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“More fish in the water/Kia maha atu nga ika ki roto i te wai”

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Review of Sustainability Measures and Other Management Controls for Selected 1 October Fishstocks

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Introduction

- 1. This submission is made on behalf of option4, the Hokianga Accord, NZ Sport Fishing (NZSF) and the Council’s Zone 3, 4 and 8 Bay of Plenty clubs. This submission is also made in the interests of assisting the Minister of Fisheries (the Minister) and Ministry of Fisheries (MFish) to achieve abundant fisheries that will enable all New Zealanders to provide for their social, economic and cultural well-being.
2. The joint submitters appreciate the opportunity to comment on the review of sustainability measures and other management controls for Hapuku Bass 3 (HPB 3) and Trevally 2 (TRE 2). The Initial Position Papers (IPPs) were released for consultation on 21 June, with submissions due by 26 July 2010.

3. The joint submitters acknowledge and support the NZ Sport Fishing Zone 5 fishing clubs' submission for Trevally 2, and the Kaikoura Boating Club's Hapuku Bass 3 submission.

Recommendations

- ⇒ That the proposals for Trevally 2 and Hapuku Bass 3 are reconsidered to take into account the 2009 Supreme Court Kahawai decision, the Ministry's recent Kahawai proposals, and the statutory obligations, Purpose and Principles of the Fisheries Act 1996.
- ⇒ That the total allowable catch (TAC) and total allowable commercial catch (TACC) setting processes are realigned to conform with the Fisheries Act 1996, by separating the processes conducted by the Minister to firstly determine and set the TAC, to ensure sustainability, and secondly to determine how that TAC will be utilised.
- ⇒ That ongoing commercial catch in excess of the TACC is an inadequate basis on which to set total allowable catches (TACs), make allowances and set or vary the total allowable commercial catch (TACC).
- ⇒ That the biomass of both Trevally 2 and Hapuku Bass 3 fish stocks is increased to achieve greater value and better meet the Purpose of the Fisheries Act. Doing this will enable all New Zealanders, not just a select group of quota owners, to provide for their social, economic and cultural well-being.
- ⇒ That the total allowable commercial catch (TACC) for both Trevally 2 and Hapuku Bass 3 is reduced to "repay" excessive past commercial catches made profitable by the application of a flawed deemed value regime, unrealistic deemed value rates and opportunistic commercial fishing practices.
- ⇒ That any commercial catch taken in excess of the total allowable commercial catch (TACC) is deducted from the following year's Annual Catch Entitlements (ACE) for that fish stock.
- ⇒ That the three management options proposed by MFish for both Trevally 2 and Hapuku Bass 3 are rejected in favour of a fourth option, as detailed in Table 1.

Table 1: Recommended TAC, allowances and TACCs, in tonnes (t), for TRE 2 and HPB 3.

		TAC	Customary allowance	Recreational allowance	Other mortality	TACC
Trevally 2	Current	241	0	0	0	241
	Option 4	337	10	120	7	200
Hapuku Bass 3	Current	0	0	0	0	335.1
	Option 4	517	10	200	7	300

- ⇒ That for economic and sustainability reasons the Trevally 2 total allowable commercial catch (TACC) is reduced until the 2011 relative abundance information is analysed, to:
 - Enable a stock rebuild;
 - Provide for non-commercial interests; and
 - Enable the Minister to take a precautionary approach in this information-poor fishery.
- ⇒ That the total allowable commercial catch (TACC) for Hapuku Bass 3 is reduced to enable the juvenile population to mature into adults.
- ⇒ That more resources are applied to Trevally 2 and Hapuku Bass 3 so that future management decisions are based on better information and all New Zealanders benefit from the value derived from these fisheries.

Submission

4. The joint submitters note the proposals for Hapuku Bass 3 (HPB 3) and Trevally 2 (TRE 2) are in sharp contrast to the recent management proposals for kahawai¹. In the Kahawai proposals MFish gives greater recognition of interdependent species and ecological relationships with seabirds and marine mammals. The Ministry also emphasises that the Minister can choose to maintain stocks at higher levels to provide better quality of non-commercial fishing.
5. Taking into account the Kahawai IPP and the *Fisheries 2030* objectives the joint submitters consider the HPB 3 and TRE 2 proposals are of very poor quality. We fear this drop in standard foreshadows a collapse in the integrity of the quota management system – a system that is obviously struggling to deliver an economic solution to an ecological and social problem of depleted fisheries.
6. While these current MFish proposals might tick the boxes for achieving a couple of the *Fisheries 2030* Performance Indicators, such as increasing quota value and no perceived increased risk to the environment, there are others that are conflicted.
7. Because commercial over-catch is ongoing and there is such poor information these current management proposals encourage decision-making on guesswork and political lobbying, which is always to the detriment of future generations of New Zealanders who deserve ‘more fish in the water’.
8. These proposals also perpetuate the notion that fish taken in excess of the legal total allowable commercial catch (TACC) is converted into a perpetual property right to the quota owner if this excess is continued over a long time period. MFish now suggest issuing additional quota as a reward for these excesses. It is unlikely that just because someone robs a bank for several years the proceeds will be granted to him in perpetuity, yet this is what the Ministry’s proposals recommend for both TRE 2 and HPB 3.
9. This same defective logic was applied during the 2002 process to increase the TACC in Snapper 2, based on historic commercial over-catch. Application of this principle was strongly rejected by some of the current submitters. Abundance and availability of Snapper in Area 2 has collapsed since the higher TACCs have been in force. Moreover, MFish recently acknowledged that the conclusions of the previous SNA 2 stock assessment, which underpinned the TACC increase, were unreliable.
10. Commercial catch rates are no longer considered useful for monitoring abundance even in some of our “information-rich” inshore fisheries. Annual sampling of the size and age of commercial catch has stopped in Snapper 1 and Snapper 8.
11. Given the paucity of available information and apparent eagerness for TACC increases a monitoring programme for Trevally 2 and Hapuku Bass 3 ought to be introduced. A strategy to monitor catch rates should be outlined as part of the Final Advice Paper (FAP) to the Minister.
12. In the Trevally 2 Initial Position Paper (IPP) MFish proposes to give away fishing rights based on a spike in commercial catch a year before new research may shed some light on what is going on.
13. The current process being used to set the total allowable catch (TAC) and total allowable commercial catch (TACC) in fish stocks is skewed towards setting a favourable TACC for commercial interests, and is illegal.

¹ Review of Sustainability Measures for all Kahawai Stocks October 2010 – Initial Position Paper. Ministry of Fisheries, 25 June 2010.

Major concerns

14. In anticipation of the fisheries Minister making a precautionary decision for Trevally 2 and Hapuku Bass 3 we highlight our major concerns with the proposals, and provide additional details below-
- a. There is no provision to enable the “input and participation” of tangata whenua having an interest in these fish stocks or area of concern, as required by s12(1)(b) of the Fisheries Act 1996.
 - b. There are no stocks assessments for either Trevally 2 or Hapuku Bass 3.
 - c. MFish note new information on relative abundance in Trevally 2 may be available in March/April 2011 and this may provide information to better inform variations in the Total allowable catch (TAC).
 - d. There is no information or investigation on interdependence of other species.
 - e. There is no time-series of any data, except reported commercial landings.
 - f. The deemed value regime is failing to constrain commercial catch to the legal limits set by the Minister. Even the MFish proposed increased deemed value rates might not provide an incentive for fishers to buy ACE (Annual Catch Entitlement). That is because current management practices incentivises this over-catch by:
 - i. Providing economic gains;
 - ii. Not providing any significant consequences for deliberate catch in excess of the TACC, and not deducting an equivalent amount from the overall TACC in the following fishing year.
 - iii. Enhanced potential for future catching rights being issued to commercial interests based on excessive historic catch.
 - g. The proposals use average commercial landings over the past 10, 15 or 23 years as a guide to setting increased total allowable commercial catches (TACCs), even when the catches have been taken by a fleet operating under a flawed deemed value regime.
 - h. There is no consideration of the quality of recreational fishing or any trend data from recreational boat ramp surveys.

Trevally 2

15. We acknowledge the NZSF Zone 5 clubs’ view that the MFish option 1 for TRE 2 is the only viable option, from those proposed.
16. We submit that current biomass, abundance and availability of Trevally in Area 2 is not providing for all New Zealander’s social, economic and cultural well-being.
17. Because Trevally 2 is not providing for people’s well-being all three MFish options are rejected in favour of a fourth option, as detailed in Table 2.

Table 2: Recommended TAC, allowances and TACCs in tonnes (t) for Trevally 2.

Trevally 2					
	TAC	Customary allowance	Recreational allowance	Other mortality	TACC
Current	241	0	0	0	241
Option 4	337	10	120	7	200

18. Option 4 is based on the following rationale:
- a. The proposed TRE 2 TACC is reduced to repay excessive past commercial catches;
 - b. There is a modest reduction from the MFish proposed TAC, to increase stock size;
 - c. Target stock size is above B_{MSY} ;
 - d. Catch at age and Catch Per Unit of Effort (CPUE) needs to be monitored;
 - e. Analyse data after five years to verify if stock is increasing; and
 - f. If biomass is not increasing at an acceptable rate the Minister could consider larger reductions in the TACC to increase the rate of rebuild in TRE 2.
19. Merely making an allowance for non-commercial interests and other mortality does not alter the biomass, abundance, or availability of TRE 2.
20. Quota management system controls and MFish have failed to constrain commercial catch levels to legally defined levels in 15 of the last 23 years.
21. It is highly objectionable that there will be any increase in TACC for Trevally 2 because MFish note that it is not known if current catches are sustainable.
22. If anything, the noted biomass decline would require a reduction in TACC due to the paucity of information, the current inability of the fishery to provide for people's well-being and the recognised sustainability risk.
23. New information on relative abundance in TRE 2 will be available in March/April 2011. MFish advise *this new information may provide a more robust foundation to vary TACs and monitor stock health and set TACs.*
24. If there is to be a change in TACC a short-term solution would be to reduce the total allowable commercial catch (TACC) until this new information is analysed. This will help to achieve a stock rebuild and provide for non-commercial interests while enabling the Minister to take a precautionary approach in this information-poor fishery.
25. We note with interest MFish comments from the deepwater IPP:
- [74] The CCAMLR² harvest strategy contains decision rules that are more stringent than the defaults for targets and hard limits defined in the New Zealand Harvest Strategy Standard (essentially B_{MSY} or proxy and 10% of the unfished level, respectively). In essence the CCAMLR harvest strategy sets a target for the stock so that over a period of 35 years the size of the spawning stock remains at least half of what it would have been in the absence of fishing. In addition a hard limit is established such that if the stock size was at, or projected to fall below 20% of what it would have been in the absence of fishing, the fishery would be closed.
26. The CCAMLR has existed longer than the quota management system and applies precautionary principles for krill and other species. It is a poor reflection on our fisheries managers that the New Zealand Harvest Strategy Standard uses reference points of 10 and 20 percent when other jurisdictions use 35 to 70 percent, with closure limits set at the 20% level, the management target for most of our fisheries. New Zealand's fisheries would largely be closed for rebuilding if they were managed to these international standards.

² Commission for the Conservation of Antarctic Marine Living Resources.

27. MFish emphasise that *the Minister has the discretion to make allowances for various sectors based on the best available information*. However, he has to do this within the bounds of sustainability and after the TAC has been set.
28. The best available information is uncertain stock information, non-commercial interests are not being provided for at current biomass levels and recreational harvest levels in Area 1 are irrelevant to TRE 2. There is no discretion for the Minister to do anything but take a precautionary approach.
29. The joint submitters reiterate the statutory obligations on the Minister are to provide for the “input and participation” of tangata whenua in this process, have particular regard to kaitiakitanga when managing our natural resources and that he must ‘allow for’ non-commercial customary *interests* not just fishing.
30. Non-commercial customary interests in TRE 2 encompass far more than the 50 permit-recorded fish and those assumed taken under the amateur fishing regulations.
31. Also, a one tonne allowance is meaningless if those fish are not available for catching or being left in the water. Abundance and availability of Trevally needs to improve.
32. We also note the concerns expressed in a recent letter from Napier Trawlermen to Pat Reid, the Chair of Area 2 Inshore Finfish Management Company. Large trawlers from the deepwater fisheries are now targeting inshore areas and the Trawlermen are supporting a 350 horse-power limit inside Hawke Bay waters. There are also serious concerns about the inadequacy of stock assessment information and the bycatch associated with scampi fishing amongst important juvenile grounds.
33. Similar concerns are expressed in a letter to Pat Reid from the Guardians of Hawke Bay Fisheries, a voluntary multi-stakeholder group based in Napier. They estimate around \$20 million has been spent over the past three years on MFish-led Fisheries Plans, with little benefit accruing to the Hawke Bay people or its regional fisheries.
34. The most effective way to improve abundance and availability is to increase the biomass by decreasing commercial catch; but given historic behaviour new controls or consequences for overfishing will be required because the TACC does not constrain commercial catch or capacity.

Hapuku Bass 3 (Groper)

35. The joint submitters endorse the Kaikoura Boating Club’s strong opposition to any TACC increase for HPB 3.
36. We submit that current biomass, abundance and availability of Hapuku Bass in Area 3 is not providing for all New Zealander’s social, economic and cultural well-being. Because HPB 3 is not providing for people’s well-being all three MFish options are rejected in favour of a fourth option, as detailed in Table 3.

Table 3: Recommended TAC, allowances and TACCs, in tonnes (t), for Hapuku Bass 3.

Hapuku Bass 3					
	TAC	Customary allowance	Recreational allowance	Other mortality	TACC
Current	0	0	0	0	335.1
Option 4	517	10	200	7	300

37. Option 4 is based on the following rationale:
- a. The proposed HPB 3 TACC is reduced to repay excessive past commercial catches;
 - b. There is a modest reduction from the MFish proposed TAC, to increase stock size;
 - c. Target stock size is above B_{MSY} ;
 - d. Catch at age and Catch Per Unit of Effort (CPUE) needs to be monitored;
 - e. Analyse catch data after five years to verify if stock is increasing; and
 - f. If biomass is not increasing at an acceptable rate the Minister could consider larger reductions in the TACC to increase the rate of rebuild in HPB 3.
38. Merely making an allowance for non-commercial interests and other mortality does not alter the biomass, abundance, or availability of groper. It seems there are very few mature hapuku left off the Kaikoura coast.
39. Kaikoura Boating Club members report decreases in both size and abundance of hapuku. Years ago groper were so abundant that large hapuku could be caught from the shore. It is notable that the shore-based angling club's trophy for the largest hapuku has been unclaimed for the past 20 years.
40. We note with interest the comments from Derek Moody, a member of the Ashley Sports Fishing Club, based in Rangiora:

Having fished the Kaikoura, Canterbury and Banks Peninsula coasts for approximately forty years I am staggered that MFish is even considering raising the commercial catch limit for Groper in this area, given that they have so little information on the fishery.

Catching Groper in this region does not come easy for recreational fishers due to the elusive nature of this not-so-common fish and the prevailing sea conditions. For example, during the last week of the school holidays I took my 12 year old son out via Lyttelton (forecast good) with the intention of catching a Groper on some marks given to me by an honest and reliable retired commercial fisherman. During our journey out to this fishing posse the sea became very rough and unpleasant for my son, so after an hour we aborted the trip and headed for home.

Two days later we tried again. The sea was flat calm (one day in a hundred) for our trip of approximately 40 miles off the Canterbury coast. After one and a half hours we were on the specified mark.

After fishing for roughly four hours trying different depths, varying our baits and methods there were no Groper caught on this once-bountiful pinnacle. (My old fisherman friend said it was loaded.) So we headed home with a few sea perch fillets for dinner rather than some succulent Groper fillets.

As recreational fishermen we do not get to fish these remote spots very often, unlike our commercial counterparts.

Recreational fishermen are forever taking a reduction in catch i.e., Blue cod fishery which has been grossly mismanaged.

Instead of increasing the commercial catch limits, the TACC should be reduced or better still stopped for a couple of years to let the stocks rebuild to such an extent that we recreational fishers can once again enjoy catching and eating this terrific fish. I do not believe that the present Groper fish stock can sustain more, if any, commercial take.

41. MFish emphasise that *the Minister has the discretion to make allowances for various sectors based on the best available information*. However, he has to do this within the bounds of sustainability and after the TAC has been set.
42. If the Minister is serious about complying with his statutory obligations, taking a precautionary approach and ‘allowing for’ customary and recreational interests then the HPB 3 TACC needs to be reduced until biomass, abundance and availability improves. Hapuku Bass 3 is a key fishery for both customary and recreational interests.
43. Quota management system controls and MFish have failed to constrain commercial catch levels to legally defined levels in 10 of the last 11 years.
44. It is highly objectionable that there will be any increase in TACC for Hapuku Bass 3 because there are no estimates of current and reference biomass.
45. MFish note the *status of groper stocks is highly uncertain, and groper are vulnerable to overfishing*.
46. MFish has no idea if current catches or the TACC is sustainable or at a level that will allow the stock to move towards a size that will support maximum sustainable yield (MSY).
47. Even more disturbing is MFish’s comment that *the history of overcatch in the fishery is not sufficiently long or consistent to confirm recent catch levels are sustainable*. [3] This reflects poorly on how we manage fish stocks. If overcatch is to be a measure for sustainability then we are all in trouble.
48. We also note the 2010 Plenary report comments on HPB 3:

[p339] Current fishstock boundaries appear inappropriate for the management of Cook Strait and South Island Hapuku. Current stock boundaries are based on QMAs and do not reflect natural stock boundaries. Existing data cannot describe the stock structure of New Zealand groper (Paul 2002b)³.
49. We agree with MFish that cautious management is advisable in the absence of robust monitoring information.
50. The joint submitters reiterate the statutory obligations on the Minister are to provide for the “input and participation” of tangata whenua in this process, have particular regard to kaitiakitanga when managing our natural resources and that he must ‘allow for’ non-commercial customary *interests* not just fishing.
51. Non-commercial customary interests in HPB 3 encompass far more than the 345 permit-recorded fish, plus another 55kg, and those assumed taken under the amateur fishing regulations.
52. A one tonne allowance is meaningless if those fish are not available, for catching or being left in the water. Abundance and availability needs to improve.
53. The most effective way to improve abundance and availability is to increase the biomass by decreasing commercial catch; but given historic behaviour new controls or consequences for overfishing will be required because the TACC does not constrain commercial catch or capacity.
54. The MFish proposal for HPB3 offers no evidence that the 360 tonne of deemed catch taken over the past decade has not been at the cost of sustainability.

³ Report from the Fisheries Assessment Plenary, May 2010: stock assessments and yield estimates. Ministry of Fisheries Science, May 2010.

55. MFish identifies what they consider is the best available information then systematically rules each an extreme uncertainty, except for the reported commercial landings.
56. Moreover, the 360t of excess catch has been taken from a common pool that all New Zealanders have a broad interest in. These interests vary from environmental, amenity, abundance, and/or catchability.
57. It is only fair that this excess commercial catch is credited to the public's share of the common fisheries pool, to repay that taken above the legal allocation. Our preferred management regime is set out in Table 3 above.

Deemed values

58. The proposals for both Trevally 2 and Hapuku Bass 3 are prime examples of the consequence of trying to manage fisheries by setting deemed values that can never deliver, on the water, the fine balance economists are able to describe in a model.
59. Even the proposed TRE 2 deemed value increase to \$1.25 per kilo does not equate to the recent port price of \$1.54 per kilo.
60. Non-commercial fishing and environmental interests expect MFish to implement practical controls to curb excessive commercial fishing, to enable our fish to be returned to the water.
61. The current and proposed deemed values rates will merely require fishers who catch fish without ACE (Annual Catch Entitlement) to deplete the fishery and pay a small fee to the Crown. This makes the Crown complicit in the oppression of the public's rights – allowing unchecked deeming to deplete stocks and deprive the public and future generations of abundance.
62. The proceeds from deemed fish rightfully belong to those other interests and users whose miss out on catch because one sector exceeds their allocation – there is no case for the Crown to profit from catches without ACE.
63. All mortality caused by commercial fishing needs to be accounted for within the total allowable commercial catch. ACE generated the following year needs to be reduced in proportion to the excess catch in the previous year i.e. A 110% catch one year is followed by a 90% ACE the following year.

Non-commercial interests

64. Section 8(2) of the Fisheries Act 1996 defines utilisation as *conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic and cultural well-being*.
65. The Supreme Court considered this aspect and noted:

[54] The notion of people providing for their well-being, and in particular their social well-being, is an important element of recreational interests.
66. Section 21 of the Fisheries Act 1996 states the Minister of Fisheries **must** 'allow for' non-commercial interests, both Maori customary and recreational.
67. MFish propose to increase the TACC for both Trevally 2 and Hapuku Bass 3 without checking that the recreational interests in these fisheries are being 'allowed for'.

68. MFish provide no information on whether current abundance and availability in these fish stocks is enabling people to provide for their well-beings, and in particular, their social well-being. This ignores a very fundamental direction from the Supreme Court.
69. As highlighted in both the NZSF Zone 5 and Kaikoura Boating Club submissions, people's non-commercial interests are not being met. As a consequence the social (and cultural) well-being of people in Area 2 and 3, their visitors and friends, are not satisfied.
70. For example, between 2006 and 2010 NZSF Zone 5 club members surveyed 8995 anglers at Hawke Bay boat ramps. Trevally catch rates have declined from 0.15 fish per angler day in 2006. While we accept trevally may not be a target species for all anglers, even the best outcome of 0.15 fish per angler day is atrocious.
71. Groper is the recreational species of choice in Area 3. Groper has been the backbone of the recreational fishery for over a century. Collapsing catch rates indicate a biomass below the level that will deliver the greatest value, and is causing significant loss of social and cultural well-being.
72. MFish's policy in the Kahawai proposals requires setting a target biomass level above that which will achieve the biomass required to produce maximum sustainable yield (BMSY). The objective is to achieve greater value and better meet the Purpose of the Fisheries Act, to provide for these well-beings.
73. The value proposition espoused in the Kahawai proposals and *Fisheries 2030* needs to be equally applied to both Trevally 2 and Hapuku Bass 3 because both fish stocks have high social and cultural values. This dictates that a new biomass target needs to be set in Trevally 2 and Hapuku Bass 3.

Legal Constraints

Fisheries Act 1996

74. The scheme of the Fisheries Act 1996 (the Act) requires the Minister to set the Total allowable catch (TAC) before making allowances for fishing related mortality and non-commercial interests, both customary and recreational, and prior to setting or varying the total allowable commercial catch (TACC). The Supreme Court⁴ noted:

[52] The scheme of the Act envisages that the Minister first sets the total allowable catch for the fishing year under s13, and then sets the total allowable commercial catch under ss 20 and 21.
75. Despite the legal requirements, TAC recommendations in MFish proposal documents are progressively being discussed in terms of the TACCs and allowances. TAC options are offered in combination with set allocation consequences. The TAC and TACC are being set contemporaneously, in contravention of s20(5)(a) of the Fisheries Act, and the decision of the Supreme Court.
76. It is not stated how the Supreme Court contemplated the Minister would consider the aspirations of fishing sectors for utilisation when setting the TAC; the TAC is concerned with managing stock size to ensure sustainability, not allocation.
77. The only apparent utilisation aspirations relevant to the TAC lie with the choice of target biomass, but neither TRE 2 nor HPB 3 have any useful *scientific* data to inform a target-setting process.
78. Matters of allocation are dealt with when applying ss 20 and 21 of the Act and are therefore only considered after a TAC is set to ensure sustainability.

⁴ New Zealand Recreational Fishing Council Inc and Anor v Sanford Limited and Ors SC 40/2008 [28 May 2009].

79. Current MFish proposal documents combine the process to set the TAC and TACC, and consultation is conducted on these terms. The Final Advice Paper (FAP) is then provided to the Minister to assist his decision-making. Both the TAC and TACC are then gazetted concurrently.
80. It is a serious concern that the TAC is increasingly being influenced and set by ss 20 and 21 matters. This may be a convenience for MFish, but the process needs to be rectified to align with the legislation.
81. The current process is skewed towards setting a favourable total allowable commercial catch (TACC) for commercial interests, and is illegal.

Sustainability and the Total allowable catch (TAC)

82. The joint submitters are very concerned the measures proposed for Hapuku Bass 3 (HPB3) and Trevally 2 (TRE2) do not ensure sustainability as required by the Fisheries Act 1996.
83. The Supreme Court noted that *fisheries are to be utilised, but sustainability is to be ensured*. [39].
84. To ensure means to ***make sure something will happen***. This sets a very high legal threshold and removes almost all of the Minister's ability to take sustainability risks.
85. Terms such as 'most likely, plausible, unlikely, uncertain, unknown etc' are not associated with ***ensuring***. These terms are more akin to the notion of 'maybe, perhaps, possibly'.
86. To ensure sustainability the Minister must move beyond these terms of uncertainty and find a TAC for both Trevally 2 and Hapuku Bass 3 within the bounds of reasonableness and absolutely ***ensures*** sustainability.
87. Ensuring sustainability means adopting harvest strategies that fully account for the uncertain, unreliable, and unknown nature of the information available.
88. Setting a total allowable catch (TAC) requires accommodating both utilisation and sustainability outcomes expressed in section 8 of the Fisheries Act, to enable all New Zealanders to provide for their social, economic and cultural well-being.
89. Both Trevally 2 and Hapuku Bass 3 are key inshore species of high social, economic and cultural value so the TAC needs to be set to achieve the Fisheries 2030 goal of *New Zealanders maximising benefits from the use of fisheries within environmental limits*.

Ministerial discretion

90. As confirmed by the Supreme Court in the kahawai proceedings, "*The Minister is also subject to the general obligation on all decision-makers under the Act to take account of stipulated information principles, one of which is that they base their decisions on the best available information* [47]."
91. Precautionary decision-making is not a Ministerial discretion.
92. When the 'best available information' is uncertain the Minister is statutorily required to act cautiously. This precaution is a responsibility arising from local statute and New Zealand's ratification of United Nation's Treaties.

93. While MFish may consider it appropriate to devise ways around allowing for the public's interest in these fisheries, there is still a statutory requirement on the Minister to act in a precautionary manner, when information is uncertain, unreliable, or inadequate. All of these qualities apply to the current management of Trevally 2 and Hapuku Bass 3.
94. We have serious concerns that the current proposals for TRE 2 and HPB 3 signal future fisheries management by guesswork alone, by employing the following money-pinching methods:
 - a. No stock assessments.
 - b. No Catch Per Unit of Effort (CPUE) information.
 - c. No catch/age sampling.
 - d. No reliable recreational harvest estimates
95. Ultimately it seems as if no actual fisheries information is required if the species is in the quota management system. Commercial landings are seemingly enough to rationalise setting a total allowable catch (TAC), the non-commercial allowances, both customary and recreational, and the total allowable commercial catch (TACC). This is clearly inappropriate and highly detrimental to the public's non-commercial environmental and fishing interests.
96. There is plenty of recreational harvest survey data that MFish could use to inform decisions for both Trevally 2 and Hapuku Bass 3. Some of that information was collected as part of the 1990s regional harvest surveys. Ignoring data on participation and catch rates while asking stakeholders for information is either lazy, cost-cutting or both.
97. The best available information we have for Area 2 is that between 2006 and 2010 trevally catch rates ranged from 0.08 to 0.15 fish per angler day.
98. MFish's proposal to increase the TACC in TRE 2 and HPB 3 is based on excess commercial catch. Catch in excess of the TACC is being used as justification for increasing both the TAC and TACC, without any data on trends in abundance, such as standardised Catch Per Unit of Effort (CPUE) to support it. This is not world-leading fisheries management; this is merely repeating the worst mistakes made in many now-collapsed fish stocks around the world.
99. Recent trevally catch increases in Area 2 is most likely attributable to the influx of high-powered trawlers into inshore waters. MFish will have this data even though it has not been presented in the IPP.
100. Trevally is not the first species to come under increased fishing pressure in Area 2. In the past decade MFish proposed increased tarakihi and snapper TACCs based on historic, ongoing catches in excess of the total allowable commercial catch level.
101. Unless excess fishing capacity is addressed MFish will continue to face ongoing demands for increased TACCs for bycatch and other target species.
102. The Minister must be given the best available information and advised of the distinction between excess catch, capacity, and effort.
103. The Minister must also be cautioned that TAC increases need to be linked to increased stock abundance, not an increased exploitation rate when fishing down a stock.

The joint submitters of option4, the Hokianga Accord and NZ Sport Fishing appreciate the opportunity to submit on the review of sustainability measures and other management controls for Trevally 2 and Hapuku Bass 3. We look forward to MFish addressing our concerns. We would like to be kept informed of future developments.

Yours faithfully,

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