

“More fish in the water/Kia maha atu nga ika ki roto i te wai”

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Submission on behalf of non-commercial interests

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Submission in response to the review of management measures for CRA3 (Gisborne), CRA4 (Wellington/Hawke Bay) and CRA7 (Otago) and CRA 8 (Southland) rock lobster fisheries for 1 April 2010

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Overview

This submission is made by the following organisations and further referred to as the non-commercial interests:

⇒ option4	⇒ NZ Sport Fishing Council Zone 5 combined clubs (6,000 members)
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Non-commercial interests seriously object to the commercial focus of the latest management proposals for the rock lobster fisheries because crayfish are a vitally important food fishery for social and cultural reasons.

The non-commercial environmental and fishing interests in Crayfish 3 (Gisborne) and Crayfish 4 (Wellington/Hawke Bay) are not being 'allowed for', as required by the Fisheries Act 1996, because the stocks are being suppressed and maintained at such low abundance levels.

None of the proposed management options for CRA 3 and CRA 4 acknowledge the historic mismanagement of these rock lobster fisheries, nor do they take account of the contribution that non-commercial interests have made to any rebuild in these fisheries.

Until the Minister of Fisheries carries out the statutory functions required of him, to assess whether the proposed management options for CRA 3 and CRA 4 will comply with ss 8, 9, 10, 12, 13, 20 and 21 of the Fisheries Act 1996, we cannot give support to any of the proposed options.

Non-commercial interests urge the Minister, Phil Heatley, to take back management responsibility to restore rock lobster abundance and fulfil his statutory obligations as prescribed by the Fisheries Act.

The recent proposals are based on the National Rock Lobster Management Group's 2009 Annual Report (the Report) to the Minister of Fisheries. The National Rock Lobster Management Group (NRLMG) is a national-level, multi-stakeholder group that has been the primary source of advice to the Minister since its formation in 1992.

Clearly the NRLMG has had ample time to address the serious, ongoing sustainability concerns in the rock lobster fisheries, but in most areas these issues have not been resolved.

Non-commercial fishing success for crayfish is inextricably linked to abundance. Shore-based and small boat fishers are particularly affected by the limited abundance of legal sized crayfish. In most locations around New Zealand the daily bag limit of six per day is never reached on a fishing trip.

Non-commercial and commercial effort tends to be highest around coastal settlements. Non-commercial catch is almost non-existent in areas of intense commercial effort.

The Rock Lobster fisheries have suffered from a boom and bust cycle for too long and the latest proposals perpetuate that cycle, particularly for Crayfish 4 (Wellington/Hawke Bay).

Mismanagement has led to such low abundance levels in some fisheries that there is a risk to the stock due to uncertain settlement and recruitment. As a consequence people are now unable to provide for their social, economic and cultural well-being through fishing for crayfish.

Statutory Functions

The National Rock Lobster Management Group advice displays contempt for proper statutory process and fails to be disciplined by the Purpose and Principles of the Fisheries Act 1996, namely sections 8, 9, 10, 12, 13, 20 and 21.

- ⇒ Total allowable catches (TACs) are not achieved by tampering with total allowable commercial catch (TACC) limits.
- ⇒ Inadequate and unlawful consultation process
- ⇒ Failure to estimate and 'allow for' non-commercial interests, including catch
- ⇒ Fails the Wednesbury test for reasonableness, by failing to take into account matters it should
- ⇒ Accepting low Catch Per Unit of Effort (CPUE) indices that deny non-commercial interests an opportunity to satisfy their social and cultural well-being acts in a manner that directly thwarts the Purpose of the Fisheries Act (s8).

Non-commercial interests

Non-commercial social and cultural interests in the rock lobster fisheries are very high.

- ⇒ These broad interests must be described and understood before any allowance can be set aside to 'allow for' those interests
- ⇒ Without a reasonable allowance a total allowable commercial catch (TACC) cannot be set.
- ⇒ The National Rock Lobster Management Group advice avoids such an enquiry; instead choosing to ask for submissions while continuing to promote unacceptable total allowable commercial catch (TACC) limits.
- ⇒ The non-commercial interests in CRA 3 and CRA 4 cannot be 'allowed for' by continuing to suppress the stocks at such low abundance levels.

Management procedures

Management procedures are a poorly disguised pitch for increased commercial catches from depleted crayfish stocks.

- ⇒ These procedures were previously tagged as decision rules. The National Rock Lobster Management Group is now attempting to find acceptance in management circles by instituting a name change.
- ⇒ Management procedures hold out hope of quality decisions being made without igniting conflicts.
- ⇒ Management procedures rely on the same raft of assumptions that fail to deliver robust outcomes and cause conflict in other stock assessment forums.
- ⇒ Catch Per Unit of Effort indices for all stocks show unacceptable inconsistency.

Management advice

The National Rock Lobster Management Group advice follows from adopting management procedures in place of previous stock assessment methods.

- ⇒ The advice relies on Catch Per Unit of Effort (CPUE) indices to estimate vulnerable stock size.
- ⇒ Minimum abundance is drawn from the past, using a rationale that if previous low abundance has not resulted in extinction then it can safely be adopted as an acceptable minimum.
- ⇒ Proposed, target abundance levels for crayfish are derived solely from commercial pot CPUE.

Shelving

Shelving, on an informal basis, is an illegal response to low stock sizes and incorrectly set total allowable commercial catch (TACC) limits.

Statutory process

Purpose and Principles of Fisheries Act – Section 8

1. Enabling people to provide for their economic, social, and cultural well-being by providing for utilisation while ensuring sustainability forms the essence of the Purpose of the Fisheries Act 1996, section 8. Statutory functions should not prevent, or act in conflict, with this Purpose.
2. The advice from the Report is not set out with the express purpose of achieving the aims of the Act (and this is not vital), but promulgates advice that by ignoring s8, perhaps inadvertently, acts directly in conflict with the Purpose and denies people the opportunity to provide for their well-beings by advising the Minister to maintain rock lobster stocks at extremely low levels.
3. Section 8 serves to ensure a balance is struck between the economic, social, and cultural needs of all New Zealanders. To strike this balance requires a Minister to consider each in turn, and have the results of an enquiry into what constitutes the well-beings.
4. The advice regarding CRA 3 and CRA 4 are driven by decision rules and are not tested against s8. The setting of Bmin and Bref must be set with the Purpose in mind, not just chosen to suit any particular group. The values chosen by the National Rock Lobster Management Group ignores what stock characteristics best provides for the economic, social, and cultural well-being of all New Zealanders.
5. All matters relevant to a decision must be taken into account – failure to do so fails the reasonableness test.

Non-commercial interests submit that:

- ⇒ The rock lobster fisheries are being mismanaged. The Minister must apply the Principles and Purpose of the Fisheries Act 1996 to provide sufficient crayfish abundance to enable people to provide for their social, economic and cultural well-being through fishing; and
- ⇒ Based on the Purpose and Principles of the Fisheries Act the proposition of a 199.5 tonne increase in the total allowable commercial catch (TACC) for Crayfish 4 is illogical, highly objectionable in social and cultural terms, and is certainly illegal.

Best available information – Section 10

6. Despite their assertions, it is clear that the National Rock Lobster Management Group (NRLMG) is not providing the “best available information” as required by section 10 of the Fisheries Act 1996.
7. *Best available information* is that which can be obtained within a reasonable time at a reasonable cost.
8. Two critical pieces of information required by the Minister to enable him to make a lawful decision are absent, those are:
 - ⇒ Stock size, or reference points that best enables people to provide for the social, economic and cultural well-being. Most specifically, the number and size distribution of the stock that best achieves the balance required by section 8 of the Fisheries Act; and
 - ⇒ A description of the non-commercial interests in the rock lobster fishery, including a recreational harvest estimate.
9. This *best information* will contain relevant descriptions of both commercial and non-commercial catch and aspirations. The NRLMG advice brushes aside the interests of non-commercial fishers, the public, and seems to be focused solely on advancing commercial interests.

10. This advice is based on selective data, drawn from privately managed databases, which seeks to maximise commercial catches. One facet of this is the acceptance that a historical stock collapse, which failed to drive the stock to extinction, is now taken as an accepted minimum. This has no correlation with the Purpose and Principles of the Fisheries Act, which direct the Minister to provide for utilisation while ensuring sustainability so that sufficient abundance is available to enable all New Zealanders to provide for their social, economic and cultural well-being.

Non-commercial interests submit that:

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| <ul style="list-style-type: none">⇒ The National Rock Lobster Management Group cannot masquerade as multi-stakeholder body and then exist only for the benefit of crayfish quota owners; and⇒ The National Rock Lobster Management Group Report recommendations, particularly for Crayfish 4, if confirmed by the Minister, are <i>ultra vires</i> (beyond one's legal power or authority). |
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Total allowable catch (TAC) – section 13

11. Total allowable catch (TAC) limits are set by the Minister in accordance with the Fisheries Act 1996, section 13 (or s14), to ensure sustainability of the fisheries resource while providing for utilisation.
12. This process requires the adoption of proxies for stock condition, and uses Bmin to represent the lowest acceptable stock size, and Bref to represent a size around which the stock is expected to fluctuate.
13. There is little information available to guide to selection of these reference points. However, these can be disciplined by the application of ss8 and 10 of the Fisheries Act - use the best information and ensure that the chosen reference points do not act against the Act's Purpose.
14. The goal is to set a TAC that enables people to provide for their well-beings by providing for utilisation while ensuring sustainability. A report whose recommendations are solely derived from a contrived numeric formula greatly risks misdirecting the Minister.
15. The Supreme Court has opined that when setting a TAC the Minister should be guided by the needs of all users and strike a reasonable balance between them.
16. Limiting the current considerations to commercial pot Catch Per Unit of Effort (CPUE) ignores the statutory responsibility the Minister has to non-commercial environmental and fishing interests.
17. Commercial CPUE may be a guide to economic aspirations for industry, but serves no useful purpose in the context of non-commercial interests. As such, the advice in the National Rock Lobster Management Group Report exposes the Minister to charges of ignoring non-commercial interests and failing the statutory duty under s13.
18. As noted in the MFish letter dated 17 December 2009, "the NRLMG proposes **achieving** the new proposed TACs for CRA 3, 4 and 7 by varying the commercial catch allowances (i.e. the TACCs) only".
19. Total allowable catches (TACs) are not "*achieved*" by varying the total allowable commercial catch (TACC).
20. TACs are **set** by the Minister, to ensure sustainability of the fisheries resource while providing for utilisation. Such discipline is needed to provide for the foreseeable needs of future generations of New Zealanders and to avoid environmental impacts.
21. The Minister must set the TAC *before* setting a TACC.

22. By promoting high-risk strategies based on catching to the absolute limits of availability the NRLMG advice seems to ignore the statutory requirements of the Act. In our view these catch limits are being touted with no regard taken for the ecosystems upon which the stock depends.

Non-commercial interests submit that:

- ⇒ Changes in the total allowable catch (TAC) ought to reflect abundance;
- ⇒ The Minister must ensure there is sufficient abundance in the water for current and future use;
- ⇒ The Minister must 'allow for' all New Zealander's broad non-commercial environmental and fishing interests in having both a healthy marine environment and abundant crayfish stocks to enable people to provide for their social, economic and cultural well-being through fishing;
- ⇒ The Minister must ensure the crayfish stocks are not driven down to such a low level that only small, recently recruited animals are available;
- ⇒ Neither the Minister nor the National Rock Lobster Management Group can confidently assert that sustainability is being ensured as prescribed by the Fisheries Act; and
- ⇒ In social and cultural terms, a total allowable catch (TAC) needs to be set for depleted crayfish stocks that provides for "more fish in the water/kia maha atu nga ika ki roto i te wai".

Allowances for other mortality and non-commercial interests – section 21

23. Section 21 of the Fisheries Act 1996 requires the Minister to 'allow for' other mortality, which includes illegal fishing and non-reported catch, and non-commercial fishing interests.
24. The statutory duty is a relatively simple exercise, such as -
- ⇒ Estimate non-commercial interests; and
 - ⇒ Estimate other fishing-related mortality

These estimates are added together and then subtracted from the total allowable catch (TAC).

The remainder is the total allowable commercial catch (TACC).

25. A Minister *must* make these estimates, and they *must* be reasonable, for a TACC to be lawfully set.
26. Information can typically be scarce and contentious, but again, the Minister is disciplined by s10; he must use the best available information, including that which can be gathered in a reasonable time at reasonable cost.
27. Non-commercial fishing interests include environmental aspects as well as Maori customary and recreational/amateur fishing. These interests are broader than just what people might catch in a day. Even taking the narrowest possible definition, non-commercial allowances must be what is expected to be caught; it can never be less than this estimate.
28. Evidence of the broad nature of these interests is in the 2009 decision to voluntarily reduce the recreational daily bag limit from six to four in CRA 4, in response to serious concerns about the poor state of the fishery and to assist in its rebuild. This volunteer action was initiated by the NZ Sport Fishing Council (formerly New Zealand Big Game Fishing Council) Zone 5 members and implemented by the North Island Southeast Regional Recreational Fisheries Forum.

29. If rock lobster abundance has changed so much that the proposed total allowable catch (TAC) limits can be sustained, then non-commercial catch must be also changing in response to increasing availability. This is self-evident.
30. The National Rock Lobster Management Group advice appears to ignore this abundance-availability relationship and treats the allowances as something to be handed out by the Minister, at will.

Non-commercial interests submit that:

- ⇒ It is not sufficient for crayfish managers to simply ask for submissions on the matter of setting new total allowable catch (TAC) and total allowable commercial catch (TACC) limits without proper application of the statutory obligations. This flawed approach fails the Wednesbury reasonableness test, as it does not take account of matters it should; and
- ⇒ The National Rock Lobster Management Group, the Minister and Ministry of Fisheries must acknowledge that non-commercial catch estimates are a necessary requirement to ensure compliance with the TACC-setting process as prescribed by s21 of the Fisheries Act.

Total allowable commercial catch (TACC) – section 21

31. Section 21 of the Fisheries Act 1996 directs the Minister to ‘allow for’ other mortality and non-commercial fishing interests as a means of setting the total allowable commercial catch (TACC).
32. For a TACC to be lawful the Minister must mount an enquiry and be satisfied that all mortality has been fully ‘allowed for’, before deciding on the TACC.
33. Non-commercial interests include the utilisation aspects of conserving, enhancing, and developing fisheries to enable people to provide for their social, economic and cultural well-being, as per s8 of the Fisheries Act.
34. The allowances must, at the very minimum, be the best estimate of mortality associated with non-commercial catch. These estimates must be reasonable for a TACC to be lawfully set.
35. The total allowable commercial catch (TACC) is what is left over after the Minister has set the total allowable catch (TAC) and then subtracted the combined estimate for non-commercial interests and other mortality.
36. Non-commercial allowances made under s21 are **not** an allocation of the total allowable catch (TAC) to be set aside for public use. Allowances are made and altered in response to estimated fishing mortality, having regard to the plethora of fishing regulations including minimum sizes, bag limits, closed areas, gear restrictions and the relationship between non-commercial catch and available biomass.
37. It is not open to the Minister to make a nominal allowance and then ignore the actual mortality while responding to commercial lobbying for greater total allowable commercial catch (TACC) limits.

Non-commercial interests submit that:

- ⇒ To comply with the legislation the Minister of Fisheries must analyse, estimate and ‘allow for’ non-commercial fishing interests in the crayfish stocks before setting the total allowable commercial catch (TACC);
- ⇒ The National Rock Lobster Management Group advice proposes almost doubling the TACC in Crayfish 4 without altering the non-commercial allowances or analysing what those interests might be;

- ⇒ The total allowable commercial catch (TACC) limits are not free to be chosen by commercial quota shareholders, or behind the veil of a multi-stakeholder group such as the National Rock Lobster Management Group; and
- ⇒ Total allowable commercial catch (TACC) limits are set by the Minister of Fisheries using the process prescribed in the Fisheries Act 1996 and after other mortality and non-commercial fishing interests have been 'allowed for'.

Consultation – section 12

38. Section 12 of the Fisheries Act 1996 requires the Minister, before doing anything related to specific sustainability measures, to both consult with interested, representative parties and provide for the *input and participation* of tangata whenua having a non-commercial interest in the stock or the environmental impacts of his proposed decision, while having **particular** regard to kaitiakitanga [guardianship of the resource].
39. While many other sections of the Fisheries Act 1996 are set out in the National Rock Lobster Management Group advice papers there is no mention of the section 12 obligations.
40. The absence of any reference to s12 would suggest that it does not exist, yet it clearly does.
41. It also seems as if the National Rock Lobster Management Group advisors and MFish have made an arbitrary decision to follow the Fisheries 2030 process with no intention of acknowledging or fulfilling the Ministerial responsibilities contained in section 12.
42. As confirmed by the Court of Appeal in the Wellington Airport case in 1992¹, consultation requires a level of openness, adequate information and allowance of sufficient time for responses.

Non-commercial interests submit that:

- ⇒ Releasing a complex consultation document a week prior to the annual Christmas holiday break and expecting a response by 5th February to be unrealistic. The seven-week window minus the four-week holiday period only allows three working weeks for interested parties to respond;
- ⇒ While the truncated consultation format may have been signalled in the Fisheries 2030 project outcome it does not in any way legitimise this consultation process for crayfish stocks, nor does it excuse the Minister from his statutory obligations; and
- ⇒ There are statutory obligations associated with s12 that must be fulfilled in order to satisfy the Fisheries Act 1996 and ensure sustainability decisions are lawful.

¹ Wellington International Airport Limited and others v Air New Zealand [1993] 1 NZLR 671, at p. 675. Judgment of the Court of Appeal delivered by McKay J quoting McGechan J in the High Court in Air New Zealand and others v Wellington International Airport Limited and others, HC, Wellington, CP 403-91, Jan 6, 1992.

Management Procedures

Decision rules aka management procedures

43. The National Rock Lobster Management Group promotes decision rules and has chosen a new term “management procedures” to represent these rules, possibly in the hope that this new language will be acceptable to both the Minister and the public.
44. Decision rules have the very attractive promise of less conflict when the total allowable catch (TAC) limits need adjusting. They are also offered with a promise of sound decision-making; greater certainty that catches will be controlled to provide the maximum benefits from the stock.
45. Non-commercial interests support the NZ Sport Fishing Council’s concerns about the application of the decision rule for 2010-11 in CRA 4.
46. The decision rules for rock lobster are driven by changes in standardised Catch Per Unit of Effort (CPUE). However, trends are not independent of past changes in the total allowable catch (TAC) and total allowable commercial catch (TACC).

Catch Per Unit of Effort (CPUE)

47. The size of a CPUE increase is not necessarily proportional to the increase in abundance, especially if the total allowable commercial catch (TACC) has been reduced markedly for that year, as was the case in CRA 4.
48. The National Rock Lobster Management Group state in the IPP that “*Standardised CPUE is considered to be a reliable indicator of relative stock size in CRA 4 and is the abundance indicator used in the CRA 4 Management Procedure.*” (IPP para 169).
49. In contrast, the NRLMG note in their advice on the choice of CRA 3 decision rule that, “*In reality, future CPUE will not be independent of the TAC. For example, setting a lower TAC would result in a higher CPUE the following year than would setting a higher TAC.*” (IPP para 73).
50. Lower total allowable commercial catch (TACC) limits generally mean reduced fishing effort, which is likely to be concentrated in areas and times that are most productive.

Assumptions about stock abundance

51. The CRA 4 standardised CPUE increased 50 percent in the last year, however, this does not necessarily translate into a 50 percent increase in abundance.
52. The National Rock Lobster Management Group base their advice on the assumption that the CRA 4 stock size has increased 50 percent in one year even though this appears implausibly high for a relatively slow growing species. The Minister needs to be wary of accepting such advice at face value.
53. If CPUE indices are reflective of stock abundance that provides for people’s social, economic and cultural well-being then it would be reasonable to expect all stocks to be managed at a level that achieves a similar CPUE.

54. As the table below demonstrates, there is a gulf of difference between the Catch Per Unit of Effort in the various fish stocks.

Table 1: Comparison of Catch Per Unit of Effort (CPUE) in the New Zealand rock lobster fish stocks.

Stock	CPUE	Stock	CPUE
CRA1	1.9	CRA6	1.6
CRA2	0.5	CRA7	2.2
CRA3	0.7	CRA8	4.0
CRA4	0.7	CRA9	1.3
CRA5	1.5		

55. A review of these CPUE figures, if being used as a measure of stock abundance, would give some comfort to the recent total allowable commercial catch increase in CRA8 (Southland).
56. Comparison of the CPUE for other stocks raises serious questions about current catches in CRA 3 (Gisborne) and CRA 4 (Wellington/Hawke Bay), and certainly CRA 2 (Auckland/Bay of Plenty). The fact that these numbers are used to rationalise commercial catch increases in obviously stressed fisheries only casts the proposed management procedures in a very dark light.
57. Non-commercial interests submit that in reality the CRA 4 biomass has not increased by 50 percent in one year and therefore the proposed increase in TAC would mean an over allocation of catch in a fishery that is only just starting to recover.
58. The only alternative offered to the Minister for CRA 4 is option 1, the status quo and to review the decision rule in 2010.

Non-commercial interests submit that:
⇒ Any Minister would be foolish to believe “management procedures” are well-crafted and considered science when they are more akin to experimental guesswork;
⇒ A more precautionary management approach is required to ensure sustainability of the rock lobster fisheries, which have such high social, economic and cultural value;
⇒ The Minister must be aware of the ease to which Catch Per Unit of Effort (CPUE) data can be manipulated, especially if this data is going to be used as the basis for higher total allowable commercial catch (TACC) limits;
⇒ We have serious concerns about the use of management procedures and CPUE indices to promote a doubling of the TACC in Crayfish 4, because that would mean there are an extra 250,000 animals in this fishery (at 0.8kg per fish);
⇒ There is little evidence that abundance in CRA 4 has increased so much in the past year that an extra 250,000 animals exist in this fishery and that this level of extraction is sustainable. It seems more like the relationship that occurs when observers are aboard vessels that increase their bycatch of seabirds and mammals; and
⇒ On the evidence provided it appears these management procedures are nothing more than a mechanism to rationalise maximum commercial catch regardless of the public’s rights and expectations as prescribed by the Principles and Purpose of the Fisheries Act 1996.

Shelving of annual catch entitlement (ACE)

59. In our view shelving of annual catch entitlement (ACE) is an illegitimate activity not provided for in the Fisheries Act 1996. That is because shelving is not a response to overfishing that is available to the Minister when faced with the unpleasant task of reducing the total allowable commercial catch (TACC). The TACC alone represents the commercial catch limit.
60. Shelving undermines the integrity of the quota management system (QMS). The very heart of the QMS is setting the total allowable catch (TAC) – limiting catch to maintain stocks within a given range. The TAC is then made available for commercial catch in the form of a total allowable commercial catch (TACC), after the allowances for other mortality and non-commercial interests have been assessed and made.
61. If there are sustainability concerns about a particularly fishery the Minister has various options, the main tool is to use section 13 to set the total allowable catch (TAC) at a reduced level.
62. If the total allowable commercial catch (TACC) has been set too high and low abundance is driving a need for catch reductions then two issues are apparent:
 - ⇒ The quota owners who sold the higher-than-sustainable catch get to keep the money earned from that sale, even though the excess catch removed the opportunity for the public to access their interest in the fishery. There is no mention of compensation for this loss – the over-catcher is rewarded by keeping the money; and
 - ⇒ The over allocated total allowable commercial catch (TACC) has to be reduced by the Minister using s21 of the Fisheries Act.
63. Allowing shelving to occur perpetuates the promise to quota owners that in the future they will be given the opportunity again to repeat the previous unsustainable behaviour and keep the rewards.
64. Because shelving is voluntary it moves the catch-limiting process from a statutory duty under the Fisheries Act 1996, where comprehensive principles apply, to an unspecified, largely unprincipled voluntary process.
65. The total allowable commercial catch (TACC) has to be what it is - a catch limit - for quota to retain its lawful characteristics.
66. However, we acknowledge that CRA 4 commercial fishermen have recently used shelving as a mechanism to voluntarily reduce their rock lobster catch due to concerns about the sustainability of the fishery. Commercial fishermen in CRA 4 shelved around 58 percent of their annual catch entitlement (ACE) in two votes, over two years.
67. In response to sustainability concerns recreational fishers also volunteered a reduction in their daily bag limit, from six to four.
68. If both commercial and recreational interests are prepared to voluntarily reduce catches in response to declining abundance then surely the Ministry of Fisheries needs no further convincing that catch levels need to fall due to the increasing sustainability risk. At that point the statutory duty is clear – the Minister must reduce the total allowable catch (TAC).

Non-commercial interest submit that:

- ⇒ Shelving permits catching rights to exist for fish that do not exist;
- ⇒ The Fisheries Act 1996 has the tools and mechanisms available to deal with sustainability risks. Often it is the inaction of managers or the inappropriate application of those tools and mechanisms that, in the CRA 4 scenario, has failed to deliver positive outcomes for stakeholders;
- ⇒ Fisheries managers need to respond promptly to address sustainability concerns from local fishers, both commercial and non-commercial;
- ⇒ Shelving is a management strategy vulnerable to manipulation and it should only be used as a short-term, formal measure to address sustainability issues;
- ⇒ Any short-term shelving arrangements would need to have the formal agreement of all quota owners and be capable of being enforced, typically by civil contract with penalty clauses; and
- ⇒ Informal shelving arrangements over the long-term are unacceptable. That is because a word-of-mouth shelving agreement cannot be enforced, it is not a formal mechanism to reduce catch and is not a lawful process available to the Minister to address overfishing.

Crayfish 3 (CRA 3) – Gisborne

69. Earlier concerns, expressed in 2008², that new section 13(2)(A) of the Fisheries Act 1996 would be used to justify maximum total allowable catch (TAC) and total allowable commercial catch (TACC) limits have been realised.
70. This latest advice from the National Rock Lobster Management Group proposes that s13(2)(A) is applied in the CRA 3 fish stock in the absence of an estimate of the biomass required to produce maximum sustainable yield (BMSY).
71. There are historic and ongoing issues about abundance in the CRA 3 fishery, particularly around Gisborne city and more-so since a marine reserve has displaced commercial fishing effort closer to town.
72. Of major concern to non-commercial fishers is:
 - ⇒ The MFish concession which enables commercial fishers to take crayfish below the minimum legal size;
 - ⇒ The taking of “spider-sized” crayfish using a customary permit; and
 - ⇒ The inability of non-commercial fishers to access sufficient numbers of legal size crayfish.
73. In 2009 the Minister of Fisheries reduced the total allowable catch (TAC) and total allowable commercial catch (TACC) in CRA 3 in response to concerns about the sustainability of the fishery.
74. The Minister also requested the National Rock Lobster Management Group to provide him with a management procedure that would help guide total allowable catch (TAC) setting from April 2010.

² Fisheries Act 1996 Amendment Act 2008 http://www.option4.co.nz/Fisheries_Mgmt/section13.htm

75. The NRLMG Working Group could not agree on one management option so they have proposed two separate options, Rule 5 or Rule 2a.
76. A rebuild is estimated to occur by 2015 using Rule 5 and 2016 using Rule 2a.
77. The majority of non-commercial people involved in these early discussions favoured Rule 5, which requires a 20 tonne reduction in the total allowable commercial catch (TACC).
78. Rebuilding the stock by 2016 using Rule 2a is the preferred option of the National Rock Lobster Management Group, industry representatives and one customary representative.
79. Neither of the options include a proposal to change the allowances for other mortality and non-commercial fishing interests.

<p>Non-commercial interests submit that:</p>
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| <ul style="list-style-type: none"> ⇒ Crayfish are a vitally important food fishery for social and cultural reasons; ⇒ Foremost priority ought to be the annulment of the concession by the Ministry of Fisheries to enable commercial fishers to harvest crayfish below the minimum legal size. That concession was originally a three-year temporary measure, which MFish have failed to revoke. Sustainability of the rock lobster fishery must come first; ⇒ The historic and ongoing issues relating to low abundance levels that prevents people from providing for their social, economic and cultural well-being must be addressed before any management procedures are implemented; ⇒ Managing harvest levels within CRA 3 has proved problematic. Subdivision of the large Quota Management Area would assist those with aspirations to manage their local fisheries, but this will only work if the harvest levels for each sub-area is reflective of local abundance; ⇒ Until the Minister of Fisheries carries out the statutory functions required of him, to assess whether the proposed management options for CRA 3 will comply with ss 8, 9, 10, 12, 13, 20 and 21 of the Fisheries Act 1996, we cannot give support to either of the proposed options; ⇒ The implementation of any management procedures does not abrogate the Minister from his statutory duty to manage fisheries sustainability to enable people to provide for their social, economic and cultural well-being, as per the Purpose of the Fisheries Act 1996; and ⇒ The Minister cannot take comfort from a contrived formula intended to perpetuate the depleted state of the CRA 3 stock, regardless of who promotes it. |
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Crayfish 4 (CRA 4) – Wellington/Hawke Bay

80. There have been historic and ongoing issues regarding the sustainability of the Crayfish 4 (CRA 4) stock.
81. It is absurd to now suggest that CRA 4 abundance is increasing and therefore the total allowable catch (TAC) should be increased and the total allowable commercial catch (TACC) almost doubled while leaving the allowances at their current levels (option 1), or current catch levels should be maintained (option 2).
82. Neither of these options acknowledges the contribution, in the form of a voluntary daily bag limit reduction imposed in 2009, that amateur fishers have made to any rebuild.
83. Predictably, the National Rock Lobster Management Group and industry favour option 1.

84. As with all total allowable commercial catch (TACC) limits, the TACC for CRA 4 has to be examined in light of the non-commercial interests in that fishery, not a selective index of Catch Per Unit of Effort (CPUE).
85. It is interesting to note that the timing of a Catch Per Unit of Effort (CPUE) sample season has been altered. The reasons for this change are not obvious. However, if the total allowable catch (TAC) depends on the sample season then it would be reasonable to expect a time series of adjusted CPUE data. None of the data has been supplied.
86. The National Rock Lobster Management Group advice notes that quota holders ‘shelved’ their annual catch entitlement (ACE) for two years prior to the Minister reducing the total allowable catch (TAC) and total allowable commercial catch (TACC) in 2009.
87. Paragraph 175 of the proposal states,
“The proposed TACC increase from 266 tonnes to 465.5 tonnes does not exceed the level in place before the 2009-10 TACC reduction; therefore it is reasonable for the commercial sector to receive the full benefit of this TACC increase up to the point of the historical catch level (the previous TACC was 577 tonnes).”
88. Adjusting the CRA 4 total allowable commercial catch (TACC) by such a huge margin, while maintaining constant non-commercial allowances would be a breach of statutory duty under section 21 of the Fisheries Act 1996.
89. This proposal is highly objectionable in many ways, including:
- ⇒ The CRA 4 fish stock, and all other fisheries, are a public resource that needs to be maintained for future generations;
 - ⇒ Non-commercial fishing and the public’s interests in CRA 4 have not been met for many years;
 - ⇒ The proposal assumes the total allowable commercial catch (TACC) has precedence over non-commercial allowances, which can be conveniently ignored. This is not true. The TACC is set after the allowances for mortality and non-commercial fishing interests have been ‘allowed for’;
 - ⇒ It further perpetuates the notion that the total allowable commercial catch (TACC) is a proportion of the total allowable catch (TAC);
 - ⇒ This proposal is based on the assumption that the public has no further interest in any increased total allowable catch (TAC) and total allowable commercial catch (TACC). This is patently wrong, as there are increasing calls for “more fish in the water” not less; and
 - ⇒ Any increase in the CRA 4 rock lobster total allowable commercial catch (TACC) will mean the fishery will be at further risk of depletion. This outcome would be detrimental to both the marine environment and the public’s interests in having abundant crayfish stocks.

Non-commercial interests submit that:

- ⇒ Until the Minister of Fisheries carries out the statutory functions required of him, to assess whether the proposed management options will comply with ss 8, 9, 10, 12, 13, 20 and 21 of the Fisheries Act 1996, we cannot give support to either of the proposed management options for CRA 4;
- ⇒ The Minister ought to make further enquiries as to the nature and extent of the non-commercial fishing interests in the Crayfish 4 stock so that those broad interests are ‘allowed for’, the s21 obligations are met, and to avoid making flawed total allowable commercial catch (TACC) decisions;

- ⇒ The huge variations in Catch Per Unit of Effort (CPUE) between stocks and the excessive total allowable catch (TAC) changes thrown up by applying these self-designed decision rules reveal this notion of management procedures to be a nonsense;
- ⇒ The Minister is strongly advised to ask for decision rules that are not so obviously flawed;
- ⇒ Managing harvest levels within CRA 4 has proved problematic. Subdivision of the large Quota Management Area would assist those with aspirations to manage their local fisheries, but this will only work if the harvest levels for each sub-area is reflective of local abundance;
- ⇒ The use of s13(2)(A) of the Fisheries Act to justify setting the maximum limits for both the total allowable catch (TAC) and total allowable commercial catch (TACC) is highly objectionable. This can only be described as an extreme example of a “pin the tail on the donkey” activity purporting to be science;
- ⇒ It is outrageous that maximum total allowable commercial catch (TACC) limits have been, and will continue to be, used to suppress the public’s interest and those of non-commercial fishers in the CRA 4 fishery; and
- ⇒ The management proposals for CRA 4 are highly contentious and pose an unacceptable risk to the marine environment and to the abundance level required to provide for people’s social, economic and cultural well-being.

Future developments

Non-commercial interests appreciate the opportunity to make a submission on the crayfish proposals. We wish to be kept informed of future developments.

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Zone 5 clubs:

Akito Boating Club	Pukemanu Boating and Fishing Club
Gisborne-Tatapouri Sports Fishing Club	Tangimoana Boating Club
Hawke Bay Sports Fishing Club	Twin Harbours Fishing Club
Mahia Boating and Fishing Club	Wairarapa Sports Fishing Club
Ngawi Sports Fishing Club	Wanganui-Manawatu Sea Fishing Club
Porangahau Fishing Club	