

Section 5

Setting and adjusting amateur and commercial allocations

Allocating available catch between the amateur and commercial sectors is difficult because of the difference in perspectives between them. Some amateur fishers have said that their sector should simply take priority over commercial fishing. Their key concern is that past allocation decisions, based on catch in depleted stocks, have significantly disadvantaged the amateur fishing sector. [56] Among industry advocates there is a strongly expressed view that the commercial sector has legitimate existing rights to a proportion of the Total Allowable Catch, and any reallocation to the amateur sector should be fully compensated. The commercial sector typically argues for a proportional approach that restricts amateur and commercial catch to fixed shares of the Total Allowable Catch. [57]

Neither approach, if applied rigidly, would be likely to create the most value for shared fisheries. Because of the different interests at stake, and the perceptions that current allocations are not reasonable, it is important that initial allocations in key fisheries could be reset.

Re-setting and adjusting shared fisheries allocations to the commercial and amateur sectors are covered below.

Footnote introduction

'Some' amateur fishers have said..... – particular reference to whom not explained;

'initial allocations in key fisheries could be reset';

does not explain or compare with the present approach of "allowing for" non-commercial interests in setting or varying TACC, and "allocating" quota to commercial fishers;

[56] QAA, commercially over-allocated fisheries, and deeming depleted stocks, Moyle's promise.

[57] The commercial fishers' view that ownership of quota confers ownership of a proportion of the TAC is incorrect. This is because the FA does not provide for ownership of the TAC by commercial, customary and recreational fishers respectively. The TACC is what remains after allowing for recreational and customary fishers and fishing related mortality, are MFish proposing commercial fishers own more than this?

The approach taken in section 5 omits to state that the Minister has a wide discretion under the FA to manage our fisheries sustainably.

MFish may have succumbed to lobbying pressure from the commercial fishing industry which considers the full extent of the recreational fishers' allowance is limited to the leftovers of a QMS managed in a way that our fisheries are under constant unnecessary pressure, or will be based on so-called 'scientific' information that underestimates the recreational catch.

It would be helpful if MFish would admit both to past errors in not properly 'allow(ing) for' the New Zealand public's recreational catch by, and the flow-on effect such errors have had not just on the ability of New Zealanders to exercise such right, but detrimental effect on the fisheries themselves.

While the MFish strives to contain and constrain recreational fishing, the commercial fishing industry continues fishing parts of the TAC to which the fishing industry itself has acknowledged acknowledges it is not entitled, by MFish permitting deeming to occur outside both the QMS and the TAC.

5.1 Baseline allocations

Some fishers have challenged the fairness of current shares in the Total Allowable Catch. [58] In moving to a more effective management system for the amateur and commercial sectors, the baseline (or starting point) allocations for important shared fisheries may need adjustment.

This section provides options for a process to determine the baseline allocations between amateur and commercial fishing sectors. Any of the suggested processes are likely to be costly and would need to be constrained to a nominated list of key fisheries. [59]

For other shared fisheries, baseline allocations could be based on existing allowances or a set of rules agreed as part of a Fisheries Plan. [60]

Subsequent changes to allocations would be made in accordance with the approach chosen under the adjustment options described in section 5.2. [61]

Footnote introduction

'Some' fishers challenge the fairness – reference to amateur fishers and the way in which the MFish has/has not been 'allowing for' non-commercial interests?

[58] It is widely considered that fairness has played no part in setting what the MFish refers to as "current shares".

The Minister must "allow for" non-commercial fishing interests. Only commercial fishers have an explicit *share* in our fisheries. That *share* is a proportion of the TACC, **not** a proportion of the TAC.

The commercial share of the TACC was set after an arduous process involving full consultation, a disputes resolution process (the Quota Appeals Authority) and compensation or future catching rights (28N rights).

By contrast, recreational fishers have had no formal process to set or resolve any issues with their part of harvesting rights.

It is not correct for MFish to suggest that shares have already been allocated in 'shared fisheries.' By making this suggestion and using it as a foundation on which to build a Shared Fisheries Policy MFish demonstrates its intention to manage our

fisheries that way.

It is also widely considered that the so-called 'science' on which recreational fishers interests have been 'allow(ed) for' is at best uncertain. The way in which the Minister presently 'allows for' recreational fishers interests is an expression of the Minister's best estimate of what recreational fishers will catch in that year. If the Minister is wrong, an improved estimate is required. If the science is inaccurate, then it is preferable to address that.

This is one of the fundamental issues

Fisheries management could be simplified if in the Shared Fisheries discussion paper the MFish said that the current allowances are likely to be based on under estimates.

This would help address the real problem of determining just what fish are available to be caught sustainably, what the proper recreational allowance should be, and how many fish must be left in the water for environmental reasons.

One cannot be criticised for wondering whether the Minister and Cabinet have been fully appraised by MFish not just of the current state of our fisheries, and some (recreational catch) uncertain information, but of the full and wide range FA tools and mechanisms to ensure sustainable use of our fisheries for future generations and so provide for the social, economic and cultural well-being of all New Zealanders.

[59] 6 fish stocks, not fisheries

This covers independent assessment, values based allocation and negotiated process for six fish stocks. Non-commercial fishers are involved in all 'shared fisheries'? How are these six fisheries selected? What about all the other fish stocks
Why 6 fisheries? Why not a set of principles that determine what fisheries should be assessed – i.e. use a principled strategic approach rather than an administrators/petty management approach

[60] Query whether Fisheries Plans are the appropriate tool for setting or altering baseline allocations. If the allocations are contested the viability of the fisheries planning process is threatened. It will be a challenge obtaining agreement on multi-sector Fisheries Plans let alone obtaining agreement on 'allocation' for each of commercial, customary and recreational.

Historically, when Fisheries Plans processes have not worked it has been due to conflict over 'allocation.' Early in the most recent Fisheries Plans process option4 strongly argued that it is unrealistic to expect recreational fishers to engage in Fisheries Plans where their interest had been unfairly 'allowed for' and without due process. The Shared Fisheries discussion paper does not contain anything to address this point.

Fisheries plans are only an MFish process there is no certainty that using such a process will improve management. It is not like say the quota management regime with a set of rules and conditions that provide for rational management and operation within a fishery.

Fisheries plans are simply MFish's current process to allow MFish to control the nature and extent of management. Twenty years ago the act provided for fisheries management plans (FMP) – that process was rejected (as a process incompatible to the QMS – no mention of the non commercial fisheries) by the Ministry and by the Minister on the ministry's advice in the mid 1990's.

The Ministry can rightly draw a number of differences between the FMP plan approach and the current fisheries plans but the process and intent remains the same and the FMP process proved that there is no certainty that the fisheries planning process will provide better management. In fact the lack of a co-management approach with recreational fishers and other stakeholders will likely undermine the plans effectiveness.

[61] Request MFish to describe circumstances where the 20% basic level would apply.

There are no recreational or customary allowances or TACC's set for a number of key shared fisheries and therefore there is no constraint on non-commercial catch in these fisheries. The Ministry will, in time, set allowances for these fisheries and the outcome of this proposal could set a precedent on fish stocks that currently do not have allowances or a TAC set (in some fisheries the TAC is a de-facto TACC).

Options for re-setting amateur and commercial allocations in key fisheries are: [62]

[62]When considering the following three options remember that MFish stated above, *“Any of the suggested processes are likely to be costly and **would need to be constrained to a nominated list of key fisheries**”*. Key fisheries means a single fish stock not the fishery as a whole i.e. Snapper 8 (SNA8) is a fish stock, not all snapper stocks. Also it does not mean six fish stocks under each option, it means six fish stocks under all of the following three options. It's a case of be careful of which box you tick. Again, who chooses the fish stocks? Do commercial get to pick and choose as well? Will it be decided regionally?

The limitation to six fish stocks, when non-commercial fishers have interests in 60 or 70 fish stocks can only lead to conflict not only amongst recreational fishers, but also between recreational, commercial and customary fishers. It's not so much about which fish stock is included, it's about the conflict created when we are being asked to ignore the rightful claims of those denied a fair process.

As stated previously there is no objective basis (apart from administrative convenience) for six FMA's - it should be done on a criterion referenced basis to determine what FMA's should be reviewed and which should not

Option A. Re-set allocations following an independent assessment

An independent panel or person would assess historical evidence and submissions from people and groups involved in a particular shared fishery to determine whether current allocations were reasonable. An assessment, and potential subsequent adjustments, that took into account the effects of past management decisions on

current shares could increase value and may assist to generate greater legitimacy. Recommendations would be made to the Minister on a baseline allocation, and on a process and timeframe to achieve the baseline. [63]

Footnote introduction

meaning of term ‘to generate greater legitimacy’?

[63] The commercial fishing industry had the QAA for all fisheries, and management decisions have allowed the TACC to grow.

The same approach ought to be available for recreational fishers. If not, why should the commercial fishing industry keep QAA increases when subsequently found to be unsustainable, and non-commercial fishers suffer cuts to their ‘allow(ance)’?

This option does not cover all fisheries as this option obviously only applies to those fisheries that have current allowances set. There are many important shared fisheries that have no current allowances i.e. most of the trevally, hapuku, bass, blue nose, flounder, kina, paua, blue cod, tarakihi and gurnard fish stocks. Check for other fisheries where we don’t have an allocation.

For this approach to work (i.e. a team of experts assess the fisheries in question) we need accurate information on true historical catches of both sectors – we don’t have that. This will become another ‘by guess or by god’ decision making process which leaves no one happy. This option should be rejected because Mfish will not be able to provide good factual information to support the decision making process. There is also an issue of advocacy, the industry and ministry would have much stronger advocacy resources than the recreational sector – and you can bet none of them will be using their resources to support the recreational fisher.

Reset Allocations - Option A - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Independent assessment	<p>Independence and qualifications of appointees on the independent panel?</p> <p>Non-commercial fishers may not have influence on the terms of reference for independent review.</p> <p>No indication of how far back the panel can go when considering historic information.</p>	<p>Six (or some other number) of fish stocks may have their baseline allocations reset, and the Government may decide to implement the new baseline allocations.</p> <p>The criteria used by the</p>	<p>Yes. See SNA1 Court of Appeal p 18 “If over time a greater recreational demand arises it would be strange if the Minister was precluded by some proportional rule from giving some</p>	<p>Very Poor. Because the proposal only addresses less than 10% of the fisheries in which recreational fishers have an interest.</p>

	<p>Will the panel be as unconstrained as the QAA whereby they can stipulate a greater allowance?</p> <p>This process will not be equivalent to the process given to the commercial sector at the introduction of the QMS.</p> <p>Who chooses the six (or other number of) priority fish stocks?</p> <p>Deciding which fisheries may be contentious.</p> <p>The vast majority of shared fisheries are not addressed by this proposal.</p> <p>Can the fishing industry nominate which fisheries they want reviewed?</p> <p>Can customary fishers nominate which fisheries they want reviewed?</p> <p>The Cabinet paper gives Government the option of not complying with the findings of the independent panel or person.</p> <p>Independently reset allocations – helpful but too limited.</p>	<p>panel may be used to set allowances in fish stocks that have yet to be allocated i.e. some crayfish stocks, hapuku, gurnard, terakihi, trevally, and blue cod.</p>	<p>extra allowance to cover it...”</p>	
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Option B. Re-set allocations following a study of value in the commercial and amateur sectors

A valuation study, considering both commercial and non-commercial values for fishing, would be commissioned to estimate the highest value allocation for particular fisheries.

Adjustments might be needed if there were a large discrepancy between the existing allocation and that expected to maximise value. [64]

[64] It appears that recreational and customary fishers would not be eligible for compensation. This retains the perverse incentive to avoid compensation, and a one-way valve against recreational fisher's interests.

At a recent MFish 'Shared Fisheries' public meeting, the commercial fishing industry stated that commercial fishers have commenced working with MFish to ensure that more social and economic values pertaining to commercial fishing are included in future management decisions. Among other things these included health benefits and could slant the field toward greater recognition of commercial fishing under the current system if they are successful (if that is possible).

A real danger for non-commercial fishers if they accept the 'values' based allocation model is that new commercial valuation techniques will quickly follow.

An initial concern for recreational fishers if a values based system was adopted was the likelihood of a reduced "allow(ance)" for recreational paua and crayfish fishers. If the commercial fishing industry is successful in introducing new so-called 'commercial' values it is conceivable that commercial fishers may also achieve priority in fisheries like snapper, tarakihi, hapuku and bass and others. More will follow on this after commercial fishers complete their discussions with MFish scientists and policy managers. Our initial view is that a 'values based allocation approach' has risks for recreational fishers.

If the value-based approach is implemented, then the 'large discrepancy' in 'value' required to trigger a re-allocation would represent a new obstacle; recreational fishers would have to clear.

In **ALL FISHERIES** where:

- recreational fishers allowances were not reset by independent assessment;
- recreational fishers allowances were based on underestimates;
- recreational fishers allowances were made in depleted fisheries;
- commercial fishers have been over-allocated;
- there are no allowances set at all,

then 'value' based decisions would be the only method available to recreational fishers to resolve these issues. The risk to recreational fishers is that if the commercial fishing industry succeeds in having commercial fishing values preferred in fisheries management decisions then recreational fishers may be left with falling back on the 20% - the MFish proposed 'basic right' - of the baseline allocation.

If this proposal is implemented, as previously mentioned, this will mean the removal of the present recreational fishers right to fish to be substituted with the 'baseline allocation' and 'basic right' combination.

Under this proposal recreational fishers would be issued a collective quota entitling them to the equivalent of 20 percent of their current collective 'allow(ance)' which may be significantly below what recreational fishers actually catch. The remaining 80 percent would be left to the unpredictable winds of market forces with no certainty as to where that wind will blow them.

Furthermore, the value of wild fish stocks are likely to increase under fishing pressure from ever-increasing global demands for fresh seafood. Due to such demand it is possible that commercial values may be attributed a 'higher value' than the 'values' of the recreational catch such as social and cultural well-being attributable to all New Zealanders and not just recreational fishers.

Examples of social and cultural well-being might include the value of a fillet of fresh fish caught by a family member on a child's plate?

What value is a day's recreational fishing for families?

What value to give our children an alternative to fast food or indoor activities such as computer playing video games?

What value to be able to give our children a lifetime healthy outdoor activity?

What value the health benefits gained from eating freshly caught seafood?

How to measure how much you're child values the time spent with a parent fishing together?

Can New Zealanders actually afford to buy the fish that we want your families to eat from the fish shop?

How can the pleasure we gain of sharing our catch with close friends and family be measured?

Customary

mana, tradition, passing down of knowledge, community involvement.

The real question though is the 'value' of money, or commercial 'points' in assessing these 'values' as against the social and cultural well-being of all New Zealanders in customary and recreational fishing.

Your input here is most 'valued'.

What do you 'value' most about customary and recreational fishing?

The Ministry at the Auckland meeting has acknowledged that such 'values' will **NOT** be included when attributing 'values' to recreational fishing.

Many recreational fishers are unaware that recreational allowances have not been set in all shared fisheries. If a values based system is imposed before an allowance is made then it is possible that the initial allocation under this regime will be based purely on the comparison of undeveloped recreational values with the more refined valuation model that the fishing industry is currently developing. The undeveloped recreational valuation is incapable of reflecting the true value of recreational fishing.

This option applies only to those fisheries that have current recreational and

customary allowances set, and does not cover all fisheries. There are many important shared fisheries that have no current recreational and customary allowances, that is, most of the trevally, hapuku, bass, blue nose, flounder, kina, paua, blue cod, tarakihi and gurnard fish stocks.

Enquiries will be made on fisheries where recreational and customary fishers do not have an ‘allow(ance)’.

See earlier comments about the problem of finding a reliable measure of the social and cultural values, and secondly having values which have a common currency with the commercial sector. This is another ‘perfect world’ scenario which is theoretically elegant but in today’s world is totally unworkable – that is why MFish when challenged have been unable to tell us exactly how such a valuation mechanism would work.

Value Based Allocations - Option B - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Reset allocations based on value	<p>The removal of the current recreational fishers’ right to fish and replacing that with a collective recreational quota of which only 20% is guaranteed.</p> <p>Recreational fisher’s allocation reduced in high commercially valued species.</p> <p>Do recreational fishers have to swap crayfish and paua for kahawai? If recreational fishers are currently harvesting and eating something valued at zero, they do not need a value-based model to suggest they do not need that fish.</p> <p>This is unrealistic. The FA contains all the management tools required for good</p>	<p>In species with low commercial values and high recreational values recreational fishers could gain some benefit. The 2003 kingfish IPP used this method, and MFish advice indicated that any changes in allocation, based on valuations,</p>	Yes, the Minister has wide discretion.	<p>Poor if valuations in high value species go against recreational fishers.</p> <p>Good if recreational fishing is more valuable in most important species.</p> <p>Excellent if MFish disregard \$ values and base the value on participation rates.</p> <p>So it is all dependent on which values</p>

	<p>management and does not require to be overhauled or replaced.</p> <p>Is there a valid method of comparing recreational and commercial values?</p> <p>If it is clear that an approach cannot be done properly why should the Government spend significant sums of money pursuing it?</p> <p>It will wind up being one of those vexing scientific subjects that is always a work in progress with on-going debate over the value of even the smallest components.</p> <p>A weak spot may be that the commercial fishing industry will exploit valuations as a weakness and litigate over it. There is high risk that a 'value' basis for 'allocation' becomes a subjective assessment and therefore not seen as fair and reasonable.</p> <p>Not all recreational values will be included, and some values may be difficult to measure. For example said the value of recreational fishing is a priceless component of what it is to be a New</p>	<p>would be very small even in this extremely highly valued recreational fishery.</p> <p>Case study appendix kingfish IPP</p>		<p>MFish use and how they are interpreted by MFish in management decisions.</p>
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	<p>Zealander? Some things are just not 'for sale'. A valuation approach assumes that all criteria can be valued.</p> <p>If you cannot get something exactly right then invariably it may always be wrong.</p> <p>Accommodating changes in participation rates will be difficult to address in a values based model.</p> <p>The output of any scientific assessment is only as good as the numbers put in. The more assumptions made, the more the likelihood of an error. Commercial fishers have fairly reliable information on commercial catch rates and value in \$ terms for their model inputs. On the other hand recreational fishers input will mainly be based on assumption and estimates and are therefore likely to be variable.</p> <p>Recreational fishers are being asked to risk the present public non-commercial right to fish in most fisheries where recreational fishers are already certain that their 'allow(ance)' is insufficient because of</p>			
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	<p>the poor methodology used to set the initial allocations. If recreational fishers do not now have a surplus, it makes no sense to risk the present public non-commercial right to fish and possibly be worse off.</p> <p>This is constrained to six (or some other number) of fish stocks. Every fishery reviewed under the value based method is one less fishery that recreational fishers can have reset following an independent assessment.</p>			
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Option C. Re-set initial allocations following a negotiation process

Under this option, representatives of the amateur and commercial sectors would negotiate agreements on allocations. Any agreements reached would need to be properly ratified. Negotiations could lead to agreements on the Total Allowable Catch, rebuilding periods, criteria or rules for future adjustments, and area management issues. [65]

Such an approach would allow all parties to put their concerns on the table and offer scope for a wide range of trade-offs that should lead to an increase in the overall value of shared fisheries. It might also set the stage for future direct negotiation on adjustments. [66]

It would be necessary to have a clear government position on the approach to be taken if negotiations failed. This would probably involve re-setting allocations based on valuations, as in Option B. [67]

Footnote introduction

All of these options contemplate a different – ‘allocation approach’ from the requirement on the Minister to ‘allow for’ non-commercial interests in setting the TACC by effectively allocating a share of the TAC to amateur fishers but without quota;

-Notwithstanding the sustainable use purpose (including providing for the social,

economic, and cultural wellbeing of New Zealanders), environmental and information principles, and the wide range of fisheries management tools in the FA, MFish:

- is expressing the view, in both Options A and B, that the FA (including judicial comment on the FA) does not contain enough detail how to manage New Zealand's fisheries according to the purpose and principles; and

- wants that re-assessed which will lead to fixed shares in the fisheries for commercial and amateur fishers respectively.

[65] Request MFish to describe a scenario where commercial and non-commercial sectors can negotiate allocations between them. For example, how would that work in the Kaipara Harbour where the commercial fishing industry has excessive allocation of flounder and mullet quota thereby putting sustainability and the marine environment at risk? Why would the commercial fishing industry or recreational fishers agree to a transfer of catching rights to the other?

This is unrealistic unless recreational fishers have a surplus of 'allocation' to bargain with. The likelihood is that there will be insufficient fish for recreational fishers meet their current demand if current allowances are turned into 'fixed allocations.'

[66] This option C requires careful consideration as it illustrates the substitution of an 'allocation approach' in place of the present requirement on the Minister under the FA to 'allow for' non-commercial interests - recreational and customary fishing in setting the TACC This substitution translates as privatisation and quota ownership for recreational fishers as the ultimate goal of MFish for fisheries management.

If that ever happened, the likelihood is that licensing - user pays – will be introduced. [which will is likely to be expensive.]

In the likely event that option C fails to secure agreement between commercial and recreational fishers, option B is suggested.

Does a failure to secure agreement under option C automatically deduct one fish stock from the limited number of fish stocks to be redressed as it moves to option B?

Present understanding is that if there is a failure to secure agreement under option C then allocations will be based on value. As mentioned earlier, initial assessments are that commercial fishers values may win over recreational fishers values in some fisheries.

Note that among the multitude of fish stocks that do not have allowances set there are eight paua stocks and three crayfish fish stocks. Others include five flounder stocks, four grey mullet stocks, seven blue cod stocks, five John Dory stocks, eight hapuku/bass stocks, two oyster stocks, four gurnard stocks, seven tarakihi stocks, and five trevally stocks that do not have initial allocations set now.

This list is not complete. Please add any additional fish stock and make any corrections.

Which six (or limited number of) stocks from the above list do recreational fishers favour most? If recreational fishers choose six of these particular stocks, then under the MFish proposal where recreational fishers already have allowances in place in any other fish stocks these will not be eligible for being, reset. This whole section is too limited in scope.

This is another example of putting forward an option which could have been implemented at any time since the early 1990's (when there were a number of negotiated processes with agreed outcomes between the amateur and commercial sector which failed to be implemented). There is no point in supporting this option unless MFish can demonstrate they can make it work- based on history; they can't!

Negotiated Allocations - Option C - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
<p>Initial allocations set by negotiation</p>	<p>When option C fails the Ministry's default position would be to go to option B – values. This is very high risk for setting initial allocations.</p> <p>There are no allowances set in many fish stocks. So recreational fisher's future access to these fisheries will be based on scientific computation instead of the Minister's decision.</p> <p>Recreational fisher's preference is for the Minister to decide rather than a valuation model which depends on the data provided. Recreational fishers' present expectation is so that the data will be of poor quality.</p> <p>Option A would provide a more credible backstop because a panel or person would make the decision.</p> <p>Needs to rely on Option A as a back-stop, not option</p>	<p>May have some use but only in stocks that can be artificially enhanced.</p> <p>Any suggestions of a wild fishery where directly negotiated allocations would work?</p>	<p>Yes Scallop 7 has a similar system</p>	<p>Poor</p> <p>May work in paua fisheries that are artificially enhanced, but only if initial allowances reflect current interest.</p>

	<p>B. Request MFish to provide a case study. For example, how would this work in Snapper 8 (SNA8), or Snapper 2 (SNA2)?</p> <p>High calibre expert recreational fisher's advocates would be required to put recreational fishers on an equal footing during the negotiation process. The commercial fishing industry is well endowed with both monetary and scientific resources.</p> <p>Adding negotiated allocations to a growing list of responsibilities being placed on recreational advocates is unrealistic unless the process is fully resourced for as long as it takes.</p> <p>This single issue would more than consume all of the funds the Government has suggested it would make available. It is unrealistic to expect experts to be available for less than \$80,000 per annum; add to that the expense in communicating with recreational fishers they will be representing. Legal advice and input will also be required in this process.</p> <p>MFish statement that "recreational representation without resources is an illusion" is right.</p>			
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	<p>Recreational fishers believe that without resourcing this process will have little credibility. It is unrealistic and unfair to expect volunteers, whose main credentials are that they can work for nothing, should be expected to undertake such an onerous burden.</p> <p>Is this designed to reduce recreational catch?</p> <p>Recreational fishers with so many voluntary jobs in a process so complex as to be never ending. Then no one will ever have time to go recreational fishing?</p> <p>There is a limit to what recreational fishers can do.</p> <p>Licensing recreational fishers will be required to participate effectively</p>			
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[67] Also a clear indication the government prefers option B - the 'values' based system.

The potential costs of these processes mean that they would need to be restricted to a limited number of stocks – perhaps half a dozen. Views are sought on the highest-priority stocks for such a process. Significant changes to allocations would be likely to require an adjustment period for moving from the present to new allocations, and this would need to be included in the decisions or agreements on allocations.

Whichever of the above three options is chosen, establishing baseline allocations between the sectors over all the shared fisheries will take time. However, the process could be set in train as soon as it was approved by the Government. [68]

[68] Fairly allocating between commercial fishers and recreational fishers may be constrained by MFish's concern of the possibility of claims of compensation by

commercial fishers for any reduction of quota where it is proposed that reduction be transferred to recreational fishers.

Section 5.1 baseline allocations may be subject to adjustment as provided in section 5.2. A concern for recreational fishers is baseline allocations not being set fairly in all fisheries.

An example of the type of rules MFish has in mind as part of a Fisheries Plan to fairly 'allocate' would have been helpful. At this stage, it is difficult to think of for a Fisheries Plan for wild fish stocks, but a Fisheries Plan for may work in artificially enhanced fisheries. There is no need to change the FA as negotiated allocations in enhanced fisheries is already underway in Scallop 7 (SCA7) an enhanced fishery.

5.2 Ongoing adjustments

Changes might sometimes have to be made to commercial and amateur allocations. [69] Clear rules for how adjustments were to be made under the new framework would increase certainty. This in turn would strengthen the incentives to conserve stocks and for sectors to cooperate in management.

Adjustments might be considered:

- When there were changes to the Total Allowable Catch.
- To account for changes in allowances for the customary sector.
- When significant changes were detected in the relative value between the commercial and amateur sectors. [70]

[69] Changes will have to be made to allow for changes in population or participation rates.

The courts have already ruled that the FA authorises the Minister to do this Snapper 1, Court of Appeal, CA82/97, per Tipping J, July 1997, page 18 – “

A further matter which points against any implication of proportionate reduction is that the Minister is in our judgment entitled to bear in mind changing population patterns and population growth. If over time a greater 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 carefully to weigh all the competing demands on the TAC before deciding how much should be allocated to each interest group. In summary, it is our conclusion that neither the specific sections (28D and 21) nor the Acts when viewed as a whole contain any implied duty requiring the Minister to fix or vary the recreational allowance at or to any particular proportion of the TACC or for that matter of the TAC. What the proportion should be, if that is the way the Minister looks at it from time to time, is a matter for the Minister's assessment bearing in mind all relevant considerations.”

For example, people from different cultural backgrounds may have different requirements for different fish species.

[70] Participation rates are one of the most important values that require consideration, both from a recreational and management perspective, and the FA obliges the Minister to do so in fisheries management decisions. This means full and proper use of the FA purpose of sustainable (reasonably foreseeable needs of future generations) use to provide for the social, economic and cultural well-being of New Zealanders.

Put plainly, ‘fish come first’ in fisheries management with healthy fisheries providing abundance for all.

Increases or shifts in population must be incorporated into ‘allocation’ decisions. For example, adjustments might be considered where such increases or shifts were evident.

Omission from the Shared Fisheries discussion paper of a consideration of such an important issues as the effects of increases or shifts in population is very noticeable. A possible reason for the omission might be that incorporating fluctuating factors such as population and participation rates is incompatible with the thrust of the Shared Fisheries discussion paper to allocate fixed shares to customary and recreational

fishers and impose a proportional system.

Moreover a reader of the Shared Fisheries discussion paper could be forgiven for reaching the view that recreational fishers are again being asked to pay for past management decisions which, in addition to extra commercial quota being allocated as a result of the Quota Appeals Authority process, have resulted in some fisheries being unsustainable.

Had the Government of the day, as directed by the FA, taken management decisions that took into account increases or shifts in population and/or increases in fishing participation, and held some quota in reserve to cover such contingency, or incorporated quota issued by the QAA into the TACC, so our fisheries would not be under stress for those reasons. Coastal fish stocks would have been rebuilt, and recreational fishers would have faith in the QMS as an effective way for managing our fisheries.

Management decisions allowing commercial fishers to deem fish in excess of TACCs has added to the stress on our fisheries.

Although the discussion paper points to the lack of information on customary and recreational fishers hampering good fisheries management, there is available evidence that demonstrates that excessive commercial fishing and an absence of constraint on sustainable quotas since the introduction of the QMS is the underlying cause of many of our fisheries being run down.

Increases or shifts in population and/or increases in fishing participation must be properly considered and taken into account in all fisheries management decisions under the FA now let alone any other proposal.

An approved Fisheries Plan might include rules for ongoing adjustment between the commercial and amateur sectors. Options are suggested below for ongoing adjustments where there is no such Fisheries Plan and no approved set of rules resulting from a process to re-set allocations as described in section 5.1: [71]

[71] Section 5.2 – again, increases or shifts in population and non-commercial fishing participation rates excluded.

Option A: Proportional adjustments

Under this approach, changes would be spread between the two sectors in proportion to their existing allocations. This is a simple scheme with predictable outcomes, giving increased certainty for both sectors. It would be relatively inexpensive to put in place.

A variation on this idea would be for the proportional adjustment to be subject to agreed rules on apportioning changes. For example, one sector might be willing not to fish a portion of its allocation so the resource could be built up. An offer along these lines might be covered by an agreed rule stating that a sector in this position would receive all, or most (rather than just a proportion), of the corresponding future gain.

Without agreed rules, proportionality could discourage attempts by any one sector to

conserve or build up the resource, but a proportional scheme may encourage parties to get together to establish such rules, or to work together to conserve resources.

Proportional adjustments would be unlikely to be acceptable where there were perceptions that the baseline allocations had not been set by a reasonable process. [72]

[72] Option A – Fisheries management by strict proportionality fails to recognise and differentiate between those fishers who conserve and those fishers who waste, hence a major concern for recreational fishers who by definition cannot compete with the bulk fishing methods of commercial fishers.

MFish favours proportional adjustments because this method of adjustments simplifies fisheries management arguably at the expense of customary and recreational fishers.

This discussion paper is not the first time MFish has worked to introduce proportional adjustments on to recreational fishers. In 2000, MFish's *Soundings* public discussion paper promoted proportional adjustments resulting in at least 100,000 people submitting against the proposals. Sixty thousand of those submissions were delivered on time, the rest lodged over subsequent months.

If introduced, proportional allocation will effectively make recreational fishers quota holders thereby inevitably leading to the licensing of recreational fishers.

Later on in the discussion paper the Government proposes seed funding a recreational organisation which will be withdrawn after a set period leaving recreational fishers to find other means of funding their participation in fisheries management as proposed in the discussion paper.

A user pays approach will inevitably lead to licensing, or some other compulsory revenue gathering process. MFish's main objective in *Soundings* was to cap the recreational catch and avoid compensation issues resulting from the Government having issued too much quota to commercial fishers for too few fish.

It is important to note that under this option A, the initial proportions of recreational fishers are likely to be significantly less than the current catch of recreational fishers. Significant bag limit reductions may be required for this option, and if further reductions are required, the possibility of bag limits set at one or two fish, or seasonal closures for some species is not inconceivable.

It can be confidently said that 'Proportional allocations' will both alter and devalue the present public non-commercial right to fish.

More information on the pitfalls of proportional allocation and adjustments for non-commercial fishers are contained in the "Proportional Allocation discussion document" – Document # 5 Proportional Share discussion paper - note in particular, the double jeopardy arguments.

A likely consequence of a Proportional allocation approach to fisheries management is division between commercial fishers on the one hand and customary and recreational fishers on the other. One reason is a lack of incentive to conserve as

required by the FA. Fishers who do not conserve are able to avoid responsibility for waste and over fishing when cuts are later made. The flip side is a lack of incentive for fishers who conserve because they cannot be rewarded the benefits of their conservation efforts.

Paragraph three of the discussion paper correctly states proportional allocations discourage conservation, but then argues that a proportional scheme may encourage commercial fishers and non- commercial fishers to get together to develop a non-proportional solution.

Although not provided for in the FA, a number of proportional management decisions, based on the MFish’s preferred proportional allocation policy have been made. For example, SNA8 and kahawai. As mentioned the effect seen by this ‘policy’ (not law) approach is division.

The first paragraph says that this option will produce predictable outcomes, give increased certainty, and be inexpensive to put in place. However, as mentioned above, a proportional adjustment approach favours the commercial fishing industry and puts at risk non-commercial fishers who conserve and are not rewarded for such conservation.

The second paragraph – refers to non-proportional rules and suggests this offers greater incentives to conserve.

A proportional adjustment approach is a simple mechanism designed to avoid the Government having to meet claims for compensation to commercial fishers and to cap recreational catch. The approach specifically prevents the Minister from addressing sustainability issues that can be attributed to one sector by distributing the cause of a run down fishery and the costs to both the commercial and recreational sectors. Document 5 is a comprehensive analysis of proportional allocation and is highly recommended reading for every recreational fisher.

The fourth paragraph states that proportional adjustments are not reasonable without setting baseline allocations by a reasonable process, but that this is possible in only six fish stocks.

It appears that MFish’s view is that proportional adjustments should be limited to six fish stocks, and the best way of making this option work is to then agree non-proportional rules. This leaves the reader pondering the worth of the option?

Proportional Adjustments – Option A - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Proportional adjustments	The inevitability of licensing under this approach. The real risk lies in the implementation. A number of benefits for	None. Suggestions please?	Yes, the Minister has wide discretion but note this proposal if implemented	Very Poor

	<p>the Government can be identified because decision making will not have to take into account all social and cultural considerations. Instead decisions will be linked to a \$ values based system which is only capable of accounting for a limited number of these values.</p> <p>A proportional adjustment approach will reduce the risk of the Government from compensation claims from commercial fishers.</p> <p>Compensating recreational fishers when adjustments are transferred to commercial fishers in a ‘values’ based system is not discussed. A likelihood is that MFish, in order to avoid compensation claims from commercial fishers will give in to commercial fishers requests of commercial “values” at the expense of recreational fishers without legal recourse.</p> <p>MFish acknowledge this approach will not work if baseline allocations are not reasonably set. Compare this with recreational fishers interests not been properly ‘allow(ed)’ under the FA..</p> <p>Removes incentives to</p>		<p>removes the Minister’s discretion and thereby the possibility of obtaining the right decision. If the FA is changed, this will become the default management approach in every shared fishery. While other options for adjusting the shares are proposed in the discussion paper, there are significant obstacles for recreational fishers to overcome before changes to the baseline shares can be achieved;</p> <ol style="list-style-type: none"> 1. Demonstrate a significant increase in value. 2. Use up one of the six fish stocks to qualify for an independent review assessment. <p>The risk is that these obstacles may mean that non-commercial fishers end up</p>	
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	conserve		with less fish either way.	
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Option B: Value-based adjustments

Government decisions to adjust allocations could be based on estimates of the marginal value of fish (that is to say, the value of the ‘next fish caught’) to each sector [73]. These estimates would take into account both commercial and non-commercial values. Adjustments to allocations would be made where assessments indicated that overall value would be increased.

A value-based approach might encourage stakeholders to consider and develop transaction-based (sale and purchase) allocation arrangements to ensure their values were accurately represented in allocations. Stakeholders would probably see sale and purchase arrangements as a truer test of value than allocations based on research estimates of value. [74]

[73] The cabinet paper describes how valuations may work. The value of the next fish caught is suggested as a viable technique.

Subject to expert economic comment, there are some obvious point to be made about using the value of the next fish caught to determine how allocations between commercial fishers and recreational fishers are made.

When a commercial fisher fishes the value of the first fish is a slight reduction in cost. As commercial fishers continue catching fish they reach a break-even point where the value of all the catch taken is equal to the cost of catching it. Every additional fish caught improves the profit makes. Every additional fish that is added increases the profit margin as a percentage of the enterprise incrementally. Therefore, the value the next fish caught to a commercial fisher will always be greater than the value of the fish caught previously.

An almost reverse situation is true for recreational fishers. The first fish caught may be the most valuable to some recreational fishers. For others they may have a catch in mind that they would consider sufficient to satisfy their interests. This may not be a bag limit, but could be a number of fish, and will probably depend more on the size of the fish.

Recreational fisher’s needs could differ on different days depending on why they are fishing. Every subsequent fish beyond that amount which would satisfy, represents a lesser value. However, the first extra fish is almost as valuable as the last. The value drops at a faster rate for every fish thereafter. The real difficulty with the value of the next fish caught is that the number of fish required to satisfy the interests of each individual fisher varies widely. Those who live by themselves will be satisfied with a far lesser catch than those who have a large and/or extended family, and the purpose for which the fishing is undertaken.

Using a standardised valuation technique is very likely to use averages. If this occurs, those with the greatest need for fish will be those most adversely affected by the outcome. This is particularly important for local coastal communities dependent on

the sea to supplement their diet, and those who cannot afford to buy fish at export driven retail prices.

Reallocation that fails to address increases and shifts in population and participation changes is likely to be highly unpalatable to those who are most dependent upon recreational fishing for food. A value based system will alienate the interests of those who can least afford it. They will be the first affected and hardest hit under a values based system.

There is no guarantee that recreational fishers would be fairly treated with a value based system. The converse may be true depending on how successful the commercial fishing industry is advocating commercial fishers' values

Value Based Adjustments – Option B - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Value based adjustments	<p>Fails to recognise full social and cultural values.</p> <p>May penalise non-commercial who can least afford it.</p> <p>Value based decisions can reallocate both ways. There is a high risk in many fisheries, particularly the higher valued commercial fisheries that these decisions will always go against recreational fishers interests.</p> <p>It is a big risk for recreational fishers to agree to the removal of a time honoured public right to fish and substituted with a value based approach perhaps offering a 'possibility' of fish dependent on the vagaries of market forces.</p>	<p>Some reallocation to recreational fishers in low valued commercial species if they are highly valued by recreational fishers.</p> <p>Kahawai is the only really obvious gain for recreational fishers foreseen at this stage.</p>	<p>Yes, the Minister has wide discretion. However, if implemented:</p> <ul style="list-style-type: none"> - this proposal would remove the Minister's discretion and thereby the possibility of obtaining the right decision. - this will become the second level of default management in every shared fishery. <p>While other options are proposed in the discussion</p>	<p>Highly Uncertain. Depends on which values are used</p>

			<p>paper for adjusting the 'allocations' there are significant obstacles for recreational fishers to overcome before changes to the baseline shares can be achieved;</p> <ol style="list-style-type: none"> 1. demonstrate a significant increase in value. 2. Use up one of the six fish stocks to qualify for an independent review assessment. <p>The risk is that these obstacles may mean that non-commercial fishers end up with less fish either way</p>	
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[74] Is MFish suggesting that amateur fishers be given quota tradeable with the fishing industry?

Option C: Combination model

Under a combination model, proportional adjustment (as in Option A) would be the default position. Valuation information, where available, would be used to shift allocations to where they created the greatest overall value. [75]

[75]

Combination Model – Option C - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available	Compared
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			under current Fisheries Act	to current right
Combination model	<p>As mentioned, independently value based or proportional adjustments carry many risks for New Zealanders Perhaps too many to consider a removal of their present non-commercial right to fish.</p> <p>Together, both options would alter and devalue the current right.</p> <p>Both options may better enable MFish to ward of claims for compensation by commercial fishers.</p>		Possibly	Highly uncertain

Direct negotiation between the amateur and commercial sectors over changes in allocation to shared fisheries is desirable and should be considered for the long term. To be successful negotiations would need to be governed by quite strict conditions. Decisions would have to be made by representative bodies, good information would be needed on the amateur catch, and the customary sector would have to be isolated from the effects of transactions. It is unlikely that these conditions will be met in the near future. [76]

[76] Is buying and selling quota between commercial and recreational fishers to resolve 'allocation' negotiations intended?

Query why option C is put forward if MFish considers that the conditions governing direct negotiations will not be met in the near future?