will complete its work and provide its report and recommendations to the Minister of Conservation by 31 December 2020.⁶²

Expectations

15. The review panel should ensure it meets (in person or by videoconference) with the New Zealand Fish and Game Council and with some councillors from some regional Fish & Game councils. The panel may meet with the Chief Executive and any regional managers.
16. The review panel may receive comments from or meet and invite comments from Treaty partners; key stakeholders; and any interested parties it chooses.
17. The review panel will conduct a survey of licence holders to assess their views.⁶³
18. Fish and Game New Zealand and the regional Fish and Game councils are expected to provide any information requested by the review panel and co-operate with the review.
19. The review panel will provide updates to the Minister on the progress of the Review, in particular on any process issues that may arise to ensure they are managed.
20. Any further expectations considered necessary to guide the review may be developed by the Minister of Conservation and communicated to the review panel in a timely way.
21. The Panel's key contact in the Department will be Mervyn English.

⁶² Following the November 2020 General Election, this date was deferred to 28 February 2021.

⁶³ The requirement for a survey was subsequently waived by the Minister.

Appendix Two – List of Species Covered by Fish & Game

(a) Fish:

- i. Brown trout
- ii. Rainbow trout
- iii. Brook trout
- iv. Tiger trout
- v. Lake trout
- vi. Atlantic salmon
- vii. Chinook salmon
- viii. Sockeye salmon
- ix. Perch
- x. Tench
- xi. Rudd**

(b) Game:

- i. Kakīānau/Black swan*
- ii. Pārera/Grey duck*
- iii. Mallard duck
- iv. Pūtakitaki/Paradise shelduck*
- v. Kuruwhengi/Shoveler duck*
- vi. Pūkeko*
- vii. Chukar
- viii. Red legged partridge
- ix. Pheasant
- x. Australian or brown quail
- xi. California quail
- xii. Virginian or bobwhite quail

**denotes indigenous species*

***denotes Auckland/Waikato FGC only*

Appendix Three – Key Legislative Provisions

Section 26C Conservation Act 1987

26C Functions of New Zealand Fish and Game Council

- (1) The functions of the New Zealand Fish and Council shall be:
 - (a) to develop, in consultation with Fish and Game Councils, national policies for the carrying out of its functions for sports fish and game, and the effective implementation of relevant general policies established under the Wildlife Act 1953 and this Act;
 - (b) to advise the Minister on issues relating to sports fish and game:
 - (ba) to co-ordinate the preparation and recommendation, for the Minister's approval, of Anglers Notices and notices for game seasons; to advise the Minister in relation to such matters; and to publish in the *Gazette* Anglers Notices and notices for game seasons;
 - (c) to participate, with the Director-General and other interested parties, in the development of a research programme promoting the management of sports fish and game;
 - (d) to oversee the electoral system by which members of Fish and Game Councils are elected;
 - (e) to recommend to the Minister an appropriate fee for fishing and hunting licences, after having regard to the views and recommendations of Fish and Game Councils:
 - (ea) to recommend to the Minister fees for game hunting guide licences and sports fishing guide licences, after having regard to views and recommendations of Fish and Game Councils.
 - (f) to determine, in consultation with Fish and Game Councils, the amount of the levy payable by Fish and Game Councils to the New Zealand Fish and Game Council, from licence sales, for:
 - (i) the administration of the New Zealand Fish and Game Council; and
 - (ii) redistribution between Fish and Game Councils; and
 - (iii) advocacy and research.
 - (g) to advocate generally and in any statutory planning process the interests of the New Zealand Fish and Game Council and, with its agreement, of any Fish and Game Council in the management of sports fish and game, and habitats;
 - (h) to provide regular reports to Fish and Game Councils;
 - (i) to liaise with the New Zealand Conservation Authority;

- (j) to audit the activities of Fish and Game Councils:
 - (ja) to recommend to the Minister, after having regard to the views and recommendations (if any) of Fish and Game Councils and the New Zealand Game Bird Habitat Trust Board, an appropriate fee in respect of any game bird habitat stamp and the form of such stamps;
 - (jb) to sell or arrange the sale of, in New Zealand or outside New Zealand, game bird habitat stamps and associated products.
 - (k) to perform such other sports fish and game functions as the Minister may require.
- (2) The New Zealand Fish and Game Council shall have such other functions as are conferred on it by or under this Act or any other Act.

Section 26C: inserted, on 10 April 1990, by section 17 of the Conservation Law Reform Act 1990 (1990 No. 31)

Section 26C(1)(ba): inserted, on 13 March 1996, by section 16(1) of the Conservation Amendment Act 1996 (1996 No. 1)

Section 26C(1)(ea): inserted, on 13 March 1996, by section 16(2) of the Conservation Amendment Act 1996 (1996 No. 1)

Section 26C(1)(ja): inserted, on 17 May 1993, by section 6 of the Wildlife Amendment Act 1993 (1993 No. 39)

Section 26C(1)(jb): inserted, on 17 May 1993, by section 6 of the Wildlife Amendment Act 1993 (1993 No. 39)

Section 26Q Conservation Act 1987

26C Functions of Fish and Game Councils

- (1) The functions of each Fish and Game Council shall be to manage, maintain, and enhance the sports fish and game resource in the recreational interests of anglers and hunters, and, in particular:
 - (a) to assess and monitor:
 - (i) sports fish and game populations; and
 - (ii) the success rate and degree of satisfaction of users of the sports fish and game resource; and
 - (iii) the condition and trend of ecosystems as habitats for sports fish and game.
 - (b) to maintain and improve the sports fish and game resource:
 - (i) by maintaining and improving access; and
 - (ii) by maintaining the hatchery and breeding programmes, where required for stocking or restocking the sports fisheries and game habitat; and
 - (iii) by formulating and recommending to the New Zealand Fish and Game Council conditions for fishing and game seasons; and
 - (iv) by ensuring that there are sufficient resources to enforce fishing and hunting season conditions; and
 - (v) by undertaking such works as may be necessary to maintain and enhance the habitat of sports fish and game, subject to the approval of the Minister, the land owner, or the administering authority, as the case may require;
 - (c) to promote and educate:
 - (i) by defining and promoting ethical standards of behaviour to be followed by anglers and hunters; and
 - (ii) by promoting recreation based on sports fish and game; and
 - (iii) by keeping anglers and hunters informed on matters affecting their interests;
 - (d) in relation to costs:
 - (i) to assess the costs attributable to the management of sports fish and game; and
 - (ii) to develop and recommend to the New Zealand Fish and Game Council appropriate licence fees to recover costs and game bird habitat stamp fees and;
 - (iii) to represent the region's interests with the New Zealand Fish and Game Council in the determination and distribution of levies on licences;
 - (e) in relation to planning:
 - (i) to represent the interests and aspirations of anglers and hunters in the statutory planning process; and
 - (ii) to formulate and adopt an annual operational work plan; and

- (iii) to prepare draft sports fish and game management plans in accordance with this Act; and
 - (iv) to identify and recommend to the New Zealand Fish and Game Council the region's sports fish and game requirements for research; and
 - (v) to implement national policy determined by the New Zealand Fish and Game Council; and
 - (vi) to liaise with local Conservation Boards; and
 - (vii) to advocate the interests of the Council, including its interests in habitats;
- (f) to issue:
- (i) licences to hunt or kill game, and game bird habitat stamps, in accordance with the Wildlife Act 1953 and any regulations made under it; and
 - (ii) licences to take sports fish, in accordance with this Part and any regulations made under this Act; and
 - (iii) game hunting guide licences in accordance with the Wildlife Act 1953 and sports fishing guide licences in accordance with this Act;
- (g) to sell or arrange the sale of, in New Zealand or outside New Zealand, game bird habitat stamps and associated products;
- (h) to recommend to the New Zealand Fish and Game Council the form of game bird habitat stamps.
- (2) Each Fish and Game Council shall have such other functions as are conferred on it by or under the Act or any other Act.
- (3) The following provisions shall apply in respect of operational work plans:
- (a) each Fish and Game Council shall prepare such a plan annually;
 - (b) such plans shall be submitted to the Minister for the Minister's approval if there is not sports fish and game management plan for the time being in force for the area;
 - (c) the Minister shall approve or amend plans submitted under paragraph (b);
 - (d) subject to paragraph (c), such plans shall have effect on and from the date of their completion by a Council but shall be subject to any amendments made by the Minister;
 - (e) if there is no management plan for any species of sports fish or game for the time being in force for the region of a Council, those provisions of the Council's operational work plan that relate to the management of those species for which there is no management plan shall not have effect until approved by the Minister.

Section 26Q: inserted, on 10 April 1990, by section 17 of the Conservation Law Reform Act 1990 (1990 No 31).
 Section 26Q(1)(b)(iii): amended, on 13 March 1996, by section 17(1) of the Conservation Amendment Act 1996 (1996 No 1)
 Section 26Q(1)(d)(ii): amended, on 17 May 1993, by section 6 of the Wildlife Amendment Act 1993 (1993 No 39)
 Section 26Q(1)(f)(i): amended, on 17 May 1993, by section 6 of the Wildlife Amendment Act 1993 (1993 No 39)
 Section 26Q(1)(f)(ii): amended, on 13 March 1996, by section 17(2) of the Conservation Amendment Act 1996 (1996 No 1)
 Section 26Q(1)(f)(iii): amended, on 13 March 1996, by section 17(2) of the Conservation Amendment Act 1996 (1996 No 1)
 Section 26Q(1)(g): added, on 17 May 1993, by section 6 of the Wildlife Amendment Act 1993 (1993 No 39)
 Section 26(Q)(1)(h): added, on 17 May 1993, by section 6 of the Wildlife Amendment Act 1993 (1993 No 39)

Appendix Four – List of Those Interviewed

The Review Team is grateful to the following organisations and individuals for contributing insights to this review:

NZFGC: Chair, Councillors, Chief Executive and Staff
Former Chairs, Former Chief Executive, and former Staff

FGCs:

- Northland FGC: Chair, Councillors, Manager and Staff
- Auckland/Waikato FGC: Chair, Councillors, Manager and Staff
- Eastern FGC: Chair, Councillors, Manager and Staff
- Hawke’s Bay FGC: Chair, Councillors, Manager and Staff
- Taranaki FGC: Chair, Councillors, Manager and Staff
- Wellington FGC: Chair, Councillors, Manager and Staff
- Nelson/Marlborough FGC: Chair, Councillors, Manager and Staff
- West Coast FGC: Chair, Councillors, Manager and Staff
- North Canterbury FGC: Chair, Councillors, Manager and Staff
- Central South Island FGC: Chair, Councillors, Manager and Staff
- Ōtago FGC: Chair, Councillors, Manager and Staff
- Southland FGC: Chair, Councillors, Manager and Staff

Former FGC Chairs, Councillors and Staff

Third Parties:

- Chief Executives’ Environment and Economy Forum (CEEEF): Chief Executives of Regional Authorities
- Concept Consulting: Director
- Environmental Defence Society: Chair and Executive Director
- Federated Farmers: President, Board Members and Staff
- Forest and Bird: Group Manager, Legal Counsel, and representative
- NZ Conservation Authority: Chair and Members
- NZ Professional Fishing Guides Association: representative
- Ōtago Conservation Board: Chair
- Public Service Commission / Te Kawa Mataaho
- S. Ongley: RMA Barrister
- Sir Geoffrey Palmer: Legal Adviser to NZFGC
- Te Arawhiti (The Office for Māori Crown Relations): Acting Chief Executive Deputy Chief Executive
- Tourism Industry Aotearoa: representatives
- Waiau Trust: representatives
- Zealandia: Chief Executive and Staff

Note: In addition, the Review had access to a range of DOC personnel and was ably supported by a DOC-provided administration team. The views of the Review Team are, however, those of the Review team alone.

Appendix Five – Summary of Feedback Submitted to the Review

Introduction

Following the announcement of the Review, a dedicated email address administered by DOC was set up to receive input from the public. The time limit for contributions was set at August 31, but it was extended a week to allow time for further contributions. The Review also conducted face to face meetings with the NZFGC, all 12 FGCs and with other interested parties.

In excess of 220 written contributions were received. The Review is grateful for the time, effort and thought that went into their compilation, and for contributors' willingness to share their experience and views. Every submission was read in full and considered in the formation of this report. It is the Review's intention to comment on the themes that emerged rather than to reference or comment on all contributions received.

Submitters presented a wide range of opinions and positions.

Summary of sources of the contributions and an exploration of the main themes

- One third of the contributions came from current and former FGC councillors and staff, and from Fish and Game Councils (FGCs) and other organisations such as angling and mountain clubs;
- Two thirds of the contributions came from individuals, the vast majority of whom were former or present game hunters and sports fishers. Eight contributions were received from overseas;
- There did not appear to be many, if any, contributions from individual members of the public or organisations that did not have some association with game hunting and sports fishing in New Zealand;
- Around half of the contributions were brief and succinct, at most three or four paragraphs making one or two points;
- Current and former councillors and staff, and organisations tended to make longer contributions, covering a substantive range of topics;
- A small number of contributions addressed each point in the Terms of Reference. A greater number commented more generally on what they saw was working well, what was not working well and made suggestions for improvement;
- A small number of contributions made comments outside the remit of the Review.

In terms of the overall themes, approximately 40 percent of contributions indicated that overall Fish and Game do a very good job and no changes are needed. Contributors in this group were happy with the status quo. Those advocating the maintenance of the status quo stressed the importance of local people looking after local resources and expressed concern that any changes might see more central control from the NZFGC or DOC. Local independence was highly valued.

Representative comments from this group of submitters included:

- *The regional delivery model is the optimum model as it encourages a sense of ownership of local issues and solutions. Local staff have a better understanding of their stakeholders and environment. Fish and Game, in my view, is a remarkable organisation.*
- *“...they [FGCs] appear to do a very good job and I don’t think the current model has too many faults.”*
- *“...I would not like to see any radical changes implemented to a system that’s working well in the interests of sports fishing. If it isn’t broken, why try to fix it?”*

Apart from support for the status quo, there was no other single theme identified by a sizeable proportion of submitters. Rather, the contributions covered a wide range of topics. Other topics highlighted in the contributions were as follows:⁶⁴

Conflict of interest

A theme of concern to many was conflicts of interest. Most believed conflict of interest was a serious problem, alive at both a regional and a national level. The Review comments on this issue in the report.

Amalgamation

Many submitters expressed the view that efficiencies could be achieved by amalgamating regions. A smaller number felt the existing regions were appropriate. The Review discusses this in the report.

Representation

Issues around elections, and the composition and tenure of the National Council (NZFGC), were touched on by a significant number of submitters. The consensus was that separate elections for a place on the NZFGC should occur across all eligible voters, rather than regions electing their own representative. It was considered this would help reduce what submitters saw as the current parochial representation on the NZFGC.

The size of the NZFGC also attracted negative comment and suggestions that the number of councillors should be reduced (around 8 was common figure). Some suggested that an additional 2 members should be appointed by the Minister of Conservation for specialised/required expertise.

The majority of these submitters believed there should be a limit on the number of consecutive terms that any member could serve on the NZFGC or serve as a chair of an FGC. Some submitters favoured paying the NZFGC chair and others favoured paying all NZFGC members. However, a number did not support payment.

⁶⁴ Those not listed were either outside the scope of Fish and Game (such as Thar) or not relevant to this Review.

Allocation of resources

A number of submitters commented on the allocation of resources – the funds originating from licence sales - and the distribution of resources throughout the organisation. Some did not favour the subsidising of smaller or less wealthy regions. Others objected to resources being transferred from the South Island to the North island. Others were unhappy about the system of licences (and the fees from them) being assigned to the specific region of their purchase – when fishing or hunting may occur in another or multiple regions.

Advocacy

Fish and Game’s advocacy role (in particular for water quality/quantity) generated significant comment. The majority of submitters were in favour of continuation of this work, however many noted that this was properly the job of territorial authorities/local government – who, submitters believed, were not fulfilling their statutory functions. Other agencies such as DOC, Forest and Bird and Iwi groups were also mentioned as potential supporters of Fish and Game with this work. Others suggested that this advocacy constituted a “public good” and as such should attract central government funding. Advocacy was widely identified as a major expenditure item of the organisation.

In contrast, the independence from central government was clearly valued and was commented on by a number of submitters. The majority of these submitters were very clear that neither DOC nor the Minister of Conservation (MOC) should have any additional influence.

The role of NZFGC and its relationship with FGCs

The majority of the contributions on this subject indicated a preference for a national council that served the regions, taking a coordinating role as opposed to a “head office” role. The role of the NZFGC should include liaison with central government and undertaking functions that would avoid organisational duplication. A number of submitters commented that the NZFGC had exceeded this brief and that some of the press releases (in recent years) from the CE had been detrimental to some stakeholder relationships at a local level. However, a minority of contributions advocated for an expanded role for the NZFGC, noting that for it to be effective the NZFGC needed greater power or more tools to enforce its policies.

Role and remuneration of managers

Some submitters commented that the regional managers had built considerable power within the organisation and that they suspected some were overpaid. However they went on to say they were unable to verify this as managers’ remuneration packages were often unavailable to council members. On the flip side, other submitters wanted the Managers Accord⁶⁵ to be reactivated as most of the scientific and institutional knowledge was held by the managers - many of whom were long serving in their role.

⁶⁵ A forum of the FGC managers which acted as a decision maker on “operational matters” under a set of agreed operating practices and principles that applied to all FGCs. The goal of the Accord is to achieve operational effectiveness through standardisation, consistency, cooperation and avoidance of duplication and inefficient practices.

Anti-farming / “Dirty dairying”

Relationships with the farming sector was a popular topic. Most submitters on this topic agreed that “the dirty dairying” campaign had been necessary and successful. However most thought it had gone on for too long and it was time to concentrate on re-building positive relationships with farmers - many of whom were licence holders and some of whom also provided access to their land for fishing and hunting. These submitters did not think it necessary for farmers and Fish and Game to agree on everything, but where there were differences criticism should be focused on specific aspects of farming practice and be circumspect. There were many areas where the two organisations had common goals.

Regular audits

Existing NZFGC policies provide for a certain number of audits of FGCs to be carried out by or organised by NZFGC each year. These have not been happening in recent years. Some submitters wanted these to be reinstated to prevent FGCs from losing sight of or straying beyond their statutory roles.

Regulation of fishing guides

This topic was noted in a number of contributions . The licencing of fishing guides has been a project “on the books” for many years but never completed. Those submitters who did comment wanted the work completed.

The use of “public excluded” provision in Fish & Game meetings

The general topic of communications between the NZFGC and FGCs and the licence holders was raised. Submitters believed improvement was required. Linked to this was the subject of public excluded discussions in council meetings. It was felt that the public excluded option was overused and hindered the ability to communicate with stakeholders and licence holders. In general terms, increased transparency was sought by submitters.

Major change required

A small number of contributors advocated major change. They said that the system was not working well and proposed that only major change would make it fit for purpose. Changes proposed included:

- Scrapping Fish and Game and having DOC monitor sports fishing and game shooting resources.
- Scrapping the NZFGC and replacing it with a smaller central office. The main purpose of the office would be to liaise with central government.
- Reducing the number of regional bodies to two or three regions only in each of the North and South islands.
- Members of the NZFGC being elected directly by licence holders. The NZFGC to be a mix of appointed and elected members. It was suggested that the appointed members could be appointed by an “arm’s length” appointments panel e.g. the Parliamentary Commissioner for the Environment.
- FGC councillors should not be members of the NZFGC.

Conclusion

As a general comment the Review notes that the views of the submitters, wide ranging and sometimes disparate as they were, reflected in large part the views expressed to the Review in face-to-face meetings with FGCs and regional managers and staff all around the country.

The Review thanks all submitters for their time and effort.

