



# NZ ROCK LOBSTER INDUSTRY COUNCIL

*Ka whakapai te kai o te moana*

PRIVATE BAG 24-901 WELLINGTON 6142  
64 4 385 4005 PHONE  
64 4 385 2727 FAX  
[lobster@seafood.co.nz](mailto:lobster@seafood.co.nz)

---

Inshore Fisheries Management  
Ministry for Primary Industries  
PO Box 2526  
Wellington 6011  
[FMsubmissions@mpi.govt.nz](mailto:FMsubmissions@mpi.govt.nz)

## REVIEW OF SUSTAINABILITY AND OTHER MANAGEMENT CONTROLS FOR SNAPPER - SNA 1

### INTRODUCTION

1. The NZ Rock Lobster Industry Council (NZ RLIC) welcomes the opportunity to comment on the Ministry for Primary Industries' *Review of sustainability and other management controls for snapper (SNA 1)*.
2. Like SNA 1, rock lobster stocks are highly valued "shared fisheries". The biomass of both species has been rebuilt successfully following introduction into the Quota Management System (QMS) and effective management of commercial harvest. The NZ RLIC therefore has a strong interest in the SNA 1 sustainability review. We see the final advice and decisions arising from this review as a test of the Government's commitment to ensuring the sustainability of shared stocks, effectively managing non-commercial removals, and supporting the integrity of the QMS.
3. In summary, the main points that we make in this submission are as follows.
  - i. The NZ RLIC strongly endorses MPI's preferred "proportional allocation" approach and submits that, in the absence of compelling arguments to the contrary, this is the *only* approach that is consistent with the purpose of the Fisheries Act and the economic and sustainability objectives of the QMS;
  - ii. The NZ RLIC considers that proportional allocation "on paper" is meaningless unless management measures are established to constrain recreational catch within the recreational allowance. We recommend:

- the implementation of meaningful bag limit reductions and/or other management controls to constrain recreational catch within the relevant (proportional) allowance under all TAC options; and
  - that urgent priority be given to comprehensive reporting of recreational and customary catch in all shared fisheries.
- iii. The NZ RLIC does not support the unilateral adoption of new stock management targets by science working groups in the absence of an agreed management approach that has been developed with the engagement of rights owners.

### **ENDORSEMENT OF PROPORTIONAL ALLOCATION**

4. The NZ RLIC strongly supports MPI's stated preference to adopt a proportional approach to allocation of the TAC between the recreational and commercial sectors. We appreciate that the Fisheries Act provides the Minister with wide discretion when allocating the TAC for a stock and that – on the face of it – proportional allocation is just one of the approaches to allocation open to the Minister.
5. However, the NZ RLIC submits that the Fisheries Act itself contains a *strong implicit preference* for proportional allocation because compared to non-proportional approaches, proportional allocation is:
- a) more consistent with the economic objectives of the QMS; and
  - b) more consistent with the requirement to ensure sustainability.
6. For these reasons we conclude that in the absence of any **compelling** counter-argument in favour of preferential allocation, proportional allocation should be the norm. The rationale for our conclusion is explored further in the following paragraphs.

### **THE FISHERIES ACT AND THE QMS**

7. The purpose of the Fisheries Act is to provide for the utilisation of fisheries resources while ensuring sustainability. The QMS is the main tool in the Act for achieving this purpose.
8. Although the QMS is an economic tool, it is designed to achieve a range of economic and environmental fisheries management objectives. It utilises a system of perpetually held and

tradable property rights and associated incentives to encourage productive efficiency and investment and to increase certainty. According to the Courts<sup>1</sup>:

*...the object behind this scheme seems clearly enough to create a stable regime under which stocks of commercial fish species are conserved and under which commercial fishermen have stable and recognised rights to fish on a basis on which they can plan and make the considerable financial commitments which this industry requires. **It is not a scheme set up to be dismantled or tinkered with by a Minister as a matter of whim.***

9. The foundation stones of the QMS are provided by quota shares (ITQ), which the Courts have consistently recognised as valuable property rights that may be adjusted only with due consideration:<sup>2</sup>

*While quota are undoubtedly a species of property and a valuable one at that, the rights inherent in that property are not absolute. They are subject to the provisions or the legislation establishing them. That legislation contains the capacity for quota to be reduced. If such reduction is otherwise lawfully made, the fact that quota are a “property right” to use the appellant’s expression, cannot save them from reduction. That would be to deny an incident integral to the property concerned.*

10. When the Minister is exercising his discretion to apportion a TAC between the commercial and non-commercial sectors under section 21 of the Act, this discretion must be exercised in accordance with the purpose of the Act and the QMS generally.
11. While there is a range of ways in which discretion may be lawfully exercised, in the absence of any compelling reasons to the contrary, the Minister should always prefer alternatives that promote rather than undermine the scheme of the Act.

#### **Proportional allocation is consistent with economic objectives of the QMS**

12. The current MPI consultation process is not the first time that the allocation of a snapper stock has proven to be controversial. In 1996, independent analysis was undertaken by NZIER economist John Yeabsley as part of the 1997 snapper litigation. The analysis – which is equally relevant today – concludes that a proportional allocation regime is more consistent with the economic objectives of the QMS than a non-proportional allocation regime. Yeabsley’s advice is summarised in the Box below<sup>3</sup>.

---

<sup>1</sup> McGechan J in *Sanford & Ors v Moyle* (CP3/89, 10 November 1989, HC Wellington). Emphasis added.

<sup>2</sup> *New Zealand Fishing Industry Association (Inc) v Ministry of Fisheries* (unreported, CA82/97, 22 July 1997, Wellington).

<sup>3</sup> Affidavit of John Yeabsley, 19 November 1996, in the *NZFIA Case* (ibid). Summary extracted from New Zealand Seafood Industry Council submission on *Review of sustainability measures and other management controls for the 2005-06 fishing year. Initial Position Paper of 30 June 2005*. 8 August 2005.

### **Summary of analysis undertaken by John Yeabsley on proportional and preferential allocation of quota**

Yeabsley compares two alternative quota allocation systems – one that maintains relative parity between commercial and recreational fishers (“proportional”) and one that gives preferential treatment to recreational fishers (“preferential”). The focus of his analysis is solely on economic issues, particularly issues of incentives and outcomes.

The economic objectives of the QMS are taken to be as follows:

- To make the incentives facing individual fishers consistent with achievement of the economically optimal sustainable yield;
- To create a system of tradable property rights to encourage allocative efficiency;
- To improve the investment climate by increasing certainty in the industry; and
- To avoid the “tragedy of the commons” by internalising the intertemporal externality costs resulting from catching fish.

#### **Yeabsley’s findings were that:**

- (1) Incentives facing commercial fishers under a proportional system are generally consistent with the economic objectives underlying the Fisheries Act. Relative to this a preferential system will be inferior in the following ways:
  - Investment decisions and cooperation will be made more difficult as a result of increased uncertainty regarding future catch sizes;
  - Commercial fishers will attempt to raise the TAC above its optimal level because their stake in the fishery will decline over time;
  - Commercial fishers will have a reduced incentive to gather and provide accurate information on the state of the fishery;
  - Enforcement of quota limits will be made more difficult by the reduced value of quota, as the forfeiture penalty will be less significant.
- (2) Under a preferential system, the recreational catch will expand at the same rate as recreational demand. This is inconsistent with socially optimal allocation of the available catch between commercial and recreational fishers.
- (3) The preferential system can be seen as imposing an additional attenuation upon ITQs, which can be expected to reduce the efficiency gains which could otherwise be achieved under a quota system relative to a system of open access. The “tragedy of the commons” is not avoided by this system.

For these reasons, Yeabsley concluded that the economic objectives of the QMS are well served by means of a proportional system and that the preferential system will create incentives and uncertainty that will undermine the economic basis of the QMS.

### **Proportional allocation reduces sustainability risks**

13. Many of the economic incentives created by proportional allocation, as identified by Yeabsley, also provide incentives for quota owners to ensure the long-term sustainability of fisheries resources. The effectiveness of these incentives is dependent on the security of quota shares. For example, if the Minister exercises his discretion under the Act in a way which adversely affects the belief by quota owners that they have secure property rights, the incentives to nurture the fishery will be undermined.
14. Apart from these effects on incentives, a discretion exercised with preference for non-commercial fishing *directly* increases the risks to sustainable management of fisheries resources by reallocating available yield away from a tightly managed, well monitored regime (the QMS) to non-commercial regimes that are essentially unmonitored and unconstrained in terms of total allowance.

### **THE NEED TO MANAGE RECREATIONAL CATCH WITHIN ALLOWANCES**

15. Proportional allocation “on paper” is meaningless in the absence of active measures to:
  - a) accurately record the removals taken by every sector; and
  - b) ensure that the recreational harvest is managed within allowances.
16. The NZ RLIC preference is that recreational fishers are willing and able to collectively take responsibility for reporting their catch and managing it within their allocated allowance. However, the recreational sector’s response to the current MPI proposals for SNA 1 confirms that the sector as a whole is not prepared to accept responsibility for securing the future of the shared fishery.
17. It therefore falls on Government to impose whatever measures are necessary to constrain recreational catch within the allowance. For this reason the NZ RLIC supports MPI’s proposal to adjust management settings for recreational fishing (bag limits and/or size limits) in order to ensure that the recreational catch is constrained within the recreational allowance.
18. If the Government is unable or unwilling to constrain recreational fishing within allowances then there are significant consequences for achieving the purpose of the Fisheries Act. First, any sustainability benefits intended to be delivered through TACC reductions may be lost or compromised. This is inconsistent with the Court’s finding in the 1997 NZFIA snapper case that the Minister must be cognisant of the need to “*restrain recreational fishing in a way which seeks to prevent the commercial sacrifice being caught on recreational hooks*”.<sup>4</sup>

---

<sup>4</sup> *New Zealand Fishing Industry Association (Inc) & Ors v Minister of Fisheries* (CA82,83/97, 22 July 1997) page 18.

19. Second, failure to constrain recreational catch within the allowance results in a *de facto* reallocation of available yield from commercial to recreational fishing, over time increasing the proportion of the fishery that is essentially unmonitored and unconstrained. This has two main consequences. The first is increased sustainability risk to the stock (an outcome that is clearly detrimental for all sectors) and the second is increased uncertainty in stock assessments leading to higher likelihood of precautionary TAC and TACC decisions and preventing the achievement of the “*utilisation*” arm of the Act’s purpose.

## **THE CASE FOR RECREATIONAL AND CUSTOMARY CATCH REPORTING**

20. Lack of information on non-commercial catch is a significant barrier to the effective management of recreational removals within the allowance. The NZ RLIC considers that it is disappointing and inexcusable that 27 years after the introduction of the QMS, lack of reliable information about non-commercial removals is *still* preventing the effective management of shared QMS stocks.

21. Although MPI has more recently put in place some measures to improve estimates of recreational catch (aerial surveys, national panel surveys and charter boat reporting), information on recreational removals remains patchy, incomplete and uncertain.

22. The lack of reliable information on customary catch is also puzzling given the reporting requirement in the Fisheries (Kaimoana Customary Fishing) Regulations 1998. It is also strange that the Ministry has never inserted a reporting requirement into Regulation 27, given that a large proportion of customary harvest continues to be taken under this “interim” regime.

23. If SNA 1 recreational bag limits are significantly reduced, we would expect that non-commercial effort will shift into the customary regime, making the need for full reporting of customary harvest even more important – not only to ensure sustainability but also to effectively protect customary rights.

24. Lack of credible information on non-commercial catch is of particular concern to the NZ RLIC because the costs of these information failings are felt almost entirely by the commercial sector in the form of precautionary decision-making on TACs and TACCs. In these circumstances the incentives for industry to collectively fund (either through cost recovery levies or directly) research and monitoring on the commercial share of the catch are severely reduced, as the potential benefits of any industry expenditure will be compromised by the lack of reliable information on non-commercial catch.

25. The NZ RLIC submits that the current SNA 1 sustainability review, and the reaction of recreational fishers to the review, reinforces the need to give urgent priority to obtaining credible information on non-commercial catch levels and trends in *all* shared fisheries. This information needs to be made available in a timely manner (i.e., at least annually) so that it can feed into stock assessments, management procedure evaluations and/or management decisions.

26. Random surveys and incomplete charter boat reporting, no matter how comprehensive, cannot deliver information of the required quality or timeliness because they do not adequately capture all recreational fishing effort and catches. A sound basis for reliable recreational catch information will only be established when there is a mechanism in place to accurately account for recreational fishing effort and catches (for example through a registration or licensing system).

## **MANAGEMENT APPROACH FOR SNA 1**

27. The NZ RLIC questions why MPI is seeking to review the sustainability measures for SNA 1 in the absence of an agreed management approach – or even an agreed biomass target – for the stock. The discussion paper on page 6 states that the previous biomass target levels (set to reflect the statutory  $B_{msy}$  objective) have been “*broadly achieved*” and that projections show that the stock is likely to continue to increase. There would therefore seem to be no urgent need to initiate a review.

28. While we understand that new information may in time lead to the establishment of new biomass target levels, we would expect that any such decision would be framed by the requirements of the Fisheries Act and informed by engagement with rights owners and other stakeholders in the context of the relevant fisheries plan.

29. Instead, we are disturbed to see that a new, significantly higher, “interim” biomass target level:

- has been adopted *not* by fisheries managers, but by a science working group;
- has been based on analytical proxies rather than on the (available) quantitative stock assessment; and
- is referenced to default settings in the non-statutory Harvest Strategy Standard rather than the Fisheries Act.

30. We support the MPI proposal to embark on an inclusive planning process for the future management of SNA 1, but question why this has not already occurred to date under MPI’s fisheries plan framework.

## **RECOMMENDATIONS**

31. NZ RLIC recommends that MPI should recommend to the Minister that he should:

- a) Adopt a “proportional allocation” approach to the allocation of SNA 1 and as a general policy position;

- b) Impose meaningful management controls in the form of reduced recreational bag limits and/or changes to minimum legal size limits to ensure that recreational catch of SNA 1 remains within the allowance;
- c) Implement a comprehensive recreational catch reporting system for all shared fisheries;
- d) Ensure the full implementation of customary harvest reporting under the customary fishing regulations and via an appropriate amendment to Regulation 27; and
- e) Set stock management targets via an appropriate fisheries management process, and not through the establishment of “default” or “interim” targets by science working groups.

NZ Rock Lobster Industry Council



---

Daryl Sykes  
Executive Officer