

**Review of Sustainability Measures and Other Management Controls for  
the 2005-06 (1 October) Fishing Year**

**SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS**

**Snapper 8 (SNA8)**

**August 10, 2005**

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## 1. Introduction

The Ministry of Fisheries (MFish) has advised that a new stock assessment is available for the SNA8 stock. MFish also advise that under the current TAC biomass is expected to increase slowly but will not reach Bmsy within the next 20 years.

The Ministry have proposed three alternative TAC options to achieve a faster rebuild of the SNA8 stock.

An Initial Position Paper (IPP) was issued to stakeholders on 30 June 2005. MFish has invited stakeholders to provide comments on the consultation document.

Original deadline for comments was 29<sup>th</sup> July 2005. MFish then extended the deadline to 10<sup>th</sup> August.

This document comprises the submission from option4 an NGO which promotes the interests of non-commercial marine fishers in New Zealand.

## 2. Ministry of Fisheries Proposals

**Table 1:** Current and proposed TAC's, allowances and TACC's for SNA 8

	Allowance Approach	TAC tonnes	Customary Allowance tonnes	Recreational Allowance tonnes	Other fishing mortality tonnes	TACC tonnes
<b>CURRENT</b>		2060	50	360	150	1500
<b>Option 1. TAC reduction of 138 tonnes</b>	Proportional	1922	50	335	139	1398
	Non-proportional	1922	50	360	137	1375
<b>Option 2. TAC reduction of 275 tonnes</b>	Proportional	1785	50	311	129	1295
	Non-proportional	1785	50	360	125	1250
<b>Option 3. TAC reduction of 550 tonnes</b>	Proportional	1510	50	261	109	1090
	Non-proportional	1510	50	360	100	1000

## **3. option4 Submission**

### **3.1 Proportional Allocation Decisions**

The attached paper on Proportional Allocation of Fisheries Resources in NZ (Appendix One) is a major part of this submission and must be read in conjunction with it. We ask that the issues raised in the Proportional Allocation of Fisheries document along with the fishery specific issues raised in this document be addressed by the Ministry in the Final Advice Paper on which the Minister bases his decision.

### **3.2 Consultation**

The timeframe allowed for consultation by the Ministry of Fisheries is unworkable for many non-commercial stakeholders with an interest in the fisheries being reviewed this year. The time between delivery of the IPP and submission deadline is too short for adequate consultation with the diverse range of non-commercial fishing interests who could be affected by this years proposals. option4 comments on the consultation process are included in this submission as Appendix Two.

### **3.3 SNA8 Proposals**

There are six proposals for rebuilding the SNA8 fishery. Three of the proposals are for proportional reductions to be applied to both commercial and non-commercial catches. The other three reduce commercial catches only. option4 has grave concerns regarding all of the proportional options as they are based on unfair initial allocations of the proportions and place the recreational allowance at risk of erosion by commercial interests that have been unable to be constrained to their TACC.

### **3.4 Double Jeopardy**

Proportional allocations also place the recreational sector in a double jeopardy situation where recreational interests have their catches reduced twice. The first reduction occurs as the biomass falls resulting in recreational fishers catching fewer fish, smaller fish or both. The second occurs when the already reduced recreational catch is further reduced in proportion to the cut applied to commercial fishers.

option4 has created the following list of criteria that need to be addressed before proportional allocations are considered:

1. Consultation with non-commercial fishers is undertaken on whether the proportional allocation model is acceptable.
2. Initial proportions are fairly achieved and set with possibility of judicial review.
3. Reliable scientific information is available on which to base initial allocations
4. Stakeholders have an equal opportunity to catch their allocation.
5. The stakeholders can be constrained to their proportion.
6. All stakeholders share pain or gain equally and simultaneously.
7. Cheating is detectable and avoidable.
8. All stakeholders have equally strong rights.
9. All stakeholders are similarly resourced.

10. There is a way of altering the proportions when they are incorrectly set.
11. There is a way of increasing the non-commercial proportion if the number of non-commercial fishers increases, or decreasing it if less people go fishing.

All proportional management options are completely rejected by recreational fishers until these fundamental issues have been addressed.

### 3.5 SNA8 Fishery

1. The west coast snapper stock is depleted and is well below the target stock level required in the 1996 Fisheries Act and is not rebuilding at an acceptable rate.
2. Excessive commercial fishing has been allowed to deplete the SNA8 fishery and maintain this depletion for so long that it is highly likely that a whole generation of recreational fishers will have been denied access to a healthy fishery.  
MFish considers that 30 years would generally be the maximum legitimate rebuild period as deduced from s 8(2)(a) considerations involving intergenerational equity issues, unless there are especially relevant factors to be considered as part of s 13(2) and (3) of the Fisheries Act 1996 .”<sup>1</sup>
3. The overfishing that has occurred to date is directly attributable to commercial overfishing. Prior to the introduction of the QMS this fishery was raped by pair trawlers down to around 5% of the virgin stock size. Subsequent to the introduction of the QMS commercial fishers have fished considerably in excess of TACC’s and have had quotas unfairly inflated by the Quota Appeals Authority and this has prevented the fishery rebuilding at a reasonable rate.
4. Commercial fishers have gained socially and economically from overfishing this resource at the expense of the social and cultural aspirations of other users. Now it is time for commercial interests to pay back those who have been deprived by their excessive activities.

### 3.6 Recreational Catch

5. The recreational catch rate in SNA8 has been adversely affected by the low stock size.
6. The recreational catch in SNA8 has been under estimated and based on poor science and that allocations based on these under estimates need be noted by the Minister as being unreliable and subject to review when better estimates are available.

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<sup>1</sup> Final Advice Paper 6 August 1998 p.179 pt.46

Part II of the Purpose and Principles section of the Fisheries Act 1996 provides guidance for decision makers. The purpose of the Fisheries Act 1996 is to provide for the utilisation of fisheries resources while ensuring sustainability. Section 8 (2)(a) defines ensuring sustainability as “*maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations*”. Amongst other definitions, the Concise Oxford dictionary defines a generation as “*the average time in which children are ready to take the place of their parents (usually reckoned at about 30 years)*”. In a fishstock context, MFish considers that it is reasonable to assume that for the next future generation that “*reasonably foreseeable needs*” means having access to the fishstock at or above a level that can produce the Bmsy. Accordingly, MFish concludes that 30 years would generally be the maximum legitimate rebuild period as deduced from s 8(2)(a) considerations involving intergenerational equity issues, unless there are especially relevant factors to be considered as part of s 13(2) and (3).

7. The excessive commercial fishing in this important shared fishery has reduced recreational catch and continues to impact on the availability of snapper to recreational and customary fishers.
8. Recreational fishers were promised, in Minister Luxton's 1998 decision, that this fishery would be rebuilt by 2008. Recreational expectations are that this is what is required for this fishery.
9. The Minister needs to take into account recreational catch has been artificially suppressed by the low stock size that this has resulted in smaller fish, less fish or both for a generation of recreational fishers.
10. The Minister needs to take into account how long recreational fishers have suffered due to the low stock size and act decisively to rebuild this fishery in the shortest timeframe proposed while properly "allowing for" recreational interests and without further adversely affecting recreational catch or interests in this fishery.
11. The Minister needs to take into account that over and above the diminished access to a healthy fishery recreational fishers voluntarily took bag limit cuts, a size limit increase and accepted a halving of the number of hooks on longlines.
12. These conservation actions were rendered futile by commercial deeming, dumping and Quota Appeal Authority (QAA) issued commercial quota.
13. It is not sufficient to propose proportional reductions to recreational catch without a full explanation to the public and the Minister of how these would be achieved.
14. Reducing the bag limit from 15 to 10 would have negligible benefit for the rate of rebuild snapper 8 stock but would disadvantage recreational fishers who do fish on one of the few days when the recreational fishery is accessible. MFish need to calculate the benefit in tonnes per annum of this measure and compare this with inter annual recruitment variability when advising the Minister in the FAP.

### **3.7 Commercial Catch**

15. The Total Allowable Commercial Catch (TACC) has been exceeded in 14 of the past 17 years through excessive use of the deeming provisions in the Fisheries Act.
16. The Total Allowable Commercial Catch (TACC) originally set at 1330 tonnes has been exceeded for the past 17 years through excessive quota which was issued by the Quota Appeals Authority (QAA) and allowed by the Ministry of Fisheries to be cumulative above their own scientifically assessed safe level of harvest. The original TACC should have formed the upper limit on commercial catches.
17. It is illogical to set a TACC for sustainability and then allow the Quota Appeal Authority to issue quotas that threaten it. Clearly this was never intended to happen, it is just one more example of a Ministry failing to do its job and limit commercial fishers to sustainable catches.
18. The Total Allowable Commercial Catch (TACC) has been exceeded through illegal dumping and high grading. Ministry admits that commercial high grading and dumping of snapper is more common on the west coast of the North Island than in other areas.

19. The Ministry has failed in its job to manage the fishery at a sustainable level and this mismanagement has been to the exclusive benefit of commercial fishing interests and at the direct expense of non-commercial fishing interests.
20. It is indisputable that the unconstrained rape of this fishery by pair trawlers in the 1970's saw this stock annihilated to a level where around 5% or less of the fish stock remained in the water. Continued excessive commercial fishing since the introduction of the Quota Management System is the major cause of the lack of rebuild.
21. The only real threats to the sustainability of the SNA8 fishery is continued commercial overfishing or corporate fraud.
22. Whatever decision the Minister makes, he has to implement steps to constrain total commercial catches to the TACC. It is unacceptable to have commercial fishers consistently overfishing in a depleted fishery.

The following table shows the effects of the Ministry's attempts at constraining capping or limiting the commercial sector to a TACC since 1987-88. QAA decisions are included as these were not scientifically set and have no regard to sustainability.

**Table 2:** Commercial catch since 1987 in SNA8

<b>Year</b>	<b>TACC</b>	<b>Catch</b>	<b>Deemed</b>	<b>Non-reporting*</b>	<b>QAA**</b>
1987	1383	1401	18	138.3	53
1988	1508	1526	18	150.8	178
1989	1594	1550	-44	159.4	224
1990	1594	1658	64	159.4	264
1991	1594	1464	-130	159.4	134
1992	1500	1543	43	150	170
1993	1500	1542	42	150	170
1994	1500	1434	-66	150	104
1995	1500	1558	58	150	170
1996	1500	1613	113	150	170
1997	1500	1589	89	150	170
1998	1500	1636	136	150	170
1999	1500	1604	104	150	170
2000	1500	1630	130	150	170
2001	1500	1577	77	150	170
2002	1500	1555	55	150	170
2003	1500	1666	166	150	170
2004	1500	-	-	150	170
2005	1500	-	-	150	170
<b>Totals</b>	<b>TACC</b>	<b>Catch</b>	<b>Deemed</b>	<b>Non-reporting</b>	<b>QAA</b>
	28673	26546	873	2567.3	2827

**Total Over catch  
6267.3**

\* Amount allowed for dumping, high grading and non-reporting. This number also includes incidental mortality so may overestimate illegal activity.

\*\*Quota Appeals Authority issued quota

### 3.8 Proportional Allocations

23. The proportional allocations as proposed in the Initial Position Papers (IPPs) are grossly unfair to recreational fishers.
24. The proposed proportions have been incorrectly set.
25. There has been no public consultation and no agreed process to set the initial proportional allocations.
26. The proposed proportional allocations make no distinction between those who have conserved and those who have plundered the fishery.
27. Proportional allocations favour commercial fishers who can maintain their catch in a depleted fishery.

28. Proportional allocations further favours commercial fishers by failing to hold them accountable for dumping and deeming to the detriment of the resource and other users.
29. The proposed proportional allocations work against the interests of non-commercial fishers whose catches and initial proportions are reduced in depleted fisheries.
30. The proposed proportional allocations work against the interests of non-commercial fishers by discounting their real conservation efforts.
31. If the Ministry cannot currently constrain the commercial sector to a sustainable TACC then they will not be able to constrain them to a proportion share.

### 3.9 Recreational Conservation

- January 1985 - First bag limit on snapper was 30 per person per day.
  - October 1993 - Snapper bag limit reduced to 20 per person per day.
  - October 1994 - Increase in minimum legal size from 25cm to 27 cm recreational fishers only. Commercial size limit left at 25cm.
  - October 1995 - Snapper bag limit reduced to 15 per person per day.
  - 1995 - Recreational long line hook number reduced from 50 to 25.
32. The increased size limit had an immediate and long-term impact on recreational fishers particularly in the Kaipara and Manukau Harbours. In many parts of these harbours it is now rare for a person to catch a legal sized snapper, therefore the snapper catch of some harbour fishers has been reduced to near zero. Overall it is estimated the increased MLS alone has reduced recreational harvest in SNA8 by around 14.6 – 18.6%.

#### Voluntary Recreational Conservation Taken Since 1995

Restrictions	Reduction	300 Tonne Current Catch	600 Tonne Current Catch
27cm MLS	16.6%	49.8 Tonne p/a	99.6 Tonne p/a
25 Hook Limit	5%	15 Tonne p/a	30 Tonne p/a
15 Bag Limit	5%	15 Tonne p/a	30 Tonne p/a
<b>Total 1995-2005</b>	<b>26.6%</b>	<b>798 Tonnes</b>	<b>1596 Tonnes</b>

33. The table above estimates the total tonnage of snapper conserved by recreational fishers since 1995 on the two recreational catch scenarios modelled by the Ministry, (We note that neither scenario may be correct). The bag limit and hook limit projections are based on an educated guess, if the Ministry has better information on these items we invite them to produce this information, (what we will not accept is to not account for them at all).

34. No allowance has been made for growth of these fish or their mortality. Obviously the growth of some of the fish conserved up to 10 years ago and their addition to the spawning biomass would have had some beneficial effects

to the current stock size above the simple tonnage conserved. It is likely that somewhere between 10-20% of the remaining biomass is made up of fish conserved by recreational fishers since 1995. Earlier reductions to recreational catch are not included in this calculation

35. Recreational fishers have previously demonstrated a ready willingness to voluntarily suggest regulations to conserve in this fishery and the effects can be demonstrated. This goodwill has been completely eroded by a failure to constrain commercial catch to sustainable limits as promised at the inception of the QMS and the proposed proportional reductions in this years IPP.
36. Furthermore, the goodwill of non-commercial fishers to conserve has been betrayed by the failure of fisheries managers to make any effort to account of the benefits accruing from such conservation goodwill. This sends entirely the wrong message to non-commercial fishers who are quietly waiting to see how previous contributions are taken into account. To expect non-commercial fishers to conserve again, given this betrayal, is naïve. Correct this policy attitude and the potential for non-commercial fishers to voluntarily contribute to an accelerated rebuild is high. Leave the betrayal in place and any hope of further voluntary contributions is seriously eroded.
37. Recreational fishers must have faith that the QMS system is able to constrain commercial catch if their confidence is to be restored. This is a fundamental requirement in the management of recreational fisheries and this must be achieved if future co-operation or conservation from this sector is required. A fair decision at this time could achieve just that. Currently recreational fishers are outraged that fish they have conserved have been used to prop up unsustainable commercial catch. They are adamant that any cuts must now focus on cutting the catch limits of those who have done the damage.

#### **4. option4 Conclusion for SNA8**

We ask that the Minister:

1. Cuts the TACC to 1000 tonnes to rebuild this fishery to above BMSY in a timeframe that ensures intergenerational equity.
2. Rejects all of the proportional catch reduction options as unfair to recreational fishers.
3. Makes no changes to recreational bag limits, size limits or gear restrictions.
4. Sets the recreational allowance at a level sufficient to cover current recreational catch.
5. Notes that recreational catch estimates and allowances are uncertain and will be subject to review when better catch information is available.
6. Dismisses commercial fishing interests economic arguments on the basis that commercial fishers have had a huge economic benefit at the direct expense of non-commercial fishing interests, and now it is time to return that which has been unfairly taken from them
7. If points 1, 2 and 3 above are implemented by the Minister it could assist in the rebuild of SNA8. The Minister could then ask non-commercial fishers to

devise and implement voluntary conservation measures to assist and accelerate the rebuild.

8. option4 support an increase the annual deemed value in SNA8 to \$8.68, 200% of the 2004 port price, to minimise the current over catch of the TACC and to provide an incentive for fishers to land SNA8 against annual catch entitlement (ACE).



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# Appendix One

## Proportional Allocation of Fisheries Resources in NZ

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### What is Proportional Allocation?

At first glance proportional allocation of fisheries resources appears to be a fair system of allocating fisheries between competing interests. If the fishstocks increase and additional yield becomes available, then commercial and non-commercial fishers are allocated more fish to catch. If a fish stock falls and a rebuild is required, each sector has their catches reduced.

Theoretically, reductions or increases in catch are done at the same percentage for both sectors at the same time. The Ministry of Fisheries (MFish) is promoting proportional allocations as an equitable way of sharing the pain of rebuilding a fish stock between sectors and sharing the gains, once the stocks are rebuilt.

For proportional allocations to have any chance of working between commercial and non-commercial fishers it is essential that:

1. Consultation with non-commercial fishers is undertaken on whether the proportional allocation model is acceptable.
2. Initial proportions are fairly achieved and set with possibility of judicial review.
3. Reliable scientific information is available on which to base initial allocations.
4. Stakeholders have an equal opportunity to catch their allocation.
5. The stakeholders can to be constrained to their proportion.
6. All stakeholders share pain or gain equally and simultaneously.
7. Cheating is detectable and avoidable.
8. All stakeholders have equally strong rights.
9. All stakeholders are similarly resourced.
10. There is a way of altering the proportions when they are poorly set.
11. There is a way of increasing the non-commercial proportion if the number of non-commercial fishers increases, or decreasing it if less people go fishing.

Unfortunately the Ministry, in trying to impose a proportional system, fails to mention let alone address ANY of the fundamental issues above. This reduces the credibility of their proposals with non-commercial fishers and must, as a result, call into question their rationale and the outcomes they seek regarding the implementation of proportional allocation.

A close scrutiny of the Ministry's Advice Papers that recommend proportional allocation of fisheries between commercial and non-commercial fishers show it to be a policy construct of Mfish which will placate commercial fishers and avoid compensation issues. There is no process evident on how this policy came about, or who was consulted in its formulation. This policy cannot be found in the Fisheries Act and has been previously rejected by the courts. When publicly consulted through the "*Soundings*" document proportional allocation of fisheries was overwhelmingly rejected by 98% of the record 60,000 individuals who submitted to the process.

Proportional allocation now appears to be the preferred policy for MFish. We believe this is because it allows them to ignore the history of the fishery, including serious overfishing and past mismanagement on the part of MFish. The proportional allocation policy seems to allow the Crown to believe it is possible to avoid compensation issues, by taking fish from non-commercial fishers in the name of sustainability and giving those same fish to commercial fishers to subsidise quota cuts in fisheries they have depleted.

A major flaw in the MFish proposals is that those who have depleted fisheries or wasted the resource are treated no differently than those who have conserved.

In simple terms, proportional allocation is about giving the commercial fishing interests almost everything they want, with little or no thought as to the impacts or consequences on non-commercial fishers. This allocation policy undermines the public's confidence in the Quota Management System and removes most of the incentives for non-commercial fishers to conserve fish stocks.

The expectations that sector groups could work together under a proportional system to develop fish plans are most unlikely to succeed in depleted inshore fisheries where the commercial sector has all the rights and resources and where their methods and practices can be demonstrated to be the cause of the depletion.

To expect non-commercial fishers to accept this system after being allocated their "initial share" based on known underestimates of catch (flawed research) compiled while the fishery is at, or near, its lowest stock levels is unrealistic.

One of the worst aspects of the proportional proposals is that they give non-commercial fishers the leftovers of a poorly implemented Quota Management System which has failed to meet its objectives of rebuilding fishstocks in the shared fisheries under review.

It is a policy that gives preference to commercial fishers at the direct expense of non-commercial fishers. This commercial preference is highest in fisheries commercial fishers have depleted the most. They therefore suffer least and the non-commercial stakeholders get severely punished for the actions of those who ruined the fishery. It's a big lose situation for non-commercial.

## **The History of Proportional Allocation**

The MFish agenda to allocate fisheries resources proportionately between stakeholders was first raised in the *Soundings* document. MFish and the NZ Recreational Fishing Council released the *Soundings* public consultation process in July 2000. *Soundings* strongly promoted proportional allocation. Options two and three in *Soundings* were focused on achieving this.

It is interesting to remember that during public consultation on *Soundings* a MFish policy division representative, Jenni McMurrin, was asked what the objectives of the

Ministry were in promoting proportional allocation. She replied that it was “to cap the non-commercial catch and avoid compensation issues for the Crown.”

### **The Courts have also commented on Proportional Allocation**

#### ***[1] IN THE COURT OF APPEAL OF NEW ZEALAND CA82/97 JUDGMENT OF THE COURT DELIVERED BY TIPPING J***

*22 July 1997 Page 18*

*A further matter which points against any implication of proportionate reduction is that the Minister is in our judgment entitled to bear in mind changing population patterns and population growth. If over time a greater non-commercial demand arises it would be strange if the Minister was precluded by some proportional rule from giving some extra allowance to cover it, subject always to his obligation carefully to weigh all the competing demands on the TAC before deciding how much should be allocated to each interest group. In summary, it is our*

*conclusion that neither the specific sections (28D and 21) nor the Acts when viewed as a whole contain any implied duty requiring the Minister to fix or vary the non-commercial allowance at or to any particular proportion of the TACC or for that matter of the TAC. What the proportion should be, if that is the way the Minister looks at it from time to time, is a matter for the Minister's assessment bearing in mind all relevant considerations.*

The current proportional system MFish are trying to implement is not about fairness, not about what is right, it can only be about protecting the Crown from compensation where fisheries have been misallocated between sectors, mismanaged or both.

Proportionality of the type the MFish are trying to impose is about using non-commercial fish as a bank from which the Crown takes fish and gives it to the commercial sector when commercial fishing has become unsustainable.

### **The Initial Allocation Process**

The first allocation of fisheries resources occurred with the introduction of the Quota Management System (QMS).

#### **The Quota Management System**

In 1986 the Quota Management System (QMS) was introduced to restrict and manage the excessive commercial fishing that had seriously depleted inshore fish stocks during the late 1970's and early 1980's. Clearly the intent was to constrain commercial fishers to a sustainable level and allow those fisheries previously depleted to be given the ability to recover. The target level set for fish stocks was, “at or above the level that can produce the Maximum Sustainable Yield” (MSY). This is usually between 20 – 25% of the unfished or virgin stock size.

The initial allocations were set on the basis of a scientifically determined Total Allowable Commercial Catch (TACC) for each fishery divided by the total commercial catch history for that fishery. The result gave the overall catch reduction required as a fraction. Each commercial fishers catch history was multiplied by this fraction to calculate their Individual Transferable Quota Allocation (ITQ).

The key issue was that commercial fishers were to be constrained to a sustainable TACC, with each fisher restricted to a defined portion of it. Compensation was paid to commercial fishers who tendered their quota back to the Crown.

The non-commercial sector was NOT given a **proportion** at this time. Non-commercial fishers were assured by Fisheries Minister of the time, Colin Moyle that, *"Government's position is clear, where a species of fish is not sufficiently abundant to support both commercial and non-commercial fishing, preference will be given to non-commercial fishing"*<sup>2</sup>

### **The Quota Appeals Authority (QAA)**

Almost immediately the commercial quota was issued, many commercial fishers sought to have their individual allocations increased by lodging appeals through the QAA. Many were successful and MFish allowed these new quotas to be cumulative above the existing Total Allowable Commercial Catch (TACC) thus unfairly inflating the commercial **share** of those fisheries.

Quotas on many inshore fish stocks soon rose alarmingly to 20-30% above the previously "scientifically determined" sustainable TACC which the commercial fishing interests had already been compensated to fish to. Within a few years commercial fishers were again overfishing many stocks.

Many of the species left out of the quota system were fished hard because there were no catch limits, quota lease costs and the prospect of these stocks being introduced to the quota system encouraged fishers to maximise their catch history. Kahawai, kingfish and many of the reef species were fished down as a result.

In some key shared fisheries the additional commercial catch issued by the QAA has prevented or slowed any rebuild and this has clearly impacted adversely on all non-commercial fishers. This has unfairly reduced the non-commercial "**proportion**" of those fisheries through reducing the biomass and suppressing non-commercial catches.

It is obvious that for the QMS to be effective, it must manage and constrain commercial catch to the scientifically determined sustainable level. It is our view that the quota generated through successful QAA appeals should have been contained within the TACC and then, each commercial fisher's ITQ should have been reduced proportionately. Then the total ITQ would have been equal to the previously "scientifically determined" sustainable level of TACC.

Allowing increases in fishing quotas by appeal without regard to the initial science relating to the setting of the TACC or sustainability of the fishery has been at the direct expense of non-commercial fishers. It has resulted in less fish for the non-commercial fishers and constitutes a direct **reallocation** of catching rights to the sector who were responsible for the over fishing. Many existing TACC's on stocks, which are below MSY, still include quota issued by the QAA.

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<sup>2</sup> National Policy for Marine Recreational Fisheries. Ministry of Agriculture and Fisheries. June 1989

## **Deeming**

Since the introduction of the QMS fish taken in excess of a fisher's quota can be sold as long as a penalty deemed value is paid. Deeming has caused TACC's to be consistently exceeded in some fisheries. The causes of deeming range from fishers with unbalanced quota portfolios through to the blatant exploitation of loopholes where a profitable difference between the deemed value and port price existed. Thousands of tonnes of inshore fish have been harvested unsustainably through deeming.

Commercial deeming which has led to TACC's being exceeded has been at the direct expense of rebuilding some important depleted shared stocks and is again to the detriment of non-commercial fishers.

Commercial fishers deeming catch above quotas has unfairly reduced the non-commercial **proportion** of those fisheries through reducing the biomass and suppressing non-commercial catches.

## **Dumping**

In those commercial fisheries where price is, or has been, based on the quality or size of fish landed, the illegal practice of dumping unwanted fish called high grading has been widespread. This has caused the loss and wastage of hundreds, possibly thousands, of tonnes of fish in important shared fisheries. Media reports and Ministry records prove this.

Another form of dumping is where fishers have insufficient quota to cover the landing of by-catch species, which are effectively worthless to the commercial fisher because of new higher deemed values, so they discard the catch.

Commercial dumping has been at the direct expense of rebuilding some important depleted shared stocks and to the detriment, yet again, of non-commercial fishers.

Commercial fishers dumping catch above quotas has unfairly reduced the non-commercial **proportion** of those fisheries through reducing the biomass and suppressing non-commercial catches.

## **Maximum Sustainable Yield**

In a mythical world where research provides accurate and timely results it might be possible to manage a fishery precisely “at or above the level that produces the maximum sustainable yield (MSY).”

We note that the Act requires the Minister to manage fisheries at or above MSY and the Ministry have interpreted this as a “knife edge” with MSY biomass levels as the target.

Unfortunately, in the real world by the time it is realised that a stock is overfished it is too late. This is because the science to determine the extent of any problem takes years to finalise and the stock continues to decline to well below MSY before catches are reduced.

For many stocks there is considerable uncertainty whether they have rebuilt under current management strategies or not. This demonstrates the inability of current policies used by Ministry to manage or improve the fishery.

The reality of the “at or above MSY” policy is that we are actually managing many of our fisheries below MSY. There is a demonstrable reallocation from non-commercial fishers to commercial fishers during the fishing down and overfishing phase, and again when catches are reduced “proportionately” to rebuild the fishery.

### **Ministry Policy is Double Jeopardy for Non-commercial fishers**

Fishery decisions that reduce catches are made when a fishery has been overfished and the biomass has fallen below MSY. Because non-commercial catch is largely driven by the abundance of a fish stock, non-commercial catches, individually and as a sector, decline as the biomass declines.

The ability of the commercial sector to catch their proportion is largely unaffected by the health of the fishery, they simply apply more effort or more efficient methods to maintain their catches and “**proportion**” in a declining fishery. They are thus only penalised once when decisions to cut catches are made.

Proportional allocation inevitably puts non-commercial fishers in a double jeopardy situation when fisheries are in poor shape and allocation decisions are being made. Our catches are eroded in the first instance by the low stock size. We end up catching smaller fish, fewer fish, or both as the fish stock declines. The overall tonnage of non-commercial catch drops as the biomass falls.

When we are allocated our “share” it is usually based on our current catch in a depleted fishery. Consequently, under the current proposals we are allocated the minimum possible amount as an initial **proportion**. Then MFish make recommendations on how to further constrain non-commercial catch through imposing lower bag limits or increased size limits. Hence non-commercial fishers are penalised twice.

If commercial fishers deplete a fishery this will inevitably reduce the non-commercial **proportion** of that fishery to the advantage of commercial interests. When subsequent decisions to cut catches are made the non-commercial sector loses some of its **proportion** when allowances are set at current catch levels. This effectively gives commercial fishers a huge advantage.

When the fishery finally rebuilds commercial fishing interests have a windfall. The non-commercial sector is locked into a lower **proportion** that obviously attracts less increase in catch as a result of the rebuild. The commercial sector have gained not only the proportion denied the non-commercial sector because of the flawed allocation process, they also get the increased yield from their proportion and the proportion they have taken from the non-commercial sector.

To make matters worse the information on which non-commercial allocations are made is extremely questionable. Estimates vary by a factor of threefold and MFish seems to have a preference of selecting the smallest number possible and often that number which best favours the commercial sector.

### **Proportionalism Works Against Conservation**

Non-commercial fishers have a record of being able to implement successful voluntary conservation initiatives. The billfish tagging program currently sees two thirds of the recreational billfish catch in New Zealand tagged and released. A similar voluntary arrangement gave thousands of kingfish a second chance as non-commercial fishers fished to huge size limits and self-imposed lower bag limits. Unfortunately when kingfish were introduced into the QMS it was done proportionately with the proportions set at current catch levels at the time.

This means that no extra allowance for fish conserved by non-commercial fishers was made in the allocation process. The result was a lower allocation of kingfish for non-commercial fishers than would have been the case had those fish been landed instead of released.

After deducting the non-commercial landed catch, the balance of the yield of the kingfish fishery (including those fish conserved by recreational fishers), was issued as commercial quota! Recreational conservation efforts were rendered futile by this reallocation.

There was also some comment at the time about the legitimacy of some of the commercial catch history which was thought to be taken by vessels without the correct endorsements on their permits to target kingfish or some such technicality. Because a proportional allocation method was used these suspect fish were automatically counted as catch history and eventually formed part of the commercial proportion as quota.

If MFish are going to implement a proportional system of allocation then conservation efforts will act against non-commercial fishers interests and to the direct benefit of commercial fishers in the interim. It is an absurd situation!

option4 has a founding principle that non-commercial fishers should be able to devise non-commercial fishery plans to prevent fish conserved by non-commercial fishers from being allocated to the commercial sector (or being used to reduce our proportion). MFish have yet to engage on this topic.

### **Proportionalism May Increase Wastage**

Commercial fishers who exceed quotas and deem catches, dump fish, don't report catch against quota (black market) or use methods that cause high levels of juvenile mortality or wastage can benefit immensely from a proportional allocation system. This is because non-commercial fishers subsidise the risks for them. If their poor

fishing practices cause the stock to decline they are assured that they do not bear the full cost of their activities.

This perverse outcome is because non-commercial catch will be cut by the same proportion as the commercial catch is. In this way non-commercial fishers carry the bulk of the risks of proportional allocation.

## **Commercial Arguments for Proportional Allocation**

The commercial sector has long argued for a proportional allocation system in depleted fisheries. The usual reasons given are that non-commercial catch will increase as the biomass increases and some or most of the benefits of rebuilding the stock will accrue to non-commercial fishers.

It is understandable that commercial fishers would want to have non-commercial allowances and proportions determined while the fishery and non-commercial catch is at its lowest levels. What is surprising is the extent that MFish have bought into such an unfair proposition.

Non-commercial catch is going to increase as depleted fisheries rebuild. Everybody seems to agree on this. Why then is there no acknowledgement in the IPP that non-commercial catches have been reduced as the fisheries have declined? Surely this information is crucial if proportions of fisheries are to be allocated fairly.

In the absence of a fair process to determine the initial proportion for non-commercial fishers, those fish lost to non-commercial fishers during the stock decline are effectively taken from them. These fish are then used to prop up commercial catches that would otherwise be unsustainable.

Ignoring the history of a fishery when setting proportional allocations allows commercial interests to prevent non-commercial interests being fairly allowed for. Imposing proportional allocation in depleted fisheries guarantees the worst possible outcome for non-commercial fishing interests.

The result is obvious, increased commercial proportions and quota holdings. It is an unjust system.

## **Compensation**

During discussions on better defining non-commercial fishing rights during the “*Soundings*” process (2000-2001), the subsequent Ministerial Consultative Group (MCG) and the Ministry Reference Group, the Ministry has consistently tried to force proportional allocation on non-commercial fishers as a way of “capping the recreational catch” and “avoiding compensation issues for the Crown”. This view has been articulated by some Ministry personnel and is well documented through speeches and presentations that various Ministry representatives have made.

Proportional allocation as a way of avoiding compensation issues for commercial fishers also appears to have now become a preferred policy of the Ministry of Fisheries in advice to Ministers in shared fisheries.

As a direct consequence of the above policy option<sup>4</sup> believe the Ministry has *no option but to give preference to commercial fishing interests* in advice to Ministers regarding the management of shared fisheries. This is because exposure to compensation from commercial fishing interests is *always* a possibility when making allocation decisions in shared fisheries and only commercial fishers can claim compensation. So, the only certain way of avoiding the possibility of claims for compensation is to pander to commercial fishing interests.

The following excerpt from a recent MFish advice paper demonstrates this point:

*“However, subject to this consideration, there is no legal requirement that a decrease or increase in the allocation of the recreational allocation is to result in a corresponding proportional adjustment of commercial catch, and vice versa. MFish notes that the Fisheries Act assigns no priority between commercial and recreational interests. The Act is directed at both commercial and non-commercial fishing. Within that duality the Act permits the preference of one sector to the disadvantage of another; for example to provide for greater allowance for recreational interests in proportion to the commercial allocation. **Any reallocation of catch from the commercial fishers to non-commercial may be subject to claims for compensation to commercial fishers under s 308 of the Act, except at the time of introduction.**”*

**Note:** As non-commercial fishers cannot sue for compensation (see bold text above), little consideration needs be given to their interests.

Giving consideration to **possible** compensation claims from commercial fishing interests will always tend to create biased advice from the Ministry unless all aggrieved parties have similar access to compensation.

Injustices caused by incorrect initial allocations or subsequent re-allocations (QAA etc) or adjustments in the respective allowances or **proportions** between sectors cannot be addressed while the Ministry follow this policy. This policy also leaves future Governments exposed to the same compensation issues the current policy fails to address.

Please also note the ongoing uncertainty expressed by Ministry about whether or not compensation is payable to commercial interests in the event of reallocation. The word **“may”** offers us no real information or direction – it simply perpetuates the uncertainty of how the QMS and Fisheries Act are designed to deal with reallocation or redistribution of catching rights.

This degree of uncertainty is mirrored in the submission made by Te Ohu Kai Moana to the Soundings consultation process in 2000 when they stated *“Te Ohu Kai Moana acknowledges the need for fishers to work co-operatively on solutions. To provide the conditions for this each party needs to have clarity of its rights and those of others and incentives to work together. Te Ohu Kai Moana rejects the status quo option as it*

*does not provide either clarity or incentives. Te Ohu Kai Moana supports a priority, unconstrained share for customary harvest with second priority being accorded to commercial rights. This means that TAC reductions would be taken firstly from the recreational allowance **unless** there was a buy back of commercial quota. However, in situations where fishers are working co-operatively on solutions, it will likely mean that Maori will agree to changes that are more evenly distributed where they believe this will foster long-sighted, co-operative approaches that enhance the sustainable management of fishstocks.”*

Here we see the word **“unless”** used to discuss compensation. What does this word actually mean – where in the fisheries legislation do we go to find direction about this option identified by TOKM?

How long will the fisheries managers choose to leave this most fundamental question of compensation unresolved? For how long are we all to be condemned to the agony of incomplete and unresolved policy that in turn leads to seriously compromised fisheries management outcomes?

### **Do Proportional Cuts or Increases to Catch Actually Work?**

Commercial fishing interests will usually argue, regardless of the cause of overfishing, that if their quota is cut then the non-commercial sector should be cut by the same proportion. In this year’s Initial Position Paper (IPP) MFish have proposed proportional cuts for most shared fisheries where catch reductions are proposed. Obviously, MFish also think there is some merit in this approach.

Besides being unfair for all the reasons outlined elsewhere in this document option4 does not believe the need for proportional allocations has been properly demonstrated or the effects of the system duly analysed. The following excerpt is based on a document tabled last January to the Minister and MFish in the hope of commencing a dialogue with them on this very issue.

*Recreational and other non-commercial catches are mainly driven by three factors:*

- \* *Abundance of the fish stock*
- \* *The number of non-commercial fishers*
- \* *Weather*

The Minister of Fisheries is directed by the Fisheries Act to “allow for non-commercial interests.” If a fish stock is below the level required to produce the Maximum Sustainable Yield, then non-commercial interests will suffer reduced catch rates and catch smaller fish. Their interests will not be properly “allowed for.”

From the three main drivers of recreational catch above, it is apparent the Minister can only improve non-commercial fishing by increasing the biomass of the fishery.

*If a non-commercial allowance is accidentally set too high or, if the Minister intentionally allows more for them than they actually catch, these fish will go uncaught because non-commercial fishers have no way of catching more than they can already catch. Their effort is so limited by the three drivers above. What this*

*means is that the Minister has no real way of instantly increasing recreational catch as he can with commercial catches.*

*On the other hand, if the Minister “allows” an insufficient tonnage to cover recreational interests then the Ministry will attempt to reduce bag limits or increase size limits or impose some other restraint to constrain recreational catch to the allowance. What this means is that the Minister has many ways of instantly reducing recreational catch yet has no equivalent way of increasing it.*

*This is a one way valve; TACC's and commercial catches can go up or down as commercial fishing interests can quickly adapt their catching capacity to match varying TACC's, regardless of the health of the stock. Recreational catch cannot be similarly increased but can easily be reduced. This is another example of biased policy that gives preference to commercial interests and is inconsistent with the Moyle's policy statements made prior to the introduction of the QMS. We believe the proportional allocation system is irreconcilable with the words “allow for” in statute.*

Because the non-commercial catch declines as the biomass of a fishery declines it can be stated without fear of contradiction that non-commercial fishers have already suffered their burden of “pain” that the proportional system seeks to equally inflict on users in depleted shared fisheries.

## **Conclusion**

In the absence of addressing the eleven points on page one concerning the implementation of proportional allocations it is hard to identify even a single benefit to non-commercial fishers of a proportional system. The overwhelming majority of benefits accrue to the commercial interests while a disproportionate amount of the risk lies with non-commercial fishers. It is a grossly unfair allocation model.

## **Recommendations on Proportional Allocation**

As a consequence of the obvious unfairness of the proposed proportional allocations and reductions to catches we, as a non-commercial fishing interest stakeholder representative group, reject completely all proportional options in the 2005 IPPs.

Before any further proportional allocation system is proposed the Ministry policy advisers need to engage with non-commercial fishing interests and resolve the issues in this document. The non-commercial sector does not, and will not support the ill-conceived and unconsulted proportional allocation system in this years IPPs or in any future IPPs.

## Appendix Two

### Consultation Process

At the time of writing this submission most non-commercial fishers are still unaware of any proposals to alter the management of fisheries they may have an interest in. Consequently they are being denied the opportunity to have their interests considered in the future management of the fisheries being reviewed this year.

We question whether the Ministry of Fisheries really did want to fulfil their obligation to properly consult with non-commercial interests in fisheries which are of immense importance to them. Local coastal communities and other non-commercial stakeholders will be denied having input under these timeframes.

Less than 10% of non-commercial fishers are members of a fishing club or national body that represents their interests. Most clubs meet monthly or less often. Two months is the minimum time these clubs require to consult with members and refer the outcome in time for their national organisation to compile a submission.

### option4 Consultation

option4's consultation process is the most robust consultation network that is available free to the Ministry, but these tight timeframes do not allow for the full use of that network. option4 has managed to get a Stop Press alert to these proposals into the latest issue of the NZ Fishing News magazine. However the magazine comes out at the end of July and the results of this element of our consultation process will not be available until mid August at the earliest. The final outcome of consultation using the option4 network will not, and could not, be known until the end of August under this timeframe for consultation.

If the Ministry insists on short consultation timeframes and wants a proper consultation process then they should be directed to use advertising in major daily papers, radio and possibly television for any future management proposals that could impact on the ability of non-commercial fishers to access a reasonable daily bag to feed their families. Otherwise, if they wish to use established consultation channels they must give those organisations sufficient time to consult widely and receive feedback.

Taking into account the issues raised above we request the Ministry consider all submissions resulting from our consultation be given due consideration when deciding the future management of these fisheries, even if they arrive after the deadlines imposed by the Ministry.

We also ask that the Ministry be directed to work with non-commercial fishers to develop consultation systems and timeframes that are workable in the future.