

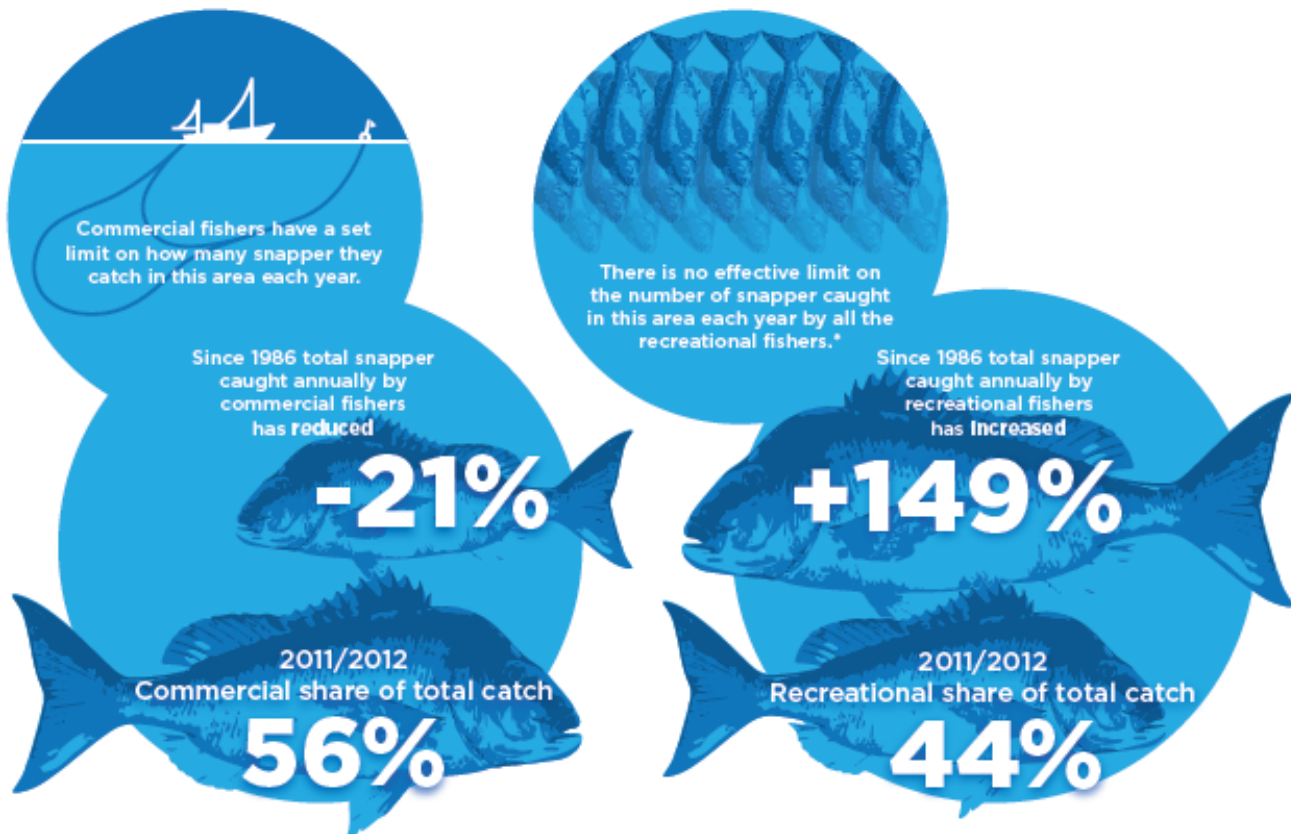
Submission by SNA1 Commercial on the Review of Sustainability and Management Controls for Snapper 1

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WE ALL LOVE A FEED OF SNAPPER

Snapper numbers in our most popular and valuable snapper fishery, Snapper 1 (SNA 1) are increasing. To keep the population growing in this shared fishery we all need to do our bit. That includes sticking within limits for how many fish we're all catching.



*The non-commercial snapper fishing allowance is 2600 tonnes. In 2011/2012 it is estimated that 3954 tonnes of snapper was caught by recreational fishers – including recreational charters. That's 52% over the allowance.

WHAT'S BEING DONE TO HELP?

The Minister for Primary Industries splits the annual catch limit in this area between commercial, recreational and customary fishers so we can all enjoy the benefits of a long-term sustainable fishery. The Government is asking for feedback on a range of options to better share and manage the fishery to keep snapper numbers growing.

AS COMMERCIAL FISHERS AND QUOTA OWNERS WE SUPPORT OPTION 2:

Increase the total allowable catch of snapper in SNA 1 by 500 tonnes to be shared proportionally between recreational and commercial fishers after an allowance is made for Māori customary fishing.

WE'RE ALSO STEPPING UP TO:

- Use science to fish smarter. In partnership with Government we're trialing new technology that more precisely targets species and keeps young fish alive.
- Adopt a 'move on' rule when areas of small fish are encountered.
- Voluntarily record and report all snapper caught that we are legally required to return to the sea.
- Invest \$600,000 across the commercial fleet to install real-time vessel reporting systems.
- Help fund and participate in further tagging programmes to better estimate snapper numbers and migration.
- Share our knowledge with scientists to give everyone a better understanding of snapper in this area.
- Positively contribute to the development of a long-term SNA 1 Management Plan alongside recreational and customary fishers.

We all need to stick to the limits and go the extra mile.

New Zealand Commercial Fisherman's Association including Whitianga and Coromandel Peninsula Commercial Fisherman's Association; Leigh Commercial Fishermen's Association; Whangarei Commercial Fishermen's Association; Bay of Plenty Commercial Fishermen's Association, New Zealand Fishing Industry Guild, Sanford Limited; Aotearoa Fisheries Limited; Leigh Fisheries; Te Ohu Kaimoana, Gavin & Ron Perry, Andy Bergvall, Dave McIntosh, Steve Lines, Tom Searle, Michael Goldsworthy, Bob McAllister, Shane Walsh, Carl Carrington, Bob Donley, Wayne Dreadon, Nathan Reid, Graeme Bailey, Darren Fabricius, Ivan Rosandich, Cindy Bailey, Steve Meredith, Roger Rawlinson, Neil & Paula Gwillim, Glen Strongman, Rowan Strongman, Brian Kiddle, Peter Reid, John Willmer, Daniel McLaren, Steve Litherland, James Dick, Elisha Yahal, Joan Bridge, Michael Thomas, Rongomal Brightwell, Henry Buchanan, Richard Stone, Laurie Bleanmish, Warwick Goodman, Doug Pulford, Adam Clow, Eric Barratt, David Stone, Michael Wenzlick, Ivan Malch, Peter McKenzie, Mike Wallace, Phil Clow, Jim Fitzgerald, All Undorf-Lay, Greg Johansson, Greg Hayes, Greg Bishop, Hilton Leith, Paul Roberston, Jim Jose, Daryll Walker, Clint Dolfing, Mark Semmens, Allan Pivac, Ray Dyer, John Dyer, Nick Hayes, Charles Hayes, Zak Olsen, Jamie Hepl, Brad Leggott, Ron Baker, Sam Hayes, Raiha Fredricseh, Rod Scott, Dave Moore, Arch Harvey, David Jose, Chris Harvey, John McGrath, Brian Gibbons, George Harvey.

(A) EXECUTIVE SUMMARY

- 1 The commercial fishing industry supports Option 2 for SNA 1 - a modest 500t increase to the TAC with the increase allocated proportionally between the total allowable commercial catch (TACC) and the recreational allowance. This option ensures sustainability while providing for increased utilisation opportunities, is equitable, and it maintains the integrity of the Quota Management System (QMS).
- 2 To ensure the SNA 1 biomass keeps growing in this shared fishery we all need to take responsibility. We've stepped up in response to concerns about commercial fishing. We agree to:
 - 2.1 Use science to fish smarter;
 - 2.2 Adopt a 'move on rule' when areas of small fish are encountered;
 - 2.3 Voluntarily record and report all snapper caught sub Minimum Legal Size (<MLS);
 - 2.4 Invest \$600,000 across the SNA 1 commercial fleet to install VMS;
 - 2.5 Help fund and participate in tagging programmes to better estimate stock;
 - 2.6 Share our knowledge with scientists and fisheries managers;
 - 2.7 Investigate the practicality of electronic monitoring on vessels to address specific management objectives;
 - 2.8 Positively contribute to the development of a long term SNA 1 management plan.
- 3 The economic importance of the SNA 1 commercial fishery cannot be overemphasised. It represents hundreds of millions of dollars in value (including export returns), investment and real jobs. Moreover, the wider northern inshore commercial finfish fishery depends on snapper for its long term viability, because snapper is the dominant species within the FMA 1 mixed fishery.
- 4 Since the introduction of snapper to the QMS commercial SNA 1 catch has been constrained by TACCs which have ensured the rebuild of SNA 1 stocks, with an overall catch reduction of 21%. In complete contrast, recreational catch has increased by 150% for the same period and has effectively been unconstrained in total extraction.
- 5 Put simply, the benefits of the rebuild of the stocks through the restrictive TACC have been lost to recreational hooks. The High Court and Court of Appeal warned the then Minister against this very issue in the mid-1990's at the time the SNA 1 TACC was cut.
- 6 The Minister has a clear obligation to manage recreational catch. Despite this, successive Ministers have failed to do so, with recreational catch increasing and essentially unconstrained. That is not good fisheries management, and it is encouraging that the Ministry has proposed reasonable measures to constrain recreational catch to the recreational allocation. These measures will not prevent recreational fishers from catching a feed of fish for whanau, family and friends.
- 7 We need the Minister to stand up and base his decision on evidence and analysis, rather than on misinformation and scaremongering. Contrary to the rhetoric of the recreational lobby, the Supreme Court has confirmed that recreational interests do **not** take priority over commercial

interests. The Minister cannot seriously consider the suggestion by some in the recreational sector that there should be a reallocation of catch by an increase to the recreational allowance only. Such a decision would not only be inequitable - it would strike at the heart of the integrity of the QMS and the incentives necessary for it to function effectively.

- 8 While the commercial fishing industry has been subjected to unjustified and at times irrational criticism from the recreational sector, we are prepared to step up and undertake a suite of significant initiatives in the SNA 1 fishery to improve management, science, enforcement and negative perceptions. While these initiatives will come at a significant cost to the industry, they demonstrate our long term commitment to and investment in the SNA 1 fishery whilst ensuring sustainability.

(B) INTRODUCTION - WHO WE ARE AND WHY THIS IS SO IMPORTANT

9 This collective submission is from independent fishers, share fishers, contract fishers, quota owners and fishing companies who catch snapper in Fish Management Area One (FMA 1). A list of us is attached as Appendix 1, and collectively we call ourselves **SNA 1 Commercial**.

10 We represent:

10.1 More than **96%** of the commercial SNA 1 catch effort;

10.2 **95%** of commercial vessels fishing in FMA 1;

10.3 The major fishing companies and processors in FMA 1;

10.4 Six Licensed Fish Receivers (AFL, OPC, Sanford, Leigh, Antons and Bay Packers); and

10.5 **90%** of the quota ownership in SNA 1.

11 We held six local meetings over two months in community halls and at fishing companies to discuss this submission, which has unanimous support and represents a collaborative effort between fishers and quota owners.

12 We are in the business of fishing. Collectively, the value of the SNA 1 commercial fishery is in the hundreds of millions of dollars. We have the most to lose if SNA 1 is not utilised sustainably, and we came together to prepare this submission as a collective to send a strong message of leadership to Government. We have stepped up in order to:

12.1 Offer solutions which will improve fisheries management and enhance our reputation;

12.2 Safeguard the value of our property rights (quota and ACE packages) and our ability to commercially harvest fish, and therefore the jobs and export earnings this contributes to our economy;

12.3 Ensure the integrity of the QMS is retained by the sustainable utilisation of the SNA 1 resource for the benefit of all stakeholders through effective management controls and a proportional approach to allocation.

13 The commercial SNA 1 fishery makes a significant contribution to the regional and national economy. It is an extremely important and high value commercial fishery. In 2009 the assets quota value for snapper was estimated at \$186 million (the fifth most valuable stock by quota asset value in the QMS). In 2011/12 the average SNA 1 quota value in 2001/12 was \$47,049 per tonne and the export value for all snapper (SNA 1 is 71% of the combined TACCs) was \$36.8 million.

14 SNA 1 quota therefore represents a substantial regional and national asset that calls for appropriate recognition by decision makers and the protection of the commercial snapper fishery from illegal, unreported and unregulated (IUU) recreational fishing.

15 However, not only is SNA 1 extremely important from an export revenue perspective, it drives real investment and real jobs. Both the domestic consumer and the hospitality industry rely on snapper sourced from SNA 1. The SNA 1 fishery in the Hauraki Gulf alone represents about 85% of the value of commercial fisheries in the area. About 820 full time jobs in Auckland and a further

360 jobs in the Waikato result from direct employment due to commercial fishing, of which SNA 1 is a critical component. The viability of the wider commercial fishery in Northland, Auckland and Waikato regions is reliant on SNA 1 catch.

- 16 While commercial catches are often dominated by snapper, the value of the associated mixed finfish species caught alongside snapper catch also make a significant economic contribution, and has been conservatively estimated at between 50-60 million dollars. These species include jack mackerel, John dory, gurnard, and trevally.
- 17 It follows that the Minister's SNA 1 decision is of critical importance to us. We have an extremely significant and long term investment in the fishery which depends on its sustainability and we are committed to protecting that.
- 18 If there is an opportunity we wish to speak to our submission. The contact people for this submission are **Greg Johansson** (09 300 8443 / 027 484 4598) and **Greg Bishop** (09 422 6424 / 021 492 289).

(C) KEY THEMES

19 There are a number of key themes running through this submission:

19.1 *We've stepped up in response to recreational concerns about commercial fishing.* While the recreational sector's criticisms of commercial fishers are inaccurate and unjustified, we are willing to commit to fisher initiatives which are creative, bold, will change the way we harvest fish and should reassure the recreational sector and the wider public. Taken as a package these initiatives show how committed we are to sustainability as well as our willingness to work with others.

19.2 *Commercial fishing is well managed by the QMS, with all SNA 1 catch recorded and over-catch penalised.* Commercial fishers are committed to ensuring the integrity of the QMS and fishing within the constraints of the TACC. Catch has been within 2.5% of the TACC for the last 5 years, and we fully support the Ministry in enforcing compliance and as part of our fisher initiatives propose a number of measures in this regard.

19.3 *Under the current TACC commercial fishers are forced to adopt inefficient catching methods to limit their snapper catch to the detriment of harvesting other species.* Snapper is the dominant stock in a mixed inshore fishery and the way it is managed affects the rest of our catch. Since 1997 we have been subject to a TACC which has become increasingly constraining as the SNA 1 stocks have rebuilt. Commercial SNA 1 catch is further constrained by outdated fishing method and area regulations, which forces us to fish inefficiently. The reality is that now we have to steam away from fish and are struggling to manage snapper bycatch as a consequence of the significant constraints on ACE availability due to a low TACC and more fish in the water. This is limiting the targeting and catch rates of other fish and creates negative incentives for fishers.

19.4 *The value of the SNA 1 quota and the financial contribution commercial catch makes to New Zealand's economy deserves to be protected.* Snapper is New Zealand's most valuable inshore finfish stock. We earn real cash, in foreign currency. We create real jobs. This needs to be protected from illegal, unregulated and unreported fishing, whether recreational or commercial.

19.5 *The unconstrained recreational catch puts at risk the long term sustainability of the SNA 1 fishery.* For decades successive Governments have failed to manage the recreational sector, undermining the integrity of our world class QMS. Good fisheries management requires good information and effective management measures on the recreational sector, not just on the commercial catch. In the case of SNA 1, this has not only effectively resulted in a reallocation of catch from the commercial to the recreational sector (which has increased unconstrained as the fishery has rebuilt under the constrained TACC), it presents a long term sustainability risk to the SNA 1 fishery.

19.6 *Reallocation/non-proportionality irreparably damages the integrity of the QMS.* Any reallocation of the SNA 1 resource from the commercial sector to the recreational sector strikes at the heart of the QMS and the property rights which underpin it, destroying the incentives for ensuring sustainability. This is why a proportional approach to the allocation of the TAC is critical.

20 Before turning to the SNA 1 IPP proposals themselves, this submission addresses a number of the key themes above by examining the important context of the SNA 1 decisions.

(D) THE CONTEXT OF THE SNA 1 DECISIONS

20.1 The SNA 1 proposals have not occurred in a vacuum. When the QMS was introduced in 1986 the Government promised the commercial sector that as quid pro quo for accepting catch reductions, the Government would manage the recreational sector to prevent the reallocation of shared fisheries over time. However, these promises have been only honoured in the breach. It is therefore encouraging that the IPP not only supports a proportional approach to the allocation of the TAC in shared fisheries such as SNA 1, but a meaningful approach to imposing reasonable management controls on the recreational sector.

20.2 This section addresses the following:

20.3 The failure to provide a policy framework for shared fisheries such as SNA 1 and the failure to manage recreational fisheries;

20.4 Good shared fisheries management and the failure to obtain reliable information on recreational catch and implement meaningful management controls on recreational fishing and the charter fleet;

20.5 Comparative value and false perceptions of inequity;

20.6 The impact on reallocation on the integrity of the QMS.

No policy framework for shared fisheries

21 Successive Governments have failed to put in place any policy framework within which a decision relating to the use of a “shared fishery” such as SNA 1 can be made.

22 In late 2006 the then Government released its ‘Shared Fisheries’ proposals for consultation. The Industry put a lot of time, effort and financial resources into preparing detailed submissions on the proposals, advocating a rights-based framework based on clear and equitable principles. Although the then Government’s proposals have since faded away, it is disappointing that the opportunity was not taken to develop a robust and soundly based policy framework.

23 As the recreational sector’s vociferous reaction to the Ministry’s SNA 1 IPP makes clear, this issue is not going to go away. It is not going to get easier to deal with. Without a clear policy framework for the management of shared fisheries, decisions such as the present will continue to be characterised by ad hoc analysis and lobbying by the vocal recreational sector.

Failure to manage recreational sector

24 For decades commercial fishers have been imploring successive Ministers to show leadership in the management of recreational fisheries. Despite the fact that in many shared fisheries non-commercial catch is likely to be a significant proportion of the total catch (in some cases in excess of 50%), Ministers have consistently failed to manage the non-commercial sector, and in particular the recreational sector.

25 This lack of adequate management has resulted in a situation whereby the commercial sector is very closely monitored, managed and constrained, and in essence bears the burden of ensuring sustainability for any required rebuild of a stock (as has occurred in the case of SNA 1). The Ministry rigorously monitors the amount of fish caught against the TACC using a catch reporting and balancing system. Commercial fishers must balance their catches against ACE or pay deemed value for catch in excess of their entitlements. Deemed values are set at levels that

provide disincentives to over-catch, while at the same time incentivising the landing and reporting of unavoidable catch.

- 26 In complete contrast to this, there is little reliable information on recreational catch (including charter vessel catch), the recreational sector is essentially unmonitored and the recreational sector is effectively unconstrained.
- 27 It is therefore ironic that when, for the first time, proposals are made to manage recreational SNA 1 catch to its allowance through the in position of reasonable management controls, the Ministry, the Minister and the commercial fishing industry are subjected to unfair, uninformed and at times irrational criticism by the recreational sector.

Good fisheries management

- 28 It is axiomatic that the Minister and the Ministry have an obligation under the Act to manage all sectors based on the principles of good fisheries management. The Act provides the framework and tools for this management to occur and thereby achieve the purpose of the Act and preserve the integrity of the QMS. Under the QMS a yearly catch limit is set for every fish stock based on stock assessments, monitoring programmes and the biological characteristics of the species. Catch limits are required by law to be set at levels that ensure long-term sustainability.
- 29 It is worth noting the conclusions of internationally recognised fisheries management expert Ross Winstanley in relation to good shared fisheries management:¹
- 29.1 It is critical to manage the total catch from the fishery, not only the commercial catch.
- 29.2 A fundamental prerequisite to being able to manage a shared fishery is reliable information about the level and characteristics of the catch taken by each sector over time. It is possible to obtain sufficient and reliable information on the catch of the recreational sector over time, for example through recreational licensing (not to gather revenue, but as a tool to gather information).
- 29.3 Where a cap is imposed on catch for sustainability reasons such as a TAC, it is essential to impose management measures on all sectors in order to constrain each sector to its allocated share of the catch.
- 29.4 Where a fishery is subject to fishing pressures from competing sectors, any failure to constrain a sector to its allocated share of a TAC, will over time inevitably result in an effective reallocation of the resource to that sector. The sustainability benefits of constraints on one sector would thereby be absorbed by the unconstrained sector.
- 29.5 To effectively constrain the recreational sector to an allocated share of a TAC, it is usually necessary to use a suite of management measures, operating in parallel (e.g. bag limits, size limits, area closures, seasonal restrictions, gear restrictions).
- 29.6 Where a reduction in the recreational share of the TAC is required it is necessary to:
- (a) recognise that small changes to large bag limits are unlikely to be effective, as such changes will usually only affect catches by the small minority of avid and consistently successful fishers; and

¹ Kahawai proceedings - affidavit of Ross Winstanley dated 6 June 2006.

- (b) maintain adequate monitoring systems to measure the effectiveness of any management tools and to provide information on what further changes might be appropriate, if necessary.

30 The industry considers that for the last 25 years successive Ministers and the Ministry have consistently failed to adequately manage shared fisheries. Commercial catch has been progressively reallocated from the commercial sector to the recreational sector in many shared fisheries, including snapper, and yet:

- 30.1 information on how much the recreational sector is catching remains uncertain;
- 30.2 no meaningful attempt has been made to estimate recreational charter vessel catch;
- 30.3 management controls have not been implemented to constrain recreational catch to the allowances they have (for example, the SNA 1 bag limit has remained at the same high level since 1997 despite recreational catch increasing markedly).

Information on recreational catch

31 Effective management depends on good information, and that information on recreational catch is lacking and needs to be improved. Successive Governments and Ministry officials have paid lip service to the importance of, and urgent need to obtain, reliable and up to date information on the nature and size of the non-commercial catch:

- 31.1 As far back as 1983, the then Assistant Director of the Fisheries Management Division of the Ministry of Agriculture and Fisheries published an article in which he said:²

In New Zealand, concern about the interaction between marine recreational fishermen and commercial fishermen, has largely been that recreational fishing should be to some extent protected from commercial fishing. It should also be recognised that recreational fishing, which currently has minimal management (for example no licensing is required, and there is no control and little knowledge of total recreational fishing effort) may have substantial impact on some commercial fisheries. In some cases, commercial fisheries may need protection from recreational fisheries.

- 31.2 In 1991 the Government commissioned a report from Dr Peter Pearse on fisheries policy development in New Zealand.³ Dr Pearse, of Canada, is internationally recognised as an expert in natural resources management. At page 9 of his report he argued for the recreational sector to be allocated an explicit share of the fishery. He said:

The absence of specific rights, and any form of licensing, leaves a dearth of information about the numbers of recreational fishers and their catches of fish. This is essential information that recreational fishing groups need to promote their interests, and resource managers need to manage recreational fisheries.

- 31.3 In 1994, in the context of work undertaken by officials on new fisheries legislation (which eventually became the Fisheries Act 1996), a report to an Official Steering Committee on "Allocation of TAC and Priority of Fishery Stakeholders" stated "*Sustainable use of the fisheries is dependent on the aggregate catch of all stakeholders not exceeding the TAC. To this end it is important to monitor recreational and Maori take.*"

- 31.4 The Ministry continues to acknowledge that such information is the critical first step in fisheries management, but also admits that to date attempts to get this information from

² *Growth has led to conflict* (June 1983)

³ See Peter H Pearse *Building on Process: Fisheries Policy Development in New Zealand: A report prepared for the Ministry of Fisheries*: July 1991

the recreational and non-commercial sectors has produced unreliable and uncertain results:

Accurate and reliable information on catch is fundamental for effective fisheries management. Reporting requirements exist for commercial and some components of customary take, however information on recreational take is obtained through surveys. This information is expensive to obtain and of variable quality. Efforts made since the early 1990s to assess the participation rates for recreational fishing, and the resulting catch of the main species, have resulted in estimates of catch and participation that vary considerably. Recent funding for recreational fishing surveys is enhancing information. However it is essential that further consideration be given to tools and investment to improve the reliability, timeliness, and cost-effectiveness of information on recreational participation and harvest.⁴

32 In the case of SNA 1, the Ministry has recently undertaken aerial access and national panel surveys which provide improved estimates of recreational (but not including charter vessel) catch. This and other information suggests that the recreational catch has increased significantly since the allocation of 2,600t was made in 1997, to about 3,750t (not counting the estimated 200t of charter vessel catch).

33 The industry considers this increase is a consequence of the recreational sector benefiting from a rebuild of the fishery caused by the restrictive TACC in the absence of meaningful management controls to constrain recreational catch to its allowance. This position becomes even starker once the impact of the catch of charter vessels is taken into account.

No information on the charter fleet catch

34 The failure to manage the large “recreational” charter fleet and require its catch to be reported has been an issue of considerable concern to the industry for many years. It provides a clear example of where the Ministry and Ministers made deliberate decisions not to use the regulatory tools available to them under the Fisheries Act to gather important information on recreational catch, and another example of the failure of successive Governments to try and obtain information on the recreational harvest, even when that information can be obtained readily.

35 In the course of the Snapper proceedings, the then Minister stated in his 1995 decision letter:⁵

I, and my Ministry, will need to continue working with recreational leaders to ensure the non-commercial harvest is restrained to an appropriate level. I also believe that it is an appropriate time to initiate discussions with charter boat operators to begin to formalise their contribution and involvement in the management of this fishery.

36 Since 1995 numerous proposals have been made by the Crown to introduce catch reporting requirements for charter vessels. Yet when reporting was finally introduced a few years ago, they astonishingly did not require charter vessels to report the catch of two of the primary recreational species, namely snapper and kahawai. The decision making paper purported to justify this on the basis that:

MFish considers that at this time, requiring catch information for other stocks would increase the administrative and stakeholder compliance cost of the proposal while providing minimal additional benefits to management.⁶

37 The commercial fishing industry considers that to not gather information on the primary recreational species caught by charter vessels is simply extraordinary. More so in circumstances where charter vessels must report snapper fishing activity, but not catch.

⁴ MFish advice to the Minister dated 16 December 2005 *Shared Fisheries Policy Development*, para 27

⁵ *New Zealand Federation of Commercial Fishermen (Inc) v Minister of Fisheries*. pg 35

⁶ Final advice paper on Marine Recreational Fishing Charter Vessel Registration and Reporting, para 110.

- 38 The SNA 1 IPP acknowledges that the snapper catch from charter vessels is not available because catch reporting is not required. SNA 1 Commercial therefore strongly supports the Ministry's proposal to require charter vessel operators to report SNA 1 catch weight and location.
- 39 However, we are concerned that the Ministry's uncertain assessment in the IPP of the likely charter vessel catch as 200t is significantly underestimated. These vessels are often operated by experienced ex-commercial fishers who know exactly where to fish and how to target large fish. Their businesses rely on successful catches.
- 40 For example, Darryl O'Keefe, recreational charter operator of Mussel Barge Snapper Safaris, was quoted in the Waikato Times (18 August 2013) as saying his charter business ferries about 9,000 recreational anglers to and from the mussel farms each year. He said there were 10 other charter operations on the Western side of the Coromandel peninsula, including 45 owners, skippers and crew, and that last year "*we took on 35,000 passengers between the 10 of us...*".
- 41 On a 'back of the envelope' basis, a conservative estimate of the SNA 1 Western Coromandel charter catch worked up on the numbers provided by Mr O'Keefe, above, could be as follows: based on each fisher landing 3 x 1.5 kilo snapper the harvest from these 10 vessels (which is only 6.7% of the registered SNA 1 charter fleet) accounts for more than 150mt of snapper. This is >75% of the Ministry's estimated charter fleet's 200 tonne catch. Extrapolate this catch rate across the 150 charter vessels working in SNA 1 their cumulative snapper take could well be in excess of 1500mt.
- 42 It follows that under the current management framework there is a very real possibility that an unconstrained recreational and charter catch puts at risk the long term sustainability of the SNA 1 fishery resource.
- Failure to implement management controls on recreational sector**
- 43 Not only has there been a general failure to obtain reliable information on recreational catch in shared fisheries to inform management decisions, there has been a failure to implement meaningful management controls to constrain recreational catch to the sector's allowances. Individual and mixed bag limits remain at high levels across most shared fisheries.
- 44 The fundamental problem is one of political will. As international fisheries expert Dr Morishima stated in the Snapper proceedings:⁷
- Total harvest by all sectors, commercial, recreational and native, must be constrained within the limits sustainable by the resource in order to conserve the productivity of the resource. If the competition among sectors for a limited resource is intense, the resource will suffer from a failure to recognise the necessity and desirability of openly confronting issues of resource allocation, divisive as they may be. Ultimately, the future of the resource itself will depend upon the ability to muster sufficient political will to provide the authority and resource to effectively limit harvest by all fishing sectors.
- 45 The failure to manage recreational fisheries over time is perhaps best demonstrated by looking at the Snapper proceedings 10 years ago, and the Kahawai proceedings brought by recreational fishers in 2006. Both cases demonstrate the unwillingness of the Crown to obtain good information about recreational catch and impose meaningful management measures to constrain the recreational sector.
- Snapper proceedings**
- 46 The immediate issue that gave rise to the Snapper proceedings in 1995-1996 was a decision by the then Minister of Fisheries to cut the TACC for SNA1 by 39% (4,938t down to 3,000t), ostensibly for sustainability reasons. Industry challenged the decision on a number of alternative

⁷ Dr Morishima affidavit dated 28 April 2006 para 22

bases, including an allegation that the Crown had, over a long period of time, failed to constrain and monitor the recreational catch of snapper. Industry argued that the Minister was allowing the yield from the rebuilding fishery to be progressively reallocated from the commercial sector to the recreational sector in the guise of making TACC reductions for sustainability purposes.

- 47 Both the High Court and Court of Appeal confirmed that when the Minister was making TACC reductions for sustainability reasons he was required to take reasonable steps to manage the recreational sector:

There will be no point in restricting the TACC for conservation purposes if the commercial catch so conserved simply disappears upwards on recreational hooks...The significant point is that both common law and common sense dictate that a Minister should not reduce the TACC for conservation means unless able to take, and taking, reasonable steps to avoid the reduction being rendered futile through increased recreational fishing.⁸

Once one retreats from the proposition that strict proportionality is required, there can be no satisfactory solution other than that the Minister must act reasonably to stop the saving resulting from TACC reductions being lost to recreational fishing.⁹

Kahawai proceedings

- 48 The Kahawai proceedings were brought by the recreational sector who unsuccessfully tried to claim that the recreational allowance should have priority over the TACC. The former Minister had rejected the implementation of management controls such as lower bag limits (from 20 to 4-6) to effect a 25% reduction in the recreational allowance (the TACC had likewise been reduced). This rejection prompted the Ministry's Manager of Fisheries Policy to email other senior officials about his concerns (emphasis added):¹⁰

A statement from the Minister that effectively says he has no intention of controlling recreational catch is unfortunate, and could place him in a legally dubious position. If I were industry, I would refuse to pay DV on the grounds that Minister clearly has no intent of controlling catch.

Such a Ministerial position also clearly undermines our strategic direction – and any fisheries plan initiative in inshore fisheries – **as industry has been saying – how can they commit to management steps at their cost when the Ministry does not know what recreational fishers take, shows no meaningful intent to restrain recreational catch, and the basis of the Ministers allocation decisions is unclear.**

- 49 The commercial fishing industry filed a counterclaim against the recreational fishers' claims, alleging that the Minister had acted unlawfully and irrationally by failing to consider any measures (including reducing bag limits) to limit recreational catch. The High Court agreed and applied the Court of Appeal's dicta in the Snapper proceedings. The Court considered that a reduction of a daily bag limited for recreational fishers was an obvious and potentially effective sustainability measure available to the Minister, and his official's advice was consistent with this reality. The Minister's rejection of considered and informed advice, without reasons, lead inexorably to a conclusion that he acted irrationally.

The Minister must manage recreational catch

- 50 The non-commercial snapper fishing allowance is 2600 tonnes. In 2011/2012 it is estimated that 3954 tonnes of snapper was caught by recreational fishers – including 200 tonnes by recreational charter vessels. That is 52% over the non-commercial (recreational) allowance.
- 51 It is critical that management measures are implemented without further delay to ensure that the recreational sector does not exceed its allocated share of the SNA 1 TAC. It goes without saying that this is required to ensure the credibility and integrity of a regime that involves an annual

⁸ *New Zealand Federation of Commercial Fisherman (Inc) v Minister of Fisheries* CP 237/95, 24/4/97, McGechan J at pg 120

⁹ *New Zealand Fishing Industry Association (Inc) & Ors v Minister of Fisheries* CA82,83,96/97 at pg 18

¹⁰ Email, Mark Edwards to MFish Deputy Chief Executive Stan Crothers and Mike Arbuckle, 8 December 2004

allocation of a share of the TAC to the recreational sector. The Courts have made it clear that reasonable management measures are required to achieve that outcome.

- 52 However, in nearly all shared fisheries including snapper, little attempt is made to constrain recreational catch. Since 1986 the total amount of snapper caught by recreational fishers has increased by 150%. While this has been in part a function of the complete absence of any reliable estimates of recreational catch, it has also resulted from the Government's failure to impose meaningful bag limits or other measures such as an increased MLS on recreational fishers. A bag limit for a high value species such as snapper of 9 fish per day within a bag limit of 20 mixed species is more than most people can reasonably require for a feed of fish for their family.
- 53 The IPP summarises the advice the Ministry received in relation to the level of appropriate bag limits to reasonably constrain recreational catch to its allowance. This is nothing new – in 2004 the then Minister received similar advice as to the appropriate bag limits for kahawai. Given our support for Option 2 and proportional 500t increase, SNA 1 Commercial considers that a reasonable bag limit reduction and increase in the MLS will achieve the stated management objectives while allowing the recreational sector to catch more than enough for a feed of fish.

Comparative value

- 54 The SNA 1 IPP notes that snapper is highly valued by the recreational sector, which SNA 1 Commercial acknowledges. However, the IPP attempts to place a comparative or relative value on snapper for both sectors, suggesting that there are roughly equivalent values between the sectors.
- 55 The IPP refers to recreational values for snapper based on the SACES 1999 study. However, the SACES information is extremely dated, having been conducted 15 years ago. The Executive Summary to SACES study itself strongly cautions that the Ministry must be “*extremely careful*” when utilising the values of recreational fishing in the report because the values “*are not directly comparable*” to gross production commercial value, and therefore “*policy decisions based on this would be misleading*” (emphasis from SACES report).¹¹
- 56 Moreover, besides being dated and uncertain, the SACES study has been criticised in terms of its methodology and the validity of its results.¹² The Ministry has previously accepted that there are no readily available indicators of value of recreational fishing that allow comparison between recreational and commercial fishers.¹³
- 57 The SNA 1 IPP acknowledges that the Ministry's comparative assessment that commercial and recreational values as equivalent is “*highly uncertain and should be treated with caution*”. SNA 1 Commercial does not consider that any such comparison can be made at all.
- 58 The ‘value’ of snapper to commercial fishers exceeds values of gross production (although these are very significant). The fishery plays a critical role in the ongoing viability of the FMA 1 inshore fishery and supports more than 1000 jobs. Moreover, the Court of Appeal's judgment in the kahawai litigation made it clear that the value of a shared stock to commercial fishers is not limited to the economic interest of quota holders.¹⁴
- 59 Moreover, to the extent that the IPP suggests that because the TAC is allocated 40% to the recreational sector and 60% to the commercial sector it may not reflect roughly equivalent values,

¹¹ Value of New Zealand Recreational Fishing, South Australia Centre for Economic Studies (SACES), Nov 1999

¹² Review of SACES Final Report, Dr Gardner Brown, Professor of Economics at the University of Washington, 6 June 2003

¹³ 2005/06 Sustainability Measures IPP: Allocation Models, para 78

¹⁴ NZ Recreational Fishing Council & Ors v Minister of Fisheries [2008] NZCA 160 at [61]

it is logically irrational and fails to recognise that that the TACC has been constrained since 1997 allowing the fishery to rebuild, whereas recreational catch has significantly increased without any meaningful constraint.

Perceptions of inequity

60 For a number of years a small but vocal group of recreational fishers have very effectively lobbied government and embarked on a public relations campaign against the commercial sector. At a recent public meeting at Buckland's Beach on 20 August 2013, LegaSea representatives explained that it was the group behind the kahawai proceedings (Option 4), having reformed now under the snapper banner.

61 An expert witness for the *recreational* sector in the kahawai litigation, Mr Boyd, aptly summarised that lack of consensus and representation in the recreational sector:¹⁵

Strong lobbying by certain interests in the recreational sector (especially Option 4) has been very destructive to reaching consensus amongst the recreational sector. Although the Option 4 faction represents a minority of recreational views, it presents the most extreme views and is vocal and highly visible.

62 The recreational lobby has gained significant traction both politically and publicly on the premise that recreational allowances are too low and do not take into account historical fishing down of the biomass by commercial fishing. Their support has been galvanised by scare tactics, such as that the recreational bag limit will be cut back to three and fishers will no longer be able to feed their families. However, the reality is that the recreational sector enjoys extremely generous allowances in shared fisheries – its cumulative catch is approximately 44% of total SNA 1 each year. It also has significant allocations in trumpeter and some rock lobster stocks and the lion's share of kahawai and kingfish stocks. Moreover, the recreational sector is in any event not constrained to their allowances, enjoying large bag limits in most fisheries.

63 Moreover, it is a historical fact that commercial fishers suffered significant catch reductions in many of the key inshore fisheries as part of the introduction of the QMS. Despite assurances from previous Governments and the warnings of the Courts, the benefit of these reductions (rebuilding stocks) has been reallocated to the recreational sector over time as the recreational fishery has been allowed to grow in an unconstrained and unmanaged way.

Impact of reallocation on the integrity of the QMS

64 Maintaining the integrity of the QMS must be an integral component of allocation decision making by the Minister. Any reallocation of the resource from the commercial sector to the recreational sector will irreparably damage the integrity of the QMS.

65 Prior to the introduction of the QMS, management of the commercial fisheries through "input" or "effort" controls had proved ineffective, and there was virtually no management of recreational fishing. This meant that a number of inshore fish stocks had come under significant biological and economic stress. As well as failing to protect the resource, the input or effort controls did not provide the commercial industry with the stability it needed to develop any form of medium or long-term direction or strategy. No production based industry can make sound investment decisions without having security of access to its primary resources.

66 The watershed change brought about by the introduction of the QMS in 1986 was to move away from trying to control the amount of effort and capital used to catch the fish, to limiting primarily the amount of fish which could be taken out of the fishery. The QMS is an economic tool incorporated in the fisheries legislation to achieve specific fisheries management objectives relating to both

¹⁵ Boyd, R. Report for the Ministry of Agriculture, Food and Fisheries Victoria, British Columbia *The New Zealand Model for TAC Allocation to Recreational Fisheries* (March 2005)

utilisation and ensuring sustainability. It employs property rights and creates incentives to encourage stewardship of the resource, productive efficiency and investment and to increase certainty.

67 At the heart of the QMS is the allocation of property rights in the form of individual transferable quota (ITQ) (a perpetual and transferable right to harvest the amount of fish reflected in the quota) and annual catch entitlement (ACE). The Fisheries Act makes it clear that quota is a valuable property right, a fact also recognised on a number of occasions by the courts.

68 The Minister's discretions under the Act must be exercised in accordance with the purpose of the Act and the QMS generally. As stated by McGechan J in *Sanford & Ors v Moyle*¹⁶ (emphasis added):

...the object behind this scheme seem clearly enough to create a stable regime under which stocks of commercial fish species are conserved and under which commercial fisherman 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.**

69 The QMS and ITQs have clearly brought stability and efficiency to fisheries management in New Zealand. New Zealand is considered a world leader in fisheries management, both in environmental and economic terms. This was not the case however, prior to the implementation of the ITQ system.

70 For the QMS to provide quota owners with the economic incentives to take a long-term view about the husbandry and protection of fisheries resources, security of access is pivotal.

71 If quota owners perceive that their rights of access are no longer secure, and have the potential to be progressively and repeatedly taken by the Crown (irrespective of compensation), then they will take a short term least cost view to all decision making (eg. TAC setting, research, selective fishing technologies, compliance, development of fisheries plans, fish and non-fish bycatch issues etc). Quite simply, why nurture and protect the resource if it is going to be taken off you? Similarly, why would a harvester have an incentive to prevent high grading or dumping if they knew they only had short term access to a fishery?

72 As Dr Yeabsley explained in his affidavit in the kahawai proceedings, the effect of such reallocative proposals on the integrity of the QMS is as follows:

Put simply, if the Minister exercises his discretion when making management decisions in a manner that demonstrates to quota owners that their property right is, over time, going to be reallocated to the non-commercial sector (other than on a willing buyer/willing seller basis) then the benefits (both in terms of ensuring sustainability and providing for efficient utilisation) that the legislature expected to flow from the use of an economic approach to fisheries management will be seriously eroded.

...

My essential point is that if decision-makers, exercising statutory discretions under the Act, both within the confines of the commercial QMS as well as in relation to the wider regulatory tools available to manage other sectors, do not *understand* and *respect* the economic model that is an essential component of the legislative scheme, then the important outcomes sought to be achieved by that legislation through the creation of the QMS will not be achieved. It is futile, in my opinion, for the legislature to have created (and now enhanced) a property rights regime designed to achieve key fisheries management objectives, if those managing and implementing that regime then allow it to be undermined by decisions that destroy the incentives necessary for that economic approach to function.

¹⁶ High Court Wellington, (CP3/89, 10 Nov 1989)

73 This has not only been the expert view of economists providing expert evidence for Industry. The Ministry also received a clear warning on catch allocations by Steve Thornton from PA Consulting in 2003:¹⁷

If a fishery is to fulfil its potential in terms of generating value or utility, the property rights to the fishery must be as secure as possible given the sustainability constraints imposed by the Act. This suggests that any reallocation ought to be done in a way that does not involve the compulsory acquisition of rights to the fishery – either through confiscation or through acquisition with compensation.

74 If the commercial inshore fishery can be readily “taken” by the government other than on a “willing buyer/willing seller” basis, and reallocated to the recreational sector, the result would be completely contrary to the fundamental tenets of, and essentially destroy, the QMS. Quota owners will stop investing in fisheries research, plant, vessels and people and develop a very short term focus on the fishery, aimed at extracting value over short time horizons in the clear knowledge that their property right is soon going to be taken from them, either by stealth or explicitly. In the context of the Shared Fisheries proposals the then Minister gave a public assurance that any such reallocation would only occur on such a basis.¹⁸

75 The IPP acknowledges that reallocation of the TAC can occur if (a) non-proportional changes are made to the allowances allocated to the commercial and non-commercial sectors or (b) there is a failure to constrain the sectors to their respective allocation. The latter has clearly occurred in the case of SNA 1 as a consequence of the industry bearing the pain through a restrictive TACC as the stock has rebuilt, whereas the recreational catch has increased unconstrained.

76 SNA 1 Commercial strongly supports a proportional approach to allocation. Anything else strikes at the heart of the integrity of the QMS and the incentives it was intended to create. It follows that while the Ministry has a policy preference for proportional allocation (‘shared pain, shared gain’), the suggestion in each of the IPP options that there could be a reallocation of catch from the TACC to the recreational sector should be rejected outright.

¹⁷ PA Consulting Group *Catch Allocations Amongst Commercial, Recreational and Customary Fishers* (Draft Report, 18 March 2003).

¹⁸ Hon Jim Anderton on 3 News, 9 February 2007, 6.31pm

(E) STOCK STATUS, MANAGEMENT TARGET AND HARVEST STRATEGIES

- 77 The IPP notes that the 2013 quantitative stock assessment results for the SNA 1 stock are suitable as a basis for informing management. The stock assessment is new and is complex, and SNA 1 Commercial is concerned that the stock assessment estimates of current biomass may be biased low (at an overall 20% of B_0). Raw catch rate data which demonstrates a significant increase in biomass appears to have been significantly flattened by the approach taken to standardisation and there is evidence of bias in the tagging data (which suggested lower biomass).
- 78 Most significantly however, the stock assessment indications of the extent of the recent increases in biomass are not consistent with anecdotal reports of snapper availability and increasing CPUE (both commercial and recreational). As the fishery has rebuilt (without an increase in the TACC) the availability of snapper is such that the TACC has become a significant constraint on the catch of related species, with ACE becoming very expensive and tightly held as a consequence.
- 79 SNA 1 Commercial therefore considers that the stock assessment estimates of current biomass for each SNA 1 sub-stock are pessimistic. Importantly however, the stock assessment confirms that the stocks are rebuilding, primarily as a consequence of the industry 'bearing the pain' through a constrained TACC since the 1997 TACC cuts. While the IPP acknowledges that the SNA 1 stocks have broadly achieved management targets since 1997, SNA 1 Commercial considers that the rebuild is slower than would have been the case if effective management of the recreational catch had occurred, rather than the gains having been lost on recreational hooks through increased recreational catch.
- 80 The IPP proposes an "analytical proxy" interim target for B_{MSY} of 40% B_0 based on the 2008 Harvest Strategy Standard (*HSS*). While such a proxy may be appropriate as a quantitative surrogate for low productivity stocks in the absence of adequate information to estimate MSY reference points, a full stock assessment is available for SNA 1.
- 81 There are generic reasons as stated in the IPP why these MSY estimates represents a theoretical optimum rather than a target for SNA 1 management, most of which relate to imperfect information (including as to catch, which as discussed above is uncertain for all recreational fisheries). However, it is also acknowledged that the extent to which the target should be above this has not been determined and should be best done by stakeholders, given it address both sustainability and utilisation objectives. It is therefore surprising that there is little justification in the IPP (or the stock assessment) why the 40% B_{MSY} proxy has been selected, other than the reference to the HSS proxy for low productivity stocks. Yet the HSS itself makes it clear that such a proxy is only appropriate in the absence of adequate information to estimate MSY reference points, which is not the case for SNA 1.
- 82 Moreover, it is not at all clear why snapper has been classified as a low productivity stock for the purpose of the 40% B_{MSY} interim target. Under the CSIRO-AFMA Productivity-Susceptibility Analysis, snapper is classified (Cryer, 2010) as a medium productivity species (in relation to which a B_{MSY} proxy could be as low as 30%). While the IPP implies that the science working group assumed 40% B_0 as an interim target, we understand that this was in fact directed by the Ministry managers and scientists.
- 83 SNA 1 Commercial considers that the 40% B_0 interim target is very conservative. That notwithstanding, it is clear from the projections that a modest 500t increase in the TAC proportionately shared (Scenario 3) would still result in spawning biomass increasing over the next

5 years, with very little impact on the rebuild between such an increase and the status quo (Scenario 2) or even a decrease (Scenario 4). For this reason the industry supports Option 2 with proportionate allocation.

- 84 Moreover, as the IPP acknowledges, analysis based on recent average recruitment levels indicates that a much more significant increase in the TAC (by 1,450t to 9,000t) could be taken over the next 5 years within minimal impact on the current status of the SNA 1 substocks (with East Northland increasing slightly to 25.7% B_0 and Hauraki-Bay of Plenty remaining at 19.5% B_0).
- 85 As the Court of Appeal in the Snapper proceedings make clear, the Minister must careful weigh the costs and benefits associated with the exercise of his discretion to move a stock towards B_{MSY} :¹⁹

It must be said at once that the decision which the Minister made must have had a very substantial effect on commercial fishing interests. The Minister acknowledged the impact his decision would have, but there was little if any analysis either in the advice paper or in the decision itself of the costs and benefits of all kinds to be derived or incurred either from the objective of moving to MSY or from the speed at which that should be done. Indeed, the advice to the Minister suggested no great concern at the time frame for moving to MSY, yet there was apparently no consideration given in the decision to the differences which would flow to both costs and benefit of the timeframe adopted were altered to 30 years, or any other period, from the period of 20 years which the Minister ultimately fixed. Putting the matter in a concrete form, there was no analysis of what harm would have been done if for example 30 years had been selected, thus lessening the impact on industry.

...

All we wish to say for the future is the Minister would be wise to undertake a careful cost/benefit analysis of a reasonable range of options available to him in moving the fishery towards MSY. If the Minister ultimately thinks that a solution having major economic impact is immediately necessary, those affected should be able to see, first, that all other reasonable possibilities have been carefully analysed, and, second, why the solution adopted was the preferable one.

- 86 This is particularly important given the IPP raises the spectre of a reduced “set and forget” approach of halving the TAC (to 3,800t). While the Ministry rightly acknowledge in the IPP that such an approach is “*not appropriate*” and would cause significant economic and cultural impacts and lost yield, the industry is very concerned that this possibility has been included in the IPP’s Executive Summary at paragraph 20. The adoption of such an approach would clearly fall foul of the Court of Appeal’s warning and be unlawful.

¹⁹ *New Zealand Fishing Industry Association (Inc) & Ors v Minister of Fisheries* CA82,83,96/97 pg 22-23

(F) PROPOSED TAC, ALLOCATION OPTIONS AND MANAGEMENT CONTROLS

87 The IPP proposes TAC options predicated on more active management of the stock, with a review anticipated within the next 5 years following the development of a long term management strategy. SNA 1 Commercial supports this approach and is committed to working with the Ministry and other stakeholders to formulate a SNA 1 Management Plan.

TAC options

88 Three TAC options are presented in the IPP, status quo of 7550t (Option 1), a modest 500t increase to 8050t (Option 2), or a 500t decrease to 7050t (Option 3).

89 SNA 1 Commercial strongly supports Option 2, with the 500t increase allocated proportionally between the commercial and recreational sectors. A TAC increase of 500t is modest given the modelled biomass projections show little short term effect on the rate of rebuild and the projected median biomass in 2018 compared to B_0 – an overall difference of only 0.6% compared to the status quo. Moreover, the analysis based on recent average recruitment levels suggests that three times the 500t increase in the TAC could be adopted with minimal impact on the status of the SNA 1 substocks.

90 The fishery has clearly been rebuilding since the previous TACC cuts. The science confirms this, and the on the water experience even more so (which we think suggests that the stock assessment estimate of current biomass are biased low). Put simply, there are more fish in the water – for the important Hauraki Gulf substock an increase of 68% since the introduction of snapper to the QMS. A modest TAC increase is therefore justified and will provide for utilisation while ensuring sustainability.

91 We also support the customary allowance being separated from the recreational allowance. While the IPP does not provide *any* quantitative information supporting the Ministry's view that customary take is in the order of 50t, we do not have any view on the allowance being set on an such an arbitrary basis other than to say that the Ministry should commit to undertaking an assessment of customary catch reported under the customary fishing regulations. The assessment of an appropriate customary allowance can only benefit from better information.

92 We consider that the 450t allowance for other mortality is arbitrary and may be very high. While there will always be other sources of fisheries-related mortality from both the commercial and recreational sectors, the allocation based on 10% of the TACC is not based on any analysis at all. Moreover, such an approach suggests that commercial fishing is to blame, whereas we know that such mortality relates to the recreational sector as well. We are proposed a suite of fisher initiatives which should improve information and compliance relating the commercial sector, which should reduce uncertainty (at least insofar as the commercial fishery is concerned) and allow a science-based rather than arbitrary approach to other mortality.

93 It goes without saying that the Option to reduce the TAC (Option 3) would cause significant hardship to both the commercial and recreational sector, for little overall benefit. While the rate of rebuild from the previous TACC cuts has been slowed by the failure to manage the increasing recreational catch of snapper, previous management targets have largely been met.

94 To cut the TAC further in such circumstances is not only unnecessary from a sustainability perspective, it would add to the inequity of the gains of the rebuild through the previous TACC cuts being lost to recreational hooks. Not only would there be a very significant economic loss (in the millions) the wider northern inshore fishery would be at threat, with significant constraints on the catch of other important species due to bycatch, such as gurnard, mackerel, john dory,

barracouta, flatfish, rig, spiny dogfish, kahawai and trevally. Moreover, such a decision would inevitably require the Minister to significantly cut the recreational bag limit and/or increase the MLS.

Allocation options

- 95 Should the Minister adopt Option 2, SNA 1 Commercial strongly supports a proportional approach to allocation, in keeping with the Ministry's policy preference and the incentives which underpin the QMS. This would provide an increase to the TACC of 320t to 4820t, and an increase to the recreational allowance by 130t to 2730t. Such an approach is equitable and maintains the integrity of the QMS. It also recognises that the constrained TACC has led to a rebuild of SNA 1 stocks, the benefits of which should be shared between sectors. It will result in a reasonable increase in the recreational allowance, recognising that snapper is an important recreational species and that recreational catch has increased with fishers now catching more fish than was estimated in 1997.
- 96 Moreover, the increased availability of snapper and the lack of available ACE due to the constrained TACC have also meant that snapper bycatch has become a very real issue for the industry and is limiting the catch of other related fishstocks. ACE has become very expensive and tightly held, and a modest increase in the TACC will help address this. As one fisher said to us in one of our meetings:
- You cannot fish in FMA 1 without snapper quota – because of lease price snapper is being used by many as a means to catch lower value lease species. In SNA 1 we missed out on a tender at \$5.85 and have heard figures of over \$6.00. I cannot understand why they would pay so much. If you did not have reciprocal snapper quota how could a long liner/trawler/seine fisher make any money on snapper at these levels?
- 97 Statements from various commercial fishers in relation to the problems this issue is causing are attached as Appendix 2 to this submission.
- 98 Any option other than proportional allocation, such as increasing the recreational allowance only as some in the recreational sector suggest, would amount to a reallocation of catch from the commercial to the recreational sector, and signal a fundamental and destructive shift in the approach to shared fisheries management in New Zealand. The Supreme Court confirmed that the recreational sector does not have a priority over the commercial sector and that its needs do not need to be provided for in full.²⁰ Having set the TAC, the Minister in effect apportions it between the relevant interests, and the Minister must take into account commercial interests when setting the recreational allowance. The so called 'right to fish' applies equally to the commercial sector, as does enabling people to provide for their wellbeing.
- 99 This submission has already addressed in detail the damage that a reallocative approach would do to the integrity of the QMS. As Dr Yeabsley said in his evidence in the Kahawai proceedings, if the Minister's decisions demonstrate that property rights under the QMS are going to be diminished by reallocation to the recreational sector, the benefits of the QMS and the incentives it creates will be seriously eroded. The industry would be placed in a position of yet again having to look to the Courts to protect both property rights and the fundamental tenets underpinning the QMS.
- 100 As many commercial fishers advocated as part of the Shared Fisheries process, a rights based framework for *all* sectors, based on clear and equitable principles which respect the integrity of the QMS, would avoid these allocation issues and the hysteria from the recreational lobby which has

²⁰ *NZ Recreational Fishing Council & Ors v Minister of Fisheries* [2009] NZSC 54 at [61]

characterised the SNA 1 consultation process. We therefore encourage the Ministry and Minister to take another look.

Management controls for the recreational sector

- 101 This submission earlier summarised the failure of previous Ministers to manage recreational catch to its allowance in shared fisheries – a failure which has resulted in the Court of Appeal’s warnings coming to pass in the case of SNA 1 – with the benefits of the rebuild of the stocks through the TACC cuts being lost to recreational hooks. In a system such as the QMS it is critical for good fisheries management and ensuring sustainability that management measures are imposed on all sectors to constrain each sector to its allocated share. We all need to do our bit.
- 102 Since the 1997 TACC cuts, estimated recreational catch has increased by approximately 75% over the recreational allowance, to an estimated 3992t (including estimated charter catch). Clearly now is the time for the Minister to take action to implement effective controls on recreational fishing. This not only is a matter of good fisheries management – the Courts have made it clear in both the Snapper and Kahawai proceedings that reasonable management measures on recreational catch should be made to prevent the benefits of TACC reductions being lost to recreational hooks.
- 103 Moreover, the lack of effective management of the recreational SNA 1 catch (and wider recreational snapper catch more generally) presents a significant impediment to obtaining MSC Certification for snapper, and therefore the reputational and enhanced export value benefits such certification would bring.
- 104 Despite the rhetoric of the recreational lobby, the management measures proposed by the Ministry in the IPP are reasonable and scientifically based. They provide the Minister with a mix of options to implement controls based on bag limit reductions and increases in MLS.
- 105 SNA 1 commercial strongly supports the implementation of reasonable management controls on the recreational sector. In the case of Option 2, the Minister has the option of the reduction of the bag limit by a few fish combined with an increase of the MLS by a few centimetres. For example, if the MLS was increased to 33cm a bag limit of 6 would be effective – more than enough for a feed of fish. Alternatively, the Minister could increase the MLS to 35cm, in which case no bag limit reduction at all would be required.

(G) FISHER INITIATIVES – WE’VE STEPPED UP

106 Most if not all of the criticism of the commercial fishing industry by the vocal recreational sector lobby has been unjustified and irrational. We (and the Minister and Ministry) have taken an unfair public hammering as a consequence of the Ministry, quite rightly, proposing reasonable and science based measures to manage the recreational catch.

107 This notwithstanding, we recognise that we as an industry have to step up and take responsibility to address such criticism and the negative public perceptions it engenders. SNA 1 Commercial has agreed to implement a suite of initiatives which will give confidence that the commercial catch continues to be well managed, accurately reported and constrained within the TACC.

108 The following initiatives have gained 100 per cent support from the fishers, LFRs and quota owners who have attended meetings in Tauranga, Thames, Auckland and Whangarei (collectively representing 96% of the commercial operators responsible for catching and managing the SNA 1 ACE, all of the LFRs, and the vast bulk of the SNA 1 quota ownership by volume).

We will support a SNA 1 management plan

109 We fully endorse the Ministry’s initiative to work towards a specific snapper management plan over the next three to five years. Across FMA 1 commercial fishers and LFRs have agreed to support their representatives to attend meetings and positively engage with other stakeholders. We will share our knowledge and our experience, while remaining open and enquiring of other views.

110 We have agreed to reach out to the recreational sector and begin a conversation about working together to ensure sustainability.

We will record <MLS snapper returned to the sea

111 By law all fishers are required to return to the sea all snapper that are under legal size. In the commercial sector these are fish less than 25cm, and they are not required to be recorded on our Catch Effort Landing Reporting form.

112 One of the criticisms raised by the recreational lobby is that commercial fishers are responsible for significant juvenile mortality by trawling and seining in significant nursery areas. Despite there being no evidence to support such an allegation, and that many of these areas are protected from commercial fishing either via regulation or foul ground, the industry is prepared to record all snapper returned to the sea on a tow by tow basis. This will provide better information on the level of undersize snapper being returned to the sea.

113 Industry has demonstrated a commitment to address juvenile mortality by its investment in the development of new fishing methods in response to regulatory and sustainability challenges. For example, Precision Seafood Harvesting (*PSH*), a Primary Growth Partnership (*PGP*) project, is our most recent effort to fish smarter and more sustainably. PSH is a \$52 million six year investment into net technology that will change the way we trawl. Small, sub MLS size fish will swim free underwater, survivability of fish landed is vastly improved, greater species selectivity is possible, and the option of on-rearing in cages to market specifications will become a reality. We refer you to the recently published quarterly report on PSH that can be found on the PGP website at this link <http://www.mpi.govt.nz/agriculture/funding-programmes/primary-growth-partnership/precision-seafood-harvesting>.

114 In the context of juvenile mortality it is important to appreciate that the commercial SNA 1 snapper fishery is already subject to a large number of fishing area and seasonal restrictions and constraints, beyond the TACC. The IPP summarises these at Table 3.1, and some of these

closures were intended to protect juveniles and spawning aggregations from the impacts of commercial fishing. A number of the other closures are historical (pre-QMS) and are effectively now obsolete and only serve to further limit commercial effort (while benefitting recreational fishers by giving them exclusive access)..

“Move On” rule - we will shift our fishing effort if a high percentage of catch is <25cm

- 115 Subsequent to our meetings, we have negotiated agreement to adopt a ‘move on’ rule similar to that used in the hoki fishery. This is a very effective avoidance technique that can be used to reduce incidental mortality of sub MLS fish. This rule ensures that fishers do not reset in the same area or tow the same line and will move on their fishing operation if a high percentage of their catch is under 25cm. The move on rule will help reduce juvenile mortality and will address any perception that trawl and Danish seine vessels indiscriminately fish.

Danish seine fishers will record shot location information

- 116 Danish seine fishers unanimously agree to record the location of all their shots, rather than only the midday location as required by the regulations. This will provide fisheries managers with better fine scale information on where Danish seining effort is occurring.

Trawl fishers will record the location of all tows

- 117 SNA 1 trawl fishers unanimously agree to record the start and end of each tow, by latitude and longitude. This will provide fisheries managers with fine scale information on where trawl effort is occurring compare to the current position (which is currently by the FMA statistical area).

We will record catch effort consistently and without bias

- 118 Fishers unanimously agreed that there was a need to begin a discussion with FishServe about how the CELR form is being filled in by fishers and the target and species list recorded. Currently there appears to be different approaches to filling out the CELRs and confusion in situations where the target species is not snapper (e.g. trevally) but the snapper bycatch tonnage is greater. This initiative will improve the robustness of the catch effort data across the SNA 1 fleet.

We will install VMS across the fleet on all vessels catching 5t or more

- 119 Fishers unanimously agree to install Ministry approved vessel monitoring systems (VMS) across the fleet on all vessels catching 5t or more of SNA 1 by any fishing methods, by 31 March 2014. The six LFRs (AFL, OPC, Sanford, Leigh Fish, Bay Packers and Antons) will require fishers landing into them to have VMS installed.

- 120 We estimate that this commitment will cost the commercial fleet \$600,000 in one-off installation plus an on-going monthly monitoring fee. VMS will support the Ministry with its compliance operations and help address any perception that illegal commercial activity is taking place. VMS will actively record and monitor the exact position of fishing vessels at all times, 24/7. Fishing effort will be mapped and logged. Locating non-compliant vessels will be easier for the Ministry.

- 121 We recommend that the recreational charter fleet similarly install Ministry approved VMS systems on their vessels before 31 September 2014.

We will adopt smarter reporting and the use of electronic log books

- 122 Fishers unanimously support moving towards smarter reporting and the use of electronic log books. This is a very tangible way to improve the understanding of the commercial catch effort. We have begun conversation with FishServe, Trident and the Ministry’s fisheries scientists about how to proceed. We are committed to have this recording in place, at least in a paper format by the start of the new fishing year.

We will support the investigation of electronic catch monitoring on all vessels

- 123 Already several fishing companies in SNA 1 are trialling the practicality of video cameras on vessels to monitor catch. They are sharing their experiences and results. Electronic monitoring (EM) is a smart and cost effective way to verify fishing activity – but must be used for specific purposes with strict protocols so as to produce reliable information that can be fed into science processes.
- 124 Human observers are expensive and often impractical on small inshore vessels. SNA 1 Commercial accepts that to be trusted the fishing industry needs to be more transparent and EM is one way that we can support our on the water initiatives with verifiable data.

We will report non-compliance and encourage VADE

- 125 The vast majority of professional fishers are fully compliant with fisheries laws and regulations. However, we are tired of a few bad apples spoiling our image and reputation and giving the recreational lobby ammunition. The professional integrity of the commercial fishing industry is at stake, and we have unanimous support and a commitment to report non-compliance when observed within the commercial fleet. SNA 1 Commercial supports the Ministry's VADE model (Voluntary, Assist, Directed, Enforced).

We will support a SNA 1 tagging programme

- 126 Fishers and quota owners in SNA 1 agree to support and commit to participating in well planning and cost effective tagging programme designed to inform an absolute biomass estimate. This will involve a trickle feed, multi-year catch and release study (not counted against ACE), ideally involving both recreational fishers and charter vessel operators also tagging and releasing fish in areas closed to the commercial sector. Up to date information on absolute biomass and a better understanding of fish movement will support the development of a stock assessment model that will be significantly more robust and should provide more certainty for future management than what is currently on hand.

We will positively engage with the Ministry's fishery managers and scientists

- 127 We want to ensure that SNA 1 fisheries management and science is as good as we can get it. We unanimously agreed that we will collaborate and share information with fisheries managers and scientists for the benefit of all stakeholders in the SNA 1 fishery (for example, through the industry owned but independent science provider Trident Systems, which has been active in research in FMA 1 for the last 3 years, including in the catch sampling of snapper, trevally and tarakihi).
- 128 For example, across all fisher meetings we heard concerns that fish survivability is a major issue. In the past many in our group have worked with fisheries scientists in catching and holding fish at sea in tanks to record their survivability. We know that there are several key triggers (depth being the main one) that will directly affect whether a released fish lives or dies. We believe that more work needs to be done on this, particularly as we understand that many recreational fishers are returning significant proportions of their catch to the sea.

APPENDIX 1 – SNA 1 COMMERCIAL MEMBERS

New Zealand Commercial Fisherman’s Association including Whitianga and Coromandel Peninsula Commercial Fishermen’s Association; Leigh Commercial Fishermen’s Association; Whangarei Commercial Fishermen’s Association and the Bay of Plenty Commercial Fishermen’s Association.

The New Zealand Fishing Industry Guild

Sanford Limited	Aotearoa Fisheries Ltd	Leigh Fisheries	Bay Packers
Antons Seafood	Te Ohu Kaimoana	OPC	Gavin Perry
Ron Perry	Steve Lines	Neil and Paul Gwillim	Charles Hayes
Andy Bergvall	Carl Carrington	Tom Searle	Michael Goldsworthy
Dave McIntosh	Shane Walsh	Wayne Dreadon	Henry Buchanan
Bob McAllister	Nathan Reid	Eric Barratt	Bob Donley
Ivan Rosandich	Darren Fabricius	Graeme Bailey	Steve Litherland
Elisha Yahel	Glen Strongman	Daniel McLaren	Rongomai Brightwell
Cindy Bailey	Steve Meredith	Roger Rawlinson	Neil & Paula Gwillim
Rowan Strongman	Brian Kiddie	Peter Reid	John Willmer
Michael Thomas	Phil Clow	Warwick Goodman	Laurie Bleanmish
James Dick	Joan Bridge	Richard Stone	Doug Pulford
Mike Wallace	Ali Undorf-Lay	Jim Jose	Mark Semmens
Greg Hayes	Michael Wenzlick	Jim Fitzgerald	Milan Barbarich
David Stone	Adam Clow	Greg Bishop	Greg Johansson
Peter McKenzie	Ivan Maich	Hilton Leith	Daryl Walker
Paul Roberston	Clint Dolfing	Ray Dyer	John Dyer
Raiha Fredricseh	Nick Hayes	Zak Olsen	Jamie Hepi
Ron Baker	Brad Leggott	Rod Scott	Sam Hayes
Dave Moore	Arch Harvey	David Jose	Chris Harvey
John McGrath	Brian Gibbons	George Harvey	Ray Yearbury

APPENDIX 2 – SNA 1 COMMERCIAL FISHER STATEMENTS

Daniel McLaren, fish (Owner/Operator) Mercury Bay

I've been involved in the commercial fishing industry for 11 years, starting as deckhand on various boats, completing my skipper's ticket and finally investing, and running an inshore long line vessel three years ago.

Fishing is something I'm passionate about and I really enjoy the challenges of the everyday life of a fisherman. In my 11 years at sea, and in particular the last three fishing for myself, I find it hard to believe there is a shortage of snapper. At times we're sent out from the shed to target mix on the deep reefs only to find they're plagued with snapper!

My business employs two crew; one has two daughters and the other crew and his partner are expecting their first child in November. For them fishing, and particular snapper which is our main catch, provides good employment with a decent wage which is often hard to come by in a small seaside town like Whitianga.

Greg Hayes, fisher in Whangarei

'I've noticed a huge increase in snapper over the past 20 years. High snapper numbers now make it prohibitive for me to fish the Hauraki Gulf, which was a valuable John dory fishing area. I have had to continually move to deeper waters to avoid snapper and too catch my target species of gurnard, John dory, and tarakihi. Even then my trips are often cut short because of snapper abundance in areas where they were never prolific.'

Adam Clow, long line fisher based in Coromandel

I fish in Bay of Plenty and East Northland and have six years of good snapper fishing experience. My partner and I are owner operators of a 14.7mt commercial inshore bottom long liner and we catch about 110 tonne of high quality fish, which consists of 75% SNA1. We absolutely rely on having access to our current levels of snapper ACE as we are raising two young daughters and are paying off our vessel and our home. Over the last six years that I have been skipper I have experienced good fishing and on the basis of this we made the decision to purchase our vessel and the business.

Greg Bishop, Leigh Fish

The recreational catch effort is huge. With owning the brand Salty Dog we know how much bait is used to catch 1000 ton long line fish is 70 ton of pilchards used by our long line fleet. Salty Dog sells retail and wholesale approx. 400 ton. This is only one bait supplier of many and does not include other baits and soft baits.

Phil Clow, Danish Seine owner operator based in Whitianga.

When I first started seining you had a bit of a respite from snapper in that in the winter months you could target the gurnard, john dory and other species without worrying about having excessive catches of snapper in your net, surfacing behind your vessel. How things have changed, the autumn months especially can deliver large catches of snapper where once they were a bycatch. It may be that the snapper is taking over the area and forcing the other species away.

Brian Kiddie, fisher Bay of Plenty

We don't target snapper as such but on my long line in the 1980's I averaged 46 hooks for one kilo of snapper and this year I have averaged 9 for that same kilo of fish.

Sean McCann, fisher Whangarei

Catching snapper commercially is not a problem, avoiding them while trying to catch other species (such as gurnard, trevally, tarakihi etc.) is. Most New Zealanders eat fish and most of that fish comes from commercial fishing boats. Think fish and chip shops, takeaways and restaurants. Most people that own boats and fish still buy most of the fish they eat.

Michael Wallace, owner operator based in Coromandel

I wholeheartedly agree with the statements of Greg Hayes, Adam Clow and Greg Bishop, especially regarding the abundance of snapper in area 1 that effect my decisions concerning my fishing operations during the whole year.

Mark Semmens, fisher working between North Cape to Great Barrier

I am both a recreational and commercial fisher. I've 38 years experience full time commercial fishing. In the 1970s and 1980s with the decline in snapper during the winter months it was that tarakihi, gurnard, John dory and trevally were easy to catch. Now the fishery has completely reversed with snapper being the dominant species and the other mix being in decline.

Even out at depths of 200 meters which was the sole domain of tarakihi I am now seeing increasing numbers of snapper. In both summer and winter months I have to return to port early and cut my trips short as I have reached my snapper allocation for the week earlier than planed. This is a problem as 'mixed species' usually offer the best return for fishers.