The People's Submission

on

The Ministry of Fisheries Shared Fisheries proposals for managing New Zealand's shared fisheries: a public discussion paper, November 2006

for

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

for

The benefit of all

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Introduction

The People's Submission sets out to demonstrate that:

a. The Fisheries Act 1996 already contains the fisheries management tools and mechanisms to rebuild and manage our inshore fisheries;

b. Proportional allocation is not the solution for rebuilding our fisheries;

c. Claims from recreational fishers for less pressure on our fisheries will ease if the proposals in this submission are implemented and fish stocks increase to provide abundance;

d. Cooperative strategies that bring together recreational, traditional, commercial, government and other interests will provide maximum benefit from fisheries.

The People's Submission is made up of 3 parts:

Part 1 - "Setting the Scene" – This backgrounds our submission and we expect will be of particular interest to the Minister of Fisheries, the Ministry and their consultants.

Part 2 – Summary statements and introduction to supporting papers.

Part 3 – The People's Submission Background Papers that respond to the proposals contained within the Shared Fisheries public discussion document. Additional papers are submitted to include discussion on related management topics.

Part 1 - The People's Submission

For "more fish in the water - Kia maha atu nga ika i roto te wai"

Ministry of Fisheries 'Shared Fisheries' proposals unnecessary and risky

What's at stake?

Many people can remember the days when fish in our harbours, estuaries and coastal waters were plentiful. You could cast a line from the beach, wharf or headland and get a bite, even a fish or two.

For the second time in six years the Ministry of Fisheries (MFish) are proposing changes that will see non-commercial fishers, both recreational and customary, give away current rights in favour of a management system that has not delivered the sustainable utilisation promise of the Quota Management System (QMS).

By redefining and confining the non-commercial fishing rights of New Zealanders MFish is forcing a compromise between commercial fishers and export returns on the one hand, and non-commercial social, economic and cultural values that require more fish left in the water so that their interests and rights can be properly provided or allowed for.

In the meantime, the health of our fisheries is at risk.

This submission highlights and emphasises that the wide range of fisheries management tools and mechanisms contained in the Fisheries Act 1996 (the Act) and regulations have yet to be fully applied to achieve the rebuild, protection and enhancement of our fisheries envisioned under the sustainable utilisation purpose of the Act.

We do not consider the need for the fundamental changes proposed in MFish's discussion paper, which include a significant alteration of the recreational right to fish of all New Zealanders.

Since the QMS

The QMS was introduced as a conservation measure in 1986. In the 21 years since then little appreciable improvement has been shown in most of our coastal fisheries, as intended by the QMS.

The dominance of commercial management objectives has continued and the health of our fisheries has been compromised by:

- too much quota issued for too few fish, including allocations by the Quota Appeals Authority (QAA);
- failure to constrain commercial fishers to the total allowable commercial catch (TACC) in some instances;
- increasing use of electronic aids to enhance fishing methods;
- ongoing use of environmentally destructive fishing methods to bulk harvest commercial quota;

- an absence of objectives based fisheries management decisions;
- non-commercial fishing interests not being properly allowed for as required of the Minister of Fisheries (the Minister) under the Act;
- uncertainty about the size of non-commercial catch; and
- insufficient funding by successive Governments on well targeted scientific research on our fish stocks and fisheries.

MFish's claim

MFish claim in their Shared Fisheries discussion paper that its ability to manage our fisheries is being hampered by insufficient information on non-commercial catch. They also state that there is a threat of compensation claims by commercial fishers if MFish acts to redress the imbalance in favour of non-commercial fishers by properly allowing for non-commercial fishers' rights and interests.

New Zealanders' non-commercial right to fish

What MFish does not explain in its discussion paper is the nature of New Zealanders' non-commercial fishing interest and right, and that such interest and right has not been properly allowed for.

Also not explained is that to help rebuild our fisheries, MFish is asking non-commercial fishers, both recreational and customary, to contribute by having non-commercial fishers' rights and interests redefined and confined, before the present fisheries management tools and mechanisms have been fully applied.

Refer: Preliminary View – http://www.option4.co.nz/sharedfisheries/preliminaryview.htm

MFish Shared Fisheries proposals risky? / Alteration of non-commercial fishers interests not required for fisheries rebuild

The purpose of this submission is to demonstrate that MFish's Shared Fisheries proposals:

- are not necessary for the management of our coastal fisheries;
- are risky; and
- that the alteration of non-commercial fishers' interests is not required to rebuild our fisheries and ought not be a pre- condition of management by MFish in a way to rebuild and protect our fisheries.

Fisheries Act – purpose - sustainable utilisation

The Fisheries Act is plain in its purpose – *sustainable utilisation* of our fisheries.

'Sustainable' means meeting the reasonably foreseeable needs of future generations.
'Utilisation' means conserving, using, enhancing and developing our fisheries to enable New Zealanders to provide for their social, cultural and economic well-being.

In addition, the Act prescribes environmental and information principles to guide MFish and the Minister in their advice and decision making duties and functions respectively on our fisheries.

Conservation purpose of the QMS not realised

The conservation and husbandry expectations of the QMS have not been realised as the authors of the Act intended.

The Crown issued commercial fishers, with eligible catch history, individual transferable quota in order to accept a reduction in overall fishing effort and on the notion that the quota holders would have the incentive to practice husbandry and conservation to protect their livelihoods.

However we consider the correct position is as follows:

- many smaller commercial operators to whom quota was allocated have sold their quota – a transferable property right – to large corporate fishers. In many cases these companies, do not fish their quota themselves, but lease it and process the catch. They guard the fisheries to which the quota relates to maintain the value (in $ terms) of their quota;
- for reasons of both economics and competition it suits corporate commercial fishers to keep the fish biomass low–(less fish in the water means that commercial fishers by their bulk fishing methods will still catch their quota, but non-commercial fishers will be denied the ability to catch the number and quality of fish that could be reasonably expected at reasonable stock abundance); and
- corporate commercial fishers seemingly influence MFish by threatening claims for compensation where MFish properly provides or 'allows for' non-commercial fishing interests.

Non-commercial fishers are missing out

In the middle of this tug of war, non-commercial fishers say that:

- fisheries management by MFish lacks clear objectives and has been inadequate;
- non-commercial fishers are missing out on having their common law right to fish, which is recognised, preserved and protected in the Act, properly allowed for by the Government;
- in some fisheries they are often competing with commercial fishing methods for smaller and smaller fish. This is particularly hard in some snapper, kingfish, crayfish and scallop fisheries where the minimum legal size for amateur fishers is larger than commercial fishers in the same area.

To many, the experience of the Hokianga Accord (the Iwi Regional Forum of the mid-north which meets all of MFish's criteria for such fora) has demonstrated that MFish has shied away from the active input and participation of customary fishers in fisheries management. This is particularly so where customary fishers are supported by recreational fishers.

So what does MFish's Shared Fisheries discussion paper say?

In summary, MFish in its Shared Fisheries discussion paper:

- claims that our fisheries are under pressure as a result of competing interests;
- points to a lack of information on our non-commercial catch which is compromising MFish's efforts to properly manage our fisheries;
- says that there is uncertainty in the 'allocation' of fish between commercial fishers and non-commercial fishers;
- refers to the threat of claims for compensation by commercial fishers if their quota entitlement is reduced at their (commercial fishers) expense to benefit non-commercial fishers.

With this in mind, MFish has put forward a set of proposals that in broad terms seek to improve the management of our fisheries by:

- redefining and confining the recreational right or interest;
- improving communication between MFish and recreational fishers - the amateur trust proposal which would include initial Government funding;
- improved information on non-commercial catch; and
- possible compensation in 'key' fisheries to commercial fishers for quota reduction to better provide for non-commercial fishing interests.

So what is to be done?

As a country we are facing a challenge with the management of our coastal fisheries and restoring the health of our fisheries to pass on to future generations.

Remedial action is required now.

What then is the proper approach to be taken?

The People's Submission

Introduction – peoples' existing right to fish is not for negotiation

The remedial action taken to rebuild and protect our fisheries ought not include any amendment or change that will redefine or confine people's recreational fishing interest or right.

A public right must not be tampered with lightly and not without compelling and easily understood reasons. No compelling case has yet been put forward or discussed – whether in MFish's discussion paper or elsewhere - warranting the redefining and confining of New Zealanders' recreational interest or right.

The 'key' changes proposed by MFish to our fisheries laws which include refining and confining New Zealanders' recreational fishing interest or right are neither required nor necessary. It is within the Minister's powers and indeed his/her duty under the existing provisions of the Fisheries Act to rebuild our fisheries within a reasonable time frame.

Moreover, the way that the non-commercial interests or right is described or 'allowed for' is broader than simply as a 'tonnage of fish' which may or may not be available to catch. It extends to maintaining a quality of fishing experience that New Zealanders can be proud of, as part of their national heritage.

Fisheries Act – purpose, principles, tools and mechanisms – apply them fully now

The Act and regulations contain a wide range of fisheries management tools and mechanisms, both macro and micro, to achieve the sustainable utilisation purpose of the Act, and a measured enhancement and rebuild of our fisheries over a given period.

Full and proper use of the present fisheries management toolbox will result in greater abundance – more fish in the water - and enable New Zealanders to provide for their social, economic and cultural well-being. This will mean a balanced consideration of the health of our fisheries and marine environment, peoples' social, economic and cultural well-being, the interests and investment in plant and jobs of both the commercial fishing industry and the recreational fishing industry.

There may be debate over fine tuning, but the tools and mechanisms in the fisheries management toolbox are already there and available in the Act, and immediate progress can be made if implemented without delay.

There is disappointment amongst recreational fishers that MFish's unnecessary 'path to reform' as outlined in its Shared Fisheries discussion paper has been initiated before full and proper use of the present fisheries management toolbox, and before the outcome of the Kahawai judicial review where key provisions of the Act relating to the purpose of the Act and the way the Minister provides or 'allows for' non-commercial fishing interests were considered.

The outcome of that decision is eagerly awaited.

Consultation, and input and participation

Concerns expressed by a number of non-commercial fishers about the way MFish consult with non-commercial fishers are well known to MFish. Before doing anything in relation to a proposed sustainability measure, the Minister must first consult with non-commercial fishers, and "provide for the input and participation of tangata whenua having a non-commercial interest in the stocks concerned or an interest in the effects of fishing on the aquatic environment in the areas concerned and *have particular regard to kaitiakitanga*: section 12 (1) (a) and (b).

We are confident that performance by the Minister and MFish of these functions in a transparent manner will allow progress to achieve more fish in the water/ kia maha atu nga ika i roto te wai.

Part 2 – Summary Statements

The People's Objective:

Protect and rebuild our coastal fisheries to enable New Zealanders to provide for their social, economic, and cultural well-being.

It is obvious to many people that the Minister and Ministry of Fisheries (MFish) are not effectively managing our inshore fisheries. The flawed implementation of the Quota Management System (QMS) has failed to constrain excessive commercial fishing, deliver abundant fish stocks, better quality fishing or meet the sustainable utilisation purpose of the 1996 Fisheries Act (the Act).

Successive Governments have focused on commercial fisheries management objectives to the detriment of fish stocks that have significant social and cultural significance. That imbalance needs to be addressed without further delay. The fishing industry should not have first call on all of New Zealand's important inshore fisheries.

We believe the purpose and principles of the Act have not been given full effect and this has led to depleted fisheries, reduced abundance in areas traditionally fished and increased conflict.

We consider that the Minister of Fisheries (the Minister), well advised of and mindful of his statutory obligations and responsibilities, should apply the Act as intended, to ensure there are sufficient fish in the water to meet the needs of future generations and enable people to provide for their social, economic and cultural well-being. This would in effect resolve most of the problems associated with access to fisheries, for all sectors.

Section 21 of the Act protects both the Minister and the people's interests by directing the Minister to "allow for" non-commercial fishing interests, **before** setting the commercial allocation. We consider that customary and recreational (amateur) interests have not been properly 'allowed for' in fisheries management processes. We submit that this statutory requirement be given full management effect before any legislative change is considered.

Quality fishing and people's well-being are paramount

A lot of fish are harvested for sustenance purposes. Many people cannot afford to purchase fish due to the high cost, often a reflection of the export price eg. Snapper $34kg, blue cod $25kg. United Nations conventions expect states to consider peoples' needs when considering the allocation of natural resources. The Minister is required by the Act to recognise the public good benefits to all New Zealanders of having access to, and availability of, fish for their sustenance, social and cultural well-being.

We stand for the following four principles supported by over 60,000 people in submissions to the *Soundings* discussion document and promoted over the past seven years:

- A priority right over commercial fishers for free access to a reasonable daily bag-limit to be written into legislation
- The ability to exclude commercial methods that deplete recreationally important areas

- The ability to devise plans to ensure future generations enjoy the same or better quality of rights while preventing fish conserved for recreational use being given to the commercial sector
- No licensing of recreational fishers.

The QMS, whilst delivering $3.8 billion in quota assets (up 40% in the last decade), mostly to corporate players in the fishing industry, has failed to protect the small operator or provide the husbandry benefits claimed during its introduction. The security of property rights has removed the innovation from commercial fishing. Fishing commercially has merely become a least cost exercise. The Government has an obligation to protect the rights of amateur and customary fishers.

Much more consultation, including the input and participation by tangata whenua, is required to both meet the Crown's ongoing obligations under the 1992 Settlement Deed and "allow for" Maori non-commercial fishing interests.

Where does the problem lie?

Interestingly MFish's 'Shared Fisheries' discussion paper seem to describe amateur fishing as more as a problem that needs to be fixed, rather than a healthy outdoor activity that needs to be 'allowed for', as laid down in the Act. It then herds readers into submitting to proposals that do not resolve the fundamental issues that really need to be addressed. In effect, MFish is trying to squeeze non-commercial fishers into the property rights based QMS. Once those property rights are fixed, size limits and individual daily bag limits will be used to limit what we can catch.

MFish's 'Shared Fisheries' paper has highlighted serious issues regarding the mismanagement of our marine environment and the lack of adherence to the purpose and principles of the Act. These failures need to be acknowledged and addressed immediately.

Remedial action ought not to include any law change to redefine and confine our amateur or customary fishing interests or rights. This is neither relevant nor necessary to enhance and improve our fisheries. The Minister must "allow for" these interests **before** setting or varying commercial catch limits.

Clear objectives needed

If the Government is committed to resolving outstanding issues in our inshore fisheries the first step is to clearly state their goal to improve non-commercial fisheries. Fisheries have been managed to a single commercial objective of maximising yield for too long. The Act provides guidance in the information and environmental principles on how to achieve greater abundance and a more precautionary approach to the management of our kaimoana.

This submission offers alternative solutions to improve inshore fisheries and management through meaningful participation and supporting the purpose and environmental principles of the current Fisheries Act. The appendices attached form part of this submission.

It is abhorrent that the public is being asked to submit to 'Shared Fisheries' proposals without having the benefit of the High Court decision relating to the Kahawai Legal Challenge. The Government, the Minister and MFish are well aware that the issues argued in that case include the purpose and principles of the Act, how they are supposed to work and how the

Minister properly ‘allows for’ non-commercial interests. We reserve the right to submit a supplementary submission after the decision is released, analysed and discussed amongst non-commercial fishing interest groups.

If the Government desires support from the taxpaying public, the very people who fund MFish and its management of our fisheries, then those managers must realise that non-commercial fishing rights are not for sale!

"The People's Submission" has been written by a group of people from all parts of New Zealand and many different backgrounds concerned about restoring the abundance of fisheries to provide for the well-being of all New Zealanders.

Part 3 – Background Papers

These Papers are offered in an order that seeks to respond to the proposals contained within the Shared Fisheries public discussion document.

Paper Number	Background Paper	'Shared Fisheries' Document Reference	
		Section	Proposal
Paper 1	Shared Fisheries Policy History	1	
Paper 2	"The People's Submission" Process	1	
Paper 3	Better Information to Manage Fisheries	2	A & B
Paper 4	Defining the Target Biomass	3	A
Paper 5	More Fish in the Water	3	B
Paper 6	Nature of Fishing Rights	4	
Paper 7	Crown's Obligations to Maori	4	
Paper 8	Priority Access to the TAC	4.1	
Paper 9	Radical Proposals – Effects on Maori	4.2	
Paper 10	MFish's Baseline Allocation Proposal Rejected	5, 5.1	A, B & C
Paper 11	Proportional Allocation Rejected	5.2	A & C
Paper 12	Benefits of Recreational Fishing in NZ	5.2	B
Paper 13	Supporting Local Area Management	6	A, B & C
Paper 14	Supporting Kaitiakitanga (Guardianship)	6 & 4.1	
Paper 15	Crown's Liability for Compensation	7	
Paper 16	Amateur Representation – Licensing Inevitable	8	

Brief Outline of Papers

1. Shared Fisheries Policy History

This paper is a response to MFish's 'Shared Fisheries' section 1

Refer Paper 1: Shared Fisheries Policy History.

2. "The People's Submission" Process

This paper is a response to MFish's 'Shared Fisheries' section 1

Refer Paper 2: "The People's Submission" Process.

3. Better Information to Manage Fisheries

This paper is a response to 'Shared Fisheries' section 2
A statement from MFish on page 4 says that, *"Lack of good information on what recreational fishers catch makes it difficult to manage fisheries sustainably."* This raises a number of questions:

- Why do we need public consultation to ensure appropriate research is undertaken?
- Why has this research not been done previously?

- How did we ‘allow for’ non-commercial catch without such crucial information?

Our recommendations:

- We recognise that comprehensive and accurate information about recreational catches would improve the management of shared fisheries.
- More resources are needed to estimate total fishing mortality for each fishing method, and mortality caused by commercial and amateur fishers
- Questions should be added to the New Zealand Census or Statistics NZ surveys such as the Household Economic Survey to determine participation rates in sea fishing by region
- A national reporting system for amateur fishers is strongly opposed as it would require all the recreational harvest survey resources, will inevitably lead to licensing and would be an expensive waste of time as the results would be highly unreliable.

Refer Paper 3: Better Information to Manage Fisheries.

4. Defining the Target Biomass

This paper is a response to 'Shared Fisheries' section 3A

Sustainable management of New Zealand’s fisheries requires that the environmental and information principles be applied when making decisions that will affect the abundance of fisheries and the access each sector has to those fisheries. There is no logical reason that stands up to scrutiny for managing inshore shared fisheries at a biomass below sustainable levels for extended periods of time. Yet this is just what has happened in some important fisheries over the last 20 years.

Our recommendations:

- Always manage important inshore fisheries above a level that can produce maximum sustainable yield to better “allow for” non-commercial fishing interests
- Ensure the Minister has protection within the Fisheries Act to “allow for” non-commercial fishing interests
- Implement alternative management strategies that will limit the Government’s compensation liability – since we the taxpayers will end up paying for the poor management and inaction of successive governments.

Refer Paper 4: Defining the Target Biomass

5. More Fish in the Water

This paper is a response to 'Shared Fisheries' section 3B

Many fish stocks have been overfished or held at low levels by intense fishing pressure. In shared fisheries this can seriously affect the availability of fish to amateur and customary fishers. The consequences of overfishing and low biomass are difficult and expensive to reverse and are the underlying cause of much of the current conflict between commercial and non-commercial fishers in shared fisheries. If fisheries are

increasingly under pressure and/or insufficiently abundant then the obvious thing to do is increase the biomass to produce more and bigger fish.

Our recommendations:

- Promote a more flexible and responsive fisheries management regime
- Reduce wastage and reward conservation efforts
- Sustainable management to improve the yield from inshore fisheries

Refer Paper 5: More Fish in the Water

6. Nature of Fishing Rights

This paper is a response to 'Shared Fisheries' section 4

The Minister must "allow for" non-commercial fishing interests before setting or varying the total allowable commercial catch (TACC). Spatial issues affecting access are much more difficult to address because management areas are so large. MFish and successive Ministers have failed to acknowledge the effects of localised spatial depletion or range contraction in heavily fished stocks on recreational and customary fishers. The current proposals show they still fail to grasp the complexity of either the true nature of fishing rights or fisheries management.

Our recommendations:

- Reject outright any redefinition of the common law right to fish
- The Minister has to give particular regard to kaitiakitanga as directed by the Act, to "allow for" Maori customary and recreational interests
- Commercial fishers are constrained to fish within sustainable TACC's

Refer Paper 6: Nature of Fishing Rights.

7. Crown's Obligations to Maori

This paper is a response to 'Shared Fisheries' section 4

Section 12 of the Act requires that, 'before doing anything' when making any decisions on sustainability measures, the Minister must provide for the input and participation of tangata whenua having a non-commercial interest in the stock concerned, or an interest in the effects of fishing on the environment in the area concerned. It is obligatory for the Minister to *"have particular regard to kaitiakitanga"*. In order to understand how section 12 works, it must be considered in the context of the purpose and principles of the Act that underpin fisheries management.

Our recommendations:

- The Government avoid creating new grievances by providing for tangata whenua's non-commercial fishing interests
- The Government reject any changes that will limit the allowance for Maori's customary fishing interests in kaimoana to reported catch only

- The Minister gives particular regard to kaitiakitanga when making decisions.

Refer Paper 7: Crown's Obligations to Maori

8. Priority Access to the TAC

This paper is a response to 'Shared Fisheries' section 4.1

MFish has proposed to maintain a minimum tonnage in each shared fishery that would have priority over commercial take. The proposed minimum level is 20 percent of the baseline amateur allocation in each fishery. It must be realised that most fisheries will have bag limits of less than one well before the 20 percent threshold is reached. How can the Government then enable people to provide for their economic, social and cultural well-being in a collapsed or seasonally closed fishery?

Our recommendations:

- Absolutely reject any constraining of the individual right to fish to a 'basic' right, or to a 'priority' to 20% of that basic right
- The Minister should give effect to section 21 of the Act and "allow for" non-commercial fishing interests
- The Government should focus its effort and resources on rebuilding inshore shared fisheries to abundant levels.

Refer Paper 8: Priority Access to the TAC

9. Radical Proposals - Effects on Maori

This paper is a response to 'Shared Fisheries' section 4

Fisheries managers have failed to protect Maori customary interests. It is not sufficient for the Minister to simply set aside a tonnage of fish for customary use if those fish are either not in the water, or are not available in the places Maori traditionally fish. MFish's objective is to reduce the quantity of fish set aside as the Customary Allowance to match historic customary catch reports. Reducing the allowance will create an apparent surplus of uncaught fish, which can then be reallocated to other fishers.

Our recommendations:

- Reject outright any reallocation of the customary allowance
- Reject the Government's assumption that all customary harvest is taken under the customary provisions and that MFish has correct records
- Object strongly to any attempt to tamper, alter or remove tangata whenua's fishing rights without clear and compelling reasons.

Refer Paper 9: Radical Proposals – Effects on Maori

10. MFish's Baseline Allocation Proposal Rejected

This paper is a response to 'Shared Fisheries' section 5

According to MFish shared fisheries are under increasing pressure, yet there is actually no evidence that shows recreational catch is increasing or decreasing. Total amateur catch is driven by weather, available biomass, participation rates (how many people actually fish) and regulatory controls. Inevitably these variables cause wide fluctuations in total recreational catch from one year to the next. Real time reporting by an estimated one million non-commercial fishers is impossible and even if it weren't the result would be no more certain than current diary survey methods. Unlike the QMS you cannot manage recreational fishers on the basis of individual catch.

Our recommendations:

- Absolutely reject any constraining of the individual right to fish to a 'basic' right, or to a 'priority' to 20% of that basic right
- Reject the proposals on the basis that the Minister is not obliged to make a fixed, proportional or baseline allocation to non-commercial fishers
- No change to current legislation to "allow for" non-commercial fishing interests
- Where the allowance for recreational fishers is based on an underestimate of catch the allowance must be increased and the TAC increased to accommodate it.

Refer Paper 10: MFish's Baseline Allocation Proposal.

11. Proportional Allocation Rejected

This paper is a response to 'Shared Fisheries' section 5.2

Proportional allocation is a method of fixing the non-commercial share of the annual available catch in the same way as commercial quota. If the total allowable catch (TAC) is increased or decreased the recreational and commercial allocation would be adjusted in proportion to their share of the TAC. Allocating an explicit proportion to each sector will allow non-commercial catch to be integrated into the Quota Management System (QMS). Amateur fishers regard proportional allocation as a blatant attempt to seriously undermine their fishing rights simply to placate a litigious group of quota holders and avoid compensation issues for the Crown.

Our recommendations:

- Reject proportional allocation because it is unfair as it fails to recognise that non-commercial fishers have suffered reduced catches in depleted fisheries
- Reject proportional allocation as it ignores conservation efforts
- Reject a fixed proportion of the total allowable catch (TAC) on the basis that the Minister has to "allow for" non-commercial fishing interests. Those interests are not limited to a specific tonnage of fish
- Reject proportional allocation because is provides no incentive for fishing sectors to take their own initiatives to improve the fishery. Under the Ministry's proposal the benefits of such action would be soaked by increased catch in other sectors.
  Refer Paper 11: Proportional Allocation.

12. Benefits of Recreational Fishing in NZ

This paper is a response to 'Shared Fisheries' section 5.2

For many years the benefits derived from our fisheries have only been measured in dollar terms, particularly in export returns. It is time that fisheries management looked further than maximising the yield from a fishery to fit a commercial model. We need to find a better balance between commercial, recreational, customary and eco-tourist/amenity potential of some of our most important inshore species.

Our recommendations:

- The Government reject value based allocation as an inadequate mechanism to "allow for" non-commercial fishing interests
- MFish reject any notion that they can put a 'value' on tangata whenua's priceless non-commercial fishing interests
- The Government acknowledge the benefits of having a healthy population enjoying good quality inshore fisheries as part of our national identity.

Refer Paper 12: Benefits of Recreational Fishing in NZ.

13. Supporting Local Area Management

This paper is a response to 'Shared Fisheries' section 6

Local area management proposals appear to offer nothing new and simply raise the question, why has MFish not used the available controls more extensively in the past? We support the amateur fishing havens (with the exception of the coastal zone) and multi-party agreements to exclude bulk fishing methods. Even the planning approach has benefit if it provides more certainty about fisheries management for the future. Based on past experience, we suggest Fisheries Plans are unlikely to be the breakthrough tool MFish claims.

Our recommendations:

- Support the local area initiatives proposed, with the exclusion of the coastal zone
- Support the need to provide for non-commercial fishers to develop and implement their own fisheries plans.
- Support initiatives to allow local communities to have a greater decision-making role in the management of their local fisheries
- MFish provide support for communities to develop more effective local fisheries management and that MFish provide support for such local management.
- MFish provide support and resources for a national annual seminar on local area management.

Refer Paper 13: Supporting Local Area Management

14. Supporting Kaitiakitanga - Guardianship

This paper is a response to 'Shared Fisheries' section 6 (and 4)

Kaitiakitanga (guardianship), the legislation and regulations that currently support it, is seen as delivering a very important component of the Treaty of Waitangi that enables Maori to manage marine resources in localised regions to achieve, as a minimum, their customary rights and traditional ability to successfully gather food as amateur fishers. Most of the options available to give effect to achieving kaitiakitanga have been eroded in effectiveness by the priority given to competing legislation that affects the same water space, such as marine reserves, and the lack of resources available to tangata whenua to implement Maori customary management tools.

Our recommendations:

- The Government fulfil its statutory obligations to Maori and address the gross mismatch of resources in area and fisheries management
- MFish promote public awareness and understanding of kaitiakitanga
- MFish provide details on how they propose to improve freshwater fisheries management including tuna (eels).

Refer Paper 14: Supporting Kaitiakitanga

15. Crown's Liability for Compensation

This paper is a response to 'Shared Fisheries' section 7

Where reductions in the TACC are made for the purpose of rebuilding fish stocks to a target stock size that is sustainable, no compensation should be paid to commercial fishers. This is because commercial fishers have already banked the cash from selling the fish and continued commercial bulk fishing practices that have further reduced productivity. Any claims for compensation by commercial fishers ought to be a matter between the fishing industry and the Government, and certainly not at the expense of the fisheries, marine environment and the non-commercial fishing interests of all New Zealanders.

Our recommendations:

- MFish acknowledge non-commercial fishers have suffered a loss in the availability and abundance of fish in the areas accessible to them, without compensation;
- MFish acknowledge since the introduction of the QMS non-commercial catch has been accommodated through the (questionable) allowances made for recreational and customary fishing, while broader fishing interests have not been 'allowed for' in shared fisheries;
- Where a reduction to a TACC is required for sustainability, no compensation will be payable
- Compensation is not required if the TAC is increased to include historic recreational catch in recreational allowances.

Refer Paper 15: Crown’s Liability for Compensation

16. Amateur Representation – Licensing Inevitable

This paper is a response to MFish’s 'Shared Fisheries' section 8

Refer Paper 16: Amateur Representation – Licensing Inevitable

Shared Fisheries Policy History

Introduction

The Government is currently consulting on wide-ranging and fundamental changes to the way shared fisheries are managed. Shared fisheries are coastal fisheries in which commercial, recreational (amateur) and customary fishers have an interest. These fisheries include important species such as snapper, kahawai, paua, rock lobster, blue cod, kingfish, mullet and flounder.

Changes proposed by the Ministry of Fisheries (MFish) in *Shared Fisheries: Proposals for Managing New Zealand's Shared Fisheries* public discussion paper ('Shared Fisheries') is likely to constrain and reduce every New Zealander's common law right to fish. Current non-commercial fishing rights are recognised, allowed for and protected by the Fisheries Act 1996 (the Act) and subject to regulations under that Act.

'Shared Fisheries' is the second initiative by MFish to develop a marine amateur fisher policy. The first initiative was the *Soundings* process.

Soundings

Soundings began in 1998 with the formation of the Rights Working Group (RWG) consisting of MFish staff and members of the NZ Recreational Fishing Council (NZRFC). The RWG asked for submissions on the future management and rights of recreational fishers. The proposed policy, released in 2000, was not well received.

Soundings included three options for the public to consider in regards to our future fishing rights. They were:

- Discretionary share (status quo, the current system)
- Proportional share (a fixed share of the available fishery)
- Recreational management (proportional share and management control).

Following a public submission process a total of 62,117 submissions were received. The overwhelming majority of all submissions received were from amateur fishers (99%). Almost all of the submissions (61,178) rejected all of the *Soundings* options, instead supporting a fourth option developed by the option4 group.

option4[1]

The option4 task force had one objective:

To carry the four principles of option4 all the way through the rights redefinition process and to have those principles enshrined in legislation.

Subsequently all the major marine amateur fishing bodies have pledged support for the four principles of:

[1] http://www.option4.co.nz/index.htm

- A priority right over commercial fishers for free access to a reasonable daily bag limit to be written into legislation
- The ability to exclude commercial methods that deplete recreationally important areas
- The ability to devise plans to ensure future generations enjoy the same or better quality of rights while preventing fish conserved for recreational use being given to the commercial sector
- No licensing of recreational fishers.

Soundings Analysis

A joint working group of NZRFC and MFish analysed the submissions and advised the Minister of Fisheries (the Minister) that there was support for the further development of policy to:

- 'Better define the public share of and access to fisheries, and,
- Improve the management of amateur fishing (note, there is widespread support for statutorily mandated national and regional representative bodies, which are government funded).
- Agree that further policy development does not include any form of licensing of marine amateur fishers.
- Note that any future public policy debate on the amateur share, access and management would benefit from a broad scale education and information programme on NZ fisheries management.
- Support exploring ways to improve the measurement of the amateur harvest.
- Support the need to improve the input and participation of Iwi in the further development of the amateur rights policy.' (Minister of Fisheries, 2002)

Ministerial Consultative Groups

Following the *Soundings* review, the Minister established a Ministerial Consultative Group to discuss how an amateur fishing policy could be progressed. A year later Stage 1 of the process had been completed with the development of a set of objectives for future management.

The objectives were based on the National Policy Statement on Marine Amateur Fisheries Management promulgated in 1989 but never recognised as government policy:

- Access to a reasonable share of inshore fishery resources equitably distributed between amateur fishers
- Improve, where practical, the quality of amateur fishing
- Increase public awareness and knowledge of the marine environment and the need for conservation of fishery resources
- Improve management of amateur fisheries
- Reduce conflict within and among fishery user groups
- Maintain current tourist fisheries and encourage the development of

- new operations where appropriate
- Prevent depletion of resources in areas where local communities are dependent on the sea as a source of food
- Provide more opportunities for amateur fishers to participate in the management of fisheries

Subsequently Cabinet approved the objectives as guidelines for the development of amateur fisheries policy discussions. (Ministry of Fisheries, 2004).

For the amateur sector one positive feature of the first round discussions was an agreement that licensing was not an option for the amateur sector. The Minister concluded, "The consultation process undertaken thus far concludes the first phase of reform. The process considered a wide range of possible policy options. These options included licensing and devolution of management responsibilities. Some of these options, particularly any form of licensing, are now confirmed as inappropriate in the New Zealand environment at this time" (Hodgson, 2002).

A second Ministerial consultative group was formed in 2003. The purpose of the Reference Group was to develop a specific proposal for reform based on the agreed objectives. The reform proposal was to be referred back for public consultation by mid 2003.

By late 2003 the Reference Group had developed a draft reform package consisting of:

- An amendment to section 21 of the Fisheries Act 1996 to provide specific allocation criteria the Minister must have regard to when making allocation decisions.
- An amendment to section 311 of the Fisheries Act that would provide a stronger access right when there is insufficient abundance of a fish stock for both commercial and non-commercial fishers.
- The provision of research services to provide information on abundance and other issues to assist in section 311 process;
- A more transparent resource, funding and expenditure process within the Ministry so that sector groups can see that resources/ funding are being allocated to the most meritorious projects (e.g. in context of the sustainability measures round);
- The development of an amateur fishing information strategy to guide research priorities and to better underpin the information needs of the reform proposal, together with a significant increase in funding. Included would be support for a joint amateur fishers/MFish internet system for obtaining information on amateur harvest;
- MFish to review amateur regulations (limited review of up to top 10 regulations of most concern) within specified timeframe; and
- When more certain information on the amateur harvest becomes available fishery management decisions based on the 1996 Amateur Fishing Harvest Estimates will be reviewed (Ministry of Fisheries 2002).

However there was no final agreement on the package. The main point of contention revolved around changes to section 21 (s.21) and the allocation criteria to be used by the Minister.

In conclusion, after five years of policy development MFish was unable to develop a policy acceptable to marine amateur fishers. The crux of the 'stand off' was MFish's wish to change s. 21 to better protect themselves and the Minister from legal challenge.

Amateur fishers were opposed to this on legal advice that there was insufficient protection in the process to ensure that the marine amateur fishers' common law right would not be undermined and diminished.

A second issue was that the Ministry showed no intent to recognise the four principles (with the exception of the non-licensing of fishers) in marine recreational fishing policy.

The one positive step to come from the *Soundings* and subsequent negotiations was Cabinet's recognition of the principles in the 1989 marine recreational policy.

It was interesting that in the three years of policy meetings MFish never proposed the incorporation of the amateur fishing sectors four principles – in spite of the overwhelming support for the principles from the *Soundings* consultation.

Again, it is disappointing that in the current 'Shared Fisheries' proposal paper there is no recognition of the four principles supported by 60,000 submissions.

Shared Fisheries Policy Process

During 2004 and 2005 it appears MFish undertook no policy analysis or policy development for amateur fisheries. A comment from the Ministry's Chief Executive suggests that recreational fisheries policy staff were rotated into other policy areas. It was not until December 2005 that a further round of amateur reform discussions begun with the release of a paper on shared fisheries.

In January 2006 the Minister of Fisheries, Jim Anderton, announced his intention that a policy on allocation in shared fisheries was to be developed. Aside from his intention to get better 'value' from shared fisheries the Minister also emphasised "*we need people working together rather than against each other*".

To that end it was surprising that the Ministry of Fisheries held separate talks with amateur, customary and commercial groups about the allocation of shared fisheries.

MFish intended releasing a discussion paper in June 2006 containing options for addressing issues of concern in shared fisheries. The stated aims of the MFish process are to:

- Improve certainty in setting and adjusting shares of the Total Allowable Catch
- Improve the collection of information on amateur harvest
- Manage commercial and amateur takes within their allocations
- Set a TAC that considers the balance between catch rates and yield to maximise overall value
- Enhance the management of amateur and customary components

Consultation was to occur over a period of four months. Presumably in response to amateur fishers' request the discussion paper would not require a submission period over the late December – January period.

Government's Intention

Cabinet did not approve the consultation paper until late October 2006. On 25th October the 'Shared Fisheries' paper was released. The Minister of Fisheries has been invited to report back to Cabinet with a recommended policy framework for shared fisheries by June 2007. As part of this process Cabinet agreed that a four-month submission period be provided, with the deadline for submissions being set at 28th February 2007.

The period from late October to late February was intended to provide sufficient time for a considered response from iwi and stakeholders. It is interesting to note that Te Puni Kokiri agreed that a four-month timeframe for submissions should provide appropriate opportunity for Maori to engage in the process[2].

Preliminary meetings were held with various groups in early 2006, before the 'Shared Fisheries' paper was released. A series of six public meetings were planned for the main centres, Whangarei and Tauranga. The first meeting was held in Whangarei on November 22nd. After some pressure, an additional meeting was added to the schedule and held in Nelson, on 14th December 2006.

The submission deadline reflects a very tight timeframe to complete the remaining steps of the policy reform (i.e. getting advice to Cabinet, having Cabinet make decisions, and enacting any legislative reforms).

A Bill would follow this process, in about September 2007. It is unclear whether MFish also intends complementary non-legislative measures. Expected reforms are to be enacted around May 2008 to allow seven months for parliamentary stages.

Key Issues

The consultation process has been poorly managed. An analysis of the 'Shared Fisheries' process indicates at least six deficiencies in the process.

Legislative timetable

MFish has emphasised that there is a limited 'window of opportunity' to change the management of the inshore fisheries policy; either the legislation timetable is maintained or legislation will not be introduced before the next election. This was the same argument promoted during the *Soundings* consultation; the concept that this is 'the last flight so we had better be on it!'

One has to wonder how good this Government's legislative timetable planning is.

The problem with this hasty approach is the lack of time to consider amendments to the policy once the analysis of submissions is completed. Inadequate analysis and insufficient consideration of alternative options that come out of that process is almost sure to create a suboptimal policy.

[2] Public Discussion Paper: Future Management of Shared Fisheries, Cabinet Paper, December 2006, page 14.

One of the consequences of the timetable may be that MFish provides inadequate time for further consultation and deliberation arising from the policy analysis. The attitude of MFish appears to be that 'we are the only independent brokers of knowledge and we know best what the amateur fishing (and other) sectors need'.

The overwhelming negative response to the *Soundings* proposals clearly emphasised the falibility of MFish's broker of knowledge or know best attitude. We must be vigilant to ensure MFish does not take this position with the Shared Fisheries policy.

Adequate time must be given to consideration of revisions to the policy following the submission process. It is worth remembering that the fishing industry delayed the introduction of the QMS by a year (from 1-10-85 to 1-10-86) because they required more time to consider Individual Transferable Quota (ITQ) policy options.

Lack of meaningful input

Although MFish first announced consultation on the Shared Fisheries policy in December 2005, and subsequently consulted with the three fishing sectors; the proposal which finally emerged in October 2006 had many elements which were new and had not previously been discussed. Part, but not all of the changes, may have been due to the influence that Cabinet had on the proposals. However analysis of early drafts of the policy to Cabinet show significant features of the policy never discussed with the amateur sector.

Although MFish has consulted in developing the Shared Fisheries policy it does not do so in a collaborative manner. As is often the case, MFish tends to 'tell the fishing sectors what the issues are' but generally does not ask for involvement of the sectors in developing or testing the policy proposals at the development stage.

Even in the *Soundings* process, where the policy was developed by a joint amateur sector and MFish team, the development occurred on the condition that the amateur members could not consult with their members on policy development. Developing policy 'in the dark' (as *Soundings* proved) is a recipe for bad policy development.

MFish's approach is not only harmful to the policy development process, but wasteful of resources since a collaborative approach is likely to develop widely supported policy faster. Yet MFish persists with a sole policy role approach. The approach almost inevitably leads to acrimony between MFish and the fishing sectors because there is little or no recognition of the key fishing sector positions and consequently fishing sector ownership of the policy proposal is almost non existent.

It is because of the poor MFish policy development process that the collaborative policy development following the analysis of submissions becomes so important.

Limited consultation over Christmas

In spite of numerous calls by amateur fishing groups for MFish not to consult over the peak summer holiday the 'Shared Fisheries' consultation period included the Christmas break. Late December to late January are obvious periods when it is very difficult to get non-commercial fishers to participate in activities such as reading proposals and preparing submissions.

MFish's timetable of consultation over this period could be seen as dismissive of the requests of amateur fishers or poor planning on the MFish's part, the truth probably lies somewhere between the two.

This lack of planning can not be entirely blamed on delays in approving the policy by Cabinet since MFish must have known in advance that delays were not only a possibility, but more likely a probability (given requirements for consultation between government departments prior to putting papers to Cabinet).

If MFish's initial decision to undertake a Shared Fisheries policy had been made early (rather than late) in 2005, with the intention of seeking Cabinet approval in say autumn 2006, consultation could have occurred during the winter of 2006 with adequate time for the various Cabinet revisions.

Poor attendance at public meetings

One characteristic of the 'Shared Fisheries' consultation round was the lack of participation by the public in meetings organised by MFish. At the Whangarei and Auckland meetings there were less than 25 members of the public present.

Although some might say the problem was apathy, that does not bear up to scrutiny when compared with the previous consultation round. At the initial *Soundings* meetings held in Auckland there were more than a hundred people in attendance.

Although the threat of licensing was an issue, that issue on its own could not explain the difference in attendance.

One factor which does seem to have influenced attendance at the 'Shared Fisheries' meetings was the poor publicity and lack of advertising of the meetings. This is surprising since (unlike the situation at the time of *Soundings*) MFish now has a dedicated team of professional communicators to cover such events.

Given the level of public awareness about the 'Shared Fisheries' process and the inappropriate consultation period it will not be surprising if the level of public input to the policy will be well below that of the *Soundings* process. Because of the way the consultation has been handled, there will be a real issue for the Government to decide whether or not the public has been adequately consulted.

Inadequate policy development and testing

One characteristic of the 'Shared Fisheries' process to date has been the lack of detailed information, case studies or policy detail to assist deliberation on the various proposals. What is surprising is, that in spite of requests for information, MFish has been unable to provide substantive background material.

It would appear that the policy has been developed in a very superficial manner with the idea that 'policy will be developed on the hoof', once a decision to implement 'Shared Fisheries' has been agreed to. If this is the situation then the policy and the legislation that evolves from it will almost certainly be suboptimal.

Inadequate consideration of the policy options

There are a number of areas in the policy where significant issues appear to have been glossed over. Three examples are:

1. The role and operational approach of the Ministry of Fisheries.

It would have been expected that a major review of the deficiencies in current shared fisheries management would include a section reviewing MFish's performance and suggesting changes. It is surprising that 'Shared Fisheries' has no significant implications for MFish's operation.

Yet no-one, including Cabinet, has identified that part of the issue could actually lie within MFish's operational approach, and that a section of the proposed policy would have addressed changes in MFish.

2. Apparent deficiencies in the legislation.

A second area where policy consideration appears inadequate is in identifying where the current legislation is deficient. In considering a range of issues in the proposed policy, from section 21 of the Act to the proposals on local management, there is an assumption that the law is deficient.

It would have been expected that the proposals should have set out, in the initial sector of the policy, a chapter explaining the perceived deficiencies in the Fisheries Act. Surely seeking public acceptance that the current legislation is deficient would have been a logical first step to suggesting changes were required.

3. Lack of consideration of the judgement of the High Court.

The most surprising deficiency is the lack of acknowledgement that a legal judgement from the High Court on allocation principles is pending. MFish appears to be completely ignoring the opportunity for the public to consider the judgement in the light of the 'Shared Fisheries' allocation proposals.

The advice from MFish is that there will be no extension of time on the 28th February deadline and no assurance that further advice from the public will be considered after that date. Yet the Minister and MFish know the judgement will not be public until at least March 2007.

Conclusion

Given the deficiencies in the 'Shared Fisheries' process to date it will be interesting to see if the comment in the Ministry of Fisheries' introduction to the 'Shared Fisheries' paper rings true,

> 'The ideas in the discussion paper have been approved for public consultation by Cabinet. However, they are not set in concrete. All can be changed or developed in response to public feedback.'

However MFish advice given to the Minister in December 2005 clearly acknowledged past efforts regarding rights reform and advised him that,

> "In the end, however, progress may be reliant on some tough decisions by Government."

It is obvious that all sectors are keen to achieve a fair result from the 'Shared Fisheries' policy development process. The Government needs to acknowledge the deficiencies associated with the current process and ensure MFish's approach does not jeopardise the final outcome.

REFERENCE

Ministry of Fisheries (2004) Advice to the incoming Minister. Ministry of Fisheries. Wellington.

Ministry of Fisheries (2002). MFish Advice to the Incoming Minister. Wellington, Ministry of Fisheries: 60 pp.

The People's Submission Process

Introduction

The Government is currently consulting on wide-ranging and fundamental changes to the way shared fisheries are managed with a view to maximising the sustainable harvest and 'value' derived from fisheries in which customary, recreational and commercial fishers have an interest.

Changes proposed by the Ministry of Fisheries (MFish) are contained in the *Shared Fisheries: Proposals for Managing New Zealand's Shared Fisheries* public discussion paper ('Shared Fisheries').

A major concern is that the proposals may further constrain every New Zealander's common law right to fish. Currently non-commercial fishing rights are recognised, allowed for and protected by the Fisheries Act 1996 (the Act) and subject to regulations under that Act.

MFish propose replacing the existing recreational right with a so-called 'basic right' - a creature of statute which would include a 'baseline allocation' for recreational fishers coupled with a 'priority right', which MFish suggest could be around 20% of the 'baseline allocation'.

Non-commercial fishing rights are not quota under the Act and cannot be 'allocated' like commercial quota. They co-exist with but are entirely separate from the fishing rights commercial fishers have under the Quota Management System (QMS).

Concerns were raised at the release of the 'Shared Fisheries' discussion paper that there were similarities between the 2000 *Soundings* rights redefinition process and the 'Shared Fisheries' process.

After many meetings and discussions it was agreed that, due to the nature of the MFish 'Shared Fisheries' paper and the implications, a collective submission would be developed to respond to the Government's proposals.

It must be noted that due to a number of factors, including MFish and Cabinet delays, the 'Shared Fisheries' consultation process has been inadequate. There has been minimal time for consultation between interest groups and no meaningful timeframe to engage with the wider public over the holiday period. The Minister made it quite clear at the commencement of this process that no extra time would be available beyond the four month submission deadline. This was recently confirmed when the combined east and west coast regional recreational fishing forum's request for a deadline extension was denied.

"The People's Submission" process involved two stages.

Meetings with MFish to Discuss 'Shared Fisheries'

In addition to numerous internal meetings, those involved in "The People's Submission" process attended a number of meetings with MFish to discuss and make comment on the Shared Fisheries discussion paper.

This process included:

- Meeting with Robin Connor (MFish Policy Analyst) in February 2006
- Meeting of option4 with MFish CEO and Deputy CEO in mid-2006
- Three meetings of the Hokianga Accord
- Two meetings of the Hokianga Accord Working Group
- NZRFC meeting November 2006
- Attendance at the Ministry's public meetings at various locations around New Zealand.
- In addition various people have attended regional recreational fora where the 'Shared Fisheries' proposal paper has been discussed.

Development of "The People's Submission"

Once the 'Shared Fisheries' policy proposal was released for public submission the working group focused on developing firstly a position and then involving a wider body of people in the development of the submission. This was achieved by:

Developing a Preliminary View

From late November to mid December 2006 a Preliminary View of the 'Shared Fisheries' proposals was developed. The 140 page document was widely circulated and the public informed of the process via the internet and fishing magazines. A further update was issued on December 20th.

The preparation of the drafts involved many individuals from several organisations and iwi including option4, the New Zealand Big Game Fishing Council, Ngapuhi, Ngati Whatua, and other northern tribes.

Public involvement

The Preliminary View requested input and involvement from the public in developing the final submission to MFish by 28th February 2007.

From the start of the revision process on December 26th there has been a steady increase in the number of participants contributing to the development of the submission.

The process of involving other members of the public was through a feedback process. Section topics were allocated to people with experience or interest in the topic. These people then created a first discussion draft for comment. The paper was then released to the wider group for comment. Through an interactive process of several draft, critiques and comments in response, and redraft, the final position paper was developed. This process was largely achieved using emails. Most of the sections went through more than five major redrafts to create the final position paper.

The timeline for developing draft sections was as follows:

Submission section	Date of initial draft
Proportional allocation	3/1/07
Nature of fishing rights	6/1/07
Amateur representation	7/1/07
The 20 percent priority	9/1/07
Introductory chapter	10/1/07
Kaitiakitanga	10/1/07
Crown's obligations to Maori	18/1/07
Benefits of recreational fishing	19/1/07
Priority access to the TAC	19/1/07
Local area management	21/1/07
Effects on Maori	22/1/07
Target Biomass strategy	24/1/07
Allocation	25/1/07
Compensation	26/1/07
Baseline allocation	7/2/07
More fish in the water	16/2/07
MFish Shared Fisheries process	26/2/07
Better information to manage fisheries	26/2/07
"The People's Submission" process	27/2/07

There have been many people from around the country who have contributed or been involved in the development of the individual background papers and subsequent submission.

The individuals most involved and/or who have been major contributors include:

- Richard Baker – Vice President New Zealand Big Game Fishing Council (NZBGFC), Hokianga Accord contributor
- Paul Barnes – option4 project team leader, Hokianga Accord contributor
- John Chibnall – life member of both New Zealand Big Game Fishing Council and New Zealand Recreational Fishing Council, Hokianga Accord contributor
- Jason Foord – option4 representative to CORANZ, legal background
- Jerry Garret – NZBGFC, Bay Of Islands Swordfish Club, IGFA and Hokianga Accord – legal background
- Bruce Galloway – outdoor enthusiast and lawyer
- Don Glass – Outboard Boating Club, Trailer Boat Federation, option4 original, past member of NZRFC executive
- Naida Glavish – Chairperson of Te Runanga o Ngati Whatua, Hokianga Accord contributor
- Angela Griffen – Public relations, media management for option4, Kahawai Legal Challenge and now Shared Fisheries
- Vic Holloway – Ngati Kahu natural resource management, Te Hiku O Te Ika Forum coordinator
- Ted Howard – commercial fishing advocate of many years, innovator and designer – currently President of Kaikoura Boating Club

- John Holdsworth – fisheries science consultant to option4, NZBGFC and the Hokianga Accord
- Scott Macindoe – option4 spokesperson and Hokianga Accord contributor
- Tony Orman – Free lance journalist, book author, Blenheim
- Steve Radich – Author and columnist of many years, Kaikohe
- Trish Rea – coordinator, analyst and researcher for both option4 and Hokianga Accord
- Jeff Romeril – President of New Zealand Big Game Fishing Council, option4 spokesperson and Hokianga Accord contributor
- Bill Ross – option4 original, past member of NZRFC executive
- Pete Saul – 30 years involvement in fisheries management, science and advocacy – currently partner in Blue Water Research, regular contributor to NZBGFC and Hokianga Accord
- Sonny Tau - Chairman of both Te Runanga A Iwi O Ngapuhi and the Hokianga Accord
- Barry Torkington – very experienced commercial fishing advocate, Leigh Fisheries representative at many fisheries management forums
- Kim Walshe – fisheries management advisor to option4, Hokianga Accord and NZBGFC - member of the Recreational Fisheries Ministerial Advisory Committee
- Abe Witana - Te Rarawa, based in the far north. Abe is an integral part of the Te Hiku O Te Ika Forum (far north fisheries forum)
- Clive Monds – environmental interests, experienced fisheries management advocate, Hokianga Accord participant
- Paul Batten, NZBGFC executive member, long term advocate for fishing interests
- Paul L Haddon, Te Runanga A Iwi O Ngapuhi Board member, Hokianga Accord original and Working Group member
- Stephen Naera –Te Roroa Board member, Hokianga Accord Working Group member

Better Information to Manage Fisheries

Fisheries scientists and managers need good information on catch and effort to monitor fish stocks and ensure sustainability. However, it is of little use to collect good information for one year alone. Data collection has to be consistent and ongoing so that trends in stock abundance are revealed. There is always a trade off between what information is needed and what is affordable to collect on an ongoing basis.

In the Ministry of Fisheries' (MFish) 'Shared Fisheries' discussion paper MFish states, on page 3 says that, "*Lack of good information on what recreational fishers catch makes it difficult to manage fisheries sustainably.*[3]*"*

So the obvious question is, if we have insufficient information on non-commercial catch now, then what estimates were used to set the amounts when the Minister allowed for non-commercial fishers, and are they credible?

What, if any, **just terms** were used in setting the current amateur allowances?

It is obvious that some serious errors have been made in harvest surveys and in some stocks which where massively over allocated to commercial fishers. For example, commercial fishers have not come close to catching the quota for gurnard and john dory in Quota Management Area 1 (QMA1) and red cod in QMA3 in any year since 1986.

In other fisheries that have been depleted by excessive commercial fishing, the balance between commercial, customary and recreational has been unfairly distorted. If there have been errors made, they must be properly corrected.

Recently there has been a lot of resources put into developing and using combined aerial over-flight and boat ramp counts to estimate recreational harvest. (Hauraki Gulf in 2003-04, QMA1 in 2004-05, SNA7 in 2005-06, SNA8 in 2006-07[4]). These surveys are expensive but the data comes from direct observations, which are believed to be more reliable that self-recorded data from fishing diaries. There is no doubt that better estimates of amateur catch would be useful in fisheries management.

The annual commercial catch of fish in New Zealand is about 350,000 tonnes. The annual recreational catch is in the order of 20,000 tonnes, about 5% of the total. MFish gives the impression in the 'Shared Fisheries' document that good information is provided by commercial fishers through legally required reporting of catches. However, the catch data is only for reported landed catch.

Any fish high graded or dumped at sea, any undersized fish killed or fish that escape commercial gear and die are not reported. The proportion of dead fish that drop out of set nets can be high for some species. These fish are not recorded. Black marketing of fish is less common these days but it still occurs.

[3] Shared Fisheries Proposals for Managing New Zealand's Shared Fisheries: A public discussion paper, November 2006, page 3 Why change things?

[4] Snapper 1 (SNA1) is the North Island's east coast area from North Cape to Cape Runaway. SNA7 includes Tasman Bay/Golden Bay and parts of east and west coast of the South Island. SNA8 is the area from North Cape to Wellington on the North Island's west coast.

In order to manage stocks well we need to know the **total fishing mortality**, not just the reported landed catch. Information on by-catch and discards is collected by MFish observers in some fisheries. Observers have been placed on some recreational charter boats in SNA1 to collect information on the size and condition of snapper returned to the sea.

More resources are needed to estimate total fishing mortality for **each fishing method**, not just from amateur fishing.

Catch Per Unit Effort

Many commercial fishers don't like filling out catch returns but do so because they have to. The information that is critical to monitoring fish stocks is catch per unit effort (CPUE). Skippers estimate all this data. They only estimate the catch of the top five species in each shot or set. The fishing effort, number of hooks, soak time or length of tow are estimated at the time but quite often this is left until the end of the trip.

Scientists trying to use this data always have to groom it first and throw out records that are clearly unbelievable or inaccurate. Commercial fishers are not good at recording CPUE information but this is the only information available on relative changes in stock size and CPUE is the foundation stone of most stock assessment models.

If there are resources to improve the quality of information available for managing important shared fisheries then these should be targeted at the areas that will yield the greatest benefits for stock monitoring. There is no doubt that a reliable index of abundance from good quality commercial CPUE for a stock should be the highest priority. Recreational CPUE is also useful for monitoring availability of fish and as part of the equation for estimating harvest.

Adaptive Management Programmes

Adaptive management programmes (AMP's) provide commercial fishers the opportunity to increase the quota available in return for more detailed catch and CPUE recording. These schemes have failed to achieve good coverage of logbook data in the commercial fleet, even though the skippers know that the AMP could be cancelled if the data is not collected. For example, fishers taking bluenose in BNS1 were given a 42% increase in the total allowable commercial catch (TACC). The logbook programme aimed to achieve 100% coverage of the longline fishery. Despite the target, the 2006 plenary report states the overall coverage dropped from around 40-50% at best to 8-14% in recent years. Despite clear incentives individual skipper refused to keep the additional catch records.

Deeming

Even where catch information is near perfect MFish fail to properly account for it. Fish deemed in excess of ACE held often overruns the TACC. The whole point of the Quota Management System (QMS) is to account for all fishing mortality. Fish deemed in excess of the TACC have never been included as fishing related mortality. This is despite the fact that deeming is the most accurately recorded and easily quantified form of other fishing mortality.

It is our strong view that a failure to explicitly account for deeming above the TACC as a form of "other mortality" in the TACC setting process:

- Is contrary to section 21 (1) (b) of the Fisheries Act;

- Contravenes the sustainable use purpose of the Act; and
- Seriously undermines the integrity of the QMS.

Deeming in SNA8

Commercial fishers in SNA8 have unsustainably exceeded their TACC through deeming by an average of 117 tonnes per year over the last 10 years. Of even greater concern is that deemed values have not constrained commercial catch in this stressed fishery and the amount of fish deemed in SNA8 is increasing. The average for the three fishing years from 2003 to 2005 is 139 tonnes, an amount almost equal to half the total recreational allowance.

In 2005 the Minister reduced the SNA8 TACC by 200 tonnes from 1500 tonne to 1300 tonne, a decision that has been all but rendered futile by increased levels of deeming in SNA8. The TACC was exceeded by over 10% (134 tonnes) in 2005-06 the first year of the new rebuild period.

Since the introduction of the QMS over eleven hundred tonnes of snapper have been deemed in excess of the SNA8 TACC. Assuming an average weight of around one kilogram each this equates to over one million fish. Had these fish been left in the water they would have done what fish do – they would have grown, many would have spawned as would their offspring.

The cost of deeming to non-commercial fishers has been immense. A whole generation of amateur and customary Maori fishers has not experienced the SNA8 fishery at more than half the minimum level of biomass prescribed by the Act. If chronic deeming continues, they are not ever likely to see a healthy well managed SNA8 fishery, or the promise of the QMS fulfilled.

Monitoring Amateur Catch

We support practical methods of collecting information to estimate the harvest by amateur fishers. The only practical way of estimating total amateur catch is collecting catch rate information from a representative sample of fishers and having an estimate of total fishing effort. The telephone /diary surveys do this but the harvest estimates may be biased high for a number of reasons.

One reason is that fishers may fish more often or not count all catch, not just what is landed, when they have a fishing diary to complete. These surveys do contain valuable information on who fishes, and the relative proportion of catch by species and method. This information cannot be collected with access point surveys, therefore the telephone diary type survey should continue. Better estimates of annual participation in sea fishing would come from questions added to the **New Zealand Census or Statistics NZ surveys such as the Household Labour Force Survey**. Amateur fishers have suggested this for many years to no avail. Why is this?

There is no single survey that can provide all the answers.

The use of direct observation using aerial over-flight boat counts and boat ramp interviews has provided some hard data on some of the main target species. However, MFish needs to acknowledge that these estimates come from relatively few access points and they do not include catch from shore fishing, fishing from moving boats and fishing outside the flight path. Allowances have been made for some of this catch, but this increases the uncertainty in

the results and may underestimate actual catch. The overflight surveys are expensive but should be continued on a regular basis, such as once every 5 years, until we have an alternative way of monitoring fishing effort every year.

There is good correlation between webcam counts of boats launching from the main boat ramps and overflight boat counts on the same day in quota management area 1 (QMA1). Webcams can operate 365 days a year and appear to offer a good relative index of fishing effort. Techniques for using these data need to be developed to provide harvest estimates for areas where fishing from trailer boats is the predominant fishing method (over 70% of snapper caught in the Hauraki Gulf is taken by fishers on trailer boats). Estimates of catch rate from trailer boats would be required from boat ramp interviews where fish can be counted and accurately measured.

Boat ramp surveys collect information on the variability in amateur catch per unit effort (CPUE). Variability can be high and is caused by changes in the abundance and availability of fish (eg in cool seasons they can be more dispersed), or changes in fishing method and area fished.

Furthermore, not all fishers are equal. A boat with two 'old salts' can catch much more that a boat full of inexperienced fishers. There needs to be ongoing boat ramp surveys with a stratified random design every year, particularly at ramps with web cams, to capture the annual variability in fishing success.

It is not landed catch alone that needs to be estimated but total fishing related mortality. Undersized fish must be returned to the sea and large fish may bust off recreational fishing lines. If these fish are gut hooked the mortality rate can be high.

Amateur fishers have been recording the size and condition of snapper that they catch and return to the sea for an MFish project to determine the selectivity of the recreational fishing method. An estimate of release mortality could be made following a holding net experiment similar to those used for the snapper tagging projects.

Individual reporting

Clearly what is required is unbiased estimates of recreational catch for the important species. By comparing observed catch rates from boat ramp surveys with catch rates recorded in survey diaries for the same area and time show that fishers tend to over report their catch. Self reporting and diary surveys are a good way of collecting a lot of information but it is of little value if we know it is biased by an unknown amount.

It is also of limited value if you don't know what proportion of fishers are providing information. Experience has shown that 100% reporting is not realistic for amateur fishers using diaries or commercial fishers who have strong incentives to report (see BNS1 example above). A national reporting system for amateur fishers would require all the recreational harvest survey resources and more, much more.

Fishing licenses would be inevitable and the outcome would be an expensive waste of time as the results would be highly unreliable. We strongly oppose individual reporting on these grounds alone.

Charter boat catch

The Australians have a compulsory charter boat reporting system. There are strong penalties for not sending in logbooks but reporting rates are still poor. The best way the Australians found to improve reporting is to keep the forms simple. Catch and effort by species should be enough. If detailed information is required such as measuring all catch including those released, an independent observer should do this. There is no good reason to require charter boats to have quota if an adequate reporting system was in place. If they were required to have quota it would have to be issued based on their catch history, they would not be able to release legal sized fish for conservation purposes and they would be able to sell fish, just as any other commercial fisher can.

Recommendations

- We recognise that comprehensive and accurate information about recreational catches would improve the management of shared fisheries.
- More resources are needed to estimate total fishing mortality for each fishing method, and mortality caused by commercial and amateur fishers
- Commercial fishers must be educated to provide better quality catch per unit effort information which is critical to getting a reliable index of abundance for a stock
- Commercial catch in excess of the TACC must stop or be fully accounted for within the TAC
- Aerial overflight surveys should be continued on a regular basis such as once every 5 years until we have an alternative
- Webcams can provide a good relative index of fishing effort for areas where fishing from trailer boats is the predominant fishing method and their use should be continued and expanded
- Boat ramp surveys need to be ongoing at key indicator ramps to capture variability in amateur catch per unit effort (CPUE).
- Telephone diary surveys should continue continued on a regular basis such as once every 5 years as this information can not be collected with access point surveys
- Questions should be added to the New Zealand Census or Statistics NZ surveys such as the Household Labour Force Survey to determine participation rates in sea fishing by region
- A national reporting system for amateur fishers is strongly opposed as it would require all the recreational harvest survey resources, will inevitably lead to licensing and would be an expensive waste of time as the results would be highly unreliable.

Defining the Target Biomass

The People's Objective:

To achieve a biomass level that enables people to provide for their social, economic and cultural well-being while avoiding compensation issues for the Crown.

Introduction

The Government is currently consulting on wide-ranging and fundamental changes to the way shared fisheries are managed. Shared fisheries are coastal fisheries in which commercial, recreational (amateur) and customary fishers have an interest. These fisheries include important species such as snapper, kahawai, paua, rock lobster, blue cod, kingfish, mullet and flounder.

Changes proposed by the Ministry of Fisheries (MFish) in *Shared Fisheries: Proposals for Managing New Zealand's Shared Fisheries* public discussion paper is likely to constrain and reduce every New Zealander's common law right to fish. Current non-commercial fishing rights are recognised, allowed for and protected by the Fisheries Act 1996 (the Act) and subject to regulations under that Act.

MFish propose replacing the existing recreational right with a so-called 'basic right' - a creature of statute which would include a 'baseline allocation' for recreational fishers coupled with a 'priority right', which MFish suggest could be around 20% of the 'baseline allocation'.

Non-commercial fishing rights are not individual quota under the Act and therefore cannot be 'allocated' like commercial quota. They co-exist with but are entirely separate from the fishing rights commercial fishers have under the Quota Management System (QMS).

The QMS was introduced in 1986 in response to decades of unsustainable commercial catches, with the intention of enhancing New Zealand's depleted coastal fisheries and maintaining viable commercial fisheries.

In 1996 the Fisheries Act was amended and now includes sustainability provisions based on environmental and information principles to achieve the purpose of the Act - of ensuring abundance for future generations while enabling people to provide for their social, economic and cultural well-being.

Our recommendations:

- Always manage important inshore fisheries above a level that can produce maximum sustainable yield to better "allow for" non-commercial fishing interests
- Ensure the Minister of Fisheries has protection within the Act to "allow for" non-commercial fishing interests
- Implement alternative management strategies that will limit the Government's compensation liability – since we the taxpayers will end up paying for the poor management and inaction of successive governments.

Current Management

Section 13 of the Act directs the Minister to set a total allowable catch (TAC) for each stock at a level that moves the stock toward a size at or above the level that produces the maximum sustainable yield (Bmsy). Bmsy is a knife edge target – fall below this level and risk recruitment failure, overfishing, and perhaps stock collapse – let it rise and uncaught fish will accrue to the stock and grow.

Having arrived at TAC, following the statutory consultative processes, the Minister is guided by the purpose and principles of the Act, and directed by sections 20 and 21, as to whom the Minister shall grant the opportunity to catch these fish.

Section 21 is very clear and directs the Minister that "before" setting any commercial opportunity (TACC), the Minister must "allow for" non-commercial fishing interests and all other mortalities. As this section is confined to granting fishing opportunity alone, it is clear that non-commercial opportunity is granted a clear priority. Section 20.3 makes this clear by explicitly stating that a total allowable commercial catch (TACC) may be set at zero.

Current stock assessments are modelled to give a TAC that meets the provision of section 13 i.e. a catch that moves the stock to a Bmsy level. The current de-facto Target Biomass is Bmsy.

Furthermore, the Act requires the Minister to consider a range of issues before deciding the sustainable catch level for each fishery in a particular area. This total allowable catch (TAC) represents the total amount of fish allowed to be removed from the fishery during each year.

Within the TAC, the Minister must "allow for" non-commercial fishing interests and the estimated amount of fish that will be killed but not landed during the process of fishing. This is generally referred to as other fishing related mortality[5].

Once mortality, Maori customary and recreational fishing interests have been 'allowed for' the total allowable commercial catch (TACC) is set. The TACC is divided proportionately between commercial fishers depending on the amount of quota shares they hold.

The target of fishing a stock down to a (biomass) level that produces the maximum sustainable yield (Bmsy) has not served the New Zealand public well. Biomass is the total weight of all fish in a stock or management area. The annual catch and quotas are also measured by weight rather than by the number of fish caught. The maximum sustainable yield is the theoretical maximum weight of fish that a stock can be harvested in a year which is replaced by young fish entering the fishery plus growth of the remaining fish in the stock.

Despite the QMS being touted as a 'world leading fisheries management regime' many key inshore shared fisheries have not rebuilt to the biomass that will support maximum sustainable yield (Bmsy) over the past 20 years. There are a number of reasons for this, primarily it has been the failure of MFish to implement the QMS as intended, and give proper recognition to the sustainability provisions within the Act to set commercial catch at levels which would ensure the rebuild of the stocks.

[5] Section 21, Fisheries Act 1996.

Target Biomass

MFish's 'Shared Fisheries' paper features the long held view that non-commercial fishers believe their rights and ability to catch a reasonable bag limit have been subsumed by the economic doctrines of the QMS, which drive fish stock levels to the lowest possible levels while complying with the sustainable use principle.

Other than a few local spatial issues, all non-commercial aspirations can be met by setting a new, higher, Target Biomass; one that expresses the intentions of sections 8, 9, 10, 12 and 21, when read together.

More fish in the water increases non-commercial opportunity. To achieve that the Target Biomass prescribed in section 13 must be applied correctly i.e. it is just as legitimate to set a TAC and TACC that drives the stock to a level well above Bmsy. Indeed, if sections 8, 9 and 10 (the religious parts of the Act) are to be given effect then this high Target Biomass will often be set.

There is no apparent need for legislative amendment. Bmsy is set out as a minimum biomass target in Section 13, not the biomass target. The Minister has every right, and a very strong obligation under Section 8, to set Target Biomass levels well above Bmsy for many stocks.

The failure to adopt a wide range of Target Biomass levels, particularly in Shared Fisheries, can be seen as the overpowering driver in the disputes that arise between commercial and non-commercial interests, and evidence that the 'religious' parts of the Act have never been given effect.

Sustainable management of New Zealand's fisheries requires that the environmental and information principles be applied when making decisions that will affect the abundance of fisheries and the access each sector has to those fisheries.

There is no logical reason that stands up to scrutiny for managing shared fisheries unsustainably, at a biomass level below Bmsy, for extended periods of time. Yet this is just what has happened in some shared fisheries for the last 20 years.

The ongoing costs of excessive juvenile mortality for all fishers, the additional environmental burdens caused as commercial fishers increase their fishing effort in depleted fisheries to catch quotas need to be taken into account. The effects of continually exceeding the commercial quotas set (chronic deeming) and the conflict caused as non-commercial fishers struggle to catch a decent sized fish have never been properly considered and taken into account in fisheries decisions.

It is usually only the fishing industry that are against rebuilding fisheries, arguing that small gains in long term yield require large cuts to current catch. It is the cost in reduced TACC's required that is the fishing industry's main disincentive to rebuild.

If shared fisheries is really about increasing the benefits of our fisheries to all New Zealanders then larger target biomass levels are the obvious solution that will lead to the following:

1. Lower fuel and other catching costs and higher profits for the fishing industry through improved catch per unit of effort (CPUE). This is because a larger biomass would mean increased fish in the water and therefore higher catch rates for all fishers.
2. Better quality and value of fish through increased size and shorter fishing trips.
3. Less juvenile mortality leading to improved yield through having a greater proportion of legal sized fish in the fisheries (not currently modelled by MFish).
4. Less trawling, set netting and longlining thus improving environmental outcomes through improved CPUE.
5. Better delivery of the Crown's obligations to "allow for" customary fishing.
6. Improved amateur fishing to better "allow for" the interests of recreational fishing.
7. Reduced conflict between competing sectors.
8. Improved certainty of sustainability.

Everyone would like to have more fish in the water right now, the only arguments against it are about the cost of getting there, rebuild timeframes, and lack of incentives for those who bear the costs. The attached **More Fish in the Water paper**[6] shows that it may be possible to increase commercial catch, provide incentives for best practice fishing methods and rebuild fisheries at the same time.

If such a system was implemented then fisheries managers could, and should, consider other benefits such as maximum long term economic security and wealth for the fishing industry, reduced catching costs in the face of rapidly increasing fuel costs (now up 30% of the fishing industry's catching cost) and include those recommendations in advice to Ministers of Fisheries along with proper consideration of the full range of non-commercial values.

Currently MFish does not account for the full extent of wastage and overfishing in their models. If we do not compare the cost of wastage and inefficiency at current biomass levels and input controls against a best fishing practice at higher biomass levels strategy, then good management and allocation decisions are not possible. If the proper comparisons are made then all can see the real cost of maintaining low stock sizes and current controls contrasted against the real benefits of rebuilding and best practice fishing strategies.

Rebuilding low levels of biomass is the central issue to amateur fishers. Healthy fish stocks capable of providing amateur fishers a reasonable chance of catching a reasonable daily bag is not too much to ask for. Making stocks sufficiently abundant to provide for improved recreational fishing was one the foundation principles upon which the QMS was built. It is now time to deliver on those promises.

[6] Shared Fisheries Submission Paper Five - More Fish in the Water.

How to Guide the Minister when Determining Target Biomass Levels

If the Minister is to now adopt a range of Target Biomass levels then some guidance may be helpful.

Perhaps a formula may be useful to express the intentions of Section 8, both for current economic, cultural and social needs, but more importantly for future generations. This formula could include Bmsy, as this is the accepted minimum level of any stock, and then modify Bmsy by a factor that increased stock levels to meet the Minister obligations under Section 8.

A range of multiples would be useful as a means of expressing the Utilisation and Sustainability principles in Section 8. These could be set at two, three and four times Bmsy. So a target Biomass would be expressed as Bmsy times a factor of two, three or four. Which stocks the new Target Biomass levels would apply to would depend on a range of factors including non-commercial interest, vulnerability to future declines from land based effects etc.

How the Target Biomass Strategy Would Work

The target biomass should be based on the respective interests of each sector. If, for example, the fishing industry had a 100% interest in the fishery, then a biomass at MSY may be fitting.

In a non-commercial only fishery, a biomass of double the amount required to produce MSY (Bmsy) would better suit their full range of interests, that is larger fish and better catch rates (however to maintain a high biomass level some yield would need to be sacrificed, depending on the controls used and wastage).

In a fishery shared equally by the sectors, negotiations aimed at agreeing on a target biomass level, somewhere between Bmsy and double Bmsy would be appropriate. This strategy would provide the optimum balance of interests and give full recognition that it is in fact a 50/50 shared fishery.

The strategy would also be based on the assumption that recreational allowances have been set at the catch level expected in a fishery that is at the Target Biomass level[7].

All other fisheries could be managed in a similar fashion, using a sliding scale between Bmsy (as the absolute hard lower limit) and twice the level of Bmsy. Other factors would need to be taken into account such as productivity of the stock, age at maturity, vulnerability to fishing and the availability of information to estimate MSY based reference points.

For stocks where information is limited, taking a precautionary approach is necessary. Fish stocks are naturally variable in size. These fluctuations can be quite large. A constant catch strategy, such as a fixed TAC, is extremely risky unless the catch level is set very conservatively. This is because continuing to fish up to the TAC set can exacerbate a natural decline in abundance.

[7] Refer The People's Submission Paper 10 – MFish's Baseline Allocation Proposal Rejected.

This target biomass strategy would recognise the respective interests in each fishery. It would also be so much simpler to implement and more transparent than some obscure value based model as proposed in 'Shared Fisheries'.

This is collectively considered to be the most constructive and straightforward mechanism to address the environmental and access issues in New Zealand’s coastal fisheries. Further discussion with non-commercial fishing representatives would be required before implementation of this proposal proceeds, particularly regarding the lower biomass “hard limit” for mainly commercial fisheries and higher biomass target for mainly non-commercial fisheries. The operation and design of the scaling methodology would also need further discussion.

More Fish in the Water

The People's Objective:

To maximise the value of shared fisheries and increase biomass levels while offering incentives to conserve and enhance fisheries for the benefit of all New Zealanders.

Introduction

The Government is currently consulting on wide-ranging and fundamental changes to the way shared fisheries are managed. Shared fisheries are coastal fisheries in which commercial, recreational and customary fishers have an interest. These fisheries include important species such as snapper, kahawai, paua, rock lobster, blue cod, kingfish, mullet and flounder.

The Ministry of Fisheries' (MFish) proposals are contained in *Shared Fisheries Proposals for Managing New Zealand's Shared Fisheries: A public discussion paper ('Shared Fisheries')*. The paper is dated November 2006 and submissions are due by 28th February 2007.

All New Zealanders have a common law right to fish. Current non-commercial fishing rights are recognised, allowed for and protected by the Fisheries Act 1996 (the Act) and subject to regulations under that Act.

Underpinning the sustainable utilisation provisions of the Act are environmental and information principles. A mix of quota limits and method restrictions are used to manage the impact of fishing on stocks and prevent further declines.

The QMS was introduced in 1986 with the intention of enhancing our coastal fisheries by restoring over-fished stocks thereby maintaining viable commercial fisheries and providing healthy fisheries for all New Zealanders.

After twenty years of the QMS it is obvious that insufficient weight has been given to the overall purpose of the Act, of ensuring abundance for future generations and enabling people to provide for their social, economic and cultural well-being.

Our recommendations:

- Promote a more flexible and responsive fisheries management regime
- Reduce wastage and reward conservation efforts
- Sustainable management to improve the yield from inshore fisheries.

Shared Fisheries Management

Management of shared fisheries needs to be far more flexible and more responsive than management of commercial only fisheries. This is necessary because, in deepwater or commercial only fisheries, the risk of overfishing and cost of rebuilding falls entirely upon the commercial sector.

Overfishing in shared fisheries can have serious consequences particularly for amateur and customary fishers. These consequences are difficult and expensive to reverse and are the underlying cause of much of the current conflict between commercial and non-commercial fishers in shared fisheries.

Ideally the best way of managing shared fisheries is to agree on the management objectives and then set a target stock size (biomass) that delivers good quality fishing with reasonable yields that are fairly divided between the competing interests. Had the QMS been implemented as promised we would have achieved an outcome similar to that ideal in most, if not all, shared fisheries. These fisheries would have rebuilt by now and conflict would be minimal.

It is difficult to dispute that successive Governments' lassie faire attitude to the management of shared fisheries is largely responsible for the current situation. Subsequent to the implementation of the QMS the Government allowed Quota Appeals Authority (QAA) decisions and chronic deeming to increase commercial fishing pressure (and the commercial share) above the original total allowable commercial catch levels (TACC). These TACC's were intentionally set at conservative levels to allow depleted fisheries to rebuild.

Furthermore, in the 1980's a lot of effort went into developing a national recreational fishing policy but MFish and the government failed to implement it.

Setting Target Biomass Levels

If fisheries are increasingly under pressure and/or insufficiently abundant then the obvious thing to do is to make the pie bigger - that is increase the biomass and the yield.

Two obvious ways of achieving this are through reducing wastage or improving the yield. A lack of incentives to conserve, blind adherence to seeking proportional fisheries decisions that fail to distinguish between those who conserve and those who waste fish (eg. through poor practices, inappropriate gear), the pretence that poor allowances are somehow permanent allocations, poor historical recognition of recreational interests and an absence of directed science have all conspired against sensible management of shared fisheries.

Fisheries managers use stock models to predict outcomes from various harvest strategies. Currently the models focus on a strategy that maintains a stock at a biomass level that produces the maximum sustainable yield (Bmsy). These models omit or poorly represent many of the variables such as yield per recruit, juvenile mortality at different biomass levels and year class strengths, illegal fishing and wastage at different levels of biomass. Another factor to be taken into account to achieve the goal of more fish in the water is the catching costs at various levels of biomass.

Everyone wants more and bigger fish in the water. The main advantage of running fisheries at higher stock sizes is that benefits to all New Zealanders is actually maximised.

Larger target biomass levels will lead to the increasing the following benefits:

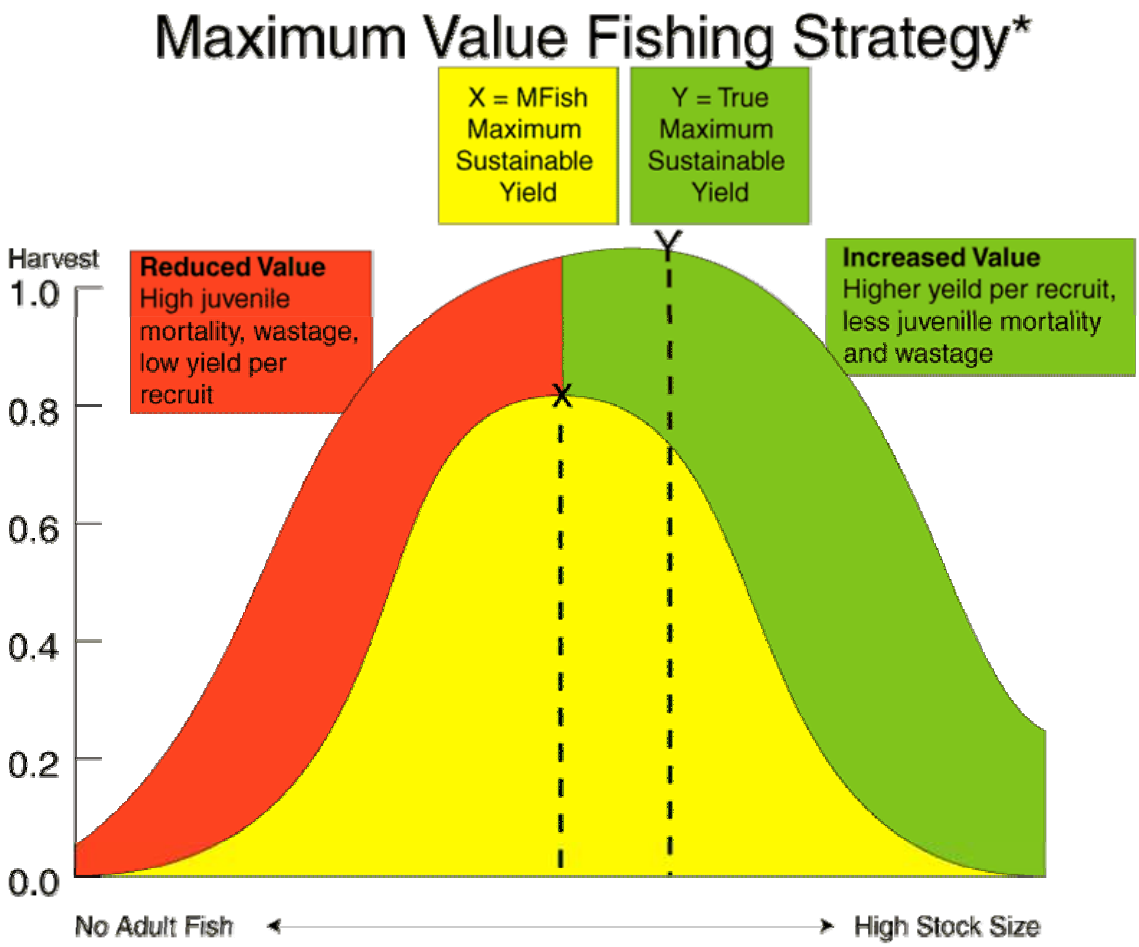
9. Lower fuel and other catching costs and higher profits for the fishing industry through improved catch per unit of effort (CPUE).
10. Better quality and value of fish through increased size and shorter fishing trips.
11. Less juvenile mortality leading to improved yield through having a greater proportion of legal sized fish in the fisheries (not currently modelled by MFish).
12. Less trawling, set netting and longlining thus improving environmental outcomes through improved CPUE.
13. Better delivery of the Crown's obligations to "allow for" customary fishing.
14. Improved amateur fishing to better "allow for" the interests of recreational fishing.
15. Reduced conflict between competing sectors.
16. Improved certainty of sustainability.

Maximising Value Fishing Strategy

The current Bmsy strategy depends on maintaining a low stock size characterised by many small fish. Stocks below Bmsy have even more small fish as a proportion of the legal sized biomass. Because so many fish are near legal size under a Bmsy strategy, current fishing gear targets very small, just legal sized fish. An inevitable consequence is that many undersized fish are also caught.

Fishing related juvenile mortality increases as the stock size reduces because at low stock sizes the catch per unit of effort (CPUE) drops. Commercial fishers increase effort in this situation to maintain their catch, so if CPUE is halved in a depleted fishery, juvenile mortality will likely double. This factor is not modelled and therefore the cost in lost production is not obvious with the current stock assessments. (Note: MFish assumes recruitment is independent of the size of the spawning biomass.)

The graph below is not to scale or representative of any particular fishery, but shows a likely outcome if undersized mortality could be reduced and/or a higher yield per recruit harvest strategy was implemented. The red area shows undersized fish currently wasted, the green area shows a likely outcome in increased catch and biomass if those fish were not killed or if fish were harvested at larger sizes.



The green area could be further increased through improving the yield per recruit. For example, if commercial and recreational fishers used best fishing practices and methods targeted at reasonable sized fish then very significant gains in yield could be generated. However, none of these gains are possible under a proportional allocation model because those who pay the cost of conservation lose the benefits to those who do not.

There are no real incentives provided in 'Shared Fisheries' or under the current proportional interpretation of the QMS for either sector to actually maximise value, conserve or rebuild fisheries. This is particularly so if amateur fishers are to be constrained to an under-allowance at the outset that may only cover half their current catch, as a consequence of other 'Shared Fisheries' proposals.

Co-operative fisheries plans would not succeed in addressing the above issues if amateur fishers believe their initial baseline proportion is poorly set and inadequate. The energies of the amateur sector would be entirely directed at resolving the new grievance caused by the misallocation.

Refer Paper 10: MFish's Baseline Allocation Proposal.

Creating Incentives Towards Conservation and Enhancement

The status quo, the 'Shared Fisheries' proposals and MFish fisheries plans do not provide sufficient incentives for users to conserve and enhance fisheries. Even in commercial only fisheries the QMS fails in this regard, so the issue is not peculiar only to shared fisheries.

One of the most fundamental flaws is the absence of any penalty for catching or killing small fish, for either sector. There are no incentives to avoid these small fish or to work towards improving the yield per recruit.

Due to this unconstrained freedom to waste and dump undersized fish, fishing technology is designed to capture everything around or above legal size. By managing fisheries in tonnages, instead of counting the total fish numbers killed by fishing, true fishing related mortality is disguised and the logic of MFish management becomes conflicted. Recruitment is a finite number of fish, the weight of which depends upon the size at capture. Managing fisheries by gross tonnes of legal sized fish extracted and declared on reporting forms fails to take account of this critical aspect of proper fisheries management.

MFish contend that recruitment of legal sized fish such as snapper is dependent on weather and water temperature and is independent of the size of the spawning biomass (except at very low stock sizes). This means that the number of legal sized fish entering the fishery annually is variable. What is more predictable is whether it would be a good, average or poor year class, because this is based on conditions when those fish were spawned.

Spawning Success

When good year classes of sub-legal fish are present in the fishery juvenile mortality increases. Conversely, if there is a poor year class mortality reduces. In Snapper 1 (SNA1)[8] the fluctuation is thought to be up to 20 fold with warm spawning conditions providing up 20 times more one-year old fish than a cooler season.

In the years following good spawning conditions many more juveniles are wasted during fishing. If this waste was reduced it could provide sufficient fish to speed the rebuilding of depleted fisheries, improve the yield per recruit and maximise the overall yield from fisheries.

Because recruitment is finite, the actual numbers of fish killed by fishing is far more important than how many tonnes are harvested. A strategy to reduce mortality and make meaningful gains in rebuilding shared fisheries needs to consider the numbers of sub-legal and just legal fish being killed during fishing.

Table 1: Estimated number of snapper per metric tonne.

Size (cm)	Estimated weight per fish (grams)	Estimated number of snapper per tonne
< 25	-	4000 - 6000
25	320	3125
30	600	1660
32	710	1408

[8] Snapper 1 (SNA1) is the snapper stock in the area from North Cape to Cape Runaway on the east coast of the North Island.

Conservation Incentives – Commercial

One often-discussed way of providing an incentive to commercial fishers to avoid small fish is to implement a no-size limit regime and a land-all fish policy. However, in the absence of observer coverage on every vessel, the incentive to dump fish too small, or too damaged to sell will continue unabated.

The incentive to conserve ACE rather than fish is so great in the case of higher valued species that if dumping cannot be done without risk in the daytime it will probably occur at night. The worst thing about a land-all fish policy is that it may create the illusion a serious issue of wastage has been addressed when it has not. A golden opportunity to cheaply and effectively rebuild fisheries will have been lost.

A far better management system would be to implement soundly based size limits in shared fisheries that would ensure close to maximum yield per recruit is achieved and implement effective input controls that protect small or undersized fish from harm. Input controls such as mesh or hook sizes are easily enforced in inshore commercial fisheries as compliance checks can be undertaken at sea or at the wharf.

Conservation Incentives - Amateur

The most important factors for amateur fishers is a lack of trust in MFish and the Government regarding the poor manner that recreational interests have been ‘allowed for’ in the past and the 'Shared Fisheries' proposal to roll over current allowances into initial allocations, when everyone agrees that the current allowances are wrong.

There is also grave concern about the use of reducing recreational fisher’s catches as a preferred soft option instead of Government taking decisive action that actually addresses the real issues. A prime example is the rampant deeming above the TAC that continues in SNA8. This is despite the Minister cutting recreational and commercial catches in 2005 and setting a rebuild timeframe, which is now threatened. Failure to address the above will leave amateur fishers in the grievance mode and more likely to litigate than co-operate!

Assuming a fair allowance at the level of current catch is implemented, with sufficient room to grow into the long-promised improved recreational fishery at the target biomass level, amateur fishers would likely cooperate with a similar incentive based system to that proposed above for commercial fishers.

Amateur fishers have much more scope for conservation and improving yield per recruit than commercial fishers. Most of the positive actions they have taken to date have been voluntarily offered and accepted, kingfish, marlin, size limits, bag limits and longline hook limits in all snapper fisheries are a few examples.

If a way can be found to incrementally increase the size limit of snapper to 32cm without causing excessive hardship, or increasing undersized catch, the recreational fishery could almost double yet only kill the same number of fish they were killing at the old 25cm size limit.

It is this sort of progressive and inspiring fisheries management that is what is needed to ensure much greater yields from fisheries.

Jumping the Hurdle

While everyone benefits at higher levels of biomass it is the cost of getting there that causes the stalemate. There are several issues that need to be addressed urgently:

1. Deeming outside the TAC and QMS threatens the management objectives and rebuilding timeframes in shared fisheries. This practice must be stopped!

2. Over-allocated commercial quota in fisheries like flounder, mullet and gurnard lead to unconstrained commercial fishing and make a mockery out of the QMS.

   Lower commercial quotas have to be set and enforced to allow these shared fisheries to rebuild to sustainable levels. If this fundamental prerequisite to managing fisheries requires compensation to fix, then pay it; otherwise give up the pretence that these fisheries are managed!

3. The Quota Appeal Authority (QAA) issued quota exceeded the sustainable limits in some fisheries. This depletion was not caused by recreational or customary fishing, consequently non-proportional cuts to the TACC are required to ensure these fisheries are properly managed without interfering further with the pre-existing customary and amateur interests that have been eroded by the QAA in the first place, and subsequent management decisions thereafter.

4. Set net fisheries like flounder and mullet can be adequately managed by input controls such as mesh sizes set large enough to protect the desired portion of the biomass. This is particularly suitable for fast growing species and may be a viable alternative.

5. The yield curve is flat around MSY for most shared fisheries so the yield is similar across a range of biomass levels. However, with an above Bmsy strategy the value to all New Zealanders, reduced juvenile mortality, increased yield per recruit, reduced environmental damage and the management flexibility for both commercial and amateur fishers at higher biomass levels dictates that an above Bmsy makes by far the most sense for shared fisheries.

6. Sensible size limits which pursue higher yield per recruit and input controls designed at reducing the mortality of small fish could be the most cost effective tools for all sectors to assist in rebuilding fisheries to optimum biomass levels. Single sector based plans are essential to provide real incentives to ensure these gains are available for each sector.

7. Some, but a significantly lesser amount of re-allocation would be required under these proposals than is suggested in 'Shared Fisheries'.

Reducing Government's Liability

Recognition of amateur fishers' conservation effort was discussed during the Ministerial Consultative Group meetings with Government in 2001. Representatives agreed that the Government's exposure to compensation for any 'reallocation' claims by the fishing industry could be halved.

This could be achieved by matching a kilogram of reallocation funded by the Government for every kilo of fish created or conserved by amateur fishers.

If this outcome could be achieved the Government's exposure is reduced and recreational conservation efforts would be incentivised and enhanced.

Refer Paper 4: Defining the Target Biomass

Compliance Incentives

In some fisheries commercial or recreational compliance could be improved through providing incentives such as increased allowances or TACC's. This would reduce illegal activity and better provide the yield to legitimate users.

Some suggestions only on where bonus catch increases could be applied:

- Vessels carrying position transmitters (GPS) to reduce trucking, fishing in prohibited areas and other illegal activities
- Fitting deck cameras for intermittent monitoring and transmitting pictures of fish handling areas to improve compliance with the land all fish strategy
- Real time reporting to reduce black marketing and misreporting
- Individualised numbered horn tags for identifying commercial crayfish against poached black market product at pubs, restaurants, hawkers and fish shops to reduce black marketing.
- Others devised to improve the compliance amateur fishers in response to specific issues.

Conclusion

The only real way of maximising the value of shared fisheries is through setting a target biomass level that ensures an abundance of fish of sufficient size to enable people to provide for their social, economic and cultural well-being and the needs of future generations, as per the Fisheries Act.

In addition, fisheries managers need to rebuild stocks to that target biomass level decisively, and in a timely manner. The current Bmsy strategy has often failed in this respect because it is designed only to satisfy commercial aspirations from fisheries.

Even the commercially orientated Bmsy strategy we are supposedly working towards has been poorly implemented. Twenty years after the implementation of the QMS some shared fisheries are still depleted to half the required level through procrastination, lack of active

management on the part of MFish, unconstrained deeming outside the TAC, QAA decisions and fishing industry threats of litigation and lobbying.

Reducing juvenile mortality and improving yield per recruit are realistic options to improve sustainability, increase abundance and catch rates. Tangible gains can be achieved through reducing wastage while providing better quality fishing for all fishers.

Incentives to conserve and enhance fisheries are stymied by ongoing issues regarding past management of shared fisheries. There is an urgent requirement to meaningfully address these issues before any progress can be made.

Implementing the Maximum Value Fishing Strategy proposed within this document can mitigate the Government's liability to litigation. If the Government is committed to achieving maximum potential from shared fisheries negotiations with amateur fishing representatives will be required.

If doing nothing is not an option, then surely what we do implement must be both fair and effective.

Nature of Fishing Rights

The Government is currently consulting on wide-ranging and fundamental changes to the way shared fisheries are managed with a view to maximising the sustainable harvest and value derived from fisheries that customary, recreational and commercial fishers have an interest in.

Changes proposed by the Ministry of Fisheries (MFish) are contained in the *Shared Fisheries: Proposals for Managing New Zealand's Shared Fisheries* public discussion paper ('Shared Fisheries').

A major concern is that the proposals may further constrain every New Zealander's common law right to fish. Currently non-commercial fishing rights are recognised, allowed for and protected by the Fisheries Act 1996 (the Act) and subject to regulations under that Act.

MFish propose replacing the existing recreational right with a so-called 'basic right' - a creature of statute which would include a 'baseline allocation' for recreational fishers coupled with a 'priority right', which MFish suggest could be around 20% of the 'baseline allocation'.

Non-commercial fishing rights are not quota under the Act and cannot be 'allocated' like commercial quota. They co-exist with but are entirely separate from the fishing rights commercial fishers have under the Quota Management System (QMS).

The QMS was introduced in 1986 with the intention of enhancing our coastal fisheries by restoring over-fished stocks thereby maintaining viable commercial fisheries and providing healthy fisheries for all New Zealanders.

MFish propose, *"to clarify provisions for Maori customary take"*. Their suggestion is to limit the allowance for customary take to what is *actually* taken. When the records suggest the allowance is being exceeded MFish will increase that amount or vice versa, subject to sustainability.

In addition, MFish propose that *"there could be **some** increases in customary take"* where inshore fisheries that are important to Maori are rebuilt from depleted states.

Our recommendations:

- Reject outright any redefinition of the common law right to fish
- The Minister has to give particular regard to kaitiakitanga as directed by the Act, to "allow for" Maori customary and recreational interests
- Commercial fishers are constrained to fish within sustainable TACC's.

Current Legislation

Under the current Act, the Minister of Fisheries (the Minister):

- Is required by Parliament to manage fisheries to ensure sustainability and so meet the reasonably foreseeable needs of future generations – 'fish come first';

- In managing the use of fisheries must conserve, use, enhance and develop fisheries to enable people to provide for their social, cultural and economic well-being;
- Must first "allow for" Maori customary non-commercial fishing interests and recreational interests before setting or varying the total allowable commercial catch (TACC).

To fulfil his statutory obligations, the Minister must:

- Adhere to both the environmental and information principles in the Act; and
- Use the wide range of fisheries management tools and mechanisms to make sure that there are sufficient fish for the needs of all New Zealanders.

Management of Fishing Rights

Recreational Right – Amateur Fishing

We consider that peoples' recreational fishing interests have not been 'allowed for' in the way intended and directed by section 21 of the Fisheries Act. Successive Fisheries Ministers have consistently demonstrated that instead of 'allowing for' recreational interests their focus (and MFish's) has been on 'allocating' or sharing out portions of the total allowable catch (TAC) between commercial fishers and all non-commercial fishers - recreational and customary.

In doing so, the Minister manages to balance the TAC, allowances and total allowable commercial catch (TACC) equation and avoids compensation issues. In our view, this approach fails to allow for a process that truly and explicitly considers the full range of recreational interests as directed by the Act.

The Act clearly states the Minister shall "allow for" non-commercial fishing interests, including recreational. However, the Minister has discretion in the way he considers various factors including population shifts and growth, social, cultural and economic considerations, the productivity of a fish stock, and fish mortality whether natural or as a result of fishing.

On the one hand the Minister is duty bound to ensure enough fish are left in the water for future generations and avoid adverse effects on the aquatic environment, while allowing enough fish be caught to enable people to provide for their social, economic and cultural well-being.

By under-estimating amateur catch, or relying on estimates of non-commercial catch from depleted fisheries, Fisheries Ministers have not fully 'allowed for' non-commercial fisher's interests.

For example, the North Island west coast snapper fishery, Snapper 8 (SNA8), has been below the level required to produce maximum sustainable yield for over twenty years (B_{msy}). This has had an impact on the number of snapper available to be caught by amateur fishers. Harvest estimates based on amateur catch rates in this depleted fishery do not accurately reflect recreational interest in this fishery.

By failing to acknowledge the effects of localised depletion on amateur and customary fishers MFish and successive Ministers have failed to grasp the complexity of either the rights or

fisheries management. These issues have been found “too hard” by the bureaucracies – and to be fair they are not simple.

These issues were discussed in the late 1970’s and early 80’s prior to the introduction of the QMS. One of the key selling points of the QMS to inshore commercial fishers was the compensation would be payable if their quotas were reduced to “allow for” amateur fishing. That right to compensation was removed by the change to proportional quotas in 1990 and this has added a further element of conflict into an already complex and angst ridden situation.

Dissatisfaction with the unfairness of the Minister’s 2004 and 2005 allocation decisions for kahawai led to a High Court challenge in 2006. The case, taken by amateur fishers and supported by Ngapuhi, sought clarification on how the Minister should “allow for” recreational fishing interests when making such decisions. The ruling is pending.

The judgment from the Kahawai Legal Challenge is likely to have an impact on outcome of the 'Shared Fisheries' discussions, particularly the clarification of the “allow for” provisions of the Act. The ill-timed release of the discussion paper and the premature closure of the submission deadline leaves non-commercial fishers struggling to accept the validity of the 'Shared Fisheries' process and also the sincerity of the Minister and MFish to find robust solutions to the ongoing debate surrounding allocation issues.

Customary Right

Maori have a traditional right to harvest seafood for the purposes of the marae. This has been defined in our fisheries laws as a customary right requiring permits and reporting. The system is still in transition and reported customary catch is a small part of the total estimated catch of fish from our coastal waters. Maori have also traditionally taken kaimoana (seafood) to feed their families.

Since the 1992 Treaty of Waitangi (Fisheries Claims) Settlement Act was enacted, most of the time Maori go fishing they are categorised as ‘recreational’ fishers (an unpalatable concept to many Maori). Therefore much of the catch by Maori for traditional or customary purposes is taken in the same way as non-Maori, under the amateur catch regime.

However, as with the recreational right to fish, fisheries managers have failed to protect the customary interests of Maori fishers in many areas. It is not sufficient for the Minister to simply set aside a tonnage of fish for customary catch if it cannot be caught.

Many places traditionally fished by Maori for hundreds of years are no longer capable of providing for customary needs because of excessive commercial fishing. Simply ensuring that there are sufficient fish of that species **in the sea** to continue breeding and allow for maximum extraction of biomass does not ensure that there are sufficient fish of appropriate size to meet the traditional and recreational needs of people **in the places** they traditionally fish.

In addition to the obligation to “allow for” customary interests and ensuring availability, the Act also directs the Minister to obtain the input and participation of Maori, and to have particular regard to kaitiakitanga (guardianship/stewardship) when making fisheries management decisions.

It is concerning there is no reference at all to kaitiakitanga in the 'Shared Fisheries' discussion paper. This absence further demonstrates the Minister's failure to properly "allow for" tangata whenua's non-commercial fishing interests as required by the Act.

Kaitiakitanga has the potential to deliver on the environmental, social, economic and cultural provisions of the Act. The failure to *have particular regard to kaitiakitanga* has led to poor management of important shared fisheries and has affected all non-commercial fishers.

Refer - Paper 14: Supporting Kaitiakitanga (Guardianship).
Paper 9: Radical Proposals - Effects on Maori.
Paper 7: Crown's Obligations to Maori.

Commercial Right

After deciding on the sustainable catch level for a fishery (TAC), the Minister has to "allow for" non-commercial fishing interests and other mortality. This includes dumping, illegal catch and incidental mortality caused by fishing. Quota rights are then issued as a proportion of the total allowable commercial catch (TACC).

It is widely considered, at least among non-commercial fishers, that too much quota was allocated to commercial fishers for too few fish in 1986 when the QMS was introduced.

Still more quota was issued to commercial fishers who were dissatisfied with their allocations, after the Quota Appeals Authority (QAA) reviewed the Government's initial allocations made to commercial fishers.

The explicit perpetual commercial fishing rights issued through the QMS, and the compensation paid from the public purse to have commercial fishers accept the QMS, both carried an absolute responsibility to the beneficiaries (quota holders) to constrain the entire commercial catch to the TACC.

In many shared fisheries commercial take has not been limited to the original TACC's through QAA increases, deeming, dumping and illegal activity. While some fisheries may still be producing the maximum sustainable biological yield (B_{msy}) others have been overfished. SNA8 is an example of a fishery below (B_{msy}), affected by QAA increases, dumping and chronic deeming.

Since 1986 commercial fishers have continued fishing with ever improving and sophisticated bulk fishing methods to maximise the return on their fishing effort.

Effect on Non-Commercial Fishers

The concept of maximum sustainable yield (MSY) is one that focuses purely on the mass of fish able to be removed on a continuous basis. There are two inevitable and known results of this harvest level in the dynamic of the population being fished.

Firstly, the total mass of fish in the population reduces to 20 percent to 30 percent of its original size.

Secondly, older fish are caught faster than they can be replaced and the age/size distribution changes so that most of the fish in the population are young and small. Very few fish get to survive into what would previously have been considered middle or old age.

Thus, it is widely acknowledged that the quantity and quality of fish caught by non-commercial fishers has diminished. In fisheries with a high traditional or amateur component this is having serious consequences on many people who have relied, and still rely on, the bounty of the sea to provide for their social and cultural well-being.

Clearly the non-commercial fishing interests that the Minister has a duty to "allow for" are more than just a share of stock that is being fished to the maximum level. Reasonable catch rates and availability of some larger fish are important aspects of these interests.

Another effect of fishing down a stock is a contraction in the area where those fish can be found. Non-commercial fishers tend to fish in coastal waters. Amateur fishing interests are often quite localised. If an area is fished out or if a smaller stock means that the fish are less dispersed then there maybe nothing in the local area to catch.

The potential of kaitiakitanga to enhance the marine environment should not be under-estimated. Many New Zealanders are concerned about the adverse flow-on effects of excessive commercial fishing. The often talked about fall in the population of sea birds which rely on kahawai to drive bait fish to the surface to feed the sea birds is a prime example.

For too long shared fisheries management has focused on meeting commercial objectives while ignoring the purpose and principles of the Act. Non-commercial fishers want improved abundance in shared fisheries to enable people to provide for their social, economic and cultural well-being.

Conclusions

Non-commercial fishing rights are recognised, 'allowed for' and protected by the current Fisheries Act. Clearly successive Fisheries Ministers and MFish have failed to properly "allow for" non-commercial fishing interests as directed by the Act.

Any changes to the Act to enable a 'basic right', a baseline allocation and a "priority" to 20 percent of that baseline allocation will constrain the common law right of every New Zealand citizen to fish. This is unacceptable to both customary and amateur fishers.

Failure to manage shared fisheries at sustainable levels has led to localised depletion, which has had a detrimental effect on catch rates for amateur and customary fishers. This fundamental aspect of management needs to be addressed, as many people cannot currently provide for their social, cultural and traditional needs.

In addition to current requirements it is difficult to see how the Minister is going to provide for the needs of future generations, as he is obliged to do, when the sustainability provisions of the Act are not being met even now.

Failure to have any regard to kaitiakitanga has diminished the mana of tangata whenua as guardians of Aotearoa and Tangaroa. The complete failure to acknowledge let alone recognise this obligation is a serious flaw in the 'Shared Fisheries' process.

The focus needs to shift from managing shared fisheries to meet commercial objectives to a more sustainable approach. The Government should concentrate on developing policies that

meet the environmental principles of the Act and thereby enable people to provide for their social, economic and cultural well-being.

Crown's Obligations to Maori

Introduction

In its 'Shared Fisheries' discussion paper released in October 2006, the Ministry of Fisheries (MFish) treats the Crown's obligations to tangata whenua lightly. There is only a brief mention in MFish's proposals of customary fishing, traditional fisheries tools and mechanisms for area management.

What MFish glaringly omits to explain is that the Fisheries Act 1996 (the Act) specifically provides for:

- 'Input and participation' by Maori's into fisheries management processes – sustainability measures, in particular contained in Part 3 of the Act; and
- The statutory obligation of the Minister of Fisheries (the Minister) 'to have particular regard to kaitiakitanga' when making decisions on sustainability measures.

Sustainability measures are those fisheries management decisions that relate to setting or varying catch limits including TACC's, areas that can be fished, the size of fish, methods and seasons of fishing. The Minister, on the advice of MFish, makes such decisions.

Generally MFish conduct two 'sustainability rounds' per annum and carry out ongoing management processes and research functions throughout the year.

In particular section 12 of the Act requires that the Minister, 'before doing anything' - making any decisions on sustainability measures - must provide for the input and participation of tangata whenua (iwi or hapu holding mana whenua over the particular area) having a non-commercial interest in the stock concerned, or an interest in the effects of fishing on the aquatic environment in the area concerned.

The Minister must also consult widely with Maori, environmental, commercial and recreational interests.

Before making a decision on a proposed measure it is obligatory on the Minister to *"have particular regard to kaitiakitanga"*.

Our recommendations:

- The Government avoid creating new grievances by providing for tangata whenua's non-commercial fishing interests
- The Government reject any changes that will limit the allowance for Maori's customary fishing interests in kaimoana to reported catch only
- The Minister gives particular regard to kaitiakitanga when making decisions.

Fisheries Act 1996 – purpose and principles

In order to understand how section 12 works, it must be considered in the context of the purpose and principles of the Act that underpin fisheries management in Aotearoa. The purpose of the Act is contained in section 8, and the principles in sections 9 (environmental principles) and 10 (information principles).

Purpose - section 8

The purpose of the Act is to provide for:

- The **utilisation** of fisheries resources
  conserving, using, enhancing and developing fisheries resources to enable people to provide for their social, economic and cultural well-being,

  while

- **Ensuring sustainability**
  - maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations;

  - avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment.

Although defined in the Act, the common meaning of 'well-being' can be described as moral or physical welfare, the healthy, contented, prosperous condition of a person or community.

'Ensuring sustainability' is not just a short-term issue but goes well beyond our lifetimes.

Environmental principles – section 9

This section requires decision makers to take into account:

- Associated or dependent species should be maintained above a level the ensures their long-term viability;
- Maintenance of biological diversity;
- Protection of habitat of particular significance for fisheries management.

Information principles – section 10

This section requires decision makers to take into account:

- The best available information;
- Uncertainty in the available information;
- Be cautious when information is uncertain, unreliable or inadequate;
- The absence of, or any uncertainty in, any information not to be used as a reason for postponing or failing to take any measure to achieve the purpose of the FA.

Setting or varying the total allowable commercial catch (TACC) is a sustainability measure: section 13.

Under section 21, contained in Part 4 of the Act relating to the quota management system (QMS), the Minister is directed to allow for Maori customary non-commercial fishing interests, recreational interests and all fishing related mortality in setting or varying a total allowable commercial catch (TACC).

Treaty of Waitangi (Fisheries Claims) Settlement Act 1992/ New Zealand's international obligations

Section 5 of the Fisheries Act directs any person making decisions under the Fisheries Act to act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and New Zealand's international obligations relating to fishing.

Section 12

Section 12 provides that, before giving any approval or carrying out any functions in relation to sustainability measures the Minister **shall** - there is no discretion - *provide for* the *input and participation* of tangata whenua and *consult* widely.

"(1) Before doing anything under any of (the sustainability measures sections) the Minister shall:

a. **Consult** with such persons or organisations as the Minister considers are representative of those classes of persons having an interest in the stock or the effects of fishing on the aquatic environment in the area concerned, including Maori, environmental, commercial, and recreational interests; and

b. Provide for the **input and participation** of **tangata whenua** having—

(i) a non-commercial interest in the stock concerned; or

(ii) an interest in the effects of fishing on the aquatic environment in the area concerned—

and **have particular regard to kaitiakitanga**.

The obligations to both consult and provide for the input and participation put in place a two-layered requirement on the Minister regarding the proposed sustainability measures, namely, the Minister must:

- Consult and engage with a wide group of interests;
- Make the necessary arrangements, including adequate resourcing, to provide for the input and participation of tangata whenua; and
- Have particular regard to kaitiakitanga.

Refer Paper 14: Supporting Kaitiakitanga (Guardianship).

Consultation

The courts have considered the term "consultation[9]" and although not defined in the Act it is defined in at least one other statute (the Local Government Act). In broad terms 'consultation'

[9] Wellington International Airport Limited and others v Air New Zealand (CA 23/92, 73/92[1993] 1 NZLR 671)

has to be a meaningful engagement with an open mind, not merely an offer of a proposal and disregarding people's responses.

In 2001 MFish published a paper entitled "Section 12: Consultation[10]" (MFish's section 12 paper) where this meaning of 'consultation' was referred to.

Interestingly, at various Hokianga Accord hui held since mid-2005 Ngapuhi, the largest iwi in the country, and Ngati Whatua have both confirmed that neither iwi has been:

- Consulted on proposed sustainability measures at the formative stage of a proposal; or,
- Offered any (let alone adequate) resourcing to enable proper and meaningful input and participation in the development of fisheries management sustainability measures[11],

as the Minister is obliged by section 12 to do.

For financial reasons, MFish has sought to make provision for input and participation on some sustainability proposals on a collective basis – more than one iwi and/or hapu – by helping to establish regional iwi customary forums. However, MFish has not clarified its criteria for iwi and/or hapu to qualify for MFish recognition as a regional iwi customary forum.

The difficulty the Hokianga Accord has experienced while trying to establish itself as the mid-north regional iwi customary forum is evidence of the lack of clarity for tangata whenua. Ngapuhi and Ngati Whatua initially established the Te Tai Tokerau forum in 2005.

At this stage actions taken by MFish in relation to sustainability measures appear to fall well short of:

- Any statement by MFish to iwi/hapu on a proposed sustainability measure that MFish will enable the provision of input and participation on that proposed sustainability measure - on all aspects of their non-commercial interests being customary, recreational and environmental;
- Including the necessary resourcing to do so.

Input and Participation

Provide for

This suggests:

- Positive steps or actions that need to be taken;
- Adequate resourcing.

Input and participation

This must include:

[10] Section 12: Consultation, October 2001. http://www.option4.co.nz/pdf/s12%20MOF.pdf
[11] http://www.HokiangaAccord.co.nz

- The contribution of tangata whenua in formulating the sustainability proposal;
- The act of taking part or being involved in the process to which the proposal relates.

Contrasted with consultation after the issues have been identified, discussed and confirmed, *input and participation* means being involved in the formulation of a proposal.

MFish's section 12 paper refers to an informal working group having initiated a project to establish how to incorporate the views of tangata whenua in developing proposals and making decisions relating to fisheries management, seeking advice from tangata whenua on how they wished to provide such *input and participation* with the project to have been completed by the end of the year 2000.

Apart from statements made in various Ministry plans - the five-year plan and the ten-year plan - of the need to involve tangata whenua in decision making processes, to date it appears that MFish has not yet developed a substantive policy on what MFish considers *input and participation* means.

The Hokianga Accord sought some clarification and MFish's explanation of their view on section 12 obligations was sent to Raniera Tau (Chairman, Te Runanga A Iwi O Ngapuhi and Hokianga Accord) in April 2006[12]. However, the Minister's statutory obligation to provide for tangata whenua's input and participation appears to remain unsatisfied. Particularly regarding the lack of provision of resources by MFish.

Tangata whenua having a non-commercial interest

Maori can lay claim to customary, recreational and environmental non-commercial interests in Aotearoa's fisheries. In the context of the 'Shared Fisheries' discussion paper all of these aspects are particularly relevant.

Maori customary fishing interests will be severely affected if the MFish proposals are implemented, as allowances for customary take will be reduced to an amount equal to current MFish data on previous permits issued.

Given the realisation that:

- The vast majority of kaimoana harvested by tangata whenua is categorised as 'recreational' fishing; and
- Maori are estimated to make up around 34% of all 'recreational' fishers;

tangata whenua have a lot at stake in the 'Shared Fisheries' discussion.

As Ngapuhi's Chairman Raniera Tau explains:

> "99.99% of the time Maori go fishing we are categorised as recreational fishers when we go fishing to feed our whanau. The only time we are customarily fishing is when we have a permit."

Environmental issues play a big role in the success of customary and recreational fishing. All things on our earth are interconnected. By Tikanga Maori (Maori principles or custom) and the practice of Kaitiakitanga (guardianship/stewardship) tangata whenua have for centuries

[12] http://www.option4.co.nz/Fish_Forums/documents/AppendixFourHuiReport706.pdf

developed ways of people living as one and in harmony with the land and sea to provide and ensure abundance for the ongoing health of the people.

The lack of input and participation of tangata whenua, consultation and consideration of kaitiakitanga has meant there is very little evidence of Tikanga Maori in fisheries management processes.

Refer Paper 9: Radical Proposals – Effects on Maori.

Kaitiakitanga

Kaitiakitanga means and implies far more than just fisheries management. Kaitiakitanga is a way of life and an expression of what mother earth means to tangata whenua. For this reason alone the apparent reluctance by MFish to date to provide for the input and participation by tangata whenua, as required by section 12, is of concern.

Another concern for Maori is the complete absence of any reference to kaitiakitanga in MFish's 'Shared Fisheries' paper.

Kaitiakitanga is defined in the Act as:

> "The exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Maori."

The Reverend Maori Marsden explains kaitiakitanga as:

> "The word used by Maori to define conservation customs and traditions, including its purpose and means, through rahui".

Rahui was designed to prohibit the exploitation, depletion or degeneration of a resource and the pollution of the environment[13].

In the absence of 'kaitiakitanga' forming an important component of fisheries management, the focus of the 'Shared Fisheries' discussion paper is on maximising 'value'

The contrast between 'kaitiakitanga' and a 'values' approach is stark. 'Kaitiakitanga' involving mana, tradition, the passing down of knowledge and community involvement associated with customary and traditional fishing to provide abundance, whilst nurturing the land and sea that feeds people and which cannot possibly be measured in economic terms, when compared with so called economic and non-economic 'values'.

Refer Paper 14: Supporting Kaitiakitanga (Guardianship).

How Section 12 Works in Practice

Well-being and the interest of Maori in customary and amateur (recreational) fishing has been a regular discussion topic on the management of our inshore fisheries at Hokianga Accord hui.

[13] Kaitiakitanga: A Definitive Introduction to the Holistic World View of the Maori, Rev. Maori Marsden, November 1992, page 19.

At the November 2005 hui MFish confirmed that the negotiations held during the process to establish the Kaimoana regulations in 1997 and 1998 included discussion about the *"input and participation"* of tangata whenua and how that would be given effect[14].

MFish intended that Maori, as a Treaty partner, would be in communication with MFish before the sustainability measure proposed moved to the consultation phase. Maori's disappointment is that very little has happened since these negotiations to give effect to the *"input and participation"* requirement.

The intention of section 12 and these negotiations is a two-stage process. First the *"input and participation"* of tangata whenua to formulate a sustainability proposal followed by consultation.

Section 12 (1) (b) (i) refers to tangata whenua's *"non-commercial interest in the stock concerned"* which, in the case of:

- Flounder 1 or Grey mullet 1, extends from north Taranaki in the west to Cape Runaway on the east coast;
- Pipi and Tuangi (cockle) area 2 extends from Cape Runaway to Wellington.

In addition section 12 (1) (b) (ii) also makes provision for input and participation by tangata whenua in relation to the *"effects of fishing on the aquatic environment in the area concerned"*. This relates back to kaitiakitanga and reinforces the need for involvement by Maori in the 'Shared Fisheries' discussions. This is particularly so given that the impacts of area controls and limiting access to fisheries will be felt by tangata whenua throughout Aotearoa.

Conclusion

Te Tiriti O Waitangi 1840, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and Fisheries Act 1996 all confer specific rights and privileges to tangata whenua in relation to non-commercial fishing interests.

Section 12 specifically requires the Minister to consult with and provide for tangata whenua's non-commercial interest in sustainability measures and the aquatic environment. Clearly successive Fisheries Ministers have failed to deliver on this statutory obligation.

In omitting any reference to kaitiakitanga in the 'Shared Fisheries' discussion paper, MFish has demonstrated poor judgement and given little regard to Tikanga Maori.

Changes to customary allowances, recreational fishing rights and limitation of access to kaimoana as a consequence of the implementation of proposals put forward by MFish in the 'Shared Fisheries' discussion paper may have a significant and detrimental impact on Maori non-commercial fishing interests for this and future generations. Therefore tangata whenua must have a key role in the 'Shared Fisheries' discussions.

[14] Whakamaharatanga hui report, Hokianga Accord, 5 December 2005, page 12
http://www.option4.co.nz/Fish_Forums/har1105.htm

Most importantly, the Minister and MFish need to develop mechanisms that enable the legislation regarding tangata whenua's interest in fisheries to be given full effect. Any delays in providing for these interests will mean new grievances are likely to emerge and any redress will be expensive.

Priority Access to the Total Allowable Catch

The Government is currently consulting on the management of shared fisheries and the priority given to non-commercial fishing interests and the fishing industry.

Changes proposed by the Ministry of Fisheries (MFish) are contained in the *Shared Fisheries: Proposals for Managing New Zealand's Shared Fisheries* ('Shared Fisheries') public discussion paper.

The effects of the proposals on customary interests have been analysed thoroughly as current legislation recognises and protects Maori interests[15].

To *"reassure amateur fishers that the basic right to catch fish will be retained and protected in the new regime"* MFish has proposed to maintain a minimum tonnage in each shared fishery that would have priority over commercial take. That tonnage would only be reduced if all commercial fishing had ceased and further cuts were required for sustainability reasons. The proposed minimum level is 20 percent of the baseline amateur allocation in each fishery.

The pretended ease of controlling recreational (amateur) catch to 20 percent of a baseline allocation set on known underestimates of actual amateur catch is a recipe for disaster. It must be realised that most fisheries will have bag limits of less than one well before the 20 percent threshold is reached. How can the Government then enable people to provide for their economic, social and cultural well-being in a collapsed or seasonally closed fishery?

There is a real danger that uninformed amateur fishers will view this 20 percent proposal as a real "priority" instead of what it actually is - the removal of the present public non-commercial right to fish and replacing it with a 'baseline allocation' and 'a basic right'. Far different from the common law right all New Zealanders currently enjoy.

Our Recommendations:

- Absolutely reject any constraining of the individual right to fish to a 'basic' right, or to a 'priority' to 20% of that basic right
- Give effect to the sustainability provisions within the current Fisheries Act to enable people to provide for their social, economic and cultural well-being.
- MFish should abandon any idea that they can constrain amateur catch to unrealistically low levels or manage fisheries in such a way to allow a 20% 'priority'
- The Minister should give effect to section 21 of the Act and "allow for" non-commercial fishing interests
- The Government should focus its effort and resources on rebuilding inshore shared fisheries to abundant levels.

[15] Refer Paper 9: Radical Proposals - Effects on Maori

Current Legislation

Every New Zealander has a common law right to fish. Current non-commercial fishing rights, both amateur and customary, are recognised, allowed for and protected by the Fisheries Act 1996 (the Act) and subject to regulations under that Act.

The very purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. Ensuring sustainability means maintaining the potential of fisheries to meet the reasonably foreseeable needs of future generations and to conserve, use, enhance and develop fisheries to enable people to provide for their social, economic and cultural well-being.

Current legislation has been structured to enable the Minister to "allow for" non-commercial fishing interests **before** he sets commercial catch limits. This statutory protection should not be underestimated as it has been upheld in several court proceedings over the past ten years.

Refer Paper 6: Nature of Fishing Rights.

Background

Prior to the introduction of the Quota Management System (QMS) commercial fishers were widely consulted and assured that any reductions to their allocation to "allow for" increased amateur catch would be compensated.

In addition, promises made to amateur fishing representatives were confirmed in 1989 during the release of the *National Policy for Marine Recreational Fisheries.* Colin Moyle, then Minister of Fisheries, made the following statement, commonly referred to as Moyle's Promise,

> "Government's position is clear, where a species of fish is not sufficiently abundant to support both commercial and non-commercial fishing, preference will be given to non-commercial fishing.
>
> This position reflects Government's resolve to ensure all New Zealanders can enjoy and benefit from our fisheries."

Further to this, changes were made to the Fisheries Act. Section 21 of the 1996 Act directs that the Minister shall "allow for" non-commercial fishing interests, both customary and recreational.

In this context, the Minister has a statutory obligation to make sure that what is taken and/or killed by non-commercial fishers is accounted for in sustainability decisions regarding shared fisheries.

Total Allowable Catch

It appears the Government and MFish believe the commercial sector have a share of the total allowable catch (TAC). If this is so, then, by default amateur fishers have been given a proportion equal to the leftovers, minus the customary catch. However, substantive evidence does not exist to support this position!

Even if the Government and MFish are correct in their assertions, then the legality and integrity of such unconsulted confiscation is questionable.

It is a fact that there has been no process to consult with, define, allocate or compensate recreational and customary fishers for the imposition of such a proportional system. If fact it is doubtful that recreational fishers have even been properly 'allowed for' under the current Act because their catch has never been properly assessed.

Fishing Participation

Picking 20 percent of a current number that maybe an underestimate of actual harvest is an appallingly crude way of trying to describe or protect a priority for amateur fishers. Because amateur fishers hold individual rights any priority must be described as the minimum acceptable individual catch multiplied by the participation rate. If overall participation rates fall the requirement will be less, conversely if more people go fishing recreationally the allowance for amateur fishing must increase.

Participation rates in fishing was commented on during the 1997 Court of Appeal proceedings. Justice Tipping made the following relevant comment,

> "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[16]."

Refer Paper 10: MFish's Baseline Allocation Proposal.

MFish's Proposals

The MFish discussion paper does not acknowledge the random nature of the catch of around quarter of the population who fish in any one year. The suggestion that a 20 percent priority in shared fisheries would capture non-commercial recreational interests is unrealistic. The level required to "allow for" amateur catch is whatever it is, and would differ depending on the fishery.

There also seems to be an assumption in the 'Shared Fisheries' proposals that there is an ability to constrain amateur fishers to whatever allocation is set. Clearly this is not the case.

Former Fisheries Minister, Doug Kidd, explained the absurdity of assuming that MFish can constrain the catch of one million amateur fishers[17]. He suggested that if one million fishers

[16] Justice Tipping, Court of Appeal CA82/97, 22 July 1997, page 18
[17] Rights meeting, Milford Cruising Club, 28 July 2001.

went to sea, caught and kept one fish each that would be one million fish removed from the fishery. The Minister and MFish would have to take those removals into account and "allow for" this mortality in management decisions.

Management that fails to allow for the one million fishers scenario may engender resentment amongst amateur fishers, encourage high-grading, potentially create high non-compliance levels and undermine confidence in fisheries managers and the management regime.

If current allowances are rolled into initial allocations and those allocations are eventually determined to be underestimates of actual catch, bag limits would have to be cut severely to constrain recreational fishers to the new allocations.

Setting very low bag limits, two or three fish as an example, may not constrain recreational fishing effort. It merely constrains the number of fish landed. High-grading where people retain better quality fish and discard smaller fish could increase. This would erode most if not all of the expected gains and management may become difficult if not impossible. Closures may eventually have to be implemented to sustain the fishery.

What is the real cost of closing all the fishing tackle and bait shops, charter fleet, boat yards, motels and other infrastructure which underpins the recreational economy a million recreational anglers and a multitude of tourists participate in? Surely this would cause so great an upheaval as to be an unthinkable 'solution'.

If a fishery is insufficiently abundant to provide for both commercial fishing and this minimum acceptable level, then priority should be given to recreational fishing interests. The 20 percent baseline priority is inadequate to address the reality and values associated with recreational fishing in New Zealand. It would also fail to comply with the purpose of the current Fisheries Act which, in part, is to meet the reasonably foreseeable needs of future generations and to conserve, use, enhance and develop fisheries to enable people to provide for their social, economic and cultural wellbeing.

In any case, the important issues should be how we rebuild stocks to target levels and "allow for" fishing then. We should not have to deal with fisheries that have collapsed.

Refer Paper 5: More Fish in the Water

Harvest Strategy – Case Study

MFish's recent initiative in the Harvest Strategy Standard also makes the 20 percent priority proposal irrelevant. The proposal is to have an ecological bottom line called a hard limit which would be set where there is a significant risk of stock collapse or changes to the ecosystem structure.

If a hard limit is reached the fishery will be closed to the extent possible[18]. The proposal is for hard limits will be set at 10% of the original stock level (B_0) or 25% of the level required to produce maximum sustainable yield (B_{MSY}) or other target level, whichever is higher.

If there were several poor years of recruitment in Snapper 8 (SNA8), the North Island's west coast snapper stock, this stock would fall below 10% B_0. The hard limit would be reached and the fishery would be closed.

[18] Harvest Strategy Standard, Ministry of Fisheries, 8 November 2006, page 33.

It is difficult to comprehend a scenario where the total allowable commercial catch (TACC) would be reduced by 100% and the amateur allowance by 80% without the fishery reaching the hard limit and being closed.

The only possibility is that some limited customary catch may be permitted and amateur fishing may resume a few years prior to commercial harvest, as the stock rebuilds.

Conclusions

It is difficult to understand why the Government has failed to explain and compare the current common law right to fish with the 20 percent "priority" proposal. This is either an oversight or a deliberate attempt to mislead the public.

Amateur fishers do not accept that the 20 percent proposal coupled with a baseline allocation will give them effective "priority" in any shared fishery.

The 20 percent priority fails to recognise the reality and benefits associated with amateur fishing in New Zealand and will not ensure that New Zealanders will *"get as much value as possible"* from shared fisheries as Jim Anderton, Minister of Fisheries, is hoping for.

The provisions within the current legislation to "allow for" non-commercial fishing interests should be given effect. No amount of "priority" in a collapsed fishery will give amateur fishers equivalent statutory protection.

Trying to control the catch of so many people fishing in a random manner, to unrealistic catch levels would require massive resources in catch monitoring, management and compliance. A high price to pay to limit what is recognised throughout the country as a part of our heritage, culture and national identity.

Therefore the Government should abandon the 20 percent "priority" and focus it effort and resources on rebuilding shared fisheries to healthy levels. Fisheries at target levels would then enable the sustainable use of our fish stocks by all fishers, non-commercial and commercial, and would also provide for better quality fishing in the future.

Radical Proposals - Effects on Maori

The Government is now consulting on wide-ranging and radical changes to the way coastal fisheries are managed, and euphemistically refers to 'key amendments' to the 1996 Fisheries Act (the Act) to do that.

The Ministry of Fisheries' (MFish) stated intention in its *Shared Fisheries Proposals for Managing New Zealand's Shared Fisheries: A public discussion paper* ('Shared Fisheries') released in October 2006 for public consultation is to:

- Unlock greater value from fisheries;
- Achieve greater certainty in 'allocation' decisions;
- **Build management capacity.**

The radical management changes proposed by MFish will have the greatest impact on Maori. Tangata whenua's commercial, recreational and customary non-commercial fishing interests are grounded on their close relationship and affinity or kotahitanga (oneness) with the moana and marine environment, lakes, rivers and streams.

Shared fisheries are the fisheries in New Zealand's coastal waters in which commercial, recreational and customary fishers have an interest. These fisheries include the important species to Maori and non-Maori alike such as snapper, kahawai, paua, pipi, tuatua, oysters, kutai (mussels), kina, rock lobster, blue cod, takeke (piper), karati, kanae (mullet), patiki (flounder), parore and all those Kaimoana that Maori thrive on.

Although freshwater fisheries, including eels (tuna) are mentioned in the discussion paper as being shared fisheries, there is no proposal on the management of those fisheries. This has been an ongoing battle with Government long before they even introduced them to the Quota Management System (QMS).

Currently all non-commercial fishing rights are recognised, allowed for and protected by the Act and subject to regulations under that Act.

In performing the Crown's ongoing obligations to Maori, MFish propose:

- *"To clarify provisions for Maori customary take"*
  MFish's suggestion is to limit the allowance for customary take to what is *actually* taken. When the records suggest the allowance is being exceeded MFish will increase that allowance, subject to sustainability;
- MFish says that *"there could be **some** increases in customary take"* where inshore fisheries that are important to Maori are rebuilt from depleted states;
- Replacing the existing *recreational right* – 99.99% of the time Maori go fishing they are classified as 'recreational' fishers - with a so-called 'basic right' which would include a 'baseline allocation' for recreational fishers coupled with a 'priority right', which MFish suggest could be around 20% of the 'baseline allocation'.

MFish has asked for feedback on the 'Shared Fisheries' paper. Submission deadline is 28th February 2007.

Overview

Fisheries managers have failed to protect Maori's non-commercial fishing interests. It is not sufficient for the Minister of Fisheries (the Minister) to simply set aside a tonnage of fish for non-commercial use if those fish are either not in the water, or are not available in the places Maori traditionally fish.

MFish's objective is to reduce the quantity of fish set aside as the Customary Allowance to match historic customary catch reports. Reducing the allowance will create an apparent surplus of uncaught fish, which can then be reallocated to other fishers.

Our recommendations:

- Reject outright any reallocation of the customary allowance
- Reject the Government's assumption that all customary harvest is taken under the customary provisions and that MFish has correct records
- Object strongly to any attempt to tamper, alter or remove tangata whenua's fishing rights without clear and compelling reasons.

Background

What is Maori fishing?

The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:

- **Constituted a final settlement of Maori claims in respect of commercial fishing;**
- **Changed the status of Maori non-commercial fishing so that:**
  - ***Although* claims in respect of non-commercial fishing continue to give rise to Treaty obligations on the Crown;**
  - **The rights or interests of Maori in non-commercial fishing giving rise to such claims no longer have legal effect except to the extent that such rights or interests are provided for in regulations made under (now) section 186 of the Fisheries Act 1996 (the Act).**

The Crown's commercial obligations

MFish itself states that:

> "The use of ITQ to settle Maori commercial fisheries claims places an additional onus on the Crown to maintain the integrity of the overall fisheries management framework - a framework based on transferable property rights that provide access in perpetuity to sustainably managed fish stocks.
>
> Crown actions such as reallocating fish stocks between commercial and recreational fishers that may diminish the worth of the fisheries redress accorded to Maori, directly or indirectly, need to be considered in full light of their potential implications for the longevity of the settlement and the need to avoid creating a new Treaty grievance.[19]"

[19] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p4 section 68.

Crown's non-commercial obligations

Whilst, as mentioned above, the status of the rights or interests Maori in non-commercial fishing giving rise to claims has changed so that such rights or interests no longer have legal effect except to the extent that they are provided for in regulations made in accordance with sl0 (c) of the Settlement Act 1992, Maori customary non-commercial fishing rights continue to give rise to Treaty obligations on the Crown.

Section l0 (b) of the Settlement Act places an ongoing obligation on the Minister to consult with tangata whenua about, and develop policies to help recognise the use and management practices of Maori in the exercise of customary non-commercial fishing rights.

Customary local fisheries management tools

Mechanisms for area management include what have become to be called customary local fisheries management tools, which are contained in Part IX of the Act:

- Provisions for the establishment of taiapure - local fisheries areas (previously the Maori Fisheries Act 1984);
- Section 186A - provides for the closure – rahui - of an area to fishing, or restriction of the use of a particular fishing method, for up to two years, in order to provide for the use and management practices of tangata whenua in the exercise of their customary non-commercial fishing rights[20].

Temporary closures and method restrictions are designed to help manage the impact of commercial and recreational fishing on important customary fisheries, and provide an interim management measure.

Section 10(c) of the Settlement Act provides for the making of regulations to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and their tauranga mataitai, (places of customary food gathering importance), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade.

The regulations known as the 1998 Kaimoana regulations provide a legislative framework for ensuring that customary fishing takes place under the management of kaitiaki (guardians) who have been properly appointed by, and are accountable to, tangata whenua.

However, the management of customary fishing under the regulations must be consistent with the sustainability of fisheries.

In summary, the Kaimoana regulations provide for the:

- Establishment of rohe moana (coastal boundaries);
- Appointment of kaitiaki; and
- Establishment of mataitai reserves, also known as customary fishing management tools, over traditional fishing grounds.

[20] *Regulations Fisheries (Kaimoana Customary Fishing) Regulations 1998; Fisheries (South Island Customary Fishing) Regulations 1998*

Commercial fishing is generally prohibited within mataitai reserves and all non-commercial fishing is managed by the kaitiaki through the making of bylaws that must apply equally to all individuals, not just Maori.

In contrast to the broader role of recommending general fishing regulations contained in the taiapure provisions, the mataitai reserve provisions provide for hands-on management of customary non-commercial fishing by kaitiaki. The largely effects-based criteria for the establishment of mataitai reserves mean that mataitai reserves are generally smaller and more focused than taiapure.

Maori and Crown Treaty fisheries relationship

The 1992 fisheries Treaty settlement enabled the QMS to happen. This emphasises the fundamental importance of the Crown's ongoing settlement obligations to Maori, some of which are now contained in the Act and the Kaimoana regulations.

Both the Fisheries Act and the Settlement Act record the Treaty relationship between Maori and the Crown relating to fisheries management.

In addition to imposing ongoing obligations on the Crown, the Settlement Act required the making of better provision for Maori participation in the management and conservation of New Zealand's fisheries.

MFish is a Crown instrument. As such, in addition to the legal duties imposed on MFish when carrying out the particular functions required by the Act and regulations, the obligation to uphold the principles of the Treaty extends to all aspects of the MFish 's functions.

The three requirements on MFish are that the Crown:

- Acts reasonably and in good faith in its dealings with Maori;
- Makes informed decisions; and
- Avoids impediments to providing redress, and avoids creating new grievances.

Discrimination in managing shared fisheries

Northern Maori were hopeful that the Crown's obligations to act in good faith, make informed decisions while avoiding impediments and creating new grievances would be borne out through the formation of the regional iwi forum structure.

MFish initially supported the 2005 establishment of the mid-north iwi forum - the Hokianga Accord. However, the pro-active steps taken by tangata whenua to have non-Maori involved in the discussions has led to MFish withdrawing their support of this initiative.

Maori have a right to determine whom they have 'at the table' and whom they consult with. It is not for MFish to tell tangata whenua how they will participate in fisheries management. MFish have a duty to give effect to the Crown's obligations and so far they have failed in their responsibilities.

Sustainability is about people looking after the fish and ensuring abundance for the future. MFish has walked away from the Hokianga Accord in an attempt to stifle any meaningful response to fisheries management and any claims to *'have particular regard to kaitiakitanga'*.

The Minister must "allow for" customary and recreational fishing

Moreover, when setting or varying the total allowable commercial catch (TACC) under section 21 of the Act the Minister must "allow for" customary and recreational fishing.

Customary fishing

It is somewhat of an over simplification, but customary fishing in the context of fisheries management today has been confined by the Act and regulation to fishing for hui and tangi pursuant to a permit issued for that purpose: [regulations 27 and 27A 1986 Amateur Regs; reg. 11 Kaimoana Regs.]

It is illegal for Maori to use these provisions for anything other than for hui Mate or hui of significance. These provisions cannot be used to gather kai for the whanau. Many Maori mistakenly believe that all their fishing needs are catered for under these particular pieces of legislation. That is as far from the truth as one could get.

Maori are recreational fishers

Whether Maori like it or not, and as unpalatable as it may be to some of them, 99.99% of the time Maori go fishing to feed their whanau, they are fishing as 'recreational' fishers under the amateur fishing regulations. Maori have the same rights as anyone else when it comes to providing kai for the whanau.

That is why tangata whenua must not stand by and let MFish's latest 'ruse' to change the fisheries laws go by without detailed scrutiny and challenge. Maori must protect the rights they have remaining in non-commercial fishing.

Refer Paper 12: Benefits of Recreational Fishing in NZ

Fisheries Act 1996

Present management of our fisheries - how the Act works

Under Act the Minister:

- Is required by Parliament to manage fisheries to ensure sustainability and so meet the reasonably foreseeable needs of future generations – 'fish come first';
- In managing the use of fisheries must conserve, use, enhance and develop fisheries to enable people to provide for their social, cultural and economic well-being;
- Must first allow for Maori customary non-commercial fishing interests and recreational fishing interests before setting or varying the total allowable commercial catch (TACC).

To fulfil his statutory obligations, the Minister must:

- Adhere to both the environmental and information principles in the Act; and
- Use the wide range of fisheries management tools and mechanisms to make sure that there are sufficient fish for the needs of all New Zealanders.

MFish fails to explain the Crown's ongoing statutory obligations to tangata whenua in the 'Shared Fisheries' paper. Shared fisheries cannot possibly be discussed without reference to how the Minister must "allow for" Maori non-commercial fishing interests before setting any commercial catch limits.

Consultation with and input and participation by Maori

Also missing from 'Shared Fisheries' is an explanation that section 12 of the Act directs the Minister before making any decision on sustainability measures contained in Part 3 of the Act to:

- Consult with tangata whenua; and
- Provide for the 'input and participation' of tangata whenua;

and on doing so *"have particular regard to kaitiakitanga"*.

The Minister's obligations under section 12 constitute the first step in setting the total allowable catch (TAC) for a fish stock. There are approximately 200 fish stocks in the Quota Management System (QMS) that currently have a TAC set.

MFish's view on the actions or steps they must take to provide for the input and participation of tangata whenua is:

> "s12 (1)(b) of the Fisheries Act 1996 requires provision for the input and participation of tangata whenua in the making of fisheries management decisions. This reflects the increased obligations on the Crown to involve the Treaty partner in the management of fisheries, as envisioned in the preamble of the Settlement Act 1992.[21]"

Experience to date is that MFish's consultation – s12 (1)(a) - to the public on a proposed sustainability measure has been by Initial Position Paper (IPP).

In the case of s12 (1)(b) this arguably falls well short of what might reasonably be expected from MFish in the nature of resourcing and facilitating to provide for the *input and participation* of tangata whenua on a particular sustainability measures proposed by MFish.

Similarly, apart from general statements in IPP's on the interests of Maori in a proposed sustainability measure, there appears little else that MFish have done to date which demonstrates that the Minister has had '*particular regard to kaitiakitanga'* in any proposed sustainability measure.

The Government's proposed 'key amendments'

MFish's 'Shared Fisheries' discussion paper signals the Minister's clear determination to change the Act.

[21] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p6 section 83.

MFish:

- Claims, without case studies in support, that shared fisheries are under pressure as a result of competing interests;
- Points to a lack of information on non-commercial catch which is compromising MFish's efforts to properly manage our fisheries;
- Says that there is uncertainty in the 'allocation' of fish between commercial fishers and non-commercial fishers;
- Refers to the threat of claims for compensation by commercial fishers if their quota entitlement (in commercial fisher's eyes) is reduced at their expense to benefit non-commercial fishers.

Commercial fishers say that MFish is managing shared fisheries in a way that is threatening the value of their quota.

During 2006 New Zealand First introduced the 'Principles of the Treaty of Waitangi Deletion Bill' before Parliament, the effect of which would be to remove any reference to the principles of the Treaty of Waitangi from legislation.

It is too early to say whether the Minister's obligation to have particular regard to kaitiakitanga, a fundamental principle for tangata whenua and a cornerstone principle in the fisheries management context would be affected, but the Bill creates uncertainty as to what is intended.

Response to Proposals

To fully understand the issues important to Maori and other non-commercial fishing interests a number of papers have been developed that include case studies. Those writing these papers have been participants at Hokianga Accord hui and understand the concerns tangata whenua have about having sufficient fish in the water for Maori to feed their whanau[22].

Additional papers:

- MFish's 'Shared Fisheries' Process
- "The People's Submission" Process
- Better Information to Manage Fisheries
- Defining the Target Biomass
- More Fish in the Water – conservation initiatives
- Nature of Fishing Rights – customary, recreational and commercial
- Crown's Obligations to Maori – section 12 obligations
- Priority Access to the TAC
- MFish's Baseline Allocation Proposal - key issue

[22] www.HokiangaAccord.co.nz

- Proportional Allocation - Rejected
- Benefits of Recreational Fishing in NZ
- Supporting Local Area Management
- Supporting Kaitiakitanga (Guardianship) including customary management tools
- Crown's Liability for Compensation
- Amateur Representation – Licensing Inevitable

Benefits of Recreational Fishing to Maori

Maori have a spiritual, cultural and traditional relationship with the moana spanning hundreds of years and a well-established dependence on kaimaona (seafood) and ika (fish) to feed their whanau. Particularly in small coastal communities, Maori families depend upon the sea as a source of food.

Subsequent to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 Maori remain unsure on the nature and extent of their non-commercial fishing rights. The recent realisation by Maori that most of the time they go fishing they do so as recreational fishers - no permit required but subject to daily bag limits – has been unfamiliar and foreign to Maori.

Despite Te Tiriti O Waitangi and the rights associated with Articles Two and Three, non-commercial Maori fishers are classified as recreational fishers along with all other New Zealanders, including tourists.

The distinguishing factor between non-commercial Maori fishers on the one hand and most other New Zealander non-commercial fishers on the other hand is the way Maori use kaimoana to manaaki manuhiri (provide hospitality to guests and visitors). This means that the very best is given to visitors or to those unable to catch fish for themselves. This enhances the mana of the individuals, whanau, marae and iwi.

A consequence of Maori not considering themselves as non-commercial recreational fishers in inshore fisheries is that for many years Maori have tended to put the blame on 'those recreational fishermen' for depleting popular fishing areas and calling for 'their' constraint.

As Raniera Tau, chairman of Te Runanga A Iwi o Ngapuhi, explained:

> "The Ministry Of Fisheries has done an excellent job of fooling us into thinking that our rights to fish for food have been catered for under the customary fisheries regulations.
>
> "This is as far from the truth as one can get, the fact of the matter is, Ministry have created, in law, three categories of fishers, customary fishers, recreational fishers and commercial fishers. Customary fishers are those who collect seafood for a hui mate or an occasion of significance. When we fish to feed our babies, Ministry has categorised that as recreational fishing. Therefore 99.99% of the time Ngapuhi go fishing, we are fishing under the amateur fishing regulations. This is why Ngapuhi have filed an affidavit in support of the Kahawai Legal Challenge, legal action taken by recreational fishers."

Ngapuhi people have clearly told their leaders that they want kaimoana (food) on the table to feed their mokopuna (grandchildren) before feeding overseas customers, or worse still, feeding Australian crayfish as in the case of kahawai[23].

Concern for our kahawai was the catalyst for Ngapuhi, Ngati Whatua and other mid north iwi to work with non-Maori through the Hokianga Accord. After many hui debating fisheries management and marine protection issues this mid-north iwi Forum is striving to achieve a common goal of "more fish in the water" "Kia maha atu nga ika i roto te wai". MFish were ardent supporters of this Forum until the questions became too hard resulting in MFish withdrawing their support.

MFish is proposing putting a 'value' on tangata whenua's priceless non-commercial recreational fishing interest. Only an outline of what this might mean is provided by MFish in its 'Shared Fisheries' paper which could put at severe risk or threaten tangata whenua's long established spiritual, cultural and traditional relationship with the moana.

This is why tangata whenua must actively engage in the debate on MFish's 'Shared Fisheries' proposals - to protect the interest Maori have in Aotearoa's fisheries so they can better provide for their well-being by providing Kaimoana for their whanau well into the future.

Customary Interests

As already mentioned, the volume of Maori customary fishing, as now administered under our fisheries laws, presently forms a very small part of the overall take of fish from our coastal waters. The important factor is having sufficient abundance to ensure fish are available as kai for tangata whenua under the amateur regulations and for customary purposes, particularly considering Maori numbers are expected to increase by 29% and total around 760,000 by the year 2021.

However, the aspirations of Maori customary fishers appear to be no different from recreational fishers, and after seven hui with the Hokianga Accord, a common goal has been established:[24]

"More fish in the water"

"Kia maha atu nga ika i roto te wai"

Further significant commitment to this goal shared by Maori and non-Maori alike came at the conclusion of the July 2006 Hokianga Accord hui held at Naumai, Ruawai, when Hugh Nathan, Ngati Whatua kaumatua referring to the fisheries issue said:

"We are merging as one people from today onwards.[25]"

Customary Harvest

Under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 customary fishing is defined by a permitting system authorised by kaitiaki. Until recent changes to regulation 27, there had been no formal obligation to report and record those fish taken using permits. The

[23] Whakamaharatanga hui report, Hokianga Accord 27-29 July 2005, p5. http://www.option4.co.nz/Fisheries_Mgmt/fmmr705.htm
[24] www.HokiangaAccord.co.nz
[25] Naumai hui report, Hokianga Accord 20-21 July 2006. http://www.option4.co.nz/Fish_Forums/har706.htm

revised regime within regulation 27A seeks to address this issue. In the meantime there is very poor information on customary take.

What is known is that many places traditionally fished by Maori for hundreds of years are no longer capable of providing for customary needs because of excessive commercial fishing. Simply ensuring there are sufficient fish of that species **in the sea** to continue breeding and allow for maximum extraction does not ensure that there are sufficient fish of appropriate size to meet the traditional and recreational needs of tangata whenua **in the places** they traditionally fish.

Section 21 of the Fisheries Act makes it clear the Minister shall (must) "allow for" Maori customary non-commercial fishing interests before he allocates fish to be caught for commercial purposes. However, as with the non-commercial recreational right to fish, fisheries managers have failed to protect the customary interests of tangata whenua in many areas.

It is not sufficient for the Minister to simply set aside a tonnage of fish for customary use if those fish are not in the water to be caught.

Current Allowances

Currently the amount of fish the Minister makes available for customary fishing is based on the quantity 'allowed for' in respect to recreational fishers. Where a fishery is considered very important to Maori, the quantity of fish 'allowed for' is set equal to the recreational allowance.

It must be noted that many of the recreational allowances are set on poor harvest estimates and in some fisheries they are gross under-estimates of what is actually taken out of the water.

Table 1: Examples of quantities of fish 'allowed for' customary and recreational fishers.

Fishstock (tonnes)	TAC*	Customary allowance	Recreational allowance	Other mortality^	TACC**
Snapper 8	1785	43	312	130	1300
Pipi 1C	243	115	115	10	3

* Total allowable catch (TAC)
** Total allowable commercial catch (TACC)
^ All other mortality to that fish stock caused by fishing

Actual Harvest

MFish has been very slow in developing the Kaimoana Regulations and giving effect to the provisions of the 1992 Deed of Settlement. The New Initiatives funding proposed in March 2004 provided $12 million for the implementation of the MFish Treaty Strategy from 2004 to 2007. Despite this funding, Maori in many areas remain no better off in terms of the resourcing of kaitiaki and of having a fully developed permitting and recording regime.

The MFish 'Shared Fisheries' proposal to limit the quantity of fish 'allowed for' customary to recorded **take** is a blow to Maori cultural and traditional principles and aspirations. It prevents instead of enabling Maori to provide for their customary needs and well-being. The effect of changes proposed by MFish will mean the allowance set aside for customary interests is likely to be severely reduced in many shared fisheries.

Customary Allowance

MFish's first objective is to reduce the quantity of fish 'allowed for' customary to the reported customary catch. Reducing the quantity of fish 'allowed for' customary to the actual level of reports assumes all customary harvest is taken under the customary provisions and that MFish has successfully recorded all previous take.

Reducing current quantities of fish 'allowed for' in Maori customary fishing would create an apparent surplus of uncaught fish available within the total allowable catch (TAC). However, because these fish have never been caught, no such surplus actually exists - the extra fish are an illusion.

MFish must be requested to explain if the so called "surplus" will be allocated to commercial fishers as quota. If so, will Maori be compensated for the reallocation and will commercial fishers be required to pay for the right to catch the surplus?

Other alternatives are:

- Will the surplus be transferred to recreational fishers, and if so, how?
- Will the surplus be distributed proportionally between commercial and recreational fishers?
- Will the surplus be held over by the Government to retain a portion of the TAC for environmental and sustainability reasons?

Other questions arise from reading the 'Shared Fisheries' discussion paper. MFish propose there could be **some** increases in customary take when fisheries rebuild.

- Where does MFish expect the extra fish will come from if there is to be an increase in customary fishing?
- How will that process work?

There is insufficient detail as to how these increases are going to be accommodated for in the future, to ensure sustainability.

MFish must also be requested to explain:

- Whether increases in Maori customary catch will be deducted from the recreational allowance, commercial allocation or both;
- Whether commercial fishers will receive compensation for their reduced quota;
- If recreational fishers will receive compensation for their reduced allowance.

Kaitiakitanga (Guardianship)

Nowhere in the 'Shared Fisheries' paper is kaitiakitanga (guardianship) mentioned and yet it is central to the Act.

As discussed, section 12 requires that the Minister must "*have particular regard to kaitiakitanga*".

The active observance and practice of kaitiakitanga in the management of New Zealand's coastal fisheries has the potential to enable Maori and non-Maori to achieve the purpose of the Act by:

'Utilisation' - conserving, using, enhancing and developing our fisheries to enable New Zealanders to provide for their social, cultural and economic well-being; whilst

'Ensuring sustainability' – maintaining the potential of fisheries to meet the reasonably foreseeable needs of future generations and avoiding, remedying or mitigating any adverse effects of fishing on the aquatic environment.

In recognition of the importance of kaitiakitanga in the management of coastal, shared fisheries a separate paper has been developed.

Refer Paper 14: Supporting Kaitiakitanga (Guardianship).

Conservation Efforts by Kaitiaki

Kaitiaki, as guardians of Tangaroa, will often impose measures that reduce fishing effort within a particular area. These measures include:

- Applying a rahui (temporary closure) over an area
- Limiting the amount of kaimoana to be taken with a permit, if the fishery is not abundant
- Refusing to issue permits if the particular fishery is considered to be under stress and needed conserving or rebuilding.

In these circumstances the amount of customary take recorded on permits does not truly reflect Maori's non-commercial fishing interests. It is more representative of kaitiaki fulfilling their role as guardians.

With this conservation ethic in mind, it will be of considerable concern to tangata whenua if MFish were to allocate or share out all of the available fish within the TAC. This would be totally unjustifiable and any moves to do that will be strongly resisted. Before any changes MFish must describe how they will fulfil their statutory obligations to provide for Maori customary needs, within the bounds of sustainability.

For the social, cultural and traditional and economic well-being of Maori both now and in the future, tangata whenua require a surplus of fish in the water over and above recorded customary catch. This is to enable the customary right to be properly 'allowed for' and to avoid Maori being left with the crumbs or leftovers after the fishing industry has enhanced their catch by using sophisticated bulk fishing methods.

Therefore it must be acknowledged that the expression of the Maori customary right as a 'tonnage' of fish based on the previous year's record of customary catch is inappropriate. The failure of the 'Shared Fisheries' proposals to recognise this distinction means the Treaty partners, Maori and the Crown, will need to resolve this issue separately.

Another factor relating to MFish's suggestion to allocate on the basis of the records pertaining to customary take is that it creates a perverse incentive for kaitiaki to issue permits purely to boost the numbers of fish on record, irrespective of whether those fish need to be conserved.

This is particularly so if the perception is held that the ‘allowance’ for customary interests is insufficient. This would put Tikanga Maori in direct conflict with the 'Shared Fisheries' proposals. Tangata whenua reject being put into this position when the current legislation protects their well-being and clearly directs the Minister to “allow for” their customary interests, not merely customary catch.

Conclusions

MFish’s 'Shared Fisheries' discussion paper seeks, by definition, to both re-define and confine the present strong broad right of every New Zealander to fish for food, and perhaps in doing so from the perspective of MFish fisheries managers, make it easier for MFish to decide ‘who ought to be entitled to how much’ from coastal fisheries.

As customary and recreational fishers, Maori have a huge interest and stake in coastal fisheries. Tangata whenua must actively engage in the debate on MFish’s 'Shared Fisheries' proposals to protect the social, economic and cultural interests Maori have in Aotearoa’s fisheries both now and in the future. For example, the Maori population is estimated to increase to 760,000 by the year 2021.

Tangata whenua’s fishing rights, and for that matter any rights Maori have must not be tampered with, altered or removed without compelling and easily understood reasons.

MFish’s omission to explain the Crown’s ongoing obligations does little to inspire confidence in MFish’s 'Shared Fisheries' proposals, which are described in concept only with few details. For example, how MFish proposes to “allow for” customary fishing if the quantity of fish is reduced based on current catch records, or if customary take actually increases.

The failure to recognise population changes and other details in the 'Shared Fisheries' paper gives Maori little confidence that customary fishing, for the purposes of the marae, will improve or that there will be more fish in the water available to catch if the proposals are implemented.

The practice of kaitiakitanga, a conservation tool ensuring abundance for now and future generations, is central to being Maori. In the fisheries management context the relevance of kaitiakitanga is specifically recognised and provided for in the Act as a counter-balance to the economic desires of the fishing industry under the QMS.

MFish’s omission of any reference to kaitiakitanga in its 'Shared Fisheries' proposals signals at best an oversight, or at worst, that kaitiakitanga might be included in one of MFish’s proposed ‘key amendments’ to the current Fisheries Act.

For tangata whenua to:

- Fulfil their role as kaitiaki;
- Fully provide for their traditional, recreational and customary needs
- Protect their huge interest in shared coastal fisheries as customary and recreational fishers.

Maori must, for all of the reasons mentioned above visibly commit themselves to join in and participate in the 'Shared Fisheries' discussion.

Ko ahau te moana ko te moana ko ahau

MFish's Baseline Allocation Proposal

Introduction

The Government's latest proposals on the way shared fisheries are managed are contained in *Shared Fisheries Proposals for Managing New Zealand's Shared Fisheries: A public discussion paper ('Shared Fisheries')*. The paper is dated November 2006 and submissions are due by 28th February 2007.

Shared fisheries are coastal fisheries in which commercial, recreational and customary fishers have an interest. These fisheries include important species such as snapper, kahawai, paua, rock lobster, blue cod, kingfish, mullet and flounder.

The Ministry of Fisheries' (MFish) discussion paper is an initial step towards full privatisation of fishing rights. This is where all rights to fish will be distributed to either commercial, customary Maori or recreational (amateur) fishers within the quota management system (QMS).

Commercial quota property rights are well entrenched and a wealthy fishing industry will fight hard to protect them. Maori negotiated a settlement for their commercial rights and have strong legislation to protect their right to fish for customary purposes. A large proportion of the New Zealand public fish in the sea for food and recreation, including Maori traditional food gatherers fishing without permits.

Without any meaningful attempts to alert the public, the Government is now looking at limiting their rights. Just because amateur fishers are the last to be properly 'allowed for' does not mean that they should settle for the crumbs!

Our Recommendations:

- Absolutely reject any constraining of the individual right to fish to a 'basic' right, or to a 'priority' to 20% of that basic right
- Reject the proposals on the basis that the Minister is not obliged to make a fixed, proportional or baseline allocation to non-commercial fishers
- No change to current legislation to "allow for" non-commercial fishing interests
- Where the allowance for recreational fishers is based on an underestimate of catch the allowance must be increased and the TAC increased to accommodate it

Fishery Interests

Commercial fishers were allocated quota based on their catch history. Attempts to estimate the amount of fish amateurs harvest annually have not yet delivered credible results. Without this information there is a significant risk that the current amounts the Minister of Fisheries (the Minister) 'allows for' recreational fishing are wrong.

The current Fisheries Act (the Act) directs the Minister to "allow for" non-commercial fishing interests, Maori customary and recreational. He does this by setting aside a tonnage in each fishery, for both interest groups, before deciding how much fish is allocated to the fishing

industry. However, neither customary nor amateur fishers are constrained to fish within that overall amount on a yearly basis. The recreational 'allowance' it is merely the Minister's best guess of what amateurs may catch in the next year.

MFish's 'Shared Fisheries' proposals seek to change the law and remove the statutory provision to "allow for" recreational fishing interests. In future, recreational interests would be redefined and limited to an explicit allocation.

It is critical to the success of any rights based fisheries management system to set realistic and fair initial (baseline) 'allowances' for amateur fishers, particularly if those rights are expected to be confined to a specific amount.

If the Government proceeds to set baseline shares for amateur fishers it needs to ensure that these are sufficient to at least cover current amateur catch and then it needs to consider the wider non-commercial fishing interests. Amateur and customary Maori fishing interests cannot be properly 'allowed for' without considering whether current catch rates and size of fish are acceptable.

The compounding adverse effects of relying on inadequate information

MFish's suggestion to roll over the current 'allowances' which are suspected of being underestimates in many fisheries, into initial allocations, or proportions of the total allowable catch (TAC), is an unsound starting point.

Once the specific amount is set, MFish make it clear that their job would be to constrain amateur catch to that explicit limit *"to ensure the total amateur take for a stock does not exceed the amateur allocation*[26]*"*.

The 'Shared Fisheries' proposals are very risky for the health of our coastal fisheries, particularly if the imposed amateur baseline 'allocation' is unrealistically low.

This action, if it occurs could:

- Threaten the integrity of the QMS designed to conserve, use, enhance and develop our fisheries to enable people to provide for their social, cultural and economic well-being;
- Pass significant (and unnecessary) compensation liabilities on to successive governments to alter the incorrectly set explicit shares of the TAC;
- Require the seasonal closure of key fisheries;
- Cause the upheaval and financial ruin amongst the recreation fishing industry;
- Seriously erode recreational fishing rights through potential misallocation in most shared fisheries.

[26] Shared Fisheries Proposals for Managing New Zealand's Shared Fisheries: A public discussion paper, November 2006, page 15.

However, it is the responsibility of MFish and the Minister to resolve deficiencies in information and allocate accordingly. It is not equitable to change the rules to produce an outcome at the expense of those who did not cause the problem in the first place.

Amateur fishers have an interest in 80 or more shared fisheries (individual fish stocks or species). The proposal in 'Shared Fisheries' to independently review a number of recreational allowances (up to six) before allocations are set are unlikely to address fisheries management errors or mistakes that affect the majority of coastal fisheries.

If amateur catch is in fact higher than previously estimated this does not necessarily indicate that the total catch is unsustainable. It simply means the fishery is, and has been, more productive than previously thought.

If decisions have been made based on this erroneous advice, they are relatively straightforward to correct. The Minister simply needs to increase or decrease the TAC and recreational allowance by the amount of the error.

Case Study – Rock Lobster 3 (CRA3)

A simple correction to "allow for" catch that has always occurred in a particular fishing can be implemented by increasing the 'allowance' made for recreational fishing and the TAC simultaneously.

In the case of CRA3 (East Cape to Wairoa) the current recreational allowance is 20 tonne (t). The 2000 harvest survey estimated the amateur catch to be over 210 t[27]. If an adjustment was to be made using this estimate, then the recreational allowance and TAC should increase by 190 t.

While this approach does not actually mean there are more fish left in the water it does give a more realistic description of the productivity of the fishery and historic amateur catch levels.

Amateur fishers do not accept responsibility for erroneous information or subsequent decisions and ought not be penalised for MFish management mistakes.

It is a concern to all amateur fishers that the 'Shared Fisheries' proposals, if implemented, would require reductions in recreational catch in most fisheries.

Correcting the TAC

Correcting the TAC and recreational 'allowances' to match reality means there is no need for any 'reallocation' of the TACC. It also avoids creating any legitimate compensation claims because there is no TACC loss.

Furthermore, no sustainability issues arise because no additional fish will be taken from the fishery as a result of the correction.

[27] The 2000 recreational survey point estimate for CRA3 was 212 t, with a range of 127 to 298 t. There is ongoing debate regarding the validity of the 2000 recreational harvest estimates.

Risk Analysis of 'Shared Fisheries' Baseline Allocations

The 'Shared Fisheries' paper ignores the current obligation on the Minister to "allow for" non-commercial fishing interests, not just catch. As previously mentioned, this includes the size and availability of fish in areas traditionally fished.

Other obvious risks of using under-estimates of non-commercial catch as initial allocations is that it would fix the initial 'allocation' at a tonnage well below the level of actual catch. It would also artificially inflate the TACC (as all catching rights within the TAC are 'allocated' amongst the different sectors). When better harvest estimates become available an adjustment would be required. Commercial fishers would no doubt seek compensation to alter the 'allocations'.

To exacerbate the situation, the Government has said there is limited compensation available. There is a risk that all available compensation would be wasted on correcting the misallocations in recreational harvest without actually re-allocating one actual fish from commercial to amateur fishers. If the Minister misallocates from the outset, even hundreds of millions of dollars of compensation may be insufficient to regain the status quo.

Significant fisheries management considerations for the Government include the cost of purchasing quota to correct any misallocation coupled with a lack of willing commercial sellers for some species, excessive TACC's, or both. The fishing industry has already voiced its concerns regarding this possible outcome of the proposals. They maintain any 're-allocation' has to be on a willing buyer/willing seller basis.

Currently there are some quota owners who do not lease out ACE even if they are not using it themselves[28]. There are few options open to the Government if there is no willing seller. Compulsory acquisition of quota seems to be the obvious solution to address any shortfall in quota that needs to be 'reallocated' to the non-commercial sector.

As mentioned above, once allocations are set MFish's obligation would be to constrain amateur fishers within that explicit limit. Any shortfall that is not resolved by compensation or acquisition will mean either daily bag limit reductions or seasonal closures, depending on the fishery.

In addition, it is unrealistic to expect to be able to constrain amateur fishers to an explicit allocation due to the random nature of the activity and the difficulty in measuring this catch.

Management Expectations

New Zealanders' expectations of MFish and the Government of the day are that fisheries will be managed as required and intended by the Act, namely, by conserving, using, enhancing and developing our fisheries to enable people to provide for their social, cultural and economic well-being.

The Act directs the Minister to "allow for" non-commercial fishing interests including catch, yet there has never been sufficient or adequate information to allow him to do so. This deficiency has arguably prevented the Minister from having discharged his statutory obligation to properly "allow for" those fishing interests including recreational.

[28] Annual Catch Entitlement allocated under any sections of 67, 67A, 68, 340 and 340A of the Fisheries Act 1996. Ministry of Fisheries definition, Part 1, Fisheries Act 1996.

MFish are aware of the errors in the current recreational 'allowances' and have been asked to correct such errors in most submissions from option4 since the year 2000[29].

This issue has frequently been raised in other forums with MFish and the Minister over recent years. Given the acknowledgement that serious errors may have been made and undertakings from MFish that this issue would be addressed, it is not credible for MFish to now promote the use of inadequate initial amateur allocations as an appropriate starting point for ongoing shared fisheries discussions. However, MFish appears intent on relying on inadequate recreational allowances!

If implemented, a likely outcome of the 'Shared Fisheries' proposals is a confiscation of the interests and rights of recreational fishers if baseline allocations are incorrectly set by using underestimates of recreational catch. The Government has already agreed that if reallocation decisions are too expensive to fix after the proposals are implemented, then they will not be addressed.

The loss to the public of New Zealand would be immense if the allowances are exchanged for a simple 'allocation'. The Minister would also lose the legislative protection to "allow for" non-commercial fishing interests.

All this would occur without any guarantee of improved abundance in coastal fisheries, more active MFish management or that the environmental and information principles underpinning the Act would be adhered to.

1990 Law Change

In 1990 an overnight amendment was made to the 1983 Fisheries Act which altered the nature of quota from rights to harvest absolute tonnages of fish to a proportional share of the total allowable commercial catch (TACC).

The result was that the Government refunded most of the money paid by industry for new quota and after 1990 compensation could not be paid to commercial fishers when TACC's were altered for sustainability reasons. Compensation to commercial fishers was still contestable through the courts for changes to TACC levels for other reasons.

The exclusion of recreational fishing interests from the proposed 1990 legislative change did not give recreational fishers confidence in the Government's intention and MFish's approach to fisheries management.

The 1990 amendment has seen a change in the way the Government regards quota, namely as a share of the TAC. The fishing industry's expectations have also changed. Commercial fishers now consider that they hold a share of the total allowable catch (TAC). This view, the validity of which is central to resolving the so-called 'allocation' debate, has yet to be considered by the courts.

Refer Paper 15: Crown's Liability for Compensation

Recreational fishers consider that:

[29] http://www.option4.co.nz/Fisheries_Mgmt/species.htm

- The interests of recreational fishers have **never** been properly 'allowed for' as directed by the Act, particularly due to inadequate information to do so;
- Therefore the quantity of fish presently 'allowed for' by the Minister to satisfy the interests of amateur fishers cannot be safely used as a basis for 'allowing for' the interests of recreational fishers;
- Information on amateur catch is insufficiently robust to be used as a basis for dividing the TAC into initial commercial and fixed recreational proportions.

The courts have said that, in broad terms, to "allow for" is a process taking into account health of the fisheries, changing population patterns and growth, and greater recreational demand[30].

In 'allowing for' the interests of recreational fishers the Act does not direct the Minister to make a fixed, proportional or baseline allocation or set shares in the TAC or any such thing. Directions from the Court on how the Minister must "allow for" non-commercial fishing interests is hoped from the Kahawai judicial review heard in late 2006[31].

However, the MFish 'Shared Fisheries' paper could lead the uninformed reader to think that explicit proportional shares already exist and that this is how the Act is supposed to be administered. As described above, this is not the case and any attempt to distort the facts is misrepresentation of the truth.

What is the basis MFish's current 'allowances'?

MFish's current recreational 'allowances' are based on a range of figures – estimates of recreational catch - derived from a number of unreliable telephone/diary surveys.

Often these results are used to estimate an average annual recreational catch by the fisheries working group so that it can be use in stock assessment models. These models are complex mathematical representations of the effects of fishing on a stock, run by research providers such as NIWA. The models rely heavily on assumptions made and the quality of information available. They cannot be used to estimate the actual catch of recreational fishers.

The problem is that the fisheries managers accept these estimates of long-term average catch selected for the model from the working group report and use it in advice to the Minister. Recreational fishing advocates have serious concerns about how these numbers are arrived at and have stated so on numerous occasions. These long-term average catch estimates are selected by working groups dominated by fishing industry lobbyists intent on arguing the figures down.

The Minister then uses these estimates when deciding how much to "allow for" current and future recreational fishing interests. The reality is the Minister has used the middle to lower estimate of the long-term average catch. Once set, the 'allowance' is usually not reviewed for many years. This is often a very poor estimate of current or future recreational catch or of the needs of the wider recreational fishing interests such as better quality fishing.

[30] Justice Tipping, Court of Appeal CA82/97, 22 July 1997, page 18
[31] http://www.kahawai.co.nz/

Of course, this methodology has suited the fishing industry but now that there is a risk of cuts to the TACC they are blaming recreational fishermen for not reporting their catches. Amateur fishers have no legal obligation to report and the commercial sector conveniently ignores issues including the cost and logistics of accurately undertaking such reporting.

Consider the following adverse consequences of implementing MFish's Shared Fisheries discussion paper options:

MFish Option A: Reset 'allocations' following an independent assessment

If implemented, only six out of 80 or more shared fisheries (fish stocks) are likely to have realistic 'allocations.'

This would be a worse case scenario for Government and recreational fishers with likely consequences being:

- Increased conflict between commercial and non-commercial fishers;
- Increased non-compliance;
- No incentives to conserve fisheries.

MFish Option B: Reset 'allocations' using valuations

If this option were implemented, all fisheries 'allocations' would have to be addressed using this mechanism.

The expense of having to repeat this valuation exercise 80 or more times, and the possible compensation claims by the fishing industry to reset the recreational 'allocations' at realistic levels would be prohibitive for the Government.

MFish Option C: Reset allocations by negotiation process

Meaningful negotiations require that the participants have a real or perceived surplus and something to gain. A serious 'under-allocation' to recreational fishers before the negotiation commences is an unsound basis to commence negotiations.

Ongoing Adjustments

In some fisheries there is scope for increasing the available catch by rebuilding stocks that are below optimum levels, improving fishing practices to reduce waste and improving yield per recruit. However, in some fisheries it may be necessary to reduce current catch in order to rebuild stocks.

To be fair, the Government must place the burden of rebuilding on the sector responsible for fishing in excess of sustainable limits. The fishing industry are happy to fish down a stock and reap the rewards, but when it comes time to rebuild those stocks they look to non-commercial fishers to take an equal share of the pain of the rebuild. Industry representatives have even threatened the Minister with legal action if proportional cuts are not applied to both sectors. This is not acceptable.

'Shared Fisheries' must provide a mechanism for ongoing adjustments to "allow for" amateur and customary fishers. There is no doubt that the New Zealand population will continue to grow. It has increased about 25% since 1986. If recreational fishers are constrained to a fixed amount of fish then there will be a continual squeeze on individual rights (reduced bag limits,

increased size limits, closed seasons) as more fishers are forced to keep their catch under the collective 'allocation'.

Ongoing adjustments must be based primarily on participation rates and the concept of a reasonable chance of catching a reasonable daily bag of fish. In other words, the total recreational catch has to be carefully reassessed taking into account the number of people involved in amateur fishing.

Conclusion

The best way of enabling people to provide for their well-being when 'allowing for' non-commercial interests - recreational and customary - is that the fish are sufficiently abundant in the areas where they fish. The target biomass must take into consideration the full range of non-commercial interests in the fishery. This includes catching reasonable sized fish.

The position recreational fishers take is that their interest be properly 'allowed for' as provided in the Fisheries Act, without amendment.

Put plainly, the Government and MFish are seeking to change the fisheries laws, in particular the way recreational fishing is 'allowed for', by redefining and confining the interests and rights of recreational fishers.

It is unacceptable and unfair to be proposing changes to the way shared fisheries are managed before ensuring that non-commercial fishing interests have been properly 'allowed for' as directed by the current Fisheries Act.

Clearly the sustainable utilisation provisions and principles of the Act are not being met and successive Governments' failure to do so has not allowed depleted fisheries to rebuild nor has it enabled New Zealanders to provide for their social, economic and cultural well-being.

Recreational fishing advocates believe progress in shared fisheries management will always be difficult until the Government properly addresses the above issues.

Proportional Allocation of Fisheries in New Zealand

This document was originally produced by option4 in response to a request from the Minister of Fisheries, in December 2004. It was updated and used as an appendix in submissions on the sustainability proposals during August 2005.

What is Proportional Allocation?

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

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

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

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

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

A close scrutiny of the MFish's Advice Papers that recommend proportional allocation of fisheries between commercial and non-commercial fishers show it to be a policy construct of MFish which will placate commercial fishers and avoid compensation issues. There is no process evident on how this policy came about, or who was consulted in its formulation. This

policy cannot be found in the Fisheries Act (the Act) and has been previously rejected by the courts. When publicly consulted through the "*Soundings*" document proportional allocation of fisheries was overwhelmingly rejected by 98% of the record 60,000 individuals who submitted to the process.

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

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

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

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

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

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

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

The History of Proportional Allocation

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

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

promoting proportional allocation. She replied that it was "to cap the non-commercial catch and avoid compensation issues for the Crown."

The Appeal Court's Comment on Proportional Allocation

In 1997 Justice Tipping delivered the following statement,

> "A further matter which points against any implication of proportionate reduction is that the Minister is in our judgment entitled to bear in mind changing population patterns and population growth. If over time a greater non-commercial demand arises it would be strange if the Minister was precluded by some proportional rule from giving some extra allowance to cover it, subject always to his obligation carefully to weigh all the competing demands on the TAC before deciding how much should be allocated to each interest group.
>
> In summary, it is our conclusion that neither the specific sections (28D and 21) nor the Acts when viewed as a whole contain any implied duty requiring the Minister to fix or vary the non-commercial allowance at or to any particular proportion of the TACC or for that matter of the TAC. What the proportion should be, if that is the way the Minister looks at it from time to time, is a matter for the Minister's assessment bearing in mind all relevant considerations.[32]"

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

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

The Initial Allocation Process

The first allocation of fisheries occurred with the introduction of the QMS.

The Quota Management System

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

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

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

32 Court Of Appeal of New Zealand CA82/97, Tipping J, 22 July 1997 Page 18

The non-commercial sector was NOT given a **proportion** at this time. Non-commercial fishers were assured by Fisheries Minister of the time, Colin Moyle that, "*Government's position is clear, where a species of fish is not sufficiently abundant to support both commercial and non-commercial fishing, preference will be given to non-commercial fishing*"[33].

The Quota Appeals Authority (QAA)

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

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

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

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

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

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

Deeming

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

33 National Policy for Marine Recreational Fisheries. Ministry of Agriculture and Fisheries. June 1989

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

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

Dumping

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

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

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

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

Maximum Sustainable Yield

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

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

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

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

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

MFish Policy is Double Jeopardy for Non-commercial Fishers

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

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

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

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

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

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

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

Proportionalism Works Against Conservation

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

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

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

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

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

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

Proportionalism May Increase Wastage

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

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

Commercial Arguments for Proportional Allocation

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

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

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

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

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

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

Compensation

During discussions on better defining non-commercial fishing rights during the *Soundings* process (2000-2001), the subsequent Ministerial Consultative Group (MCG, 2001) and the Reference Group (2003), MFish has consistently tried to force proportional allocation on non-commercial fishers as a way of capping the recreational catch and avoiding compensation issues for the Crown. This view has been articulated by some MFish personnel and is well documented through speeches and presentations that various MFish representatives have made.

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

As a direct consequence of the above policy option4 believe MFish has *no option but to give preference to commercial fishing interests* in advice to Ministers regarding the management of shared fisheries. This is because exposure to compensation from commercial fishing interests is *always* a possibility when making allocation decisions in shared fisheries and only commercial fishers can claim compensation. So, the only certain way of avoiding the possibility of claims for compensation is to pander to commercial fishing interests.

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

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

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

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

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

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

This degree of uncertainty is mirrored in the submission made by Te Ohu Kai Moana to the *Soundings* consultation process in 2000 when they stated,

> "Te Ohu Kai Moana acknowledges the need for fishers to work co-operatively on solutions. To provide the conditions for this each party needs to have clarity of its rights and those of others and incentives to work together. Te Ohu Kai Moana rejects the status quo option as it does not provide either clarity or incentives. Te Ohu Kai Moana supports a priority, unconstrained share for customary harvest with second priority being accorded to commercial rights. This means that TAC reductions would be taken firstly from the recreational allowance **unless** there was a buy back of commercial quota. However, in situations where fishers are working co-operatively on solutions, it will likely mean that Maori will agree to changes that are more evenly distributed where they believe this will foster long-sighted, co-operative approaches that enhance the sustainable management of fishstocks."

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

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

Do Proportional Cuts or Increases to Catch Actually Work?

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Recommendations

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

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

Benefits of Recreational Fishing in New Zealand

The Government is currently consulting on the management of shared fisheries and the value derived from those fisheries by all New Zealanders.

Changes proposed by the Ministry of Fisheries (MFish) are contained in the *Shared Fisheries: Proposals for Managing New Zealand's Shared Fisheries* public discussion paper ('Shared Fisheries').

In the pursuit of unlocking greater value from fisheries that customary, recreational and commercial fishers participate in MFish has identified seven main issues that need to be addressed.

Proposals to address the lack of catch information, alternative biomass levels, allocation, local area management, compensation and establishing representative capacity for the recreational sector all fail to recognise the relative value of recreational (amateur) fishing to the country and our people.

The values associated with an activity enjoyed by over one million people each year cannot be measured in dollar terms only, it is far more than that.

Our recommendations:

- The Government reject value based allocation as an inadequate mechanism to "allow for" non-commercial fishing interests
- MFish reject any notion that they can put a 'value' on tangata whenua's priceless non-commercial fishing interests
- The Government acknowledge the benefits of having a healthy population enjoying good quality inshore fisheries as part of our national identity.

Current Legislation

Every New Zealander has a common law right to fish. Current non-commercial fishing rights, both recreational and customary, are recognised, allowed for and protected by the Fisheries Act 1996 (the Act) and subject to regulations under that Act.

The very purpose of the Act is to provide for the utilisation of fisheries resources while ensuring sustainability. Ensuring sustainability means maintaining the potential of fisheries to meet the reasonably foreseeable needs of future generations and to conserve, use, enhance and develop fisheries to enable people to provide for their social, economic and cultural well-being.

Refer Paper 6: Nature of Fishing Rights.

Recreational Fishing

Well-being can be described as moral or physical welfare, healthy, contented, prosperous condition of a person or community. If a quarter of New Zealand's population fish seven times per year that is seven million days of healthy outdoor recreational activity for an otherwise increasingly obese and sedentary population.

If parents teach kids to fish, it gives them much more than just something to do. Through learning and achieving success fishing can be character building.

Many kids enjoy a real boost to their self-esteem when they catch a decent fish. Family relationships and communication are strengthened when that fish, provided by them, is cleaned, cooked, eaten, and the catching of it talked about.

In New Zealand, amateur fishers catch around twenty thousand tonnes of fish per annum. The families and friends of the successful anglers eat this catch. The best thing about eating that fish is what is not in it. There are no foreign antibiotics, hormones, preservatives, artificial colours or flavours; it is completely unprocessed and unadulterated. Indeed a rare treat in this "ready-to-eat-in-two-minutes" world.

Then there are the benefits of what is in it - omega 3 and other essential oils and vitamins. One only has to look at the life span and low incidence of heart disease in populations that eat lots of fish, such as the Japanese people.

A recent research paper showed a diet deficient in omega 3 contributes to various disorders. These include difficulty in concentrating, ADHD and similar ailments. A random sampling of students showed a definite trend, those with low levels of omega 3 were failing at school, and more prone to behavioural problems.

Economic Wealth

In addition to the health and social benefits, the infrastructure required to support one million amateur fishers, undertaking around seven million fishing trips is immense. Charter boats, accommodation, service stations, ice and bait. And the manufacturing sector, the boats, rods, chandlery, tackle suppliers and lure makers to name a few. This in turn, means many people are directly or indirectly employed in servicing amateur fishers' needs.

To put it into context, the wealth generated by only twenty thousand tonnes of recreationally caught fish is thought to be almost one billion dollars per annum, according to an outdated estimate from the 1990's.

On the other hand, the economic value generated by the total wild catch of commercial fishers is slightly over one billion dollars. The difference is that the fishing industry has to catch over five hundred thousand tonnes of fish per annum to achieve their figure.

So, just using these rough estimates, recreationally caught fish are likely to be around twenty times more valuable than commercially caught fish. This is not including the savings in health and social expenditure created by a robust and healthy recreational fishery.

Foreign exchange earnings associated with commercial fishing are often trumpeted as being good for the country. What is not so well defined is the earnings generated by in-bound tourists looking for their ultimate fishing experience in the "angler's El Dorado". Of

significance is the number of sport fishermen visiting these shores, spending time and money in pursuit of trophy fish. Many of those fish are caught and released to fight another day and so become targets for the next tourist visiting our many coastal communities.

Ever since Zane Grey visited in the 1920's the world has known about the fishing and boating talents of New Zealanders. Internationally Kiwis are recognised for their boat building expertise. Whole industries have sprung up to capitalise on the skills honed through spending time on the water, in boats and fishing.

Undeniably, recreational fishing makes a significant contribution to the economy of New Zealand and to the social and cultural well-being of it's people.

Maori and Recreational Fishing

Maori have a spiritual, cultural and traditional relationship with the moana spanning hundreds of years and a well-established dependence on kaimaona (seafood) and ika (fish) to feed their whanau. Particularly in small coastal communities, Maori families depend upon the sea as a source of food.

Subsequent to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 Maori remain unsure on the nature and extent of their non-commercial fishing rights. The recent realisation by Maori that most of the time they go fishing they do so as recreational fishers - no permit required but subject to daily bag limits – has been unfamiliar and foreign to Maori.

Despite Te Tiriti O Waitangi and the rights associated with Articles Two and Three, non-commercial Maori fishers are classified as 'recreational' fishers along with all other New Zealanders, including tourists.

The distinguishing factor between non-commercial Maori fishers on the one hand and most other New Zealander non-commercial fishers on the other hand is the way Maori use kaimoana to manaaki manuhiri (provide hospitality to guests and visitors). This means that the very best is given to visitors or to those unable to catch fish for themselves. This enhances the mana of the individuals, whanau, marae and iwi.

A consequence of Maori not considering themselves as non-commercial recreational fishers in inshore fisheries is that for many years Maori have tended to put the blame on 'those recreational fishermen' for depleting popular fishing areas and calling for 'their' constraint.

As Raniera Tau, chairman of Te Runanga A Iwi o Ngapuhi, explained:

> "The Ministry Of Fisheries has done an excellent job of fooling us into thinking that our rights to fish for food have been catered for under the customary fisheries regulations.
>
> "This is as far from the truth as one can get, the fact of the matter is, Ministry have created, in law, three categories of fishers, customary fishers, recreational fishers and commercial fishers. Customary fishers are those who collect seafood for a hui mate or an occasion of significance. When we fish to feed our babies, Ministry has categorised that as recreational fishing. Therefore 99.99% of the time Ngapuhi go fishing, we are fishing under the amateur fishing regulations. This is why Ngapuhi have filed an affidavit in support of the Kahawai Legal Challenge, legal action taken by recreational fishers."

Ngapuhi people have clearly told their leaders that they want kaimoana (food) on the table to feed their mokopuna (grandchildren) before feeding overseas customers, or worse still, feeding Australian crayfish as in the case of kahawai[34].

Concern for kahawai was the catalyst for Ngapuhi, Ngati Whatua and other mid north iwi to work with non-Maori through the Hokianga Accord. After many hui debating fisheries management and marine protection issues this mid-north iwi Forum is striving to achieve a common goal of "more fish in the water/Kia maha atu nga ika i roto te wai". MFish were ardent supporters of this Forum until the questions became too hard resulting in MFish withdrawing their support.

MFish is proposing putting a 'value' on tangata whenua's priceless non-commercial recreational fishing interest. MFish only provided an outline of what this might mean in its 'Shared Fisheries' discussion paper which could put at severe risk or threaten tangata whenua's long established spiritual, cultural and traditional relationship with the moana.

This is why tangata whenua must actively engage in the debate on MFish's 'Shared Fisheries' proposals - to protect the interest Maori have in Aotearoa's fisheries so they can better provide for their well-being by providing Kaimoana for their whanau well into the future.

Conclusions

MFish policy should reflect current legislation and "allow for" people's non-commercial fishing interests, not merely the 'value' of what they catch.

MFish cannot possibly put a 'value' on tangata whenua's priceless non-commercial fishing interest and this raises questions on how they propose to give effect to their value based judgements.

It is difficult to have confidence in the outcome of the 'Shared Fisheries' debate when there is only cursory acknowledgement of the food gathering aspects of recreational fishing. This forms a very important part of why many people actually fish.

As always, the devil is in the detail and there is insufficient information in the 'Shared Fisheries' discussion paper to describe how MFish are going to compare the economic gains of a select few corporate fishing companies with the all-encompassing 'value' of having a healthy population enjoying abundant fisheries that enables people to provide for their social, economic and cultural well-being.

Amateur fishers do not need dubious value based assessments in the management of shared fisheries. The greatest gains would come from implementing the full provisions of the current Fisheries Act and placing more emphasis on the environmental aspects of those provisions to improve the yield from shared fisheries for everybody's benefit.

[34] Whakamaharatanga hui report, Hokianga Accord 27-29 July 2005, p5. http://www.option4.co.nz/Fisheries_Mgmt/fmmr705.htm

Supporting Local Area Management

The Government's latest proposals on the way shared fisheries and our coastline are managed are contained in *Shared Fisheries Proposals for Managing New Zealand's Shared Fisheries: A public discussion paper* ('Shared Fisheries').

Section 6 of the Ministry of Fisheries (MFish) 'Shared Fisheries' paper identifies three management proposals to address local area management. The proposals seem to be promoted as new initiatives that would benefit non-commercial fishers. However, that is not the case.

The following case studies demonstrate that the suggested controls have either been rejected by MFish or the Minister of Fisheries in the past (coastal fishing zone), or are provided for under the current Act (amateur fishing havens, and multi-sector agreements to ban bulk fishing).

A study of the Kaipara Harbour community fisheries management initiative suggests that the current MFish structure is unlikely to support local management of fisheries.

Our recommendations:

- Support the local area initiatives proposed, with the exclusion of the coastal zone
- Support the need to provide for non-commercial fishers to develop and implement their own fisheries plans.
- Support initiatives to allow local communities to have a greater decision-making role in the management of their local fisheries
- MFish provide support for communities to develop more effective local fisheries management and that MFish provide support for such local management.
- MFish provide support and resources for a national annual seminar on local area management.

Area Management Tools

MFish make reference to several management tools currently available for managing particular areas. Mataitai are mentioned briefly as a tool to provide for customary use and management practices. Combination or subdivision of Quota Management Areas (QMA) on agreement by commercial fishers is referred to as are section 311 provisions of the Fisheries Act 1996 (the Act).

The cursory mention of mataitai and customary area management tools is concerning. The complete lack of support for the process to establish rahui, taiapure and mataitai needs to be highlighted. These area tools are the only mechanisms available to tangata whenua to manage areas on scale of interest to hapu and local coastal communities. The benefit derived from implementing these tools are enjoyed by the wider community yet MFish have done little to educate the public about these customary tools.

Reference to combining or subdividing QMA's is also made in the 'Shared Fisheries' paper. Reality is, that without direct intervention from the Minister of Fisheries, 75 percent of quota owners have to agree to any changes to QMA boundaries. This has not proved to be a realistic solution to addressing issues in shared fisheries to date.

Stringent requirements to provide proof that commercial fishing is having an effect on amateur catch rates has proven to be problematic in the past. Section 311 provisions within the Act have not delivered the outcomes amateur fishers have sought. That amateur and customary fishers interests are not being met in inshore fisheries is not due to the shortage of area tools it is more the lack of management action regarding spatial issues that is of major concern.

Refer Paper 14: Supporting Kaitiakitanga (Guardianship).

MFish Proposal A: *Provide for a coastal zone or areas where key species are managed with priority for non-commercial fishing*

A coastal zone of uniform width (e.g. 2 km) around the whole coast.

This proposal was suggested in the Final Report of the Fisheries Task Force to the Minister of Fisheries (the Minister) on the Review of Fisheries Legislation in April 1992. The Task Force comprised appointed group of experts appointed by the Minister. The report followed an extensive period of consultation and deliberation.

The Minister/Ministry rejected this option in 1992 but MFish has resurrected the concept in 2006. What has changed that makes the option viable now compared with the 1992 situation?

Given the rights based, free market approach of the commercial fisheries Quota Management System (QMS) regime, the proposal seems to be an oxymoron. The rights based approach suggests that fishers should be given the minimum of restriction in their fishing activity and the maximum opportunity to develop their activities (within the constraint of sustainability). Closing areas to commercial fisheries just to provide a non-commercial zone is contrary to MFish's historical approach to resource allocation. The proposal makes little sense as a blanket control.

One reason the proposal would be of little value flows from MFish's statement (in section 6) that the closure would not be applicable in areas where there is commercial fishing interests (such as commercial paua and rock lobster fishing). Those wishing to support this initiative should ask themselves what inshore areas are there that commercial fishers would not claim they are dependent on for their livelihood, or are not already closed to all fishers (marine reserves other marine protected areas)?

Secondly, giving fishing areas to non-commercial fishers where there is no commercial fishery will not deal with the non-commercial sector's major problem of spatial conflict issue between the sectors.

Thirdly, areas not used by commercial fishers are likely to be areas where non-commercial fishers are unlikely to use – what is the advantage of being granted areas that non-commercial wont use?

If areas of importance to non-commercial fishers exist which are not important to commercial fisheries (and no examples are given in the document) the question arises as to how committed future governments would be to protecting the areas for non-commercial fishers?

It seems likely that if a new commercial fishery developed or current fishing methods extended that could use the non-commercial fishing areas then future governments would likely weigh the commercial and export dollar benefits of opening the areas to be of greater value than protecting non-commercial interests. In this scenario non-commercial fishers in the priority coastal zone would become caretakers for future commercial interests.

MFish Proposal B: *Provide for sector-initiated proposals to protect or strengthen specific interests*

Amateur Fishing Havens

Amateur fishing havens are not a new initiative which could be introduced under the Shared Fisheries Policy; such havens have been in place for a number of years and have been available since the introduction of the commercially focused QMS.

One example is the non-commercial scallop areas closed to commercial dredges in the Coromandel fishery. Although the closures were initially established by voluntary agreement between the sectors, when the agreement was breached the Minister introduced a regulation to close the area to commercial dredging under the Fisheries Act.

The Minister may close areas to commercial fishing methods to better provide for recreational fishers under section 311 of the Fisheries Act. This provision has seldom been used because of the requirements listed. These are that catch rates for recreational fishers are low in the area and this is preventing fishers from catching the recreational allowance for that stock. Also there needs to be evidence that the low catch rates are due to the effect of commercial fishing in the area were the recreational fishing occurs and that all parties to the dispute have been though the formal dispute resolution process and failed to reach agreement.

Clearly any recreational group wanting to initiate this process would need considerable resources over several years and be quite sure there was evidence to support their proposal. Currently this is too hard for most groups concerned about commercial fishing effects in their area. This has lead to drastic actions, at times illegal, to warn off commercial fishers or draw attention to a problem.

The Shared Fisheries policy needs address this and provide better access to the tools available. For example, a national annual seminar could be organised on local area management tools and issues with resources provided by MFish. This would be a forum for information sharing and would help develop support networks so that each proposal does not have to start from scratch. It would also be an opportunity to measure MFish's performance on current projects.

Multi-party agreements to exclude bulk fishing methods

Again, the 'Shared Fisheries' paper appears to present this as a new management option. However there is adequate provision for this control in the current Act and there are examples of multi-party agreements excluding bulk fishing methods.

For example, in the late 1980's there was considerable concern in the Auckland region about set netting. Of particular concern was the practice of commercial fishes setting nets over 1,000 in length on shallow reefs.

In June 1990 the Ministry of Fisheries established a Set Net Task Force representing commercial, non-commercial and environmental interests. The Task Force and MFish released a public consultation document and undertook further consultation, particularly with commercial set netters.

Subsequently, in 1993 thirteen areas were closed to set netting. The closed areas were extensive (in a number of cases more than 10 kms of coastline were closed to netting).

MFish Proposal C: *Create area-based fisheries plans appropriate to shared fisheries issues*

MFish is currently promoting Fisheries Plans as the major fisheries management strategy to address (amongst other things) spatial conflict and other problems amongst the sectors. The planning approach is not a new initiative for New Zealand fisheries.

In 1983 the Fisheries Act was amended to provide for Fisheries Management Plans to address conflict between sectors and other issues. MFish put considerable effort into the plans and substantial public consultation occurred. Over 700 submissions were received when the draft Auckland Region Plan was released. However after around 10 years of work the plans were never made operational.

In the early 1990's the Minister of Fisheries decided (on Ministry advice) that the plans were incompatible with the QMS and in 1996 the specific enabling provisions of the 1983 Act were removed from the new Act[35]. It therefore seems surprising that fishery plans are in vogue again! In spite of what MFish might say, there are many similarities with the old and new planning process.

To date no MFish plans have been implemented. It is always easy to promote an initiative being the answer when there is no history of its performance. Are Fisheries Plans likely to provide a 'breakthrough' fisheries tool MFish would have us believe?

Kaipara Harbour

To assess the Fisheries Plan process we use the example of the Kaipara Harbour plan developed by the Kaipara Harbour Sustainable Fisheries Management Study Group (KHSFMSG)[36]. Although the Kaipara plan and strategy were not developed as an MFish plan, the Kaipara experience reflects the planning approach (development of strategies, consultation, and development of specific initiatives) common to fisheries planning. MFish staff were closely involved in the planning process and instrumental in the Kaipara Harbour strategy's final form.

Kaipara Harbour is New Zealand's largest enclosed waterway and is claimed to be the second largest harbour in the world. The waterway covers 500 square kilometres and a coastline of 3,000 kilometres.

[35] Fisheries Act 1983, first section - Fisheries Management Plans, sections 4-12 outlined details over eight pages. The First Schedule in the Act included a one-page summary of what a plan should entail.
[36] Fishing For The Future: A Strategy for the Fisheries of the Kaipara Harbour. Prepared by the Kaipara Harbour Sustainable Fisheries Management Study Group, 2003.

The KHSFMSG was established in 1999 following widespread concern about overfishing in the harbour. The group was comprised of members from the local community, iwi and commercial fishers and was chaired by the Mayor of Dargaville.

To provide background information on the fishery NIWA were contracted to provide a report on the commercial fishery including a detailed analysis of the commercial catch and effort statistics for the fishery.

The group consulted widely with six public meetings and three special meetings for commercial fishers. Following a call for submissions 37 submissions were received representing the views of 86 individual submitters.

The group analysed the information and produced a draft discussion document followed by another round of public meetings with community and stakeholder groups. In addition to this process a parallel series of nine hui were undertaken by Ngtai Whatua to discuss customary take regulations for the harbour.

Following three years of deliberation and consultation a draft plan was developed and sent to 300 stakeholders and organisations with an interest in the harbour. 134 submissions were received representing 505 signatories.

Ninety one submissions (448 signatories representing 89% of the signatures) supported the overall strategy.

Only five submissions, one of which was MFish's submission, opposed the Strategy.

Kaipara Proposals

The KHSFMSG plan proposed four types of controls and also recommended strategies for compliance, education and training, and monitoring and research.

The first proposal addressed managing the fishing pressure on the harbour. The group recommended that the Kaipara Harbour become a separate Quota Management Area (QMA). The concern in the Kaipara (and a common concern of non-commercial fishers in other areas) is that the QMA's are too large, and in this case allows fishers from all over the region to concentrate their fishing effort in localised areas (such as the Kaipara) rather than spread their effort throughout the QMA. For the flounder and grey mullet fisheries the QMA (Area 1) extends from Tirua Point in north Taranaki to Cape Runaway on East Cape.

The second proposal addressed a code of practice for commercial fishers to implement by MFish regulation. In addition there were several voluntary codes proposed for the commercial sector.

Specifically the proposal recommended an increase in the minimum fish size for some flatfish species, and an increase in the mesh size for flounder and mullet. Both these controls were intended to allow fish to grow one year longer and larger before harvesting. A reduction in the maximum length of set nets (to 800m) for three species, reducing the maximum time nets could be set (6 – 12 hours), better marking and monitoring of stranded nets were also proposed.

The third proposal addressed a code of practice for non-commercial fishers to implement by MFish regulation. One voluntary control was also recommended.

Specifically the proposal recommended all fin fish caught in the harbour be landed in a whole state (to stop undersized fish being landed), a reduction in the season for scallops (to stop harvesting during the breeding season) and a ban on night fishing (to stop illegal activity). In line with the commercial fisheries, increases in the non-commercial mesh size of flounder and mullet nets, limits on the time nets could be set, better marking of nets were also proposed.

The fourth proposal was the closure of the non-commercial scallop fishery for two years to allow stocks to rebuild.

All of the proposals involved modification of existing fisheries controls; these were not extreme proposals outside of the normal range of fisheries regulations.

Yet, in spite of the widespread local support for the proposals, three years later only one of the proposals (a two year closure of the scallop beds by non-commercial fishers) has been implemented.

Conclusions

It would have been expected that a policy proposal document such as Shared Fisheries would have proposed only new initiatives. However, the local management proposals appear to offer nothing new and simply raise the question, why has MFish not used these available controls more extensively in the past?

We support the amateur fishing havens (with the exception of the coastal zone) and multi-party agreements to exclude bulk fishing methods. Even the planning approach has benefit if it provides more certainty about fisheries management for the future.

We support the planning process as this in line with the planning right principle supported by over 60,000 people in the option4 *Soundings* submission during the year 2000[37]. That submission argued that the non-commercial sector needs a planning right to determine how the non-commercial fishery should be managed. This principle has been promoted to Government since 2000 and yet the 'Shared Fisheries' paper does not even recognise this approach as an option, let alone support the approach.

Based on the experience of the Kaipara Plan we would suggest Fisheries Plans are unlikely to be the breakthrough tool MFish claims. The issue of local management is more than just managing fisheries on a local scale. Local management is also about supporting local communities to work with MFish to create better fisheries management.

Local communities are closer to the issues than MFish and are more likely to find effective workable solutions through their relationships with the various stakeholders and iwi with an interest in local area fisheries issues.

The Strategy for the Fisheries of the Kaipara Harbour represents more than three years work, negotiation and consultation by the local Kaipara community. Despite this, the Strategy has been dismissed by MFish and the Minister as an inappropriate approach. Inexplicably the

[37] http://www.option4.co.nz/option4/soundings.htm

experience of the Kaipara community is one of many examples of local community management efforts that have been rejected by the Minister/MFish.

A national annual seminar on local area management tools and issues would be a useful forum for information sharing and would help develop support networks so that new proposals do not have to start from scratch. As part of the local management provisions of the Shared Fisheries policy MFish would provide resources and their performance on current projects would be measured.

Supporting Kaitiakitanga - Guardianship

Introduction

The Government is currently consulting on the management of shared fisheries and the 'value' derived from those fisheries by all New Zealanders. Shared fisheries are usually inshore fisheries that customary, recreational and commercial fishers participate or have an interest in.

Changes proposed by the Ministry of Fisheries (MFish) are contained in the November 2006 *Shared Fisheries: Proposals for Managing New Zealand's Shared Fisheries* public discussion paper ('Shared Fisheries').

This lightweight MFish paper briefly mentions customary fishing and area management tools but what has been completely overlooked in the document is any reference to kaitiakitanga (guardianship).

Kaitiakitanga, the legislation and regulations that currently support it, is seen as delivering a very important component of Te Tiriti O Waitangi that empowers Maori to manage the marine resources in localised regions, to achieve, as a minimum, their customary rights and also their traditional ability to successfully gather kaimoana.

Although freshwater fisheries, including eels (tuna), are mentioned in the discussion paper there are no management proposals to improve those fisheries. Neither is there any acknowledgement of the need to improve the health of the waterways that tuna live in.

Tangata whenua understand these waterways eventually lead to the sea and are concerned about the pollutants in those rivers and streams having a detrimental effect on inshore fisheries, particularly on kina, paua and the once plentiful shellfish beds.

MFish has asked for feedback on the discussion paper. Submission deadline is 28th February 2007.

Our recommendations:

- The Government fulfil its statutory obligations to Maori and address the gross mismatch of resources in area and fisheries management
- MFish promote public awareness and understanding of kaitiakitanga
- MFish provide details on how they propose to improve freshwater fisheries management including tuna (eels).

Current Legislation

No clarification has been given to the public explaining what the Crown's statutory obligations are to tangata whenua, and that the Fisheries Act 1996 (the Act) specifically provides for:

- 'Input and participation' of tangata whenua into fisheries management processes – sustainability measures, in particular contained in Part 3 of the Act; and
- The statutory obligation of the Minister of Fisheries (the Minister) to *have particular regard to kaitiakitanga* when making decisions on sustainability measures.

Sustainability measures are those fisheries management decisions that relate to setting or varying catch limits including total commercial catch, areas that can be fished, the size of fish, methods and seasons of fishing. The Minister, on the advice of MFish, makes these decisions.

Generally MFish conduct two 'sustainability rounds' per annum and carry out ongoing management processes and research functions throughout the year.

Kaitiakitanga

Maori have an infinite relationship with the Moana (sea) and it is an integral part of their spiritual and cultural history. For centuries Maori have continued to provide kai (food) from both land and sea utilising the practice of kaitiakitanga in order to provide abundance for present and future generations.

The moana continues to be the source of kaimoana (seafood) which Maori have traditionally had reliably available for them to use for special gatherings on the marae or feeding of their whanau (families). The importance is such that Maori have ensured, since the signing of Te Tiriti O Waitangi, that marine area guardianship/trusteeship referred to as kaitiakitanga has been built into numerous regulations concerning the sea and coastal areas.

MFish define kaitiakitanga as,

> The exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate tangata whenua in accordance with tikanga Maori.[38]

The Reverend Maori Marsden explains kaitiakitanga as,

> "The word used by Maori to define conservation customs and traditions, including its purpose and means, through rahui".

Rahui was designed to prohibit the exploitation, depletion or degeneration of a resource and the pollution of the environment[39].

This definition is from a paper, *Kaitiakitanga: A definitive introduction to the holistic world view of the Maori*, that Rev. Maori Marsden wrote and produced in 1992. The paper discusses kaitiakitanga in the context of resolving, "*The rights of tangata whenua and their role in determining how environmental and conservation policies may be applied to achieve positive results*". The paper was to help decision makers to determine how kaitiakitanga may be expressed and applied in management decisions for the benefit of everyone.

[38] Fisheries Act 1996, Section 2 (1).
[39] Kaitiakitanga: A Definitive Introduction to the Holistic World View of the Maori, Rev. Maori Marsden, November 1992, page 19.

Has Kaitiakitanga Been Given a Chance?

Most of the options available to give effect to achieving kaitiakitanga have been eroded in effectiveness by the priority given to competing legislation that affects the same water space, such as marine reserves, and the lack of resources available to tangata whenua to implement customary management tools.

It is difficult to reconcile this gross mismatch of resources in area and fisheries management debates. For example, tangata whenua have not been able to compete resource wise, against the massive investment made by MFish policy in the 'Shared Fisheries' discussions.

It would be fair to say that the majority of Maori are oblivious to the discussions regarding 'Shared Fisheries', despite their interest in, and dependence on, the ongoing availability of kaimoana. Most have no idea of the ramifications this policy will have on all Maori and their mokopuna, if these proposals go unchallenged and are eventually allowed to evolve into legislative change. This is particularly so as Maori numbers are growing and it is estimated around 34% of amateur fishermen are Maori. Any changes to catch limits will affect those people and their whanau.

The complete lack of support for the process to establish rahui, taiapure and mataitai also needs to be highlighted. These area tools are the only mechanisms available to tangata whenua to manage areas on scale of interest to hapu and local coastal communities. The benefit derived from implementing these tools are enjoyed by the wider community yet the Crown's agencies in MFish and DoC have done little to educate the public about these customary tools.

Neither have they made any substantive effort to increase public understanding and awareness so that people can support these management tools in preference to a complete confiscation in the form of no-take forever marine reserves. Much korero (talk) has occurred on this topic during Hokianga Accord hui over the past 18 months[40].

Sir Tipene O'Regan of Ngai Tahu captured the benefits of customary management during the debate surrounding the Akaroa Harbour marine reserve and taiapure proposal in April 2004,

> " A full marine reserve is frozen management rather than a creative solution. It means nothing can be taken from that area. The taiapure leaves room for some areas to be closed for a while, some to be opened, and some to be restocked" and that imposing a marine reserve was "an absolutist solution, based on ideologically driven theories."
>
> A taiapure "has a local management body that may have more Pakeha than Maori on it. The runanga are the catalyst to bring together people to work out a management plan for the harbour and fisheries.[41]"

The Crown has clearly failed in its obligation to provide for tangata whenua's customary aspirations. All Crown obligations under the Fisheries Act have to be carried out in a way that is consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and other legislation. MFish explained this obligation in 2002 as follows,

> "However, Maori customary non-commercial fishing rights continue to give rise to Treaty obligations on the Crown. Section 10(b) of the Settlement Act 1992 places an ongoing obligation on the Minister to consult with tangata whenua about, and develop

[40] http://www.HokiangaAccord.co.nz
[41] Tangaroa, Issue No. 72 – April 2004

policies to help recognise the use and management practices of Maori in the exercise of customary non-commercial fishing rights"[42].

Other Statutory Obligations

In addition to obligations associated with section 10 of the Settlement deed, there are others such as those related to sections 33 and 36 of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and sections five and twelve of the Fisheries Act 1996.

Section 12 of the Fisheries Act specifically states the Minister shall *"have particular regard to kaitiakitanga"*.

The object of sections 175 to 185 of the Fisheries Act 1996 is to better provide *"for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi"*[43].

The Kaimoana Regulations deal specifically with gazettal of rohe moana, kaitiaki, the issuing of customary permits, enabling kaitiaki to participate in sustainability measures, institute mataitai and complete reporting provisions.

Refer Paper 7: Crown's Obligations to Maori.

Customary Management Tools

One outcome of the 1992 Settlement deed was the statutory provision for tangata whenua to manage areas of importance, to provide for their non-commercial customary needs. The significance of the settlement should not be underestimated and is clearly made in the following MFish policy statement,

> "All the customary fisheries management tools arising from the 1992 fisheries settlement (customary fishing regulations, mataitai, s186A closures and method restrictions) are contained in Part IX of the Fisheries Act 1996, along with the taiapure provisions that formed part of the 1989 interim settlement. It is important to remember that all of these provisions have arisen in the context of Treaty settlement negotiations. **The fisheries Treaty settlement in 1992 was a necessary precursor for establishing the legitimacy of the QMS.** Obligations attached to the fisheries settlement provisions should be approached in this regard. Similarly, the QMS and the ITQ rights are now fundamental to the integrity of the settlement.[44]"

It is unfortunate that the Crown, the Minister and MFish have not been so articulate when explaining these obligations to the public, particularly when proposals for customary area management are put forward for consultation. Even so, MFish confirm their perception of tangata whenua's role in the ongoing management of our fisheries with this comment,

> **"**Taken together the Settlement Act 1992 and the Fisheries Act 1996 encapsulate the Treaty relationship between Maori and the Crown in respect of fisheries management. The Settlement Act not only placed a number of specific ongoing obligations on the Crown, **it also prescribed a wider purpose of making better provision for Maori participation in the management and conservation of New Zealand's fisheries**.[45]"

[42] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p4 section 71.
[43] Fisheries Act 1996, Part 9, section 174.
[44] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p6 section 78
[45] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p6 section 79.

Despite these comments being made five years ago, Maori still await MFish's advice on how and when they are going to give full effect to these obligations both now and into the future.

Also in 2002 MFish made the comment, *"temporary closures and method restrictions are designed to help manage the impact of commercial and recreational fishing on important customary fisheries, and provide an interim management measure while a mataitai reserve or taiapure is being established"*.[46]

In the same paper they also say, *"The largely effects-based criteria for the establishment of mataitai reserves mean that mataitai reserves are generally smaller and more focused than taiapure"*.[47]

Mataitai Reserves

The Fisheries (Kaimoana Customary Fishing) Regulations 1998 18 – 32, (North Island) and the Fisheries (South Island Customary Fishing) Regulations 1999 stipulate criteria for mataitai establishment.

Mätaitai reserves can be declared in New Zealand fisheries waters (except South Island fisheries waters or fresh waters found outside South Island fisheries waters) under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (regulations 18-32). For the South Island, similar provisions are available in the Fisheries (South Island Customary Fishing) Regulations 1999 (mätaitai reserves can be declared over freshwater in South Island fisheries waters).

Mataitai reserves recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and places of importance for customary food gathering. A management committee can make bylaws that apply equally to all individuals. Bylaws can be recommended to restrict or prohibit take of fish, shellfish or marine life within the whole or any part of a mataitai reserve. Commercial fishing is prohibited unless special application is made to allow it to occur within the mataitai. Five mataitai exist currently: two in the North Island and three in the South Island.

Taiapure

Taiapure-local fisheries and temporary closures and method restrictions or prohibitions are tools available under Part 9 of the Fisheries Act 1996 (sections 174-185; and section 186A and B, respectively). Section 186 A applies to North Island and Chatham Islands, Section 186 B to the South Island. Section 186 also contains more general provisions for regulations to be made.

Taiapure can be established in coastal waters, including harbours and estuaries that have special significance to any iwi or hapu, either as a source of food or for spiritual or cultural reasons. A management committee can advise the Minister of Fisheries on regulations to manage and conserve the area's fisheries. Regulations cannot discriminate on the grounds of colour, race, ethnic or national origin. Until the Minister agrees to any regulation changes, existing management controls continue to apply to all fishers within a taiapure. There are currently seven taiapure throughout New Zealand[48].

[46] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p5 section 72.
[47] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p5 section 74.
[48] http://www.fish.govt.nz/en-nz/Fisheries+at+a+glance/default.htm

Temporary Closures

Section 186 of the Fisheries Act 1996 allows temporary closures and method restrictions to better recognise and provide for the use and management practices of tangata whenua in the exercise of their non-commercial fishing rights, by improving the size and/or availability of fish stocks or by recognising a customary fishing practice in the area concerned. These closures can apply for a maximum of two years and can be renewed after further consultation. Temporary measures apply to all fishermen including customary. Currently, six temporary closures are in force with five of those around the North Island.

Aquaculture Management

The impact of aquaculture management will undoubtedly have an effect on tangata whenua's ability to manage impacts on their rohe moana (coastal area). Kaitiaki (guardians) appointed by tangata whenua should be included in discussions relating to activities that will have an effect on the environment. Examples exist where territorial authorities (regional or local councils) only consult with their own recognised Maori authorities and often those people do not have close links with kaitiaki.

Crown Perspective of Obligations

The Crown considers it has reached a final settlement of Maori claims in respect of commercial fishing through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992[49].

As the Crown's agent MFish has an ongoing obligation to act in accordance with Te Tiriti O Waitangi and confirmed this fact in the 2006 Statement of Intent,

> "The Ministry interacts with tangata whenua on a number of different levels. Mäori are now the largest quota owners in New Zealand's commercial fishing industry. Tangata whenua can manage their non-commercial customary fishing activity through customary regulations. Mäori are also recreational fishers. To engage with tangata whenua across this range of interests the Ministry consults with over 100 iwi and hapü on matters affecting their fisheries. [50]"

> "The Ministry must act in accordance with Treaty principles: the principle of partnership; the principle of active protection, and the principle of redress. It has to act reasonably, honourably, and in good faith, and to make informed decisions. Acting in this way will strengthen relationships with Mäori and avoid grievances.[51]"

Several years earlier, in December 2002 MFish produced a series of four documents called Occasional Papers, these were:

- Part 1 – Shared Resource: Allocation between stakeholders
- Part 2 – The legal nature of recreational fishing rights
- Part 3 – Obligations to Maori
- Part 4 – Maintaining the marine environment and recreational fishing rights.

These papers were presented during a meeting of amateur fishing representatives, MFish and the Minister of Fisheries at the time, Pete Hodgson. The papers are online at http://www.option4.co.nz/Your_Rights/referencegroup.htm

[49] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p3 section 61.
[50] Statement of Intent 2006-2011, Ministry of Fisheries 2006, p22.
[51] Statement of Intent 2006-2011, Ministry of Fisheries 2006, p24.

Obligations to Maori

Within Part 3 - Obligations to Maori paper are many references to non-commercial fishing rights, customary management and ongoing Crown responsibilities. Although MFish acknowledge their duty to tangata whenua, it is action that counts and so far Maori have not benefited from the advice written in MFish's own documents.

As an example, MFish explain in section 81,

> "The relationship obligations on the Ministry of Fisheries, derive from it being an instrument of the Crown. While fisheries legislation puts a legal duty on the Ministry of Fisheries when carrying out particular tasks, **the obligation to uphold the principles of the Treaty extends to all aspects of the Ministry's operations.**[52]

There are similarities between the Crown's obligations as described in resource management and in fisheries management legislation. Basically the Crown has three main requirements:

- That the Crown acts reasonably and in good faith in its dealings with Maori;
- That the Crown makes informed decisions; and
- That the Crown avoids impediments to providing redress, and avoids creating new grievances[53].

These requirements are addressed in Section 12 of the Fisheries Act. This section directs the Minister to consult with tangata whenua before making any sustainability decisions and most importantly the Minister has to *"have particular regard to kaitiakitanga"*.

The Minister and MFish have given section 12 scant regard. You would have to wonder why they have not fulfilled the Crown's obligations or followed their own advice. Clearly MFish are not operating in a vacuum of ignorance when it comes to tangata whenua's statutory rights, as evidenced below,

> "The principles that the Crown acts in good faith and makes informed decisions, amount to a requirement to consult with Maori before making decisions that may affect their interests. As outlined above, s12 (1)(b) of the Fisheries Act 1996 requires provision for the input and participation of tangata whenua in the making of fisheries management decisions. This reflects the increased obligations on the Crown to involve the Treaty partner in the management of fisheries, as envisioned in the preamble of the Settlement Act 1992.[54]"

Despite all of the above many Maori and most non-Maori are oblivious to the nature of customary rights and the Crown' obligations, despite the Settlement being 15 years old.

Refer Paper 7: Crown's Obligations to Maori.

Public Awareness

Public support for kaitiakitanga will only come through understanding the spiritual and cultural basis of guardianship/stewardship, the legal background and what the advantages are.

[52] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p6 section 81.
[53] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p6 section 82.
[54] Occasional Papers: Obligations to Maori, Ministry of Fisheries, December 2002, p6 section 83.

Kaitiakitanga means guardianship in the widest sense and comes from Maori's knowledge and connectedness to the land, sea and the life within it. If this concept was as well promoted as the arguments for marine reserves, many people would choose active, local management over "*frozen management"* as Sir Tipene O'Regan so aptly put it.

There is an obvious need for a public awareness campaign to enlighten the public to the potential of customary management tools. However, it would be naïve to contemplate an awareness campaign without a complete literature review of the Fisheries Act 1996, Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Resource Management Act, Coastal Policy Statements (DoC), Fisheries (Kaimoana Customary Fishing) Regulations 1998 and the Fisheries (South Island Customary Fishing) Regulations.

All fisheries sustainability decisions, marine protection tools and mechanisms are underpinned by kaitiakitanga in law. Through this tangata whenua have access to rahui, taiapure and mataitai. But due in part to a lack of awareness of kaitiakitanga and the potential of customary tools to provide for the needs of the public, support is often given to a marine reserve proposal in the misguided hope that fisheries will improve.

Worse still, opposition to a reserve proposal generates much anger, mistrust and a general dislike of any form of 'control' over people's behaviour in the marine environment. Within this context, any attempt to promote customary tools is generally perceived as another 'imposition'.

The New Zealand Big Game Fishing Council has discussed kaitiakitanga with its members for the past two years with a majority supporting the concept. option4 has also made considerable efforts to enlighten the public about the potential of customary management. The Hokianga Accord, as the mid-north Iwi Forum, has been the ideal vehicle to promote kaitiakitanga to all participants to improve coastal management[55].

Public Involvement

In the early 1990s the public lost their statutory right to manage local coastal areas. At the time many people did not realise the lost potential brought about by changes to the Fisheries Act. Nowadays the only way local communities can actively participate in meaningful local management is through the use of customary tools.

When implemented with community support, customary management tools can be successful in bridging gaps in cultural and social issues and lead to greater understanding, as an ongoing relationship is needed between the kaitiaki (guardians) and local (often non-Maori) people. What tangata whenua need is cooperation of the whole community, but that will only come through awareness and understanding.

If an equal amount of effort was put into promoting customary tools as there is in promoting marine reserves, local communities would be empowered to actively work together in a constructive manner, without having to suffer the division commonly associated with marine reserve proposals.

In addition to being a tried and true way of nurturing resources in Aotearoa and throughout Polynesia, the advantages of kaitiakitanga are:

[55] http://www.HokiangaAccord.co.nz

- Its inbuilt flexibility - if a fish stock in a particular area needs to recover and multiply, then a rahui (temporary ban) and/or a tapu (spiritual ban) can be imposed until there is sufficient abundance again
- Its inclusiveness by encouraging communities, both Maori and non-Maori, to work together positively
- It addresses the real issue of people's impact on the environment
- It provides local solutions to local problems without closing areas permanently
- It recognises the social and cultural values of local communities
- It fulfils the Crown's ongoing obligation to tangata whenua
- It does not create new grievances

Kaitiakitanga is guardianship of the land and sea to ensure there is abundance and a healthy environment for future generations to enjoy. It is conservation without confiscation that enables people to live as one with their environment. As such, the concept of kaitiakitanga should be given the respect it so richly deserves and the resources to reach its full potential.

The Crown has a long way to go to prove to tangata whenua and the community that they are committed to fulfilling their statutory obligations for the benefit of all New Zealanders.

Crown's Liability for Compensation

Introduction

What the 'Shared Fisheries' proposals are about

The Government's latest proposals on the way shared fisheries and our coastline are managed are contained in *Shared Fisheries Proposals for Managing New Zealand's Shared Fisheries: A public discussion paper*. The paper is dated November 2006 and submissions are due by 28th February 2007.

The proposals have the potential to affect both fishing sectors – commercial and non-commercial (Maori customary and recreational fishers).

In Section 7 of the 'Shared Fisheries' discussion paper the Ministry of Fisheries (MFish) stipulates that compensation only applies to the commercial sector. MFish propose either maintenance of the status quo, where commercial fishers can seek "redress" through the courts, or alternatively a process that considers redress such as paying compensation if changes in allocation were "significant".

What remains unexplained in the discussion paper is that since the introduction of the Quota Management System (QMS) MFish has spent considerable time and effort warding off possible compensation claims from the fishing industry due to quota cuts. This is because proper management of New Zealand's coastal fisheries, in the way intended by the Fisheries Act 1996 (the Act), may require reductions in some commercial catch limits in order to rebuild stocks.

Insufficient weight has been given to the overall purpose of the Act, of ensuring abundance for future generations and enabling New Zealanders to provide for their social, economic and cultural well-being. This unsatisfactory approach has resulted in a number of compromised decisions whereby proportional reductions have been made to both commercial quota and to the quantity of fish the Minister has seen fit to "allow for" the interests of non-commercial fishers.

There are no winners using MFish's approach. The fishing industry may maintain profits in the short term by continuing to extract large amounts of fish from the water, but if fish stocks remain under pressure the losers have been, and will continue to be, the fisheries, marine environment and all New Zealanders. The orange roughy and hoki fisheries are two recent examples of reductions having been made because of sustainability concerns.

Limited Liability

The threats for compensation due to any 'reallocation' of the total allowable catch (TAC) remain largely unsubstantiated and therefore the Government's liability is limited. It is certainly not as hefty as some are making it out to be.

We recommend the Government takes account of the historical circumstances surrounding the evolution of the QMS and realise that present compensation claims in relation to shared fisheries have no validity under current legislation.

Background

The incessant demands for compensation coming from commercial quota owners arise from the belief that they own a property right to New Zealand's fisheries, and that this right is similar to a terrestrial land right. This right is the Individual Transferable Quota (ITQ) generated under the QMS. If the proportion of the TAC available to them under this right is diminished by Government action then they believe they are owed compensation from the Government.

Non-commercial fishing interests have bemoaned the mistakes made in the QMS system that left them with insufficient allowances for their catch for decades. This failure to "allow for" non-commercial fishing interests, as prescribed by the Act, has enabled successive Ministers to allocate more fish to the fishing industry than they are capable of catching and resulted in many total allowable commercial catches (TACC's) being set above the limits intended by the Fisheries Act. Once these inflated TACC's were gazetted commercial interests have fought tooth and nail to retain them.

Now that greater recognition is being given to past mistakes and a greater acceptance of the consequences to non-commercial fishers of these mistakes, moves to correct the situation are gaining momentum, and spawning discussion documents such as the 'Shared Fisheries' proposals.

The QMS was introduced over 20 years ago with an explicit provision for compensation. The Crown was going to take all the risk with the Fish Stock management, and would release and redeem commercial catch rights by buying and selling ITQ on the open market. By this method the Crown would manage catch limits to sustainable levels, and be able to allocate or allow catches to whomever it chose. The method for reducing catch was to simply enter the market and purchase the desired tonnage of ITQ. To release catching rights it would offer a tender process to the market, with the highest bidder receiving the ITQ.

Almost on introduction there was opposition from the commercial ITQ holders to the tender process. Government was under intense pressure to provide this excess TACC to the existing ITQ holders on far more favourable terms, and many creative ideas were bandied about as the industry sought to evade the costs a competitive tender would generate. This opposition to paying for ITQ continued until 1989 when it became apparent that some large TACC reductions were required, and would cost, at least, many tens of millions of dollars to purchase.

Resource Rentals

Concurrently, a system of Resource Rentals existed designed to achieved two outcomes. Fund the management of fisheries and deliver a return to New Zealand from the exploitation of a valuable natural resource. Resource Rentals were a fixed charge levied per tonne of ITQ owned, payable annually. Initially the Rental was set at a token level to ensure acceptance and to let the new system bed in, but it was the clear stated intention to quickly ratchet these to a level that fully achieved the objectives. The commercial industry continually opposed these rentals and sought ways to rid themselves of this impost.

In 1989 the Government, faced with the first large reductions in TACC's, and with Treasury baulking at paying large sums to purchase the ITQ for non-existent fish, a compromise

solution was sought. The industry was finally able to remove Resource Rentals and drastically modify the tender process as it applied to TACC changes. In return for these two significant changes, ITQ would now change automatically with changes in TACC, and became known as a proportional system. The effect was to transfer the risk of fluctuating TACC's from the Crown (who previously had to enter the market and purchase quota) to the quota holders themselves, whose entitlement would rise and fall with changes to the TACC, *without giving rise to any compensation liability to the Crown.*

Current Framework – Sustainable utilisation purpose

The QMS was introduced in 1986 with the intention of enhancing our coastal fisheries for all New Zealanders by restoring over-fished stocks thereby maintaining viable commercial fisheries and providing healthy fisheries for New Zealanders. However, it is widely considered, at least among non-commercial fishers, that too much quota was allocated to commercial fishers in most shared fisheries at the outset of the QMS. This was a failure of politics rather than science.

Ten years later the Fisheries Act was amended to include environmental and information principles with wide ranging management tools and mechanisms to ensure that there are sufficient fish for the needs of all New Zealanders.

Under the QMS, commercial fishers have an individual right to harvest fish, defined as ITQ.

Non-commercial fishing rights are not quota under the Act and cannot be 'allocated' like commercial quota. These rights are derived from common law and co-exist with, but are entirely different from, the rights commercial fishers have under the QMS.

Under the current Act, the Minister of Fisheries (the Minister):

- Is required by Parliament to manage fisheries to ensure sustainability and so meet the reasonably foreseeable needs of future generations – 'fish come first';
- When managing fisheries, must conserve, use, enhance and develop fisheries to enable people to provide for their social, cultural and economic well-being;
- Must first allow for Maori customary non-commercial fishing interests and recreational fishing interests before setting or varying the total allowable commercial catch (TACC).

The QMS - Preserving and enhancing our fisheries?

In 1986 ITQ's were issued to qualifying commercial fishers based on their catch history (or proportion of the commercial catch). At that time there was no provision for the Minister to "allow for" recreational (amateur) or customary fishing interests.

The 1992 settlement of Maori claims relating to fishing rights included provision to Maori of $150m to purchase a half share of Sealord Products Limited which then owned 20% of commercial quota, the ongoing obligations of the Crown to allocate 20% of quota for fish species to Maori via the Fisheries Commission, and Maori customary non-commercial fishing rights continuing to give rise to Treaty obligations on the Crown.

Today, Maori and their business partners own about half of all commercial quota.

Considering perpetual property rights have already been allocated to commercial fishers, such allocations and the way non-commercial fishing interests are 'allowed for' must be done fairly. This is important to ensure the ongoing health of the fisheries, marine environment and to enable New Zealanders to provide for their well-being both now and in the future.

Failure to do this may cause irreparable harm to our fisheries and the marine environment. It would not address the competing, and quite distinct, interests of commercial fishers on the one hand and non-commercial interests on the other hand.

If the Minister of the day made errors when setting the initial amateur allowances in any fishery by using flawed estimates of recreational catch he has obviously failed to properly "allow for" non-commercial fishing interests. Before any progress can be made towards improved management of amateur fisheries, errors in the current recreational allowances must be corrected. The only proper way to do this is to find out what the current amateur catch is then properly "allow for" it, as directed by the Fisheries Act. Any attempt to constrain amateur fishers to erroneously set allowances will be bitterly resisted.

The likely consequences rolling over the erroneous current allowances into baseline proportional allocations as proposed in 'Shared Fisheries' include creating new problems that are going to be difficult and/or expensive to fix given the inflexible nature of the QMS:

a. difficulty in rectifying the error given the inflexible nature of the QMS;

b. ongoing conflict between the competing users;

c. disincentives to conserve, enhance and protect fisheries and the marine environment[56];

d. a compromise of, and failure to observe, the sustainable utilisation purpose of the Act; and

e. seriously undermine compliance with the rules that control the respective rights.

It is evident that after 20 years of the QMS, there are no stated management objectives for individual fisheries, and it is impossible to find incentives delivering anything other than maximum possible catch, supported by intense lobbying and legal challenge.

Compensation and the QMS

The QMS as a conservation tool

Haphazard is a term that could be used to describe the evolution of the QMS. Early fears of monopolisation of quota in the hands of a few corporates have been realised. So too has the shift of focus of the QMS from sustainable stewardship of the resource to maximising the value of the quota holding. This is despite the obvious need, since the early 1980's, to rebuild and enhance coastal fisheries to provide maximum benefits for all New Zealanders.

Compensation

At the outset of the QMS, compensation was payable to quota holders for any loss of harvesting rights. Over $40 million was paid to reduce fishing effort in inshore waters (equivalent to around $130 million in today's terms).

[56] Refer Paper Eleven: Proportional Allocation of Fisheries in NZ.

More quota was issued by the Quota Appeals Authority (QAA), a tribunal established to review claims from commercial fishers who were dissatisfied with their initial allocations. This additional quota accumulated on top of the agreed sustainable limits set for commercial harvest. The QAA mandate did not include consideration whether the quota they were issuing was sustainable or not.

There were errors made in the initial allocation of commercial catching rights where excessive quotas were created on the basis of faulty scientific assessments. By 1990 MFish, some commercial and non-commercial fishers alike realised that catch rates for some fish stocks had been set too high. However, the cost of buying back some of that quota from the fishing industry was seen as unacceptable by the Government. This was particularly true of the fisheries where the Government had sold large quantities of quota, only to later realise there had been a major error in stock estimates – the major issue was over Orange Roughy. Obviously quota allocation errors were made in shared fisheries, flounder, mullet and gurnard are some of the worst examples.

1990 Legislative Amendment

In 1990 legislative amendment resulted in an overnight change to the 1983 Fisheries Act whereby:

- the nature of quota was changed from rights to harvest absolute tonnages of fish to a proportional share of the total allowable commercial catch (TACC);
- compensation would not be paid to commercial fishers when TACC's were altered to ensure sustainability;
- compensation for commercial fishers was still contestable through the courts for changes made to TACC levels for other reasons.
- when the change to 'no compensation' was being considered in 1990, it was made clear to the Minister (Ken Shirley) that dropping compensation would inevitably and unavoidably impact unfairly on small-scale commercial fishing interests when non-commercial fishing interests were eventually 'allowed for'. The allowance for non-commercial interests was implicit, not explicit at that time.

Amateur fishers had an implicit allowance before and after the 1990 process, so amateur fishing rights were not altered by the 1990 deal and have never been legitimately made explicit or proportional. If MFish dispute this point then it must explain how the change could be legitimate without ensuring input and participation by non-commercial rights holder representatives.

It is a matter of record that neither recreational nor customary non-commercial fishing interests were represented, consulted, or allowed for in these discussions.

In exchange for forgoing compensation for catch reductions, commercial fishers would receive the benefits of any increases at no cost, after allowing for non-commercial fishing interests and other fishing related mortality. The owners of catch history in nearly all commercially landed species were to continue to be allocated rights in perpetuity at no cost – no change was made to that situation at that time.

Since 1990, hundreds of millions of dollars worth of shares in fish stock (TACC's) have been given to catch history holders at no cash cost – which situation is unchanged, and has strong

legal precedent, as the right to catch fish was in the permit, and was the permit holder's not the Crown's. The Crown had the right to issue permits. They also had the right to cancel permits as they did for many unfortunate part time fishermen in the early 1980's – most of whom were tangata whenua.

At that time MFish was concerned with reducing the large numbers of commercial fishing people holding permits, and sought to reduce them so that the administrative system did not become overly complex.

There were two distinctly different groups in those that lost their permits prior to the QMS introduction:

- Those who had permits because the law on applying for fuel rebates had changed; and
- The other group who went fishing part time, but did not meet the $10,000 income threshold set. These people could apply through a commitment and dependence test, but few had the skills to do so, and were thus excluded.

As mentioned previously, prior to 1990 all commercial allocations of ITQ were based on catch history, and surplus ITQ was allocated by way of competitive tender.

Since 1990, hundreds of millions of dollars worth of shares in fish stock (TACC's) have been allocated to commercial fishers at no cost to the recipient.

In addition, the hundreds of millions of dollars worth of ITQ destined for tender was also subsequently allocated at no cost, after the 1990 legislative amendment.

In exchange for forgoing compensation for catch reductions commercial fishers, as the owners of catch history in nearly all commercially landed species were to be allocated rights in perpetuity at no cost.

Exclusion of Recreational Interests

Recreational fishing advocates were excluded from the 1990 discussions. Following the 1990 amendment the QMS was still a mechanism for managing commercial fishing without any consideration given to 'allowing for' non-commercial fishing interests. Concerns are still held regarding the exclusivity of the transaction and the validity of a process that produced an unsatisfactory outcome that disregards non-commercial fishing interests.

An unfortunate outcome of this process has been the change in the way the Government regards quota, namely as a share of the TAC. The fishing industry's expectations have also changed. Although not tested in court, commercial fishers now consider that they hold a share of the total allowable catch (TAC) rather than a proportion of the TACC.

In refusing to address the issue of shared fisheries at the time the Government arguably created a major break in the incentive structures in fisheries management. It created a situation where it became in the best interests of commercial fishers to deplete recreational areas, thus reducing the probability that increasing recreational pressure would cause a reduction in the TACC.

'Shared Fisheries' – A hollow prospect

One important reason for all New Zealanders getting to grips with, and understanding, the Government's 'Shared Fisheries' discussion paper is that the paper proposes a change to the nature of non-commercial fishing interests whilst offering no promise of rebuilding fisheries that are well below the level required to produce maximum sustainable yield (Bmsy), or reducing catch in fisheries already under stress from commercial bulk fishing methods.

The perceived benefits of MFish's 'Shared Fisheries' proposals seem to accrue to the fishing industry by proposing compensation for any 'reallocation'. The current Fisheries Act offers no guidance on this debate.

If the objective is to have more fish in the water, the obvious solution is to reduce current catch levels.
A desire by fishing industry to be compensated if catch reductions are required maybe an important reason behind MFish's 'Shared Fisheries' proposals particularly considering, since 1990, the QMS confers no entitlement of compensation for sustainability purposes.

With commercial fishers having, what appears to be, a stranglehold on our coastal fisheries and able to exert considerable influence in the way MFish manages our fisheries, are commercial fishers now seeking to strengthen their position by the reintroduction of compensation?

If so, under MFish's 'Shared Fisheries' proposals, compensation could be restored without New Zealanders being similarly compensated for the consequences of continued commercial bulk fishing pressure on inshore shared fisheries.

Exception for small-scale inshore fishing businesses

There were many small-scale fishers in the inshore fishery whose acceptance of the QMS was required, for it's introduction. Many of these fishermen expressed concern about what would happen when amateur fishing increased and they got squeezed out. At that time the only way to squeeze them out was to buy them out. Very few of those fishers (as distinct from deepwater fishers) have received any allocations from new stocks coming into the QMS (kahawai being a possible exception). If stocks are to be rebuilt to above Bmsy, those fishers face cuts that will make their operations uneconomic. The 1990 changes were unfair to small-scale fishermen in 1990 and it remains so today.

It is unreasonable to resolve one grievance by creating another. To that end, there are commercial fishing people whose livelihoods may be threatened by changes to the TACC (with or without compensation). The viability of their enterprise may be undermined by these changes. It is our contention that the State must rise to the occasion as it has demonstrably already done with the precedent-setting Quota Appeal Authority. We see no reason why a similar tribunal should not be convened for the purposes of assessing fair and reasonable treatment of such affected parties. To try to achieve a "one size fits all approach" is to condemn some small commercial operators to an unfair demise as a result of the unconstitutional (and possibly illegal) 1990 change to the compensation fundamentals.

Our fear is that by acknowledging, in any manner, that compensation is due that we will be misconstrued, or falsely interpreted, as accepting that the current amateur allowances are in

fact explicit allocations. We have little faith in MFish's ability to deal fairly with recreational interests.

A lack of willingness to acknowledge their past errors, which have seriously disadvantaged amateur and customary fishing interests and MFish's failure to disclose the very real issue of the inadequate current amateur allowances leaves us with real concerns regarding MFish's ability to promote fair and lasting solutions to achieving more fish in the water.

We believe it is likely that MFish will promote two unacceptable proposals to minimise the effects of their previous errors under the pretence that they will solve the vexing issues, they being:

1. Re-allocate the portion of the TAC set aside to allow for Maori Customary interests that are considered uncaught. These may be paper fish that have never been caught and don't actually exist. Because the fisheries have never produced these fish this option will not be sustainable and will ultimately damage customary fishing rights and the fish stocks.
2. Constrain amateur fishers to their current under-allowances and reduce recreational bag limits to achieve an actual reduction harvest, while pretending recreational catch has increased instead of admitting their allowance setting error.

Neither of the above options is acceptable. The latter is particularly offensive considering the conservation steps already taken by recreational fishers (bag limit reductions etc) and the fact that the allowances have been set in depleted fisheries. MFish must keep their hands off recreational fish or face the consequences of creating a new grievance that will haunt future administrations.

Our Recommendations:

As the managers responsible for administering our fisheries in the way required by the Act, it is for MFish to acknowledge that:

- non-commercial fishers have suffered a loss in the availability and abundance of fish in the areas accessible to them, without compensation;
- since the introduction of the QMS non-commercial catch has been accommodated through the (questionable) allowances made for recreational and customary fishing, while broader fishing interests have not been 'allowed for' in shared fisheries;
- where a reduction to a TACC is required for sustainability, no compensation will be payable
- compensation is not required if the TAC is increased to include historic recreational catch in recreational allowances.

If the Government takes account of the historical circumstances surrounding the evolution of the QMS it will realise that present compensation claims in relation to shared fisheries have no validity under current legislation.

Compensation to rebuild depleted fisheries is dependent on historical factors[57]

> Compensation should not be required for non-proportional reductions to the TACC or changes in the respective proportions allowed for each sector. The only time compensation should be considered is when a clearly demonstrable and real re-allocation from commercial fishers to another sector occurs.
>
> If the re-allocation goes the opposite way, from amateurs to commercial fishers, then commercial fishers must have to purchase the new quota in order to prevent the establishment of a one-way valve where commercial fishers will get re-allocated quota free, yet are compensated if re-allocation goes against their interests.

Compensation should not be paid where non-proportional TACC reductions occur for any of the following reasons:

- Where overfishing through chronic deeming above the TACC is the cause of depletion or slowing of rebuild timeframes
- In response to unsustainable by-catch, misreporting and illegal activity that can be attributed to a sector.

Compensation should not be paid where the respective proportions of the TAC change for any of the following reasons:

- If recreational catch has been stable and the current allowance has been set on incorrect scientific information then whether the error has to be corrected upwards or downwards it should be achieved through increasing or deceasing the TAC and the recreational allowance by the amount of the historical error. This will cause no sustainability issues and will simply mean that the fishery is more or less productive than was previously thought. As no reduction or increase to the TACC will be required no compensation will be payable.
- Because a sector is given an increase due to improved fishing practices, compliance or have achieved an improvement in yield per recruit.

Compensation should be paid where non-proportional TACC reductions occur for any of the following reasons:

- To correct the initial over-allocation of commercial TACC's – too much quota issued for too few fish;
- To remove unsustainable Quota Appeals Authority (QAA) driven increases to the TACC and
- To re-allocate from commercial fishers to amateur fishers.

Where reductions in the TACC are made for the purpose of rebuilding fish stocks to a target stock size that is sustainable, no compensation should be paid to commercial fishers. This is because commercial fishers have already banked the cash from selling the fish and continued commercial bulk fishing practices that have further reduced productivity.

[57] Refer Paper Eleven: Proportional Allocation of Fisheries in NZ.

Any claims for compensation by commercial fishers ought to be a matter between the fishing industry and the Government and certainly not at the expense of the fisheries, marine environment and the non-commercial fishing interests of all New Zealanders.

Amateur Representation – Licensing Inevitable

The following comment is a response to 'Shared Fisheries' section 8

Included in the 'Shared Fisheries' proposals is an offer of $3 million dollars over a ten-year period, to establish an Amateur Fishing Trust. This Government appointed Trust would be created to oversee what will be a contentious implementation phase of these proposals.

Only Trustees who accept the Government's management objectives will be appointed. A further suggestion is that ongoing funding could be obtained through *"subscribed membership"*.

Licensing is inevitable because the Trust will eventually have to be self-funding.

MFish has already conceded that once shares are allocated the amateur sector will be required to stay within their allocation.

To ensure the limit is not exceeded extensive annual surveys would be required. The difficulty of accurately measuring the catch of so many random fishers' catch means these new saltwater fishing licenses (which will be used to pay the management costs for the recreational fishery) will need to be very expensive.

Also, the suggestion to provide seed funding to an organisation in the hope that eventually it is able to undertake a representative role (by way of voluntary donations) is naïve. The NZ Recreational Fishing Council has been striving to do this for over twenty years with limited success.

Amateur fishers could lose in the order of $100 million dollars worth of catching rights if the 'Shared Fisheries' proposals are implemented. There is absolutely no comparison between those rights and the cost to the Government of seed funding the Trust. Three million to 100 million - it would be the best deal the Government has ever made!