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

## SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS

## Kahawai (KAH)

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**Contents**

1. Introduction....4

2. option4 Objectives....4

3. MFish Policy Supported in 2005 IPP....5

4. Problems with past Kahawai Management....6

5. TACs....13

6. The Fisheries Act's Information Principles....13

7. Individual QMA Assessment Required....14

8. Non-commercial Interests....14

9. MFish's Proportional Allocation Policy Preference....15

10. Reports by fishing clubs/experienced fishers....17

11. The Hauraki Gulf Marine Park....17

12. Social, Cultural and Economic Factors for Non-Commercial Fishers....18

13. Implementing the reductions proposed....18

14. Maori Fishing Interests ..... 19

15. Kahawai as food ..... 20

16. option4 Conclusion ..... 21

**Appendices**

APPENDIX 1 – Individual Analysis of Key QMAs

APPENDIX 2- Hui Outcome 29 7 05

APPENDIX 3 - Proportional Allocation of Fisheries Resources in NZ

A selection of historic recreational submissions made in response to the management of kahawai:.

1. NZSFC letter to Minister of Fisheries re kahawai TAC's (Feb 1991).
2. NZRFC submission on pelagic fisheries management (Aug 1991).
3. NZBGFC letter to Minister of Fisheries (Sept 1991).
4. Minutes of pelagic fisheries management meeting (Sept 1991).
5. NZBGFC letter to Minister of Fisheries re kahawai (Oct 1991).
6. NZRFC submission on kahawai and kingfish for 1994 sustainability round.
7. NZRFC submission on 1994/95 sustainability round.

## 1. Introduction

Thank you for the opportunity to submit on the 2005 kahawai IPP.

option4 supports MFish's new policy initiative of managing the biomass of important shared fisheries at, or significantly above, the level required to produce the maximum sustainable yield ($B_{MSY}$).

option4 believes kahawai are an obvious candidate for management above $B_{MSY}$.

The Minister's 2004 kahawai decisions, which were made in error, create a new baseline from which the 2005 decisions will be made.

A key issue is MFish's policy preference for "proportional" allocation between the commercial and non-commercial sector. The attached option4 submission on proportional allocation is part of this submission on kahawai and should be read in conjunction with it.

In 2004, non-commercial fishers submitted that past purse seine target catch had depleted the kahawai stock to unacceptably low levels. The fishery has not recovered and this depletion continues to adversely affect the ability of amateur and customary fishers to catch kahawai.

Many of the key issues raised in non-commercial fishers' 2004 submissions were not adequately addressed by MFish or the Minister and should be remedied in 2005.

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

## 2. option4 Objectives

2.1 The following are option4's key objectives for kahawai:

a) That kahawai stocks be managed above $B_{msy}$ such that "*more fish are left in the sea*";

b) That the Minister not allocate "proportionally" between the commercial and non-commercial sectors which subordinates non-commercial fishing rights;

c) That the Minister undertake an evaluation of the true nature and scope of non-commercial fishing interests and how those interests can best be allowed for taking into account all relevant factors;

d) That, when setting TACs and TACCs/non-commercial allowances, the Minister should take a range of information into account (as the best available

information) to make more sophisticated decisions, rather than being solely reliant on recent catch history information;

e) That, when setting TACs and TACCs/non-commercial allowances, the Minister undertake an individual assessment of each QMA taking into account factors relevant to individual QMAs.

## 3. MFish Policy Supported in 2005 IPP

3.1 option4 supports the management of stocks above $B_{msy}$

3.2 The Fisheries Act 1996 requires the Minister to set TACs such that the biomass in each QMA is *at or above* $B_{msy}$. This should occur where (as examples):

a) Stakeholders agree to manage fish stocks above $B_{msy}$ (as stated at paragraph 17 of the 2005 kahawai IPP);

b) Where the available information suggests that a greater utilisation benefit would result and could be achieved by managing according to the preference of the sector that values the resource the most (as stated at paragraph 17 of the 2005 kahawai IPP);

c) Where the scientific information on the status of stocks is uncertain. Applying the precautionary principle (which is mandatory under New Zealand's international obligations) stocks should be managed above $B_{msy}$ where stock information is uncertain;

d) Where there are reports from fishing clubs and experienced fishers of a decline in catch rates;

e) Where there is a significant non-commercial component to the fishery;

f) Where the environmental adverse effects of high volume commercial fishing are unknown;

g) Species have a relatively low commercial value,

3.3 option4 agrees with paragraph 13 of the 2005 kahawai IPP which states that the key benefits of management of stocks above $B_{msy}$ are:

a) The increased availability of fish; and

b) The increased size of fish.

3.4 option4 agrees with MFish's (at paragraph 15) that increased availability and fish size would benefit the recreational sector.

3.5 option4 also agrees with MFish (at paragraph 19 of the 2005 IPP) to the extent that:

- The non-commercial sector values kahawai more highly than the commercial sector;

- Kahawai is a relatively low value commercial species.

3.6 option4 submits that the Minister should place greater weight on the factors identified in paragraph 29 of the 2005 IPP in deciding TACs.

3.7 option4 submits that this is typical of the lack of certainty surrounding the scientific information on the status of kahawai stocks.

3.8 option4 agrees with MFish's statements at paragraph 110(c)(i) of the 2005 IPP to the effect that there is a need for caution given the interdependence of other stocks on kahawai.

3.9 option4 agrees with MFish's statement at paragraph 130 of the 2005 IPP that:

> *"Kahawai anglers are characterised as follows: they go fishing significantly more times per year and are more likely to fish for eating purposes. They are more likely to fish from jetty or land platforms and are slightly more likely to catch and keep additional fish. They have a lower average fishing expenditure, have a higher male participation and are more likely to be a member of a fishing club."*

3.10 While these agreements are a positive development, many issues remain to be resolved and are discussed below.

## 4. Problems with past Kahawai Management

4.1 The history of kahawai management has created problems. Most recently, the 2004 kahawai decisions created an incorrect baseline from which the 2005 decisions will be made. There are serious omissions with the 2004 decisions which should be remedied.

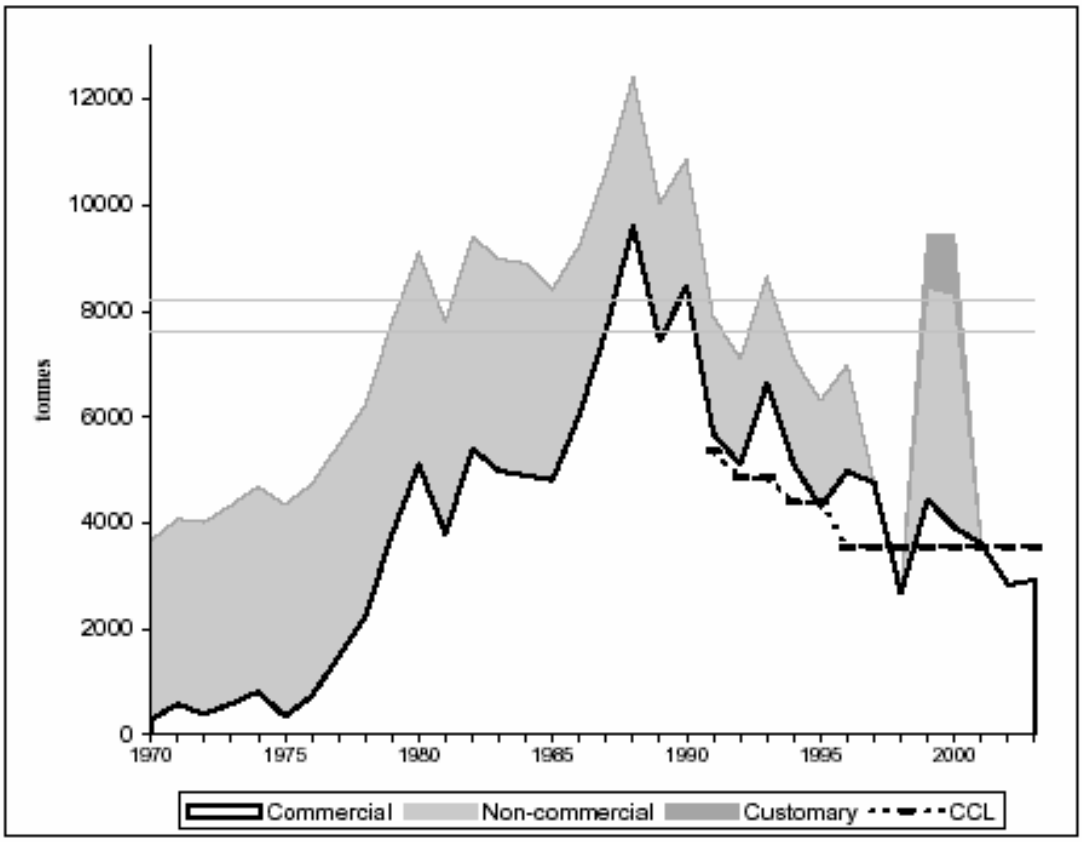
## Past high purse seine catch

4.2 Non-commercial fishers submitted in 2004 that past high purse seine target catch had depleted the kahawai stocks and they have not recovered. This depletion continues to adversely affect the quality of amateur and customary fisheries. In particular to catch kahawai at reasonable catch rates and of reasonable size.

4.3 In response to these claims, MFish provided the following information in their 2004 Final Advice Paper (FAP) on which the Minister based his decision. The MFish 2004 FAP stated at paragraphs 117 to 121:

> "*Figure 1 shows a representation of combined landings by sector groups over time. The figure is based on reported commercial landings data, recreational harvest estimates up to 1996 are those data reported for the sensitivity analysis version of the 1996 stock assessment and the two point sources graphed for 1999-00 and 2000-01 are based on recreational harvest estimates as reported in table 3. Customary landings are included in the non-commercial estimates until 1996. After that, customary harvest is shown separately based on 25% of the recreational estimates. The combined commercial purse seine catch limits (CCL) are shown. Also depicted are the 1996 estimates of MCY based on a natural mortality of M=0.2 (7,600 tonnes and 8,200* tonnes).

**Figure 1: Cumulative kahawai landings by fishing sector between 1970-2003**



*MFish notes recreational submissions suggesting unsustainable levels of commercial fishing. Figure 1 does suggest the level of commercial fishing alone was in excess of MCY estimates between 1987 and 1991. However, MFish does not share submitters views that management of the kahawai fishery after 1991 was ineffective and that as a result any kahawai stock is depleted due to commercial fishing.*

*As shown in Figure 1, the introduction of purse seine limits was effective in limiting commercial catches. The reported number of annual purse seining target sets on kahawai was reduced from about 250 sets in 1987-88 prior to the introduction of catch limits to average about 60 sets after their introduction. Commercial catches have declined after peaking at 9 600 tonnes in 1987-88 to 2 900 tonnes in 2002-03.*

*MFish notes that commercial purse seine catch limits currently apply only to purse seining when kahawai is the target species. Landings in some years in excess of CCLs as shown in Figure 1 are due to landings of kahawai as bycatch.*

*Commercial landings from KAH 3 have declined by more than 5 000 tonnes between 1980 and 2003. Most of the early part of this reduction in landings is due to imposing purse seine catch limits, however these have not constrained commercial landings since 1995-96. MFish notes the reasons given for declining commercial landings provided in submissions. Industry submits that profitability of this fishery has been eroded by measures that they have voluntarily agreed to and the closure of a cannery, which have resulted in a changed distribution of the purse seine fleet. Recreational fishers submit that declining catch rates are a more likely cause of the cessation of purse seine fishing in KAH 3.*

*Trends in non-commercial catch, while developed for the 1996 assessment model, are unknown. The two most recent harvest estimates suggest recreational fishers currently account for a much greater component of total landings than the commercial sector. Whether this is the result of a more recent increase in recreational catches or recreational catches of kahawai have been substantially higher than previously thought in the past is unknown. Most recreational submissions claim that recreational catches of kahawai have declined. If this were to be the case then historical catches may have been substantial."*

4.4 option4 has concerns regarding the way in which the above information has been presented, the accuracy of the information, and the conclusions MFish have drawn from the information.

## *Mis*-reported and *non*-reported commercial kahawai catch

4.5 The chart above (Figure 1 under paragraph 117 of MFish's 2004 kahawai FAP) does not show the full extent of the commercial catch because there was a large amount of under-reporting and misreporting of commercial kahawai catch during the period. This was discussed in MFish's 1988, 1989 and 1990 Plenary reports which MFish produced to analyse the status of kahawai stocks from 1989 onwards.

4.6 It is necessary to take commercial misreporting and under-reporting into account in order to accurately evaluate the impact of the dramatic rise in commercial catch during 1974 – 1987/88 on non-commercial fishers. During the late 1980s, commercial fishers had an incentive to "fish for quota" in anticipation of kahawai being introduced to the quota management system and commercial quota being allocated according to catch history.

4.7 The adverse effects of this large scale commercial purse seining of kahawai during this period has not been fully addressed by MFish.

4.8 MFish's depiction of historical catch rates in the graph shown above (Figure 1 under paragraph 117 of MFish's 2004 FAP) did not include estimates of under-reported and misreported catch.

4.9 For instance, the total catch in 1984 was believed to be 8000 tonnes as opposed to the reported 4400 tonnes. From 1983-1986 MFish estimated that the commercial catch was 6000 tonnes to 9000 tonnes annually when the reported catch was only 3700 tonnes – 4800 tonnes. Three main sources of commercial under-reporting were noted in MFish's 1990 Plenary report:

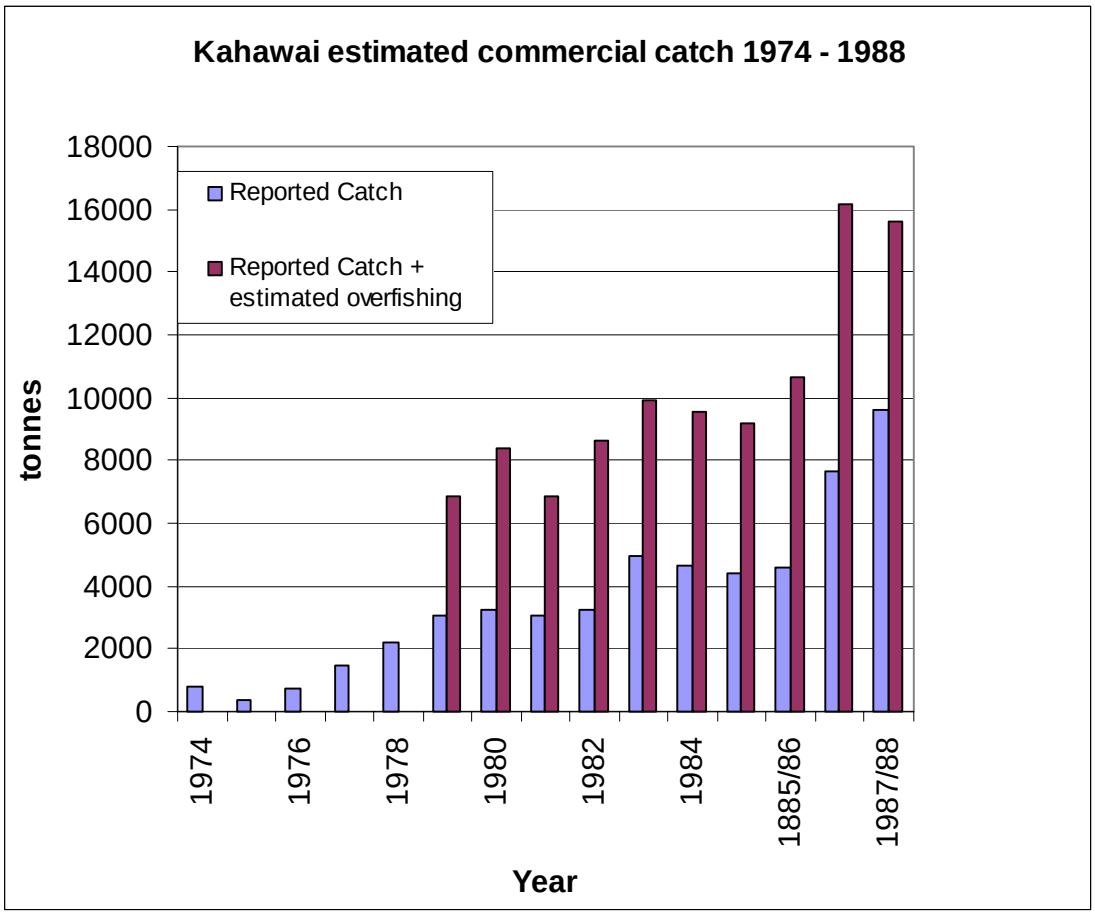
a) Kahawai dumped at sea;

b) Bait for line and rock lobster fisheries; and

c) Catch reported as mixed fish by the purse seine fishery.

4.10 It was thought that large-scale dumping declined by about 1983 because it became preferable to land kahawai rather than dump them at sea as more valuable commercial species became scarcer.

4.11 However, some purse seine fishers continued to misreport kahawai catch as, for example, “mixed fish”, “rejects” or “felix” throughout the 1980s. This practice occurred where kahawai and other species like jack mackerel were caught in mixed schools and were not readily identifiable because of the large amount of fish caught. When MFish's estimates of the amount of kahawai taken as "mixed fish" are added to the reported commercial catch, the commercial catch is actually much higher. The graph below displays reported commercial catch compared to reported commercial catch with MFish's estimates of mis-reported commercial catch (taken from Table 2 of MFish's 1990 Plenary Report).




4.12 The new graph does not include estimates of the tonnages of commercially caught kahawai dumped at sea, used as bait or the large-scale *non*-reporting.

## The impact of past unsustainable commercial kahawai catch

4.13 Figure 1 in MFish's 2004 FAP does not portray the full picture with respect to past commercial catch. In light of this information, the high levels of past commercial kahawai catch are likely to have had a greater impact on the present biomass of kahawai stocks and non-commercial catch.

4.14 The estimated additional 53,000 tonnes of misreported kahawai catch plus other non-reported catch are likely to have had significant adverse effects on kahawai biomass and non-commercial catch in each QMA. This impact continues to be more apparent in some QMAs than in others.

4.15 This additional 50,000 tonnes of kahawai taken out of the fishery was not factored into MFish's national estimate of MSY which was used as a reference point for TAC setting in 2004.

4.16 The 2005 kahawai FAP should properly evaluate the impact of this past high commercial catch on the biomass of kahawai stocks and non-commercial catch in each QMA.

4.17 The past high commercial catch of kahawai should be properly accounted for and attributed to the commercial sector.

4.18 The non-commercial part of Figure1 in the 2004 FAP should also be reconsidered. The graph should show the non-commercial catch clearly, without confounding the graph with incompatible data series (as was the case in the 2004 FAP).

4.19 option4 notes the conclusion of the Recreational Technical Working Group in the 2005 IPP para132

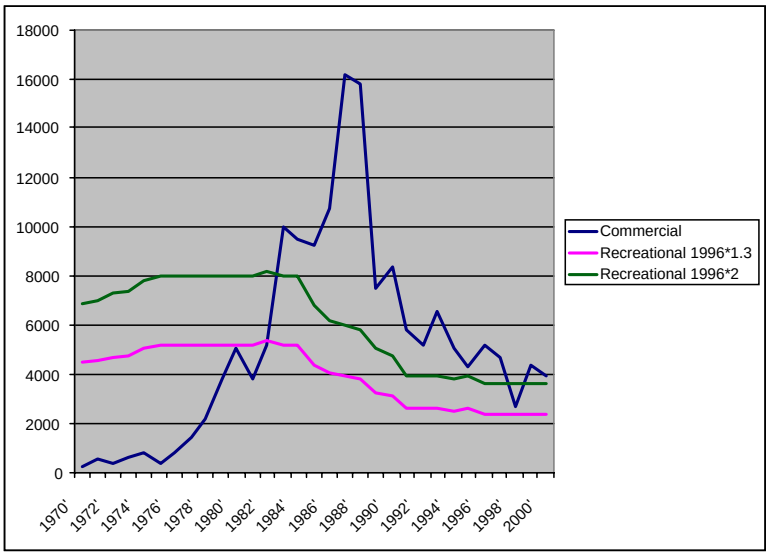
> *"The Recreational Technical Working Group recommends that the harvest estimates from the diary surveys should be used only with the following qualifications: a) they may be very inaccurate; b) the 1996 and earlier surveys contain a methodological error; and, c) the 2000 and 2001 estimates are implausibly high for many important fisheries."*

4.20 These warnings apply to the recreational catch series used in the 2004 FAP. We ask that MFish choose a current upper and lower bound for modelling recreational catch and model both figures as separate series back until 1970 as a proportion of the expected biomass.

4.21 As it stands Figure 1 above shows a halving of the recreational catch by the early 1990s based on the low commercial catch figures used. The decline in recreational catch would be greater when the additional commercial catch is included in the data series.

4.22 An example of the type of national line chart that would more accurately show trends in commercial and non-commercial catch is given below. We ask the

Ministry to include this type of information for the Minister to consider in the FAP.




4.23 An evaluation should be made of the effects of the interaction between commercial and non-commercial interests as the purse seine fishery was developed. This evaluation needs to include the following points:

- how the non-commercial catch was reduced by half or more, prior to 1991;
- where these fish have gone and who is now harvesting the other half of the non-commercial kahawai catch;
- how those fish can be returned to non-commercial fishers.

4.24 option4 believe the kahawai fishery was delivering sustainable yields and well developed prior to the introduction of the purse seine fleet.

## Comparisons of recreational catch after the peak commercial catch

4.25 The 2005 IPP stated at paragraph 24:

> "*MFish notes that in the main recreational fisheries in KAH 1, recreational claims of declining sizes of kahawai are not supported by catch sampling and age structure data from the recreational fishery, which has been closely monitored since 2000–01. The size and age of the fish sampled has remained relatively constant since 2000–01 with a broad age structure evident in the catches. These results are not consistent with a rapid decline in abundance. However, MFish notes that catch selectivity may influence these indicators.*"

4.26 Comparisons by MFish of recreational catch rates and sizes of fish since January 2001 are somewhat short sighted. This is not when the rapid decline in abundance

occurred; in fact if existing management measures were effective this is when the stock should show a rebuilding trend. We note that despite extensive boat ramp sampling over the peak months in the recreational fishery NIWA were frequently unable to meet their target sample size if 1500 fish per region in these surveys due to low catch rates.

4.27 To evaluate the impact of commercial fishing on kahawai stocks, or to allocate catch between sectors based on research since January 1991 is not a good basis for informed decision making. This is because the peak level of commercial fishing preceded 1991 and this is when the most damage to non-commercial fishing occurred.

4.28 The peak level of commercial fishing and the rapid decline in abundance preceded 1991. A number of submissions last year stated that 1991 was when the non-commercial fishery was in a very poor state - so poor that the then Minister imposed catch limits on purse seine as an interim measure to halt the decline.

4.29 The comparison of catch rate and size data post 1991 shows that the non-commercial fishery has not improved since the period of peak commercial catch, even under commercial catch limits imposed since 1991.

4.30 The size and age structure of kahawai in the main recreational fishery in KAH 1 (Hauraki Gulf) is certainly not broad. In other regions targeting of kahawai in surface schools may indeed result in selective fishing for larger adult fish.

## 5. TACs

5.1 A precautionary approach favouring the setting of lower TACs should be taken to ensure sustainability in each QMA because there is an information deficit in relation to kahawai stocks.

5.2 Basing TACs solely on catch history across all QMAs has the effect of concentrating allowances in areas of highest past fishing pressure, and is likely to result in some QMAs being over-utilised and others under-utilised.

5.3 As discussed above, the suggestion of management of kahawai above $B_{MSY}$ is supported.

## 6. The Fisheries Act's Information Principles

6.1 When setting TACs and TACCs/non-commercial allowances the Minister should take into account a range of information (as the best available information) including the information:

- History of the Fishery;
- The reasons management is required;

- Historic reliance;
- Time taken to catch fish;
- Other measures of trends in fish availability, in each QMA;
- The relative value of kahawai to each sector;
- The rationale for pre QMS management measures;
- Indications of the effectiveness of pre QMS management;
- Evidence of regional depletion;
- The relative size of QMAs;
- The distribution of fishing effort (and fishing method) across QMAs;
- Direct observations of fishing clubs/experienced fishers;
- Fish size.

6.2 Such information would allow the Minister to more readily understand the true state of the kahawai fisheries confronting individual fishers.

## 7. Individual QMA Assessment Required

7.1 When setting the kahawai TACs and TACCs/non-commercial allowances, the Minister should undertake an individual assessment of each QMA and take into account specific factors relating to each QMA.

7.2 A uniform, national approach of proportional reductions should not be taken.

7.3 For example, basing TACs solely on catch history in each QMA solely on catch history is likely to leave some QMAs over-utilised and others under-utilised. This is inconsistent with "ensuring sustainability".

7.4 Different QMAs have undergone different histories and different pressures. KAH1, for example, has been subject to the greatest fishing pressure.

7.5 Appendix 1 to this submission undertakes an individual evaluation of key QMAs: KAH 1, KAH 2, KAH 3, KAH 8.

## 8. Non-commercial Interests

8.1 In allowing for non-commercial "interests" the Minister should evaluate the true nature and scope of those interests and allow for them in a way that provides for those interests (i.e. taking into account the history of the fishery, and criteria which measure the quality of the recreational fishing experience e.g. CPUE or fish size).

8.2 It needs to be expressly recognised that non-commercial fishing in New Zealand is as much about putting food on the table as it is about "recreation".

8.3 Non-commercial fishers are currently experiencing disappointingly low catch rates, which are particularly low in some QMAs. For example, a recent NIWA survey indicated that it currently takes an angler 8 boat trips on average to catch a kahawai in the Hauraki Gulf.

8.4 Non-commercial interests should not be measured by recent catch history alone when there is a significant risk that the non-commercial catch has been eroded by past high levels of commercial catch.

8.5 When the fishery rebuilds, the low current non-commercial catch rates and/or small size of fish are likely to improve in many key fisheries. Only if non-commercial allocations allow for possible increased harvest will future problems be avoided. The restoration of this important non-commercial fishery should something to be celebrated, not punished.

## 9. MFish's Proportional Allocation Policy Preference

9.1 option4 opposes MFish's policy preference for proportional allocation stated at paragraph 66 of the 2005 IPP as follows:

> *"Kahawai is a shared resource. Non-commercial removals contribute approximately 58% percent of the existing TAC. MFish generally supports a* ***proportional approach*** *to allocation of shared fisheries on the basis that all stakeholders should contribute to the increasing the abundance of the resource.* ***This position assumes that all sectors are to a lesser or greater degree responsible for the present state of the fishery****. Further, it assumes that the level of catch reduction achieved from each contributing sector is of some consequence to the overall reduction required. However, the Act allows the Minister broad discretion. A preference may be provided to one sector over another when making a determination on the allowances that should be set before a decision on the TACC."* [Emphasis added]

9.2 It is incorrect to assume that the non-commercial sector and commercial sector are equally responsible for the decline in kahawai biomass. Rather, the alarming decline in kahawai is overwhelmingly attributable to the commercial sector.

9.3 In light of the information on high commercial catch of kahawai described above, it is clear that the kahawai fishery was severely and unsustainably fished by commercial interests prior to the first recreational survey.

9.4 The commercial harvest of kahawai prior to 1990 has reduced the biomass of kahawai stocks to a point where it has had serious impacts on non-commercial fishers ability to catch kahawai.

9.5 Figure 1 in the 2004 kahawai FAP showed that non-commercial catch had declined from around 4000 tonne to around 2000 tonne per annum.

9.6 Commercial Catch Limits (CCL's) were introduced in 1991 in response to concerns from both recreational and Maori customary fishers about the low catch rates and poor state of the kahawai fishery. There is no evidence that the CCL's have achieved their purpose, which was to improve non-commercial catch. In such circumstances, a precautionary approach should be adopted.

9.7 The large commercial catches of the purse seine fishery were achieved by fishing down the standing stock of kahawai to low levels. The low levels of kahawai biomass have suppressed the non-commercial catch. The following statement from Sanford appeared in the 2004 kahawai FAP at paragraph 71 suggest the impacts of commercial catch on non-commercial catch:

> "*MFish notes the Sanford submission that it is axiomatic that harvesting will have led to a reduction in biomass. With a species such as kahawai that is highly visible because of its surface habit, it will be more noticeable to recreational fishers as the size of the stock is reduced towards BMSY. Further, a reduction in the size of fish might be expected as larger older fish are removed during harvesting and replaced by smaller more productive fish. At issue is whether the biomass has declined to a point that a rebuild of the stock is necessary or desirable.*"

9.8 Proportional allocation improperly subordinates non-commercial fishing rights to the commercial sector where biomass has been reduced significantly, and consequently, the non-commercial catch is suppressed. The **attached** proportional document (Appendix Three) is a critical part of this submission, it explains in detail how this occurs and needs to be read in conjunction with this submission.

9.9 A status quo catch history approach with fixed proportional reductions does not address the long-standing management issues in some QMAs.

9.10 A non-proportional approach is now the only way non-commercial fishers have of getting back the access to the kahawai they lost when commercial fishers fished down kahawai stocks.

9.11 In order to rebuild the fishery quickly and provide for intergenerational equity TACCs should be set at the maximum commercial kahawai by-catch in each QMA over the last 5 years.

9.12 While the CCLs may have slowed further decline in the fish stock, there is no evidence available that non-commercial catch rates, size of fish or the biomass has improved over the last 14 years in many key areas, particularly in KAH1, KAH2 and KAH3. Some re-allocation back to non-commercial fishers is now required to address this problem.

9.13 The only way of actually improving non-commercial catch is to increase the biomass while allowing a sufficient portion of the TAC to non-commercial fishing interests to cover the increased catch.

9.14 option4 submit that the development of the purse seine fishery has lead to the re-allocation of around 2000 tonnes of non-commercial fish per year to the purse seine fishery. This was achieved by suppressing non-commercial catch through commercial purse seine fishers massively reducing the kahawai biomass pre 1990.

9.15 If past high commercial kahawai catch is left unaccounted for, it distorts the critical historic information necessary for the Minister to make an informed decision on whether a proportional management decision is appropriate.

9.16 The commercial sector, being responsible for the alarming declines in kahawai stocks, should bear the cost of the need to rebuild those stocks.

## 10. Reports by fishing clubs/experienced fishers

10.1 The reports of fishing clubs and the direct observations of experienced fishers should not be dismissed or given little weight as being "anecdotal" evidence.

10.2 Such information is often the best available information where scientific information is limited and uncertain, particularly where that information extends back in time prior to the peak in purse seine fishing.

10.3 The weight of non-commercial reports all support the same conclusion that kahawai stocks have declined to unacceptably low levels and kahawai catch rates/fish size remain disappointingly low in many areas.

## 11. The Hauraki Gulf Marine Park

11.1 There are particularly strong sustainability concerns in the Hauraki Marine Park area, which is an area of significant national importance.

11.2 Sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 require the protection of the Hauraki Gulf Marine Park.

11.3 As noted above, a recent NIWA survey indicated that it took a recreational fisher 8 boat trips on average to catch a kahawai in the Hauraki Gulf in 2004. This is typical of the wider sustainability concerns that exist for kahawai in the Hauraki Gulf.

11.4 A more drastic rebuild is needed in KAH 1 to protect the national social, cultural and economic importance of the area. Significant reductions in the TACC for

KAH1 are needed to assist in rebuilding stocks to allow reasonable catch rates and fish size in the Hauraki Gulf Marine Park Area.

## 12. Social, Cultural and Economic Factors for Non-Commercial Fishers

12.1 When setting kahawai TACs and TACCs/non-commercial allowances social, cultural and economic factors relevant to the non-commercial sector should be taken into account.

12.2 The 2005 kahawai IPP only appears to evaluate the economic effects of proposed reduced TACs on the commercial sector.

12.3 Social, cultural and economic factors relevant to the non-commercial sector should also be evaluated. The 2005 kahawai IPP appears to simply reference such factors without evaluating them in relation to non-commercial fishers.

12.4 Such factors specifically include the importance of kahawai as food.

12.5 The social, cultural and economic benefits non-commercial fishers obtain from kahawai should be sought to be maximised.

## 13. Implementing the reductions proposed

13.1 The 2005 kahawai IPP stated at paragraph 7(p):

> *"Should the Minister decide to reduce the TAC and allowances there is no proposal to apply additional management controls to further constrain recreational catch. Recreational fishers consider the catch will be within the current allowance without additional management controls. There is no new information to suggest that a revised recreational allowance would be exceeded with current management controls and at current levels of abundance."*

13.2 As noted above, there is no new information non-commercial fishers will exceed their current allowances. option4 also submits that if the non-commercial allowances are reduced by a further 10% there is no new evidence to suggest that non-commercial fishers allowances would be exceeded.

13.3 option4 submits that the 15% reduction to recreational allowances made last year should be remedied and further reductions to catch required to rebuild this fishery be applied only to the TACC to recognise and address the historical issues. The cut to the TACC needs to be greater than the proposed 10% to address the issues raised in this submission.

13.4 Clearly, there is no urgency for the Minister to impose proportional cuts to both commercial and non-commercial fishers, nor any fear that non-commercial fishers would increase their catch if the allowance is increased. Any surplus allocation to non-commercial fishers would go uncaught and would be the equivalent of commercial fishers shelving quota.

13.5 The greatest benefits of this approach would be that non-commercial fishers could then conserve kahawai with no risk that the tonnage of fish conserved would be taken by commercial fishers. The need for further contentious decisions in the near future would be alleviated and the non-commercial sector would feel that a long standing injustice had finally been addressed.

## 14. Maori Fishing Interests

14.1 Maori have interests in all aspects of fishing, commercial, recreational and customary.

14.2 Kahawai are considered a taonga, a treasure and certainly are not viewed as a sport fish.

14.3 Sonny Tau, Chairman of Te Runanga A Iwi O Ngapuhi, recently made the following comment as the 2005 NZRFC Conference:

> "*We treasure the kahawai as an integral part of our ability to manaāki our manuhiri".*

14.4 Sonny Tau added:

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

14.5 Ngāpuhi's Professor Manuka Henare summarises manaākitanga in this way:

> *"manaāki tanga relates to the finer qualities of people, rather than just to their material possessions. It is the principle of the quality of caring, kindness, hospitality and showing respect for others. To exhibit manaākitanga is to raise ones mana (manaāki) through generosity." Māori customary fishing must be allowed for, manaāki manuhiri is paramount."*

14.6 Over the past few months two hui have been held with Ngapuhi, other northern iwi and recreational non-commercial fishing interests. The outcome of both hui was very clear; there are insufficient fish in the water to meet the needs or aspirations of Maori, whether they are fishing to feed their family (currently categorised as "recreational" fishing) or for customary purposes.

14.7 Both hui unanimously agreed that achieving "more fish in the water" is the only way to resolve their concerns. The agreement reached at Whakamaharatanga Marae in Hokianga was formalised into one document[1] and will the basis of future discussions between non-commercial fishing interests and MFish of Fisheries **(Appendix Two).**

14.8 Ongoing mismanagement of our inshore shared fisheries, kahawai in particular, has come at a high social, cultural and economic cost for Maori. Tangata whenua do not want to continue to bear the cost of poor kahawai management.

## 15. Kahawai as food

15.1 A high proportion of kahawai caught by non-commercial fishers is taken for food. Cooked fresh or smoked at home, it is becoming increasingly popular. Surveys of returning fishers at some boat ramps have shown that 90% of fishers return home with no fish. Attitudes to kahawai have changed. Today a wide range of fish species are taken home for the table, as prime species have become less abundant.

15.2 There are many people in small coastal communities who rely on the sea for food. They have no supermarket or often no shop at all where they live. Many cannot afford to buy fish at retail prices. Of course they do not eat fish all the time, but without it their standard of living drops; they may go hungry. These people, Maori and non-Maori, are subsistence fishers who rarely have a voice in corridors of power or the offices of MFish.

15.3 Subsistence fishers are not defined as customary. They only take what they need under the amateur bag limits and it is not for the purposes of hui or tangi. It is for the purposes of traditional harvest, quality of life, supporting an individual or family, as is the custom in many seaside communities. Kahawai was once one of their most accessible fish, caught from the beach, wharf or rocks, harbours, estuaries, open coast headlands and reefs.

15.4 The Minister should evaluate the needs of subsistence fishers and their need for access to a healthy kahawai stock.

15.5 Arguably, their needs are the greatest of all; not for the quantity they take, but for the impact on their lives.

[1] Hui outcome 29 7 05

## 16. option4 Conclusion

16.1 option4 believes this submission proves that the kahawai fishery needs to be rebuilt to restore access to a healthy fish stock to provide all non-commercial fishers with a reasonable chance of catching a reasonable daily bag of acceptable size kahawai.

16.2 option4 believes this submission proves that any and all further reductions to catch required to rebuild this fishery should be applied only to the TACC to recognise and address the historical issues. Further we believe that in order to quickly rebuild these fishers to a level above or significantly above $B_{MSY}$ then the TACC's should be set at the highest recorded commercial by-catch level in each QMA. In some areas TACCs may need to be reduced more than the proposed 10% to address the important issues raised in this submission. In KAH8 where kahawai catch is predominately by-catch no further reduction may be required.

16.3 option4 believes the proportional document demonstrates there is no urgency for the Minister to apply any cuts to non-commercial fishers allowance, nor is there any fear that non-commercial fishers would increase their catch in the short term if the non-commercial allowance is increased. Until the kahawai fishery rebuilds any surplus allocation to non-commercial fishers would go uncaught and would be the equivalent of commercial fishers shelving quota.

16.4 The greatest benefits of this approach would be that non-commercial fishers could then conserve kahawai with no risk that the tonnage of fish conserved would be taken by commercial fishers. As the fishery rebuilds over time the non-commercial catch will increase and this increase will be sustainable as it will be covered by the higher allowance. The need for further contentious decisions in the near future would be alleviated and the non-commercial sector would feel that a long standing injustice had finally been addressed.

16.5 option4 urges the Minister to adopt a specific management objective for managing each kahawai stock above $B_{MSY}$, in order to leave more fish in the water.

16.6 option4 urges the Minister to accept that the fishing method that causes a sustainability problem should bear most of the catch reduction required to fix the problem. For too long fishing companies have been allowed to externalise the environmental and social costs of their business.

16.7 The Minister must be made aware of the true extent of commercial kahawai catch in the 1980s, which was responsible for fishing these stocks down. This includes the "mixed fish", "rejects" or "felix".

16.8 That, when setting TACs and deriving TACCs and non-commercial allowances, the Minister should take a range of information into account (as the best available information), including information that defines the nature and scope of non-commercial interests in kahawai, in order to make more sophisticated decisions

in each fish stock, rather than being solely reliant on recent catch history information and proportional reductions.

16.9 The Minister should be informed that proportional allocation improperly subordinates non-commercial fishing rights to the commercial sector where biomass has been reduced significantly, and consequently, the non-commercial catch is suppressed. A status quo catch history approach with fixed proportional reductions does not address the long-standing management issues in high use QMAs.

16.10 Issues for the Minister to consider and proposed allowances in each of the main QMAs are detailed in Appendix 1 below.

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## APPENDIX 1 – INDIVIDUAL ANALYSIS OF KEY QMAs

## QUOTA MANAGEMENT AREA: KAH1

The Minister needs to consider:

- Kahawai is a very significant amateur and customary Maori fishery, second only to snapper in KAH1.
- Non-commercial fishers have a long-standing grievance about the large purse seine target catch and the disappearance of kahawai (surface schools in particular) in KAH1 which was an unconstrained commercial fishery until October 1990.
- Most of the purse seine fleet fished out of Tauranga as home port.
- There were strong commercial incentives to "fish for quota" and maximise the catch history of kahawai and other non-QMS species in the late 1980s and early 1990s.
- Amateur catch rates for kahawai are low in KAH1 (0.15 kahawai per hour) and very low in the Hauraki Gulf (0.07 kahawai per hour) (Source: Bradford 1999. Comparison of marine recreational fishing harvest rates and fish size distributions).
- Amateur catch rates for kahawai in KAH1 have not improved since 1991 and may have declined further in the Hauraki Gulf.
- The size of kahawai in amateur catch has been small. In 2000 the mean weight in KAH1 overall was 1.2 kg and just 0.86 kg in the Hauraki Gulf. Details of the length and age distribution of kahawai in KAH1 over recent years are in NIWA reports to MFish.
- The latest recreational harvest survey estimated just 30 tonnes of kahawai caught over the main summer season in the Hauraki Gulf (equivalent to a single purse seine shot). This implies that recreational catch on its own is not responsible for the poor state of the kahawai fishery in the Hauraki Gulf.
- The Hauraki Gulf Maritime Park Act states that sustaining the life-supporting capacity of the environment of the Hauraki Gulf is a matter of national significance.
- There is strong evidence based on direct observation that there has been a significant reduction in the number of visible surface schools of kahawai in many areas of KAH1.
- Non-commercial fishers do not accept that "this is as good as it gets".
- The vast majority of New Zealanders in KAH1 want a rebuild of kahawai stocks
- The social, cultural, economic and amenity value of an abundant kahawai stock in KAH1 is significantly greater to New Zealanders than the commercial export of a low value fish protein.
- Commercial fishers state that they don't have to go far from port to catch kahawai in the Bay of Plenty.
- The major commercial fishers have agreed and stuck to voluntary agreements with amateur fishers in KAH1.
- The shift of the only two Nelson based purse seine vessels to Tauranga in 2001 has significantly increased the purse seine fishing capacity in KAH1 and

will result in more of the KAH2 catch coming from the area adjacent to KAH1.

- The kahawai stock was fished down by purse seine fishers with reported catches as high as 4300 t plus landings of kahawai mixed fish in excess of 3000 per year in KAH1 in the late 1980s.
- The highest estimate of amateur catch is 2200 tonnes per year from the 2000 national telephone and diary survey.
- There is widespread support from Maori and amateur fishers for managing the KAH1 stock at a level well above $B_{MSY}$.
- KAH1 is significantly smaller than the other kahawai QMA's and already had a long established and productive amateur and Maori customary fishery prior to the introduction of targeted purse seining.
- The purse seine fishing method was responsible for fishing down the KAH1 biomass. These fishers and companies have benefited with the catch at the publics expense and they should bear most of the catch reduction required to rebuild the fishery.

**Conclusion**

- Note, that non-commercial fishers reject the option of retaining the status quo or a proportional reduction of allowances from the status quo.
- In order to rebuild the fishery quickly and provide for intergenerational equity the TAC in KAH1 should be set at 3250 t.
- The Minister shall allow for non-commercial interests before setting the TACC. This should be based on the best available information. The Minister should allow 2200 t for amateur fishers and 550 t for Maori customary catch.
- The Minister should set the TACC at 430 t, which will cover genuine by-catch by commercial fishers and allow 70 t for other sources of mortality.

## QUOTA MANAGEMENT AREA: KAH2

The Minister needs to consider:

- Kahawai is a very significant amateur and customary Maori fishery, topping the harvest estimates in 2001 in front of snapper and blue cod in QMA2.
- Non-commercial fishers have a long-standing grievance about the large purse seine target catch and the disappearance of kahawai (surface schools in particular) as a target species in an unconstrained commercial fishery until October 1990.
- There were strong commercial incentives to "fish for quota" and maximise the catch history of kahawai and other non-QMS species in the late 1980s and early 1990s.
- Amateur catch rates for kahawai target fishing are low in KAH2 (in Hawke Bay 44 % of target trips were successful and average catch per target trip was 1.05 kahawai) and very low in the Wairarapa (37% of target trips were successful and average catch per target trip was 0.68 kahawai). (Source: Bradford 1998. National marine recreational fishing survey1996: catch and effort results by fish zone).

- The mean weight of kahawai in the amateur catch in 2000 was 1.6 kg. Details of the length distribution in KAH2 are in the MFish *rec_data* database.
- There is strong evidence based on direct observation that there has been a significant reduction in the number of visible surface schools of kahawai in areas of KAH2.
- Non-commercial fishers do not accept that "this is as good as it gets".
- The vast majority of New Zealanders in KAH2 want a rebuild of kahawai stocks
- The social, cultural, economic and amenity value of an abundant kahawai stock on the East Coast, Hawkes Bay and Wairarapa is significantly greater to New Zealanders than the commercial export of a low value fish protein.
- The shift of the only two Nelson based purse seine vessels to Tauranga in 2001 will shift the purse seine fishing activity in KAH2 from the Wairarapa and the lower North Island to East Cape where the customary fishery may be even more adversely.
- The kahawai stock was fished down by purse seine fishers with reported catches as high as 1660 t plus landings of kahawai mixed fish in excess of 1500 t per year in KAH2 in the late 1980s.
- The highest plausible estimate of amateur catch is 820 tonnes per year from the 2001 national telephone and diary survey.
- There is widespread support from Maori and amateur fishers for managing the KAH2 stock at a level well above $B_{MSY}$.
- KAH2 is larger that KAH1 in area but the coastline would be similar in length.
- The Purse seine fishing method was responsible for fishing down the KAH2 biomass. These fishers and companies have benefited with the catch at the publics expense and they should bear most of the catch reduction required to rebuild the fishery.

**Conclusion**

- Note, that non-commercial fishers reject the option of retaining the status quo or a proportional reduction of allowances from the status quo.
- In order to rebuild the fishery quickly and provide for intergenerational equity the TAC in KAH2 should be set at 1170 t.
- The Minister shall allow for non-commercial interests before setting the TACC. This should be based on the best available information. The Minister should allow 820 t for amateur fishers and 205 t for Maori customary catch.
- The Minister should set the TACC at 115 t, which will cover genuine by-catch by commercial fishers and allow 30 t for other sources of mortality.

## QUOTA MANAGEMENT AREA: KAH3

The Minister needs to consider:

- Kahawai is a very significant amateur and customary Maori fishery, second only to blue cod in KAH3.
- Non-commercial fishers have a long-standing grievance about the large purse seine target catch and the disappearance of kahawai (surface schools in

particular) as a target species in an unconstrained commercial fishery until October 1990.

- There were strong commercial incentives to "fish for quota" and maximise the catch history of kahawai and other non-QMS species in the late 1980s and early 1990s.
- Amateur catch rates for kahawai target fishing are low in KAH3 (Tasman Bay and Golden Bay 31 % of target trips were successful and average catch per target trip was 0.69 kahawai) on the south east coast of the South Island kahawai have all but disappeared from amateur catch. (Source: Bradford 1998. National marine recreational fishing survey1996: catch and effort results by fish zone).
- The mean weight of kahawai in the amateur catch in 2000 was 1.6 kg in KAH3. Details of the length distribution in KAH3 are in the MFish *rec_data* database.
- There is strong evidence based on direct observation that there has been a significant reduction in the number of visible surface schools of kahawai in areas of KAH3.
- Non-commercial fishers do not accept that "this is as good as it gets".
- The vast majority of New Zealanders in KAH3 want a rebuild of kahawai stocks
- The social, cultural, economic and amenity value of an abundant kahawai stock on the around the South Island is significantly greater to New Zealanders than the commercial export of a low value fish protein.
- The shift of the only two Nelson based purse seine vessels out of KAH3 and into KAH1 will significantly reduce the targeting of Kahawai in KAH3. Consequently bycatch has been quite low in recent years.
- Historically, this QMA supported the largest kahawai fishery in New Zealand.
- The kahawai stock was fished down by purse seine fishers with reported catches as high as 5700 t plus landings of kahawai mixed fish in excess of 3000 t per year in KAH3 in the late 1980s.
- The highest estimate of amateur catch is 670 tonnes per year from the national telephone and diary surveys.
- There is widespread support from Maori and amateur fishers for managing the KAH3 stock at a level well above $B_{MSY}$.
- KAH3 is the largest kahawai QMA in New Zealand but in the southern half abundance can be low or seasonal.
- The Purse seine fishing method was responsible for fishing down the KAH3 biomass. These fishers and companies have benefited with the catch at the publics expense and they should bear most of the catch reduction required to rebuild the fishery.

**Conclusion**

- Note, that non-commercial fishers reject the option of retaining the status quo or a proportional reduction of allowances from the status quo.
- Note: that commercial catch history may not fully reflect the historical size and potential kahawai by-catch in the QMA3.
- In order to rebuild the fishery quickly and provide for intergenerational equity the TAC in KAH3 should be set at 930 t.

- The Minister shall allow for non-commercial interests before setting the TACC. This should be based on the best available information. The Minister should allow 570t for amateur fishers and 140 t for Maori customary catch.
- The Minister should set the TACC at 205 t, which will cover current and potential by-catch by commercial fishers in KAH3, and allow 15 t for other sources of mortality.

## QUOTA MANAGEMENT AREA: KAH8

The Minister needs to consider:

- Kahawai is a very significant amateur and customary Maori fishery, second only to snapper in KAH8.
- The purse seine target catch has not historically been large in KAH8 and mainly in the south half which used to be part of KAH3 pre-QMS.
- Amateur catch rates for kahawai target fishing are not as low as the other QMAs.

Table 1. Recreational catch per kahawai target trip in KAH8

| Recreational Fishing Zone | % successful target trips | Average catch on a target trip |
|---|---|---|
| Ninety Mile | 57.1 | 2.00 |
| Dargaville | 68.1 | 2.96 |
| Kaipara H | 55.2 | 2.28 |
| Manukau H | 51.3 | 1.68 |
| Waikato | 53.3 | 1.55 |
| Taranaki | 47.2 | 1.20 |
| Manawatu | 43.8 | 1.27 |

- Non-commercial fishers do experience reasonable catch rates at times in the northern areas.
- The mean weight of kahawai in the amateur catch in 2000 was 1.3 kg in the old area KAH9. Details of the length distribution in KAH8 are in the MFish *rec_data* database.
- The social, cultural, economic and amenity value of an abundant kahawai stock on the west coast of the North Island is significantly greater to New Zealanders than the commercial export of a low value fish protein.
- The shift of the only two Nelson based purse seine vessels out of KAH3 and into KAH1 will reduce the targeting of Kahawai in the southern areas of KAH8.
- Historically, this QMA supported the smallest kahawai target fishery in New Zealand.
- The kahawai reported catches peaked in the old area KAH9 at 800 t plus landings of kahawai mixed fish of up to 600 t per year in the late 1980s.
- The highest estimate of amateur catch in the new KAH8 area is 525 tonnes per year from the national telephone and diary surveys.

- There is widespread support from Maori and amateur fishers for managing the KAH8 stock at a level well above $B_{MSY}$.
- KAH8 is the second longest coastline of the kahawai QMAs in New Zealand.
- The commercial catch is largely genuine bycatch of the trawl and set fisheries in the region.

**Conclusion**

- Note, that non-commercial fishers recognise the need to provide for commercial by-catch.
- Note: that recent commercial catch history may reflect the potential kahawai by-catch in the KAH8.
- In order to maintain the sustainability of kahawai KAH8 the Minister should set the TAC at 1250 t.
- The Minister shall allow for non-commercial interests before setting the TACC. This should be based on the best available information. The Minister should allow 525 t for amateur fishers and 130 t for Maori customary catch.
- The Minister should set the TACC at 565 t, which will cover current and potential by-catch by commercial fishers in KAH8, and allow 30 t for other sources of mortality.

## APPENDIX 2 – Hui Outcome 29 7 05

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

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

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

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

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

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

### Those present at the hui agreed upon the following:

***Sustainability***

- We all want more fish in the water.
- Customary and recreational fishing interests all agreed that there is insufficient abundance to meet the requirements of non-commercial fishers in many inshore shared fisheries.
- Greater understanding of fisheries management processes has developed through dialogue.
- There is universal agreement about the deficiency of the current management of our fisheries.
- MFish acknowledge some failure in their fisheries management.
- Non-commercial fishers raised a list of issues that they believe need to be addressed regarding initial allocations, illegal and unethical activity by commercial fishers. These issues will need to be addressed as an essential

component of regaining trust that the QMS can deal fairly with both commercial and non-commercial interests.
- MFish acknowledge that without goodwill it is difficult to effectively reduce non-commercial catch.
- It was agreed that goodwill was eroded when historic conservation efforts went unaccounted for in recent fisheries management decisions and proposals.
- Public awareness and good understanding of the need for change is essential if goodwill is expected.
- MFish have acknowledged research funding is limited.

***Customary***

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

***Recreational***

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

***Reserves***

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

**Recommendations**

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

# Proportional Allocation of Fisheries Resources in NZ

**option4**
August 2005

## What is Proportional Allocation?

At first glance proportional allocation of fisheries resources appears to be a fair system of allocating fisheries between competing interests. If the fishstocks increase and additional yield becomes available, then commercial and non-commercial fishers are allocated more fish to catch. If a fish stock falls and a rebuild is required, each sector has their catches reduced.

Theoretically, reductions or increases in catch are done at the same percentage for both sectors at the same time. The Ministry of Fisheries (MFish) is promoting proportional allocations as an equitable way of sharing the pain of rebuilding a fish stock between sectors and sharing the gains, once the stocks are rebuilt.

For proportional allocations to have any chance of working between commercial and non-commercial fishers it is essential that:

1. Consultation with non-commercial fishers is undertaken on whether the proportional allocation model is acceptable.
2. Initial proportions are fairly achieved and set with possibility of judicial review.
3. Reliable scientific information is available on which to base initial allocations.
4. Stakeholders have an equal opportunity to catch their allocation.
5. The stakeholders can to be constrained to their proportion.
6. All stakeholders share pain or gain equally and simultaneously.
7. Cheating is detectable and avoidable.
8. All stakeholders have equally strong rights.
9. All stakeholders are similarly resourced.
10. There is a way of altering the proportions when they are poorly set.
11. There is a way of increasing the non-commercial proportion if the number of non-commercial fishers increases, or decreasing it if less people go fishing.

Unfortunately the Ministry, in trying to impose a proportional system, fails to mention let alone address ANY of the fundamental issues above. This reduces the credibility of their proposals with non-commercial fishers and must, as a result, call into question their rationale and the outcomes they seek regarding the implementation of proportional allocation.

A close scrutiny of the Ministry's Advice Papers that recommend proportional allocation of fisheries between commercial and non-commercial fishers show it to be a policy construct of MFish which will placate commercial fishers and avoid compensation issues. There is no process evident on how this policy came about, or who was consulted in its formulation. This policy cannot be found in the Fisheries Act

and has been previously rejected by the courts. When publicly consulted through the "*Soundings*" document proportional allocation of fisheries was overwhelmingly rejected by 98% of the record 60,000 individuals who submitted to the process.

Proportional allocation now appears to be the preferred policy for MFish. We believe this is because it allows them to ignore the history of the fishery, including serious overfishing and past mismanagement on the part of MFish. The proportional allocation policy seems to allow the Crown to believe it is possible to avoid compensation issues, by taking fish from non-commercial fishers in the name of sustainability and giving those same fish to commercial fishers to subsidise quota cuts in fisheries they have depleted.

A major flaw in the MFish proposals is that those who have depleted fisheries or wasted the resource are treated no differently than those who have conserved.

In simple terms, proportional allocation is about giving the commercial fishing interests almost everything they want, with little or no thought as to the impacts or consequences on non-commercial fishers. This allocation policy undermines the public's confidence in the Quota Management System and removes most of the incentives for non-commercial fishers to conserve fish stocks.

The expectations that sector groups could work together under a proportional system to develop fish plans are most unlikely to succeed in depleted inshore fisheries where the commercial sector has all the rights and resources and where their methods and practices can be demonstrated to be the cause of the depletion.

To expect non-commercial fishers to accept this system after being allocated their "initial share" based on known underestimates of catch (flawed research) compiled while the fishery is a at, or near, it's lowest stock levels is unrealistic.

One of the worst aspects of the proportional proposals is that they give non-commercial fishers the leftovers of a poorly implemented Quota Management System which has failed to meet it's objectives of rebuilding fishstocks in the shared fisheries under review.

It is a policy that gives preference to commercial fishers at the direct expense of non-commercial fishers. This commercial preference is highest in fisheries commercial fishers have depleted the most. They therefore suffer least and the non-commercial stakeholders get severely punished for the actions of those who ruined the fishery. It's a big lose situation for non-commercial.

**The History of Proportional Allocation**

The MFish agenda to allocate fisheries resources proportionately between stakeholders was first raised in the *Soundings* document. MFish and the NZ Recreational Fishing Council released the *Soundings* public consultation process in July 2000. *Soundings* strongly promoted proportional allocation. Options two and three in *Soundings* were focused on achieving this.

It is interesting to remember that during public consultation on *Soundings* a MFish policy division representative, Jenni McMurran, was asked what the objectives of the Ministry were in promoting proportional allocation. She replied that it was "to cap the non-commercial catch and avoid compensation issues for the Crown."

## The Courts have also commented on Proportional Allocation

***[1] IN THE COURT OF APPEAL OF NEW ZEALAND CA82/97***

***JUDGMENT OF THE COURT DELIVERED BY TIPPING J***

*22 July 1997 Page 18*

*A further matter which points against any implication of proportionate reduction is that the Minister is in our judgment entitled to bear in mind changing population patterns and population growth. If over time a greater non-commercial demand arises it would be strange if the Minister was precluded by some proportional rule from giving some extra allowance to cover it, subject always to his obligation carefully to weigh all the competing demands on the TAC before deciding how much should be allocated to each interest group. In summary, it is our*

*conclusion that neither the specific sections (28D and 21) nor the Acts when viewed as a whole contain any implied duty requiring the Minister to fix or vary the non-commercial allowance at or to any particular proportion of the TACC or for that matter of the TAC. What the proportion should be, if that is the way the Minister looks at it from time to time, is a matter for the Minister's assessment bearing in mind all relevant considerations.*

The current proportional system MFish are trying to implement is not about fairness, not about what is right, it can only be about protecting the Crown from compensation where fisheries have been misallocated between sectors, mismanaged or both.

Proportionality of the type the MFish are trying to impose is about using non-commercial fish as a bank from which the Crown takes fish and gives it to the commercial sector when commercial fishing has become unsustainable.

## The Initial Allocation Process

The first allocation of fisheries resources occurred with the introduction of the Quota Management System (QMS).

### The Quota Management System

In 1986 the Quota Management System (QMS) was introduced to restrict and manage the excessive commercial fishing that had seriously depleted inshore fish stocks during the late 1970's and early 1980's. Clearly the intent was to constrain commercial fishers to a sustainable level and allow those fisheries previously depleted to be given the ability to recover. The target level set for fish stocks was, "at or above the level that can produce the Maximum Sustainable Yield" (MSY). This is usually between 20 – 25% of the unfished or virgin stock size.

The initial allocations were set on the basis of a scientifically determined Total Allowable Commercial Catch (TACC) for each fishery divided by the total commercial catch history for that fishery. The result gave the overall catch reduction

required as a fraction. Each commercial fishers catch history was multiplied by this fraction to calculate their Individual Transferable Quota Allocation (ITQ).

The key issue was that commercial fishers were to be constrained to a sustainable TACC, with each fisher restricted to a defined portion of it. Compensation was paid to commercial fishers who tendered their quota back to the Crown.

The non-commercial sector was NOT given a **proportion** at this time. Non-commercial fishers were assured by Fisheries Minister of the time, Colin Moyle that, "*Government's position is clear, where a species of fish is not sufficiently abundant to support both commercial and non-commercial fishing, preference will be given to non-commercial fishing*"[2]

**The Quota Appeals Authority (QAA)**
Almost immediately the commercial quota was issued, many commercial fishers sought to have their individual allocations increased by lodging appeals through the QAA. Many were successful and MFish allowed these new quotas to be cumulative above the existing Total Allowable Commercial Catch (TACC) thus unfairly inflating the commercial **share** of those fisheries.

Quotas on many inshore fish stocks soon rose alarmingly to 20-30% above the previously "scientifically determined" sustainable TACC which the commercial fishing interests had already been compensated to fish to. Within a few years commercial fishers were again overfishing many stocks.

Many of the species left out of the quota system were fished hard because there were no catch limits, quota lease costs and the prospect of these stocks being introduced to the quota system encouraged fishers to maximise their catch history. Kahawai, kingfish and many of the reef species were fished down as a result.

In some key shared fisheries the additional commercial catch issued by the QAA has prevented or slowed any rebuild and this has clearly impacted adversely on all non-commercial fishers. This has unfairly reduced the non-commercial "**proportion"** of those fisheries through reducing the biomass and suppressing non-commercial catches.

It is obvious that for the QMS to be effective, it must manage and constrain commercial catch to the scientifically determined sustainable level. It is our view that the quota generated through successful QAA appeals should have been contained within the TACC and then, each commercial fisher's ITQ should have been reduced proportionately. Then the total ITQ would have been equal to the previously "scientifically determined" sustainable level of TACC.

Allowing increases in fishing quotas by appeal without regard to the initial science relating to the setting of the TACC or sustainability of the fishery has been at the direct expense of non-commercial fishers. It has resulted in less fish for the non-commercial fishers and constitutes a direct **reallocation** of catching rights to the

[2] National Policy for Marine Recreational Fisheries. Ministry of Agriculture and Fisheries. June 1989

sector who were responsible for the over fishing. Many existing TACC's on stocks, which are below MSY, still include quota issued by the QAA.

**Deeming**
Since the introduction of the QMS fish taken in excess of a fisher's quota can be sold as long as a penalty deemed value is paid. Deeming has caused TACC's to be consistently exceeded in some fisheries. The causes of deeming range from fishers with unbalanced quota portfolios through to the blatant exploitation of loopholes where a profitable difference between the deemed value and port price existed. Thousands of tonnes of inshore fish have been harvested unsustainably through deeming.

Commercial deeming which has led to TACC's being exceeded has been at the direct expense of rebuilding some important depleted shared stocks and is again to the detriment of non-commercial fishers.

Commercial fishers deeming catch above quotas has unfairly reduced the non-commercial **proportion** of those fisheries through reducing the biomass and suppressing non-commercial catches.

**Dumping**
In those commercial fisheries where price is, or has been, based on the quality or size of fish landed, the illegal practice of dumping unwanted fish called high grading has been widespread. This has caused the loss and wastage of hundreds, possibly thousands, of tonnes of fish in important shared fisheries. Media reports and Ministry records prove this.

Another form of dumping is where fishers have insufficient quota to cover the landing of by-catch species, which are effectively worthless to the commercial fisher because of new higher deemed values, so they discard the catch.

Commercial dumping has been at the direct expense of rebuilding some important depleted shared stocks and to the detriment, yet again, of non-commercial fishers.

Commercial fishers dumping catch above quotas has unfairly reduced the non-commercial **proportion** of those fisheries through reducing the biomass and suppressing non-commercial catches.

## Maximum Sustainable Yield

In a mythical world where research provides accurate and timely results it might be possible to manage a fishery precisely “at or above the level that produces the maximum sustainable yield (MSY).”

We note that the Act requires the Minister to manage fisheries at or above MSY and the Ministry have interpreted this as a “knife edge” with MSY biomass levels as the target.

Unfortunately, in the real world by the time it is realised that a stock is overfished it is too late. This is because the science to determine the extent of any problem takes years to finalise and the stock continues to decline to well below MSY before catches are reduced.

For many stocks there is considerable uncertainty whether they have rebuilt under current management strategies or not. This demonstrates the inability of current policies used by Ministry to manage or improve the fishery.

The reality of the "at or above MSY" policy is that we are actually managing many of our fisheries below MSY. There is a demonstrable reallocation from non-commercial fishers to commercial fishers during the fishing down and overfishing phase, and again when catches are reduced "proportionately" to rebuild the fishery.

## Ministry Policy is Double Jeopardy for Non-commercial fishers

Fishery decisions that reduce catches are made when a fishery has been overfished and the biomass has fallen below MSY. Because non-commercial catch is largely driven by the abundance of a fish stock, non-commercial catches, individually and as a sector, decline as the biomass declines.

The ability of the commercial sector to catch their proportion is largely unaffected by the health of the fishery, they simply apply more effort or more efficient methods to maintain their catches and **"proportion"** in a declining fishery. They are thus only penalised once when decisions to cut catches are made.

Proportional allocation inevitably puts non-commercial fishers in a double jeopardy situation when fisheries are in poor shape and allocation decisions are being made. Our catches are eroded in the first instance by the low stock size. We end up catching smaller fish, fewer fish, or both as the fish stock declines. The overall tonnage of non-commercial catch drops as the biomass falls.

When we are allocated our "share" it is usually based on our current catch in a depleted fishery. Consequently, under the current proposals we are allocated the minimum possible amount as an initial **proportion**. Then MFish make recommendations on how to further constrain non-commercial catch through imposing lower bag limits or increased size limits. Hence non-commercial fishers are penalised twice.

If commercial fishers deplete a fishery this will inevitably reduce the non-commercial **proportion** of that fishery to the advantage of commercial interests. When subsequent decisions to cut catches are made the non-commercial sector loses some of its **proportion** when allowances are set at current catch levels. This effectively gives commercial fishers a huge advantage.

When the fishery finally rebuilds commercial fishing interests have a windfall. The non-commercial sector is locked into a lower **proportion** that obviously attracts less increase in catch as a result of the rebuild. The commercial sector have gained not only the proportion denied the non-commercial sector because of the flawed

allocation process, they also get the increased yield from their proportion and the proportion they have taken from the non-commercial sector.

To make matters worse the information on which non-commercial allocations are made is extremely questionable. Estimates vary by a factor of threefold and MFish seems to have a preference of selecting the smallest number possible and often that number which best favours the commercial sector.

## Proportionalism Works Against Conservation

Non-commercial fishers have a record of being able to implement successful voluntary conservation initiatives. The billfish tagging program currently sees two thirds of the recreational billfish catch in New Zealand tagged and released. A similar voluntary arrangement gave thousands of kingfish a second chance as non-commercial fishers fished to huge size limits and self-imposed lower bag limits. Unfortunately when kingfish were introduced into the QMS it was done proportionately with the proportions set at current catch levels at the time.

This means that no extra allowance for fish conserved by non-commercial fishers was made in the allocation process. The result was a lower allocation of kingfish for non-commercial fishers than would have been the case had those fish been landed instead of released.

After deducting the non-commercial landed catch, the balance of the yield of the kingfish fishery (including those fish conserved by recreational fishers), was issued as commercial quota! Recreational conservation efforts were rendered futile by this reallocation.

There was also some comment at the time about the legitimacy of some of the commercial catch history which was thought to be taken by vessels without the correct endorsements on their permits to target kingfish or some such technicality. Because a proportional allocation method was used these suspect fish were automatically counted as catch history and eventually formed part of the commercial proportion as quota.

If MFish are going to implement a proportional system of allocation then conservation efforts will act against non-commercial fishers interests and to the direct benefit of commercial fishers in the interim. It is an absurd situation!

option4 has a founding principle that non-commercial fishers should be able to devise non-commercial fishery plans to prevent fish conserved by non-commercial fishers from being allocated to the commercial sector (or being used to reduce our proportion). MFish have yet to engage on this topic.

## Proportionalism May Increase Wastage

Commercial fishers who exceed quotas and deem catches, dump fish, don't report catch against quota (black market) or use methods that cause high levels of juvenile

mortality or wastage can benefit immensely from a proportional allocation system. This is because non-commercial fishers subsidise the risks for them. If their poor fishing practices cause the stock to decline they are assured that they do not bear the full cost of their activities.

This perverse outcome is because non-commercial catch will be cut by the same proportion as the commercial catch is. In this way non-commercial fishers carry the bulk of the risks of proportional allocation.

## Commercial Arguments for Proportional Allocation

The commercial sector has long argued for a proportional allocation system in depleted fisheries. The usual reasons given are that non-commercial catch will increase as the biomass increases and some or most of the benefits of rebuilding the stock will accrue to non-commercial fishers.

It is understandable that commercial fishers would want to have non-commercial allowances and proportions determined while the fishery and non-commercial catch is at its lowest levels. What is surprising is the extent that MFish have bought into such an unfair proposition.

Non-commercial catch is going to increase as depleted fisheries rebuild. Everybody seems to agree on this. Why then is there no acknowledgement in the IPP that non-commercial catches have been reduced as the fisheries have declined? Surely this information is crucial if proportions of fisheries are to be allocated fairly.

In the absence of a fair process to determine the initial proportion for non-commercial fishers, those fish lost to non-commercial fishers during the stock decline are effectively taken from them. These fish are then used to prop up commercial catches that would otherwise be unsustainable.

Ignoring the history of a fishery when setting proportional allocations allows commercial interests to prevent non-commercial interests being fairly allowed for. Imposing proportional allocation in depleted fisheries guarantees the worst possible outcome for non-commercial fishing interests.

The result is obvious, increased commercial proportions and quota holdings. It is an unjust system.

## Compensation

During discussions on better defining non-commercial fishing rights during the "*Soundings*" process (2000-2001), the subsequent Ministerial Consultative Group (MCG) and the Ministry Reference Group , the Ministry has consistently tried to force proportional allocation on non-commercial fishers as a way of "capping the recreational catch" and "avoiding compensation issues for the Crown". This view has been articulated by some Ministry personnel and is well documented through speeches and presentations that various Ministry representatives have made.

Proportional allocation as a way of avoiding compensation issues for commercial fishers also appears to have now become a preferred policy of the Ministry of Fisheries in advice to Ministers in shared fisheries.

As a direct consequence of the above policy option4 believe the Ministry has *no option but to give preference to commercial fishing interests* in advice to Ministers regarding the management of shared fisheries. This is because exposure to compensation from commercial fishing interests is *always* a possibility when making allocation decisions in shared fisheries and only commercial fishers can claim compensation. So, the only certain way of avoiding the possibility of claims for compensation is to pander to commercial fishing interests.

The following excerpt from a recent MFish advice paper demonstrates this point:

*"However, subject to this consideration, there is no legal requirement that a decrease or increase in the allocation of the recreational allocation is to result in a corresponding proportional adjustment of commercial catch, and vice versa. MFish notes that the Fisheries Act assigns no priority between commercial and recreational interests. The Act is directed at both commercial and non-commercial fishing. Within that duality the Act permits the preference of one sector to the disadvantage of another; for example to provide for greater allowance for recreational interests in proportion to the commercial allocation.* ***Any reallocation of catch from the commercial fishers to non-commercial may be subject to claims for compensation to commercial fishers under s 308 of the Act, except at the time of introduction."***

**Note:** As non-commercial fishers cannot sue for compensation (see bold text above), little consideration needs be given to their interests.

Giving consideration to **possible** compensation claims from commercial fishing interests will always tend to create biased advice from the Ministry unless all aggrieved parties have similar access to compensation.

Injustices caused by incorrect initial allocations or subsequent re-allocations (QAA etc) or adjustments in the respective allowances or **proportions** between sectors cannot be addressed while the Ministry follow this policy. This policy also leaves future Governments exposed to the same compensation issues the current policy fails to address.

Please also note the ongoing uncertainty expressed by Ministry about whether or not compensation is payable to commercial interests in the event of reallocation. The word ***"may"*** offers us no real information or direction – it simply perpetuates the uncertainty of how the QMS and Fisheries Act are designed to deal with reallocation or redistribution of catching rights.

This degree of uncertainty is mirrored in the submission made by Te Ohu Kai Moana to the Soundings consultation process in 2000 when they stated *"Te Ohu Kai Moana acknowledges the need for fishers to work co-operatively on solutions. To provide the conditions for this each party needs to have clarity of its rights and those of others*

*and incentives to work together. Te Ohu Kai Moana rejects the status quo option as it does not provide either clarity or incentives. Te Ohu Kai Moana supports a priority, unconstrained share for customary harvest with second priority being accorded to commercial rights. This means that TAC reductions would be taken firstly from the recreational allowance* ***unless*** *there was a buy back of commercial quota. However, in situations where fishers are working co-operatively on solutions, it will likely mean that Maori will agree to changes that are more evenly distributed where they believe this will foster long-sighted, co-operative approaches that enhance the sustainable management of fishstocks."*

Here we see the word ***"unless"*** used to discuss compensation. What does this word actually mean – where in the fisheries legislation do we go to find direction about this option identified by TOKM?

How long will the fisheries managers choose to leave this most fundamental question of compensation unresolved? For how long are we all to be condemned to the agony of incomplete and unresolved policy that in turn leads to seriously compromised fisheries management outcomes?

**Do Proportional Cuts or Increases to Catch Actually Work?**

Commercial fishing interests will usually argue, regardless of the cause of overfishing, that if their quota is cut then the non-commercial sector should be cut by the same proportion. In this year's Initial Position Paper (IPP) MFish have proposed proportional cuts for most shared fisheries where catch reductions are proposed. Obviously, MFish also think there is some merit in this approach.

Besides being unfair for all the reasons outlined elsewhere in this document option4 does not believe the need for proportional allocations has been properly demonstrated or the effects of the system duly analysed. The following excerpt is based on a document tabled last January to the Minister and MFish in the hope of commencing a dialogue with them on this very issue.

*Recreational and other non-commercial catches are mainly driven by three factors:*

* *Abundance of the fish stock*
* *The number of non-commercial fishers*
* *Weather*

The Minister of Fisheries is directed by the Fisheries Act to "allow for non-commercial interests." If a fish stock is below the level required to produce the Maximum Sustainable Yield, then non-commercial interests will suffer reduced catch rates and catch smaller fish. Their interests will not be properly "allowed for."

From the three main drivers of recreational catch above, it is apparent the Minister can only improve non-commercial fishing by increasing the biomass of the fishery.

*If a non-commercial allowance is accidentally set too high or, if the Minister intentionally allows more for them than they actually catch, these fish will go uncaught because non-commercial fishers have no way of catching more than they*

*can already catch. Their effort is so limited by the three drivers above. What this means is that the Minister has no real way of instantly increasing recreational catch as he can with commercial catches.*

*On the other hand, if the Minister "allows" an insufficient tonnage to cover recreational interests then the Ministry will attempt to reduce bag limits or increase size limits or impose some other restraint to constrain recreational catch to the allowance. What this means is that the Minister has many ways of instantly reducing recreational catch yet has no equivalent way of increasing it.*

*This is a one way valve; TACC's and commercial catches can go up or down as commercial fishing interests can quickly adapt their catching capacity to match varying TACC's, regardless of the health of he stock. Recreational catch cannot be similarly increased but can easily be reduced. This is another example of biased policy that gives preference to commercial interests and is inconsistent with the Moyle's policy statements made prior to the introduction of the QMS. We believe the proportional allocation system is irreconcilable with the words "allow for" in statute.*

Because the non-commercial catch declines as the biomass of a fishery declines it can be stated without fear of contradiction that non-commercial fishers have already suffered their burden of "pain" that the proportional system seeks to equally inflict on users in depleted shared fisheries.

## Conclusion

In the absence of addressing the eleven points on page one concerning the implementation of proportional allocations it is hard to identify even a single benefit to non-commercial fishers of a proportional system. The overwhelming majority of benefits accrue to the commercial interests while a disproportionate amount of the risk lies with non-commercial fishers. It is a grossly unfair allocation model.

## Recommendations on Proportional Allocation

As a consequence of the obvious unfairness of the proposed proportional allocations and reductions to catches we, as a non-commercial fishing interest stakeholder representative group, reject completely all proportional options in the 2005 IPPs.

Before any further proportional allocation system is proposed the Ministry policy advisers need to engage with non-commercial fishing interests and resolve the issues in this document. The non-commercial sector does not, and will not support the ill-conceived and unconsulted proportional allocation system in this years IPPs or in any future IPPs.