

A Preliminary View on the Ministry of Fisheries Shared Fisheries discussion paper

Released on 15/12/2006 for feedback, input and participation

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Introduction

“Shared Fisheries” Will Affect All Non-Commercial Fishers

The Government is currently consulting on wide ranging and fundamental changes to the way non-commercial fisheries, both customary and recreational are managed.

The changes proposed by MFish for discussion could include the removal of the present **common law right of New Zealanders** to catch fish that is not for sale recognised, allowed for and protected by the Fisheries Act 1996 (FA), and subject to regulations under that Act, and replaced by MFish’s so-called ‘basic right’, a creature of statute which would include a ‘baseline allocation’ for recreational fishers coupled with the ‘basic right’ being suggested by MFish as 20% of the ‘baseline allocation’.

What this means and how this might work is discussed later in this Preliminary View. In the meantime, whichever way it goes, everyone who tosses a line in the brine will be affected by the outcome.

To the uninformed it appears the Shared Fisheries public discussion document (released by MFish on October 25th 2006) suggests it is recreational fishing that is the problem with the present lack of availability of fish for non-commercial fishers, both customary and recreational fishers.

The part commercial fishers have played in the lack of availability of fish in many inshore stocks is not mentioned in the discussion paper. Moreover the discussion paper fails to properly explain the repercussions that will flow from the proposed changes.

To assist non-commercial fishers we have had a team of experts review the Shared Fisheries document, and form a Preliminary View to assist recreational fishers understand what the proposals in the discussion paper really mean and to enable non-commercial fishers make an informed contribution to MFish’s shared fisheries conversation. Your views and input will then be used to assist in compiling a submission that all are welcome to endorse or use as another view to assist you with your own submissions.

"The People's Submission"

The Preliminary View document includes the MFish Shared Fisheries public discussion document in its original form with the footnotes representing our initial analysis and comments. We are working hard to ensure as many people as possible read it in its entirety - quite contrary to MFish’s view expressed in their article in the December Fishing News where they stated *“There are those who will tell you that you don’t need to read it because they’ve already done that and decided what you should think – we think you should ask yourself for a second opinion”*

We believe the MFish discussion paper demonstrates a misunderstanding of and omits to address the main issues non-commercial fishers face. For example, in contrast to the

thorough process being applied by non-commercial fishing representatives please note that, apart from a handful of answers to “Frequently Asked Questions”, there are no reference resources being made available by MFish for further background reading on any of these policy proposals. The only other reference point is the Cabinet Paper (December 2005).

Our document “Shared Fisheries – A Preliminary View” can be found on www.option4.co.nz/sharedfisheries/preliminaryview.htm Please go there to find out what is happening and to have input into “The People’s Submission.”

Compiling "The People's Submission"

We have not undertaken the task of compiling "The People's Submission" lightly, and are committed to the best possible process within the MFish imposed time constraints. Non-commercial fishers need not be fisheries managers or fisheries scientists to provide meaningful input.

Developing the Preliminary View document has been a crucial first step and generated much thought provoking debate already. We are confident this debate can only be enriched by your input and participation. Be assured that the submission will address the main issues recreational fishers have complained of for decades.

The compilation of the first draft of "The People's Submission" is being undertaken right through the Christmas and New Year holiday period with a goal to produce a 1st draft for your review **by January 22nd**.

This allows one and a half weeks for further input and polish before **"The People's Submission" is released on 1st February**.

"The People's Submission" will not be limited to only responding to MFish’s proposals and options contained in the discussion paper. It is intended that the submission will contain positive, constructive, affordable and achievable solutions to the issues of the proper management of the fisheries in our harbours, estuaries and coastal waters, much of which can already be achieved under our present fisheries laws as it is currently written and without removing the present.

The release of "The People's Submission" will be accompanied by a booklet designed to help people more fully understand what is at stake. The booklet will include the submission itself, an index of appendices referenced in the submission (all of which will be available on the web site), and a summary of the process that was adopted/followed to generate the submission. In addition there will be pages for “champions” to encourage their friends and family to sign their support and endorsement.

Commencing in February a series of public meetings, hui and club meetings will be organised to present "The People's Submission", answer questions and, hopefully, earn your support and endorsement of "The People's Submission" result of excellent transparent process designed to capture and incorporate as many viewpoints as possible.

This follows our practice and process since 2000 when the MFish “Soundings” discussion paper was released to public consultation.

With your support we aim to set a new benchmark in public consultation with a thoroughly researched and balanced submission endorsed by New Zealand non-commercial fishers committed to both enhancing and improving our coastal fisheries and marine environment – ‘more fish in the water’ - and protecting their right to fish.

Kahawai Legal Challenge

MFish’s Shared Fisheries discussion paper proposes a change in how the Fisheries Act ‘allows for’ recreational fishing. The Kahawai Legal Challenge is an application for judicial review to overturn the Minister’s decision in relation to the way the Minister ‘allowed for’ non-commercial fishers when he set the total allowable commercial catch (TACC) for kahawai, and in doing so obtain directions from the Court on just how current law should work.

It is disappointing that the Government has decided to go ahead with the Shared Fisheries process before this very important decision is delivered. It makes sense to wait and find out first, then ‘if it ain’t broke, don’t fix it.’

STOP PRESS – The Kahawai Legal Challenge court hearing was finally concluded on Monday 11th December. Mr Justice Harrison reserved his decision and committed to doing his best to deliver his judgment in February 2007. This is much appreciated.

Who are we?

The principal authors of this Preliminary View are (in alphabetical order)

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Please, go to the www.option4.co.nz website, read the Preliminary View and offer your input and/or encouragement.

Key process milestones for "The People's Submission"

- | | |
|----------|--|
| 25/10/06 | MFish and Cabinet launch their Shared Fisheries public discussion document with a four month public consultation process including the Xmas/New Year holiday period. |
| 6/11/06 | Kahawai Legal Challenge hearing in the Auckland High Court – incomplete due to the judge falling ill. |
| 11/12/06 | Conclusion of the Kahawai Legal Challenge Court hearing |
| 14/12/06 | Release of the “Preliminary View” – an analysis and critique of the MFish policy proposals containing initial questions and comments to indicate implications and consequences of policies being proposed. This document will seek input from a large number of people representing non-commercial fishers, commercial fishers, tangata whenua, environmental and conservation organisations. |
| 22/1/07 | Release of the first draft of “The Peoples Submission” including some/most of its supporting appendices – this step in our process seeks feedback and endorsement from the people contributing to the development of the response to the MFish proposals. |
| 1/2/07 | Release of “The Peoples Submission” and its supporting appendices
Launch date of the 90 day “peoples” public awareness and understanding campaign – the goal of the next 90 days is to have as many people as possible gain insight and understanding of what is being proposed. Endorsement and support for “The Peoples Submission” will be sought from as wide a range of interests as possible. Public meetings, hui and advertising campaigns will be organised and attended as resources allow. |
| February | Public meetings, hui and club meetings.
Receive Judgment for the Kahawai Legal Challenge |
| 28/2/07 | Final date for the MFish public consultation process.
“The Peoples Submission” will be given to MFish |
| 31/3/07 | Updated summary of endorsement and support for “The Peoples Submission” to be delivered to MFish. |

31/4/07

Final date for public meeting/hui of the "The People's Submission"
people's public awareness and understanding campaign.

Shared Fisheries – an overview

MFish Shared Fisheries discussion paper – a substitution of the present public non-commercial right to fish with a lesser ‘basic right’?

What is the discussion paper about?

The recently released 25 October 2005 – MFish Shared Fisheries discussion paper is the second attempt by the Government in only 6 years to obtain New Zealanders’ agreement to a change to their non-commercial right to catch fish. This time MFish proposes that right being replaced by a ‘baseline allocation’ coupled with ‘a basic right’ to fish as outlined below.

MFish’s proposal included this replacement ‘allocation’ being determined on a ‘value’ assessment, being subject to ongoing adjustment, and managed alongside commercial quota in our quota management system (QMS).

MFish says that it is unsure how many fish New Zealanders are catching as non-commercial fishers, and that this so called lack of information is compromising MFish’s efforts to properly manage our fisheries to provide plenty for all New Zealanders.

Under our present fisheries laws, New Zealanders’ present non-commercial right to fish which MFish’s proposal if implemented would replace, must be ‘allow(ed) for’ to enable New Zealanders to provide for their social, economic and cultural well-being. The replacement ‘basic right’ proposed by MFish, could as mentioned, be determined on a new yet to be defined value assessment.

New Zealanders includes ‘all’ New Zealanders whether Maori, of European or other descent. Since the 1992 Maori fisheries settlement, most of the time Maori go fishing they are categorised as recreational fishers. 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.

‘Shared’ Fisheries or ‘Coastal’ Fisheries

The use by MFish of the term 'Shared Fisheries' in respect of the fisheries of our estuaries, harbours and coastal waters is perhaps somewhat of a misnomer. This is because New Zealand has one of the largest coastlines of any nation, and 'Shared Fisheries' may not convey to or enable the reader to identify with such waters and the fisheries in those waters which are part of everyday life for New Zealanders.

The ratio of boat ownership per person in New Zealand is also high by world standards due to our proximity to our estuaries, harbours and coastal waters all of which are accessible by dinghies, small runabouts and coastal launches and yachts alike.

It is therefore no accident that New Zealanders love of the water also means that we cherish our fisheries and marine wildlife and environment, and the ability to fish for food is one important part of what it means to be a New Zealander.

It has therefore been of concern to the number of us who are boaties and amateur fishers to watch the availability of certain fish, and the size of fish in our fisheries continuing to diminish since 1986, the year the Quota Management System (QMS) was introduced to enhance and restore the health of our fisheries arguably reduced as a consequence of the growth of our commercial fishing industry, and increasing sophistication and effectiveness of commercial bulk fishing methods.

What is my right to fish?

It is the right of every New Zealander to catch fish that is not for sale. This common law right is recognised, allowed for and protected by the Fisheries Act 1996 (FA), and subject to regulations under that Act on bag limits, fish size and fishing methods to name the main controls on non-commercial fishing.

This right co-exists but is entirely different from the fishing rights commercial fishers have under the QMS which was introduced in 1986 to rein in an expanding commercial fishing industry and to rebuild and enhance our coastal fisheries for all New Zealanders.

The Minister of Fisheries (the Minister):

- is required by Parliament in the Fisheries Act 1996 (the Act) to manage our fisheries to ensure sustainability which meeting the reasonably foreseeable needs of future generations – ‘fish come first’;
- in managing the use of our fisheries must conserve, use, enhance and develop our fisheries to enable New Zealanders to provide for their social, cultural and economic well-being;
- must ‘allow for’ the non-commercial right of New Zealanders to catch fish before the Minister sets or varies the total allowable commercial catch (TACC).

To do that, 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 plenty of fish for the needs of all New Zealanders.

So what’s the problem with our fisheries then?

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

On top of that more quota was allocated from decisions of the Quota Appeals Authority to commercial fishers unhappy with the allocation of quota they got from the Government.

Since then commercial fishers have carried on fishing with ever improving and sophisticated bulk fishing methods. The commercial industry favours fisheries under pressure as the best conditions for bulk fishing, namely, fewer, vigorously growing, and as a consequence smaller fish never to reach middle age let alone old age.

Meanwhile it is also widely acknowledged among non-commercial fishers that the quantity and quality of non-commercial fishers' catch has diminished – fewer and smaller fish. This is having serious consequences with many New Zealanders who traditionally and culturally rely on the bounty of the sea for food, let alone adverse flow-on effects on the marine environment. For example, the 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.

How does the Minister allow for my right to fish for food?

Under the Act the Minister must 'allow for' non-commercial fishing before setting or varying the TACC for commercial fishers.

New Zealanders' non-commercial public right to fish:

- is not quota under the Act, and must not and cannot be 'allocated' like commercial quota;
- must be 'allow(ed) for' **before** the TACC is fixed or varied, and in doing so achieve the sustainable use purpose of the Act including enabling New Zealanders to provide for their social, economic, and cultural well-being.

The Act gives the Minister has a wide discretion and ability in the way the Minister 'allow(s) for' our non-commercial public right to fish depending on considerations such as population shifts and growth, social, cultural and economic considerations, the seasons, the weather, the rate of fish reproduction, and fish mortality whether naturally or as a result of fishing by both commercial and non-commercial fishers.

One possible way of looking at it is that on the one hand the Minister balances enough fish left in the water for the future and avoid adverse effects on the aquatic environment, and on the other hand letting enough fish be caught to enable **people** to provide for their **social, economic, and cultural well-being**.

The Minister is supposed to be taking these considerations into account, but in the case of kahawai the New Zealand Big Game Fishing Council (NZBGFC) and the New Zealand Recreational Fishing Council didn't think he did. So they took the Minister to court over the way the Minister "allow(ed) for" the interests of non-commercial fishers when he set the TACC for kahawai.

This case has now been heard and the decision is eagerly awaited. In the meantime it is disappointing that MFish has seen fit to proceed with its Shared Fisheries consultation before the court's decision is delivered and the effects of that decision on our non-commercial public right to fish and marine environment considered.

What do non-commercial fishers want?

Non-commercial fishers want to catch more fish than presently available to catch in our key fisheries like snapper, crayfish, trevally, kahawai, and not just little fish, the leftovers from commercial fishing which ought to be left in the water for environmental reasons, and allowed to grow to provide for our future needs.

Non-commercial fishers want:

- 'more fish in the water' so they can just catch fish;
- a healthy balanced fishery with fish of all sizes and ages so that good sized fish can be caught more easily;
- the Minister and MFish to manage our fisheries as they are supposed to be managed under the Act – sustainable (including meeting the needs of future generations) utilisation (including conserving, using, enhancing and developing our fisheries to enable New Zealanders to provide for their social, cultural and economic well-being);
- the Minister to properly 'allow for' New Zealanders' non-commercial customary and recreational rights to fish.

Why won't MFish and the Minister do this?

MFish claims, without case studies in support, 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, and says that there is uncertainty in the 'allocation' of fish between commercial fishers and non-commercial fishers.

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

MFish also 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.

MFish's solution – proposal

In outline, MFish's solution to the dilemma MFish describes, is expressed as proposals in MFish's discussion paper:

- manage fish stocks to increase the level of fish in the water above maximum sustainable yield (MSY)
 - **but only** where there would be an *increase in overall 'value'* – *economic and non-market value* – possibly involving a trade off as between commercial fishers who want to catch more fish, and recreational and customary fishers who want more and bigger fish in the water;
 - could involve a rebuild of fisheries where fish are less available to be caught by non-commercial fishers which would be treated by MFish on a case by case basis again if doing so would produce an *increase in 'value,'*

And,

- 'allocate' to recreational fishers:

In **6 key fisheries** - initially, yet to be selected -

a '**baseline amateur allocation**' of the total allowable catch (TAC)

- a **process** to determine the **baseline allocations** between amateur and commercial fishers (independent assessment of historical evidence, reasonableness of current allocations; valuation study between amateur and commercial; negotiation on overall value/trade-off);
- intended over **all** fisheries:
would take time, but would start as soon as approved by the Government;
- be subject to **adjustments** (proportional; value based; combination with proportional the default).
adjustments might be **considered** -
when changes to TAC;
to account for changes in customary allowances;
when significant changes were detected in relative value between commercial and amateur fishers;
- significant changes to allocations** would:
 - require an adjustment period;
 - need to be provided for in allocation decisions or agreements.

coupled with -

a **base level (minimum tonnage)** – the MFish so-called ‘basic right’ - 20% of baseline amateur allocation suggested with **priority** over commercial fishing, **reduced** only if all commercial fishing had already ceased in the fishery and a further reduction needed for sustainability.

‘**Key amendments**’ to the Fisheries Act, if passed by Parliament, to introduce these proposals could:

- remove the present non-commercial **recreational** right of every New Zealander as a recreational fisher to fish for food which the Minister must presently ‘allow for’;
- substitute the ‘baseline allocation’ (non-commercial quota), and the ‘basic right’ outlined above;
- place New Zealanders as non-commercial fishers as a minor shareholder in our coastal fisheries without assurance of improvement to our fisheries, and the extent of the ‘basic right’ possibly dependent on the ‘value’ assessment as between commercial and non-commercial fishers referred to above. This could be constrained by possible claims by commercial fishers for compensation on any shift of value from commercial fishers to non-commercial fishers which results in a reduction of commercial quota allocated ‘re-allocated’ to non-commercial fishers.

And,

- for **customary** fishers modify the present non-commercial right of customary fishers to fish for food by:
 - introducing allocation rules to specify **actual take** authorised under regulations;
 - providing such allocation **before** allocation to amateur and commercial (MFish says consistent with MFish practice);
 - providing that subject to overall sustainability limits set by the Minister, when reporting or records suggests that the authorised **take exceeds** the **allowance**, then there could be an increase;
- providing that there could be some increases where inshore fisheries important to Maori are rebuilt from depleted states to the actual customary take.

What do non-commercial (recreational and customary) fishers propose?

- that the Minister manage our fisheries sustainably to meet the needs of future generations of New Zealanders as required to do under the Act;
- that the Minister conserve, use, enhance and develop our fisheries to enable New Zealanders to provide for their social, cultural and economic well-being as required to do under the Act;
- that the Minister preserve, protect and properly ‘allow for’ the present right of every New Zealander as non-commercial fishers to fish for food;
- preparing a detailed submission to the Minister formally making these proposals;
- request your input, participation and support in doing so.

Finally,

Apart from 'defining' a recreational access [arguably not a right in the common law sense–] it appears that the 'value' assessment is MFish's attempt to introduce rules to 'make the 'allocation' process less arguable for MFish.

The questions ‘The Peoples Submission’ intends addressing include:

- why does not or cannot our present FA enhance and improve fishing – ‘more fish in the water’ - for all New Zealanders?
- why the present Act has not been or cannot be properly tried out with all ‘bells and whistles’ first before introducing a change to New Zealanders’ present non-commercial right to catch fish, and trying new and untried fisheries management processes?
- without fully working out the detail will 'the basic right' as described in the discussion paper work to:
 - improve our fisheries ?
 - make more fish available to non-commercial fishers?

A public right must not be tampered with lightly and not without convincing and easily understood reasons. MFish’s Shared Fisheries discussion paper puts forward proposals, but is short on detail to satisfy and give the reader sufficient confidence that non-commercial fishers would be better off – more fish in the water available for non-commercial fishers to catch – if the proposals were implemented.

If the '**basic right**' is put in place and the new fisheries management proposals become law, but do not achieve the results of enhancing and improving our fisheries and aquatic environment with fish more available both in number and size for non-commercial fishers to catch, there may be no going back, or at least most unlikely that the present non-

commercial right to fish would be reinstated. Legislation would be required to make that happen.

Moreover, MFish appears to be proceeding with undue haste with its consultation process by having imposed a very short consultation timeframe on New Zealanders inconveniently timed for the busy lead up to and during the Christmas holiday period.

The MFish imposed time for submission expires 'before' 28 February 2007.

13 December 2006

Critique and Analysis of -

Shared Fisheries

Proposals for managing New Zealand's shared fisheries: A public discussion paper

November 2006

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[Please note that these page numbers apply to the original MFish document, not this analysis paper](#)

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Foreword from the Minister

Fishing has always been important to New Zealand and New Zealanders. It is a major component of our economy and a central part of our heritage, our culture and our national identity.

Those of us who go fishing have a lot in common. Whether we fish for fun off the beach, to earn a living, or to put food on the table, we all share the same resource and the same interests in ensuring it is managed well.

This paper focuses on “shared fisheries” – the fisheries where customary, amateur and commercial uses intersect. Here, the common interests of these users can be easily forgotten in the face of competing demands for access.

The challenge before us is to manage these important shared fisheries in a way that ensures New Zealand and New Zealanders get as much value as possible from them, not only today but into the future.

The ideas set out in this paper represent some new proposals to unlock greater value from

our shared fisheries. We face significant problems in these fisheries, and new approaches and decisive action are required. [1]

All New Zealanders have and will continue to have a basic right to catch fish. [2] But that accepted, we need to make some major changes if we are to achieve greater certainty in allocation decisions, build management capacity and produce more overall value from the fisheries. [3]

It is important that we get the policy and legal framework right and this is where you, the fishers, come in. I encourage you to get involved with the process and play your part in moving the policy discussion ahead.

Please read this paper, think about the proposals and options raised, and send us your views. All submissions will be carefully read and considered as part of the policy development process. You can be sure that your voice will be heard.

I look forward to hearing your thoughts over the next few months.

Hon Jim Anderton
Minister of Fisheries
October 2006

Footnote introduction

The Minister refers to:

- the importance of New Zealand's fisheries for the economy, and New Zealand's culture;
- competing demands for access;
- challenge to manage to obtain as much possible value now and in the future faced with significant problems requiring new approaches and decisive action;
- New Zealanders having a basic right to catch fish, continuing to have that right, but major changes needed to achieve amongst other things greater certainty in allocation decisions, building management capacity and producing more overall value.

The Minister points to **legislative change** by reference to getting 'the policy and legal framework right.' [See also the Minister's letter to Cabinet dated '['] that "implementation of a new policy framework is expected to require **a few key amendments** to the FA which would be enacted by the **end of 2007**".]

[1] The Quota Management System (QMS) was introduced 20 years ago to rein in the commercial fishing industry.

During that time amateur bag limits have been severely cut. In some fisheries size limits have been increased. Gear restrictions have been imposed and the way the Ministry of Fisheries (MFish) has applied our fisheries laws have all combined to constrain and reduce overall amateur catch. The constraints imposed by all of the above has inarguably

reduced amateur take.

The commercial sector on the other hand, had their total initial Total Allowable Commercial Catch (TACC) set at sustainable levels and/or levels that would allow rebuilding of depleted fisheries.

The Quota Appeals Authority (QAA), dumping, deeming, high grading and black marketing have all acted against these constraints. In some fisheries, the fisheries managers have elected to increase TACC as a way of resolving these issues. When we look at the TACC's that the commercial sector were issued at the outset of the QMS and compare that with today's figures, many have increased. This is not anecdote. Surely the fishers responsible for depleting a fish stock ought to take responsibility when a rebuild is required. We believe that the Shared Fisheries process should be addressing the cause of the problems to a far greater extent than it does in the document presented to the public.

In many fisheries amateur fishers have already have accepted significant changes to bag limits and size limits for sustainability and environmental purposes.

[2] The right to fish is a common law right protected by statute not derived from it. This public right is clearly distinguishable from and superior to the "basic right" MFish wants to substitute in place of our public right.

[3] Increasing the management capacity of the amateur sector is of no consequence. The management of our fisheries by MFish in accordance with the purpose of the Fisheries Act 1996 (FA) is the key. The purpose is "to provide for the utilisation of fisheries resources while ensuring sustainability."

The FA is clear. Our fisheries are to be managed at or above a biomass that can produce MSY. MFish can already alter the TACC's and/or make non-proportional cuts or increases under the FA. MFish has never been successfully legally challenged for doing so and has not yet had to pay compensation for such decisions. Until our fisheries are managed as intended by the FA it is unnecessary to amend the FA in the way proposed by MFish.

Section 1

Introduction

Shaping the shared fishery

This discussion paper has been produced by the Ministry of Fisheries (MFish), guided by decisions of the Minister of Fisheries and Cabinet, so people can have their say on proposals to improve the management of New Zealand's shared fisheries. Shared fisheries are those in which commercial, amateur and customary fishers all participate. Most shared fisheries are inshore fisheries (including snapper, blue cod, kahawai, rock lobster and paua) – but they also include offshore fisheries such as gamefish and freshwater fisheries such as eels. [4]

The overall goal of the changes being proposed is to increase the value New Zealanders get from the use of shared fisheries. [5] Value can be defined in terms of money, as it is by the commercial sector, but also in terms of the values that amateur and customary fishers seek – food, cultural tradition, or simply the pleasure of being outdoors and catching fish. Improved management systems will aim to ensure that the use of fisheries resources reflects the value placed on them by different groups. [6]

[4] A full list of all shared fisheries is required for the Peoples Submission - suggest going through Clements to identify all stocks.

[5] The 'overall goal of change' is to increase the value – see definition below.

[6] Will MFish weigh up all non-commercial values such as 'social and cultural' criteria which the Minister must under the FA?

Why change things?

New Zealand's shared fisheries are under increasing pressure. [7] Effective management is currently undermined by poor information on amateur catch and uncertainty surrounding the process for allocating available catch between commercial, customary and amateur fishers. [8]

This situation needs to change to secure the future of shared fisheries in New Zealand. [9] Doing nothing would simply ignore the environmental risks associated with management decisions based on poor information, [10] the costs of ongoing contention and litigation, and the loss of value associated with inadequate incentives for all sectors to protect and improve shared fisheries. [11]

The ultimate aim of shared fisheries' management is to provide opportunities for New Zealanders to get the best value – the best mix of financial value and other values – from the use of our fisheries resources. As with all fisheries management, there is an overriding need to protect the sustainability of fisheries resources.

At present it is difficult to assess the value of fisheries to the customary and amateur sectors because there is too little information available about who is catching what, where

and when. Lack of good information on catch makes it difficult to manage fisheries sustainably. One of the main objectives of the proposals and options in this paper is to produce better information about use of the fisheries and so strengthen management. [12]

Management of shared fisheries will also be strengthened by improving how value is distributed. Where rules for allocation processes are not well defined, fishers from all sectors become concerned over the future of their access to fisheries resources. This uncertainty discourages both conservation initiatives and cooperation between the different sectors that use shared fisheries, because each group is worried that the benefits of its work will be lost to others in the allocation process. [13]

So, another main objective of the proposals in this paper is to produce a better allocation process that is clear and takes into account different fishing values. [14]

Footnote introduction

MFish points to:

- amateur fishers exercising their right to fish;
- ‘management undermined’ by poor information on the amateur catch;
- uncertainty - for MFish/commercial fishers/customary fishers /amateur fishers? – see reference to litigation - in the way in which MFish advises/the Minister “allows for” the non-commercial catch under section 21 FA;
- apart from the above, there is no discussion on the cause of the state of New Zealand’s fisheries;

[7] What is the source of this fishing pressure considering that the amateur sector has been heavily constrained over time? Why is the real cause of stressed fisheries, or fisheries that have failed to rebuild, not honestly put. Additional commercial quota issued by the Quota Appeals Authority (QAA) and catch above the TACC that is allowed to be taken if the fisher pays a deemed value to the crown (deeming) are two obvious omissions that have increased commercial shares in fisheries or stopped these fisheries from rebuilding

[8] On the contrary, the recreational catch has been reduced in almost every fishery through bag limit reductions, size limit increases, gear constraints and new interpretations of the regulations.

[9] Constraint of the commercial sector to achieve the sustainable use is available to MFish under the FA.

[10] Consider a risk analysis that includes the reductions already placed on recreational fishers? If recreational fishers have been historically catching more than they have been allowed for there is no risk, the fishery is plainly more productive than previously thought. ‘Doing nothing’ - again expresses MFish’s intention on reform of the FA.

[11] The FA framework is sustainable use purpose, application of the environmental and information principles fisheries management tools and mechanisms which require both MFish and the Minister to provide for the social, cultural and economic well-being of New Zealanders whilst ensuring the health of our fisheries. The poor implementation of management decisions, that is, the level at which TACC's are set or varied plus deeming outside the TAC that poses a real risk to the environment and our fisheries.

[12] The Minister argues that assessment of value is difficult because there is insufficient information on the quantity of fish amateur and customary are catching and links strengthening management to obtain the 'best value'.

Does the Minister have only \$ or economic value of the commercial fishing industry in mind, and what weight does he place on the 'social, economic and cultural well-being' of New Zealanders in relation to non-commercial fishing as contained in the sustainable use purpose in section 8 FA.

Management is weak because adjustments to the TACC do not necessarily mean that the commercial catch or mortality will change. For example, SNA8 TACC cut last year, deeming above the TACC increased.

Deeming can be used to legitimately override management decisions and where deemed values are set too high, the fish caught are simply dumped or not reported. An internal Ministry document produced in the 1990s clearly identified corporate fraud as the biggest threat to the QMS.

On the other hand, bag limit cuts, size limit increases or gear restrictions placed on amateur fishers always reduces their catch. While some may resist complying with new regulations for a time, the overall effect is a catch reduction.

[13] Meaning? MFish repeats the "uncertainty surrounding...allocation.. 'and concerns expressed about this from 'all sectors'.

However, directions on how recreational fishers consider the Minister must 'allow for' non-commercial fishing interests is hoped for from the Kahawai Legal Challenge.

[14] Amateur fishers have had their public fishing right consistently eroded to the benefit of commercial fishers. Instead of MFish fairly and squarely addressing and making good previous decisions which did not properly allow for the public right to fish and made favorable allocation to the fishing industry MFish now introduce for consideration a 'value' assessment requiring amateur fishers to defend the new 'baseline allocation' proposed. Moreover, MFish says in the discussion paper that there are limitations on how many fisheries will be addressed in this proposal.

About this paper

The ideas in this 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. Where a clear view has been formed about the best way forward, ideas are presented as proposals for discussion. In other cases there may be more than one path that could usefully be taken. Here you will find two or more options to consider. [15]

Some of the ideas in this paper are new and different, but they have not been raised lightly. Debate will help produce better solutions and this will benefit all New Zealanders.

This paper gives a series of proposals and options intended to:

- Help generate better information on catch and value (Section 2). [16]
- Enable the Total Allowable Catch to be set at levels that will raise the overall value obtained from shared fisheries (Section 3). [17]
- Provide guidance and rules for allocating the Total Allowable Catch among the customary, amateur and commercial sectors (Section 4). [18]
- Provide mechanisms to reset amateur and commercial allocations of the Total Allowable Catch in key fisheries, and for ongoing adjustments to allocations in all shared fisheries (Section 5). [19]
- Allow for focused management of specific local areas of shared fisheries (Section 6). [20]
- Allow the possibility of redress for the commercial sector where there are significant adjustment costs associated with allocation or access decisions (Section 7).
- Create greater capacity for amateur fishers to participate in the management of shared fisheries (Section 8).

Footnote introduction

There is no explanation of the existing nature and extent of the right of all New Zealanders to catch fish for not for sale recognised, preserved and protected in the Fisheries Act 1996 (FA), and the Minister’s obligation to “allow for” that right, and contrasted with the ‘allocation’ of quota under the Quota Management System (QMS) for commercial fishing.

MFish signals a new approach by all sectors being in the ‘allocation’ process – see also Minister’s letter to Cabinet.

MFish again refers to customary and recreational fishers as part of the ‘allocation’ process of quota for commercial fishers; -. c.f., the present FA framework - the TAC is ‘set’ (s13 et seq); the Minister ‘shall allow for’ non-commercial – customary and

recreational – fishing interests (s21); the TACC is ‘set’ (s20); quota is allocated (s29A et seq)].

[15] Ideas – This Shared Fisheries public discussion document has been approved by Cabinet. Those ideas MFish sees as having a prospect of achieving reform for the ‘overall goal’ to maximise value’?

[16] This is directed mainly at recreational fishers.

[17] The Minister’s Cabinet letter particularly makes mention of “commercial and amateur value, in both quantitative and qualitative terms”.

[18] The Minister’s Cabinet letter refers to an ‘allocation’ approach for the **amateur** and commercial sectors and a basic level of amateur take.

[19] Whilst not supporting the proposal, resetting of the so called amateur ‘baseline allocation’ and commercial allocations in only to “key” fisheries would unfairly treat the public - amateur fishers - who are entitled to a fair ‘baseline allocation’ in every fishery in which amateur fishers have an interest.

Resetting ‘baseline allocations’ in key fisheries – see section 5.1. Because of cost, initially restricted to six fish stocks, and over time establishing baseline allocations to all shared fisheries using the value-based system. MFish suggest measures to address ongoing adjustments in all fisheries,

[20] The Minister’s Cabinet letter refers to ‘new legislative tools’ for local management areas.

The key ideas in this paper are:

- All New Zealanders have a basic right to catch fish. [21]
- Shared fisheries should be managed in a way that produces the best value – including both financial and other values – for New Zealanders. This could be dangerous. The Ministry have already acknowledged that the values based system could go against recreational fishers in highly values commercial fisheries. At a public meeting the fishing industry said they were already working with the Ministry to better allow for their full range of values. This will increase their valuations. If they succeed it could be more than paua and crayfish that are given commercial priority. Recreational species like snapper, scallops and hapuku/bass could be lost as well.
- Better information about the amateur catch in shared fisheries is needed for sound management decisions that will ensure sustainability and recognise each sector’s legitimate interests. [22] This will require more effective research and monitoring. Allocation decision making could also be strengthened by getting better information on the relative value of amateur and commercial fishing. [23]
- A basic level of amateur take should be protected through a guaranteed minimum tonnage in each shared fishery, which would have priority over commercial fishing. [24]
- Maori customary take permitted under the customary fishing regulations or regulation 27 or 27A of the amateur fishing regulations should be provided for when setting allocations. [25]
- Amateur and customary values should be more explicitly recognised than they are now in setting the Total Allowable Catch for shared fisheries. [26] Allocating the Total Allowable Catch among the commercial and amateur sectors needs to be a more certain process than it is now. This means providing processes both for resetting baseline allocations [27] and for future adjustments that are aimed at gaining maximum value from shared fisheries. [28]
- Tools for local area management should consider whether exclusion of particular fishing methods or all commercial fishing would lead to an increase in value. [29]
- Redress should be considered for significant shifts in allocation or access. [30]
- Amateur fishers can and should have a bigger role to play in the management of shared fisheries. [31] This could be brought about through a trust that would work to ensure amateur fishers were involved in fisheries management.

The proposals in this paper will require further detailed development if adopted. Putting the proposed shared fisheries management framework into action may take several years. [32]

This paper deals exclusively with the interactions between customary fishing, amateur fishing, and commercial fishing, and how to ensure the best use of New Zealand’s fisheries from these three types of uses. Consequently the proposals do not encompass aquaculture, international fisheries, allocation between fishers and others users of ocean

resources, non-extractive use of fisheries, illegal fishing, or measures primarily intended to ensure that fishing is environmentally sustainable. [33]

Footnote introduction

- “commercial and amateur value, in both quantitative and qualitative terms” – see Minister’s Cabinet letter;
economic activity associated with the harvest from both commercial and amateur sectors...also includes non-market values...’ – see Minister’s Cabinet letter;

- suggests that the so-called “basic level” of amateur take would replace the existing right of New Zealanders to go fishing in the sea without a permit, subject only to regulation as recognised, protected and preserved in the FA?

- ‘...proposed that the revised allocation framework provide that where actual non-commercial customary take is regulated for, it is fully provided before allocation to the amateur and commercial sectors in order to confirm current practice...’ – see Minister’s Cabinet letter;

- allocation approach’ proposed,

but legislation to key sections of the FA proposed.

[21] The public right to fish is a common law right protected by statute not derived from it, it is more than just a basic right. MFish does not explain the nature and extent of the existing right of all New Zealanders to catch fish for food as mentioned above compared with the “basic right” proposed in the discussion paper.

[22] The public’s ‘legitimate’ interests as amateur fishers have yet to be identified in all fisheries, and include a legitimate and fair process for setting initial allocations in all fisheries we have an interest in.

[23] Identifying amateur fishers’ current catch in a fishery is an attempt to convert amateur fishers’ legitimate interests into a tonnage limited by what amateur fishers catch in depleted fisheries and after those interests have been constrained by bag limit cuts, size limit increases and gear restrictions.

To do this against the background of the lack of constraints on commercial fishing since the introduction of the QMS is unfair. While commercial fishers have had their TACC increased on a number of fisheries, recreational catch has been reduced by bag, size and gear constraints.

[24] A fishery would have to collapse before the suggested ‘basic right’ of 20% of the ‘baseline allocation’ applies. This is not a real priority, and contrary to Moyle’s Promise of preference for the public right to fish.

[25] The FA is explicit by providing that the Minister shall “allow for” customary fishing interests. Not only must the Minister ‘allow for’ sufficient fish to meet the requirements and needs of customary fishing interests, the Minister must ensure there are sufficient fish in the water in the area to be caught.

[It also infers local management.] Allowing for only those fish taken prevents Maori conservation efforts, as conserved fish will be reallocated to commercial and recreational fishers under the proportional allocation model promoted later.

[26] Meaning? Having a proper allowance, or being able to conserve?

[27] Limited to six fish stocks? Why?

[28] What are the MFish’s plans for the remaining fish stocks? Will amateur fishers need a multitude of bag limit reductions or size increases where amateur fishers have been under ‘allocated’?

[29] Who pays for the research? What are the criteria? Non-tangibles, health benefits, getting kids away from computers, teaching skills, strengthening families and communities. How can these things be valued? MFish has already indicated such ‘values’ cannot and will not be ‘valued’ in the new system?

[30] Only commercial fishers will be compensated. The compensation bias will remain.

[31] What does this mean? How will it work? Has the MFish lined up any organisations to fill this role? How will the people be appointed to the trust? Ministerial appointments are a possible concern

[32] If done properly, this would be a far more difficult process than implementing the QMS. Amateur fishers need to ensure that ‘allocations’ in each fishery have been set by a fair process. Because of the expense of achieving this, full implementation may take decades.

[33] Why is illegal fishing not addressed specifically in this document? The New Zealand taxpayer – the public - is spending possibly hundreds of millions of dollars over time to determine the actual tonnage caught by recreational fishers, yet except in the briefest terms in Section 4.2, illegal fishing is not addressed.

As previously mentioned, corporate fraud is the biggest threat to the QMS, illegal fishing is rife in some fisheries. Simple cost effective solutions are available to address these issues. Every tonne of reduction of illegal fishing leads to an extra tonne of fish that can be lawfully harvested. If New Zealand is to maximise the value of our fisheries then illegal fishing must be addressed as a priority. Similarly, other mortality must be properly quantified for both commercial and recreational interests.

The discussion paper seems to be more concerned with compensating commercial fishers,

and capping the recreational catch rather than managing our fisheries as intended by the FA.

Having your say

We are seeking your views on the proposals and options contained in this document.

In particular, we would like to know:

- What do you think of the specific proposals raised in this document? Why do you support or not support them?
- Where there are options presented, which option do you favour? Why? Is there another possibility that should be on the list?
- Do you think some of these fisheries management reforms are more urgent than others? What do you think should be the priorities for action? [34]
- What shared fisheries should have the highest priority for attention – particularly under the proposals in section 5.1 of this document?
- What other approaches could be taken to address the issues raised?

You can find out more about the proposals by:

- Coming along to a public consultation meeting. These will be held around the country from November to mid-December. Details for these meetings will be advertised in major metropolitan and provincial newspapers and available on the MFish website.
- Checking the Shared Fisheries pages on the MFish website (www.fish.govt.nz) for background information, questions and answers, and information on the consultation process.

Please let us know what you think before 28 February 2007. You can make your views known by:

- Sending a letter by email to shared.fisheries@fish.govt.nz or by post to Shared Fisheries consultation, Ministry of Fisheries, PO Box 1020, Wellington.
- Filling out and returning a submission form available from the website, or from MFish staff at any of the consultation meetings or by calling 0800 666 675.
- Filling out the online submission form on the Shared Fisheries pages of the MFish website.

A summary of submissions will be carried out and made available on the MFish website. Please note that all submissions are subject to the Official Information Act and, if requested, MFish may need to release information in submissions. If you have any objection to releasing information in your submission, please indicate the parts you think should be withheld and the reasons. MFish may still have to release all or part of a submission.

MFish will be updating the Shared Fisheries pages on its website (www.fish.govt.nz) regularly so you can stay up-to-date with the shared fisheries consultation and management reform process.

Footnote introduction

Is there an opportunity to submit counter proposals?

[34] These options appear constrained by MFish's view of fisheries management which is not always aligned with the FA.

For example, it is probably unrealistic to expect that MFish will be able to obtain sufficiently reliable information on the catch of one million amateur fishers? Even if a snapshot of what amateur fishers catch in one year is possible, how does that relate to what they catch in the next year or the following years?

Weather patterns change, the size of fish stocks fluctuate, the movements of fish change from one year to another, recreational fishing is a random exercise that is undertaken without any cognisance of a collective quota or target which has to be achieved.

To an individual fisher it is irrelevant what others are catching in the fishery; the collective allowance is irrelevant to an individual fisher. An increased collective allowance will not make them fish more and a decreased overall allowance will not make them fish less. Amateur fishers fish where and when they want to. The discussion paper fails to recognise the nature and variability of amateur fishers and their activities, and seeks to control something which has not and possibly cannot be clearly defined.

How can submitters possibly be expected to understand the implications of ticking or crossing boxes in a document that fails to adequately explain the consequences of their approval or disapproval?

This discussion paper lulls amateur fishers into thinking that they have caused our depleted fisheries when in fact they have always acted in the interests of the fishery.

This is both 'unfair play' and unreasonable for all amateur fishers, who for 20 years have suffered catch reductions by regulation

This discussion paper fails to recognise the cause of the problems in coastal fisheries by not distinguishing between the customary and amateur fishers on the one hand who have conserved, and commercial fishers who have exceeded their entitlement.

The MFish needs to set TACC's that are capable of constraining commercial catch and then take management action to ensure that those TACC's do in fact constrain commercial catch. Had MFish done as promised there would be sufficient fish in the water for all New Zealanders.

How will final decisions be made?

MFish will consider the submissions made on this discussion paper, carry out further study and develop recommendations for the Government. This process will involve working with other government departments to ensure that a consistent and coherent approach is taken. Final decisions on reforms, and the nature and timing of

implementation, will be taken by the Cabinet in mid-2007. [35]

Footnote introduction

The intention is for key changes to the FA by end of 2007

[35] Comment on this process

- What certainty does the process give that the views of the majority will be taken into account?
- What prevents the Ministry from choosing what it wishes for the Cabinet paper?

Key terms used in this paper

Amateur fishing: Public, non-commercial fishing. It includes any fishing under the amateur fishing regulations (except regulation 27 and 27A), whether the purpose of fishing is for recreation, subsistence or leisure. Although the current legislation refers to this as “recreational fishing,” some of it is more in the nature of food gathering. Amateur just means this fishing is not done for money.

Customary fishing and customary take: Non-commercial Maori customary fishing recognized and provided for by permits issued under the customary fishing regulations or under regulations 27 or 27A of the amateur fishing regulations.

Fisheries Deed of Settlement: The 1992 agreement between Crown and Maori negotiators to settle Treaty of Waitangi claims in relation to fisheries. It resulted in the Crown providing funds to purchase half of New Zealand’s biggest fishing company, Sealord (and is often called the “Sealord Deal”), transferring 20% of all new commercial quota to Maori, and developing regulations to recognise and provide for customary non-commercial fishing. The interim Settlement agreed in 1989 also provided substantial redress through transfer of 10% of all commercial quota existing at that time.

Fisheries Plans: Plans approved by the Minister of Fisheries that set out what MFish and stakeholders want from a fishery, and how these objectives should be achieved. The process provides a formal opportunity for stakeholders to have an input at the earliest stage rather than after they are developed by MFish staff. Once approved, a Fisheries Plan will formally establish arrangements to manage the fishery in a particular way.

Phone-and-diary surveys: Amateur fishers identified through random national phone surveys. Some are asked to keep diaries of their fishing trips and catches. Information from these surveys and the diarists is used to help assess national amateur fishing patterns and catches.

Shared Fisheries: Fisheries where amateur, Maori customary and commercial fishers all have an interest. Changes in management will affect all of these groups. Decisions have to be about finding the best way to manage the whole fishery or stock, not just about managing one group of fishers. Shared fisheries include iconic species such as snapper, blue cod, kahawai, rock lobster and paua.

Stock: Fish stocks are defined under the Fisheries Act 1996 for management purposes. A stock is a species in a particular area.

Total Allowable Catch: The sustainable limit on annual catch, set for each fish stock. All take by customary, amateur and commercial fishers must be accounted for within this total. An allowance is also made for effects such as that from illegal fishing on the stock.

Value: Not just financial or commercial value, but also less obvious or intangible values held by amateur, and customary fishers. Value includes commercial profit and economic

activity associated with harvest from the commercial and amateur sectors such as employment, foreign exchange earnings (exports and international tourism revenue) and retail sales. Value also includes non-market values associated with the ability to provide food for the table, values for customary practice and tradition, the pleasure of a day out on the water, or the sport of testing skills in the hunt. Valuation techniques exist to assess in quantitative or qualitative terms both commercial and amateur value. [36]

[36] Yet MFish stated at a recent public meeting held in Auckland that MFish would have difficulty ‘valuing’ the intangibles of recreational fishing.

Section 2

Getting better information on catch and value

Any effective management system depends on good information. In fisheries, this means knowing who is catching what, where and when. [37] Relatively good information is provided by commercial fishers through legally required reporting of catches. There is an obligation to report customary take under the customary fishing regulations, and efforts are being made to improve this reporting as provisions of these regulations are taken up by iwi.

For the amateur catch, information is currently collected mainly by surveys. So far, two major phone-and-diary surveys have randomly sampled the entire New Zealand population to find out who goes fishing and what they catch. These surveys are expensive and time consuming and have produced uncertain catch estimates that differ between the surveys by up to 300%. More accurate results are needed to ensure the effective management of fisheries where the amateur take represents a significant proportion of the total take. Better information is also essential if amateur interests are to be properly recognised and taken into account in effective management of shared fisheries. [38]

There is also a need to find out more about what fishers on recreational charter boats are catching. Iwi, commercial fishers and some amateur fishers have concerns about the effects of charter fishing on certain species in certain places. Charter fishing operators are not subject to specific regulations and it is not clear what effects charter fishing is having on the resource. However charter operators are in a good position to provide accurate information about their clients' catch.

In addition to information on catches, the value that commercial and amateur fishers obtain from fishing is important to efforts to improve the overall value obtained from shared fisheries. Such information would be vital for the implementation of some proposals put forward in later sections of this document.

Footnote introduction

Every fish accounted for in the 'allocation' approach versus 'social, economic and cultural well-being' (s 8 FA) approach – is there a difference?

[37] Effective management of fisheries means knowing what effect fishing is having on a fish stock. Indicators such as trends of CPUE or the relative abundance of various year classes can provide much of this information. Fisher independent CPUE and trawl surveys, tagging surveys, monitoring of boat ramps are capable of giving a clear picture of whether the size of the fishery is stable, increasing or decreasing and trends in recreational fishing participation rates.

[38] Measurement does not equate to management particularly when the subject is highly variable. In amateur fisheries, annual surveys would be required but would be

prohibitively expensive. Effective manage does not require all this information, but it would be required to make MFish's proposed proportional system work.

Proposals to improve information on the amateur catch and value follow below. Please note that they are not being put forward as alternatives – one or all of these ideas could be implemented:

Proposal A: More survey and monitoring work

MFish is currently concentrating on new information-gathering methods involving flights over specific areas to count boats, and boat-ramp surveys to count catch. These are showing promising results, but are limited at present to relatively small, high-use areas of boat-based fishing. Under this proposal, MFish would develop and expand its overflight and boat ramp survey work around the country, and carry out more detailed analysis of existing data. Phone-and-diary surveys could still be carried out, but with improved methodology and supported by other survey data.

These information-gathering methods could be supplemented by other approaches, including:

- Seeking information (e.g. through fishing clubs) on the effort and take of regular fishers.
- Gaining information about fishing effort through the increased use of web-cams mounted at boat ramps and other places.
- Adding fishing questions to the Census and the three-yearly Household Economic Survey. [39]

[39] Can the amateur catch be measured with the precision required for a proportional system? The trend is more important than the known quantity of fish caught especially since the current allowances are likely to be inaccurate.

If amateur fishers have been historically under-allowed for and new information shows that amateur fishers are catching more, how does that cause a threat to sustainability or create a situation where compensation is necessary if the allowance is corrected? Quite clearly it does not.

Risk & Benefit Analysis for Proposal A - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
A More surveys	The information may be used to constrain recreational fishers to incorrectly set allowances There are two measurement issues here. Firstly can a measure of social	Improved understanding of the fishery and recreational participation rates More reliable stock assessments with will increase certainty about stock size and sustainability	Yes	About the same, better information is certainly required - the danger lies in what they use it for

	<p>and cultural values be derived through some methodology?</p> <p>Can the value derived for social and cultural values be described in a 'currency' that can directly be compared to the commercial value?</p> <p>MFish, in spite of repeated requests have not provided information on how the social and cultural values could be valued.</p> <p>We are not convinced that such values can be measured and calculated in a way that would allow comparisons of equivalence.</p>			
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Proposal B: Reporting for recreational charter operations

Under this proposal, MFish would hold a register of all charter boat operators, who would be required to regularly report on the catch and effort by amateur fishers on their boats. This information would be used to monitor fishing pressure on specific popular sites and, if necessary, take management action to protect vulnerable species such as groper. Charter boat registration would be likely to involve a charge to offset administration costs.

There is no intention to bring charter fishing into the quota management system. [40]

[40] Suggest steps aimed at placating concerns expressed by some [who?] about the level of amateur catch from charter boats.

Amateur fishers are concerned about commercial fishers deeming, dumping fish at sea, high grading, misreporting catch, illegal take and juvenile mortality.

The quantity of fish caught in these practices must be properly observed, assessed and allowed for?

Risk & Benefit Analysis for Proposal B - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
B Charter boat reporting	<p>Allowance could be used to exclude or control charter boats.</p> <p>Despite assurances it could be a pre-emptive vehicle for requiring charter boats to have quota</p> <p>Eventually the cost of collecting and processing data will be charged to charter operators.</p> <p>Another expense on charter operators that will inevitably be passed on to amateur fishers.</p> <p>Collecting poor or incomplete information will be of little value.</p>	<p>Improved information for some off-shore species.</p> <p>Improved localised information of catch of some divers.</p> <p>Possibly a catch rate information (CPUE index) from regular and experienced operators.</p>	Yes, s189	<p>Slightly lesser.</p> <p>Considerable risk for very localised information.</p>

Proposal C: Estimating relative values for commercial and amateur fishing

The aim of improved management of shared fisheries is to ensure that New Zealanders get the greatest possible value from them. The difficulty is that different user groups value the shared fisheries in different ways. Commercial users are interested mainly in dollars and cents measurement of economic activity. Customary and amateur users, on

the other hand, are interested more in other values such as cultural practice or enjoyment.

To determine how the shared fisheries can produce the greatest value for everybody, these different sorts of values need to be assessed and measured against each other. This is not an absolute science, but economists have developed techniques for doing it.

Under this proposal, effort would be put firstly into developing and adapting methods that could produce useful valuation information about our shared fisheries. These methods would then be used to assess relative values for fishing by commercial and amateur sectors in specific fisheries, so that this information could be taken into account in management decision-making. [41]

[41] Whether a ‘values’ based ‘allocation approach’ offers any certainty to amateur fishers appears very doubtful.

Previously option4 asked MFish that participation rates and/or population trends be used to guide allocation decisions so that the interests of individual amateur fishers are not diminished over time. This was to be a two-way system; if the worldwide trend away from recreational fishing occurs in New Zealand the fishing industry would win a quota increase.

Why has a ‘value’ based approach been selected in preference to this model? The answer to this question is important for New Zealanders to gauge for themselves MFish’s fisheries management ability.

Risk & Benefit Analysis for Proposal C - Recreational fishers’ risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
C Relative values research	<p>Amateur catch is likely to be under-valued because of technical difficulties with a value approach.</p> <p>May require catch reductions in high value commercial species.</p> <p>There are two measurement issues here. Firstly, can a measure of social</p>	<p>Increased recreational allowances in some high value recreational fisheries that are of low commercial value. Kahawai, blue cod and kingfish seem to be only species in this category, could be more.</p> <p>May allow fish stocks to be managed above Maximum Sustainable Yield (MSY).</p>	Yes	<p>Not as certain. Because there is loss in commercial high value stocks, and gain in low commercial valued stocks</p>

	<p>and cultural values be derived through some methodology?</p> <p>Can the value derived for social and cultural values be described in a 'currency' that can directly be compared to the commercial value?</p> <p>MFish, in spite of repeated requests have not provided information on how the social and cultural values could be valued. We are not convinced that such values can be measured and calculated in a way that would allow comparisons of equivalence. If this cannot be done than the proposal is a sham.</p>			
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Section 3

Setting the Total Allowable Catch

The Total Allowable Catch, which is described in tonnes, controls harvest and is the main means of affecting fish stock levels. Each stock has its own Total Allowable Catch and this tonnage is the pool from which allocations of catch for the customary, amateur and commercial sectors are made. Over time, setting the Total Allowable Catch at different levels influences the size of the stock and therefore the yield, abundance and size of the fish available to be caught.

There are different views about what fish stock levels should be. The standard practice (of MFish) for many fisheries has been to manage stocks at the level that provides Maximum Sustainable Yield. [42] This lets fishers catch the greatest amount of fish, year after year, in a sustainable way, and often suits commercial fishers well. [43] Amateur and customary fishers, on the other hand, often regard fish size and abundance as important. Both size and abundance can be improved by letting the stock level increase, but this means that a smaller amount of fish can be taken sustainably each year. [44]

Footnote introduction

Minister's Cabinet letter – 'managing stocks at higher levels is difficult under the current provisions of the FA as this is not strictly necessary for sustainability reasons alone...and a significant disadvantage to the commercial sector';

Section 13 requirements – 'standard practice' referred to in the discussion paper?

Query this statement – compare with fisheries management in accordance with the full and proper use of the FA purpose of sustainable use (reasonably foreseeable needs of future generations, and to enable people to provide for their social, economic and cultural well-being; FA environmental and information principles; FA management tools and mechanisms

Determination of so-called 'values' – see section 5, Proposal B

[42] So why has this not been done, and why do we still have fisheries managed below MSY after 20 years of management under the QMS? The obvious answer is QAA increases and deeming. In spite of all the posturing by the Ministry and industry that the QMS is the best management system in the world, the management regime cannot constrain the fishery within sustainable limits.

[43] This skirts the real issues and current management practices. It is not standard practice as we have insufficient information to determine what MSY is, in most fisheries. '...lets fishers ...' – commercial, or recreational or customary fishers....? 'Often' suits... or 'always' suits commercial fishers? Commercial fishers value economic return – profit.

[44] Most recreational concerns are in fisheries that are and have been below MSY for three decades. Getting those fisheries to a biomass at or above MSY without further punishing recreational fishers who have endured multiple controls such as bag limit cuts, size limit increases and gear restrictions, while the commercial sector has inflated their quotas through the Quota Appeals Authority and deeming in excess of their already increased quotas.

“‘Often’ regards...” or “‘always’ regards...” Amateur and customary fishers value size and abundance.

There are two proposals in this paper that could provide greater flexibility in setting the Total Allowable Catch for shared fisheries and so better recognise the importance of amateur and customary values. These are not “either/or” options – both proposals could be implemented.

Proposal A: Setting the Total Allowable Catch for a stock target level above that which achieves Maximum Sustainable Yield

This would provide for Total Allowable Catches in shared fisheries to be set in a way that brought about an increase in a stock to a level above that which allows Maximum Sustainable Yield. Managing the resource at this higher level would mean a smaller overall quantity of fish could be taken each year, [45] but the fish would be larger on average and more abundant, and so possibly easier to catch. This approach would be taken only where such a target would be likely to lead to an increase in overall value from the fishery. [46]

This proposal would almost certainly involve a trade-off between commercial demand for greater yield and amateur and customary values for bigger fish and higher catch rates. All sectors might need to forego some of the total catch to build and maintain a higher stock level.

Footnote introduction

‘Probably’ easier to catch for amateur fishers (and commercial fishers?) rather than ‘possibly’ by managing our fisheries above MSY.
“...forgo some of the total catch to build and maintain a higher stock level.” Reduction of the TAC or cuts?

[45] In fisheries currently below MSY this would mean the same amount, or more, fish could be taken.

[46] Is there anything wrong with ALWAYS at or above MSY for all shared fisheries? The FA says that is the target. Why must fisheries be managed so far above MSY that overall yield is unduly affected?

Risk & Benefit Analysis for Proposal A - Recreational fishers risk analysis

CRITICAL POINT

In proposal A MFish imply that managing fisheries above MSY will **always** result in less yield. It is important to note that this would only occur when fisheries are managed **significantly above MSY**. It also assumes that less yield means less value (i.e. that value can only be assessed by the total catch), but recreational fishers may be happy to trade off yield for a higher catch rate and catching fewer but larger fish.

Questions to contributors:

Would non-commercial fishers be happy if **ALL** shared fisheries were managed to **ALWAYS** be at or above the level that can produce MSY, as described in the current Fisheries Act?

This would not require changes to fisheries legislation.

Or: Is fishing to the maximum sustainable yield a commercial management objective? Do non-commercial fishers accept that there are benefits to non-commercial fishers of management of fisheries **significantly above** the level that can produce MSY? This would most likely require changes to the FA to clarify the Minister’s obligation to consider this option.

How to manage a fishery at or above MSY?

A buffer above MSY is required because science and decision making lag behind reality, sometimes by many years. Having a buffer above MSY would mean a fishery could actually be managed as the FA specifies, always at or above the biomass level that would the Maximum Sustainable Yield.

If agreement can be reached that the above is the objective there will be plenty of room for effective solutions that will minimise the possibility of compensation claims by commercial fishers to any cuts in quota. If this agreement can be reached then the concerns expressed by MFish in the discussion paper and MFish’s solutions expressed as proposals and options would not be necessary.

For example, Kahawai is a species that would meet the value criteria to be run significantly above MSY? If so, then the risk of pulling back to always at or above MSY from the higher goal, which is a level significantly above MSY, will cause fewer problems for researchers, reduces the Government’s exposure to compensation claims by commercial fishers and achieves what the amateur fishers public want in most fisheries.

Your views please on other fisheries examples that need to be managed significantly above MSY? Please advise and provide reasons for your suggestion.

Table to be completed after feedback received.

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
A Management above MSY				

Proposal B: Setting the Total Allowable Catch in depleted fisheries to allow faster rebuild times

In fisheries where stock levels are below management targets, a stock rebuild strategy is needed. Rebuild generally requires cuts in current catches to take pressure off stocks. The bigger the cut, the faster the stock is likely to rebuild. Reduced catch means reduced incomes for commercial fishers. Longer rebuild times are often favoured by the

commercial sector to reduce this impact. But, in shared fisheries, a longer rebuild time may mean that the value available to customary and amateur fishers is lower for longer. For important shared fisheries, a constraint on target rebuild times may help to increase overall value from the fishery.

This proposal is based on the idea of setting a Total Allowable Catch that would allow a depleted fishery to rebuild more quickly to target levels, within a specified maximum number of years. Rebuild times would vary from species to species and would depend on the biology of the species and the state of the fishery.

The proposals above would be applied on a case-by-case basis if doing so would produce an increase in value obtained from the shared fishery. [47]

Footnote introduction

Management target levels?

Cuts by whom, and how?

Target rebuild times?

Target levels?

‘Value’ assessment – what, how much and to whom?

[47] Managing fisheries below MSY for extended periods of time gives absolute preference to the commercial sector while ignoring the social and cultural aspirations of non-commercial users.

Low stock sizes also diminish recreational access and catch.

These are core issues central to shared fisheries that have to be seen to be addressed fairly.

Why does MFish allow fisheries to be run below this level under the current FA?
Proposals A and B seem to suggest what is currently available in the FA.

Management of any fishery below MSY for an extended period is not as intended by the FA which requires that fisheries must be managed at or above MSY while allowing for social, economic and cultural well-being of New Zealanders.

Why are these proposals suggested only in fisheries where they would produce an increase in ‘value’?

Clear, fair and easily understood rules for rebuilding depleted fisheries are overdue, and may be all that is required from the discussion paper process to rebuild our depleted fisheries.

Any solution to the management issues in shared fisheries must be able to address or otherwise allow for the actual cause of the depletion. Failure to do so undermines any incentive to conserve.

If one million fishers don't believe the system is fair, compliance will be threatened. For example recreational fishers should not receive bag limit cuts because the fishing industry is chronically deeming in excess of the TACC or because the fishing industry has too much quota (flounder mullet gurnard) or in fisheries where the QAA has issued quota

It is essential to determine the cause of the depleted state of the stock.

Commercial Fishing (have we missed anything?)

- Does the TACC constrain the commercial catch and if not why not?
- Was the TACC inflated by the QAA?
- Has the TACC been increased?
- Is there an Adaptive Management Programme (AMP) in place?
- Is dumping and high-grading occurring?
- Are commercial fishers reporting all catch?
- Is chronic deeming occurring and causing the TACC to be exceeded?
- Is fishing related mortality higher than allowed for?
- Other?

Recreational Fishing (have we missed anything?)

- Has the participation level demonstrably increased, if so what prevents the Minister from allowing for it? Compensation? [Tipping J (HC) in Snapper 1 “it would be strange.....”
- Has there been a demonstrable increase in catch?
- Has the allowance been set correctly i.e., no allowance?
- Was the allowance set in a depleted fishery?
- Was the allowance set accurately?
- Are bag or size limits being ignored?

Customary Fishing (have we missed anything?)

- Has kaitiaki management been supported adequately?
- Has the participation level or catch demonstrably increased?
- Is there a decline in customary catch? What is the reason?

Risk & Benefit Analysis for Proposal B - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current	Compared to current right

			Fisheries Act	
B Faster rebuilds	<p>Recreational catch will be reduced proportionately even in fisheries where there have been previous bag limit cuts, size increases and gear restrictions.</p> <p>This is because commercial fishers have been over-allocated in the fishery and/or deemed excessively. Moreover, the Quota Appeals Authority decisions have inflated quotas to unsustainable levels and the practice of dumping may continue. Value-based assessments ignore historical issues and in doing so, will potentially create conflict and reduce incentives to conserve.</p>	<p>Depleted fisheries maybe rebuilt.</p> <p>Reduced catching costs.</p> <p>Less juvenile mortality.</p> <p>Greater access for non-commercial fishers.</p>	Yes	<p>Much less certain. Under a value-based system, significant risk associated with this option.</p> <p>Much more certain. If the proposed (MCG and MAG) participation rates criteria were implemented instead of the value-based model.</p>

Section 4

Priorities for allocating the Total Allowable Catch

The present approach to making allocations of the Total Allowable Catch for shared fisheries lacks certainty. Priorities in the allocation process and the criteria for changing allocations between sectors need to be clarified. The allocation proposals and options in this section are intended to increase certainty. They would:

- Protect the basic right of the public to go fishing; and
- Clarify the provision for Maori customary food gathering to recognise obligations under the Fisheries Deed of Settlement.

These points are developed below. [48]

Footnote introduction

Query how MFish presently applies section 21 to “allow for” (not ‘allocate’ as for quota under the quota management system – QMS) non-commercial fishing interests - information on non-commercial catch, and pressure from commercial fishers;

Possible s21 directions from Kahawai judicial review;

Again, reference to section 21 FA – full and proper application of the purpose, principles and fisheries management tools of the FA;

Present ability to ‘change allocations’;

Does not explain the present right of all New Zealanders to catch fish for food not for sale without a permit as regulated by amateur fishing regulations as recognised, protected and preserved in the FA;

Intention to include amateur in the ‘allocation’ process the so-called ‘basic right,’ – see Minister’s Cabinet letter.

[48] Basic right’ - devalues recreational fishing and is quite different from the present public non-commercial right which must be allowed for according to social, economic and cultural needs subject only to sustainability.

4.1 The basic right to catch fish

Many New Zealanders feel that the freedom to cast a line to catch a fish is a cultural tradition that should be maintained. They are concerned that changes to the management of shared fisheries might mean restrictions or limitations were placed on this tradition. This value is part of our national identity and should be protected.

The proposal in this section is intended to reassure amateur fishers that the basic right to catch fish will be retained and protected in the new regime.

Footnote introduction

No explanation of the existing right of New Zealanders to fish for food not for sale without a permit as regulated by amateur fishing regulations, recognised, protected and preserved in the FA;

Again does not explain the existing ‘right’ of New Zealanders to fish, as above;

Refers to such ‘right’ as a ‘tradition’ rather than fishing for food being a ‘public right’ which is ‘part of the New Zealand way of life’;

Refers to concerns that fisheries management changes – those proposed in the discussion paper? – may threaten such ‘right’ – perhaps a reference back to ‘increasing (unspecified, that is threatened by the effects of either commercial fishing or amateur fishing) pressure’ in Section 1;

Why change things? - from (unexplained) changes to the management of fisheries;

Is ‘the freedom to cast a line to catch a fish...’ under threat?

MFish, in the discussion paper, is proposing ways to recognise and administer not the present right of New Zealanders to fish, but a **new and lesser** ‘basic right’?

Government’s National Identity theme - Minister’s Cabinet letter;

Does not explain the existing public right to fish, but instead uses the term ‘the basic right’ as described in the proposal;

Refers to the legislative reform – ‘the new regime’ - which, as explained in the proposal would include ‘the public right’ to fish as part of the allocation of the TAC process.

Proposal: Priority for amateur fishing over commercial fishing

The Government would protect and maintain a basic level of amateur take by establishing a minimum tonnage for the amateur sector in each shared fishery. This would have priority over commercial take. The tonnage would be reduced only if all commercial fishing had already ceased in the fishery and a further reduction in take was needed to ensure sustainability.

The minimum tonnage for each stock could be set at 20 percent of the baseline amateur

allocation in each fishery (*see next section*). [49]

Footnote introduction

This is the modification proposed by MFish to the existing right of New Zealanders to fish for food not for sale without a permit as regulated by amateur fishing regulations, recognised, protected and preserved in the FA;
 A ‘key’ part of the discussion paper.

[49] This definitely calls for a case study - to be completed.
 The concern is that the MFish has suggested a “basic right to catch fish” concept and is attempting to define this as 20% of a minimum tonnage allocation in only six fish stocks. Why?

Risk & Benefit Analysis for Priority Proposal - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
4.1 Basic right	<p>There is a real danger that uninformed recreational fishers will view this as a real priority instead of the removal of the present public non-commercial right to fish and substituted with a ‘baseline allocation’ (see below) and ‘a basic right’ as above.</p> <p>Fisheries are in a state of collapse before the priority clicks in. A rough SNA8 case study indicates the biomass would be around 3.5% of the virgin stock size before it comes into effect.</p> <p>This would only leave around 20% of the stock size required to produce MSY.</p>	<p>MFish’s suggestion made at a meeting with officials in Auckland, whereby it would be possible for the Minister to completely stop commercial fishing while leaving the 20% recreational allowance in place to achieve a faster rebuild in a fishery that was valued much higher to recreational fishers than it</p>	<p>Yes, see SNA1 (High Court and Court of Appeal), namely, set the TACC at 0, and ‘allow for’ greater recreational interest.</p>	<p>Very Poor</p>

	<p>This is not the same priority as offered by Moyle's Promise.</p> <p>An actual priority to 20% will never become a reality as the fish stock would be so low as to require all fishing to stop to prevent recruitment failure and stock collapse.</p> <p>Removing the present public non-commercial right to fish and substituting 'a basic right' of 20% of the current recreational allowance (which could be an under-allowance) while leaving the remaining 80% available for commercial nets coupled with questionable valuation methodology would neither improve our fisheries nor 'allow for' the social, economic and cultural non-commercial needs of New Zealanders to fish.</p>	<p>was to commercial fishers.</p> <p>However it is difficult to think of a fishery where this could apply?</p>		
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4.2 Customary take

Under current legislation customary fishing must be conducted in accordance with permits issued under regulations and cannot be for sale or trade. Customary take is already highly regulated and represents a small percentage of the overall shared fisheries take. The permits require quantity, area, method and species to be harvested to be specified, and either reporting or recording of take. Permits can only be issued by persons approved by tangata whenua and notified to the Minister. The Minister of Fisheries retains the ability to constrain customary take for sustainability purposes.

The Fisheries Act 1996 does not provide clear guidance on how the obligations under the Fisheries Deed of Settlement need to be effected in the provision made for customary fishing when allocating the Total Allowable Catch.

Footnote introduction

‘Social, economic and cultural well-being’ criteria in the definition of ‘utilisation’ in section 10 FA?

Present ability to constrain for recreational and commercial

Reference to s21 FA: does not say how the Minister must ‘allow for’ customary non-commercial fishing interests when ‘setting or varying’ TACC;

Consider the purpose – sustainable utilisation – and environmental and information principles contained in the FA which when combined with the other fisheries management tools and mechanisms contained in the FA provide the ‘guidance’ MFish refers to;

Refer also to the awaited outcome of the Kahawai judicial review

Proposal: Clarify provision for Maori customary take

Allocation rules should recognise that actual customary take authorised under the customary fishing regulations (or regulation 27 or 27A of the amateur fishing regulations) is to be provided for before allocation to the amateur and commercial sectors in order to align the Fisheries Act with the obligations created by the Fisheries Settlement. This clarification is consistent with MFish practice. [50]

When reporting or records suggest authorised customary take exceeds the allowance, the customary allowance would increase, subject to overall sustainability limits ultimately set by the Minister. There could be some increases in customary take where inshore fisheries that are important to Maori are rebuilt from depleted states.

Footnote introduction

The language used differs from that used in the FA. Under the FA quota under the QMS is 'allocated', whereas non commercial fishing interests such as customary and recreational are 'allow(ed) for' when the Minister sets or varies the TACC;

The Government's intention to include 'recreational' and 'commercial' in allocation - Minister's Cabinet letter.

- 'could' be some increases..... – a possibility only?

MFish's intention is to 'allow for' only for fish reported or recorded as part of the customary take, namely, actual take, possibly to eliminate the gap MFish sees between what the Minister presently 'allows for' for customary against reported or recorded take;?

Consider – practice of kaitiakitanga (guardianship/stewardship) may explain low reported/recorded take?

Stipulates priority allocation for customary

[50] This section is unclear

A concern for Maori is that on the one hand the discussion paper suggests reducing the customary allowance to reflect actual customary take, whilst on the other hand fails to explain how Maori will be provided for in the future after this perceived over allowance has been taken from Maori.

Maori are a fast growing sector of New Zealand's society and have the highest participation rates in recreational and customary fishing. They also have extensive commercial fishing interests. How can Maori have an opinion on this proposal when the document does not explain where the extra fish will come from if there is an increase in customary fishing or how the process will work? There is insufficient detail as to how these increases are going to be accommodated in the future to ensure sustainability.

Decreases in Customary Allowance

The first objective is to reduce the customary allowance to the actual/reported customary catch. This will create an apparent surplus of uncaught fish available within the TAC.

However because these fish have never been caught, no such surplus actually exists, the extra fish are an illusion, MFish has not explained what will happen to this apparent surplus of fish.

Will the "surplus" be allocated to commercial fishers as quota, and if so, 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 so that at least the Government retains a portion of the TAC possibly for environmental and sustainability reasons?

Reducing Maori customary allowance to the actual level of customary take:

- assumes all customary take is taken under the customary provisions.

Maori have been preoccupied with the Treaty of Waitangi fisheries settlement issues. By and large, tangata whenua have not turned their attention to this most complex debate. Some have however. The Hokianga Accord has held 7 hui with the Shared Fisheries issues to the fore. Please note that the Chairman of Ngapuhi and the Chairperson of Ngati Whatua have both been heavily involved in the development of this preliminary view.

In many cases, Maori have been duped into thinking that their total non-commercial needs from the fisheries are catered for under the Customary regulations. This is as far from the truth as one can get

Now that the Treaty of Waitangi Fisheries Settlement issues have been dealt with (by and large) Maori have woken up to the fact that 99.99% of the time that they go fishing to feed their families they are categorised as recreational fishers.

Some would say Maori have been hoodwinked. It must be remembered that the idea of customary catch being limited to customary permit holders is an MFish concept. Is a process of having to get a customary permit to provide for the purposes of the marae giving full effect to the words “full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession”

It has also been said that things cannot change because the Deed of Settlement and the Sealord Settlement were final settlement of these issues. However, Parliament realised and stated as these provisions went through the House that the customary fisheries issues remained unfinished and needed to be further developed. It would be totally unjust to see the allowances for customary fishing reduced to what is actually reported just as tangata whenua appreciate what they have and develop the necessary understanding and process to work with their fisheries

Nowhere in this document is kaitiakitanga mentioned and yet it is very much a part of the FA. In fact, kaitiakitanga has more potential to deliver good fisheries management outcomes for many coastal fisheries than anything else on the statute. To not discuss kaitiakitanga in the context of “Shared Fisheries” is unacceptable. Watch this space. For

further background material please go to www.hokiangaaccord.co.nz

A chronology for Maori fishing rights is being developed.

Conservation Efforts by Kaitiaki

Maori customary may not be fully satisfied if kaitiaki have imposed a rahui, issued customary permits for less fish than required for sustainability reasons, or refused to issue a permit on the grounds that there were insufficient fish and the resource needed to be conserved.

If all of the fish allocated within the TAC are caught then how will Maori customary be satisfied?

Maori must have a provision for retaining a surplus over and above their current catch to properly accommodate their full interest. The amount is a matter between Maori and the Government. It is a simplification for the Maori customary right to be expressed as a 'tonnage.'

Increases in Customary Take

The discussion paper fails to explain:

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

Illegal Take

Illegal take is a significant problem in certain shared fisheries and specific initiatives by MFish are underway to reduce it. Estimates of illegal take are allowed for before allocating the available catch. [51]

Managing customary take

A record of take is needed to ensure the allowance reflects actual take and so that a response could be made should reported customary take exceed the allowance.

Allocation for customary take requires the setting of allowances within the Total Allowable Catch. Currently some reporting of actual take is incomplete and MFish makes assessments of likely harvest based on criteria and available information. Reporting of customary take needs to be improved to ensure that information on total take is as complete as possible, so that the sustainability of resources can be protected. [52]

Managing amateur take

Amateur take will continue to be managed using bag limits, minimum legal sizes, and gear restrictions. As information is improved, changes may be necessary to these settings to ensure the total amateur take for a stock does not exceed the amateur allocation. [53]

Managing commercial take

Under the Quota Management System, all commercial catch must be reported. It must be counted against the Annual Catch Entitlement held, or a deemed value must be paid. A concern is that in some shared fisheries, commercial operators have regularly exceeded the Total Allowable Commercial Catch. Management changes to the deemed value regime are under discussion at present and have good potential to bring commercial overcatch more strictly under control [54]

Accountability for total fishing mortality is also a concern in some shared fisheries. Changes could be made to improve this, for example, by removing minimum legal size limits so that all catch is counted against the commercial allocation. Changes in fishing practices may be possible to avoid unwanted catch. This could promote faster stock rebuilds and so reduce the severity of any cuts needed to the Total Allowable Catch. [55]

Various controls are already possible under the current management framework, and fisheries plans would provide a good context to evaluate further controls.

[51] Fails to explain/differentiate whether commercial, recreational or customary fishers are considered by MFish to be illegally taking fish yet explicitly states that it does not deal with illegal fishing.

[52] For MFish to suggest that the MFish “makes assessments of likely harvest based on criteria” demonstrates an unsatisfactory process.

There is neither reference to the Ministers obligation to “allow for” under section 21, nor any explanation of the Ministers statutory obligations ‘to provide for the input and

participation' of tangata whenua on sustainability measures both under s12 FA (and regulation 14 of the customary regulations) and to have particular regard to 'kaitiakitanga'.

Poor estimates of customary and recreational catch translate into lower allocations for non-commercial with the balance allocated to commercial.

Estimates of customary catch may not reflect customary interest in fish stocks where kaitiaki have constrained customary catch to conserve fish stocks.

Once commercial quota has been allocated it will be a very difficult process to get that fish back for reallocation to non-commercial fishers.

[53] Having modified the present right of all New Zealanders to catch fish for food recognised, preserved and protected in the FA, by the proposal referred to in section 4.1 of the discussion paper MFish would also use these measures, namely, bag limits etc to manage the public's right to fish at the new modified and lower level?

[54] Will the depleted SNA8 be addressed by MFish this year?

[55] No explanation given why this is not occurring as provided for under the FA?

Section 5

Setting and adjusting amateur and commercial allocations

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

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

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

Footnote introduction

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

‘initial allocations in key fisheries could be reset’;

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

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

[57] The commercial fishers’ view that ownership of quota confers ownership of a proportion of the TAC is incorrect. This is because the FA does not provide for ownership of the TAC by commercial, customary and recreational fishers respectively. The TACC is what remains after allowing for recreational and customary fishers and fishing related mortality, are MFish proposing commercial fishers own more than this? The approach taken in section 5 omits to state that the Minister has a wide discretion under the FA to manage our fisheries sustainably.

MFish may have succumbed to lobbying pressure from the commercial fishing industry which considers the full extent of the recreational fishers’ allowance is limited to the leftovers of a QMS managed in a way that our fisheries are under constant unnecessary

pressure, or will be based on so-called ‘scientific’ information that underestimates the recreational catch.

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

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

5.1 Baseline allocations

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

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

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

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

Footnote introduction

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

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

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

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

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

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

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

This is one of the fundamental issues

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

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

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

[59] 6 fish stocks, not fisheries

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

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

Historically, when Fisheries Plans processes have not worked it has been due to conflict over 'allocation.' Early in the most recent Fisheries Plans process option4 strongly

argued that it is unrealistic to expect recreational fishers to engage in Fisheries Plans where their interest had been unfairly ‘allowed for’ and without due process. The Shared Fisheries discussion paper does not contain anything to address this point.

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

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

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

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

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

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

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

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

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

Option A. Re-set allocations following an independent assessment

An independent panel or person would assess historical evidence and submissions from people and groups involved in a particular shared fishery to determine whether current allocations were reasonable. An assessment, and potential subsequent adjustments, that took into account the effects of past management decisions on current shares could increase value and may assist to generate greater legitimacy. Recommendations would be made to the Minister on a baseline allocation, and on a process and timeframe to achieve the baseline. [63]

Footnote introduction

meaning of term ‘to generate greater legitimacy’?

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

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

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

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

Reset Allocations - Option A - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Independent assessment	<p>Independence and qualifications of appointees on the independent panel?</p> <p>Non-commercial fishers may not have influence on the terms of reference for independent review.</p> <p>No indication of how far back the panel can go when considering historic information.</p> <p>Will the panel be as unconstrained as the QAA whereby they can stipulate a greater allowance?</p> <p>This process will not be equivalent to the process given to the commercial sector at the introduction of the QMS.</p> <p>Who chooses the six (or other number of) priority fish stocks?</p>	<p>Six (or some other number) of fish stocks may have their baseline allocations reset, and the Government may decide to implement the new baseline allocations.</p> <p>The criteria used by the panel may be used to set allowances in fish stocks that have yet to be allocated i.e. some crayfish stocks, hapuku, gurnard, terakihi, trevally, and blue cod.</p>	<p>Yes. See SNA1 Court of Appeal p 18 "If over time a greater recreational demand arises it would be strange if the Minister was precluded by some proportional rule from giving some extra allowance to cover it..."</p>	<p>Very Poor. Because the proposal only addresses less than 10% of the fisheries in which recreational fishers have an interest.</p>

	<p>Deciding which fisheries may be contentious.</p> <p>The vast majority of shared fisheries are not addressed by this proposal.</p> <p>Can the fishing industry nominate which fisheries they want reviewed?</p> <p>Can customary fishers nominate which fisheries they want reviewed?</p> <p>The Cabinet paper gives Government the option of not complying with the findings of the independent panel or person.</p> <p>Independently reset allocations – helpful but too limited.</p>			
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Option B. Re-set allocations following a study of value in the commercial and amateur sectors

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

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

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

At a recent MFish ‘Shared Fisheries’ public meeting, the commercial fishing industry stated that commercial fishers have commenced working with MFish to ensure that more social and economic values pertaining to commercial fishing are included in future management decisions. Among other things these included health benefits and could slant

the field toward greater recognition of commercial fishing under the current system if they are successful (if that is possible).

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

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

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

In **ALL FISHERIES** where:

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

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

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

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

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

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

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

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

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

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

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

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

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

Customary

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

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

Your input here is most 'valued'.

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

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

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

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

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

See earlier comments about the problem of finding a reliable measure of the social and cultural values, and secondly having values which have a common currency with the commercial sector. This is another 'perfect world' scenario which is theoretically elegant

but in today's world is totally unworkable – that is why MFish when challenged have been unable to tell us exactly how such a valuation mechanism would work.

Value Based Allocations - Option B - Recreational fishers risk analysis

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

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

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

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

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

Footnote introduction

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

-Notwithstanding the sustainable use purpose (including providing for the social, economic, and cultural wellbeing of New Zealanders), environmental and information principles, and the wide range of fisheries management tools in the FA, MFish:

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

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

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

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

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

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

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

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

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

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

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

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

This is another example of putting forward an option which could have been implemented at any time since the early 1990’s (when there were a number of negotiated

processes with agreed outcomes between the amateur and commercial sector which failed to be implemented). There is no point in supporting this option unless MFish can demonstrate they can make it work- based on history; they can't!

Negotiated Allocations - Option C - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
<p>Initial allocations set by negotiation</p>	<p>When option C fails the Ministry's default position would be to go to option B – values. This is very high risk for setting initial allocations.</p> <p>There are no allowances set in many fish stocks. So recreational fisher's future access to these fisheries will be based on scientific computation instead of the Minister's decision.</p> <p>Recreational fisher's preference is for the Minister to decide rather than a valuation model which depends on the data provided. Recreational fishers' present expectation is so that the data will be of poor quality.</p> <p>Option A would provide a more credible backstop because a panel or person would make the decision.</p> <p>Needs to rely on Option A as a back-stop, not option B. Request MFish to provide a case study. For example, how would this work in Snapper 8 (SNA8), or Snapper 2 (SNA2)?</p>	<p>May have some use but only in stocks that can be artificially enhanced.</p> <p>Any suggestions of a wild fishery where directly negotiated allocations would work?</p>	<p>Yes Scallop 7 has a similar system</p>	<p>Poor</p> <p>May work in paua fisheries that are artificially enhanced, but only if initial allowances reflect current interest.</p>

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

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

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

[68] Fairly allocating between commercial fishers and recreational fishers may be constrained by MFish’s concern of the possibility of claims of compensation by commercial fishers for any reduction of quota where it is proposed that reduction be transferred to recreational fishers.

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

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

5.2 Ongoing adjustments

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

Adjustments might be considered:

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

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

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

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

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

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

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

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

Omission from the Shared Fisheries discussion paper of a consideration of such an important issues as the effects of increases or shifts in population is very noticeable. A possible reason for the omission might be that incorporating fluctuating factors such as

population and participation rates is incompatible with the thrust of the Shared Fisheries discussion paper to allocate fixed shares to customary and recreational fishers and impose a proportional system.

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

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

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

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

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

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

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

Option A: Proportional adjustments

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

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

Without agreed rules, proportionality could discourage attempts by any one sector to conserve or build up the resource, but a proportional scheme may encourage parties to get together to establish such rules, or to work together to conserve resources.

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

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

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

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

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

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

the discussion paper.

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

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

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

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

A likely consequence of a Proportional allocation approach to fisheries management is division between commercial fishers on the one hand and customary and recreational fishers on the other. One reason is a lack of incentive to conserve as required by the FA. Fishers who do not conserve are able to avoid responsibility for waste and over fishing when cuts are later made. The flip side is a lack of incentive for fishers who conserve because they cannot be rewarded the benefits of their conservation efforts.

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

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

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

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

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

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

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

Proportional Adjustments – Option A - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Proportional adjustments	<p>The inevitability of licensing under this approach.</p> <p>The real risk lies in the implementation. A number of benefits for the Government can be identified because decision making will not have to take into account all social and cultural considerations. Instead decisions will be linked to a \$ values based system which is only capable of accounting for a limited number of these values.</p> <p>A proportional adjustment approach will reduce the risk of the Government from compensation claims from commercial fishers.</p> <p>Compensating recreational fishers when adjustments</p>	<p>None.</p> <p>Suggestions please?</p>	<p>Yes, the Minister has wide discretion but note this proposal if implemented removes the Minister’s discretion and thereby the possibility of obtaining the right decision. If the FA is changed, this will become the default management approach in every shared fishery. While other options for adjusting the shares are proposed in the discussion</p>	Very Poor

	<p>are transferred to commercial fishers in a 'values' based system is not discussed. A likelihood is that MFish, in order to avoid compensation claims from commercial fishers will give in to commercial fishers requests of commercial "values" at the expense of recreational fishers without legal recourse.</p> <p>MFish acknowledge this approach will not work if baseline allocations are not reasonably set. Compare this with recreational fishers interests not been properly 'allow(ed)' under the FA..</p> <p>Removes incentives to conserve</p>		<p>paper, there are significant obstacles for recreational fishers to overcome before changes to the baseline shares can be achieved;</p> <ol style="list-style-type: none"> 1. Demonstrate a significant increase in value. 2. Use up one of the six fish stocks to qualify for an independent review assessment. <p>The risk is that these obstacles may mean that non-commercial fishers end up with less fish either way.</p>	
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Option B: Value-based adjustments

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

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

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

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

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

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

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

Using a standardised valuation technique is very likely to use averages. If this occurs, those with the greatest need for fish will be those most adversely affected by the outcome. This is particularly important for local coastal communities dependent on the sea to supplement their diet, and those who cannot afford to buy fish at export driven retail prices.

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

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

Value Based Adjustments – Option B - Recreational fishers risk analysis

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

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

Option C: Combination model

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

[75]

Combination Model – Option C - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Combination model	As mentioned, independently value based or proportional adjustments carry many risks for New Zealanders Perhaps too		Possibly	Highly uncertain

	<p>many to consider a removal of their present non-commercial right to fish.</p> <p>Together, both options would alter and devalue the current right.</p> <p>Both options may better enable MFish to ward of claims for compensation by commercial fishers.</p>			
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Direct negotiation between the amateur and commercial sectors over changes in allocation to shared fisheries is desirable and should be considered for the long term. To be successful negotiations would need to be governed by quite strict conditions. Decisions would have to be made by representative bodies, good information would be needed on the amateur catch, and the customary sector would have to be isolated from the effects of transactions. It is unlikely that these conditions will be met in the near future. [76]

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

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

Section 6

Local area management

There are already tools for managing particular areas, for example:

- Under the customary fishing regulations mātaihai reserves can be established to provide for customary use and management practices.
- Commercial fishers can make collective decisions to combine or subdivide Quota Management Areas.
- Section 311 of the Fisheries Act provides for areas to be closed to commercial fishing methods to favour amateur fishing – but it applies only where commercial fishing causes low amateur catches and adversely affects the ability of amateurs to take their overall allowance.

Management at scales smaller than Quota Management Areas may help increase the value of shared fisheries, especially for customary and amateur fishers in inshore areas. For instance, some high-use areas such as Kaipara have suffered from depletion of harbour fisheries and the situation might be improved by specific controls. [77]

[77] Area closures

Consider the so-called “race for space” between Maori customary areas, aquaculture and marine reserves.

Questions

What effect will recreational havens have on Maori customary areas, aquaculture and marine reserves?

Is there enough space for all these areas without breaching the existing prevent test? To achieve smaller QMAs 75% of quota holders need to be in agreement on subdivision. Such agreements may be difficult to achieve, particularly in shared finfish stocks

Proposals for management of specific areas are described below. One or more could be implemented.

Proposal A: Provide for a coastal zone or areas where key species are managed with priority for non-commercial fishing

Many commercial bulk-fishing exclusion zones for particular methods already exist around the coast. These could be extended to cover the whole coast. Such a measure would establish a coastal zone of uniform width (e.g. 2 km). A complete commercial ban would not be practical owing to the dependence of commercial operators taking species such as paua and rock lobster on access to close inshore areas.

Such measures could involve significant dislocation of commercial fishing and redress would need to be considered. [78]

[78] Two kilometre exclusion zone

Questions

What methods and fisheries are intended to be excluded? All commercial fishing? How will flounder and mullet fisheries be affected?

If only trawl methods are intended to be excluded, will that be sufficient?

This appears a very broad-brush approach that is unlikely to properly address most of the localised fisheries management issues.

Note that most of the coastal zone is already protected from close inshore trawling. If so this option may achieve little if concentrating only on trawling.

In remote coastal areas where trawlers are working, what is intended by banning commercial fishing in those areas?

New Zealand has a huge coastline.

Please advise if you live in an area that does not have a trawl exclusion zone? Is the absence of a trawl ban causing a scarcity of fish in that area?

It is important to appreciate that major [dislocation/ of commercial fishing/ reduction of quota] may require the Government to compensate commercial fishers.

Once again this is a management option we already have in the FA– offering it as something new is misrepresenting the true situation. Why would we want a 3 km exclusion zone around all the coast when we don't use all of it – how would you feel if the ministry had suggested we give the commercial sector a 3 km zone – the proposals need to be balanced and this one isn't. In fact of course it is a sop. If a quota fisher could demonstrate that a significant proportion of his quota fishing came from within the zone he/she would be given the right to fish the area – so this proposal gives us nothing new.

Are there any other bulk fishing methods that should be excluded from the near shore area? If there are there is adequate provision in the current act (and has been for at least 40 years) to exclude commercial fishing from inshore areas.

Please also advise if you consider there **are any other bulk fishing methods, apart from trawlers, that should be excluded from the near shore area? For example, long lines.**

Coastal Zones – Proposal A - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Provide for coastal	Coastal zones are incapable of dealing with the Kaipara Harbour	Further research would be required to determine if	Yes, many have been implemented	?

zones	competition in flounder and mullet fisheries because most commercial fishing occurs within 2km of the coast. Government liable for compensation	there were any benefits to this proposal.		
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Proposal B: Provide for sector-initiated proposals to protect or strengthen specific interests

This would involve providing for sector representatives to nominate areas for special management to enhance the value of particular fisheries. The option could involve:

- Nominating small areas as ‘amateur fishing havens’ which would be closed to some or all commercial fishing methods, or for seasonal closure to commercial fishing, or
- Multi-party agreements to exclude bulk fishing methods from an area (e.g. bans on commercial and amateur set netting, dredging, long-lining or trawling, etc) or provide for rotational harvesting or restricted seasons for commercial or all fishing.

Unless supporters of any exclusion proposal could gain the agreement of affected commercial interests, a process to assess proposals would be required. This would need to consider redress for commercial interests. [79]

[79] This proposal suggests negotiated and agreed proposals between commercial and recreational interests. Agreement is highly unlikely because by not agreeing the commercial sector may be able to claim compensation for any ‘re-allocation’. This is a disincentive for commercial fishers to reach agreement.

The discussion paper discusses small fishing havens or multi-party agreements. A good example is the Kaipara Harbour where the commercial fishing industry has flounder and mullet quota in Area 1, can fish where and when they choose and cannot fill that quota. Any area constraint is likely to produce claims of insufficient area to fill the quota they presently cannot catch.

The Kaipara Harbour is an inappropriate example in section 6, as there is no obvious solution to the fisheries management issues faced in the Kaipara Harbour in the discussion paper.

Sector Initiated – Proposal B - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Protect specific	Giving consideration to	There may be some areas set aside, but	Yes, plenty of area and method	?

interests	compensating commercial fishers may prove a disincentive to commercial fishers agreeing.	<p>only if the Government is prepared to compensate commercial fishers.</p> <p>What is the best use of Government funds? Ensuring the allocations are correct? Buying small areas of fishing space in depleted fisheries?</p> <p>What represents the maximum value there?</p> <p>If all the fisheries were managed at or above MSY would local area management of the type contemplated be required?</p> <p>Would marine reserves be required if management at or above MSY produced abundance?</p> <p>Would we need more customary local management tools such as mataitai reserves for fin fish if management at or above MSY produced abundance, or would Maori be</p>	<p>restrictions are already in place.</p> <p>However MFish's hands-off management style has led MFish to be reluctant to address fundamental issues that could easily be resolved if MFish realised how powerful input controls can be at resolving fisheries issues and improving the value of fisheries for all New Zealanders.</p> <p>If the MFish could concentrate on actually managing fisheries in a way that would maximise the returns while minimising waste, significant gains in productivity and co-operation between commercial fishers, and customary and recreational fishers are likely results.</p>	
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		able to focus mataitai where most effective, like shellfish, crayfish, paua, scallops, mussels, kina, pipi, tuatua, cockles (tuangi)?		
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Proposal C: Create area-based fisheries plans appropriate to shared fisheries issues

Fisheries plans could be developed under current processes to cover all shared fisheries within nominated areas such as the Hauraki Gulf, Bay of Islands and Kaipara Harbour. This approach would take significant time and commitment from all those involved, including MFish. However, it would allow for more comprehensive management, including negotiated trade-offs that could increase the value obtained from the fishery.

[80] The success of Fisheries Plans where one sector is significantly over-allocated, and the other sector has been allocated on the basis of current utilisation in a depleted fishery is doubtful.

Area Based Fisheries Plans – Proposal C - Recreational fishers risk analysis

Proposal	Risks	Benefits	Available under current Fisheries Act	Compared to current right
Fisheries Plans	<p>Fisheries Plans that will further stretch resources of recreational fishers to enable participation.</p> <p>Recreational fishers may have insufficient allocation to meet their needs, and the fishing industry with surplus quota.</p> <p>What ‘bargaining chip’ will recreational fishers have to achieve a resolution?</p> <p>Buying fish quota from commercial fishers may well require a compulsory licensing scheme, and with the price of fish quota licenses will likely be expensive.</p>	<p>May be valid in artificially enhanced fisheries.</p> <p>Seems to work in scallop 7, and may work in paua fisheries after the technology has been perfected.</p>		?

	<p>Many recreational representatives have tried formulating fisheries plans with the fishing industry in wild fish stocks i.e. Snapper 1. Despite best efforts over a number of years, none are in place.</p> <p>Presently available under the FA are multi-fisheries plans that may cover more than a single quota management area, and single fisheries plans that include resolving allocation issues></p> <p>MFish now proposes area based fisheries plans.</p> <p>There are inadequate resources, financial or personnel wise, to engage effectively with the fishing industry in so many diverse processes.</p> <p>The priority for co-operative fisheries management in wild fisheries is first, the resolution of all outstanding issues discussed and fairly addressed in the Proportional Allocation paper – Document # 5</p>			
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Section 7

Redress following adjustments in allocations or access

This applies only to the commercial sector.

It has been made clear that the proposals including in the Shared Fisheries discussion paper may result in the 're-allocation' of fish from commercial fishers to recreational fishers and vice versa.

This section suggests the Government paying commercial fishers compensation for those changes if their quota is reduced, but makes no mention of compensating recreational interests if their allowances are reduced.

It is obvious, that the Government will not be making its decisions purely on the recommendations derived from these proposals, because it will have the option, as stated in the Cabinet paper, of doing nothing if the cost of compensation is too high.

Because only commercial fishers are entitled to compensation this will mean decisions are likely to go against recreational fishers more often than not.

It is an unfair basis upon which to make decisions.

This section applies only to the commercial sector.

If the Government proposed changes to allocations or access, any significant costs that would be imposed on the commercial sector could be assessed and the need for redress considered.

The options proposed are:

Option A: Leave redress with the courts

This represents the status quo. Potential for redress for the effects of allocation decisions would remain with the courts, if and when claims were made. If there was a need for significant adjustments involving reallocation from the commercial to the amateur sector, claims for redress would be likely, with associated costs and antagonism.

Option B: Provide a specific process for consideration of redress to the commercial sector

A process would be developed to consider redress for significant costs faced by the commercial sector for particular classes of adjustments such as:

- Transitional adjustments associated with re-setting baseline allocations for the amateur and commercial sectors.
- Steps to recognise the interests of the amateur sector, such as setting revised stock targets with higher availability but lower yield of fish, or setting the Total Allowable Catch to achieve faster rebuild of depleted stocks.

- Future adjustments to redistribute take or access between the amateur and commercial sectors, such as value-based changes to the Total Allowable Catch or geographical exclusions.

The process under this option would assess both the costs and benefits of changes in allocations. It would also consider whether the costs were significant and warranted redress by the Government. This analysis would be included in advice to decision-makers on changes to allocations. Subsequent allocation decisions would take these issues into account. Decision options might include payment of redress, or leaving this to the courts to consider. [81]

Footnote introduction

see Kahawai submissions for discussion on compensation – both commercial fishers and amateur fisher’s perspectives

[81] In the absence of a compensation fund of known proportions, what certainty is there that the Government has put enough aside to be able to afford the solutions proposed in this document?

Will there be more than one compensation fund, namely, one for buying quota and one for buying a fisheries area?

Section 8

Representing amateur fishers' interests

This section has questionable relevance to improving the management of coastal fisheries. It simply identifies that there will be costs, and that the Government will, for a short while, pay some of those costs.

Such costs appear to be significantly exceeded the funding offered in the discussion paper.

This section will be considered in detail in “The People's Submission.”

Amateur fishers can and should have an important role in fisheries management, particularly by feeding their views into the decision-making process and in areas such as the development of fisheries plans.

Greater involvement by amateur fishers would mean more and better information on their views and objectives would be available to fisheries decision-makers. It would ensure that users were part of the development of long-term management strategies, and would help in the creation of ideas and policies acceptable to a large number of people.

An obvious problem with greater involvement by amateur fishers is that most participate on a voluntary basis and not through any professional role. Current organisations find it difficult to generate funding and to represent all amateur interests. Representing the broad public interest in amateur fishing will always be difficult, and assessing and taking account of such dispersed interests is often left to the Government.

Strengthening the voice of amateur fishers in the management of shared fisheries could be achieved through the use of professional representatives. This would enable more effective input by the amateur sector on the development of Fisheries Plans, discussions with the commercial sector on allocation, access to particular areas and the improvement of shared fisheries generally. Ultimately, such staff would be employed by a fully representative amateur fishing organisation. The following proposal would be an intermediate step toward this goal.

Proposal: Creation of an Amateur Fishing Trust

The trust would work with existing amateur fishing organisations to provide professional input into fisheries management; fund projects in line with the purpose of the trust; and promote the development of a representative, accountable and funded structure for the amateur fishing sector. Trustees would be appointed by the Minister and establishment trust funds would come from the Government and possibly other sources. The trust deed would require accountability to amateur fishers and would include public reporting obligations.

The staff of the trust could carry out roles including coordinating the views of amateur fishing organisations and communicating these to MFish and the Government, working with amateur fishing organisations on Fisheries Plans, helping those organisations to become more representative, accountable, and self-funding. The trust could be a step on the way to the formation of a new national representative governance structure developed by the sector for itself. This might build on existing organisations or possibly subsume some, and would eventually represent all amateur fishers. [82]

[82] \$3 million over ten (or five) years

Obligations:

Engage in fisheries management processes for all fish stocks - could involve as many as 60 Fisheries Plans.

Two representatives for each plan, allowing for twenty days = 40 man days per plan x 60 = 2400 days.

This is in addition to attending stock assessment meetings, input and participation into other processes i.e. MPA proposals.

If recreational fishers are going to engage in the Fisheries Plans process, minimum resourcing would include:

Scientific advice
Policy advice
Legal advice.

These costs would be in addition to managing the Trust.

Funding for ongoing administration would need to be found.

This section has been proposed as if the recreational sector has paid representation then they can participate as an equal partner in the fishery with the obligations and constraints that requires.

This is focusing on the wrong issue; representation by itself will do little for the recreational sector.

What needs to be focused on is getting a number of governance processes operating effectively. To give just one example. It is no good having advocacy if the advocate does not know what the constituents want or think about an issue. Secondly the constituents can't provide meaningful advice unless they are informed and there is a loopback communication system. These governance issues are difficult but if they are not addressed there will be no support for recreational leaders and advocacy will be a 'lone voice' advocating a vested or biased position.

Section 9

Have Your Say!

Note:

Issues surrounding the timing for consultation of this discussion paper over the 2006/2007 Christmas holiday period, and the short four month submission period expiring on 28 February 2007 on such an important issue for all New Zealanders and the health of our fisheries and public right to fish in our coastal fisheries will be considered at a later date.

The Ministry of Fisheries would like to hear the views of as many people as possible on the proposals for change put forward in this discussion document. All submissions will be considered and taken into account in final advice and decision making. It is just as important to let us know of your support for proposals as it is to tell us why you think they may not work or to offer an alternative idea.

Please let us know what you think before 28 February 2007. You can make your views known by:

- Sending a letter by email to shared.fisheries@fish.govt.nz or by post to Shared Fisheries consultation, Ministry of Fisheries, PO Box 1020, Wellington.
- Filling out and returning a submission form available from the website, or from MFish staff at any of the consultation meetings or by calling 0800 666 675.
- Filling out the online submission form on the Shared Fisheries pages of the MFish website.

Please note that all submissions are subject to the Official Information Act and, if requested, MFish may need to release information in submissions. If you have any objection to releasing information in your submission, please indicate the parts you think should be withheld and the reasons. MFish may still have to release all or part of a submission.

MFish will be updating the Shared Fisheries pages on its website (www.fish.govt.nz) regularly so you can stay up-to-date with the shared fisheries consultation and management reform process. [83]

[83] Former Minister of Fisheries with the National Government, and ‘author’ of the Fisheries Act 1996, The Hon. Doug Kidd in 2001 at a meeting of recreational fishers at the Milford Cruising Club argued strongly against any attempt at defining the broad non-commercial right of the people of New Zealand to fish for food that is not for sale, which the Minister must “allow for” in fisheries management decisions. The strength and power of the right lies in its breadth.

MFish in their discussion paper are asking the people of New Zealand to consider the removal of such right to be substituted with a defined 'baseline allocation,' coupled with 'a basic right' initially in six key fisheries with uncertain outcomes on the worth of that replacement on important issues of improving the health of our coastal fisheries and marine environment, thereby improving both abundance and the ability of non-commercial – customary and recreational – fishers to 'catch a fish' that is not undersize.

The scheme of the Fisheries Act 1996 is that 'fish come first.' By improving the biomass and hence the health and abundance of our coastal fisheries first, the Minister will then be able to fully allow the non-commercial right of the people of New Zealand to fish for food, as well as providing for commercial fishers to catch quota that is sustainable for our coastal fisheries.

Case studies:

Much work is already in place for most of these case studies to be completed with reference to policy proposals and constructive alternative proposals being worked on:

Snapper 2

Snapper 8

Hapuka 1

Flatfish (Flounder) 1

Grey Mullet 1

Gurnard 1

Blue Cod 7

Paua 5D

John Dory 1

Scallop CS

Garfish (Piper) 1

Sprat 1

Trevally 1

Kahawai 1

Terakihi 1 – Adaptive Management proposals

Crayfish 8

Crayfish 2

Shared Fisheries public discussion paper – an interpretation and summary with comment.

1/12/06

Foreword from the Minister

- 1 The *Minister's foreword* sets the scene for MFish's discussion paper.
- 1.1 *Fishing* is:
 - a. *important* to New Zealand and New Zealanders;
 - b. a *major component* of our *economy*; and
 - c. a central part of our *heritage*, our *culture* and our *national identity*.
- 1.2 *Fishers* have a *common interest* to ensure the fishery is *managed well* whether to:
 - a. earn a living from fishing; or
 - b. put food on the table.
- 1.3 The discussion paper relates to *shared fisheries* used by *customary*, *amateur* and *commercial* fishers.
- 1.4 The *challenge* is to *manage* our shared fisheries to *ensure* that New Zealand and New Zealanders *get as much value as possible...* today (and) into the future.
- 1.5 The *ideas* in the discussion paper represent:
 - a. *new proposals* to *unlock greater value* from our shared fisheries;
 - b. for which *new approaches and decisive action* are required in the face of significant problems.
- 1.6 All New Zealanders *have and will continue to have a basic right* to catch fish, but *major changes are needed* to achieve:
 - a. *greater certainty* in *allocation decisions*;
 - b. building *management capacity*; and
 - c. produce *more overall value* from the fisheries.
- 2 Extends an invitation to *fishers to get involved* with the process of getting the:

2.1 *policy*; and

2.2 *legal framework*,

right.

Comment: The Minister:

i. introduces:

- *the importance of New Zealand's fisheries for the economy, and New Zealand's culture;*
- *competing demands for access;*
- *challenge to manage to obtain as much possible value now and in the future faced with significant problems requiring new approaches and decisive action;*
- *New Zealanders having a basic right to catch fish, continuing to have that right, but major changes needed to achieve amongst other things greater certainty in allocation decisions, building management capacity and producing more overall value.*

*ii. points to **legislative change** by reference to getting 'the policy and legal framework right.' See also the Minister's letter to Cabinet dated December 2005 that "Implementation of a new policy framework is expected to require **a few key amendments** to the FA which would be enacted by the **end of 2007**"*

Section One - Introduction

3 Shaping the shared fishery

3.1 People having their say on proposals to *improve the management* of New Zealand's *shared* – commercial, amateur and customary – *fisheries*:

- a. mainly onshore; but
- b. some offshore fisheries; and
- c. freshwater fisheries.

3.2 *Overall goal of changes* proposed:

- a. *increase* the *value* New Zealanders get from *use of the shared fisheries* in terms of:
 - *money* – commercial sector; but also
 - *food* from a cultural tradition, etc., for amateur and customary fishers;
- b. *Improved management* systems will aim to ensure that the use... *reflects* the *value placed*... by different groups.

Comment: the 'overall goal of change' is to increase the value – see definition below

4 Why change things?

4.1 Shared fisheries under *increasing pressure*.

- 4.2 Effective **management** currently **undermined** by:
- a. **poor information** on **amateur** catch; and
 - b. **uncertainty** surrounding the process for **allocating** available catch between commercial, customary and amateur fishers.

4.3 To secure the future of shared fisheries, **change is required**.

4.4 **Doing nothing** would:

- a. ignore the *environmental risk* of management decisions based on *poor information*;
- b. (result in) costs of ongoing *contention* and *litigation*;
- c. (results in) loss of value (*associated with inadequate incentives* to protect and improve shared fisheries).

[*Comment:*

i. points to amateur fishers exercising their right to fish;

ii. says:

- 'management undermined' by poor information on the amateur catch;

- uncertainty - for MFish/commercial fishers/customary fishers /amateur fishers? – see reference to litigation - in the way in which MFish(advises)/the Minister “allows for” the non-commercial catch under section 21;

ii. apart from the above, no discussion on the cause of the state of New Zealand’s fisheries;

iii. no explanation of the existing nature and extent of the right of all New Zealanders to catch fish for food recognised, preserved and protected in the Fisheries Act 1996 (FA), and the Minister’s obligation to “allow for” that right, and contrasted with the ‘allocation’ of quota under the Quota Management System(QMS) for commercial fishing:

iv. ‘doing nothing’ -again expresses an intention of reform.]

4.5 **Ultimate aim** of shared fisheries *management* is:

- a. to provide *opportunity* for New Zealanders to get the **best value** – financial and other values from the use of our fisheries;
- b. an **overriding need** to protect the **sustainability** of our fisheries’ resources.

[*Comment: The FA framework is sustainable use purpose, application of the environmental and information principles fisheries management tools and mechanisms which require both MFish and the Minister to provide for the social, cultural and economic well-being of New Zealanders whilst ensuring the health of our fisheries.]*

4.6 An **absence** of too little/good **information** makes it difficult to:

- *assess the value* of fisheries to **customary** and **amateur** – who is catching what, where and when;

*[Comment: that is, how much fish **customary** and **amateur** are taking, and assess economic and ‘non-market’ values to both of catching fish?
compare this approach with ‘social, economic and cultural well-being’ in section 8 FA]*

- *manage the fisheries sustainably.*

*[Comment:
| the most fish – **best value** - from our fisheries?]*

4.7 A **main objective** is to **strengthen management** by:

- a. **better information** for use of the fisheries;
- b. **improving** how **value is distributed**.

*[Comment: **strengthen management** – linked to obtaining the ‘**best value**’?]*

4.8 **Lack of definition** of **rules** for **allocation** results in:

- a. fishers from **all sectors** being *concerned* over their *future access*;
- b. *discourages conservation and co-operation* because *one group* is worried its benefits will be lost to another group in the allocation;

*[Comment:
i. repeats the “uncertainty surrounding...allocation.. ’and concerns expressed about this from ‘all sectors’; but

ii. directions on how recreation fishers consider the Minister must ‘allow for’ non-commercial fishing interests is hoped for from the Kahawai judicial review;

ii. signals a new approach by all sectors being in the ‘allocation’ process – see also Minister’s letter to Cabinet]*

4.9 **Main objective** – a **better allocation process** that takes into account differing fishing values.

*[Comment: i. again refers to customary and recreational fishers as part of the ‘allocation’ process of quota for commercial fishers;
ii. c.f., the present FA framework - the TAC is ‘set’(s13 et seq); the Minister ‘shall allow for’ non-commercial – customary and recreational – fishing interests (s21); the TACC is ‘set’ (s20); quota is allocated (s29A et seq)]*

About this paper

- 5 Contains *ideas* approved by Cabinet which *can be changed* in response to *public feedback*.

Comment: already approved by Cabinet – see Minister’s letter to Cabinet dated December 2005

- 6 Some *clear ideas* are put forward as *proposals*.

[Comment: those ideas MFish sees as having a prospect of achieving reform for the ‘overall goal’ to maximise value’?]

- 7 Others (ideas) as a *path* that could *usefully* be taken.

8 **Proposals and options are intended to:**

- 8.1 Section 2 – generate *better information* on *catch* and *value*.

[Comment: directed mainly at recreational fishers]

- 8.2 Section 3 – enable the *TAC* to be set at *levels* that will *raise the overall value* obtained from shared fisheries.

[Comment: particularly of “commercial and amateur value, in both quantitative and qualitative terms” – see Minister’s Cabinet letter]

- 8.3 Section 4 – provide *guidance and rules* for *allocating* the *TAC*.

[Comment:

*i. Minister’s Cabinet letter refers to an ‘allocation approach for the **amateur** and commercial sectors;*

ii basic level of amateur take]

- 8.4 Section 5 – provide:

a. Mechanisms to *reset amateur and commercial allocations* of the *TAC key fisheries*; and

b. For *ongoing adjustments* to allocations *all* shared fisheries;

[Comment:

i. reset ‘baseline allocations’ in key fisheries – see section 5.1, because of cost, initially restricted to six fish stocks, and over time establishing baseline allocations to all shared fisheries;

ii. ongoing adjustments to all fisheries,

legislative change required.]

8.5 Section 6 – allow for *focused management* of **specific local areas** of shared fisheries.

[Comment: Minister’s Cabinet letter refers to ‘new legislative tools’ for such areas,

8.6 Section 7 – possibility of **redress** for **commercial fishers** where significant adjustment costs associated with:

a. *allocation* decisions; or

b. *access* decisions.

8.7 Section 8 – **greater capacity** for **amateur** fishers to **participate in management** of shared fisheries.

9 **Key ideas**

[Comment: those put forward as proposals in the discussion paper]

9.1 All New Zealanders have a **basic right** to catch fish.

[Comment: does not explain the nature and extent of the existing right of all New Zealanders to catch fish for food as mentioned above compared with the “basic right” proposed in the discussion paper.]

9.2 *Management* to produce **best value** – both *financial* and *other values*;

[Comment: or, “commercial and amateur value, in both quantitative and qualitative terms” – see Minister’s Cabinet letter]

9.3 **Better information** on the **amateur** catch needed for:

a. sound management decisions that will ensure *sustainability*;

b. recognize each sector’s *legitimate* interests;

c. more effective *research and monitoring*;

d. better information on **relative value** of *amateur* and *commercial* fishing will *strengthen allocation* decision making.

[Comment: ‘economic activity associated with the harvest from both commercial and amateur sectors...also includes non-market values...’ – see Minister’s Cabinet letter]

9.4 **Amateur take** - *protection of a basic level of amateur take* by a guaranteed minimum tonnage:

a. in each shared fishery;

b. having *priority* over commercial fishing

[Comment: suggests that the so-called “basic level” of amateur take would replace the existing right of New Zealanders to go fishing in the sea without a permit, subject only to regulation as recognised, protected and preserved in the FA?]

- 9.5 Maori **customary** (customary fishing regulations or regulation 27 or 27A of Amateur Fishing Regulations) **should** be provided for when setting allocations.

[Comment: i. Maori customary non-commercial fishing interests are already provided for under the Fisheries Act in that the Minister “shall allow for” such interests in setting the TACC :s21:

ii. ‘..proposed that the revised allocation framework provide that where actual non-commercial customary take is regulated for, it is fully provided before allocation to the amateur and commercial sectors in order to confirm current practice...’ – see Minister’s Cabinet letter]

- 9.6 More **certainty** required in **allocating the TAC** among *commercial* and *amateur* fishers by:

- a. **resetting** baseline allocations;
- b. future **adjustments**; and
- c. to **gain maximum value**.

[Comment: ‘allocation approach’ proposed]

- 9.7 **Local area management** consider whether *exclusion of*:

- a. particular *fishing methods*; or
- b. *commercial* fishing.

would lead to an **increase in value**.

- 9.8 **Redress** for **significant** shifts in:

- a. *allocation*; or
- b. *access*.

- 9.9 **Amateur** fishers should have a **bigger role in management** through a **trust**.

- 10 **Proposals** in the discussion paper if adopted will:

- 10.1 require further *detailed development*.

- 10.2 take *several years* to put a management framework in place.

[Comment: but legislation to key sections of the FA proposed]

- 11 Discussion paper:

- 11.1 deals with:
- a. *customary*;
 - b. *amateur*; and
 - c. *commercial* fishing, and
- how to *ensure the best use* of New Zealand's fisheries from these three uses;
- 11.2 *does not include* aquaculture, international fisheries, allocation between fishers and other users of ocean resources, non-extractive use of fisheries, illegal fishing or measures primarily intended to ensure that fishing is environmentally sustainable.

Having your say

- 12 MFish:
- 12.1 is seeking *thoughts* on the *specific proposals*;
- 12.2 asks why people *support* or *do not support*?
- 12.3 asks option(s) favoured, why and any other possibility?
- 12.4 asks are *some* fisheries management *reforms* more *urgent* than others?
Priorities for action?
- 12.5 *what* shared fisheries should have the *highest priority* for attention – section 5.1?
- 12.6 *Other approaches*** to address the issues raised?
[Comment: opportunity to submit counter proposals]

How will final decisions be made?

- 13 MFish will:
- a. *consider* the *submissions*;
 - b. carry out further *study*;
 - c. *develop recommendations* for the Government; and
 - d. work with *other government departments* to ensure a consistent and coherent approach.
- 14 Final decisions on *reforms*, and nature and timing of implementation will be taken by Cabinet mid-2007.
[Comment: intention is for key changes to the FA by end of 2007]

Key terms used in the discussion paper

15 Amateur fishing

15.1 public, *non-commercial* fishing;

15.2 fishing under the *amateur regulations*, except regulations 27 and 27A, whether for:

- a. recreation;
- b. sustenance (food); or
- c. leisure;

[Comment: Fisheries (Amateur Fishing) Regulations 1986, and other amateur fishing regulations]

15.3 referred to as *recreational fishing* in the FA, some is more in the nature of *food gathering*;

15.4 *amateur* means fishing *not done for money*.

16 Customary fishing and customary take

16.1 *non-commercial Maori customary* fishing by permits under customary fishing regulations 27 or 27A of the amateur fishing regulations;

16.2 *Fisheries Deed of Settlement*

1992 Agreement between the Crown and Maori *negotiators* to settle Treaty of Waitangi claims in relation to fisheries;

[Comment: Deed of Settlement dated 23 September 1992; Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 – relates to claims by Maori in respect of commercial fishing with on-going obligations by the Crown to Maori in respect of non-commercial fishing]

- a. Crown provided funds to Maori to purchase half of Sealord transferring 20% of all new commercial quota to Maori;
- b. *developing regulations* to recognise and provide for *customary non-commercial* fishing;
- c. *interim 1989 Settlement* provided substantial redress through transfer of 10% of all commercial quota at that time.

17 Fisheries Plans

17.1 plans *approved* by the Minister providing:

- a. what *MFish* and *stakeholders* want from a fishery;

- b. *how these objectives should be achieved.*
- c. *formal opportunity for stakeholders to have input at an early stage before development by MFish staff;*
- d. *an approved Fisheries plan would establish arrangements to manage fishery in a particular way.*

[Comment: application of s11A FA?]

18 Phone-and-diary surveys

18.1 *amateur fishers;*

- a. *identified through random national phone surveys;*
- b. *some asked to keep diaries of fishing trips and catches.*
- c. *information from surveys and diarists used to help assess national amateur fishing patterns and catches.*

19 Shared fisheries

19.1 Fisheries where *amateur*, *Maori customary* and *commercial* fishers *all* have an *interest*;

19.2 *changes in management* will effect all these groups;

19.3 decisions have to be about finding the *best way to manage* the whole fishery stock, *not* just managing *one group of fishers*;

19.4 include *iconic* species such as snapper, blue cod, kahawai, rod lobster and paua.

20 Stock

20.1 *fish stocks* defined under the FA for *management* purposes;

20.2 a *species* in a *particular area*.

21 Total Allowable Catch (TAC)

21.1 *sustainable* limit on annual catch set for each fish stock;

21.2 all take by *customary*, *amateur* and *commercial* fishers must be accounted for within the TAC;

21.3 an *allowance* also for effects such as that from illegal fishing on the stock.

[Comment: see section 13 – TAC to maintain the stock at or above a level that can produce msy, or mechanisms to enable any stock below msy to be restored – referred to in the Minister’s Cabinet letter]

22 Value

22.1 **financial** or **commercial** value;

22.2 less obvious or **intangible** values held by *amateur* and *customary* fishers;

22.3 includes:

- a. **commercial profit and economic activity** associated with *harvest* from *commercial* and *amateur* sectors – employment, foreign exchange earnings (exports and international tourism revenue), and retail sales;
- b. **non-market value** associated with ability to *provide food*;
- c. **customary** practice and tradition;
- d. **pleasure** of a day out on the water;
- e. **sport**.

Refers to existing valuation techniques to assess *quantitative* or *qualitative* value of both commercial and amateur.

[*Comment: value to amateur and customary fishers in economic as well as so called 'non-market' terms?*]

Section 2 – Getting better information on catch and value

23 *Any effective management system* depends on:

23.1 good *information*;

23.2 in fisheries, knowing *who* is catching *what*, *where* and *when*.

24 **Information**

24.1 *commercial* – legally required reporting.

24.2 *customary* – obligation to report under customary fishing regulations – efforts being made to improve as regulations taken up by iwi.

24.3 *amateur*:

a. mainly by *surveys*;

b. to date two major *phone-and-diary* surveys of *random* samples of New Zealand's population;

c. *expensive* and *time consuming* producing *uncertain* catch estimates – survey differential by up to 300%;

d. *more accurate* results *needed* for effective management where *amateur* take represents a *significant proportion* of total take.

e. *better information* essential to *properly recognise amateur* interests and take into account *effective management*.

25 **Charter boats**

25.1 need for *information* on recreational *charter boats catch*;

25.2 *iwi, commercial* and *some amateur* fishers have *concerns*;

25.3 charter fishing operators *not subject to specific regulations*;

25.4 *effects of charter fishing* on the resource not clear;

25.5 charter operators can provide *accurate information*.

26 **Value**

26.1 information on *value* to commercial and amateur fishers:

a. important to improve *overall value* from shared fisheries.

b. *vital for implementation* of *some* proposals in the discussion paper.

[Comment: every fish accounted for and allocated approach? v 'social, economic and cultural well-being' s 8 FA – is there a difference? If so, why propose a change?]

27 **Proposal A - more survey and monitoring work**

27.1 MFish concentrating on *new information-gathering methods*:

- a. flights over specific areas to count boats;
- b. boat-ramp surveys to count catch.

These methods are *limited to* relatively *small, high-use areas* of boat-based fishing.

27.2 MFish would:

- a. *develop and expand over-flight and boat ramp* surveys;
- b. *carry out more detailed analysis* of existing data;
- c. still carry out *phone-and-diary* surveys but with *improved methodology* and *supported* by other survey data.

27.3 *Supplement* these methods by:

- a. *seeking information* (e.g., through *fishing clubs*) on effort and take of *regular* fishers.
- b. *gain information* about *fishing effort* through increased use of *web-cams* at boat ramps and other places.
- c. *add fishing questions* to the *census* and *three-yearly household economic survey*.

28 **Proposal B - reporting for recreational charter operations:**

28.1 The elements of this proposal are:

- a. MFish will hold a *register* of all *charter boat operators*;
- b. charter boat operators to *regularly report* on the:
 - catch; and
 - effort,by amateur fishers on their boats;
- c. the *information* on catch and effort would be used to:
 - *monitor* fishing pressure on specific popular sites; and

- if necessary, take *management action to protect* vulnerable species such as groper;
 - d. *charter boat registration* would be likely to involve *a charge* to offset administration costs;
 - e. MFish says there is *no intention* to bring charter fishing into the *QMS*.
- 29 **Proposal C - estimating relative *values* for commercial and amateur fishing**
- 29.1 *Aim of improved management* of shared fisheries – *to ensure that New Zealanders get the greatest possible value*.
- 29.2 Difficulty – different user groups *value* for shared fisheries *differently*:
- a. **commercial** users - *dollars and cents* measurement of *economic* activity.
 - b. **customary** and **amateur** – *values* such as *cultural* practice or enjoyment.
- [Comment: **customary** and **amateur** – *values* – *food which include being on the water etc*]
- 29.3 To determine greatest value:
- a. *assess and measure values* against each other;
 - b. *not an absolute science* – *economists* have developed *techniques*.
- [Comment: *value to amateur and customary fishers in economic terms?*]
- 29.4 This proposal - effort to:
- a. *develop and adapt methods* to produce useful **valuation** *information* about shared fisheries;
 - b. use these *methods* to assess **relative values** for commercial and amateur sectors in *specific fisheries*;
 - c. so *this information could be taken into account* in management decision making.

Section 3 – setting the total allowable catch (TAC)

- 29.5 TAC:
- a. described in *tonnes*;
 - b. *controls harvest*;
 - c. main means of *affecting* fish stock *levels*.

29.6 *Each stock has its own TAC from which **allocations** ... for the customary, amateur and commercial sectors are made.*

29.7 **Setting the TAC:**

- a. influences the *size* of the *stock*; and
- b. therefore the *yield, abundance* and *size* of fish available to be caught.

29.8 **Differing views** on what *fish stock levels* should be.

29.9 **Standard practice** (of MFish) to *manage stocks at Maximum Sustainable Yield (msy)*:

[Comment: Minister's Cabinet letter – 'managing stocks at higher levels is difficult under the current provisions of the (FA) as this is not strictly necessary for sustainability reasons alone...and a significant disadvantage to the commercial sector'; refers to more fish above msy, and less below msy but higher yield]

- a. lets *fishers* catch *greatest amount* of fish in a *sustainable* way;

*[Comment: lets fishers – **commercial or recreational or customary** fishers....?]*

- b. *often* suits *commercial* fishers well;

[Comment: 'often' v 'always' suits commercial fishers ?]

- c. amateur and fishers *often regard* fish size and abundance as important.

[Comment: 'often' v 'always' regard - amateur and customary fishers value size and abundance ?]

[Comment: section 13 requirements – 'standard practice' referred to in the discussion paper?]

29.10 *Size and abundance* can be improved by:

- a. *letting* the stock level *increase*;
- b. this means *smaller amount* of fish can be taken *sustainably* each year.

[Comment: query this statement – compare with fisheries management in accordance with the full and proper use of the FA purpose of sustainable use (reasonably foreseeable needs of future generations, and to enable people to provide for their social, economic and cultural well-being; FA environmental and information principles; FA management tools and mechanisms)]

29.11 Two *proposals* to provide *greater flexibility*:

- a. **setting** the **TAC** for **shared fisheries**.
- b. **better recognise** the importance of *amateur and customary values*.

Both proposals could be implemented.

[Comment: determination of so-called 'values' – see section 5, Proposal B]

30 **Proposal A - setting the TAC for a stock level above that which achieves *msy***

30.1 Set the TAC to increase stock level *above msy*.

30.2 Would mean *smaller quantity* of fish could be taken each year, but *more and larger* fish, and so *possibly* easier to catch.

[Comment: 'probably' easier to catch for amateur fishers (and commercial fishers?)]

30.3 This *proposal* would be taken *only* where:

- a. managing *above msy* would lead to an *increase in overall value*.
- b. involve a *trade off* between:
 - *commercial* demand for *greater yield*; and
 - *amateur and customary values* for *bigger* fish and *higher catch* rates.
- c. Need to *forego* some of the total catch by all sectors *to rebuild and maintain* higher stock level.

[Comment: *forego* – future catch or cuts?]

31 **Proposal B - Setting TAC and depleted fisheries to allow faster rebuild times**

31.1 Where stock levels are below *management targets*, a *stock rebuild strategy* is needed.

[Comment: *management target levels?*]

31.2 **Rebuild:**

- a. *generally requires cuts* in current catches to *take pressure off* stocks.
- b. *bigger* the cut the *faster* the likely rebuild.

[Comment: *cuts by whom, and how?*]

31.3 **Longer rebuild times favoured by *commercial* sector:**

- a. because *reduced catch* means *reduced incomes*;
- b. to *reduce* that *impact*.

31.4 In *shared fisheries* a **longer rebuild** time may mean:

- a. **value** available to *customary and amateur* is **lower** for longer;

- b. for **important** shared fisheries a **constraint** on target *rebuild times* may **help** to **increase overall value**.

[Comment: target rebuild times ?]

31.5 **This proposal** – setting the TAC to allow:

- a. **rebuild** of a **depleted** fishery **more quickly** to target levels;

[Comment: target levels ?]

- b. within a **specified maximum** number of **years**.

31.6 **Rebuild times:**

- a. would **vary** from *species* to species.

- b. *depend on the biology* of the species, and *state of* the fishery.

31.7 Note – above proposals applied on a **case by case basis** if *doing so* would produce an **increase in value** obtained.

[Comment: ‘value’ assessment – what, how much and to whom?]

Section 4 – priorities for allocating the TAC

32 Present *allocations* approach in *shared fisheries lacks certainty*.

[Comment:

i. query how MFish presently applies section 21 to “allow for”(not ‘allocate’ as for quota under the quota management system – QMS) non commercial fishing interests - information on non-commercial catch, and pressure from commercial fishers;

ii. possible s21 directions from Kahawai judicial review.]

32.1 **Clarification** sought by MFish in:

- a. **priorities** in the **allocation** process;
- b. **criteria** for **changing allocations** between sectors.

[Comment: i. again, reference to section 21 FA – full and proper application of the purpose, principles and fisheries management tools of the FA:

ii. present ability to ‘change allocations’]

- c. the **allocation proposals** and options intended to **increase certainty**;
- d. **protect the basic right** of the public to go fishing;

[Comment:

i. does not explain the present right of all New Zealanders to catch fish for food not for sale without a permit as regulated by amateur fishing regulations as recognised, protected and preserved in the FA;

ii. intention to include amateur in the ‘allocation’ process the so-called ‘basic right,’ – see Minister’s Cabinet letter]]

- e. **clarify** the provision for **Maori customary food** gathering to recognise (the Crown’s) obligations under the Fisheries Deed of Settlement.

33 **The ‘basic right’ to catch fish – section 4.1**

33.1 Refers to *many New Zealanders*:

- a. *feel* that the **freedom to cast a line** to catch a fish is a **cultural tradition** to be maintained.

[Comment: as noted above, no explanation of the existing right of New Zealanders to fish for food not for sale without a permit as regulated by amateur fishing regulations, recognised, protected and preserved in the FA].

- b. are **concerned** that **changes to the management of shared fisheries** might mean **restrictions or limitations** on this tradition.

[Comment: this statement:

i. again does not explain the existing ‘right’ of New Zealanders to fish, as above;

ii. refers to such ‘right’ as a ‘tradition’ rather than fishing for food being a ‘public right’ which is ‘part of the New Zealand way of life’;

iii. refers to concerns that fisheries management changes – those proposed in the discussion paper? – may threaten such ‘right’ – perhaps a reference back to ‘increasing (unspecified, that is threatened by the effects of either commercial fishing or amateur fishing) pressure’ in Section 1, Why change things? - from (unexplained) changes to the management of fisheries]

- 33.2 The discussion paper notes that **‘this value’** (of the freedom to cast a line to catch a fish (as) a cultural tradition) is part of **New Zealand’s national identity** and **should be protected**.

[Comment:

i. is ‘the freedom to cast a line to catch a fish...’ under threat?;

*ii. MFish, in the discussion paper, is proposing ways to recognise and administer not the present right of New Zealanders to fish, but a **new** ‘basic right’?*

iii. Government’s National Identity theme - Minister’s Cabinet letter]

- 33.3 **Proposal** – intended in the **new regime** to reassure amateur fishers that **‘the basic right’** to catch fish will be:

a. **retained**;

b. **protected**.

[Comment: This i. again does not explain the existing public right to fish, but instead uses the term ‘the basic right’ as described in the proposal;

*ii. refers to the legislative reform – ‘the **new regime**’ - which, as explained in the proposal would include ‘the public right’ to fish as part of the allocation of the TAC process]*

34 Proposal – priority for amateur fishing over commercial fishing

34.1 The Government would:

34.2 **protect**; and

34.3 **maintain**,

‘a basic level’ of amateur take by establishing a **minimum tonnage** for the amateur sector in each shared fishery.

34.4 This **basic level/minimum tonnage** for amateur fishers would:

- a. have **priority** over the *commercial* take;
 - b. be **reduced only** all commercial fishing *had already ceased* in the fishery, and a *further reduction* in take needed to ensure *sustainability*.
- 34.5 Suggests a minimum tonnage for each stock *at 20% of the baseline amateur allocation* in each fishery. Section 5.1 of the discussion paper is referred to.

[Comment: i. this is the modification proposed by MFish to the existing right of New Zealanders to fish for food not for sale without a permit as regulated by amateur fishing regulations, recognised, protected and preserved in the FA;

ii. a 'key' part of the discussion paper]

35 **Customary take – 4.2**

35.1 Under the FA:

- a. must be conducted *in accordance with permits* issued under **regulations**; and
- b. *not* for **sale** or **trade**.

35.2 **Customary** take:

- a. is already **highly regulated**; and
- b. represents a **small percentage** of the overall shared fisheries take.

35.3 The **permits** require:

- a. *quantity, area, method and species* to be specified;
- b. either **reporting or recording** of take; and
- c. can only be *issued to persons* **approved** by *tangata whenua* (known as kaitiaki), and notified to the Minister.

35.4 The Minister retains the *ability to* **constrain** customary take for **sustainability** purposes.

[Comment: i. 'social, economic and cultural well-being' criteria in the definition of 'utilisation' in section 10 FA ?;

ii. present ability to **constrain** *for recreational and commercial].*

35.5 MFish says that the FA does **not** provide **clear guidance** on how the Crown's **obligations** under the **1992 Deed of Settlement** need to be effected in the provision made for customary fishing when *allocating the TAC*.

[Comment: i. reference to s21FA:

ii. does not say how the Minister must 'allow for' customary non-commercial fishing interests when 'setting or varying' TACC;

iii. *consider the purpose – sustainable utilisation – and environmental and information principles contained in the FA which when combined with the other fisheries management tools and mechanisms contained in the FA provide the ‘guidance’ MFish refers to;*

iv. *refer also to the awaited outcome of the Kahawai judicial review].*

36 **Proposal – Clarify provision for Maori customary take**

36.1 **MFish’s proposal** is that:

- a. **allocation rules** should *specify* that **actual** customary take authorised under the Customary Fishing Regulations (or regulation 27 or 27A of the Amateur Fishing Regulations):
 - is to be *provided for before* allocation to the amateur and commercial sectors;
 - in order to *align the FA* with the Crown’s obligations created by the 1992 settlement;

MFish says that this would be consistent with MFish practise.

[Comment:

i. language different from that used in the FA, namely, quota under the QMS is ‘allocated’, whereas non commercial fishing interests such as customary and recreational are ‘allow(ed) for’ when the Minister sets or varies the TACC;

ii. *intention to include ‘recreational’ and ‘commercial’ in allocation - Minister’s Cabinet letter].*

36.2 When **reporting or records** suggests the *authorised* customary take **exceeds the allowance** made by MFish:

- a. the customary allowance would *increase*;
- b. *subject to overall sustainability* limits ultimately set by the Minister.

36.3 MFish says that there **could be some increases** in **customary** take where *inshore fisheries* that are *important* to Maori are *rebuilt* from *depleted* states.

[Comment:

i. **‘could’** be some increases.....;

ii. *MFish’s intention is to ‘allow for’ only for fish reported or recorded as part of the customary take, namely, actual take, possibly to eliminate the gap MFish sees between what the Minister presently ‘allows for’ for customary against reported or recorded take;*

ii. *consider – practice of kaitiakitanga may explain low reported/recorded take?].*

36.4 **Illegal take:**

- a. MFish:
- i. sees illegal take as a *significant problem* in certain shared fisheries;
 - ii. says *specific initiatives* are underway to reduce (this problem);
 - iii. *estimates* of illegal take are allowed for before allocating the available catch.

[Comment: does not explain whether commercial fishers, or recreational fishers, or customary fishers are considered by MFish to be illegally taking or catching fish?]

36.5 **Managing customary take:**

- a. MFish says:
- i. a **record of take** is **needed**:
 - to ensure the **allowance** reflects **actual take**; and
 - so that a **response could be made** should reported customary take exceed the allowance.

[Comment: response?]

- b. **allocation** for customary take requires the *setting* of allowances within the TAC;
- c. concerning **reporting**, MFish says:
- i. *some* reporting of actual take is *incomplete*;
 - ii. MFish makes *assessments* of *likely harvest* based on criteria and available information;
 - iii. *improved reporting* is required to ensure that *information* on total take is as *complete as possible* so that the sustainability of the resource can be protected.

[Comment: no explanation of the Minister's obligation 'to provide for the input and participation' of tangata whenua on sustainability measures both under s12 FA (and regulation 14 of the customary regulations) and to have particular regard to 'kaitiakitanga'].

36.6 **Managing amateur take:**

- a. MFish says:
- i. amateur take will continue to be managed *using*:
 - bag limits;

- minimum legal sizes; and
 - gear restrictions.
- b. as information is improved *changes* may be necessary to these *settings* to ensure the total amateur take for a stock does not exceed the amateur allocation.

[Comment:

consider – having modified the present right of all New Zealanders to catch fish for food recognised, preserved and protected in the FA – by the proposal referred to in section 4.1 of the discussion paper – MFish would also use these measures – bag limits etc - to manage the public’s right to fish at the new modified and lower level?]

36.7 Managing **commercial** take:

- a. under the **QMS**, all commercial catch must be:
- i. *reported*; and
 - ii. *counted* against the Annual Catch Entitlement (ACE) held or a deemed value.
- b. MFish expresses **two concerns** in some shared fisheries:
- i. **commercial operators** have **regularly exceeded** the TACC – management changes to the deemed value regime are under discussion and have good potential to bring commercial over-catch more strictly under control;
 - ii. accountability for **fishing mortality** which could be improved by changes such as removing minimum legal sizes so all catch is counted against the commercial ‘allocation’, changes in fishing practises to avoid unwanted catch.
- c. MFish says this *could promote faster stock rebuilds* and so *reduce the severity of any cuts* to the TAC.
- d. MFish refers to:
- i. various *controls* already possible under the *current management framework*; and
 - ii. *fisheries plans* would provide a good context to evaluate further controls.

[Comment:

does not explain whether ‘current management framework’ means the purpose, principles and fisheries management tools under the FA, or MFish policy to administer the FA].

Section 5 – Setting and adjusting amateur and commercial allocations

37 *Allocating* available catch *between amateur* and *commercial* sectors difficult because of the difference in perspectives.

38 *Some amateur fishers* have said:

38.1 *Amateur fishers should have priority* over commercial fishing.

38.2 *Their key concern is past allocation decisions:*

- a. based on *catch* in *depleted stocks*;
- b. which have *significantly disadvantaged amateur* fishers.

[Comment: some?.....]

38.3 *Commercial fishers* argue:

- a. commercial fishers have *legitimate existing rights* to a proportion of the TAC;
- b. *any reallocation* to amateurs should be *fully compensated*;
- c. argue for a *proportional* approach restricting amateur and commercial fishers to *fixed shares* of the TAC.

39 *Neither – amateur or commercial – approach*, if applied rigidly, *would likely create the most value* for shared fisheries.

40 The paper says it is important that *initial allocations* in *key fisheries could be reset* because of:

40.1 *different interests* at stake;

40.2 perceptions that *current allocations* are *not reasonable*.

[Comment: ‘initial allocations in key fisheries could be reset’]

41 *Resetting* and *adjusting* shared fisheries *allocations* to commercial and amateur sectors are set out in this part.

[Comment: does not explain or compare with the present approach of “allowing for” non-commercial interests in setting or varying TACC, and “allocating” quota to commercial fishers]

42 **Baseline allocations – Section 5.1**

42.1 *Some* fishers challenge the *fairness* of *current shares* in the TAC.

[Comment: “some”? – reference to amateur fishers and the way in which the Ministry has/has not been ‘allowing for’ non-commercial interests].

42.2 Moving to a **more effective management system** for amateur and commercial fishers, the **baseline (or starting point) allocations** for important shared fisheries may need **adjustment**.

42.3 Suggested *options* for a process to determine **base line allocations** between amateur and commercial fishers:

- a. are likely to be *costly*;
- b. need to be **constrained** to a nominated list of ‘**key**’ fisheries.

42.4 For *other* shared fisheries [presumably not ‘key’ fisheries] **base line allocations** could be based on:

- a. **existing** allowances; or
- b. a set of *rules agreed* as part of a **fisheries plan**.

42.5 *Subsequent changes* to allocations would be made in accordance with the approach chosen for **ongoing adjustments** under options described in Section 5.2.

43 **Options for resetting amateur and commercial allocations in ‘key’ fisheries**

43.1 **Option A – reset allocations following an independent assessment**

- a. **Independent** panel or person to assess:
 - *historical* evidence;
 - *submissions* in a particular shared fishery to determine whether *current allocations* were *reasonable*.
- b. An *assessment*, and *potential subsequent adjustments* that took account of past management decisions on *current shares*:
 - could *increase value*;
 - may assist to generate **greater legitimacy**.

[Comment: meaning of term ‘to generate **greater legitimacy**’?]

- c. *Recommendations* would be made to the Minister on:
 - a *baseline allocation*;
 - *process* and *time frame* to achieve that.

43.2 **Option B – reset allocations following a study in the commercial and amateur sectors**

- a. A *valuation study* considering:
 - *commercial* fishing values;
 - *non-commercial* fishing values;
 - to estimate *highest value allocation* for *particular fisheries*.
- b. *Adjustments* – might be needed if a *discrepancy* between:
 - *existing* allocation; and
 - allocation *expected*,
 to *maximise value*.

43.3 Option C – reset initial allocations following a negotiation process

- a. *Agreements on allocations* would be:
 - *negotiated* by representatives of *amateur* and *commercial* sectors.
 - need to be *properly ratified*.
- b. Agreements might include:
 - *TAC*;
 - *rebuilding periods*;
 - *criteria* or *rules* for future adjustments;
 - *area management* issues.
- c. *Negotiations*
 - would: allow parties to *air* their *concerns*;
 - would: offer scope for a wide range of *trade-offs*,
 that should lead to an *increase* in the *overall value* of shared fisheries;
 - might set the stage for *future direct negotiation on adjustments*.
- d. A fall back Government position if negotiations failed - ought to involve *resetting allocations based on valuations as an option B*.

[Comment:

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

ii. notwithstanding the sustainable use purpose (including providing for the social, economic, and cultural wellbeing of New Zealanders), environmental and information principles, and the wide range of fisheries management tools in the FA, MFish:
- is expressing the view, in both Options A and B, that the FA (including judicial comment on the FA) does not contain enough detail how to manage New Zealand's fisheries according to the purpose and principles, and
- wants that re-assessed which will lead to fixed shares in the fisheries for commercial and amateur fishers respectively].

44 **Costs** – because of costs of these *processes* MFish:

44.1 says that they would need to be **restricted** to a **limited number** of fish stocks – perhaps **six**;

44.2 seeks views on the **highest priority** stocks;

44.3 says **significant changes** to **allocations** would:

- a. likely require an **adjustment period** from present allocation; and
- b. need to be *provided for* in the decisions or agreements on *allocations*.

44.4 Whichever option is chosen – establishing **baseline allocations** over **all** shared fisheries would *take time* but would **start as soon as approved** by the Government.

45 **Ongoing adjustments** – **section 5.2**

The discussion paper contemplates possible **changes** to *commercial* and *amateur allocations*.

45.1 **Clear rules** on **adjustments** under the new framework would:

- a. increase *certainty*;
- b. strengthen *incentive to conserve* stocks and for sectors to *co-operate* in management;

45.2 **Adjustments** might be **considered**:

- a. when there were *changes to the TAC*;
- b. to account for *changes in allowances for customary fishers*;
- c. when **significant** changes were detected and **relative value** between commercial and amateur sectors;

45.3 An *approved fisheries plan* – might include *rules* for *ongoing adjustment* between commercial and amateur sectors.

45.4 Options suggested by MFish for *ongoing adjustment* where there is **no**:

- a. such *Fisheries plan*;
- b. *approved set of rules* to reset allocations as described in section 5.1.

46 Option A - Proportional adjustments

46.1 **Changes** would be *spread* between *commercial* and *recreational* sectors in *proportion* to their *existing* allocations.

MFish says this would:

- a. produce *predictable outcomes*;
- b. give *increased certainty*;
- c. be relatively *inexpensive* to put in place.

46.2 **A variation** – proportional adjustments subject to *agreed rules* on apportioning *changes*.

for example: one sector – say, commercial – may *offer* not to fish a *portion of its allocation* to rebuild fishery, and an agreed rule that – say, commercial – receive *all*, or most (not just a proportion), of the corresponding *future gain*.

46.3 **Without agreed rules** proportionality may discourage one sector to:

- a. conserve; or
- b. build up the fishery, **but**

46.4 A proportional scheme may encourage parties to:

- a. *establish rules*; or
- b. *work together* to conserve.

46.5 **Proportional adjustments** - unlikely to be *acceptable* where *perceptions* that **baseline allocations** not set by *reasonable process*;

47 Option B – Value Based Adjustments

47.1 Government decisions to *adjust allocations* could be based on *estimates* of the **marginal value** of fish – value of next fish caught;

47.2 **Estimates** would take into account *commercial* and *non-commercial values*;

47.3 **Adjustment** to allocations – made where assessments indicated that **overall value** would be increased.

47.4 **Value based approach**:

- a. *might* encourage *consideration and development* of *transaction-based* (sale and purchase) allocation arrangements;

- b. to *ensure values* accurately represented;
- c. stakeholders would *probably see* sale and purchase arrangements:
 - as a *truer test* of value;
 - than [*as opposed to*] allocations based on *research estimates* of value.

48 ***Option C - Combination Model***

48.1 ***Option A - proportional adjustments*** – would be the ***default position***.

48.2 ***Valuation information*** where available would be used to *shift allocations* where the *greatest overall value* created.

49 *MFish favours **direct negotiation*** between amateur and commercial sectors over *allocation changes* in shared fisheries for which:

49.1 ***negotiations*** would need to be governed by *strict conditions*;

49.2 ***decisions*** would:

- a. be made by *representative bodies*;
- b. need *good information* on *amateur catch*;
- c. *customary sector isolated* from the effects of transactions.

MFish notes the *unlikelihood* of these conditions being met in the near future.

[*Comment: unless a value based approach, then proportional adjustments would take place*]

Section 6 – Local area management

- 50 *Existing tools* for management of particular areas:
- 50.1 *customary* fishing regulations – mataitai reserves;
- 50.2 *commercial* fishers can make *collective decisions* to combine or subdivide quota management areas (QMA);
- 50.3 *section 311 FA* – provides for areas to be *closed to commercial fishing* to favour amateur fishing – *only where* commercial fishing causes low amateur catches, and adversely affects the ability of amateurs to catch their overall *allowance*.
- 51 Management at *scales smaller than QMAs* may help *increase the value* of shared fisheries for customary and amateur fishers in inshore areas. e.g., Kaipara Harbour – a depleted high use area – given as an example for improvement by specific controls.
- 52 Three proposals for management of specific areas – one or more could be implemented.
- 53 ***Proposal A – provide for a coastal zone or areas where key species are managed with priority for non-commercial fishing***
- 53.1 *Many commercial bulk-fishing exclusion zones* for particular methods:
- already *exist* around the coast;
 - could be *extended* to cover the whole coast;
- 53.2 Such measures [*presumably a commercial bulk-fishing exclusion zone*]:
- would establish a *coastal zone of uniform width* (eg, two kilometres)
 - complete* commercial ban would *not be practical* because of commercial fishing of paua and rock lobster to close inshore areas;
 - could involve *significant dislocation* of *commercial* fishing and *redress* would need to be considered.
- 54 ***Proposal B – provide for sector-initiated proposals to protect or strengthen specific interests***
- 54.1 Would involve providing for *sector representatives* to nominate *special management areas* to *enhance the value* of particular fisheries.
- 54.2 The [*presumably this*] option could involve:
- nominating *small areas* as *single “amateur fishing havens”*:
 - closed to some or all commercial fishing methods; or
 - seasonal closure to commercial fishing; or

- b. ***multi-party agreement*** to:
 - i. *exclude bulk fishing methods* from an area (eg, bans on commercial and amateur set netting, dredging, long lining or trawling etc); or
 - ii. provide for *rotational harvesting* or *restricted seasons* for commercial or *all* fishing.
- 54.3 The discussion paper appoints to the agreement of affected commercial interests being necessary, or a process to assess proposals would be required.
- 54.4 This [*presumably both alternatives*] – would need to consider *redress* for commercial interests.
- 55 ***Proposal C– create area-based fisheries plans appropriate to shared fisheries issues***
- 55.1 ***Fisheries plans*** could be developed under *current processes [presumably the FA]* to cover ***all*** shared fisheries within nominated areas such as:

Hauraki Gulf
Bay of Islands
Kaipara Harbour.

The discussion paper refers to *significant time and commitment* from all involved including MFish, *but* would allow for:

- a. more *comprehensive management*.
- b. including *negotiated trade offs*.

that could *increase the value* obtained from the fishery.

Section 7 – Redress following adjustments in allocations or access

- 56 Applies only to the *commercial* sector.
- 57 If the **Government proposed** changes [*presumably contained in, but not necessarily restricted to the discussion paper*] to allocations or access, any **significant costs** that would be *imposed* on the *commercial* sector:
- 57.1 could be *assessed*; and
- 57.2 the need for redress considered;
- 58 Option A – leave redress with the Courts**
- 58.1 represents the status quo;
- 58.2 potential for redress for the effects of allocation decisions would remain with the Courts if and when claims were made;
- 58.3 if there was a *need for significant adjustments* involving *reallocation* from the *commercial* to the *amateur* sector:
- a. *claims for redress* would be *likely*;
- b. associated costs and antagonism.
- [*Comment: see Kahawai submissions for discussion on compensation – both commercial fishers and amateur fishers perspectives.*]
- 59 Option B – provide a specific process for consideration of redress to the commercial sector**
- 59.1 Develop a *process to consider redress* for *significant costs* faced by *commercial* fishers for particular *classes of adjustments* such as [*not exclusive*]:
- a. *transitional adjustments* associated with **resetting** *baseline allocations* for the amateur and commercial sectors;
- b. steps to *recognise the interests* of the *amateur* sector such as *setting*:
- *revised stock targets* with *higher availability* but *lower yield* of fish; or
 - the *TAC* to achieve *faster rebuild* of depleted stocks.
- c. *future adjustments to redistribute take* or *access* between amateur and commercial sectors such as:
- *value based changes* to the *TAC*; or
 - *geographical exclusions*.
- 59.2 The process under this option would:

- a. assess the *costs and benefits* of *changes in allocations*;
- b. consider *whether* the *costs* were *significant* and *warranted redress* by the Government.

This analysis would be included in *advice to decision-makers* on allocations.

59.3 *Subsequent allocations decisions* would take these issues into account.

59.4 *Decision options* might include:

- a. payment of *redress*; or
- b. leaving this to the *Courts* to *consider*.

Section 8 - Representing amateur fishers' interests

- 59.5 The discussion paper recognises **amateur fishers** having an important *role* in fisheries **management** by *feeding their views*:
- a. into the *decision making* process; and
 - b. in areas such as the *development of fisheries plans*.
- 59.6 Greater **involvement by amateur** fishers would mean:
- a. *more and better information* on their *views and objectives* would be available to decision makers;
 - b. ensure that *users* were *part of* the development of **long-term management** strategies;
 - c. help in the *creation* of **ideas and policies** *acceptable* to a *large number of* people.
- 59.7 An **obvious problem** with greater involvement by amateur fishers is that most participate:
- a. on a **voluntary** basis; and
 - b. **not** through any **professional** role;
- 59.8 **Current organisations** find it *difficult* to:
- a. generate **funding**; and
 - b. *represent all* amateur interests.
- 59.9 **Representing** the *broad public interest* in *amateur* fishing will *always be difficult*.
- 59.10 Assessing and *taking into account* such *dispersed interests* is often left to the **Government**.
- 59.11 Strengthening the *voice of amateur fishers* in the management of *shared fisheries* could be achieved through **professional representatives**:
- a. would enable *more effective input* by the amateur sector:
 - i. on the development of *fisheries plans*;
 - ii. in *discussions* with the *commercial* sector on *allocation*;
 - iii. *access* to particular areas;
 - iv. *improvement* of shares fisheries generally.
 - b. ultimately, *such staff* would be *employed* by a *fully representative* **amateur fishing organisation**.

59.12 This proposal would be *an intermediate step* towards that goal.

60 ***Proposal – creation of an amateur fishing trust***

60.1 The ***trust*** would *work with* existing fishing organisations to:

- a. provide *professional input* into fisheries management;
- b. *fund projects* in line for the purpose of the trust;
- c. *promote the development* of representative, accountable and funded structure for the amateur fishing sector.

60.2 The *Minister* would *appoint trustees*.

60.3 ***Establishment Trust Fund*** would come from the *Government* and possibly other sources.

60.4 The ***Trust Deed*** would:

- a. require *accountability* to amateur fishers;
- b. include *public reporting* obligations.

60.5 The *Trust staff* could carry out roles including:

- a. *co-ordinating* the *views* of amateur fishing organisations;
- b. *communicate* these views to MFish and the Government;
- c. *working with* amateur fishing organisations on ***fisheries plans***;
- d. helping those organisations to *become more representative, accountable and self funding*.

60.6 The discussion paper sees the *trust* as a *step on the way* to formation of a ***new national representative governance structure*** developed by the amateur sector for itself.

60.7 This *new* national representative governance structure might:

- a. *build on existing organisations*; or
- b. possibly *subsume* some; and
- c. *eventually represent all* amateur fishers.

Section 9 – Have your say

- 60.8 MFish requests view *of as many people as possible* on the **proposals for change** put forward.
- 60.9 All *submissions* will be:
- a. *considered*; and
 - b. *taken into account*,
- in **final advice** and **decision making**.
- 60.10 MFish says:
- a. it is just as important to let MFish know of **your support** for proposals;
 - b. as to say **why you think they may not work**; or
 - c. to offer *an alternative idea*.
- 60.11 Submissions are requested **before** 28 February 2007.

Proportional Allocation of Fisheries Resources in NZ

option4
August 2005

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What is Proportional Allocation?

At first glance proportional allocation of fisheries resources 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 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 the Ministry, 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 Ministry'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 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 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 at, or near, its 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 Quota Management System which has failed to meet its 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* a MFish policy division representative, Jenni McMurrin, was asked what the objectives of the Ministry were in promoting proportional allocation. She replied that it was “to cap the non-commercial catch and avoid compensation issues for the Crown.”

The Courts have also commented on Proportional Allocation

[1] IN THE COURT OF APPEAL OF NEW ZEALAND CA82/97

JUDGMENT OF THE COURT DELIVERED BY TIPPING J

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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.

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 resources occurred with the introduction of the Quota Management System (QMS).

The Quota Management System

In 1986 the Quota Management System (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 fishers 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.

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*"¹

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 Total Allowable Commercial Catch (TACC) thus unfairly inflating the commercial **share** of those fisheries.

Quotas on many inshore fish stocks soon rose alarmingly to 20-30% above the previously "scientifically determined" sustainable TACC which the commercial fishing interests had

¹ National Policy for Marine Recreational Fisheries. Ministry of Agriculture and Fisheries. June 1989

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.

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 Ministry 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 has 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 the Ministry 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 Ministry 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.

Ministry 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) and the Ministry Reference Group, the Ministry 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 Ministry personnel and is well documented through speeches and presentations that various Ministry 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 the Ministry of Fisheries in advice to Ministers in shared fisheries.

As a direct consequence of the above policy option⁴ believe the Ministry 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 may 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 the Ministry 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 the Ministry 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 Ministry 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 Fisheries 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 the Ministry 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 on Proportional Allocation

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 IPPs.

Before any further proportional allocation system is proposed the Ministry 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 years IPPs or in any future IPPs.