

**Review of Sustainability Measures and Other Management Controls for
the 2005-06 (1 October) Fishing Year**

SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS

Flatfish (FLA1)

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Contents

| | |
|--|---|
| 1. Introduction..... | 3 |
| 2. Ministry of Fisheries Proposals | 3 |
| 3. option4 Submission..... | 4 |
| 4. option4 Conclusion for FLA1 | 7 |

Appendices

| | |
|--|----|
| Proportional Allocation of Fisheries Resources in NZ | 9 |
| Consultation Process | 20 |
| Hui Outcome | 21 |

1. Introduction

The Ministry of Fisheries (MFish) has advised that they are reviewing catch limits for Flatfish (FLA1) in response to expressions of concern from coastal communities about sustainability and local depletion of stocks in various harbours on the west coast of the North Island.

An Initial Position Paper (IPP) was issued to stakeholders on 30 June 2005. MFish has invited stakeholders to provide comments on the consultation document.

Original deadline for comments was 29th July 2005. MFish then extended the deadline to 10th August.

This document comprises the submission from option4 an NGO which promotes the interests of non-commercial marine fishers in New Zealand.

2. Ministry of Fisheries Proposals

The following management measures are proposed by the Ministry of Fisheries for the FLA 1 fishery for the 2005–06 fishing year:

EITHER

Option 1

Set a TAC of 1 382 tonnes for FLA 1 and within that TAC set:

- a customary allowance of 270 tonnes;
- a recreational allowance of 270 tonnes;
- an allowance of 27 tonnes for other sources of fishing-related mortality; and a TACC of 815 tonnes.

OR

Option 2

Set a TAC of 1 307 tonnes for FLA 1 and within that TAC set:

- a customary allowance of 270 tonnes;
- a recreational allowance of 270 tonnes;
- an allowance of 27 tonnes for other sources of fishing-related mortality; and a TACC of 740 tonnes.

The current TACC is 1187 tonnes. A TAC and other allowances have not yet been set for FLA 1. Both options propose to base the TAC, TACC, and allowances on recent catches.

The proposed TAC, TACC, and allowances are set out in Table 1.

Table 1: The proposed TAC (tonnes), TACC (tonnes) and allowances (tonnes) for FLA 1 for the 2005-06 fishing year

| | Proposed TAC | Customary allowance | Recreational allowance | Other sources of fishing-related mortality | Proposed TACC |
|---|-----------------|------------------------|---------------------------|--|------------------|
| Option 1 (TAC based on recent catch) | 1 382 | 270 | 270 | 27 | 815 |
| Option 2 (TAC based on recent catch) | 1 307 | 270 | 270 | 27 | 740 |

3. option4 Submission

3.1 Proportional Allocation Decisions

The attached paper on Proportional Allocation of Fisheries Resources in NZ (Appendix One) is a major part of this submission and must be read in conjunction with it. We ask that the issues raised in the Proportional Allocation of Fisheries document along with the fishery specific issues raised in this document be addressed by the Ministry in the Final Advice Paper on which the Minister bases his decision.

3.2 Consultation

The timeframe allowed for consultation by the Ministry of Fisheries is unworkable for many non-commercial stakeholders with an interest in the fisheries being reviewed this year. The time between delivery of the IPP and submission deadline is too short for adequate consultation with the diverse range of non-commercial fishing interests who could be affected by this years proposals. option4 comments on the consultation process are included in this submission as Appendix Two.

3.3 Flatfish (FLA1)

Flounder are an easily accessible species important for the social and cultural wellbeing of many local communities. The west coast flounder stock in particular has been allowed to become depleted through excessive Total Allowable Commercial Catch (TACC) being allocated since the introduction of the QMS.

We are concerned that neither of the two proposed options may fully address community concerns about access to and sustainability of the fishery. Option two is the only option that borders on being credible because it may actually constrain commercial catch in some years. Option one is unlikely to constrain commercial catches at all.

option4 notes that initial FLA1 quotas were set at a high level based on 1983 catch levels. This was the highest catch on record. MFish now considers the existing TACC appears to be artificially high given that it has never been caught. They also note that inter-annual abundance is not as variable as previously thought. Both of these factors indicate the TACC has always been set too high.

3.4 Commercial Catch

As the TACC has never constrained commercial catch in this fishery it has always been fished intensely. This intensive fishing effort has caused serious conflict between commercial and non-commercial fishing interests.

We note a declining trend is evident in major fisheries like the Kaipara Harbour. Catch rates peaked in the 1990's and have subsequently declined. This is indicative of "localised" depletion within the harbour according to MFish. We stress "localised" as this is the biggest harbour in the Southern Hemisphere and in our opinion should be a separate QMA.

The ability of commercial fishers to deplete a harbour as large as the Kaipara to the detriment of local communities shows the absurdity of the size of the Quota Management Area (QMA) for FLA1. This fishery extends from Taranaki, around North Cape and down to Cape Runaway on the East Coast.

The combination of excess quota and massive size of the QMA has led to the development of a mobile fleet of set netters capable of depleting entire harbours until they become uneconomic to fish. Just as the fishery starts to recover the mobile commercial fleet returns and repeats the depletion. This behaviour has been to the detriment of local non-commercial interests (and sometimes local commercial set netters) and is a major cause of conflict.

We are disappointed that none of the proposals deal with the main issues in this fishery. While reducing quotas to ACTUAL current catch levels will possibly prevent the conflict from escalating, the current level of conflict will likely continue. Those who have been fighting for years to have sensible management of these fisheries will yet again feel the Ministry has failed to deal with the real issues. The QMS has failed to deliver fisheries management for flounder that meets the social and cultural expectations of many coastal communities.

3.5 Initial Allocations

Commercial fishing interests have had priority in this fishery since the introduction of the QMS. The excessive quotas issued have allowed commercial fishing interests to determine the biomass available to non-commercial fishers through the Ministry of Fisheries failing to constrain commercial catch.

The commercial sector has been able to fish vast areas within FLA1 until the area is no longer economically viable before moving to the next area. Because flounder are a

fast growing species this behaviour has been repeated annually and has caused serious conflict between commercial fishers and communities, which has been well documented.

As the Minister will be setting initial allocations for non-commercial fishers in FLA1 we ask that the points raised in proportional document (Appendix One) and the fishery specific points above be drawn to the Minister's attention in the FAP.

3.6 Maori Fishing Interests

Flounder and mullet are considered a taonga, a treasure. Both species are also important food sources for local communities in many harbour and estuarine areas. Historically, both of these species were readily available, easily caught and accessible. Sadly, with the depletion of the flounder and mullet stocks this is no longer the case. Maori can no longer meet their social and cultural needs.

At the recent hui at Whakamaharatanga Marae, Hokianga, (which MFish officials attended) Maori leaders were put in the embarrassing position of having to apologise for the small size of the flounder they had caught locally and provided to the manuhiri (visitors) for dinner.

Sonny Tau, Chairman of Te Runanga A Iwi O Ngapuhi, recently made the following comment, *"We treasure flounder and mullet as an integral part of our ability to manaāki our manuhiri"*.

Ngāpuhi's Professor Manuka Henare summarises manaākitanga in this way: *"manaāki tanga relates to the finer qualities of people, rather than just to their material possessions. It is the principle of the quality of caring, kindness, hospitality and showing respect for others. To exhibit manaākitanga is to raise ones mana (manaāki) through generosity."* Maori customary fishing must be allowed for, manaāki manuhiri is paramount.

Sonny added "Prior to the signing of the Sealords deal when Maori went fishing to feed their babies they were fishing customarily. Since the 1992 settlement 99% of the time Maori now go fishing to feed their babies, they are categorised as recreational fishers."

Over the past few months two hui have been held with Ngapuhi, other northern iwi and recreational non-commercial fishing interests. The outcome of both hui was very clear; there are insufficient fish in the water, including mullet and flounder, to meet the needs or aspirations of Maori, whether they are fishing to feed their family (currently categorised as recreational fishing) or for customary purposes. The flounder and mullet fisheries must be rebuilt so that the reasonable needs of tangata whenua can be met.

Both hui unanimously agreed that achieving "more fish in the water" is the only way to resolve their concerns. The agreement reached at Whakamaharatanga Marae in Hokianga was formalised into one document (Appendix Three) and will be the basis of

future discussions between non-commercial fishing interests and the Ministry of Fisheries.

Ongoing mismanagement of our inshore shared fisheries has come at a high social, cultural and economic cost for Maori. Tangata whenua do not want to continue to bear the brunt of MFish's inability to manage inshore fisheries.

4. option4 Conclusion for FLA1

We are concerned that neither option put forward in the Initial Position Paper (IPP) is capable of addressing community concerns regarding access to, or the sustainability of, the flounder fishery.

As the Minister is required to "allow for" non-commercial interests we recommend option two as a minimum first step. This is because option two is more likely to reduce the risk of further **escalating the conflict** in communities that have borne the brunt of the poor management of the flounder fishery to date.

Other solutions are obvious and necessary to **actually** address the real issues. We ask that these be considered in addition to option two:

- This QMA is far too large for effective management of the flounder fishery on a local scale. The QMA needs to be subdivided and sustainable quotas allocated to contentious areas so that these fisheries can rebuild and non-commercial fishing can be properly allowed for.
- Flounder are a fast growing species and set netting is the main commercial method used in harbours. An increase in the minimum set net mesh size for **commercial fishers only** would increase the biomass, and availability of flounder to non-commercial fishers fairly quickly. It would also increase commercial yield per recruit in the fishery. The capture and mortality of small flounder would be also be reduced at higher mesh sizes. A further benefit would be a significant reduction in the mortality of other juvenile fish found in harbours. The wasteful catch of undersized snapper, trevally, small dogfish and gurnard would decline markedly.
- Set netting can be an extremely wasteful method when nets are left to soak for extended periods of time in areas where sea lice are present. The current maximum soak times are far too long at 18 hours. If actual soak times prevalent in the fishery now can be reduced, then wastage to scavenging will be reduced and productivity increased.

4.1 In addition to the above option4 submits that the Minister:

1. Reduces the TACC to significantly less than 740 tonnes to allow this fishery to rebuild.
2. Sets in place a mechanism where FLA1 can be subdivided into smaller QMA's so that community concerns can be addressed.
3. Sets in place a mechanism to review the minimum mesh sizes in the FLA1 fishery.
4. Sets in place a process to review soak times to reduce unnecessary wastage.

5. Makes no changes to non-commercial bag limits, size limits or gear restrictions.
6. Sets the non-commercial allowances at a level sufficient to cover current or expected non-commercial catch.
7. Notes that non-commercial access has been adversely affected by lack of constraint on commercial catch and that the allowance is not a fixed proportional division of the FLA1 fishery.
8. Notes that recreational catch estimates and allowances are uncertain and will be subject to review when better catch information is available.



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Appendix One

Proportional Allocation of Fisheries Resources in NZ

August 2005

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 to 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 McMurran, 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*

22 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 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 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.

¹ National Policy for Marine Recreational Fisheries. Ministry of Agriculture and Fisheries. June 1989

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.

Appendix Two

Consultation Process

At the time of writing this submission most non-commercial fishers are still unaware of any proposals to alter the management of fisheries they may have an interest in. Consequently they are being denied the opportunity to have their interests considered in the future management of the fisheries being reviewed this year.

We question whether the Ministry of Fisheries really did want to fulfil their obligation to properly consult with non-commercial interests in fisheries which are of immense importance to them. Local coastal communities and other non-commercial stakeholders will be denied having input under these timeframes.

Less than 10% of non-commercial fishers are members of a fishing club or national body that represents their interests. Most clubs meet monthly or less often. Two months is the minimum time these clubs require to consult with members and refer the outcome in time for their national organisation to compile a submission.

option4 Consultation

option4's consultation process is the most robust consultation network that is available free to the Ministry, but these tight timeframes do not allow for the full use of that network. option4 has managed to get a Stop Press alert to these proposals into the latest issue of the NZ Fishing News magazine. However the magazine comes out at the end of July and the results of this element of our consultation process will not be available until mid August at the earliest. The final outcome of consultation using the option4 network will not, and could not, be known until the end of August under this timeframe for consultation.

If the Ministry insists on short consultation timeframes and wants a proper consultation process then they should be directed to use advertising in major daily papers, radio and possibly television for any future management proposals that could impact on the ability of non-commercial fishers to access a reasonable daily bag to feed their families. Otherwise, if they wish to use established consultation channels they must give those organisations sufficient time to consult widely and receive feedback.

Taking into account the issues raised above we request the Ministry consider all submissions resulting from our consultation be given due consideration when deciding the future management of these fisheries, even if they arrive after the deadlines imposed by the Ministry.

We also ask that the Ministry be directed to work with non-commercial fishers to develop consultation systems and timeframes that are workable in the future.

Appendix Three

Hui Outcome

Whakamaharatanga Hui to Discuss Non-commercial Fishing Interests and Maori Customary Management Tools 27-29 July 2005

Introduction

On the 28th July 2005 the Ministry of Fisheries were invited to Whakamaharatanga Marae to have meaningful discussion on issues raised by those attending the hui. Discussions took place on a way forward and the conception of, and attendance of, customary regional forums.

Background

Up until 1992, when Maori went fishing to feed their whanau, they were customary fishers. They took enough fish to feed the family within traditional practices. After the signing of the Sealords deal the situation changed forever. Maori are now categorised as recreational fishers when fishing for food to feed their children.

Over the last 12 years Maori have been engaged in dealing with their commercial allocation of quota. Now that the asset has been settled and is close to being finalised, Maori have finally realised that their non-commercial interests are threatened by a lack of fish in the water.

In the last year Ngapuhi have been in consultation with other non-commercial fishing interests and have come to the conclusion that they have much in common. With closer relationship building it has been established that because of the depletion of the inshore shared fisheries the main common desire is more fish in the water.

Consultation has now widened to include other iwi within the Tai Tokerau region who have also concluded they must work together with other non-commercial fishing interests to achieve the objective of more fish in the water.

Those present at the hui agreed upon the following:

Sustainability

- We all want more fish in the water.
- Customary and recreational fishing interests all agreed that there is insufficient abundance to meet the requirements of non-commercial fishers in many inshore shared fisheries.
- Greater understanding of fisheries management processes has developed through dialogue.
- There is universal agreement about the deficiency of the current management of our fisheries.
- MFish acknowledge some failure in their fisheries management.

- Non-commercial fishers raised a list of issues that they believe need to be addressed regarding initial allocations, illegal and unethical activity by commercial fishers. These issues will need to be addressed as an essential component of regaining trust that the QMS can deal fairly with both commercial and non-commercial interests.
- MFish acknowledge that without goodwill it is difficult to effectively reduce non-commercial catch.
- It was agreed that goodwill was eroded when historic conservation efforts went unaccounted for in recent fisheries management decisions and proposals.
- Public awareness and good understanding of the need for change is essential if goodwill is expected.
- MFish have acknowledged research funding is limited.

Customary

- We agreed that mataitai and taiapure were potentially excellent customary tools for managing sedentary species but were unlikely to have much effect on mobile finfish stocks.
- More resources are needed to be applied to implement and maintain customary tools.
- Kaitiakitanga is caring for the fish stocks. Iwi agree kaitiakitanga is for the benefit of all.
- Customary interests accepted the forums proposed by the Te Tari o Te Kahui Pou Hononga.
- It was agreed the customary forum must include all non-commercial fishing interests.
- Iwi still maintain their customary rights under the Settlement Deed.
- Recreational fishing interests have developed an appreciation of tikanga associated with customary fishing.
- Before the promulgation of customary management tools education has to be provided to the public.

Recreational

- Recreational fishing interests fully recognise and respect customary fishing rights.
- Ngapuhi acknowledge that a significant portion of their catch is currently categorised as recreational.
- Recreational fishers have achieved a good understanding of how the above two points interact with Ngapuhi's commercial fishing interests.
- It was agreed by recreational fishing interests that our interests, in this respect, coincide to a great extent.
- We have achieved a common understanding of each others (customary and recreational) aspirations in shared fisheries.

Reserves

- No-take marine reserves were not a solution to poor fisheries management.

Recommendations

- We recommend that non-commercial fishers work collaboratively on the response to the current Ministry Initial Position Papers. The drafts are already prepared for the response to the SNA8, FLA1, GMU1 and kahawai proposals. The proportional allocation document will form part of the submissions. This is to help achieve the objective of more fish in the water. The decisions on these fisheries will take effect on 1 October this year.
- We recommend that if there are any outstanding issues from the proportional document, the Ministry and representatives from this hui will meet to discuss those issues after 1 October.
- We recommend that we should reconvene within four weeks. This hui will be funded by the Ministry.
- We recommend discussions will be on the terms of reference, a Memorandum of Understanding and a strategic plan for the forum.