

**Perspectives on
non-commercial fishing interests**

**for
the Minister of Fisheries
Hon. Phil Heatley**

from

**The Hokianga Accord
(the mid-north regional iwi fisheries forum)**

and

New Zealand Big Game Fishing Council Inc.

and

option4

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1. Executive Summary

This paper is submitted by the Hokianga Accord, the mid-north regional iwi fisheries forum, the New Zealand Big Game Fishing Council Inc., and option4 for consideration by the newly appointed Minister of Fisheries, Hon. Phil Heatley.

The joint signatories congratulate Phil for being appointed as Minister of Fisheries. It is refreshing to see this complex role being undertaken by someone with an in-depth knowledge of the issues. We look forward to a meaningful working relationship.

The purpose of this paper is to provide the new Minister with non-commercial fishing interests' perspectives on the issues facing the Government in enabling the Minister to carry out his statutory obligations under the Fisheries Act 1996 ('the Act') to achieve sustainable utilisation of New Zealand's fisheries. Particularly by applying the environmental and information principles of the Act, and wide consultation including input and participation in fisheries management by tangata whenua and having particular regard to kaitiakitanga.

Issues identified include:

- Obtaining Ministerial recognition of the Hokianga Accord as the regional iwi fisheries forum of the mid-north;
- Restoring and enhancing inshore fisheries for the benefit of non-commercial fishing interests and how that can be achieved;
- Deeming in excess of the total allowable commercial catch;
- Compensation - the 1990 Fisheries Amendment Act;
- Issues presently before the Supreme Court relating to allowing for non-commercial fishing interests;
- The recent amendment to section 13 of the Fisheries Act 1996 in setting the total allowable catch (TAC), and
- How non-commercial, commercial and environmental interests might collaborate and work together to assist the Minister to achieve the common end of healthy and abundant fisheries for all people thereby enabling New Zealanders to provide for their wellbeing.

2. Summary of Issues

Hokianga Accord

1. The Hokianga Accord has evolved over the past three years to represent the non-commercial fishing interests of both Maori and non-Maori in Tai Tokerau.
2. Major participants in the mid north iwi fisheries forum are Ngapuhi and Ngati Whatua. The New Zealand Big Game Fishing Council and option4 actively support the Accord. The common goal is “more fish in the water/kia maha atu nga ika ki roto i te wai”.
3. The Accord is more than just a customary forum; it is capable of, and does, represent far wider non-commercial fishing interests. A summary of submissions from the forum is online at http://option4.co.nz/Fish_Forums/hokianga.htm.
4. MFish has not given any meaningful support to this mid north iwi fisheries forum.
5. The joint signatories to this document urge the Minister to initiate a review of the Ministry’s stance to ensure the Crown’s ongoing obligations to tangata whenua, as prescribed through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and Fisheries Act 1996, are being met.

Depleted fisheries

6. The quota management system (QMS) was introduced in 1986 to curb rampant commercial fishing, particularly inshore, and rebuild severely depleted fisheries.
7. Despite twenty-two years of the QMS many of our inshore fisheries have not rebuilt to sufficient levels that enable all New Zealanders to provide for their own social, economic and cultural wellbeing.
8. Non-commercial fishers, both customary and amateurs, have suffered ongoing, detrimental effects because of excessive commercial fishing.
9. Non-commercial fishers have experienced a loss of access over considerable time when fishing in these depleted fisheries. The Ministry’s application of proportional allocation in these decimated fish stocks creates additional disadvantages.
10. The joint signatories suggest the Minister commence a management review with the objective of limiting commercial catch to tonnages that allow depleted fisheries to rebuild within a reasonable timeframe to enable people to provide for their wellbeing.

Overallocated fisheries

11. At the outset of the QMS quotas were set on the basis of catch history, as a scientifically determined sustainable level was unavailable. A total allowable catch was set and commercial fishers would be constrained to this TAC (now described as the TACC), with each fisher restricted to a defined quantum. Compensation was paid to commercial fishers who tendered their quota back to the Crown.
12. Many commercial fishers successfully challenged their individual allocation through the Quota Appeals Authority (QAA) process and received an increase.

13. Instead of proportionally reducing the total allowable catch in each fish stock, MFish allowed these QAA increases to accumulate on top of the existing allocations. Some by as much as 20 to 30 percent above, what was hoped, the sustainable level.
14. Allowing these increases without regard to the initial science or sustainability of the fishery has been at the direct expense of non-commercial fishers.
15. Ongoing, excessive commercial fishing in some key inshore fisheries has prevented or slowed these fisheries from rebuilding. There is now less fish available for both customary and amateurs.
16. The outcome of this overfishing is unnecessary conflict because non-commercial catch is largely driven by abundance. Non-commercial catch, by individuals and the sector, reduces as the biomass declines.
17. The joint signatories submit this constitutes a direct reallocation of catching rights to the sector responsible for the overfishing.

Rebuilding fisheries

18. We anticipate there will be a need to review some allowances for non-commercial interests in light of next year's Supreme Court judgement. Correctly allowing for these interests, as we believe the Act requires, should not be seen as a reallocation but a reassessment.
19. Given the trends in fisheries management around the world and the culture of marine recreation in New Zealand, the fishing industry should not expect to dominate almost all inshore fisheries forever. A time will come when reassessment will be required.
20. A major roadblock in fisheries management for the last 18 years is the uncertainty over compensation. There is a need to clarify the Government's position on compensation to commercial fishers, in what circumstances it will apply (if any) and when it will not be considered.
21. Managing fisheries at 15 to 20 percent of virgin biomass (B_0) to achieve maximum sustainable yield has proven to be an impossible target in most of our important fisheries, for a variety of reasons.
22. The recently adopted Harvest Strategy Standard compounds the problem of unsuitable and unusable tools. The rationale is to provide a defensible, clear and unambiguous standard, and yet they draw on all manner of Bmsy reference points, none of which are clear and unambiguous.
23. A standard that directs actions referenced to Bmsy, when for almost all stocks Bmsy will always be unknown and only a concept to be debated, sets no standard at all. We have seen the results of probability estimates; that stocks are subject to mortalities that prevent them returning to historical levels.
24. Any useful standard will be one that reflects community values. Abundance levels at less than $B_{0.5}$ do not reflect the public's values and are nothing other than a commercial expression of maximum justifiable catch, and enable short-term exploitation at the expense of following generations.

25. The Harvest Strategy Standards are *ultra vires*.
26. A more reliable, sustainable approach would be a target of 40 to 50 percent of B_0 . This has become the standard target in many other fisheries jurisdictions. It is also the target in the New Zealand hoki fishery.
27. This approach would both increase yield per recruit (by reducing the mortality of small fish) and achieve the purpose of the Act, of enabling all New Zealanders to provide for their wellbeings while ensuring sustainability.
28. Managing fisheries of significance to non-commercial fishers such as snapper, blue cod, kingfish, crayfish, paua and shellfish at this higher level will assist the Minister to fulfil his statutory obligations.
29. Non-commercial fishers have offered a number of solutions to rebuild fisheries while minimising the impacts on both commercial and non-commercial fishers. MFish continue to discount these suggestions in favour of a more blunt approach of proportional cuts.
30. The cumulative effect of applying unjust proportional reductions is that non-commercial fishers are further alienated from management processes.
31. The joint signatories urge the Minister to make rebuilding fisheries a priority, this is particularly important in these cash-strapped times. People will be looking at cost-effective ways to feed their family. Successful fishing would encourage a healthy outdoor pursuit and provide alternative supplements to New Zealanders' current diet of preservatives and saturated fats.

Default shares in fisheries

32. There has never been a proper process to determine what the non-commercial allowances in each fish stock ought to be.
33. Currently, many recreational allowances are based on out-of-date surveys, which MFish acknowledge are flawed.
34. Many of these allowances are set well below what the actual catch is. In some instances, such as snapper, flounder and mullet, MFish acknowledged the deficiency in allowances but recommended a level below what was being taken anyway.
35. Setting Maori customary allowances based on the recreational allowance, with the application of the Ministry's General Criteria, just compounds the injustice being wrought on non-commercial fishers.
36. Non-commercial fishers are hopeful that this issue will be addressed to some extent in the Supreme Court kahawai decision.

Spatial management

37. MFish does not seem well equipped to address spatial management issues to enable non-commercial fishers to provide for their wellbeing in inshore fisheries, particularly given the large quota management areas.
38. Non-commercial fishers are increasingly aware of the need to create mechanisms that provide for spatial abundance, that is sufficient numbers of fish in traditional fishing places.
39. The joint signatories ask, how will the Ministry's scarce management resources be directed to addressing and fixing the issue of spatial abundance, so that a more finely grained management approach is adopted?

Kahawai Legal Challenge

40. The relationship between various sections of the Fisheries Act 1996 is the subject of appeal to the Supreme Court in regards to the Kahawai Legal Challenge Appeal Court ruling.
41. The key question in the leave application was how the purpose of the Act (s8) – to “*enable people to provide for their social, economic and cultural wellbeing*” - applies to the exercise of the Minister's discretion under section 21, when the Minister makes decisions to ‘allow for’ recreational fishing interests when setting or varying the TACC.
42. As mentioned at the outset, these issues are presently before the Supreme Court. The hearing is scheduled for 12th February 2009.

Non-commercial catch

43. Poor information on recreational catch is often raised as a major issue, and sometimes used as a weapon, against amateur fishers.
44. The Minister has a statutory obligation to ‘allow for’ non-commercial fishing interests, not just catch.
45. In reality we will probably never know how much fish is being harvested by a million-plus amateurs, fishing at random times and places.
46. Very good regional information can, and is, collected from boat ramp surveys, web cams and at-sea sampling. The big question is participation rates and how often people fish.
47. Fishers will support well-implemented research to estimate harvest but it is not the “holy grail” that some people think. A more practical approach is to monitor trends. Is fishing effort increasing or decreasing? Are people catching more or less? Are the fish bigger or smaller compared to the last survey?
48. Monitoring changes in rates of participation and changes in catch are more useful than the current obsession with total catch.
49. If people are catching more and bigger fish then the Minister's job inevitably becomes easier because there is most likely to be less conflict.
50. The joint signatories are available to participate in discussions that will lead to the implementation of appropriate methods that monitor trends in recreational catch.

Commercial catch

51. Fishing industry representatives are quick to claim that there is accurate information on commercial catch levels. However, commercial catch information is nowhere near as accurate as what is advocated.
52. Totals for commercial landings are relatively well known, whereas total fishing mortality is unknown.
53. Fisheries stock assessment models should include an index of stock abundance. Usually this is derived from trends in commercial catch per unit effort (CPUE). The quality of effort data recorded is often poor. Identifying and removing unreliable or implausible data is an essential first step in analysis.
54. MFish generally recommend the Minister 'allow(s) for' a percentage of mortality, based on the TACC and the particular fishery. For example, in snapper fisheries a 10 percent allowance is made for other mortality.
55. However, the true amount of mortality due to dumping, high-grading, trucking, black marketing and wastage remains unclear. Previous proposals to study the level of juvenile mortality have been resisted by industry and the Ministry.
56. The industry continues to ignore advances in net design that permit escape of almost all juvenile fish, and promotion and development of this technology is currently being funded by non-commercial interests.
57. The joint signatories support investigation into fishing methods that will improve the yield from fisheries and reduce the environmental impacts of fishing.

Deeming

58. Deeming is outside of the TAC and therefore outside of the Fisheries Act 1996. This is because deemed fish are not accounted for in the TAC, the TACC or the allowance for other mortality.
59. Deeming is a significant problem in key inshore fisheries. Tonnes of fish are caught over and above the scientifically agreed level of sustainable harvest.
60. Deeming in depleted fisheries is particularly offensive to non-commercial fishers who suffer loss of access and quality of fish.
61. Chronic deeming has occurred in a number of important, inshore fisheries, for many years. Snapper 2 and 8 are prime examples.
62. A major bugbear for non-commercial fishers is that there is no account taken of the effect of these deemed fish being removed from the fishery. Those fish are lost from the (breeding) stock and not available to non-commercial fishers.
63. In depleted fisheries the effect is compounded. In 2005 the Minister reviewed Snapper 8 (SNA8). This North Island west coast snapper stock is around half the legal limit required to produce maximum sustainable yield. Commercial fishers have deemed an extra 4.88 percent in excess of the TACC over the past 20 years.

64. In 2005 the Minister, on advice from MFish, proportionally reduced the SNA8 allowances for customary and amateur fishers and the commercial allocation (TACC) by around 13 percent.
65. This proportional decision did not take into account who had caused the depletion in the fishery. Non-commercial fishers had not contributed to this decline but had attempted to rebuild the fishery by conserving more than 26 percent of their catch since 1995.
66. The concurrent decision to reduce the amateur daily bag limit from 15 to 10 just exacerbated the feeling of injustice amongst west coast recreational fishers.
67. MFish's recent response has been to recommend increases in deemed value penalties. This flawed approach assumes there is a dollar value that would encourage the fisher to land his catch as opposed to dumping it.
68. MFish argue that landings of deemed fish have reduced. However, there is no guarantee that actual mortality has reduced; this may merely mean the fish are not being landed because there seems to be no demonstrable change in commercial fishing behaviour.
69. The dearth of compliance and enforcement resources means that many commercial fishing areas are not policed or regularly patrolled.
70. The joint signatories encourage the Minister to review the resources available for compliance and enforcement activities.

Compensation

71. Lack of clarity surrounding compensation continues to prevent resolution of the major issues in fisheries management.
72. At the outset of the quota management system (QMS) commercial fishers received over \$40 million dollars (around \$130 million in today's terms) to reduce fishing effort in inshore waters.
73. Some inshore fisheries were depleted to less than five percent of their original size. The removal of 95 percent of the fish stock has had a major effect on people, particularly those in coastal communities who depend on the sea for food.
74. Non-commercial fishers have received no recognition of their traditional, common law right to fish or compensation for their loss of access to healthy, abundant inshore fisheries.

1990 amendment

75. An amendment to the Fisheries Act in 1990 changed the nature of commercial quota from a right to harvest absolute tonnages of fish to a proportional share of the total allowable commercial catch (TACC).
76. Since 1990 the Crown has not been liable for compensation if there was any change to the TACC for sustainability reasons.
77. Commercial fishers can still use the judicial process to contest any TACC changes made for other reasons.

78. Threats of compensation claims by commercial fishers have resulted in no variation on the Ministry's theme of allocation using catch history or a proportional approach.
79. Compensation is a serious public policy issue that needs to be addressed.
80. The Ministry's inadequate response to a recent Official Information Act request from non-commercial fishers for information surrounding the 1990 amendment is unsatisfactory¹.
81. The joint signatories will support the Minister in seeking a review of previous legal advice on the compensation issue and if there is continuing legal uncertainty then the Crown consider applying for a declaration on the issue, as was suggested (verbally) in Court by Justice Harrison in the High Court kahawai proceedings.

Proportional allocation

82. The ongoing threat of compensation claims from commercial fishers has skewed Ministry advice to the extent that their 'preferred policy' is now proportional reductions to commercial and non-commercial allowances, irrespective of who caused the sustainability problem, or the purpose of the Fisheries Act.
83. The proportional approach, along with a risk of litigation against the Crown by commercial fishers is a problem for those fish stocks where there has been no allowance (at all) for recreational fishers.
84. Within Fisheries Management Area 1 alone there are at least twelve fish stocks with no allowance made for non-commercial fishers². Within these stocks are important fisheries such as Rock Lobster, Red Gurnard, Hapuku, John Dory, Paua and Trevally.
85. Inevitably, conflict arises when the Minister accepts and makes decisions based on this proportional allocation advice.
86. The joint signatories anticipate allocation issues will be addressed during the Supreme Court kahawai proceedings.

Section 13 amendment

87. The recent amendment to section 13 of the Fisheries Act 1996 which changed the cornerstone sustainability measure within the Act without proper consultation remains a contentious issue.
88. The amendment process demonstrated a complete lack of respect towards the public, who deserved to be informed about developments and be given the opportunity to understand and respond.
89. While MFish openly acknowledge the lack of trust between the various interest groups, the deliberate exclusion of non-commercial fishers from the amendment development process defies belief and just exacerbates the trust issue. Until such time as a basic level of respect is given to all stakeholders with an interest in the process, fisheries management will remain adversarial.

¹ Official Information Act request 799, dated 16 June 2008.

² Ministry of Fisheries website, Status of Fisheries, <http://www.fish.govt.nz/en-nz/SOF/default.htm>.

90. The proposal to include a section 12 transitional clause and then pass the amendment, without tangata whenua's input or participation, cannot be viewed as legitimate or appropriate. This is particularly so given the Crown's ongoing obligations to Maori in both the Fisheries Act 1996 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
91. The joint signatories opposed the MFish-proposed amendment to section 13, including the transitional clause, prior to its enactment. Undoubtedly the ramifications for passing this amendment without due consideration to Treaty obligations will become more obvious with time.

Non-commercial participation

92. Despite various promises the non-commercial sector remains unresourced and limited in capacity to meaningfully participate in processes with industry and MFish.
93. Existing regional and national forums are under-powered and therefore incapable of addressing these fundamental issues that are of national importance.
94. At the recent national hui of regional recreational fishing forums the New Zealand Big Game and Recreational Fishing Councils proposed a restructure of existing organisations to support a number of regional associations. The intent is to design a democratic, transparent structure representing the regional interests of the fishing public.
95. Currently resources are stretched and non-commercial fishers are struggling to stay engaged in existing processes (fish plans, science and research planning working groups, sustainability rounds, standards, 2030 vision etc).
96. A number of substantial, carefully considered submissions have been made in response to various MFish proposals over the past ten years.
97. "The People's Submission," written in response to the Ministry's Shared Fisheries proposals, was the result of almost 1500 hours work by around 30 authors. This was unprecedented effort made on behalf of non-commercial fishers.
98. The submission identified the major issues requiring resolution and offered cost-effective solutions to enable sustainable use of our fisheries, protect the marine environment and increase abundance for future generations.
99. Aside from a brief email acknowledgement of receipt, if requested, very little feedback has been received from MFish in response to any of the submissions.
100. If the Minister seeks to have more meaningful and robust input from the non-commercial sector then serious consideration needs to be given to resourcing the amateur sector and tangata whenua so that progress can be made.

Contribution to regional economies

101. New Zealand has world-class recreational fisheries for billfish, tuna and kingfish. One of the first objectives of the New Zealand Big Game Fishing Council (NZBGFC) was to promote quality recreational fishing opportunities to international anglers. In 1960 the Council was awarded the national tourism award for its success in attracting international anglers to fishing contests.

102. Marine-based tourism is an important contributor to the regional economy in Northland, Kaikoura and many other areas. A lot of effort goes into protecting marine mammals and coastal landscapes. We are also fortunate that Colin Moyle had the foresight when he was Minister to protect the recreational billfish fishery.
103. The MFish socio-economic team are doing good work even though they have operating on limited resources. There is more to fisheries management than repeating stock assessments. Some of the research budget does need to be set aside for collecting socio-economic data on fisheries.

Highly migratory species

104. The NZBGFC has been involved in the development of the Fisheries Plan for Highly Migratory Species (HMS). The engagement with other NGOs, Iwi representatives, commercial fishers and Ministry staff has generally been positive. There are a few issues worth highlighting.
105. Broadbill swordfish was one of the billfish species included in the original billfish moratorium. In the early 1990s, through a series of meetings and a MOU between recreational and commercial fishers, the Minister was asked to allow commercial landing of broadbill and to pass regulations prohibiting commercial fishers to land marlin in New Zealand waters.
106. However, the tuna longline fishery was one of the last open access non-quota species in New Zealand. A flood of new fishers, who had no involvement or interest in the Billfish MOU and previous negotiations, entered the fishery. Swordfish was targeted using light sticks and squid bait despite an agreement and regulations stating that it should remain a by-catch species. The Ministry was unable to enforce the bycatch rule.
107. The result was a boom and bust commercial fishery with the recreational swordfish fishery one of the many casualties. Even though swordfish and large tunas are now in the quota system and most of the longliners have left, there is still direct competition between sectors for swordfish. Recreational and commercial boats are fishing the same water at the same time and the recreational fishery is the clear loser. American tourists that were once almost guaranteed a fish or two are no longer holidaying in New Zealand because of the low catch rates.
108. Ideally there should be some spatial separation with some of the accessible seamounts closed to commercial surface longlining. However, when this is suggested the Ministry talk about “gifts and gains” and the commercial fishers want to land “some” striped marlin.
109. The ‘recreational-only’ status of striped marlin is vitally important to the clubs that NZBGFC represents, particularly in Northland and the Bay of Plenty, and there is no way they would consider agreeing to commercial fishers landing marlin. This is understandable given their recent experience once they agreed to limited commercial access to swordfish.
110. It is important that New Zealand assists in international efforts to protect billfish stocks. NZBGFC believe that New Zealand commercial vessels fishing in the high seas areas should not be able to land marlin or sailfish and that the importation of marlin for sale should be prohibited.

111. Some commercial fishers complain that it is a waste to cut off a dead marlin but there would undoubtedly be more dead fish if they were able to keep them. It is an ironic argument given that New Zealand boats kill tens of thousands of live sharks every year just for their fins.

Shark finning

112. New Zealand stands out from most other western countries in allowing unlimited finning of sharks with no requirement to retain the body. During the fish plan process recreational fishing representatives were concerned about the steep decline in the number of sharks caught by club members (over 1500 mako sharks tagged and released by recreational fishers in 1995 down to 150 tagged in 2007).
113. Through the fish plan process we promoted the objective of maintaining the reproductive potential of sharks in our region. Because sharks bear live young it is the number of large mature females that determines the ability the species to maintain population size. Fishers should be made aware of the importance of releasing large females.
114. There is also an objective to formally review management of shark fisheries to ensure New Zealand handling and management of HMS sharks is aligned with international best practice. The NZBGFC intend to ensure that this will provide some extra protection for live sharks caught on commercial vessels and a reduction in finning at sea.