



Review of the Fisheries Act 1996 and Regulations

Submission to achieve abundance in New Zealand's inshore marine environment

For: The Ministry for Primary Industries

**From: New Zealand Sport Fishing Council and affiliated members, the
New Zealand Angling and Casting Association and LegaSea
supporters.**

14 December 2015

Phil Appleyard
President
NZ Sport Fishing Council
PO Box 207-012
Hunua 2254
secretary@nzsportfishing.org.nz

Andrew Hill
Manager Fisheries and Aquaculture Policy
Sector Policy
Ministry for Primary Industries
PO Box 2526
Wellington 6140
fisheries.review@mpi.govt.nz

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8. Purpose of the Fisheries Act 1996 –

(1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

(2) In this Act—

ensuring sustainability means—

- (a) Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
- (b) Avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment:

utilisation means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing.

Part 1. Background

- 1.1 On 19 August 2015 Nathan Guy, the Minister for Primary Industries (MPI) announced an operational review of the Quota Management System (QMS). The long-term aim is to “deliver greater net value to all sectors – commercial, recreational and customary, while enhancing the sustainability of our fisheries...This programme of work is about refreshing and improving our fisheries management system, not replacing it”.
- 1.2 A week later LegaSea, a public outreach initiative of the New Zealand Sport Fishing Council, issued a [media release supporting the proposed review](#) while highlighting the need for the review to take into account the value of recreational fishing.
- 1.3 A project is currently underway to measure the contribution that recreational fishing makes to the New Zealand economy. The outcome of this economic research is highly anticipated given the Government’s continued commitment to the goal of “doubling the value of primary sector exports by 2025. Adding value to the seafood products we export is crucial because we can’t just double the number of fish we take”, continued Mr. Guy.
- 1.4 The New Zealand Sport Fishing Council (NZSFC) is a National Sports Organisation with over 32,000 affiliated members from 57 clubs nationwide and a growing number of organisations aligning with our policies and principles.
- 1.5 This submission is a joint effort by the New Zealand Sport Fishing Council and affiliated members, the New Zealand Angling and Casting Association, other organisations and LegaSea supporters, collectively referred to as ‘the submitters’.
- 1.6 Our representatives are available to discuss this submission in more detail if required. We look forward to positive outcomes from this review and would like to be kept informed of future developments. Our contact is Dave Lockwood, secretary@nzsportfishing.org.nz.

Part 2. Introduction

- 2.1 **The origin and intent of this review is unclear.** Cabinet has been struggling with marine protection areas legislation, poor economic contributions from industrial fishing, introducing recreational fishing parks, and a general growing voice of dissatisfaction within the electorate about the poor state of the near shore marine environment and depleted inshore fisheries.
- 2.2 **New Zealand has a 30 year experience with an Individual Transferable Quota (ITQ) based Quota Management System.** Only Iceland has more experience. The word ‘review’ conjures up an image of an examination of what has and has not worked, experiences gained here and abroad, all brought together in a coherent manner to refresh and improve New Zealand’s QMS for another 30 years.
- 2.3 **In Iceland a full fisheries management review has been undertaken** and several fundamental changes were made after less than 30 years of experience. Some of the Icelandic lessons could apply here, or be adapted to suit issues peculiar to New Zealand.

- 2.4 **Transparency of information is one example where New Zealand could benefit** from the Icelandic experience. In Iceland commercial unloads are undertaken using a qualified, independent weigh master. Landings and sale price data are made public on the fisheries website that same day. There is no comparison with our system that establishes the Licenced Fish Receiver (LFR) as the gatekeeper – the weigh master and receiver of the harvested fish - when the LFR is financially enmeshed in the transaction.
- 2.5 In the near future the results of a **project to reconstruct catch from New Zealand's fisheries**, from 1950 to 2010, will be released. A draft working paper is online at the Sea Around Us project run out of the University of British Columbia. In general terms, the reconstruction assesses actual catch at almost three times the reported catch. At the heart of the report is the clear demonstration that New Zealand has not collected or reported anything close to actual catch, and lacks the ability, or will, to do so.
- 2.6 **Iceland realised the need to establish a 25-mile inshore buffer zone**, to protect and enhance the opportunities of small regional ports for commercial and non-commercial use of fisheries resources. This initiative will undoubtedly have further iterations as experience is gained. This contrasts to New Zealand where our inshore zone is sometimes described as being economically inefficient, however, the social and cultural reasons for establishing coastal zones are compelling.
- 2.7 Iceland also found that there was **no mechanism to return to the nation a dividend for the commercial exploitation of its fish stocks**. A Resource Royalty based on the unloaded price of fish has now been established and this rate is set to increase above 10% over time. Instead of giving away its marine resources, New Zealand could receive improved benefits from establishing a Resource Royalty on every kilo of fish harvested for sale.
- 2.8 **The context the submitters have taken** in responding to this review is to examine both institutional structures and the legislation supporting them, and then operational policy and regulations, and finally test the contribution flowing to New Zealand Inc – the resource owners – across three fields:
- The international reputation of New Zealand;
 - The contribution to economic growth of New Zealand made by fisheries; and
 - The community acceptance of the methods and outcomes from commercially exploiting New Zealand's fisheries.
- 2.9 In broad terms **this submission examines the efficacy of the Quota Management System** in relation to the current goals and outputs of sustainable depletion, the economy of fishing, the public's acceptance of current management, and the increasing awareness of the need to restore abundance to grow New Zealand's wealth, people's health and wellbeings by applying LegaSea's 5 Principles.
- 2.10 LegaSea's 5 Principles
1. Let's rebuild the fishery.
 2. Stop senseless waste.
 3. The public (NZ Inc) owns the fishery.
 4. Equal size limits for all.
 5. Value recreational fishing.
- www.legasea.co.nz/5principles.php

Part 3. Executive summary

3.1 Fisheries Management 101

- First, set a very strong environmental standard and stick to it.
- Second, ensure that commercial users pay a fair fee for the commercial exploitation of common property fisheries resources.

The rest is detail.

New Zealand's fisheries management system fails on both counts.

3.2 The Principles of the Fisheries Act 1996 (the Act) need bolstering by introducing a more explicit direction to the Minister than simple "have regard to". The Minister must be directed to act in a precautionary manner and this means setting lower Total Allowable Catches (TACs) when information is poor.

3.3 All stocks need a reliable index of abundance and target, and limit reference points. The TAC must be set to achieve the target within a specified time frame. The Purpose of the Act needs elevating as a primary objective when setting the target.

3.4 Sections 20 and 21 of the Act need amending to re-establish a priority for recreational interests that existed in the 1986 Act and was intended to pass into the new 1996 Act.¹

3.5 The important contribution that both commercial and non-commercial fishing makes to New Zealand's economy must be used to guide allocation decisions when applying sections 20 and 21 of the Act.

3.6 Section 308 needs amending to explicitly excuse the Crown from any compensation claims for any change in the Total Allowable Catch (TAC) or Total Allowable Commercial Catch (TACC) for a stock.

3.7 Section 311 must be amended to provide a Minister with a simple mechanism for altering Quota Management Areas (QMAs).

Part 4. Fisheries 2030

PRINCIPLES 1 & 3

4.1 **Fisheries 2030.** It might seem odd to begin with Fisheries 2030 (2030), a non-statutory strategic plan however, Fisheries 2030 is endorsed by Cabinet and used by the Ministry for Primary Industries (MPI, the Ministry) as a guiding, operations planning document. Fisheries 2030 has several fatal passages and these lie at the centre of many localised depletion disputes.

4.2 **Fisheries 2030 sets out the overarching purpose against which operational policy success is measured.** The New Zealand Sport Fishing Council (then NZBGFC) [submitted in detail on the 2030 proposals](#) when they were being developed.

¹ Cabinet paper containing advice from Solicitor General.

² Internal MPI Fisheries 2030 Planning Document

³ The opposition to the ITQ-system has not been homogenous, and there has been little agreement about what the

- 4.3 **The bias embedded in 2030** sets in train a series of MPI actions that promote private interests at the expense of the national interest. The kernel of this bias lies with the Ministry adopting the role of industry partner to increase export earnings².
- 4.4 **The assumption around maximising exports.** It is assumed that maximising export returns is the best and preferred utilisation choice. This assumption is not just misplaced – it is demonstrably wrong in many cases. In Part 8 of this submission, *The Economy of Fishing*, we explore some alternative use options and offer alternate use choices that can deliver far greater economic benefits to New Zealand and New Zealanders.
- 4.5 **The consequences of the Ministry adopting the role of partner** with commercial interests can be seen in many of the science and management delivery models being routinely adopted. Commercial interests’ scientists gather and analyse the data, then present summaries to MPI under strict confidentiality agreements and Memorandums of Understanding.
- 4.6 **The results from this “partnership” model** are becoming increasingly unreliable, and the lack of public scrutiny is proving fatal. What begins as an attempt to prevent public outcry at specific events evolves into a series of planned deceptions. An example is given in Part 7 Transparency.
- 4.7 **There is little point in only refreshing fisheries management** while Fisheries 2030 is used to justify a government and industrial union that operates, in the main, in secret, for private interests while ignoring the national interest. This may not have been the original intention of the Fisheries 2030 policy or the Quota Management System, but is where we find ourselves today.

- The Ministry’s Fisheries Directorate need to focus on developing high quality outcomes that deliver maximum national benefits that are not tied to an industrial complex bent on capturing all the benefits for itself in a quasi partnership.
- Fisheries 2030 serves as a noose around the Ministry’s neck and prevents creating value for New Zealand by methods other than commercial fishing.

Part 5. The QMS needs a major review

PRINCIPLE 3

- 5.1 **After 30 years the Quota Management System (QMS) is in need of a major review.** A once over lightly ‘refreshing’ of the Fisheries Act will not achieve the step change NZ fisheries need to achieve a truly abundant state delivering maximum value to New Zealand.
- 5.2 **The QMS sits upon foundations of deceit and incoherence**, and the recent increases in dysfunction will only be exacerbated over time. Localised depletion, habitat destruction, low economic performance, captured science, and a strengthening monopoly of major

² Internal MPI Fisheries 2030 Planning Document

quota shareholders will only increase and compound additional political costs while the QMS is parked in a silo and considered untouchable. This is to the detriment of the nation and our people.

5.3 No secrets. As the public learns more about New Zealand's fisheries management and politics there will be an increasing demand on politicians to respond in the public interest. It is inevitable. The costs of maintaining and protecting the monopoly of quota shareholders will land squarely on Government's desk, and Government relies on high quality advice, and most importantly honesty from officials.

5.4 The QMS is not all it is cracked up to be. Government needs to know that they have been persuaded, without evidence, that the QMS is a world leading management system, that New Zealand's fish stocks are thriving, and the best fisheries policy is to divert the fisheries sector of MPI to work as partners with industrial fishing interests, to collaborate and increase exports. There are alternative ways to use fewer resources and deliver greater value for NZ Inc.

5.5 Amendments to Fisheries Act required. This submission includes proposed amendments to Part 2 of the Fisheries Act. If these amendments are applied they will go some way towards limiting the environmental and economic damage resulting from the simplistic policy advice that is currently given to Cabinet.

5.6 Transitioning to a high value economy. The NZSFC is hosting an International Fisheries Symposium in 2016, its purpose is to explore a pathway to transition from our low value, high volume commodity trading commercial industry cocooned within the QMS, to a high value, low volume use model for near shore fisheries.

5.7 Getting more value from our inshore stocks. The Quota Management System has delivered some economic benefits from exploiting large volume, deepwater stocks, but the same system burns value in the near shore stocks. Examples of the pitifully low economy generated by bulk harvesting and commercially fishing the near shore can be found later in this submission.

5.8 Settling Maori claims. In our view, improving the QMS is potentially hampered by using Individual Transferable Quota (ITQ) class shares to settle Maori commercial fishing claims. The overarching requirement to not change policy settings that will devalue the 1992 Deed of Settlement is incoherent. Any reduction in share price can be interpreted as a devaluation, and these occur for many unrelated, or non fishing reasons. For example, a change in the Reserve Bank's interest rate often drives a change in Forex cross rates, and these impact export prices for fish, and these prices are driving the share price, most often downwards.

5.9 Detrimental dependence on government subsidies. The difficulty of transforming the Settlement assets into high quality income streams since 1992 is well known, and is unlikely to improve beyond the margin while the industry shelters in a monopoly, with a growing dependence on government subsidies.

5.10 The Maori component should be seen as a vehicle for change, not an impediment. The challenge is to find a future that is durable for Maori interests and transforms the low quality, low performing assets received as settlements into an improved and durable form.

- ITQ systems are difficult to change and NZ is not alone. Iceland is reforming its ITQ system after a major review, reversing some parts.³ These reforms include recovering private harvesting rights and imposing a resource rental regime.
- While Iceland's reforms have been challenged they are already delivering benefits to Iceland's coastal communities and the State.

Part 6. Purpose and Principles of the Fisheries Act 1996

PRINCIPLE 1

6.1 Fisheries Act 1996. Section 8. Purpose. We accept the desire to leave the Purpose of the Fisheries Act 1996 (the Act) as currently written.

s8(1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

s8(2) In this Act—

Ensuring sustainability means—

(a) Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and

(b) Avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment:

Utilisation means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing."

6.2 The Act's Principles need a refresh if they are to serve the intended purpose of conditioning the wide, discretionary powers exercised by Ministers and their officials. Part 2 of the Act contains all the 'religious bits' (Doug Kidd pers comm) and need to be explicitly applied to make the balance of the Act work in a cohesive manner.

6.3 Fisheries Act 1996 Section 9. Environmental Principles

"All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following environmental principles..."

6.3.1 The requirement to "take into account" these Principles is weak and reads down their critical function of providing an environmental test for utilisation proposals. Replacing "take into account" with "have particular regard to" would bolster this section, as evidenced by the following Court of Appeal judgment:

"The Minister's decisions in 2004 and 2005 were unlawful to the extent that the Minister (a) failed to have particular regard to ss7 and 8 of the Hauraki Gulf Marine Park Act 2000

³ The opposition to the ITQ-system has not been homogenous, and there has been little agreement about what the alternative should be. In a poll among the general public, published in *Ægir*, the journal of the Icelandic Fisheries Association (1999), only 7,1% of the respondents wanted to keep the present system unchanged. However, only 17,3% wanted to abolish the quota system altogether. **One third (33,3%) of the respondents favoured some kind of regional allocation or "community quota"**. Almost one-third (29,2%) was favourably disposed to either resource rentals or quota-auction, while 10,5% wanted a special tax on quota transactions. Eythorsson 2003

*when fixing the Total Allowable Commercial Catch for Quota Management Area KAH1...”
[Court of Appeal, 20084]*

s9(a) “Associated or dependent species should be maintained above a level that ensures their long-term viability....”

6.3.2 Section 9(a) attempts to modify the Purpose by suggesting associated or dependent species should be maintained above a level that ensures their long-term viability. The Act defines long-term viability as maintaining a low risk of stock collapse and the stock always retains the ability to rise to higher levels.

6.3.3 This implies that for every species or stock encountered by commercial or recreational fishing interests sufficient knowledge will be available to assess its long-term viability. Inshore trawl catch typically comprises 20 to 40 species, many of which are benthic dwellers. This catch mix and the reluctance by users to fund research means s.9 is ignored and never applied.

s9(b) “Biological diversity of the aquatic environment should be maintained....”

6.3.4 Section 9(b) requires biological diversity be maintained. Failing to maintain diversity means diversity has declined. There are no shades of grey in respect of maintaining biodiversity to some spatial scale; either diversity is present or it isn't. Providing all species are found somewhere presumably biodiversity is being maintained. Again, this implies a knowledge basket far beyond anything ever contemplated in NZ fisheries management. To have this provision sit in the Act posing as a biological diversity test is a myth and it needs amending to allow diversity aspirations to be tested and delivered, or deleted.

s9(c) “Habitat of particular significance for fisheries management should be protected.”

6.3.5 Section 9(c) requires protection for habitats of particular significance. This means of known importance. This is another critical qualifying provision that is simply ignored and there is no routine test.

6.4 All sections in Part 2 of the Act clearly act in concert to establish the overarching constraints on utilisation; the Purpose and Principles are set to direct decision makers when exercising powers. Simply acting as if the Principles do not exist, because to comply would be difficult, permits highly damaging utilisation practices to run for decades without ever having to meet a test based on Part 2 of the Act encompassing the s9 Environmental Principles.

6.5 Fisheries Act 1996 Section 10. Information Principles. Again, ‘take into account’ is insufficient and permits the Principles to be ignored.

“All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following information principles....”

⁴ Sanford Limited, Sealord Group Limited And Pelagic And Tuna New Zealand Limited V The New Zealand Recreational Fishing Council Inc, And New Zealand Big Game Fishing Council Inc And Ors Ca 163/07 [11 June 2008]

s10(a) "Decisions should be based on the best available information...."

6.5.1 Section 10(a) directs decision makers to use the **best available information**, and that is defined as the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

6.5.2 In reality, the best available information is confined to that science information arising from stock assessment, or some other catch analysis. Sourcing and including other sources of information is eschewed on a vague assumption that they will be more unreliable than 'science' information.

6.5.3 **The best information must include anecdotal information**, as long time series of human observation can often be more informative than a description of commercial CPUE.

s10(b) "Decision makers should consider any uncertainty in the information available in any case..."

6.5.4 **Section 10(b) fails to guide** or indicate how a decision maker is expected to respond to varying degrees of uncertainty. For example, even the most studied stocks retain high levels of uncertainty around basic assumptions being imported into stock assessments, and infrequently, or unstudied stocks often lack even basic biological knowledge of recruitment, natural mortality and spawning locations etc.

s10(c) "Decision makers should be cautious when information is uncertain, unreliable, or inadequate..."

6.5.5 Section 10(c) is self explanatory and expresses common sense.

s10(d) "The absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of this Act."

6.5.6 Section 10(d) is often cited by decision makers to justify their management decisions.

6.6 When read together the Information Principles clearly attempt to define the discretion of decision makers when information is uncertain, unreliable, or inadequate. This implies a risk based approach to decision making.

6.7 The lower the quality of information the higher the risk and the more cautious decision makers are instructed to act. It is not so much a matter of being cautious, but more a need to act in a precautionary manner.

6.8 The need to act in a precautionary manner must be explicitly stated.

6.9 The level of utilisation of stocks must be conditioned by all available information, not just outputs from desktop modelling exercises and science working group processes.

6.10 Applying a precautionary approach would likely mean only small Total Allowable Catches (TACs) being available for low information stocks, and Harvest Strategy Standard (HSS) targets for high information stocks. This is a matter of applying a discount to TACs relative to the risk.

- **Given 30 years of experience it is clear that section 10 of the Act needs to be more explicit**, providing clear instructions that the decision maker must act in a precautionary manner when information is of low quality. Generally this will mean lower TACs for low information stocks.

Part 7. Transparency

PRINCIPLES 2 & 3

7.1 Commercial exploitation of a public resource has to occur in a fully transparent way if the activity is to have public acceptance. As an example, in Iceland every time a fishing vessel lands its catch the unloading is supervised by an authorised, independent weigh master and the quantities and price received for the catch is posted online the same day.

7.2 In New Zealand we have a culture of keeping fisheries data confidential, based on an outdated notion of commercial confidentiality. Namely, that fishing competitors must not be able to access others' catch data, and in many respects this data is treated as the intellectual property of the fisher⁵. This culture of confidentiality lacks any basis now that the days of open access have passed and there is far more technology applied to commercial fishing.

7.3 The claims of commercial sensitivity are bogus. Commercial catch and effort data is routinely collected and held in Fishserve⁶, accessible to only selected parties. Information relating to where fishing effort is being deployed, and where those catches are being taken needs to be readily available to everyone. There is nothing secret about fishing and there is increasing public demand and interest in understanding how these national resources are being exploited for private profits.

7.4 The public and its agencies are losing access to knowledge on the commercial use of their fishery resources. Over the last 20 years commercial interests have steadily ramped up the influence of their in-house science team. They successfully tender for

⁵ MPI to Graeme Carter OIA request, 2015

The relevant point with discarding is that when self-reporting, most commercial operators are acting in accordance with legislation and are unlikely to be prosecuted. In fact we at MPI continue to encourage this reporting as it allows fisheries managers to build a better picture of the reported take of the commercial sector. Accordingly, if operators are acting legally they are protected by rules of privacy and also confidentiality regarding their "Intellectual Property" such as the detail of catch composition, locations and effort. It is for these reason we refuse many OIA requests for commercially sensitive data regarding legitimate commercial operators. This also includes our refusal to name the vessel and companies to avoid litigation risk for companies acting in accordance with the law. With this in mind MPI has provided you with the following response to your specific questions.

⁶ FishServe is the trading name of a privately owned company called Commercial Fisheries Services (CFS). CFS is a wholly owned subsidiary of Seafood New Zealand. FishServe provides administrative services to commercial fishers.

research and fisheries monitoring contracts. Data is collected and analysed with only summary results being made publicly available. The lack of independent oversight provides opportunities to tailor these results to reflect a particular or pre-determined outcome.

7.5 The Declaration on Open and Transparent Government, which was approved by Cabinet on 8 August 2011, states that government data and information should be open, readily available, well managed, reasonably priced and re-usable unless there are necessary reasons for its protection. Personal and classified information will remain protected. Government data and information should also be trusted and authoritative.

7.6 Active public data supply is becoming business as usual for most central government departments with open data programmes. The 32 central government departments are increasingly seeking and responding to user and stakeholder demand for open data in accordance with the Declaration on Open and Transparent Government. Data should be released in re-usable, machine-readable format, preferably in their original state. The current 'Guidelines for the Release of Information from Fisheries Databases' were developed in the 1990s and last reviewed in 2005. The world, our Government and public policy have moved on, but not so in fisheries.

7.7 Data from statutory catch and effort forms needs to be publicly available, information collected by recreational fishing surveys and reporting on customary fisheries needs to be made available as long as it complies with Privacy Act provisions.

7.8 The definition of sensitive data in the Guidelines needs reviewing so that event level data can be provided to all researchers with a confidentiality agreement with MPI, for both independently funded projects and MPI funded projects.

Case study

7.9 The most recent example is the withholding of SNX (undersized snapper) data requested by the Minister following the 2013 decision for SNA1, on the North Island's northeast coast. A trial with cameras, observers, and self reporting (using the code SNX) was to be overseen by MPI and the results analysed to learn what level of sub-legal snapper was taken, by vessel and location, and time.

7.10 Three separate data sets would have been generated. First would be the observer reports with matching self reported data, these are detailed and would be the most reliable. Second would be the camera verified self reported records, and finally there would be a set of self reported records.

7.11 Despite repeated requests since July 2014 no data has been released, only a summary in August 2015.

7.12 There is no need to keep any of this data confidential. Vessel names are easily changed to numbers to make them anonymous, and numbers of undersized fish in the catch and locations are hardly intellectual property.

7.13 So what did the analysis and summary data released describe? In August 2015 MPI and commercial interests reported very low levels of sub-legal snapper catch – an average of 3.3% by weight across all the fleet and all methods. <http://www.mpi.govt.nz/news-and-resources/media-releases/new-information-on-important-fishery/>

- 7.14** The submitters are concerned about the results because the summary estimated SNX at a level that was about a third of all previous sampling programmes.
- 7.15** At the meeting of the Snapper 1 Strategy Group in August NZSFC formally requested two simple metrics to better understand what is going on. The first was the number of times zero SNX catch was reported by method in the data used. A high proportion of zeros would lower the average significantly. The second was the number of times the SNX catch was reported as 15% of legal snapper catch. This was the trigger for the voluntary move-on rule and would provide a rough guide to the effectiveness of this measure. SNX reporting and the move-on rule were both measures being considered in the Draft SNA1 Strategic Plan. Both measures underpinned a package agreed by the Minister and commercial interests as part of the 2013 Snapper 1 decision.
- 7.16** After three further meetings of the Snapper 1 Strategy Group without answers the NZSFC lodged an Official Information Act (OIA) request in October to obtain a copy of the data extract used by MPI, to do their own analysis. After all, it is publically owned data, generated and reported for the Minister. What could be the problem?
- 7.17** When the OIA was received MPI contacted commercial interests to let them know a request had been made for the Ministry-held data set. NZSFC and commercial interests had a short meeting where it was revealed there are indeed shortcomings in the data and some fishers were deliberately under reporting, but their records remain in the data set and are used to generate the average catch of undersize snapper published in the public summary.
- 7.18** The NZSFC was also asked by commercial interests to withdraw the OIA request so a collaborative solution could be found.
- 7.19** MPI has extended the OIA timeframe to allow for more consultation with the industry, apparently due to confidentiality agreements made between MPI and commercial interests.
- 7.20** Commercial interest have offered to provide their own, more detailed analysis of the SNX data at a Northern Inshore Working Group meeting in December. The submitters will want to ensure that the fundamental principles of MPIs Research and Science Information Standard (April 2011) are met. These are Peer review, Integrity, Objectivity and Reliability to “ensure that the quality of scientific methods, results and conclusions meet the accepted standards and best practices of the scientific community.”⁷
- 7.21** This withholding of data and subsequent revelations about the veracity of the data is compounded by the blatantly political video produced and released on Sanford website two minutes after MPI put the summary data online.
- 7.22** Rather than judge on the facts above, we will leave it to the reader of this submission to decide if there were conflicts of interest, collusion, orchestration and if the Minister and public of New Zealand have been misled to achieve a managed outcome that best suits a particular sector, and what the primary motivation might be. This against a background where stakeholders, bureaucrats and politicians are calling for more transparency and a collaborative approach to fisheries management.

⁷ MPI Research and Science Information Standard April 2011

7.23 Our concern is that the first time this new model of electronic monitoring and reporting of SNX discards is tested we come up against long delays, new confidentially agreements and lack of peer review prior to releasing the data. This hardly bodes well for a new era of transparency in commercial fishing or mainstreaming the culture of open Government.

7.24 We face a daunting future with the spectre of extractive industries gathering their own data and self-selecting what will be reported to Government and how. Treating the public as a body with no rights to know how their resource is being used is to treat the public with contempt. Section 10 of the Fisheries Act is the provision for providing full transparency in all aspects of New Zealand's fisheries.

- The Fisheries Act must have a new provision in section 10 that specifies all data used to manage fisheries is publicly available in machine readable form. This would comply with whole of government aspirations to conform to common standards across departments and leverage greater value from government data and national resources.

Part 8. The Economy of Fishing

PRINCIPLE 5

8.1 The economic assumptions around fishing need to be tested. Fisheries 2030 establishes MPI as an industry partner to increase exports of fish. Fisheries 2030 makes the untested assumption that this will provide the greatest economic benefit to New Zealand from the fisheries resources under NZ management. Testing such a broad assumption is overdue.

8.2 The economic failure of the QMS is self evident. Growth is by merger and acquisition, monopoly rents replacing value adding, and low profitability. The inability of an industry, operating in a time of unprecedented demand for natural seafood and protected by a monopoly, to generate high value returns and contribute to the NZ economy beyond token returns is evidence of systemic barriers to value creation by industrial fishing.⁸

8.3 The low export values derived from New Zealand's commercial catch is embarrassing. Those values are sourced from the Government's export statistics. Large volumes of inshore fish are being exported for rock bottom prices.⁹

8.4 There is a lack of innovation and analysis of our fisheries performance. There is also an absence of any competing views on generating value for New Zealand from anything other than commodity trading of bulk harvested fisheries.

⁸ Marine Policy 63 (2016) 180–183

⁹ NZ Export Statistics - Trevally \$2.50; Kahawai \$1.50; Tarakihi \$2.00; Albacore \$2.80; Jack Mackerel \$1.50; Sea Perch \$2.40; Snapper \$9.00; Skipjack Tuna \$1.36 <http://www.seafoodnewzealand.org.nz/our-industry/export-information/export-reports/>

8.5 In the inshore fisheries there are no more fish available – the future will hold lower catches as ocean stressors increase with climate change and cumulative effects of declining water quality alter productivity.

8.6 We need to challenge lost productivity. The economic sense of continuing to protect an industry for another 30 years when the last 30 has produced so little, must be challenged by alternate use and value propositions.

8.7 The repeated examples of forced labour, dumping, and offshore processing confirm that value to NZ from the industrial use of our inshore fisheries is inconsequential.

8.8 There is another raft of institutional dysfunction and embarrassment on the way when the Catch Reconstruction research results are revealed in early 2016. New Zealand will once again attract international criticism for weak governance.

8.9 Considerations around generating high economic yield from inshore fisheries desperately need revisiting and analysing. The two case studies of inshore utilisation the submitters are pursuing are:

- i. The industrial catching and selling for export; and
- ii. The sport, recreational and tourism use.

The first covers low stocks with minimal non-commercial catch, the second relies on increased abundance to produce fishing experiences to attract offshore enthusiasts.

8.10 The economics of inshore commercial fishing rely on taking from the ocean the maximum quantity of a species that can be justified under the Fisheries Act. Prosecute the stock to the lowest allowable biomass. At this level it is thought a maximum weight of fish may be taken each year for export, thereby maximising the economic opportunity from the resource. The harvest is well in excess of what the domestic market can consume and our inshore species are exported to world markets where they compete with deepwater species and cheap product from Asian aquaculture.

8.11 The economics of sport and recreational fishing is that stocks are maintained at much higher levels and sports fishermen support a huge recreational fishing industry. This sport and recreational fishery generates at least 10 times the economic value for each kilo of fish killed – with very large foreign exchange components.

Case study

8.12 The sport fishery for marlin went from an award winning tourism generator in 1960 to barely viable in the mid-1980s. The removal of foreign licenced tuna longliners and the New Zealandisation of the fishery with non-commercial status for marlin has seen catch rates in the East Northland charter boat fishery maintained at a reasonable level. NZSFC records show an increase from a few hundred striped marlin per year to an average of 1530 over the last 20 years (Holdsworth and Saul 2013).

8.13 The real economic worth of the resources cannot be realised when stocks are managed at currently low levels. The costs of low stock sizes are often described in ecological terms, but the huge economic cost is mostly ignored.

8.14 The contrasting economic models are simple enough. The economics of commercial fishing rely on keeping fish populations very low, and the opportunity cost of this strategy

is passed to NZ Inc. The economy of sport/recreational fishing relies on maintaining high abundance (high catchability) and thereby generating many times the commercial value for each fish caught non-commercially.

8.15 A preliminary analysis of the economy of recreational fishing project notes that the GST paid on recreational fishing activities alone is greater than the total export receipts if those recreationally caught fish, crayfish and shellfish were caught commercially and sold at last year's export rates, per species. In other words, if the recreational catch was taken commercially and exported the consolidated fund would suffer a large loss.

- One essential outcome of this review is to understand and adopt stock management strategies that offer the highest economic value to be generated. We must not continue to suffer the high opportunity costs imposed on NZ Inc by low abundance harvest strategies.
- The only change needed is to adopt a high biomass strategy. The Minister has unfettered power under s 13 to set the stock size anywhere between the lowest point (B_{MSY}) and the highest point, the unfished biomass.

Part 9. Fisheries research

PRINCIPLE 1

9.1 The purpose of the Fisheries Act is to provide for utilisation while ensuring sustainability. Not just short-term sustainability, but for the reasonably foreseeable needs of future generations.

9.2 Sustainability can be defined in a number of ways. In the Act the main reference is maintaining the stock biomass at or above a level that can produce the maximum sustainable yield (B_{MSY}). The Harvest Strategy Standard makes an allowance for uncertainty and risk when recommending biomass targets. This Standard aligns more closely to the public's aspiration for sustainable abundance of their coastal fisheries.

9.3 For sustainability to be ensured and the QMS to function effectively an investment is required to collect long time series of high quality catch, abundance and biological data. Stock assessment methods and modelling will continue to improve, but reliable inputs of real data are essential and these cannot be reconstructed at a later date.

9.4 The tension in the current cost recovery model must be resolved. The tension exists between the short-term business horizons of commercial fishers and long-term fisheries management objectives. The fishing industry sees research spending as a cost that needs to be managed and they must have a say in what research is undertaken and how often.

9.5 Attributing research levies to the specific stock being studied means even **basic monitoring is not affordable for many inshore fisheries.**

9.6 The fishing industry has succeeded in capping research spending. While the number of stocks has increased 3.5 times the current MPI fisheries research budget is about 45% of what it was in real terms in the early 1990s (Wage –corrected to 1992 purchasing power). The situation is particularly dire for data collection and stock assessments of

inshore stocks because a substantial portion of the research budget is now allocated to deepwater fisheries, recreational harvest estimates, the effects of fishing on the environment, biodiversity research and international fisheries research.

9.7 The move from Resource Rentals to cost recovery has been a national disaster in respect of the quantity and quality of marine fisheries research. New Zealand is following the well trodden path of industry determining where, when, and what research will occur each year and directing research dollars to where industrial fishing might benefit. The return to Resource Rentals and Crown funded research is unavoidable if NZ is going to capture anything resembling a decent return on the exploitation of our fisheries. Industrial captains already decry such a change as imposing another tax, and this is entirely predictable, however, the case for securing a financial return to NZ Inc from commercial use of fisheries is unarguable.

9.8 CPUE is not a reliable abundance index. It has sometimes been argued in the scientific literature that well-calibrated fishery catch per unit effort (CPUE) data is an adequate measure of relative stock abundance, and that useful stock assessments can be based solely on simple models tuned to such data. While this may be true for some fisheries, there are many case studies demonstrating the assumption that commercial CPUE is directly proportional to resource abundance is incorrect and that this has led to large biases in results. Also, that such bias is often detected too late, and only when additional sources of data are obtained and included in the assessment.

9.9 MPI fisheries science has stated that they will not proceed with stock assessment projects if a reliable index of abundance for a particular stock is NOT available. Stock assessments are needed to determine stock reference points; without them managers cannot relate the amount currently being taken by fishing to any other state.

9.10 The use of reference points is considered by the Food and Agriculture Organization of the United Nations (FAO) Code of Conduct for Responsible Fishing to be fundamental to effective fisheries management. They feature explicitly in Article 6, which sets out the general principles of the Code:

“States and subregional or regional fisheries management organizations or arrangements should, inter alia, determine: (a) stock-specific target reference points, and at the same time, the action to be taken if they are exceeded; (b) stock-specific limit reference points, and at the same time, the action to be taken if they are exceeded; when a limit reference point is approached, measures should be taken to ensure that it will not be exceeded.”

9.11 Fundamental duty of science. The need to develop precautionary approaches, target and limit reference points, harvest control rules, management procedures simulation models, and related methods has added considerably to the duties of stock assessment scientists and, in many cases, has strained the limits of available data.

9.12 In order to implement a precautionary approach, fishery scientists must deliver to fishery managers a description of the existing uncertainty and an assessment of the risks created by overfishing and other impacts on the stock. It is not adequate to simply report the best estimate and describe its uncertainty.

9.13 Any stock assessment analysis must be broadened to include evaluation of the possible consequences of alternative harvest strategies given the amount of uncertainty about current and projected stock status.

- 9.14 Only a handful of New Zealand inshore finfish stocks have a quantitative stock assessment** with estimates of B_{MSY} . For most northern stocks commercial trawl catch per unit of effort (CPUE) is the only indicator of abundance available. For the SNA 1 stock assessment longline CPUE is available and the trawl CPUE is not considered reliable and is not used.
- 9.15 There are trawl surveys conducted by NIWA in the South Island (East Coast and West Coast), which have proved useful** when assessing stock status and management options for a range of species. This type of fisheries independent data collection should continue and MPI are currently considering adding additional shallow water trawl survey strata to better monitor snapper abundance in SNA7.
- 9.16 Fishery independent data** is also collected from large scale tagging surveys. MPI is considering spending \$7 to \$9 million on a SNA1 tagging survey. For 15 years commercial fishers have opposed this research based on the cost. This has left a large gap in the time series and the current proposal is to undertake a multi-year release and recapture period to try and fill the knowledge gap.
- 9.17 The current cost recovery model makes it very hard to get large inshore research projects funded**, and the significant Crown contribution to the SNA1 tagging project means other important monitoring and research work will be put on hold.
- 9.18 An ongoing fisheries independent survey in FMA1 and East Coast-Hawke Bay is needed.** Our preference would be for a full time longline survey in FMA1 and a standardised trawl survey in the East Coast-Hawke Bay.

- At the minimum, at least one reliable abundance index should be available for each stock.
- Regular fishery-independent surveys offer the best choice for achieving a reliable index if designed well with respect to location, timing, sampling gear, and other statistical survey design considerations.
- The revised cost recovery model must allow for important ongoing monitoring projects to continue even when occasional large scale projects are undertaken.
- There needs to be a defined pooled fund for inshore fisheries research that can be applied to low information stocks.
- The legislation needs to be changed to allow for the creation or acquisition of research quota (as part of the TAC) that allows for the capture and sale of fish by a commercial enterprise that is fishing as part of an approved fisheries survey.

Without a new approach to long-term sustainable research funding the QMS will stagnate and inshore fisheries research projects will be picked on their potential to provide commercial fishers with an increased TACC or benefit rather than following the purpose of the Act and restoring sustainable abundance.

Part 10. Setting the Total Allowable Catch (TAC)

PRINCIPLE 1

- 10.1 Setting the TAC is the primary sustainability tool** available in the Fisheries Act 1996. A very high standard is set when setting TACs as every species sustainability must be *ensured*.
"Fisheries are to be utilised, but sustainability is to be ensured¹⁰." [Supreme Court, 2009]
- 10.2** Sections 13, 13(2A), 14, 14A, 14B, and 14C contain the provisions for setting a TAC. Clearly this is no trivial matter and several options are provided, acknowledging the complexity and necessity of setting the primary sustainability tool.
- 10.3** One difficulty arises from an implicit goal of reducing the stock size to a level that will produce the Maximum Sustainable Yield. The TAC is set to deplete a stock to this level, when assessed above the B_{MSY} level, or permit a stock to increase when it is below B_{MSY} .
- 10.4 The NZSFC has an active policy for Fisheries Management Area 1 (FMA1)** that reaches for more ecosystem based considerations and cautions of the inevitable surprises from single species stock assessments. This policy is found [here](#).
- 10.5** While theoretically attractive to economists, such concepts rely heavily on the amount of reliable information available to fisheries scientists. **Even for so called, "information rich" inshore stocks such as snapper uncertainty remains high.**
- 10.6** In Snapper 1 (SNA1) commercial interests claim the assessment is flawed, in SNA2 the assessment was rejected because fishers changed their behaviour when the deemed value was raised so CPUE is now considered unreliable. In SNA7 there has been a huge spike in trawl catch rates probably from just one year class, which the assessment model just cannot fit, and in SNA8 there has been no stock assessment for 15 years.
- 10.7 Stock assessments require large amounts of high quality information** to enable the biomass size to be reliably estimated across time. In some areas commercial fishers have effectively lobbied for reduced research data collection, simply as a cost cutting measure. In small or low value fisheries the current cost recovery model means most research options are just not affordable.
- 10.8 Generating the volume of information** required to effectively manage stocks and run the QMS as envisioned is not simply challenging, it **is impossible**. This places the concept of moving from input to output controls (in the QMS) in the theoretical basket – it fits nicely with economist's views on market economics but quickly sinks once launched at sea.
- 10.9** The quality and amount of **fisheries data is highly variable** across the 635 stocks in the QMS. To overcome what would be a fatal gap in most assessments, setting a TAC under s. 13 by determining B_{MSY} , a range of alternative assessment processes are offered.
- 10.10 The sections guiding TAC setting needs to be more direct**, clarifying that decision makers need to achieve the Purpose of the Act.

¹⁰ New Zealand Recreational Fishing Council Inc And Anor V Sanford Limited And Ors Sc 40/2008

- 10.11** After all, all decisions taken under the Act must conform with the Purpose¹¹ and the Purpose addresses matters beyond a single stock TAC.
- 10.12** The Amendment creating s. 13(2A) drew a detailed submission on weakening the TAC setting process and is [HERE](#). Improvements would come from binding the TAC setting, Principles, and Purpose in a more forthright manner and we make recommendations.
- 10.13** The risks and ability of the Minister to **set catch limits in the national interest** are severely curtailed by weak principles. Section 10 was intended to allow a Minister to be conservative when information was limited or unreliable; now we find it is used to compel maximum utilisation even though information is poor.
- 10.14** Applying s.13(2A) to set TACs using simulations drew criticism from non-commercial interests, including the NZSFC, when the amendment was before the Select Committee in 2008. The weakening of the sustainability standard was obvious.
- 10.15** **The obvious depletion in CRA2** now serves as a perfect example of what goes wrong with weak standards and using patently unreliable information masquerading as best science when setting catch levels.
- 10.16** CRA2 is also a good case study of what results from **devolving science functions to industry controlled bodies**. Wildly optimistic stock assessments, disbelieved by long-term observers and fisheries users, are used to depress the stock to levels well below the threshold for complete closure. There is a demonstrable need to amend section 13 to ensure that conforming with the Purpose, including giving proper weighting to the needs of future generations, takes precedence over the immediate needs and wants of today's users.

Part 11. Allocation

PRINCIPLES 1 - 3

- 11.1** **Allocation decisions** are often considered to be about setting allowances and the Total Allowable Commercial Catch (TACC). We submit that most of the decisions made affect or alter allocations between and within sectors. Setting the TAC will affect allocations, area closures, method restrictions, bag limits and size limits. All of these factors affect what can be taken, where and how.
- 11.2** While MPI and some Ministers have expressed a desire to have a **more automated or formulaic approach to allocation** the submitters do not agree. There is always a need to balance the expectations of fishers and the public, uncertainty in the available information, the effect on associated and dependent species, trends in utilisation, and value.
- 11.3** **We submit that allocation decisions must remain with the Minister** as part of his/her responsibility for this public resource.

¹¹ SC 40/2008 [2009] NZSC 54 para.59

11.4 **MPI has been identified as the single most significant outdoor recreation natural resource manager in New Zealand**, including DoC, if participation rates are the basis for analysis. (Greenaway 2013¹²):

As the single most significant recreation resource manager in New Zealand, the Ministry needs to have a more clear understanding of the benefits that will accrue to society via the allocation of access to marine fishing. These benefits will be greater than the current contingent valuation methods indicate, which are largely confined to concepts of individual benefit.

A paradigm shift may be required whereby the Ministry better recognises its role as administrator of the nation's single most important outdoor recreation resource (all other outdoor recreation resources with higher levels of participation are managed by diverse agencies).

This will require a more considered resource allocation regime, which is likely to include a review of the proportional allocation model....The regime will need to maximise benefit at the national level, and must therefore take into account the full spectrum of values obtained from recreational marine fishing.

11.5 **Changing the culture of fishing is a primary challenge** to restoring abundance and diversity in our marine environment. This requires MPI to completely re-evaluate their role in fisheries management and redirect resources:

- a. Decisions would be improved by taking a broader ecosystem-wide approach to stock assessments and TACs. There is no real account taken of the need to allow species to provide the essential ecosystem services, and the impacts a TAC has on associated species. There is usually some bland statement in advice papers about lack of information and an assumption that the obligation is dealt with.
- b. In support of providing maximum opportunity to commercial interests MPI tend to ignore or become very creative in considering statutory duty. This is done in the full knowledge that reviewing decisions through the Courts is expensive and a huge barrier for disaffected parties.

11.6 The current government endorses **Fisheries 2030**, where allocation and use is to maximise benefits for the State. Below the goal are multiple, often conflicting, objectives stripping the 2030 document of rigour. It will be found on examination in NZ, as it has been in every other similar jurisdiction where economic value has been compared, that sport or recreational fishing generates a far larger economy and value from inshore resources. What is obvious for billfish - that each fish killed generates a huge multiple in value compared to a commercially caught fish - applies to other near shore species as well.

11.7 Eventually it has to be recognised that **MPI advice, which guides allocation decision making, is reducing the State's return not improving it**. The depletion of inshore stocks and the ongoing protection of the allocations made for commercial fishing is in effect a huge public subsidy to private interests. The far greater value available from public fishing is denied.

¹² Report on the "Review of sustainability and other management controls for snapper 1 (SNA 1)". R. Greenaway. August 2013.

11.8 Also, the perception that all sectors' interests have to be met is adopting a poor indicator for good stewardship; **it is the States interests that need to be provided for**, and this includes future generations' needs. Current users are just current users, we won't be users for long; our grandchildren will soon take that role. We don't need to promote current users interests over our obligations for stewardship of the ecosystem and enabling future generations to make their decisions.

11.9 **Making allocation decisions in regional fisheries poses additional problems.** In the case of Skipjack tuna, in 2014, the NZSFC opposed the proposed excessive TACCs for commercial fishers as it legitimises catch far in excess of any catch history ever achieved:

There is no effective fisheries management for yellowfin or bigeye tuna under the New Zealand QMS with allocations far in excess of any catch. An excessive allocation for skipjack would just be repeating the mistakes of the past and would not be defensible if challenged by other Western and Central Pacific Fisheries Commission members.
[<http://nzsportfishing.org.nz/userfiles/file/Skipjack-NZSFC-submission-Jun14.pdf>]

Part 12. Compensation for ITQ shareholders

PRINCIPLE 3

12.1 **1986. The Fisheries Act 1983 is amended** to provide for the Quota Management System (QMS). The QMS has an explicit provision for compensation. The Crown takes all the risk when varying Individual Transferable Quota (ITQ) by buying and selling ITQ on the open market. By this method the Crown would manage catch limits to sustainable levels, and be able to allocate or allow catches to whomever it chose. The method for reducing catch was to simply enter the market and purchase the desired tonnage of ITQ. To release catch rights it would offer a tender process to the market, with the highest bidder receiving the ITQ.

12.2 Concurrently, a system of **Resource Rentals** was attached to ITQ to achieved two outcomes:

- Fund the management of fisheries; and
- Deliver a return to New Zealand from the exploitation of a valuable natural resource by capturing super profits.

12.3 Resource Rentals were a fixed charge levied per tonne of ITQ owned, payable annually. **Initially the Resource Rental was set at a token level** to ensure acceptance and to let the new system bed in, but the clearly stated intention was to quickly ratchet these to a level that fully achieved the objectives. The commercial industry continually opposed these rentals and sought ways to rid themselves of this impost.

12.4 **1989.** The Government was faced with the first large reductions in Total Allowable Commercial Catches (TACCs). Treasury baulked at paying large sums to purchase the ITQ for non-existent fish and a compromise solution was sought.

12.5 **1990. An amendment by Supplementary Order Paper** to the Fisheries Act 1986 was enacted to resolve the impasse. This compromise solution was formulated largely in secret between three commercial organisations and officials, without public consultation,

and left few records. Quota entitlements would now change automatically with changes in TACC, and became known as a proportional system. The effect was to transfer the risk of varying TACCs from the Crown (who previously had to enter the market and purchase quota) to the ITQ holders themselves, whose entitlement would rise and fall with changes to the TACC, ***without giving rise to any compensation liability to the Crown.***

*“Under the proposal we have moved to proportionate quotas: the total allowable catch is set and the individual holders of those transferable quotas have their quota varied according to the proportion they hold. **No compensation is involved**, and, equally, people do not have to purchase any increase.” [Emphasis added] (Hansard, vol 506, p 1149)*

- 12.6 In return, **the Crown agreed to abolish Resource Rentals** and drastically modify the tender process as it applied to TACC changes. The TACC would belong to the ITQ owners, largely unencumbered, although remaining subject to variation.
- 12.7 **1992.** The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- 12.8 **1996. A new Fisheries Act** formalises the new regime by issuing shares in every TACC. These new ITQ class shares produce an Annual Catch Entitlement (ACE) each year; the amount of fish each shareholder can catch now results from a combination of the number of shares owned and the magnitude of the TACC.
- 12.9 **The costs associated with changes to the TACC are internalised to the shareholders.** There is enacted a provision (s.308) in the new Fisheries Act that explicitly indemnifies the Crown for any liability should a TACC be reduced for sustainability purposes, and lists 46 sections of the Act that can be altered without giving rise to claims against the Crown. Sections 20 and 21 (TACC setting) are not included in the list.
- 12.10 It is clear the ITQ shareholders have never given up on the possibility of restoring Crown liability for variations in TACCs, and have used every opportunity to advance the claim. So far the Crown has avoided paying any compensation for TACC reductions, and ITQ shareholders have not sought any.
- 12.11 **2000. Soundings.** There have been several attempts by Fisheries Ministries to avoid the potential liability of allowing for greater recreational catches. Various versions of the same theme have shown up in Soundings, Shared Fisheries, Fisheries 2030 Vision etc. They depend on the principle of allocating a total allowable recreational catch, a quota or fixed proportion of the TAC, and only enabling increases by buying commercial quota on a willing buyer/willing seller basis.
- 12.12 **2005 – 09.** Kahawai Legal Challenge – High Court, Court of Appeal and Supreme Court. New Zealand Recreational Fishing Council Inc And Anor V Sanford Limited And Ors Sc 40/2008 [28 May 2009].
- 12.13 **2008-10. Shared Fisheries** sought to re-establish Crown liability for compensation to ITQ shareholders for TACC reductions.
- 12.14 **2011.** Once a TACC is set, this generates an annual catch entitlement (ACE). The amount of ACE generated for each shareholder is in proportion to the number of shares

held. The ACE catching right may be bought or sold, but ACE (by and large) expires at the end of the fishing year.

- 12.15 Any increase in the **Allowance for recreational interests** (not proportional to any change for the commercial sector) does not amount to any "taking" of rights. This is because the nature of commercial fishing rights under the QMS are expressly subject to variation, including variation as may favour the recreational or other fishing sector. If there is a reduction in a TACC, and that reduction is otherwise lawfully made, this does not affect any "property right" as the commercial fishers claim. In other words it is the nature of the commercial fishers property rights that catch rights are subject to variation.
- 12.16 **The threat of compensation claims** by the commercial fishing industry has been highly effective in maintaining the Ministry's "catch-history" policy over the years. The Ministry's advice to the Minister for the *kahawai* decisions made numerous references to the risks of varying the TACC on a non-catch-history basis, and how this may be subject to compensation claims by commercial fishers against the Crown. This advice drew the comment from the Chief Justice that the matter of compensation was being successfully employed 'interorum¹³', with the Solicitor General replying, "I won't say yes and I won't say no".
- 12.17 By leaving the door ajar to potential compensation claims, the current drafting of **section 308 Fisheries Act 1996 is highly unsatisfactory**. So long as the Crown is not expressly protected by adding ss 20, 21 to s308(2)(c), and the Courts have not ruled on the issue, commercial fishers can continue to threaten claims of compensation against the Crown.
- 12.18 It is clear from the record that once the income stream from commercial quotas (Resource Rentals) have been forgone, so has the ability to pay compensation. Either the Crown receives rentals and pays compensation, as in the original institutional arrangements, or this is exchanged for a rent-free proportional right that varies at Ministerial discretion without compensation or cost.
- 12.19 **The underlying commercial right is a number of ITQ class shares owned**. The proposition that increases in ACE should be free, but reductions compensated, is completely unprincipled and unsupported in the Fisheries Act. TACC reductions (for any purpose) do not reduce the property of shareholders.
- 12.20 The majority decision in *kahawai* case confirmed that the when setting a TAC the Minister must have a view to how any TAC decisions would affect allocation at ss20, 21 of the Fisheries Act 1996. However, now that a Review is occurring similar weight should also be given to the minority opinion of the Supreme Court by the Chief Justice.

Part 13. Self reporting of recreational harvest

PRINCIPLE 1

- 13.1 There have been a number of individuals and organisations promoting the value of **electronic self reporting of recreational catch** in New Zealand. Presumably the main

¹³ Is a legal threat, usually one given in hope of compelling someone to act.

reason for this is to get harvest information given the use of the phrase “you can’t manage what you don’t measure”.

13.2 NZSFC representatives were involved with all the working group review meetings of the 2000 and 2001 Telephone Dairy Survey harvest estimates and subsequent meetings which led to the development of the **Large Scale Multi Species (LSMS) surveys** of 2011-12. The LSMS included:

- A well designed year-long phone survey of people recruited onto a National Panel using door to door surveys of 30,000 households;
- A NIWA aerial overflight survey in FMA 1 on random days for a year with interviewers counting and measuring fish accurately at the ramps; and
- A survey for 2 years of almost all boat access points in the western BOP to measure rock lobster, scallop, kahawai and gurnard recreational harvest.

13.3 The results were worked up as **independent harvest estimates**, before being compared.

13.4 The **important element of all these surveys** is they had a defined sample frame and within that a person or day could be selected at random. With a random sample from a known population there are straightforward methods to determine the sample size needed to give a good estimate, and once the sample is collected scaling up to a total harvest with confidence intervals. The harvest estimates for the main fish species were remarkably similar and the coefficient of variation was low (c.v.s of 6% to 9%).¹⁴

13.5 **These surveys are expensive but provide very plausible harvest estimates** for the main species. NZSFC is concerned that electronic self reporting will deliver poorer harvest estimates and divert resources and funding from high quality research.

13.6 One of the **problems using self reporting** is you do not know how many fishers there are (sample frame) and you get a bias in those who report (non-random). Usually it is the keen fishers who report and they fish more often and are probably more successful. Even if all fishers were registered (=licenced) there would be no way to scale up biased data from those who reported, and from those who did not report.

13.7 With the best will in the world the submitters cannot imagine more than **50% of trips would be reported**. There could be some analysis on fishing effort and catch rate or location with what could be a huge messy database, but the harvest estimates would be worse than the 2000 and 2001 telephone diary estimates, which were largely unusable. In 2000 the snapper harvest estimate in SNA1 was 6,200 tonnes and in 2001 it was 6,700 tonnes, over double the previous and subsequent estimates.¹⁵

13.8 In part, the problems with those surveys was **avid or experienced fishers were over represented in the survey**, they used recall of past fishing events which was not accurate, and some thought that reporting the catch by other people on the same fishing trip was helpful.

13.9 The National Panel Survey in 2011-12 has largely resolved these issues.

¹⁴ Edwards and Hartill 2013. Calibration between offsite and onsite amateur harvest estimates.

¹⁵ Ministry for Primary Industries (2015). Fisheries Assessment Plenary Report, May 2015

- 13.10 **Examples of good quality self reporting in fisheries in New Zealand are hard to find.** To date, reporting by customary fishers against customary permits is generally poor despite years of trying. Commercial fishers reporting logbook data under the terms of the Adaptive Management Programmes was very poor, in most cases. Probably the best example is the reporting of marlin by recreational fishers. Individual capture weight, date caught, vessel name and angler name are recorded by NZSFC clubs. These records have been published in club year books, in some cases since 1925.
- 13.11 Before any resources are committed to a self reporting system for recreational fishers the submitters would like to see more detail around any proposal, because at present there are **few explanations of how such a system may work.** As part of this work the submitters would expect to see case studies of where self reporting systems have been successfully deployed in overseas jurisdictions.
- 13.12 **The 2011-12 NPS delivered the best estimates of recreational harvest in New Zealand.** The submitters do not support scarce resources being used on the development and promotion of a large scale self reporting programme in the hope that it will provide something better than we have at present.

Part 14. Spatial collision

PRINCIPLES 3, 5

- 14.1 The inshore waters are experiencing repeated collisions between the laissez faire Total Allowable Commercial Catches (TACCs) set for entire Fisheries Management Areas, and the public interest in abundant fisheries. It is often characterised as spatial conflict between commercial and recreational fishers, but this is unhelpful. The conflict arises from **the incoherent management strategies embodied in the Quota Management System** and the non-commercial fishing interests of recreational users.
- 14.2 It is a collision of doctrine, theory and of democracy. **New Zealand's fisheries resources are the property of the State** and administered by the government of the day, in the interests of the country, conditioned by UNCLOS and other international treaties that NZ has ratified.
- 14.3 The reluctance of the Ministry for Primary Industries (MPI) and the Minister to **reduce commercial catch** unless commercial interests volunteer reductions or there is evidence from a quantitative assessment is a fatal weakness and driver of depletion for inshore stocks. There are only a handful of quantitative stock assessments for inshore finfish stocks and a national assessment for bluenose.
- 14.4 **This collision is imposing a high cost on the amenity value of inshore recreational fishing.**
- 14.5 **The continued decline in inshore abundance,** despite all that science says, is fueling an ever increasing air of dissatisfaction in the state of the fish stocks by environmental groups, the public, recreational fishers, Councils, DOC, MfE and others. The knives are out.
- 14.6 While the specific expression of dissatisfaction may vary, the cause is surprisingly common: **the decline in inshore marine ecosystem health.**

- 14.7 MPI is leading all user groups to ruin by defending so staunchly the excessive commercial TACCs. Even those TACCs that are never caught, cannot be caught, are permitted to exist and prop up commercial effort that should rightly be retired from the inshore fishery. The 15 trawlers hammering gurnard in Hawke Bay in the first week of December is a ready example.
- 14.8 The benefits of **the QMS** may be realised in the deepwater fisheries, we're not sure yet about that, but it is demonstrably **a failure in the inshore mixed fishery**, multi-user environment.
- 14.9 **The need to maintain very productive inshore environments** that use the upwelling nutrients to drive productivity is well known and accepted, except perhaps by those responsible for policy settings in NZ inshore fisheries.
- 14.10 The demands upon the inshore ecosystems are so large and disruptive that **the time has come for a period of catch reductions and constraints**, to enable system-wide rehabilitation to occur.
- 14.11 Despite years of advocacy from a range of groups and a growing need, MPI seem to be in a quandary as to how to apply precautionary fisheries related constraints. This lack of active management has left many people bewildered and in despair. It is no wonder so many people aspire to have Marine Protected Areas, spatial plans and marine reserves; this growing public support is driven by the absence of a viable alternative.
- 14.12 Currently MPI is seen as a bureaucracy paid from the public purse but serving industrial fishing interests, particularly quota (ITQ) shareholders.**
- 14.13 If there is any way to impose rebuilding strategies in the inshore fisheries within existing structures, we have yet to see it. Our submissions on Part 2 of the Act are applicable here. The sections in the Act being used to drive maximum extraction policy settings need to be amended to direct the Minister to be far **more conservative when setting the TAC and TACC for a fish stock**. Conforming with the Purpose of the Act requires a risk averse approach and certainly not maximum harvest strategies imposed on single inshore stocks.
- 14.14 If legislative amendments are not applied, the application of the Quota Management System to near shore fisheries must be suspended and **a new governance system, better attuned to ecosystem based management and the public's expectations and wellbeings, must be imposed.**
- 14.15 **The idea of a near shore zone with limited commercial fishing is not new.** It is established in Iceland and parts of USA. The removal of all netting to protect Maui's dolphin in areas along the North Island west coast has seen fish abundance increase dramatically in a few years.
- 14.16 Recreational parks push commercial effort into someone else's front yard. This domino effect of serial depletion is ignored by those promoting measures for political gain or to achieve an outcome for an isolated area.

- A comprehensive near shore coastal zone where method and gear restrictions give relief from the remorseless exploitation of the QMS seems unavoidable.
- Imposing method and gear restrictions in the near shore zone would help in providing the level of protection needed for juvenile fish on the east coast of the North Island, particularly in vulnerable areas of Northland, the Bay of Plenty and Hawke Bay.
- Method and gear restrictions would also help to reduce the exploitation rate on fish stocks important to the public.

Part 15. 28N Rights

PRINCIPLES 3, 5

- 15.1 These **28N rights** are non-transferable rights which originate under sections 28N and 28OE of the Fisheries Act 1983. They were created at the introduction of the Quota Management System in 1986. They are currently administered under s23 of the Fisheries Act 1996¹⁶.
- 15.2 The processes that gave rise to Individual Transferable Quota (ITQ) can be summarised as follows:
- a. The Minister declares a species to be a quota species¹⁷
 - b. The Minister declares a TAC for the quota stock¹⁸
 - c. The Ministers declares the years that catch history will generate PMITQ¹⁹
 - d. The Minister declares a minimum threshold for receiving PMITQ²⁰
 - e. The Minister declares the GMTQ for a fish stock²¹
- 15.3 The **preferential allocation rights** that have become known as 28N²² rights resulted from efforts to reduce the sum of the Provisional Maximum Individual Transferable Quotas (PMITQs) to no more than the Total Allowable Catch (TAC). When the PMITQ had to be reduced proportionately to achieve the TAC the administrative reductions were treated as preferential rights to any future allocations.
- 15.4 Commercial fishers who chose not to sell, and to have their rights reduced without compensation, became entitled to have those reduced PMITQ rights restored in future as perpetual, transferrable quota 28N rights; if the Total Allowable Catch (TAC) in that stock was increased.
- 15.5 Changes to the TAC/Total Allowable Commercial Catch (TACC) increase under the 1983 Fisheries Act were achieved by the Crown buying and selling ITQ. The Crown took all the income from generating new ITQ and paid all the costs of reductions. The embedded market in this arrangement had only **a single buyer and a single seller**.

¹⁶ www.option4.co.nz/Fisheries_Mgmt/28nrighths.htm

¹⁷ Fisheries Act 1983 s28B(1)

¹⁸ Fisheries Act 1983 s28C(1)

¹⁹ Fisheries Act 1983 s28C(3) – Provisional Maximum Individual Transferable Quota

²⁰ Fisheries Act 1983 s28E

²¹ Fisheries Act 1983 s28F – Guaranteed Minimum Individual Transferable Quota

²² Fisheries Act 1983 s28N

- 15.6 28N rights were specified in kilograms, as was the ITQ finally allocated in 1986. When a TAC, or currently a TACC, is increased any outstanding 28N rights are honoured first until all those rights are discharged, before other quota holders receive any increase.
- 15.7 However, changes to these rights resulting from the new Fisheries Act 1996 brought fundamental changes to how ITQs were described and the markets facilitating trade. **Now quota is expressed as shares** in a fishstock, with 100,000,000 issued for every quota stock.
- 15.8 Honouring 28N rights is effected by redistributing quota shares amongst incumbent shareholders²³. **Liability has been moved from the Crown to current shareholders**, most of which are unaware how s23 operates.
- 15.9 Originally around 5,000t of 28N rights were created across all stocks. As of February 2010, 2,686 tonnes remained unredeemed, and 54 owners held 484 tonnes of 28N rights in SNA1²⁴.
- 15.10 The history of the SNA1 TAC/TACC can be summarised:
- a. The intention was that a TACC set at 4710t in 1986 would rebuild the depleted snapper fishery and within a few years any administrative cuts would be redeemed via the s28N mechanism. These were all fixed tonnages of SNA1 ITQ.
 - b. Unpredicted by anyone, the Quota Appeal Authority (QAA) immediately began a generous round of granting ITQ to appellants, and continued until the TAC had blown out to 6010t by 1991, an increase of 27%.
 - c. The catch savings made by those that took the catch reductions (both compensated and 28N rights) were immediately lost and no stock rebuilding occurred, in fact the stock continued to be under severe stress. The catch reduction failed in its purpose of rebuilding the stock, and it was only by fulfilling this purpose that preferential allocation treatment could be offered in the form of 28N rights.
 - d. In 1992 the TACC was reduced by 1,106t (18%), by way of uncompensated proportional ITQ reductions, to remove the excess granted by the QAA. Even at this level stocks failed to rebuild, and a further 438t (9%) reduction to the TACC was made in 1997, and finally stocks began to recover.
 - e. Following the initial reduction of PMITQ by 44%, that included either compensation or promises of future ITQ, reductions equivalent to one third of the original 4710t TACC were made without any compensation mechanism.
 - f. Reducing the PMITQ in 1986 did not lead to any stock rebuilding that would enable a TAC increase. It is simply outside the scope of natural justice that those who suffered the costs of the additional reduced ITQ that finally rebuilt the stock should be excluded from sharing in the benefits.

²³ Fisheries Act 1996 s 23

²⁴ In October 2004 60 owners held 533.735 t of 28N rights in SNA1. In January 2010 54 owners held 484.535 t of 28N rights in SNA1. MFish 27 January 2010.

- 15.11 **It is arguable if 28N rights holders are owed anything** for the PMITQ reduction. There was no actual property lost to the Crown during the setting of the TACC in 1986; the Crown honoured the GMITQ sent to complying fishermen. The Crown did not actually take anything as the sum of the PMITQs was never able to be converted into ITQ if in doing so the sum exceeded the TAC.
- 15.12 Even if accepted that the Crown has a liability to those 28N rights holders on the basis of a legislated promise made as the Quota Management System was being created, are these rights holders owed private ITQ class shares in a fish stock that did not exist at the time 28N rights were granted?
- 15.13 These 30 year-old **28N rights to initial TACC increases seem fraudulent** in 2015 in a number of ways:
- a. When the voluntary buy back scheme failed to achieve the necessary reductions in PMITQ some means of administering further reductions was urgently needed. The offer of 28N rights to those who then had their PMITQ administratively reduced was a sweetener offered to get the new QMS up and running. There was not time for further negotiations or refinement.
 - b. The TAC reductions that gave rise to 28N rights have not delivered a rebuild of Snapper 1 or 8. Now the 28N rights sit in legislation as a right to fish that have never existed. The expectation was the TAC reductions, achieved by both compensated and administrative means, would lead to a rapid rebuild enabling subsequent increases. This never eventuated.
 - c. With hindsight we can see there was no 'potential yield' that would provide the TACC increase needed to convert the 28N rights to ITQ. The creation of 28N rights was a mistake made with erroneous assumptions about the snapper stock. Such mistakes are easily made when setting catch limits with little other than catch history serving as a guide.
 - d. The QMS was never going to be perfect when established in 1986. It represented a novel and untried management doctrine attempting to meld the economist's views of economic efficiency with the biological constraints of a largely unknown ecosystem. Mistakes made at the inception, and there have been several, have needed to be rectified over the following years, and the failure of 28N rights regime needs to be corrected now and removed from the system.
 - e. Most of the existing quota shares in SNA1 have been bought by current owners at full market price. If there was to be a TACC increase, it seems grossly unfair that these owners would lose shares (market share) on the basis of a past administrative mistake by the Crown. This seems to impose an unjustifiable cost onto most current shareholders.

15.14 From the Court of Appeal decision written by Tipping J in CA83/97 –

Section 28N Rights

565.6 tonnes of quota remain subject to these rights. All the current holders represent people or companies who were originally holders of quota in 1986. We were informed that holders of these rights are entitled on any future increase in the total amount of quota to their share of that increase at no cost. Apparently, in order to qualify the increase does not have to be an increase above the base amount which applied immediately after the holders had suffered their reduction; it can be any subsequent increase. If this is indeed the effect of the legislation, the position may justify some examination. Those bearing the present sacrifice on a decrease in quota will not necessarily recoup all that sacrifice on any subsequent increase.

We were not taken into the full details of this issue and we simply make this comment from what we were advised at the bar.

15.15 The liability for the 28N rights must be returned to the Crown, and until the matter is resolved no TACC increase should occur.

Remove 28N rights from the QMS

- The existing 28N rights should be paid out at the compensation rate used in the original buy back scheme, discounted for current value, and cancelled. It is the only way to clear the future from past mistakes and place all current shareholders on an equal footing.
- Furthermore this prevents further erosion of the Deed of Settlement value as occurred in Bluenose.

Part 16. Co-management

16.1 **Co-management can take many forms** and generally means some iteration of community or stakeholder groups managing a resource in a co-operative way. User participation and/or stakeholder involvement are usually considered as desirable qualities of management institutions, even if there is a need for balancing stakeholder interests and the public interest (Mikalsen and Jentoft 2001).

16.2 In New Zealand there has been a single example where users and government bureaucracy engage jointly to manage marine resources, and that is in the Rock Lobster fishery. **The National Rock Lobster Management Group acts as an advisory body** to the Minister and comprises commercial, recreational, and customary interests. This example is widely promoted in NZ as an indigenous co-management model that could be adopted by several other fisheries.

- 16.3 **There are examples in Canada where co-management has gained traction** and delivered outcomes accepted by the users. The indigenous people in British Columbia have attempted to close herring fisheries, as they believe the stocks will not support the Federal TACs being set. Some call it asserting 'conservation rights' (Pinkerton) and some call it 'stewardship rights', but the effect is the same - to sacrifice the immediate benefits of fishing to them, for the long-term sustainable benefits for all.
- 16.4 **An essential element of co-management is the capacity and willingness to sacrifice immediate benefits** for themselves for long-term benefits for all. Note, this is not simply serving self interest as described by E Ostrom; true conservation or stewardship follows from setting self interest aside and seeking improved ecological states and improved catches for all.
- 16.5 **New Zealand is not able to embrace contemporary co-management practices** as we have selected institutional arrangements that rely on people prosecuting their self interest. This has led to fractious encounters where self interests collide with anger and accusations and demands for higher intervention.
- 16.6 **The fatal feature of New Zealand fisheries** that prevent co-management is the existence of the Quota Management System that creates what TACC shareholders see as strong private rights.
- 16.7 **Private and public rights seldom, if ever, coalesce into co-management.** The incentives, short-term and long-term costs and benefits, are incompatible and private rights holders assume that foregoing immediate catch will not be worth the cost in the long run. If the existing mix of rights is the main ingredient preventing the development of co-management, what changes are possible?
- 16.8 The doctrine of the Total Allowable Commercial Catch (TACC) shareholders is to make private and public rights the same, by creating shares in the Total Allowable Catch (TAC). In this regard there would be equitable costs and benefits according to the interest in the TAC. This view is supported by market economists, some within MPI, and the commercial fishing industry. This is simple nonsense and anyone wanting to promote this view must turn their attention to all the stocks within the inshore ecosystem and understand what consequences would flow from such a policy setting.
- 16.9 We would need to see case studies on a dozen stocks in Quota Management Area 1 for a start, and once we examine John Dory, Gurnard, Trevally, Flatfish, Grey Mullet, Jack Mackerel, Kahawai and more it soon becomes obvious that **dividing up shares in a proportional manner when a TAC changes will deliver ridiculous results** (10 gram increments to the bag limit).
- 16.10 **Co-management will evolve in New Zealand** when the inshore coastal zone suspends the QMS from the near shore and is replaced by a more sensitive management regime. This regime would, by necessity, cause mana whenua, and other public and private groups to meet and determine the environmental limits. Before this can happen two changes are required:
- a. Firstly, to have mana whenua exercise kaitiakitanga [stewardship], and not western capitalist, highest rate of return models that inevitably collide with traditional obligations as kaitiaki (guardians).

- b. Second is to firmly establish, by statute, the indemnification of the Crown for any changes in TAC, TACC, or Allowances, irrespective of purpose or need. In other words, give full effect, finally, to the intention of the change from fixed tonnage ITQs to TACC shares - that no resource royalty was being collected in exchange for no payments (when a TACC increased) or compensation (when a TACC decreased) without qualification. It is obvious that without an income stream a payment stream is simply out of the question and completely illogical.

16.11 **To create coastal zones the Fisheries Act needs amending** to simplify changes to Quota Management Areas. There is nothing implicit or explicit that areas available to different types of fishing methods or seasons cannot be altered from time to time. It is obvious that changes will become necessary, from time to time, as a very accurate tool to solve some inshore problems.

16.12 **This is not simply a matter for discrete Marine Protected Areas;** there are times when a Quota Management Area needs to be redefined. The presupposition that Individual Transferable Quota (ITQ) shareholders have a defined spatial right that cannot be changed without compensation is spurious. If government consider there is a liability then extinguish it now with an amendment.

16.13 **Co-management may mature in New Zealand** but its pursuit now is defeated by the perceived spatial rights of ITQ shareholders and the blatant commercial manner which Maori fisheries management lobbyists adopt without question.