

5/6/01

The Minister of Fisheries

Dear Minister

We value this opportunity to offer you advice on the Ministries “Draft Working Papers for Recreational Fishing Reform” and provide you with feedback.

We believe that our next meeting with you will be a critical step in the process, and feel it is very important that you read our feedback prior to the meeting with you in Wellington on 10/7/01.

A 2 hour meeting without you having read our feedback would diminish the value of the process you have requested and not allow invitees to address the very significant issues at hand.

We enclose our response, by email and we would respectfully ask that you read it over the weekend. We realise that your time is precious and your workload immense. To simplify this we have commented in italics. If you are unable to review our document we would rather that the next MCG is rescheduled to allow you the time to become conversant with our thinking. We have consulted with 23 recreational leaders, many from outside option4, in the process of developing this response to ensure it covers a broad range of views.

We seriously question the adequacy of the Public Consultation phase of the Soundings process and we are far from confident of the veracity of the analysis of submissions received from the public. An independent review undertaken by the NZRFC also agrees that the submission analysis is seriously flawed.

Put simply Minister, the recommendations put forward to the Ministry from the Joint Working Group do not reflect the statements of the vast majority of the public who made submissions to the Soundings public consultation. There is strong evidence of pre determination in the whole process, which we believe you should be made aware of.

We believe the “Draft Working Papers for Recreational Fishing Reform” are biased by these errors and consequently ignore the overwhelming majority of what the public submissions said. In fact, we would go so far as to say that the Working Papers we have been considering are not a reflection of the Public Consultation but are in fact an agenda of what Ministry wants in terms of recreational reforms regardless of the public view.

We remain clear – the public desires a Priority right over commercial fishing, clearly defined in legislation. Having established that, then and only then does the public want to truly commit to further involvement in the management of its precious, inshore, shared fisheries.

Kim Walshe
Scott Macindoe
Paul Barnes

RECREATIONAL FISHING REFORMS EXECUTIVE SUMMARY

The attempt throughout this process to place starting boundaries on the public's rights before they are defined, is considered to be seriously flawed. The statement on page 6 of the Soundings document, that "neither recreational nor commercial have priority over one another", along with the statement in the Joint Working Group's vision on page 4, that it is perceived as a "collective right" (i.e.: the right to fish) and therefore not an individual right, attempts to predetermine the outcome and limit the debate prior to defining the right.

That predetermination continues unabated in this document.

These documents are also unclear on what rights are being defined and what is meant by "recreational fishing". Is "recreational fishing" fishing for fun and sport, or is "recreational fishing" inclusive of every non-commercial harvest taken from the sea except the Maori Traditional harvest? If so, then it is deficient in not dealing with other components of the non-commercial harvest. e.g. food gathering and fishing for subsistence and sustenance purposes.

The importance of non-commercial fisheries to local communities along with the economic and social well-being that flows through to the wider public from non-commercial fishing, also appears to be largely ignored. Also ignored is the cultural importance of non-commercial fishing to a vast number of native born New Zealanders. The N.Z. Government must realise that "recreational fishing" is merely a component of a much wider range of existing public rights to harvest seafood from N.Z.'s. marine fisheries.

The portion of the public who have an interest in harvesting from the sea have become very aware that it is not just "recreational" fishing that is being debated, but the rights of the population at large to harvest from the sea, regardless of race or creed. In short, many believe it is a fundamental Human Rights issue.

We also believe many of the concepts provided are insufficiently developed at this stage for a decision paper.

Objective

The structure of the package reflects two aims on the part of government:

Encourage good fisheries management

Improve the quality of recreational fishing *We have to question if these reforms can deliver this outcome.*

The Structure of the Reform Package

This reform package is presented in three parts:

Better stock management by providing an improved level of information on

recreational harvest,

Options to more clearly define the recreational right and provide transparency in allocative decision making, and,

Options to improve participation by the recreational sector in fisheries management.

1. Improved Information requirements

The scientific value of both proposals is questionable. Leading ministry scientists suggest that the appropriate forum to discuss ways of improving recreational harvest estimates is the scientific working group.

Double the frequency of recreational catch estimates (from 4 to 2 yearly), and

Require reporting by charter vessel operators of the harvest activity of recreational fishers using their service.

MCG members and those they have consulted are sceptical of both the usefulness and motives behind this proposal. Serious safety issues and practicality of measuring catches have been raised by charter boat skippers. The data collected would be of limited use unless independently validated. Skippers who suspect a hidden ministry agenda (most of them) could manipulate the data and further confound the database derived from this proposal. Equally, if catches fell an incentive to over report could exist to avoid potential bag limit reductions. Lower bag limits could act as an indicator of poor fishing in that operators area and could also act as a disincentive to potential clients A standardised CPUE project with volunteers using a variety of recreational methods may give a much more reliable result, charter boats who offer to participate could be included

This will enable a better information base to manage for sustainability across the fishstocks. It will also provide for an improved ability to manage for local recreational objectives. *Managing local recreational objectives will require knowledge on the local stock abundance and year class strengths and a way of measuring changes over time. Weather, water temperature, natural fluctuations and variations in commercial and customary fishing activity in the area will also be required to determine if any observed change is due to other sources of mortality or causes other than recreational fishing. Standardised CPUE may offer a much better way of detecting real change in the fishery. Unvalidated data collected by those with a vested interest such as that proposed may be worse than no data at all.*

It is not proposed that recreational fishers who choose to access their entitlements through charter operators be restricted in any way over and above recreational fishers who use alternative methods of access.

Information regarding the catch and effort of recreational fishers using charter boats would be valuable for the industry itself in managing for sustainability in their local areas. *Data that can be identified by area could lead to top operators in certain areas being followed by less successful operators who could then improve their catch rates by pirating the best areas. Catch rates would then show an overall improvement that is not caused by improved stock levels or increased effort, the questionable usefulness of the data as a measure of stock abundance could be eroded. Fashions in fishing*

tackle could further confound the results with non-standardised tackle. Hook type, flashers, jigs, bait and line type all have completely different catch rates and catch profiles even when fished simultaneously Fishing tackle is constantly evolving and CPUE indices in the midst of such variability may not be useful for determining changes in stock abundance

Improved information is considered necessary to improve the management of fisheries irrespective of other changes in the management structure. *Fisher independent data monitoring stock abundance and size class strength combined with standardised CPUE on recreational tackle in randomly selected recreational areas would be a more reliable source of information. Charter vessels may not provide the necessary type of random fisher behaviour in areas representative of where the other 94% of the recreational harvest is taken. We strongly agree that better information on recreational harvest is necessary, however, we do not agree with the means of achieving it suggested here.*

2. Better Defined Rights

- * Define a share of the TAC for recreational harvest in law
- * Establish a process for adjusting that share through time

We believe that the Ministry, in the Soundings document adopted a set of preconceived and indefensible assumptions about the relationship New Zealanders have with the seas surrounding their lands, whilst at the same time having omitted reference to many important issues surrounding the pre-existing rights of New Zealanders to fish and harvest these seas. This current document continues along the same preconceived ministry agenda despite the fact that 98.5% of submitters to the soundings process strongly disagree with proportionalism. The public have made it very clear, they perceive their right as an individual right, not part of a collective or as a shareholding in a commercial fishery.

A defined share will help to prevent the erosion of recreational harvest by commercial methods. Clearly defining the boundaries between sectors will greatly enhance the potential for collaborative solutions to fisheries management issues.

This is ideological theory similar to that promoted prior to the introduction of the QMS. In practice it is not likely to succeed because of the vastly differing objectives of the non-commercial and commercial sectors. Collaborative solutions have been rigorously tried and have usually failed to address even the most fundamental issues such as the level of stock the fishery should be managed towards. Non-commercial fishers reject the reliance on ideologies proven to be unworkable in most instances as a way of addressing inter-sector conflict.

Recreational and subsistence fishers are not convinced that a property rights or shareholding regime will meet their long term objectives for maintaining and improving the quality of the public fishery and their individual rights.

We are specifically concerned with the following risks associated with the QMS and the potential to cause further erosion of the public share. We believe that the closer the public right is aligned with the commercial rights under the QMS, the greater

these risks will become.

DUMPING

Dumping of commercial catch in excess of quota.

Dumping of unwanted commercial by-catch.

Dumping of commercial overcatch catch through lack of vessel holding capacity.

Highgrading of commercial target catches for economic and quality reasons.

INFLATED QUOTAS

Quotas issued through the Quota Appeals Authority inflating commercial quota at the expense of other users and sustainability.

THEFT

Black-marketing of unreported commercial catches. Fisher fraud, misreporting of catches by commercial fisherman. Corporate fraud, misreporting or non-reporting by large quota holding entities and exporters.

OVERCATCH

Deeming of catch to the Crown, in excess of sustainable limits, caused by an inappropriate quota holding or quota lease for the method or fishery the vessel is operating in.

WASTAGE

Wastage caused by inefficient fishing gear.

Wastage caused by non-selective fishing gear.

Wastage caused by the loss of experienced fishers, and their replacement with inexperienced novices, through high costs of leasing quota and low landed prices.

TARGETING OF BYCATCH SPECIES

Targeting of species important to non-commercial fishers, which are outside the QMS to avoid quota costs and retain profitability and build catch histories.

LOSSES IN YIELD

Loss of yield through harvesting important species, shared with other users, at sizes that are well below the sizes that will produce the maximum yield per recruit.

GENERAL PROBLEMS

Lack of incentives in the QMS for individual commercial fishers and/or quota holders to conserve and enhance fishstocks.

The preference of the fishing industry toward high-risk harvesting strategies instead

of a precautionary approach in species managed within the QMS.

The race to build catch history in fisheries outside the QMS often leading to over fishing and a stock depleted below MSY

Recreational quota or shareholdings like the proportional share system promoted in this document, linked in any form to Commercial rights, or able to be negatively impacted on by Commercial behaviour and / or harvest strategies, has been totally and completely rejected by the public as an unnecessarily high risk strategy. Recreational quota will require extensive bureaucracy, policing and rules for little or no real gains. Quota-based or proportional options have a real chance of outcomes for non-commercial fishers directly opposite to the rosy picture painted in this document.

"The principal effect of the various administrative systems, and now statutory amendments to the Fisheries Act 1996, has been to allow commercial fishers to avoid the ultimate point of the QMS, namely to limit the quantity of fish taken to the quantity of quota held." (from the report of the Parliamentary Commissioner for the Environment page 53)

Under the proposed proportional shareholding the public share will be exposed to all of the above risks. Effectively the public will suffer cuts to its shareholding for commercial mismanagement and over fishing.

It is no wonder that the commercial sector wants the proportional system for the public. If their high risk harvesting strategies, wasteful technologies or illegal activity threatens the sustainability of any fishery, the public will pay through reduced catching rights, even though the public may not be the cause of the decline in the stock. It halves the fishing industry's exposure to catch reductions through commercial or ministry mismanagement and commercial over fishing.

The current situation does not necessarily provide the degree of transparency that is needed to give certainty and incentives for good management to all sectors. The debate is often focused around allocation decisions and not around maximising the value of the resource. MFish has no Process for discussing "maximising the value of the resource" only issue-based management is addressed in the Sustainability round or by the useless issue-based Disputes Resolution Process or the very technical Research Planning Process. Fisheries plans may be a little better but only after allocation has occurred. There is no MFish process to negotiate the management objectives for marine fisheries. The Ministry 'default' position is to assume MSY is the best management objective for every species. MSY only maximises production not social or economic objects in key shared fisheries.

Setting a share in law raises the issues of how that share should initially be determined and how it would change through time. This package proposes a range of considerations that would enable these processes to provide for the aspirations of recreational fishing interests.

This document, in seeking to downgrade the non-commercial portion of the fishery to

an explicit shareholding, is directly against the views expressed by 98.5% of respondents to the soundings consultation. We note that the commercial position on non-commercial allocation of an explicit recreational share, despite it's lack of public support is still the ministry's preferred option. If the public wishes are ignored in this matter it is unlikely that any reforms will achieve the level of support necessary for implementation. The public have clearly asked for their priority to be given management effect in legislation.

When changing the shares the government will need to consider several issues. Principle amongst these is the impact on other rights holders and on the Deed of Settlement. *Judge McGechan determined that Maori quota was in fact no different to any other commercial quota, and that Maori entered into the settlement with their eyes open as to what was on offer.*

The transparency and rigor implied by a share setting process is not substantially different from the current framework for allocative decision-making. *We disagree, under the proposed system the status quo position will be a proportional shareholding. We dispute that this is the current situation*

Recent court decisions have clarified that there is a requirement on the Minister to share the burden of any necessary reductions in harvest between the sectors. *However this is not all that the ruling said. What about the Court of Appeal which upheld the findings of Judge McGechan that the property right (Quota) is not absolute and is defined in terms of the statute creating it. "There is no doctrine of which we are aware which says you can have the benefit of the advantages in a species (type) of property but not have to accept the disadvantages similarly inherent. (p16) The court rejected the argument of industry that the proportion of the TAC allocated to non-commercial interests and commercial interests should remain constant. It held:*

"We see no reason why either as his primary purpose or as a consequence of some other purpose the Minister should not be able to vary the ratio between commercial and recreational interest. To do so is within his powers." (p17-18)

The court also held on this point that the Minister could take account of population growth in determining the level of recreational catch to be allocated, saying:

"...the Minister is entitled to bear in mind changing population patterns and population growth. If over time a greater recreational 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 to carefully weigh all the competing demands on the TAC before deciding how much should be allocated to each interest group."

This reform would not impose more constraints on recreational harvest than would occur under the current regime. *The assumption that the current system of allocation is an explicit shareholding is questionable. Adaptive management reallocates and alters the shares in favour of the fishing industry as does TACC increases under the current system. We asked for funding to secure a legal opinion in these matters and were told that it would be unnecessary.*

Minister it is apparent that a legal opinion may be the only way to resolve this issue.

3. Management Structures

- Establish Regional Recreational Management Groups. *The public have clearly stated they do not support the establishment of management groups before defining their right,*

We have a strong interest in improving participation of the recreational sector in fisheries management to better provide for recreational objectives. *Yet this document argues against meaningful involvement unless a proportional system is implemented.* In the medium term, we propose that the management groups would take a substantial role in the management of recreational fishing for Government. The Ministry of Fisheries would monitor outcomes.

The Groups would recommend to the Minister the set of rules that would best utilise their share of the resource, provide services related to recreational fishing under contract, and represent recreational interests.

Recreational management groups should enhance outcomes for recreational fishers, and fisheries management, through greatly increasing the potential for collaborative fisheries management between sectors. *Ideology prevailing over history and common sense again.*

Improved participation will increase the potential of the regime to provide for recreational objectives and the benefits they wish to derive from fisheries. *It will require more than simple participation to provide for recreational and sustenance objectives and the benefits they wish to derive from fisheries. It will take a major shift in the Ministry of Fisheries mind set and a defining of a priority right over the commercial sector.*

The ministry is funded largely by the fishing industry, it is in constant contact with the fishing industry, the legislation it works under is centered around extracting the greatest meat weight from the commercial fishery. Consideration of how their management of the commercial fishery disaffects the public harvesters of seafood has been at the bottom of their list at least, and possibly not even on it at worst.

Fundamental change, which recognises the true values of recreational and sustenance fishing, to the people, the economy and the country as a whole is required. Perhaps a ministry of recreational and sustenance fishing is required to provide balanced ministerial advice on allocation and conflict issues.

Baseline funding from the government is proposed for the professional staff. Input from recreational fishers in the area would be through an elected board or council that employs and directs the staff.

For sustainability reasons and because of the potential impact on the integrity of other rights, the government would need to retain the decision-making that leads to changes in the share. *What about the formula based priority model proposed later, surely that has to affect other rights.* The government role in achieving sustainability and ensuring the integrity of other rights can be achieved through the share setting process, regular monitoring of a sectors activity and adjustment to controls. The objectives and range of management mechanisms that can be pursued within

these boundaries should not impact on sustainability.

Spatial allocation

Currently s311 of the Fisheries Act 1996 allows for the exclusion of commercial methods if significant adverse effect on the ability of recreational fishers to take their allowance can be shown, a dispute procedure has been followed, and agreement cannot be reached.

This process is potentially a powerful tool. *This tool is favoured by the fishing industry because only they have the resources to use it. Minister, if you want the truth about the disputes procedure ask the people of Tauranga who did use it have advised all others it is a useless process which can lead to serious financial hardship if it goes wrong. We seriously doubt anyone will perceive this recommendation as a credible alternative to an area component of a recreational or sustenance right. This is why 98.5% of submitters to soundings asked for an area component or recreational / sustenance fishing zone be defined. We expect a very negative public response when the public are informed that the area solutions such as zones are off the agenda. The soundings document acknowledges that spatial conflict is an issue and proposed mechanisms for addressing it.*

Two elements within this package of reforms would make this provision more effective.

The first is the definition of a share in law. *Again, the ministry refusal to suggest anything can possibly be done for our plight unless we accept a shareholding.*

This would mean that the inability to catch a share over time due to commercial behaviour or practices would be more readily observable. *We can not see how this reduces the difficulty of proving cause whatsoever.*

A potential scenario under the current management framework is that commercial practices can have the effect of reducing the recreational sectors ability to catch fish over time. This may result in a lower allowance when surveys to estimate catch show that recreational catch has fallen. Reduced catch rates could in turn reduce incentives to participate within the recreational sector as catch rates are low and therefore less fishing activity is likely to occur.

With a defined share, this reallocation would be much less likely. The share, if it is not caught, could remain in the water. The inability to catch this share would become a relevant fact in the dispute procedure that can result in the exclusion of commercial methods in the inshore areas. *Are the ministry suggesting that the recreational allocation be defined in tiny blocks within a QMA, and catches then be measured in these mini areas so that, in the case of localised depletion, historical catch trends will be available to a dispute procedure, we think not. Conversely if the ministry is proposing this recreational research and allocation on a larger scale, ie a whole QMA how can it possibly be of help in cases of localised depletion. We thought the ability of the disputes procedure to address localised depletion and inter-sector conflict was the fundamental reason for having a dispute procedure in the first place*

The second element of the reforms that will enhance this provision is the establishment of management groups. Dedicated professional staff to initiate and manage the process and who have the mandate to negotiate would provide a

significant boost to the quality of recreational input into the process.

Customary Issues

The proposed package does not recommend any changes to the management of other sectors, either commercial or customary. *Does this mean that under every scenario proposed we are being asked to accept the leftovers, as of today, as our share? Is this compatible with the “improving recreational fishing” promised earlier. Wouldn’t an allocation formula based on population or popularity cause management change to the commercial sector?*

It is likely that recreational and customary objectives often coincide, for example their preference for high catch rates and size of fish in the inshore zone. To the extent that new management regimes for recreational fishing are successful in achieving these objectives, there is a high probability that customary fishers would benefit. *How can these new management regimes for recreational fishing be successful under the proposed limitations of possible actions.*

DRAFT WORKING PAPER FOR DISCUSSION RECREATIONAL FISHING REFORMS: OVERVIEW

Introduction

1 The reforms outlined below constitute a ‘package’ of reforms to the management of recreational fishing. The structure of the package reflects two aims on the part of government:

- Encourage good fisheries management
- Improve the quality of recreational fishing

2 At the broadest level, the public policy objective for government is to achieve good fisheries management. Good fisheries management maximises the benefits derived from use of fisheries resources. *Good fisheries management requires more than simply setting a TAC and an accounting of the fish reported as caught.*

PART ONE: Background and Nature of the Reforms

3 The purpose of the Fisheries Act is to ‘provide for utilisation while ensuring sustainability’. The achievement of the overall sustainability of a species has been the focus of the Ministry of Fisheries activities. This requires, in aggregate, a limit on all harvest from any fish stock. Therefore it ultimately implies a limit on each sectors harvest, individually and collectively.

4 The principal method by which the purpose of the Act is achieved is through a rights based framework. This framework is most clearly developed in the commercial sector where it is used to both strictly cap the overall harvest and to determine who has the right to take shares of the overall limit. This provides a framework whereby the value of their share of the fishery is maximised and sustainability is ensured.

5 It is also important to note that ensuring that the value of the commercial share is

maximised is not achieved through detailed prescription of activities. Instead it is achieved through clearly defining the sustainability concerns and ensuring the integrity of the framework and then leaving the details to the sector. In general the commercial sector can then determine the timing and method of harvest that provides the best quality of fish and commercial return. *Input controls are still widely used, and are very necessary for sound management, waste reduction and spatial allocation issues. The ministry should admit this fact.*

6 It has been the premise of the current reform process that in order to allow the recreational sector to pursue their objectives, a more clearly defined set of rights is required. This will more clearly articulate the boundary with other sectors rights and the boundaries of sustainability. This will create an environment that will allow an increase in the quality of recreational fishing without compromising the objectives and use rights of other sectors. *This document fails to convincingly demonstrate how this will be achieved.*

7 The definition of good quality recreational fishing is not obvious. It may change through time, it may be specific to a location and it may be specific to a species. The information about these objectives is diffuse and costly to obtain. Simplistic notions of overall harvest do not capture it entirely. Obtaining this information over time is one of the principal challenges of achieving the objectives of recreational fishers and therefore good fisheries management.

8 Reforms to achieve improved quality of recreational fishing, enhance fishers' existing right and their say in management decisions should simultaneously improve overall fisheries management outcomes sought by:

- Better stock management by improving the information available

- Improving the incentives for sectors to contribute collaboratively to good stock management through improved definition of the recreational right, and the integration between use rights *We disagree as previously explained.*

- Improving participation by the recreational sector in fisheries management

PART TWO: The Structure of the Reform Package

9 This reform package is presented in three parts:

- Initiatives to provide an improved level of information on recreational harvest,
- Options to more clearly define the recreational right and provide transparency in allocative decision making, and,
- Options for improving the management of the recreational harvest.

The attached appendix lays out the options that are proposed in a diagrammatic form.

1. Improved Information requirements

10 The current level of information about the activities of recreational fishing is not always sufficient to enable good fisheries management. The information gathered is

infrequent and not comprehensive. Total Allowable Catch targets can sometimes be breached without the knowledge of MFish. In order to better define and enhance recreational rights, and integrate with other use rights, better information is needed.

11 Two measures are proposed to raise the quality and frequency of information available for fisheries management. These are:

Double the frequency of recreational catch estimates, and *See our earlier comments*
Require reporting by charter vessel operators of the harvest activity of recreational fishers using their service. *See our earlier comments*

12 This information is considered necessary to improve the management of fisheries irrespective of other changes in the management structure. These measures can be considered independently, both of each other and of any other reform options proposed.

13 The current frequency of recreational surveys is four yearly (on average). During four years significant change can occur to the patterns of recreational fishing and the fish stock. Therefore it is proposed that more frequent monitoring should occur on a two yearly time scale. This will enable a better information base to manage for sustainability across the fishstocks. *See our earlier comments*

14 It is not proposed that recreational fishers who choose to access their entitlements through charter operators be restricted in any way over and above recreational fishers who use alternative methods of access. Nor is it proposed that any form of restriction be placed on the activities of the charter vessel operators.

15 It is considered that information regarding the catch and effort of recreational fishers using charter boats would be valuable for the industry itself in managing for sustainability in their local areas. This information will also help MFish to monitor for sustainability on the broader scale. *See our earlier comments*

2. Better Defined Rights

16 For a given fish stock the Minister of Fisheries determines the Total Allowable Catch that will ensure sustainability. How this catch is divided amongst the participants is therefore a key boundary that defines the rights of that sector in relation to other extractive sectors.

17 The current situation does not necessarily provide the degree of transparency that is needed to give certainty and incentives for good management to all sectors. The debate is often focused around allocation decisions and not around maximizing the value of the resource.

18 The current situation can also compromise the ability of the government to effectively manage for sustainability. The current lack of transparency could for example result in decisions being overturned or Total Allowable Catch targets being

breached.

19 The way to achieve the transparency and good fisheries management is to define a share of the TAC for recreational fishing in law. This reform package provides an option for achieving this for recreational fishing. *This statement infers only one possibility. There is no acceptable explanation as to why an alternate rights hierarchy could be determined or some other method be proposed that is more acceptable to the public.*

20 Setting a share in law raises the issues of how that share should initially be determined and how it would change through time. This package proposes a range of considerations that would enable these processes to provide for the aspirations of recreational fishing interests.

21 When changing the shares the government will need to consider several issues. Principle amongst these is the impact on other rights holders' and on the Deed of Settlement².

22 It is important to note that the transparency and rigor implied by a share setting process is not substantially different from the current framework for allocative decision-making. Recent court decisions have clarified that there is a requirement on the Minister to share the burden of any necessary reductions in harvest between the sectors. It is not acceptable to impose the entire burden of restrictions on just the commercial sector for example. *See earlier comments.*

1 Devaluing other rights generates issues for employment, regional development, foreign exchange, and fiscal costs for the government to consider.

2 The Deed of Settlement granted, among other things, commercial ITQ rights to resolve Treaty claims. The ITQ rights were the currency of exchange used by the government. Subsequent government law, which undermined the value of the rights, may generate further claims

Subsequent government law, which undermined the value of the rights of the non-commercial sector in favour of commercial fishers have since and continue to be enacted.

3. Management Structures

23 The Government has a strong interest in improving the participation of the recreational sector in fisheries management. Improved participation will increase the potential the regime will provide for recreational objectives and the benefits they wish to derive from fisheries.

24 It is useful to distinguish between rules and regulations that achieve overall sustainability and those that are designed to provide for recreational objectives within those boundaries. Achieving sustainability and ensuring the integrity of other rights can be achieved through the share setting process, regular monitoring of a sectors activity and adjustment to controls. This is not to say that shares cannot change, they currently can be adjusted and it is proposed that they be adjustable in the future. The

objectives and range of management mechanisms that can be pursued within these boundaries should not impact on sustainability.

25 This package proposes two options for the potential management structures of recreational fishing. These are:

Continue to manage the share of the harvest based on advice from the Ministry of Fisheries, or

Create Regional Recreational Management Groups to manage recreational fishing harvest.

26 A continuation of the current arrangement whereby recreational fishing is managed based on advice from the Ministry of Fisheries is an option once shares are defined. This would mean very little change to the overall way that recreational fishing is managed save for a greater degree of transparency in the allocative decision making processes.

And the fact that the new status quo would be a shareholding position.

27 However a defined share provides an opportunity to involve recreational fishers directly in the management of a component of their fishery. An option to establish Recreational Management Groups is therefore provided.

Does this mean the status quo prevents us from direct involvement in management and the ONLY way we can get involved is as a shareholder?

28 For sustainability reasons and because of the potential impact on the integrity of other rights, the government would need to retain the decision-making that leads to changes in the share.

Minister you have warned us that any proposal which comes out of this process has to go through many government departments and to other sectors for their agreement. Consequently we believe that any proposal we agree to, will be quickly edited down to a explicit proportional shareholding with no mechanism for alteration. We believe any reform that makes it through the process will be incapable of providing any priority in certain species, nor will a population based formula to increase the public share as public demand increases, or any similar proposal survive. Members of the rights working group have warned of this likely outcome. The ministry frequently warned them of this risk during the RWG deliberations.

It appears to us the risk of further erosion of our current rights through accepting the proposed shareholding is too great!

The Groups would recommend to the Minister the set of rules that would best utilize their share of the resource, providing services related to recreational fishing under contract, and represent recreational interests. In the medium term it is expected that the group would take a substantial role in the management of recreational fishing for

Government.

29 It is important to note that this option is viable only if the recreational sector is prepared to support the proposal. It is not an option that can be included in the face of opposition from those who would need to be involved in the establishment and management of the groups. *Do we have to accept a proportional share or have no input into management?*

30 It is proposed that these groups be established where there is a need and a desire to have them. Baseline funding from the government is proposed for the professional staff. Input from recreational fishers in the area would be through an elected board or council that employs and directs the staff.

3 It is the only option if no shares are defined.

31 Recreational management groups should enhance outcomes for recreational fishers, and along with shares, fisheries management benefits overall through greatly increasing the potential for collaborative fisheries management between sectors. *Unproven ideology*

32 Defining the share more explicitly is considered a fundamental precursor to creating the management structures that can pursue the objectives of improving the quality of recreational fishing. Without this transparency it is not recommended that structures with more direct accountability to recreational fishing interests be considered. For the Government to support the establishment of recreational management groups, it should be confident they will contribute to good fisheries management, rather than just promote recreational interests without appropriate consideration for other users. *Accept a share or have no input into management.*

Spatial allocation

33 The process for spatial exclusion of commercial methods for the purposes of recreational fishing is not directly addressed in this package of reforms. Currently s311 of the Fisheries Act 1996 allows for the exclusion of commercial methods if significant adverse effect on the ability of recreational fishers to take their allowance can be shown, a dispute procedure has been followed, and agreement cannot be reached.

The submissions to the soundings process demonstrated that 98.5% of submitters wanted the issue of spatial access addressed and suggested an area component of the public rights in the fishery be developed. Any package of reforms that ignores this groundswell of opinion is unlikely to be well received. We do not consider a disputes process a viable substitute for an area right. This document acknowledges that the dispute process is flawed unless we accept a shareholding.

The Soundings document also considered the impact of aquaculture and its potential to adversely affect public access to the fishery. The fundamental right of public access to, and the use of, traditional fishing areas and methods must be more clearly defined in law to give priority over and protection against the erosion of that access by commercial extractive users and aquaculture. This document is deficient in not

canvassing these issues which have been clearly identified as being one of the central elements required in any reform package.

Minister Moyle's 1989 policy stated "to ensure recreational users have access to a reasonable share of fisheries resources""Preference will be given to non-commercial fishing in areas readily accessible and popular with the Public where a species is not sufficiently abundant to support both non-commercial and commercial fishing." We cannot understand why this is not being given management effect by this Labour Government.

34 This process is potentially a powerful tool. Two elements within this package of reforms would make this provision more effective.

35 The first is the definition of a share in law. This would mean that the inability to catch a share over time due to commercial behaviour or practices would be more readily observable.

36 A potential scenario under the current management framework is that commercial practices can have the effect of reducing the recreational sectors ability to catch fish over time. This may result in a lower allowance when surveys to estimate catch show that recreational catch has fallen. Reduced catch rates could in turn reduce incentives to participate within the recreational sector as catch rates are low and therefore less fishing activity is likely to occur.

37 With a defined share this reallocation would be much less likely. The share, if it is not caught, could remain in the water. The inability to catch this share would become a relevant fact in the dispute procedure that can result in the exclusion of commercial methods in the inshore areas.

38 The second element of the reforms that may have a significant bearing on the process to achieve spatial allocation is the establishment of management groups. Dedicated professional staff to initiate and manage the process and who have the mandate to negotiate would provide a significant boost to the quality of recreational input into the process. *To suggest spatial access can be negotiated in the absence of a right is to ignore the reality history has given us.*

Customary Issues

39 The proposed package does not recommend any changes to the management of other sectors, either commercial or customary. It does however have a bearing on the likely outcomes that the customary sector could expect from their fishing activity. *See earlier comments*

40 It is likely that recreational and customary objectives often coincide, for example their preference for high catch rates and size of fish in the inshore zone. To the extent that new management regimes for recreational fishing are successful in achieving these objectives, there is a high probability that customary fishers would benefit.

41 This proposed regime for recreational fishing management will differ from the regime for customary management, the other non-commercial extractive sector. The allowance provided for customary fishing is based on the fishing authorised by kaitiaki under customary regulations and therefore not directly affected by the share for recreational fishers. Customary fishers are also very interested in the availability of fish in inshore areas where they fish. They have a number of statutory provisions to enable them to exercise management over areas of most interest for customary fishers including Mataitai, taiapure and s186a provisions.

RECREATIONAL FISHING REFORMS: IMPROVED INFORMATION

Introduction

1 The Soundings process and subsequent Joint Working Group Report found that the information collected by the Ministry about the nature and extent of recreational fishing needed improvement. *The real outcome of the Soundings process was an overwhelming (98.5%) rejection of options 1, 2 and 3. The same options that are now presented before us in this document*

2 Estimating recreational harvest is critical to ensuring sustainability in some stocks. In particular those stocks where recreational harvest is large and subject to change. In those cases accurate stock assessments depend on accurate estimates of recreational harvest.

3 Maximising the benefits obtained from recreational fishing also requires more detailed information regarding the nature and extent of recreational harvest. In particular data that provides knowledge on catch and effort rates through time would provide invaluable information on the degree to which recreational fishing objectives are being provided for.

4 This paper considers initiatives to augment the information gathered by the Ministry regarding the nature and extent of the recreational fishing harvest in order to improve the management of fisheries. Two initiatives are considered. There is some synergy between the two and they are not considered to be alternatives but rather complement each other.

5 The initiatives recommended in this paper do not depend on any of the options recommended in the rights definition paper or the management structure paper. They can be pursued irrespective of decisions on options included in those papers. *Surely a paper on research requirements should have gone before the appropriate scientific working group to determine if the information gathered in these proposals would be useful in achieving the stated objectives.*

Current Situation

6 Currently the Ministry carries out surveys of recreational catch every four years. They are based on phone surveys and diary surveys. Diarists are selected through

phone interviews. Diarists then record their fishing activity for a year. Other methods are used to calibrate these surveys including boat ramp surveys and door-to-door surveys.

This summary and much of what follows is over simplified and out dated. During the course of the latest National Recreational Harvest Survey significant changes in technique have occurred. The prevalence of recreational fishers is now obtained from house to house surveys and is a much better estimate of the number of fishers than the 1996 telephone survey.

The Ministry have funded a continuation of the 1999-2000 recreational survey using the proven house to house vehicle to recruit diarists and estimate fisher prevalence so there will be a harvest estimate for key species for the 2000-2001 year (REC2000/01). There is a proposal from the Recreational Fisheries Research Planning Group to run a stand alone and continuous survey of fisher prevalence every year.

The problem with large one off surveys every 2 or 4 years is the cost of recruiting 4000 diarists each time that give a representative sample of recreational fishers. The results of project REC2000/01 will provide information on the costs effectiveness of "rolling" recruitment for an ongoing survey. There is the prospect that an annual harvest estimate for key fisheries is possible every year.

The recreational harvest for are many species like Kingfish, Trevally, Trumpeter or Butterfish is not well estimated by the 4 yearly national surveys. A survey of the same design every 2 years will only give twice as many poor estimates.

There were six other recreational harvest surveys put out to tender for 2001-2002 designed to provide harvest estimates of blue cod, shellfish or all recreational fishing in specific areas. Also there is a three year project monitoring length and age structure of the recreational kahawai catch currently underway. There is potential for other targeted surveys.

Summary: Yes, better data on recreational catch is required. There are developments in survey technique that need to be investigated by the people with hands on experience. Recreational fishers and Ministers need better advice, and more time, than provided in this document before they are asked for a considered or binding response.

7 Therefore estimates are available every four years (for the year preceding the assessment of the information). The information is collected and analysed under contract for the Ministry of Fisheries.

8 Diary surveys have proven to be the most effective way to determine a nationwide measure of the recreational take. Other methods have been used in conjunction with diary surveys in particular areas. However, no other method currently provides a cost effective way to generate a comprehensive measure of the take across the full range of fishstocks.

9 The cost of carrying out a full nationwide survey is approximately one million dollars.

10 Better data is useful for the achievement of specific recreational objectives. The recreational sector may have more specific areas of concern. For example, the inner Marlborough sounds and the charter fishing industry that relies on it. Local depletion of that nature does not necessarily impact on sustainability of the stock given the stock is managed over a much larger area (Quota Management Area).

11 Even with no change to the rights or management of recreational fishing there is a need for an improvement in the quality of recreational information that we gather and hold. This is partially to achieve an improvement in the Ministry's ability to manage to sustainability targets. It is also necessary to provide better information for the allocative decisions that are currently made.

Problem With Current Information

12 A major difficulty with our measurement of recreational fishing is the frequency of surveys. If there is little change in recreational fishing activity over time this may not pose a significant problem. However, in situations where recreational activity is changing significantly over time, the frequency of surveys poses a serious management issue. This problem is exacerbated by the significant impact that changing weather patterns (e.g. an el nino season) can have on recreational harvest.

13 Four yearly surveys also create difficulties because it is difficult to get good trend data that allows for cross checking against previous surveys. Estimates that appear to be unusual are difficult to correlate with previous numbers due to the time that has passed. Therefore estimates become isolated points rather than a series that can provide reliable trend data.

14 A further problem with the recreational surveys is that good estimates are only achieved for fishstocks with high recreational activity. As the number of fishers, or the success rate of fishers, falls to low levels it makes reliable estimation very difficult or provides no estimates. This may not provide enough data to allow for management of recreational objectives (beyond ensuring the overall sustainability of the stock). Increasing the frequency of surveys will improve the likelihood of getting non-zero returns in any given fish stock. *It is not a matter of getting "non-zero" returns. Low numbers of returns that vary widely give little confidence in the harvest estimate produced. Twice as many estimates with low sample sizes will still give a poor result. If you need information on a fishery then target effort at getting the coverage required.*

15 Information obtained from the diary surveys is significantly improved if diarists contribute for more than the minimum one-year. The time scale data this provides is more valuable in determining the nature and extent of fishing activity. Achieving this has proven difficult however as interest drops off after the year is up. *In fact a large proportion of fishers only fish a few times a year. Many of these fishers drop out of the diary survey before the year is up. Current thinking is that continuous recruitment with say a six month duration of diary duties may help reduce the drop out rate in diarists.*

16 The information requirements for more specific measurement and assessment of

recreational catch will be more demanding than what is currently collected. Better quality information will allow more targeted management initiatives to address problems that may be specific to the recreational sector.

We would not have thought that the frequency of surveys was the issue. Unless recreational/sustenance catch rates or stock sizes are changing rapidly, increasing the frequency of surveys will not be the most cost-effective use of funds. Although there are examples of a stock whose abundance is highly variable from year to year (for example the flatfish species), most stocks are relatively stable.

What is needed is greater precision in the estimates. This will not be addressed by simply more of the same – repeating the surveys more often. There are other areas where we would have thought funds would be more wisely spent. For example improved sampling and sample stratification techniques will improve the precision of the estimate. A second factor is the need to improve the accuracy of diarist reporting and provide independent checks on the diarist estimates.

If the surveys are to be reduced from four to two years it begs the question why not a continuously survey rather than have two yearly pulse surveys.

We can not see how more regular surveys (by themselves) will improve estimates in fisheries with low fishing effort. Increasing the frequency of surveys will not necessarily improve the likelihood of getting non-zero returns in any given fish stock, however better sampling techniques will increase the likelihood of improved data.

Initiative: Requiring catch and effort reporting from charter vessels

17 This initiative:

- Requires catch and effort returns from charter vessel operators
- Provides improved information on recreational harvest, and
- Provides an improved capacity to manage for charter fishing objectives.

18 The Ministry is not recommending that any further controls be established on the fishing activity of those who choose charter-fishing vessels to catch their recreational entitlement. Charter fishing is providing access to members of the public, and tourists, to enable them to take their recreational fishing entitlements.

There will be problems getting catch and effort reporting accepted by charter boats and downright hostility if the Ministry try and impose user pays for data collection or the proposed penalty regime. As with all other recreational research projects this must be 100% crown funded. (The \$100,000 a year management cost is very light. NIWA were paid over \$73,000 in 1997-98 for a 12 month marine charter boat diary survey that only covered 85 boats (23%) out of about 370. It would cost a lot more to get 90% or better coverage especially to gain initial acceptance).

19 It is not practical to attempt to introduce sector wide reporting requirements. The cost and practicality of obtaining this information from all recreational fishers would be prohibitive.

20 Charter fishing does however provide a source of information about the state of recreational fishstocks. Charter fishers have a consistent method and a usually high success rate compared to other recreational fishers. Charter vessels target species that are of high interest to recreational fishers in general. Anecdotal evidence suggests harvest from charter boats is increasing

For these reasons the information may be useful to calibrate the results received through the diary surveys to achieve better estimates in important recreational fisheries.

21 It would therefore contribute to the Ministry's need to obtain information to ensure sustainability. It would also provide useful information for the charter industry to maximise the value and the sustainability of their business. This information will also provide advanced warning of problems in particular areas that charter fishers depend on, thereby allowing for better certainty and security for the charter fishing business.

22 Charter fishing is an important industry in some areas already. It is potentially an important industry in many more areas around New Zealand. Improved management of recreational fishing may generate more demand for charter fishing services. The government has an interest in monitoring and ensuring the sustainability of the business beyond its responsibilities to ensure sustainability of the fish stock. Charter fishing generates employment, regional development and revenue issues for the government to consider.

23 Local depletion is a problem which charter fishers may often be faced with. This threatens the viability of the business and the capital sunk into the fleet. These problems may not however threaten overall sustainability in the quota management area but rather they may be specific to a local area. Therefore there is a clear interest in the charter fishing industry in good local management of the areas on which they depend.

24 This information could also provide evidence about the nature of particular local problems, which may facilitate co-operative solutions to be developed within the sector. It may be that given the clear interest of charter vessel operators in the sustainable management of their local area that self-management of the number of vessels or good practice guidelines will emerge. Catch and effort information would facilitate this through informing the participants of the exact nature of any problems they may be facing.

25 This option recommends that charter fishing vessel operators be required to return catch and effort reports to the Ministry of Fisheries detailing the activity of recreational fishers using their service.

26 The Ministry proposes that a database of basic catch and effort information for recreational fishers using charter-fishing vessels be established, managed and maintained by the Ministry of Fisheries. This information should also be made available to any relevant recreational management authority.

We are not sure that reporting from charter vessels will provide better information. We have not read the NIWA report by Gavin James and others for some time but we seem to remember those charter boat surveys were not successful. We heard no

arguments in the consultative meeting to suggest that the group saw the benefits of what the Ministry had proposed.

Issues involved in requiring catch and effort information

27 Determining who are the charter fishing vessel operators is the first issue to address. It is proposed that the Marine Safety Authority (MSA) database be used to create a database of charter fishing vessel operators.

28 The current MSA register does not require the vessel operator to distinguish between charter fishing and other taxi operations. It is proposed that the vessel registration be amended to require a distinction between those vessels registered as charter fishing vessels and those registered for other purposes. Minor changes will be required to the registration form.

29 The Fisheries Act allows for the definition of groups who are required to fill out returns on their fishing activity. It is proposed that charter vessel operators registered with the MSA be required to fill out catch and effort returns detailing the activity of recreational fishers using their service and to supply the Ministry with the information.

30 It is proposed that basic information be required in order to minimise the compliance costs and the database management costs. Returns could be required monthly or quarterly detailing catch and effort data.

31 It is proposed that information on the following activities be recorded:
Number of trips completed and number of hours fished,
Number of fish caught of each species,
Number of undersized fish returned to the sea,
Estimated weight per species,
Area that activity took place in (broad enough to protect commercial sensitivities),
Number of passengers on average per trip.

32 A system to achieve compliance will need to be established. It is proposed that reminder letters be sent and after a specified period of non-compliance the existing non-compliance provisions within the Fisheries Act be implemented.

33 The fiscal implications of this proposal are primarily generated by the cost of the database and its management. The estimated cost to the Ministry of developing and maintaining this database is \$100,000 per annum.

34 There is compliance cost implications involved in requiring charter fishers to file returns. These should be kept to a minimum through:

- Requiring only high level information,
- Providing convenient methods of filing returns,
- Minimising the frequency of returns,
- Ensuring that information about proposed requirements is distributed well in advance of the implementation of obligations.

Whereas the diarists are drawn from an independent group of fishers with no vested interest in the data they provide, this situation would not characterise the charter boat sector. Unless the Charter boat fleet supports the programme, we would have serious reservations about the accuracy of the data provided, particularly if the charter operators believed the reporting could limit their livelihood.

Initiative: Frequency of recreational harvest estimates

This initiative:

- Recommends a doubling of the frequency of recreational harvest estimates in significant fish stocks from four yearly to two yearly,

- Provides for improved ability to manage towards sustainability targets in significant recreational fishstocks,

- Enables more informed and therefore enhanced allocative decision making.

- Provides the potential to obtain better information on fishstocks that are of particular interest to recreational fishers.

36 As noted above it is not practical to require sector wide reporting of fishing activity in the recreational sector. Instead the Ministry of Fisheries estimates the recreational harvest through four yearly surveys.

37 This option proposes a doubling of the frequency of recreational harvest estimates. More frequent estimates will achieve increased statistical precision of the estimates of recreational catch across all surveyed fishstocks.

38 This option provides for a direct improvement in the frequency of estimates that the Ministry obtains. It will therefore provide an enhanced ability for the Ministry to manage towards sustainability targets by lowering the likelihood of TAC targets being breached.

39 The allocative decision making that is required under the Fisheries Act 1996 will be significantly improved through the availability of more frequent estimates on recreational harvest. Allocative decisions may be required more frequently as a result of the more frequent estimates. However it is less likely that the disparity between current harvest and the last allowance set will be as large as it can be with four yearly estimates.

40 The four yearly diary surveys that are currently published cost approximately one million dollars a survey. Therefore the fiscal implications of doubling the frequency of the survey are an increase in the overall cost of one million dollars every four years to one million every two years, which is \$250,000 per year. This cost is based on no change to the method used to estimate the harvest.

41 However, the objective is to achieve a doubling of the frequency of the estimates, not simply to double the frequency of the surveys.

42 The obvious method is to simply replicate the four yearly surveys in the intervening years between the current surveys. It may also be possible to investigate alternative methods that do not require a complete replication of the survey. One

method to achieve this could be retaining the services of the diarists for longer periods. It is proposed that the best mix of methods be selected to provide the required two yearly harvest estimates. The fiscal implications may vary with the mix of methods chosen. It is proposed that the most cost effective method be chosen while ensuring the accuracy of the estimates is maintained.

As already commented we do not believe that increasing the frequency of surveys is the issue, improving the precision of the results is the key and more repetitive surveys per se will not achieve this.

This writer attends or receives minutes from a number of the Ministry's fisheries working groups. We am unaware of any Ministry paper on improved information being presented to the Ministry's technical working groups for expert advice, We would suggest the Improved Information paper be referred to the Marine Recreational Fisheries Working Group for technical review.

DRAFT WORKING PAPER FOR DISCUSSION RECREATIONAL FISHING REFORMS: DEFINING RIGHTS

Introduction

1 This paper considers the question of whether a share of the Total Allowable Catch (TAC) should be set in law for recreational fishers. The subsequent question of how revisions to a share would be managed is then considered. Consideration is given to the threshold for determining the need for a share and the process for the initial setting of the shares.

Background

2 The intention in setting a more defined share of a fish stock for recreational interests is to protect and enhance recreational harvest, and improve the incentives to participate in stock management. It is not intended to limit recreational harvest any more than is currently the case; rather the paper considers process and criteria to alter the current allocations.

3 A more transparent framework will provide clear signals to all sectors regarding the framework for future government decisions. A stable and transparent framework for allocative decisions will allow a greater degree of planning and achieve better fisheries management outcomes for all sectors.

4 New Zealand fisheries management is output based. This means the primary tool to achieve sustainability is the setting of a Total Allowable Catch (TAC). The TAC places a limit on the total harvest in a given fish stock for a given year. In a shared fishery this means that the TAC must be allocated between the participating sectors through government decisions.

It is superficial to state that New Zealand fisheries are output based, a TAC is an output control but TACs occur in fisheries that are not output regimes, nor are recreational/sustenance or Maori traditional fisheries output based. This distinction

is important issue since much of the paper is based on the premise that output based fisheries and proportional shares are an essential construct of New Zealand's fisheries management. For example in paragraph 5 the assumption appears to be that defining a share is the only way to define the recreational/sustenance right.

*Although the Minister acknowledges there has been an unprecedented response to the Sounding Process with over 60,000 responses, the truth is that there has been an unprecedented 60,000 submissions **opposed** to the three Soundings options. Two of those options required the recreational/sustenance share to be implemented. There is currently at best very limited support for a defined share regime.*

In the Sounding process and in these papers there is no recognition of the principles set out in the Marine Recreational Fishing Policy issued by Minister Moyle in 1989. That policy's statement on rights has much greater support amongst recreational/sustenance fishers than does the current proposals.

'Defining a share for recreational/sustenance harvest and defining the framework for adjusting the share through time will make the Minister's allocation decisions more open and predictable', may be correct but that misses the point. What will make the decision more 'open and predictable' is an open and predictable process in other words the process is the issue not the definition of the share. An equally 'open and predictable' process could be used for a priority right regime.

5 Defining a share for recreational harvest and defining the framework for adjusting that share through time will make the Minister's allocation decisions more open and predictable. It does not necessarily mean that the factors that are considered or the result of the decision are different to the current outcomes. If a defined share were to do no more than clarify the current decision making process this would be considered an improvement on the current framework. The question of how these decisions should ideally be made is however relevant when considering establishing a more transparent framework for allocation.

6 The establishment of shares would provide for proportional arrangements between sectors. Should a TAC be reduced there is an implication that each sector would share in a reduced allowance, unless the shares were adjusted. Similarly an increase in a TAC under a defined share arrangement would provide an increased allowance to all sectors in line with their share.

This is simplistic in its approach. We would not agree that just because the TAC needs to be reduced that all sectors should take a reduction. If the reason for the decline in the resource was due to factors outside of the control or influence of each of the sectors then there may be justification for the position. However if one sector has created the decline then why should all sectors be reduced.

7 A number of factors could be considered in determining how the recreational share could be adjusted through time including any priority for the recreational sector. One form of priority, for example, could be that the share is adjusted to take account of an increase in population. Another form of priority might provide for the share to be increased if demand for fishing increases. Another form of adjustment framework might be to adjust shares based on the relative value of the fish to each sector.

Option one: The Status Quo (no defined shares in the fishery)

8 Under this option shares would not be explicitly set for recreational harvest. The status quo would continue and no change to the law would be necessary. The allowance for recreational fishers would continue to be subject to the discretion of the Minister.

Current situation

9 Allocative decisions are currently made when the Minister makes an allowance for non-commercial interests before setting a Total Allowable Commercial Catch (TACC). The Minister must allow for non-commercial interests before setting the TACC. Section 21 of the Fisheries Act states that when setting or varying a TACC the Minister must have regard to the TAC for that stock and allow for Maori customary non-commercial fishing interests and recreational interests. An allowance is also made for other forms of mortality.

10 There is no requirement to fully satisfy estimated non-commercial requirements. Therefore the Minister may make an allowance that is less than the current harvest and therefore create a situation where adjustment to controls on recreational activity will be required. In other words, when there are competing demands on the fish stock it is recognised that recreational users do not have full priority.

Although the current Minister has stated Minister Moyle did not have Cabinet approval of the National Policy for Recreational Fisheries, the major recreational/sustenance fishing groups (including the NZGFC, NZRFC and Option4) support the National Policy For Marine Recreational Fisheries (NPFMRF) statement on recreational priority. Minister Moyle stated in the foreword to the Policy 'Government's position is clear, when a species is not sufficiently abundant to support both commercial and non-commercial fishing, preference will be given to non-commercial fishing.' This definition of the priority right for recreational/sustenance fishers should be reinstated.

Para 10 states that the recreational users do not have priority over the commercial sector in allocative decisions. It would also be appropriate to inform Cabinet that the Court of Appeal has noted (in reviewing the SNAI decisions by Minister Kidd) that the Minister is not precluded from making allowance to the recreational sector for changes in fisher population patterns and population growth.

11 This implies that underlying the current allocative decision making there is a form of proportionality determining allocative decisions. It is also recognised that the Minister may make allowances that do not reflect proportionality so long as the minister carefully weighs up all of the relevant considerations.

We do not agree with the first sentence. The first sentence is a justification for the proportionality option as proposed in options 2 and 3 of the Ministry's Sounding document. The Minister makes a decision based on information on recreational and sustenance catches not on the basis of proportionality.

12 An important consideration when making allocative decisions is that the Fisheries

Act provides the potential for compensation to be sought when decisions are made that reallocate allowances from one sector to another. Devaluing other rights also generates employment and regional development issues for the government to consider. The government used commercial quota rights to settle Treaty claims in the Deed of Settlement. Decisions that significantly erode these rights may therefore generate further Treaty grievances.

The compensation arises not from the recreational/sustenance catch but from the administrative regime created by the QMS, which entitles quota rights holders to compensation. The problem arises out the Government's decision to set aside the issue of the recreational/sustenance right in 1986, in favour of the administrative convenience of considering the commercial sector in isolation to the Maori and the recreational/sustenance sectors. For this reason the development of the recreational/sustenance right must consider what should have been provided when the QMS regime was introduced. This is no different from the arguments raised by Maori in the Muriwhenua and subsequent Maori claims.

The term recreational right does not adequately reflect the breadth of the issue under debate. The right covers both the recreational right and the sustenance right (ie all those fishers excluding the commercial and the traditional Maori take). The right to take fish for sustenance is a right of both Maori and non-Maori. To some extent the defining of the recreational/sustenance right addresses the Maori rights not covered by the Deed of Settlement, it addresses Treaty grievances not erodes them.

Pros and cons of the current situation

13 The principal disadvantage in the current framework is the lack of incentive to conserve the resource. Without a defined share there is less corresponding sense of husbandry. If the likelihood of the share being extracted by another sector is removed there is the possibility of making better decisions to maximise the benefit of the fishery. For example, it is not likely that the recreational sector would collectively decide to reduce their harvest to increase their catch rates if this was to result in the commercial sector receiving an increased allowance. A reduced recreational harvest can easily result in an increased TACC.

It is a moot point about whether or not the current framework is provides a lack of incentive to conserve the resource. There are examples of the recreational/sustenance sector making husbandry decisions to improve their fishery under the current regime.

It is not correct to state 'it is not likely that the recreational sector would collectively decide to reduce their harvest to increase their catch rate if this was to result in the commercial sector receiving and increased allowance.' For example the recreational/sustenance sector increased the minimum fish size for snapper from 25 to 27cm in spite of the commercial sector remaining at 25cm. This management control has reduced the recreational and sustenance catch and catches rates. The benefits of this have been dissipated because the commercial sector have retained a MLS of 25cm, in spite of scientific evidence that the optimum yield per recruit is achieved at around 30cm.

Recreational agreement to differential size limits, such as exist in the scallop fisheries, or where size limits have been voluntarily increased (kingfish) or where bag

limits have been voluntarily reduced (blue cod in the south) are additional examples of the recreational/sustenance sector making husbandry decisions to improve their fishery under the current regime.

14 Currently the commercial sector may cause a lowering of recreational harvest through bulk fishing methods. Depletion by trawlers could result in a lower harvest for recreational fishers, as the fish are less available in accessible areas. This may in turn result in a lower allowance for recreational fishing, in subsequent years, in line with their lower harvest. A discretionary allowance therefore carries the risk to the recreational sector that their share may be reduced.

It is superficial to identify bulk fishing methods like trawling as the issue that may reduce the recreational/sustenance catch rates. Fishing methods such as netting in West Coast harbours are likely to have just as much if not more impact on recreational/sustenance fishing catch rates. The exclusion of longliners in the inner Hauraki Gulf in the mid 1990's was justified on the supposed impact of longliners on recreational/sustenance catch rates. This control and other recent commercial fishing exclusions such as the current Minister's decision on a closure in the Eastern Bay of Plenty demonstrate that currently processes are in place to address the spatial conflict issue.

15 A lack of certainty also reduces the incentives on the commercial sector to invest in the resource. If unrestrained recreational take is likely to erode the proportional share of the fishery then there will be a corresponding lack of husbandry incentive on the commercial fishing sector. If the proportion is considered to be secure through time, the incentives to manage sustainably and invest in the resource, and develop collaborative arrangements between sectors, increase. This can have the advantage of increasing the TAC available for all sectors.

The argument that uncertainty created by potential impact of recreational/sustenance sector affects investment decision in the commercial sector is often stated as fact by the SNAI quota holders. Although the argument has some logic, logic does not necessarily equate with fact. We are unaware of any evidence to show conclusively that such uncertainty around future recreational/sustenance catches does adversely affect investment decisions. In reality there are many factors that influence the future abundance of fish stocks, and the value of quota, how significant the threat of recreational/sustenance fishing is to investment may be insignificant.

16 Similarly if catch rates are eroded by other factors (such as environmental effects) this could lead to a reduced allowance for recreational interests. If fishing behaviour changes and recreational fishers no longer fish a particular area, their share may not be maintained. Over time, therefore, erosion of the recreational share from a variety of sources can occur.

This paragraph appears to assume that if catch rates are eroded by other (eg environmental) factors the recreational/sustenance share should be maintained. The recreational/sustenance sector or any other sector must work within sustainable limits, and in the case of environmental catastrophe they would have to reduce catch rates accordingly. It is illogical to think otherwise. The recreational/sustenance sector does not have a surplus of effort which would be unleashed if catch rates declined,

their catch rates and catch would likely decline in proportion with the decline in the abundance of the stock.

17 When the TAC increases in a fish stock it is not necessarily of immediate benefit to the recreational sector. The current framework may allow that increase to be allocated entirely to the commercial sector. It is only if recreational harvest actually increased that consideration would be given to an increased allowance.

This paragraph identifies a major difference between the impact of a proportional share and the priority right as stated by the NPFMRF. If strict bag limits or other controls were in place and the TAC is increased under the Defined Share management regime proposed in this paper the fisheries resource could be under-utilised because the recreational and sustenance catch does not increase accordingly.

Under the NPFMRF the additional catch would go to the commercial sector until such time as the recreational/sustenance catch increased if ever. In this way the resource is more efficiently utilised. By comparison the Defined Share approach is seriously flawed.

We believe the logic in paragraph 17 shows a lack of understanding of the recreational/sustenance sector. Assuming status quo management, if there was an increase in the resource the recreational/sustenance sector would have already taken full benefit (within the limits of their effort) of the increase, since their catch rates would have been increasing in line with the resource increase.

Recreational/sustenance catches do not move in a lockstep approach increasing whenever the Minister makes an additional allocation in the resource, it would occur as a gradual progression utilising the resource increase as it occurred.

18 From the crown's perspective, clarity in the allocative decision making process may more clearly distinguish between restrictions for the purpose of sustainability and restrictions for the purpose of allocation. Sustainability decisions are protected from litigation to secure compensation or have the decision put aside. Allocative decisions are not. However the commencement of the Fisheries Act 1996 should lead to greater transparency in decision making as the Minister must give reasons consistent with the law when making allocative decisions.

We would agree that allocative decisions for sustainability and those for allocation decisions should be clarified and distinct. But that could happen within any framework, if it does not occur now it is a problem of process and not a fault of the management regime itself.

19 Area management tools that are being developed by the Ministry such as fisheries plans and the dispute resolution procedures are not impeded by a continuance of the current framework. Fisheries Plans may result in an agreed proposal to set medium to long-term shares in a fishery, or to set a TACC strategy.

It remains to be seen whether or not the dispute resolution process or the Fisheries Planning process will improve fisheries management. It is a common practice for the promoters of a new regime to state a new process will address the ills of the past.

Option two: Defined shares in the fishery

20 Under this option a recreational share would be established in fisheries where recreational harvest is significant. Recreational and commercial shares in key fishstocks would be set as a proportion of the TAC remaining after the customary harvest is allowed for.

21 The remainder would be split between recreational and commercial interests according to the pre-determined shares. The tonnage allocation stemming from the shares would vary in line with changes to the TAC and changes to customary harvest.

This means the Minister would set the TAC and allow for customary harvest.

The benefits of defining a share in law

22 This option would result in the clear right to a guaranteed share of the fishery. If commercial practices were to prevent the harvest of the recreational share, that share would not be able to be subsequently reallocated to the commercial sector. This also enables the recreational sector to make plans about how to maximise the benefit of harvest within their share.

23 The recreational sector would be able to make plans about how best to utilise their share of the resource without the threat of that share being reduced as a result. The quality of fishing can be improved through preventing the recreational share being reallocated to the commercial sector.

24 With a defined share, an increase in the TAC automatically results in an increase in the recreational allowance irrespective of the actual harvest. This creates incentives to restrain catch because of the assurance of the benefits of a rebuild. Only a percentage

25 A defined share will potentially provide for the more effective use of other sections of the Fisheries Act. The dispute procedure that can result in the exclusion of bulk methods from some areas may be more readily implemented. An inability to harvest the recreational share could provide evidence to use in these proceedings.

26 There are also benefits to the wider fisheries management framework from a defined share of the fishery for the recreational sector. Defining the crown sustainability targets explicitly for each sector through a defined share can enable better management towards those targets. It will increase good husbandry incentives and encourage collaborative arrangements between sectors.

27 A defined share for the recreational sector would provide more certainty of rights within the commercial sector, which can lead to greater investment both in the industry and in the fishery. This certainty would come in part from the transparency that would be evident in allocative decisions and the security of fixed proportions removing concerns about the erosion of rights.

Comments on Para 22 - 27. 'If commercial practices were to prevent the harvest of the recreational/sustenance share, that share would not be able to be subsequently reallocated to the commercial sector.' This statement appears to suppose it would be

relatively straightforward to determine the commercial impact on recreational/sustenance fishers. If this comment is to be used in the final paper much more thought needs to be given to the practical implementation of the action required. We believe it would be extremely difficult to prove such a case, given all the uncertainty and impact of other factors on a fish stock and recreational/sustenance harvest. Not only would it be difficult to prove but it would likely be costly.

This situation exemplifies one of the major problems of resolving common property resource issues, and why so many recreational/sustenance fishers are sceptical about the self-management regimes proposed in Soundings. The impact of such an action to prevent reallocation to the commercial sector would be strongly opposed by the commercial sector. As it is of direct impact to the livelihood a major New Zealand industry you would expect the commercial sector to expend considerable resources and money to oppose the action. The recreational/sustenance sector would likely lose such an action simply due to lack of resources, rather than the merits of the case. An example of the way the industry would react was seen in the response to Minister Kidd's actions related to the reduction in the SNAI TACC.

If the Ministry wants to gain the support of the recreational/sustenance sector to self management it will not be by proposals such as Soundings but through the development of processes that convince the recreational/sustenance sector that they will operate on a level playing field with the commercial sector. So far such processes have not developed. Processes such as disputes resolution and Fisheries Plans discussed in this paper give no confidence, because there is no clear evidence that the balance between the commercial and recreational/sustenance sector will be addressed. While this imbalance remains the recreational/sustenance sector will always turn by default to the Minister as their protector – only because the Government holds the power to match the industry.

Past experience shows that, for the reasons given above the recreational/sustenance sector would not want to enter into Fisheries Plans with the commercial sector until there were adequate safeguards to ensure parity between the powers of the commercial and recreational/sustenance sectors.

However the recreational/sustenance sector would be prepared to enter into binding plans with the Government to rebuild and manage stocks if the Government could ensure the benefits of constraint would in the long term flow back to the recreational/sustenance sector. The increase of the snapper MLS demonstrates the capability of the recreational/sustenance sector to take such action.

We have discussed above two reasons above why we do not believe Para 27 is correct. We are not convinced that the defined share approach would improve investment in the industry because there is no evidence that the situation currently exists (in spite of what the industry may say). Secondly if the TAC was increased and the recreational/sustenance sector could not take the increase it would create inefficient use of the resource.

The drawbacks to defining a share in law

28 A defined share will make allocative decisions more explicit and therefore potentially more difficult for a Minister to make. However this is also a likely result of the implementation of the Fisheries Act 1996. Explicit allocative decisions may lead to civil claims for compensation for damages.

We do not consider it a drawback to have the allocation decisions made more explicit, we believe it would make it easier for the Minister to make his decisions. This is contrary to what the Ministry paper seems to suggest.

29 It will be clear that reductions will be required from the recreational sector when a TAC is reduced. However the Minister will have discretion to depart from the existing shares provided all relevant considerations are addressed.

If the TAC was reduced for sustainability reasons, the recreational/sustenance sector should take reductions in proportion to the extent that its actions have created the stock decline. If the TAC is reduced because of environmental factors (beyond the control of any sector) the recreational/sustenance sector's catch should be reduced in proportion to the TAC reduction. If this were the case the recreational/sustenance sector's catch would decline in any case, it would be driven by the resource decline not the Minister's decree.

Adjusting the shares through time (aka Priority for recreational fishers)

30 It is possible to envisage the need arising for changes to the share. Voluntary, mutually agreed, changes in the shares are expressly allowed for through Fisheries Plans. However there is also the question of whether there should be some automatic or periodic revision of the shares.

We have already commented that it is highly unlikely that Fisheries Plans would create a voluntary mutually agreed change in shares in favour of the recreational/sustenance sector. We support the principle of Fisheries Plans but at this stage only between each sector and Government. Within the Ministerial Consultative Group there are members with extensive experience in developing management plans between fisheries sectors during the 1980s-1990s. The hurdles that ensured agreement did not occur then, have not been addressed by the current Fisheries Plan proposals.

31 Priority for recreational fishers could be provided for within a system of defined shares. Priority could be considered to be an increase in the share for recreational harvest in line with an increase in their actual harvest.

This paragraph ignores the principle that sustainability must provide a cap on harvest.

32 Simply adjusting the shares as harvest fluctuates is effectively the same as not setting a share at all. It would therefore not provide any of the benefits or the drawbacks of the defined share. This option is not considered here, as it would not provide any benefits over the current system.

This paragraph looks at the issue too simplistically, if catches fluctuate there may be

good reason for adjusting the share. An example of where this should have been implemented in the QMS is fisheries such as flatfish (where TACCs were set at the maximum level of catch).

33 It is possible to consider a system whereby a share could not be reduced but could be increased in line with foreseeable harvest. However, reallocating shares from the commercial to the recreational sector raises some potentially significant impacts, which the government would need to consider, including fiscal impacts, treaty issues, regional development concerns and employment effects.

We have already commented that there are situations where the recreational/sustenance harvest should decline. The issues raised about the potentially adverse impacts are unbalanced. The paragraph should also recognise that there may be positive regional development and employment impacts if the recreational/sustenance allocation was increased.

34 Therefore reallocation should remain subject to ministerial decision. However, it is useful to consider a transparent process for these decisions, and the matters that would be relevant in setting and amending shares.

35 There are two options considered:

Option A

36 A process to request reallocations could be established. This would be based on a case presented by the relevant management authority. Criteria could be established that would support a case for a reallocation. These could include:

- Population growth (or growth in the number of fishers),
- Demonstrated value of the fishery as a recreational resource relative to commercial value,
- Demonstrated errors in the original information leading to the share setting.

One reason for requesting reallocation may be the enhancement of the fishery by one sector. For example as a result of increasing the MLS by one sector and not by others.

37 Many factors could be relevant to such a decision (just as they are currently). The factors that the Minister would need to consider would include:

- The benefits of increased recreational access, Fiscal implications of reallocations,
- The implications for the deed of settlement and;
- Implications for regional development and employment in the fishing industry.

38 These effects could be quite significant and would be considered on a case-by-case basis by the Minister. Under this option the Minister would use discretion to determine whether or not the reallocation should occur.

The paper suggests in several places the potential impact of allocation changes on regional development. It should be remembered that the introduction of the QMS had a significant adverse impact on regional communities such as northland. We do not

have a copy, but there is a report commissioned by the Ministry from McDermott Associates which identified some of the issues. Colin Moyle considers the worst impact of the QMS was the impact on small fishing communities (pers. comm.). The reallocation of shares should also recognise that management has adversely impacted on the recreational/sustenance sector and needs to be reduced. For example consistent over fishing of TACCs – as discussed in the first consultative meeting.

Option B

Under this option the Minister would grant reallocations if certain conditions were met.

The criteria for automatic share reallocations could be:

€Population growth, or,

€Growth in the number of fishers.

41 This option creates a situation whereby certain relevant factors are excluded from consideration. For instance, fiscal implications of explicit reallocation and implications for regional development and employment would not be manageable on a case-by-case basis. Furthermore they may only become evident after transfers have automatically occurred. The outcome of reallocation could include serious costs to government and erosion of treaty settlements.

42 Further difficulties around definitions are posed with this option. The number of fishers is difficult to define. Currently there is some instability in the estimates of participation within the recreational sector. Basing shares on these figures would therefore raise difficulties. This option also creates instability in the definition of other rights.

43 Population growth could be based on census data that is available five yearly. This would not generate much change in the shares, as population is slow to change. It also does not necessarily correlate with the demand for fishing.

Initial Setting of shares

44 The initial setting of shares could be carried out in a manner that provided as much as possible for the aspirations of recreational fishers.

The above appears to be simply a codification of the fisher/population growth criteria and factors to be considered in Option A.

45 The shares would be set on a reasonable basis. The following considerations could be relevant:

The share cannot be less than the current take,

The relative economic value of recreational fishing,

The share could be set to take account of historical shares as well as current shares,

An allowance for measurement uncertainty and possibly growth rates could be included,

A minimum allowance in all fisheries could be included (for example 5%),
Majority shareholding in important fisheries could be guaranteed (for example 51% in SNA1, 75% in BC07, 51% in KHA),

Some fisheries could be given in their entirety to recreational interests (eg Kingfish) and in that case commercial fishing would be at the behest of the recreational management authority (or customary authority).

There are several points in this section which are poorly thought through.

We would not support a minimum allowance in all fisheries, there is no basis for allocation in the deep water fisheries such as orange roughy, or oreo dory.

To state that fisheries with an inevitable commercial by-catch (such as kingfish) should be given over in their entirety to recreational interests is flippant at best.

46 The initial share setting process would need to consider the social, cultural and economic implications of any reallocations that are created as a consequence. Some of the options may involve fiscal costs and risks for the government and any share setting process would be constrained by these factors.

The initial share allocation comment appears to restate the obligations required of the Minister under the current Act.

Threshold for establishing a share

We not sure what this section is about. The current allocation should be the current catch. If that allocation is zero it should be zero, if it is five percent or sixty five percent it should be five and sixty five percent respectively. To take any other position is not economically rational.

47 A threshold for establishing a share would need to be created. In some fisheries recreational interest is low, particularly in the deep-water fisheries. For this reason it would only be necessary to manage towards shares in significant recreational fisheries.

48 One potential measure of significance is where recreational fishers take 10 percent or more of the total allowable catch. The attached Appendix lists all fisheries with a recreational harvest at or above ten percent based on recent figures. Under this option, where the share does not currently exceed ten percent then no share need be set.

49 This threshold reflects both the information available and the likelihood of recreational catch being a significant determinant of sustainability.

50 A ten percent threshold provides for unrestricted harvest up to that threshold, even in fisheries where no harvest currently occurs. If a ten percent minimum is guaranteed then this may provide an opportunity for the recreational sector to achieve other outcomes with the share they are granted but do not currently harvest. A further variation is to provide a minimum allocation of species that are coming into the QMS. This window of opportunity exists only as long as there remains more species to be incorporated into the QMS.

DRAFT WORKING PAPER FOR DISCUSSION

RECREATIONAL FISHERIES REFORM: MANAGEMENT STRUCTURES

Proposal

1 This paper considers the options of crown management or stakeholder management of recreational fishing. The paper expands on the issues that would need to be addressed in establishing a recreational management group and its role in fisheries management in a preliminary establishment phase, as well as potential longer-term management responsibilities.

Background

2 New Zealand's' fisheries are a common property that is utilised by a number of groups who have differing views on the optimum use of the resource. Allocation of the use of the resource between groups is complex and can result in conflict. Intervention by the Crown to resolve those conflicts is often not an ideal solution.

3 Recreational fishers are currently not well placed to participate effectively in processes to manage and allocate the fisheries in which they have an interest. Recreational fishers are not well, resourced, organised or sufficiently informed to participate at the same level as other stakeholders. The mandate of recreational fishers who do participate is not robust. The result is that recreational fishers often rely on lobbying Ministers to achieve their desired outcomes.

4 The current structure of recreational fisheries management, the limited capability to participate in fisheries process due to lack of resources and the ambiguity over the relative strength of their right to access fisheries, compared with other stakeholders, creates disincentives for cooperation amongst fisheries users to achieve good fisheries management outcomes.

5 Officials have considered those issues and have assessed two management options for the management of recreational fishing, within a sustainable utilisation framework.

Discussion

6 A key assumption of this paper is that either a recreational share has been defined or a strategy to define a recreational share has been agreed. The specification of a recreational share is central to other groups recognising the legitimacy of recreational fishers rights and a consequent role in advising on management measures for the fishery as a whole. If the recreational management group model is progressed, a defined share of the fishery will also create strong incentives for recreational fishers to undertake self -management of their own activities to protect the fishery and equitably ensure access amongst recreational fishers. In addition it should encourage co-operation with other fishers to achieve good management outcomes that might benefit all participants in the fishery.

The assumption that management structures can only occur if the

recreational/sustenance share is defined or a strategy to define the recreational/sustenance share has been agreed to is presumptuous. What compelling evidence is there to support this statement? The reason for taking this position seems to be based on the views of the other sector groups. If this is so, one wonders who is running the fishery – the Minister or other sector groups.

The Ministry's view seems to be that defining the recreational/sustenance share is the only way forward. The recreational/sustenance sector will likely oppose the model of joint sector's management because they believe the commercial sector in particular will command far greater resources than the recreational/sustenance sector. In my opinion the Sounding document did not address this concern and neither does this paper. Unless the issue is addressed this paper will not have support from the public.

It is not correct to state that management structures can not develop unless the recreational/sustenance share is defined. There are examples operating under the current environment which demonstrate that agencies other than the Ministry can provide services to acceptable standards. For example Option4.co.nz would probably be able to provide (based on the results of the Soundings process) a better consultative network than the Ministry can provide. In our view the statement that '...a defined share of the fishery will also create strong incentives for recreational fishers to undertake self-management of their own activities to protect the fishery and equitably ensure access amongst recreational fishers.' is pure rhetoric and not an objective statement based on fact. We know of no evidence that this will be an assured result of self-management in recreational/sustenance fisheries. It would seem to hold where fishers have an individual harvesting right but that is not the case in the recreational/sustenance sector.

7 Officials consider that once the Crown's sustainability objectives have been achieved, through the establishment of a TAC and allocation of that TAC amongst interest groups, the most effective way to achieve good management outcomes in the recreational fishery is to enable them to develop management systems and rules on use that address the aspirations of the recreational fishers. Management of the recreational share should reflect the preferences of the current [and future] users of the public access right, subject to specific constraints set out in law.

It is naive to suggest that sustainability will be achieved '.... through the establishment of a TAC and allocation of that TAC amongst interest groups...' This seems to suggest that sustainability will be achieved provided TACs are set, ignoring the problems of by-catch, and adverse impacts of fishing on the environment to name just a few. The discussion on SNA 2 over fishing discussed at the first meeting was an example where fishing based on a TAC would not resolve the sustainability issue.

8 If there is no prospect of a defined recreational share emerging that could be devolved to recreational management groups, then statutory management responsibilities should remain with central government (MFish and the Minister of Fisheries).

As already stated the Ministry is not correct to state that devolution of responsibility can only occur if a defined recreational share is defined. Nor is it correct to state

there are only two opinions – retain central management or phased empowerment.

9 The two options for management¹ are considered in this paper are to:

Retain central management: or

Establish recreational management groups (phased empowerment)

10 In the first case, the Minister of Fisheries (on behalf of the NZ fishing public) would manage recreational shares. In the second case, recreational management groups would manage the shares. Transfer of management responsibility relies on an appropriate legislative framework to ensure oversight and accountability for management of fishers and an active strategy to establish groups and build fisheries management capacity.

11 Each of these options is discussed in turn. Most of the paper deals with the second option because it involves the establishment of new organisations and the consideration of appropriate transitional strategies and governance arrangements.

Option 1: Central management

12 The recreational share of the TAC could be held by the Minister of Fisheries, on behalf of the public and managed (procedurally) in a manner similar to current arrangements that is:

Changes to statutory management measures would be made by the Minister on the advice, largely, of MFish; and

Recreational interests would be consulted in the course of developing regulatory proposals.

This seems to be the status quo. It needs to be remembered that 60,000 fishers voted against this option in the Soundings round. The opposition to the status quo has not died since the Sounding consultation. For example at the three day Auckland Boat Show in June more than 3,000 people (10 percent of the visitors) signed letters to the Minister expressing their concern about recreational/sustenance fisheries management. The letters stated that they realised licensing of the recreational/sustenance sector was no longer an issue but that recreational/sustenance fishers still wanted action on a priority right, exclusion of commercial fishers from high use recreational/sustenance areas and a planning right to enhance the fishery.

13 Given the definition of a share, there would be an obligation on the management agency to take all reasonable steps to maintain the recreational harvest within the limits of the share. As discussed in the paper on defining rights, the share could be increased in particular circumstances.

Responsibility to provide advice on any change in the share, including any underlying information requirements, would lie with MFish and be subject to consultation with the recreational sector and other interested parties.

‘ 1 ’management options’ refers to options for the delegation of management functions over fisheries.

Advantages

Integrated delivery of fisheries management compliance services. Particularly regulatory advice and compliance services

No additional costs or changes to baseline funding.

Disadvantages

No direct voice for the recreational sector (=> no means to participate directly in determining management measures and negotiating for improved spatial access for recreational fishers)

No direct accountability to recreational fishers (reduced legitimacy of rules)

Problem-solving limited to statutory solutions (ie unlikely to include voluntary options)

Initiatives constrained by departmental funding

Competing priorities (depends on MFish organisation and Vote Fisheries Output definition)

As we understand this paragraph the Ministry is proposing a definitive share be established which ever of the two management regimes is introduced. If the implementation of a definitive share is not negotiable that fact should have been made clear in the presentation at the first consultative meeting. The recreational/sustenance share should only be introduced if there is strong support from recreational/sustenance fishers. That support is not there at present. Creating better recreational/sustenance fisheries management will only occur if there is widespread support for the management regime. It needs to be remembered that with something in the order of one million fishers it is impossible to enforce fisheries management unless there is at least tacit support by the fishers. If there was widespread disobedience to the management regime it would do neither the government nor the recreational sector credit.

Option 2: Recreational management groups

14 In the medium term (5 to 10 years), responsibility for the recreational share of fisheries could be managed by elected, properly constituted, regional organisations representing the interests of recreational fishers. This section outlines a stepped process to successfully devolve management responsibilities including the recommendations for regulations for recreational fisheries from central government to recreational management groups.

15 This option proposes the establishment of five recreational management groups with government baseline funding.

16 Responsibility for the management of the recreational fishery would be transferred to these groups in two phases, an establishment phase and a self-management phase.

17 During the establishment phase, the focus would be on building fisheries management capacity within the groups. The groups would recommend management measures to the Minister of Fisheries and if properly constituted could be contracted to provide research or services to the Minister, subject to standards and specifications that the Minister may require. MFish would continue to carry out its present role of

consulting and advising the Minister on the suitability of any management proposal that may come forward from recreational fishers.

18 In the self management phase, in addition to participating in fisheries management forums with other interest groups, recreational management groups would be delegated authority to develop and consult recreational fishers on management proposals for recreational fishing and rules that might constrain recreational fishing activity, such as season or area closures, gear controls, or bag limits. The management groups could then provide advice directly to the Minister on appropriate management measures for the recreational fishery. The Minister would retain a role to audit the process used to develop any recommendations and ensure that any measures are consistent with the requirements of the Fisheries Act.

19 In this role the recreational management groups could be carrying out some of the public good management roles that are currently the responsibility of the Crown. In the absence of an ability to generate their own funds to resource these new roles, baseline funding from central government would need to continue since the groups would then be accountable for recreational fisheries management.

20 Where the Minister of Fisheries does not have confidence that a recreational management group has the capacity, or will, to assume those specified management roles, the group would be wound up and would receive no further public funding.

21 It is important that the establishment phase be carried out with a view to eventually devolving management responsibility. MFish does not support ongoing public funding for recreational fishing advocacy organisations.

This option has two significant barriers to its success.

Firstly although there is currently widespread recreational support for the recreational management controls (such as bag limits and MLS). The challenge will come when the recreational/sustenance sector's catch exceeds the allocation, to the extent that the general public's catch is being affected. Unless there is widespread acceptance of the need to reduce catches the management controls will not be supported. The current regime (ie Option1) would be unlikely to manage such a situation.

Secondly, we cannot conceive successive governments accepting to meet the costs of recreational/sustenance fisheries management groups. The current government for example does not fund Maori fisheries management groups for Mataitai or Taipure. In the medium to long term we am sure that government will require recreational/sustenance fishers to meet the costs of their own management. If the government accepts Option2 they will need to guarantee future funding if they are to have recreational/sustenance fishers support. This is not practical and therefore (based on the results of Soundings) neither is public support.

Establishment of recreational management groups

22 Recreational management groups would be established—with public funding—to advise

Government on recreational fishing management measures and to represent

recreational interests in regional fisheries management issues.

23 During the establishment phase, key roles for the management groups would be negotiating agreements with other sectors for access to fisheries resources, advice on management measures to equitably share the available resource among recreational fishers and on measures to constrain recreational take within the share that they have been allocated (or obtain ministerial decision to change the share).

24 Representing recreational interests could also involve:

Participation on behalf of the recreational sector in fisheries management processes (such as the development of fisheries plans or dispute resolution) to enhance recreational fisheries opportunities

Representing recreational interests in the processes to recognise customary fishing interests of tangata whenua;

Representing recreational fishing in the Marine Reserves Act processes

Participation on behalf of the recreational sector in coastal planning processes under the Resource Management Act;

Conducting research under contract to the Crown on specific recreational issues;

Determine local research priorities to feed into MFish research purchase processes;

Determine local compliance priorities to feed into MFish compliance planning processes;

Conduct public awareness/education programmes about fisheries management issues and recreational responsibilities with a view to increasing voluntary compliance under contract from the Ministry.

MFish Role

25 During the establishment phase MFish would:

Set standards and specifications and manage research and education contracts;

Consult interested parties on recreational management measures and advise the Minister on those proposals;

Develop its own proposals for recreational management where necessary;

Monitor success of management measures including compliance of recreational fishers on fishing within the recreational share;

Enforce compliance measures.

Until the issue of a balance of power and resources between the commercial and recreational/sustenance sectors is developed there will be little support for recreational/sustenance fishers taking joint initiatives with other sectors. The proposals in this paper (for the reasons given above) are unlikely to achieve the balance of power required.

There will however likely be support for the recreational/sustenance sector formulating plans approved by the Minister which will result in constraints provided the longer term benefits accrue to the recreational/sustenance sector. The increase in the MLS for snapper from 25cms to 27cms was an example of the recreational/sustenance sector's ability to make constraints.

Self-Management Phase

26 In addition to the functions described in the establishment phase, key roles for the Recreational Management group during this phase would be expanded to include:

- Delegated authority to provide direct advice to the Minister on management measures affecting recreational use of the fishery;

- Delegated authority to propose rules to manage the activity of recreational fishing;

- Delegated authority to consult recreational fishers and other interested parties on proposed, rules and management measures;

- Provide advice to the Ministry on research needs and priorities.

27 In undertaking these roles, the recreational management groups would be exercising powers and functions under the Fisheries Act 1996. Consequently they would be subject to the same sustainability and treaty obligations as other fisheries managers.

MFish role

All the bullet points in para 26 can be achieved by the recreational/sustenance sector, through the good will of the Minister, at this time.

*The power of delegation may increase the strength of the recreational/sustenance management body provided the delegation is tied to funding. In other words the provision of services would be by way of a contract between the Ministry and the recreational/sustenance body. In return for funding the body would provide a designated service, authority would be delegated to enable the body to efficiently provide the service. **If there were no funding then there would be no contract and if there was no contract there could be no delegation of authority.***

28 In the self-management phase, MFish would

- Advise the Minister on any revisions to the recreational share;

- Set standards and specifications for research and service contracts and manage those contracts;

- Provide advice to the Minister on consistency of management and consultation process with the law;

- Provide advice to the Minister on consistency of proposed management measures and rules with the Fisheries Act

Appendix 1 shows the potential objectives, responsibilities and powers of recreational management groups during the establishment phase and self-management phase.

Governance

29 Recreational management groups would be set up by statute. To ensure groups are representative of the recreational sector, an elected board should govern each organisation. The board could also include 1 or 2 members appointed by the Minister of Fisheries to focus in particular on the Crown's requirements in relation to Treaty issues and proper administration of public funds.

Boundaries and numbers of recreational management groups

30 In determining the boundaries and number of recreational management groups, it is necessary to:

Ensure the boards reflect the population fishing in the area, rather than be based on residential interests.

Consider demographic and biological factors such as population base, geographic dispersal of recreational fishers, and stock boundaries.

31 In order to ensure that recommended management measures reflect the interests of the people who use the recreational resource in a particular area, it is desirable to include as many of the users as practical in the 'electorate'. For instance, how do we get Aucklanders to support fisheries management initiatives in areas that they fish but which are outside their region? This issue could be partly resolved by creating large regions for the recreational management groups, or by providing opportunities for individuals to transfer their vote outside the region of their residence.

32 Management measures recommended by recreational management groups should not be allowed to unfairly discriminate between users (for instance, on the basis of their place of residence).

33 It is proposed that there be five recreational management groups established, roughly:

North: Northland, Hauraki Gulf, Coromandel, Bay of Plenty and Raglan

East Coast: East Cape and Hawkes Bay

Southern NI: Taranaki, Wairarapa, Manawatu, Wellington

Top of the South: Marlborough, Tasman, West Coast, Kaikoura

South of the South: Canterbury, Otago, Stewart Island, Fiordland

34 A perfect match between the electorate and the users of the resource cannot be achieved. It is probably desirable to require each recreational management group to prepare a strategy describing the distribution and origin of recreational fishing effort in their region and the initiatives that will be taken to meet their overall needs by working in collaboration with other recreational management groups or MFish.

35 Note that it is not necessary to establish all 5 groups at once. Provided there is a comprehensive regional framework, groups could be set up over time (on the advice of regional recreational fishing leaders) and subject to successful elections.

Umbrella group?

36 An issue to consider is whether the need for coordination between the management groups justifies the establishment of an umbrella group.

37 The more autonomous the recreational management groups are, the greater will be the recreational sector's ownership of their activities. This suggests that management

groups should not be established as “branches” of a national recreational group. Instead, it is proposed that regional groups should have responsibility to get together annually to discuss issues of mutual concern and develop guidelines to ensure their management initiatives are not inconsistent and do not impede each others’ progress. The recreational management groups would have the discretion to form and fund an umbrella group if this adds value from their perspective.

Funding

38 It is proposed that public funding be used to establish and operate the regional management groups (in anticipation of them assuming direct management responsibilities in the medium term). An annual budget would be specified via a purchase agreement with the Minister.

39 Actual funding for each recreational management group would differ to take into account regional differences, in particular the intensity of fishing effort within the region. Further work is required on the nature and extent of the public funding and criteria for allocation across the regional groups.

40 Recreational management groups would not have licensing powers or other compulsory levying powers. However they should not be precluded from raising funds on a voluntary basis to expand the resources available to them from the Crown.

Elections

41 Members of the board of each recreational management group should be elected. The board members are, in effect, the trustees of the recreational share and should be accountable to recreational fishers.

42 It is proposed that elections would be publicly notified and all people registered on the electoral roll within the region of a recreational management group should be entitled request voting forms and vote for board members. The election process will impose significant costs in administration. In addition, we should provide for individuals to transfer their vote outside their region. For instance, a person living in Wellington who regularly fishes in the Marlborough Sounds, could decide to transfer their vote to become a member of the electorate in the Top of the South recreational management group.

Advantages

- Improved ability to negotiate spatial access agreements to benefit recreational fishers.

- Capacity building.

- Dedicated resources to represent recreational fishers.

- Robust mandate from, and transparent accountability to, recreational fishers.

- Development of better fisheries management arrangements by providing effective representation from recreational fishers.

- Ability and incentives to derive management options that suit recreational fishers.

Disadvantages

- Dependent on strong will within the recreational sector.

Cost.

Start up costs would require new funding.

During the establishment phase the roles of the management groups do not replace MFish. Consequently there would be no compensatory savings until groups reached the self-management phase.

The MFish role changes but is not entirely replaced during the self-management phase.

Legislative framework

43 The legislative framework surrounding the establishment of recreational management groups should address a number of issues. These are that legislation :

should be enabling to the extent practical;

Specify boundaries of RMGs, but allow for changes;

Allow the Minister to devolve (transfer/delegate) management powers to RMGs on a case-by-case basis;

Allow for the Minister to resume management responsibilities in cases of ongoing non-performance;

On the issue of boundaries and number of recreational/sustenance groups We would think that it is better to have fewer groups than those proposed, but that the North region is probably too large. If funding and resources are based on the number of fishers some areas (as proposed) may have insufficient resources to achieve their goals. The geographical size of some of the proposed areas could significantly increase the costs of consultation in areas where the population of non-commercial fishers is sparsely distributed(comment from the South Island). We would suggest that the areas are based on those domiciled in the area, we think the proposed concept of having a catchment of those fishing in the area will be administratively too complex to manage.

Based on K Walshe's discussions with recreational fishers we agree with the statement that 'The more autonomous the recreational management groups are, the greater will be the recreational sector's ownership of their activities.' and that regional bodies should not be 'branches' of a national recreational group.

Para 38 – 40. We have already stated that it is naive to think that government will fund the recreational/sustenance sector management ad infinitum. No government could bind future governments to this provision. We think there will be widespread incredulity by the public if it is suggested that future funding would be guaranteed. We note there is no discussion in the paper on how future funding would be provided long term. We would expect a significant section of a paper to Cabinet would need to cover the arguments for and against this funding and to provide a mechanism for this. If it is the Ministry's intent to do this then the issue should have been canvassed in greater detail in this paper.

Para 41 – 42. It may be more expedient to have Boards elected by the Minister during the establishment phase, and lead into wider elections for the self-management phase.

Appendix 1.

Potential objectives, responsibilities and powers of recreational management groups during the establishment phase

Objectives

To protect and enhance New Zealand's recreational fisheries

To ensure ongoing, free and fair public access to recreational fisheries

To increase voluntary compliance with recreational fishing regulations

Responsibilities

Establishment phase

To recommend management controls, including bag limits, to:

Equitably share the available resource among recreational fishers ('those who choose to go fishing');

Maintain take within the recreational share;

Implement positions taken on behalf of recreational interests in regional fisheries management issues

To provide services under contract to government;

To recommend to MFish research and compliance services for the effective management of recreational fishing

To delegate responsibility to negotiate spatial access agreements to appropriate local recreational fishing groups;

To negotiate spatial access agreements with other sectors;

To represent the interests of recreational fishers in other discussions regarding regional fisheries management issues;

To participate in the development of fisheries plans for key recreational fisheries;

To manage public education campaigns and improve awareness of fisheries management rules and responsibilities;

To provide an annual report to the Minister of Fisheries and general public;

To appoint staff;

To act consistently with the provisions of the Fisheries Act and other relevant legislation.

Self-management phase

To provide direct advice to the Minister on recreational fisheries issues;

To propose management measures and rule and consult fisheries users on those matters;

To recommend to the Minister of Fisheries regulatory controls and management strategies to improve the management of recreational fishing;

To deliver services required by the Crown.