

**CONSULTATION ON THE RECOMMENDATIONS TO THE MINISTER OF
FISHERIES OF THE JOINT WORKING GROUP ON DEEMED VALUES**

SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS

20 October 2006

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Introduction

The Ministry of Fisheries (MFish) has invited stakeholders to provide submissions on the recommendations to the Minister of Fisheries of the Joint Working Group on Deemed Values.

The Joint Working Group was formed in 2004 and submitted nine recommendations to the Minister in May 2005. The Minister has decided that consultation should be undertaken to seek the views of fisheries stakeholders before any decision is taken on the recommendations.

A letter was sent to stakeholders on 16th August 2006 advising the consultation process was underway. Original deadline for submissions was 13th October. On request, MFish extended that deadline to 20th October to allow non-commercial fishing interests to submit their views.

This document is the outcome of a consultation process with non-commercial fishing interests and is the submission from the following organisations and individuals:

- Te Runanga A Iwi O Ngapuhi (Raniera T Tau, Chairman)
- Te Runanga o Ngati Whatua (Naida Glavish, Chairperson)
- option4
- The New Zealand Big Game Fishing Council
- The New Zealand Recreational Fishing Council
- Akaroa Harbour Recreational Fishing Club
- Nugget Point Recreational Fishing Club
- Outdoor Recreational Party New Zealand (Marine Committee)
- Cara Lockie
- Dianne Wilson
- Ed Railey
- Joe Wilson
- John Forrest
- Kristina Smith
- Mathew Railey
- Robert Wilson
- Stephanie Railey
- Terry Buckley
- Wayne Radford

Overview

Non-commercial fishers are very concerned that the options put forward by the Deemed Values Joint Working Group (JWG) may not be compatible with the purpose and principles of the 1996 Fisheries Act (the Act).

Before setting the Total Allowable Commercial Catch (TACC) the Fisheries Act directs the Minister to “allow for” all other mortality caused by fishing. However, in some fisheries there are well-documented mortalities that have never been allowed for. Fish deemed in excess of the TACC, and the additional mortality associated with catching those fish, has somehow been omitted and those fish remain unaccounted for. This appears to be contrary to the sustainable use purpose, principles and relevant parts of the Act. The JWG proposal seems to ignore or dismiss this critically important point.

This submission provides the Minister of Fisheries with an alternative proposal to ensure that future deeming is compatible with the Act. The certainty of Ministerial decisions achieving their stated objectives will be increased when all mortalities are included within the decision making process. Rebuild strategies in shared fisheries would no longer be undermined by unaccounted for removals from the fishery.

Placing real constraints on commercial fishing would improve public confidence in the Quota Management System (QMS) and clearly demonstrate a will to rebuild depleted fisheries within the desired timeframes. Another advantage is increased harmony between competing interests in shared fisheries.

Submission

Past and present ‘deeming’ in excess of the TACC in shared fisheries is easily quantified. Deeming is one of the mechanisms which makes non-commercial fishing interests subordinate to commercial fishers’ catching rights and their excesses, and is therefore a source of major conflict between the groups.

We are disappointed to find that the Joint Working Group (JWG) consisting of Ministry of Fisheries (MFish) staff, industry representatives and Treasury officials have been working on this project for the past two years without any input from non-commercial fishing interests. How can this have occurred? Non-commercial fishers clearly flagged deeming as a major issue in the *Discussion Document* provided at the request of the Minister of Fisheries’ advisor in December 2004, and in the subsequent “*Proportional Allocation Document*” provided to the Ministry in August 2005. (Appendix 1).

We are also concerned that the working group report and the discussion document encourage the consideration of the recommendations as a package, which implies that deals or tradeoffs have already been made.

This 'take it or leave it' approach is unacceptable and is not a satisfactory policy development process. It fails to give proper regard to non-commercial fishing interests and the proposal appears, in part, to be contrary to the Fisheries Act 1996 (the Act).

The MFish imposed short submission times and the one-sided process to date have left non-commercial fishers at a distinct disadvantage in developing sensible and compelling alternative proposals which meet the sustainable use purpose of the Act, and the opportunity to put those alternatives forward for open and transparent discussion amongst all users of our fisheries. The JWG proposal also fails to adequately consider non-commercial interests alongside those of quota holders without the benefit of dialogue on the issues.

It is apparent to us that if this process fails to achieve constraint of commercial catch within the TACC in shared fisheries, then we fail to see just how the sustainable use of our fisheries to meet the reasonably foreseeable needs of future generations can be achieved to provide for the social, economic and cultural well-being of all New Zealanders. It would therefore be inevitable that more injustices will be created than resolved.

Our particular interest in deeming relates to shared fisheries, fisheries important in the food chain of shared fisheries, and then only to deeming above the TACC.

Shared Fisheries

In shared fisheries the setting of the TACC is much more than devising a simple target that can be casually disregarded and exceeded by commercial fishermen. The Act intends that TACCs be set after a thorough process that takes into account the management objectives for that particular fishery, based on the best available information and consideration of the interests all sectors.

In depleted fisheries, rebuild timeframes are often among the stated objectives. For example, in 1998 the Minister of Fisheries implemented a ten-year rebuild strategy for Snapper 8 (SNA8). The TAC, TACCs and allowances were set to achieve that express objective for the North Island west coast snapper fishery.

The fishing industry's response has been to continue the chronic deeming that has plagued this fishery since the outset of the Quota Management System (QMS). The last three fishing years have seen the highest ever levels of deeming in SNA8 and the expected rebuild has not occurred. In fact, the TAC had to be reduced again in 2005.

It is our view that the TACC is a marker that explicitly determines the maximum level of commercial catch that can be taken while still achieving the management objectives of that fishery. Exceeding the TACC in shared fisheries that are being rebuilt is a very serious issue. It places an extra burden on the stock which, even if sustainable in the short term, defers or prevents rebuilds within the timeframes stated in fishery decisions.

Although we are heartened that the Ministry of Fisheries is finally addressing the deeming issue, we are very concerned that there has been far too much focus on the rights of quota holders and far too little discussion on MFish's responsibility to manage our fisheries for sustainable use as required by the Act, and how the deeming proposals will affect non-commercial fishing interests.

Fisheries Act 1996

The Fisheries Act requires the Minister to set the TACC as the upper limit of commercial catch. Before setting the TACC, the Minister is directed to allow for non-commercial fishing interests and all other mortality from the TAC.

Section 21 (1) of the Fisheries Act states:

*(1) In setting or varying any total allowable commercial catch for any quota management stock, the Minister shall have regard to the total allowable catch for that stock and shall **allow for** —*

(a) The following non-commercial fishing interests in that stock, namely-

(i) Maori customary non-commercial fishing interests; and

(ii) Recreational interests; and

*(b) **All other mortality to that stock caused by fishing.***

Fishing Related Mortality

The amount of fishing related mortality allowed for varies considerably. In fisheries such as purse seining for kahawai, there is a 3% to 5% allowance in recognition that almost all fish that are encompassed by the net are landed. In less well-targeted fisheries such as bottom trawling and longlining, a 10% allowance for fishing related mortality is the norm. This recognises losses due to unseen mortality; for example, where small fish are squeezed through the mesh of nets. It also includes obvious mortality including crushed or damaged fish that are dumped, undersized fish that are returned, legal sized fish that are high-graded for quality reasons or dumped as a response to high deemed values, and for black-marketing (fish neither landed against ACE nor deemed).

The above allowances for fishing mortality have to be set, based on best estimates with little supporting information. However, from the information we have, there is strong evidence that fish deemed in excess of the TACC have never been included as fishing related mortality. This is despite the fact that **deeming is the most accurately recorded and easily quantified form of other fishing mortality**. Surprisingly, deeming above the TACC is simply not accounted for anywhere.

It is our strong view that a failure to explicitly account for deeming above the TACC as a form of “other mortality” in the TACC setting process:

- Is contrary to section 21 (1) (b) of the Fisheries Act;
- Contravenes the sustainable use purpose of the Act; and
- Seriously undermines the integrity of the Quota Management System.

Because all deeming is directly attributable to commercial fishers, it clear to us that to achieve the sustainable use purpose of the Act the only fair and legitimate way to allow for reported commercial catch in excess of the TACC is to deduct that amount from the TAC after the Minister has allowed for non-commercial fishing interests in the following year. A new decision could be made when deeming causes the TACC to be exceeded or, alternatively, relying on the accuracy of the information on fish deemed the previous year, a decision rule could be used to achieve the same outcome in a cost effective, automatic process.

In layman’s terms, catch over and above the TACC is like taking a loan from the bank (fish stock). Deeming only pays the interest on that loan, but commercial fishers have never been required to pay back the capital (fishstock) they have taken which was otherwise destined to rebuild a stock below B_{MSY} .

Non-commercial fishers want a system with clear disincentives or deterrents for commercial fishers who exceed the TACC. We consider the most effective measure in shared fisheries would be to reduce the TACC in the following year by the amount of the over catch in fisheries that may be below the target biomass. Only in this way is the capital loss (biomass) repaid.

We are very concerned with the approach taken in the Joint Working Group’s paper which seeks to strengthen its proposal by the introduction of vague terms not contained in the Act such as:

“Significant levels of catch in excess of the TACC should not be allowed to persist.”

Non-commercial fishers consider that **any** fishing above the TACC is “significant” in shared fisheries and emphasise that the Minister has no discretion under the Act to allow for mortality only if “significant”. Deemed fish are truly dead and the Minister must allow for **all** of them.

Any other approach can only distract all users of the fisheries from the task of sustainable use management and create unnecessary arguments and protracted debates as to what is, or what is not, “significant”.

A cornerstone of the QMS was that by giving commercial fishers explicit property rights to catch fish it would encourage quota holders to work collectively to conserve fishstocks. Fundamental to this objective is the ability to constrain commercial catch to the TACC. The sustainable use purpose of the Act is crystal clear and we can only

conclude that chronic deeming is a symptom of “laissez faire” or inadequate management of our fisheries not intended by the Act.

Quota owners collectively hold all the commercial fishing rights to a fish stock. Deeming above the TACC occurs when quota holders collectively fail to issue or provide ACE (Annual Catch Entitlement) in balanced catching portfolios. The ACE is designed to allow commercial fishers to cover expected catch against catching rights.

It is our strong view that the rental or return quota holders are entitled to be confined to fish taken within the TACC. Any erosion or loss of value quota holders suffer when fish are taken above the TACC is their collective responsibility by allowing fishers to fish with inadequately balanced ACE portfolios. As quota holders collectively hold, control and/or issue all catching aspects their quota rights, it follows that quota holders alone must take responsibility for any fishing above their entitlements.

The proposal in this submission would create strong incentives for quota holders to operate collectively, in the interests of the sustainable use of the fisheries when those quota holders are faced with an immediate quota cut as the price for taking fish in excess of the TACC. Moreover, fishing companies which hold large blocks of quota would carefully consider altering their catch plans, or contemplate leasing ACE to allow others to take fish they normally catch themselves in preference to a TACC reduction for collectively taking fish in excess of the TACC.

As part of our proposal, if quota holders resisted such incentives to achieve the sustainable use of our fisheries and cooperatively address deeming, a fisheries management decision could be made effectively splitting the TACC into two components, namely:

- A lower TACC; and
- A **deeming allowance**, which, when added together would total the previous TACC.

The **deeming allowance** would give Mfish control over a bank of sustainable ACE which could be issued to fishers to cover the precise amount of ACE the quota holders had failed to make available.

In the following year, if the combination of deeming allowance plus the new lower TACC is under-caught, then the TACC would automatically increase and the deeming allowance would be reduced to reflect this.

If the deeming allowance plus the new TACC is exceeded, the TACC would be reduced again. The quantity of fish representing the sum total of the TACC plus the new deeming allowance would always be equal to the previous TACC, and remain so until a new stock assessment was available.

We consider that all deemed monies should be returned to quota holders under this scenario up to the level of the previous TACC. Following this approach, if quota holders

had a greater involvement in setting deemed values they ought to have no entitlement to compensation. This is because any reduction in quota would be implemented to constrain commercial fishers to their sustainable entitlement intended by the setting of the TACC.

Quota holders have the capacity right now to manage their quota portfolios responsibly within the TACC in shared fisheries. If they do not, under this proposal MFish will control the shortfall. Refunding payments for deemed values above the TACC reduces the incentive for quota holders to work together to constrain the total commercial catch. In fact, it may create perverse incentives to do the opposite.

With this proposal in place quota holders would quickly learn to adjust their catch plans, and distribution of ACE they lease out, to maximise control over and the value of their quota holdings.

Non-commercial fishers believe that the JWG proposed options of increasing TACCs to simply cover chronic deeming is unacceptable because it completely ignores the information principles of the Act. The existing TACC is the result of an assessment that includes scientific information and agreed objectives of all users of the fishery. In the absence of a new stock assessment the previous assessment is the best available information. Deeming is a symptom of systematic or organisational failure and should not be used as the basis for increasing TACCs, particularly in shared fisheries. The mere fact that commercial fishers cannot balance their catch portfolios is no reason in itself, to give a TACC increase.

Non-commercial fishers believe that increasing TACCs to cover chronic deeming is unacceptable in:

1. Shared fisheries where additional restrictions on recreational bag and size limits are in place;
2. Under a proportional allocation model where the recreational allowance is a fixed proportion of the TAC; and
3. Particularly in a rebuilding shared fishery where the stock may be below the desired target biomass.

It is possible that the fishing industry, and/or quota holders will resist the obvious solution described above for shared fisheries by raising the “if we had proportional allocation in shared fisheries none of this would have happened” smokescreen they have been promoting for the last decade.

We again remind MFish that the statutory rights of commercial quota holders on the one hand, and recreational fishing rights on the other hand are quite different and, as such carry vastly different responsibilities.

Commercial Fishing Rights

The implementation of the QMS, including the setting of the original TACCs was achieved after a formal process that included the following:

- Consultation with commercial fishers
- Scientific assessment based on commercial catch reports
- Catch history (used as the basis for allocating quota, not current utilisation)
- Compensation (paid to commercial fishermen to accept the TACC as the upper limit of commercial catching rights)
- The Quota Appeals Authority (which gave commercial fishers who were dissatisfied with their quota allocations, a process to have their claims heard and quota allocations reviewed).

The explicit perpetual commercial fishing rights issued through the QMS, and the compensation paid from the public purse to get commercial fishers to accept the QMS, both carried an absolute responsibility to the beneficiaries (quota holders) to constrain the sum of all commercial catch to the TACC.

Recreational Interests

The right of all New Zealanders to catch fish is recognised and protected in the Act. This right has been administered by MFish in an ad hoc manner without any proper process. The ability to exercise that right has been whittled away, by stealth, to the detriment of recreational fishers. MFish's focus has been on balancing the TAC and TACC equation and avoiding compensation, rather than allowing for a process that truly and explicitly considers the full range of recreational interests as directed by section 21 of the Fisheries Act.

Put simply, recreational fishers have had their rights eroded by being fitted into the leftovers of a poorly implemented QMS. Deeming above the TACC erodes recreational fisher's rights even further.

Successive fisheries Ministers have allowed for recreational fisher's rights using under-estimates of recreational use, or estimates based on current utilisation in depleted fisheries. As a consequence this poses difficulties for Ministers to properly "allow for" non-commercial fishing interests. If an under allowance of historic catch has been made it merely means the fishery is more productive than previously thought. Exceeding a poorly estimated recreational allowance does not therefore pose a sustainability risk in the absence of evidence that effort and catch is **actually** increasing.

Case Studies

The only shared fishery case study presented is Kingfish 8 (KIN8). We believe this is a very poor choice and not representative of inshore shared fisheries where conflict has arisen through chronic deeming. Other fish stocks such as Snapper 2 (SNA2) - an extreme example - or SNA8, which is an average example, would have made much better case studies. We use SNA8 because it is an average example in an important shared fishery. The evidence of how deeming adversely affects non-commercial fishing interests and does not allow for their aspirations to be achieved was included in the option4 SNA8 submission in 2005. A copy of the submission to the SNA8 2005 IPP is attached as Appendix Two. Additional new points on the latest SNA8 decision are also summarised below in Appendix Two.

Deeming in Shared Fisheries

Deeming in excess of the TACC in shared fisheries is entirely inappropriate for the following reasons. It:

- Undermines the management objectives of Ministerial decisions
- Overrides the interests and aspirations of other users
- Undermines the value of quota holdings
- Places unsustainable burdens on fish stocks in fisheries that are below MSY or target biomass
- Reduces public confidence in the QMS

It appears from the Joint Working Group's paper the Ministry wants to continue tinkering and experimenting with economic sanctions as a way of constraining commercial fishers to the TACC. After twenty years of watching this approach fail, we believe the time for doing so in shared fisheries is truly over! Such experiments, if considered to be absolutely necessary, should be run in commercial only deepwater fisheries.

Important shared fisheries need a completely different management approach. It is unacceptable that the Minister and MFish are failing to manage shared fisheries according to the sustainability provisions of the Act and are allowing deeming to operate outside the constraints of the Act. Non-commercial fishers strongly object to their fisheries management objectives and aspirations coming second, just to placate commercial fishers and avoid compensation issues for the Crown. We can be certain that deemed fish are truly dead and therefore they must be "allowed for" as directed by the Act. It would be absurd to suggest that commercial fishermen would pay deemed values for fish they had not actually landed.

Deeming has not been properly accounted for in the TACC setting process. The Act directs the Minister to "allow for" all other fishing related mortality before setting the TACC. This proposal provides the Minister with a mechanism to ensure that all fish killed through deeming in excess of the TACC are accounted for and deducted from the next year's TACC.

Criteria for Implementation of Shared Fisheries Deeming Policy

In shared fisheries deeming in excess of TACC requires close scrutiny from a non-commercial perspective because commercial fishers have no rights above the level of the TACC. Non-commercial fishers need a process whereby they can nominate a fishery as being an important shared fishery in which the commercial catch has to be constrained to the TACC.

There should be a simple decision rule implemented when the TACC has been exceeded through deeming in a nominated shared fishery. Commercial fishers should be constrained to the TACC by using the deeming allowance/TACC split mechanism described above.

Obviously, quota owners will have had ample opportunity to modify catch plans, fishing areas, fishing methods, ACE distribution or any of the other mechanisms available to them to minimise the impact this proposal has on them.

Fisheries plans are highly unlikely to change our view on allowing for all fishing related mortality as per the Fisheries Act. Left unresolved the crucial issue of deeming above the TACC could seriously undermine any future shared fisheries plan process.

There are a limited number of fisheries affected by this proposal. Further consultation between non-commercial fishers and the Ministry will be required to define the final framework and to nominate fisheries of concern to ensure that a fair deeming policy regarding shared fisheries results from this process.

We note that this process does not address the over-allocation of TACC in some fisheries. We flag this related issue as urgent. Unnecessary conflict is created when TACCs are intentionally set so high they are never likely to constrain commercial catches.

This submission only deals with shared fisheries where the TACC is set to a level intended to constrain commercial catch, and that level is exceeded. This important point clearly distinguishes the above proposals from the old 'overs and unders' policy.

The Minister of Fisheries sets a TACC. The above proposals simply ensure that commercial fishers stay within the TACC. The split between new TACC and the deeming allowance is determined by the over catch in the previous year. Therefore, the sum of the deeming allowance and the new TACC will always be equal to the previous TACC as set by the Minister.

We are available for further discussion on the options put forward in this paper.

Appendix One

Proportional Allocation of Fisheries Resources in NZ

By the option4 team

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 fish stocks 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 its 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. Stakeholders can 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 fewer 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 at, or near, its 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 its 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.

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 McMurrin, 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*"¹

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.

¹ National Policy for Marine Recreational Fisheries. Ministry of Agriculture and Fisheries. June 1989

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 sector who were responsible for the over fishing. Many existing TACCs 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 TACCs 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 TACCs 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 three 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 programme 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; TACCs and commercial catches can go up or down as commercial fishing interests can quickly adapt their catching capacity to match varying TACCs, regardless of the health of the 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 year's IPPs or in any future IPPs.

Appendix Two

option4 submission to the review of sustainability measures and other management controls for the 2005-06 fishing year.

Submission on Snapper 8 (SNA8) made on behalf of non-commercial fishers.

10 August 2005

1. Introduction

The Ministry of Fisheries (MFish) has advised that a new stock assessment is available for the SNA8 stock. MFish also advise that under the current TAC biomass is expected to increase slowly but will not reach Bmsy within the next 20 years.

The Ministry have proposed three alternative TAC options to achieve a faster rebuild of the SNA8 stock.

An Initial Position Paper (IPP) was issued to stakeholders on 30 June 2005. MFish has invited stakeholders to provide comments on the consultation document.

Original deadline for comments was 29th July 2005. MFish then extended the deadline to 10th August.

This document comprises the submission from option4 an NGO which promotes the interests of non-commercial marine fishers in New Zealand.

2. Ministry of Fisheries Proposals

Table 1: Current and proposed TAC's, allowances and TACCs for SNA 8

	Allowance Approach	TAC tonnes	Customary Allowance tonnes	Recreational Allowance tonnes	Other fishing mortality tonnes	TACC tonnes
CURRENT		2060	50	360	150	1500
Option 1. TAC reduction of 138 tonnes	Proportional	1922	50	335	139	1398
	Non-proportional	1922	50	360	137	1375
Option 2. TAC	Proportional	1785	50	311	129	1295

reduction of 275 tonnes	Non-proportional	1785	50	360	125	1250
	Proportional	1510	50	261	109	1090
Option 3. TAC reduction of 550 tonnes	Proportional	1510	50	261	109	1090
	Non-proportional	1510	50	360	100	1000

3. option4 Submission

3.1 Proportional Allocation Decisions

The attached paper on Proportional Allocation of Fisheries Resources in NZ (Appendix One) 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.

3.2 Consultation

The timeframe allowed for consultation by the Ministry of Fisheries is unworkable for many non-commercial stakeholders with an interest in the fisheries being reviewed this year. The time between delivery of the IPP and submission deadline is too short for adequate consultation with the diverse range of non-commercial fishing interests who could be affected by this years proposals. option4 comments on the consultation process are included in this submission as Appendix Two.

3.3 SNA8 Proposals

There are six proposals for rebuilding the SNA8 fishery. Three of the proposals are for proportional reductions to be applied to both commercial and non-commercial catches. The other three reduce commercial catches only. option4 has grave concerns regarding all of the proportional options as they are based on unfair initial allocations of the proportions and place the recreational allowance at risk of erosion by commercial interests that have been unable to be constrained to their TACC.

3.4 Double Jeopardy

Proportional allocations also place the recreational sector in a double jeopardy situation where recreational interests have their catches reduced twice. The first reduction occurs as the biomass falls resulting in recreational fishers catching fewer fish, smaller fish or both. The second occurs when the already reduced recreational catch is further reduced in proportion to the cut applied to commercial fishers.

option4 has created the following list of criteria that need to be addressed before proportional allocations are considered:

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 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 incorrectly 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.

All proportional management options are completely rejected by recreational fishers until these fundamental issues have been addressed.

3.5 SNA8 Fishery

1. The west coast snapper stock is depleted and is well below the target stock level required in the 1996 Fisheries Act and is not rebuilding at an acceptable rate.
2. Excessive commercial fishing has been allowed to deplete the SNA8 fishery and maintain this depletion for so long that it is highly likely that a whole generation of recreational fishers will have been denied access to a healthy fishery. MFish considers that 30 years would generally be the maximum legitimate rebuild period as deduced from s 8(2)(a) considerations involving intergenerational equity issues, unless there are especially relevant factors to be considered as part of s 13(2) and (3) of the Fisheries Act 1996.²
3. The overfishing that has occurred to date is directly attributable to commercial overfishing. Prior to the introduction of the QMS this fishery was raped by pair trawlers down to around 5% of the virgin stock size. Subsequent to the introduction of the QMS commercial fishers have fished considerably in excess of TACCs and have had quotas unfairly inflated by the Quota Appeals Authority and this has prevented the fishery rebuilding at a reasonable rate.

² Final Advice Paper 6 August 1998 p.179 pt.46

Part II of the Purpose and Principles section of the Fisheries Act 1996 provides guidance for decision makers. The purpose of the Fisheries Act 1996 is to provide for the utilisation of fisheries resources while ensuring sustainability. Section 8 (2)(a) defines ensuring sustainability as “*maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations*”. Amongst other definitions, the Concise Oxford dictionary defines a generation as “*the average time in which children are ready to take the place of their parents (usually reckoned at about 30 years)*”. In a fishstock context, MFish considers that it is reasonable to assume that for the next future generation that “*reasonably foreseeable needs*” means having access to the fishstock at or above a level that can produce the Bmsy. Accordingly, MFish concludes that 30 years would generally be the maximum legitimate rebuild period as deduced from s 8(2)(a) considerations involving intergenerational equity issues, unless there are especially relevant factors to be considered as part of s 13(2) and (3).

4. Commercial fishers have gained socially and economically from overfishing this resource at the expense of the social and cultural aspirations of other users. Now it is time for commercial interests to pay back those who have been deprived by their excessive activities.

3.6 Recreational Catch

5. The recreational catch rate in SNA8 has been adversely affected by the low stock size.
6. The recreational catch in SNA8 has been under estimated and based on poor science and that allocations based on these under estimates need be noted by the Minister as being unreliable and subject to review when better estimates are available.
7. The excessive commercial fishing in this important shared fishery has reduced recreational catch and continues to impact on the availability of snapper to recreational and customary fishers.
8. Recreational fishers were promised, in Minister Luxton's 1998 decision, that this fishery would be rebuilt by 2008. Recreational expectations are that this is what is required for this fishery.
9. The Minister needs to take into account recreational catch has been artificially suppressed by the low stock size that this has resulted in smaller fish, less fish or both for a generation of recreational fishers.
10. The Minister needs to take into account how long recreational fishers have suffered due to the low stock size and act decisively to rebuild this fishery in the shortest timeframe proposed while properly "allowing for" recreational interests and without further adversely affecting recreational catch or interests in this fishery.
11. The Minister needs to take into account that over and above the diminished access to a healthy fishery recreational fishers voluntarily took bag limit cuts, a size limit increase and accepted a halving of the number of hooks on longlines.
12. These conservation actions were rendered futile by commercial deeming, dumping and Quota Appeal Authority (QAA) issued commercial quota.
13. It is not sufficient to propose proportional reductions to recreational catch without a full explanation to the public and the Minister of how these would be achieved.
14. Reducing the bag limit from 15 to 10 would have negligible benefit for the rate of rebuild snapper 8 stock but would disadvantage recreational fishers who do fish on one of the few days when the recreational fishery is accessible. MFish need to

calculate the benefit in tonnes per annum of this measure and compare this with inter annual recruitment variability when advising the Minister in the FAP.

3.7 Commercial Catch

15. The Total Allowable Commercial Catch (TACC) has been exceeded in 14 of the past 17 years through excessive use of the deeming provisions in the Fisheries Act.
16. The Total Allowable Commercial Catch (TACC) originally set at 1330 tonnes has been exceeded for the past 17 years through excessive quota which was issued by the Quota Appeals Authority (QAA) and allowed by the Ministry of Fisheries to be cumulative above their own scientifically assessed safe level of harvest. The original TACC should have formed the upper limit on commercial catches.
17. It is illogical to set a TACC for sustainability and then allow the Quota Appeal Authority to issue quotas that threaten it. Clearly this was never intended to happen, it is just one more example of a Ministry failing to do its job and limit commercial fishers to sustainable catches.
18. The Total Allowable Commercial Catch (TACC) has been exceeded through illegal dumping and high grading. Ministry admits that commercial high grading and dumping of snapper is more common on the west coast of the North Island than in other areas.
19. The Ministry has failed in its job to manage the fishery at a sustainable level and this mismanagement has been to the exclusive benefit of commercial fishing interests and at the direct expense of non-commercial fishing interests.
20. It is indisputable that the unconstrained rape of this fishery by pair trawlers in the 1970's saw this stock annihilated to a level where around 5% or less of the fish stock remained in the water. Continued excessive commercial fishing since the introduction of the Quota Management System is the major cause of the lack of rebuild.
21. The only real threats to the sustainability of the SNA8 fishery is continued commercial overfishing or corporate fraud.
22. Whatever decision the Minister makes, he has to implement steps to constrain total commercial catches to the TACC. It is unacceptable to have commercial fishers consistently overfishing in a depleted fishery.

The following table shows the effects of the Ministry's attempts at constraining capping or limiting the commercial sector to a TACC since 1987-88. QAA decisions are included as these were not scientifically set and have no regard to sustainability.

Table 2: Commercial catch since 1987 in SNA8

Year	TACC	Catch	Deemed	Non-reporting*	QAA**
1987	1383	1401	18	138.3	53
1988	1508	1526	18	150.8	178
1989	1594	1550	-44	159.4	224
1990	1594	1658	64	159.4	264
1991	1594	1464	-130	159.4	134
1992	1500	1543	43	150	170
1993	1500	1542	42	150	170
1994	1500	1434	-66	150	104
1995	1500	1558	58	150	170
1996	1500	1613	113	150	170
1997	1500	1589	89	150	170
1998	1500	1636	136	150	170
1999	1500	1604	104	150	170
2000	1500	1630	130	150	170
2001	1500	1577	77	150	170
2002	1500	1555	55	150	170
2003	1500	1666	166	150	170
2004	1500	-	-	150	170
2005	1500	-	-	150	170
Totals	TACC	Catch	Deemed	Non-reporting	QAA
	28673	26546	873	2567.3	2827

**Total Over catch
6267.3**

* Amount allowed for dumping, high grading and non-reporting. This number also includes incidental mortality so may overestimate illegal activity.

** Quota Appeals Authority issued quota.

3.8 Proportional Allocations

23. The proportional allocations as proposed in the Initial Position Papers (IPPs) are grossly unfair to recreational fishers.

24. The proposed proportions have been incorrectly set.

25. There has been no public consultation and no agreed process to set the initial proportional allocations.

26. The proposed proportional allocations make no distinction between those who have conserved and those who have plundered the fishery.
27. Proportional allocations favour commercial fishers who can maintain their catch in a depleted fishery.
28. Proportional allocations further favours commercial fishers by failing to hold them accountable for dumping and deeming to the detriment of the resource and other users.
29. The proposed proportional allocations work against the interests of non-commercial fishers whose catches and initial proportions are reduced in depleted fisheries.
30. The proposed proportional allocations work against the interests of non-commercial fishers by discounting their real conservation efforts.
31. If the Ministry cannot currently constrain the commercial sector to a sustainable TACC then they will not be able to constrain them to a proportion share.

3.9 Recreational Conservation

- January 1985 - First bag limit on snapper was 30 per person per day.
 - October 1993 - Snapper bag limit reduced to 20 per person per day.
 - October 1994 - Increase in minimum legal size from 25cm to 27 cm recreational fishers only. Commercial size limit left at 25cm.
 - October 1995 - Snapper bag limit reduced to 15 per person per day.
 - 1995 - Recreational long line hook number reduced from 50 to 25.
32. The increased size limit had an immediate and long-term impact on recreational fishers particularly in the Kaipara and Manukau Harbours. In many parts of these harbours it is now rare for a person to catch a legal sized snapper, therefore the snapper catch of some harbour fishers has been reduced to near zero. Overall it is estimated the increased MLS alone has reduced recreational harvest in SNA8 by around 14.6 – 18.6%.

Voluntary Recreational Conservation Taken Since 1995

Restrictions	Reduction	300 Tonne Current Catch	600 Tonne Current Catch
27cm MLS	16.6%	49.8 Tonne p/a	99.6 Tonne p/a
25 Hook Limit	5%	15 Tonne p/a	30 Tonne p/a
15 Bag Limit	5%	15 Tonne p/a	30 Tonne p/a
Total 1995-2005	26.6%	798 Tonnes	1596 Tonnes

33. The table above estimates the total tonnage of snapper conserved by recreational fishers since 1995 on the two recreational catch scenarios modelled by the Ministry, (We note that neither scenario may be correct). The bag limit and hook limit projections are based on an educated guess, if the Ministry has better information on these items we invite them to produce this information, (what we will not accept is to not account for them at all).
34. No allowance has been made for growth of these fish or their mortality. Obviously the growth of some of the fish conserved up to 10 years ago and their addition to the spawning biomass would have had some beneficial effects to the current stock size above the simple tonnage conserved. It is likely that somewhere between 10-20% of the remaining biomass is made up of fish conserved by recreational fishers since 1995. Earlier reductions to recreational catch are not included in this calculation
35. Recreational fishers have previously demonstrated a ready willingness to voluntarily suggest regulations to conserve in this fishery and the effects can be demonstrated. This goodwill has been completely eroded by a failure to constrain commercial catch to sustainable limits as promised at the inception of the QMS and the proposed proportional reductions in this years IPP.
36. Furthermore, the goodwill of non-commercial fishers to conserve has been betrayed by the failure of fisheries managers to make any effort to account of the benefits accruing from such conservation goodwill. This sends entirely the wrong message to non-commercial fishers who are quietly waiting to see how previous contributions are taken into account. To expect non-commercial fishers to conserve again, given this betrayal, is naïve. Correct this policy attitude and the potential for non-commercial fishers to voluntarily contribute to an accelerated rebuild is high. Leave the betrayal in place and any hope of further voluntary contributions is seriously eroded.
37. Recreational fishers must have faith that the QMS system is able to constrain commercial catch if their confidence is to be restored. This is a fundamental requirement in the management of recreational fisheries and this must be achieved if future co-operation or conservation from this sector is required. A fair decision at this time could achieve just that. Currently recreational fishers are outraged that fish they have conserved have been used to prop up unsustainable commercial catch. They are adamant that any cuts must now focus on cutting the catch limits of those who have done the damage.

4. option4 Conclusion for SNA8

We ask that the Minister:

1. Cuts the TACC to 1000 tonnes to rebuild this fishery to above BMSY in a timeframe that ensures intergenerational equity.
2. Rejects all of the proportional catch reduction options as unfair to recreational fishers.
3. Makes no changes to recreational bag limits, size limits or gear restrictions.
4. Sets the recreational allowance at a level sufficient to cover current recreational catch.
5. Notes that recreational catch estimates and allowances are uncertain and will be subject to review when better catch information is available.
6. Dismisses commercial fishing interests economic arguments on the basis that commercial fishers have had a huge economic benefit at the direct expense of non-commercial fishing interests, and now it is time to return that which has been unfairly taken from them.
7. If points 1, 2 and 3 above are implemented by the Minister it could assist in the rebuild of SNA8. The Minister could then ask non-commercial fishers to devise and implement voluntary conservation measures to assist and accelerate the rebuild.
8. option4 support an increase the annual deemed value in SNA8 to \$8.68, 200% of the 2004 port price, to minimise the current over catch of the TACC and to provide an incentive for fishers to land SNA8 against annual catch entitlement (ACE).

2006 Snapper 8 Comments

Commercial fishers in SNA8 have unsustainably exceeded their TACC through deeming by an average of 117 tonnes per year over the last 10 years. Of even greater concern is that deemed values have not constrained commercial catch in this stressed fishery and the amount of fish deemed in SNA8 is increasing. The average for the three fishing years from 2003 to 2005 is 139 tonnes, an amount almost equal to half the total recreational allowance.

In 2005 the Minister reduced the SNA8 TACC from 1500 tonne to 1300 tonne, a decision that has been all but rendered futile by increased levels of deeming in SNA8 this year. With one full month of fishing left the TACC had been already been exceeded by almost 6% (74 tonne).

Since the introduction of the QMS over eleven hundred tonnes of snapper have been deemed in excess of the SNA8 TACC. Assuming an average weight of around one kilogram each this equates to over one million fish. Had these fish been left in the water they would have done what fish do – they would have grown, many would have spawned as would their offspring.

Despite the fact the Minister must allow for all mortality, the true cost of chronic deeming has never been thoroughly assessed by the Ministry of Fisheries. Additional growth and recruitment from fish removed in excess of the TACC would have added to rebuild rates in this fishery. We would consider that a multiplier of four or five would better reflect the potential lost productivity from fish removed by deeming and other catch balancing systems over a twenty year period. In fact, had commercial fishers been constrained to the TACC SNA8 could well be rebuilt by now. The Ministry should have assessed and informed the Minister of the actual effects of deeming based on the actual tonnages deemed, and deeming patterns over time, in their advice to him so this mortality could be properly “allowed for”.

The cost of deeming to non-commercial fishers has been immense. A whole generation of non-commercial fishermen have not experienced the SNA8 fishery at more than half the minimum level of biomass prescribed by the Act. If chronic deeming continues, they are not ever likely to see a healthy well managed SNA8 fishery, or the promise of the QMS fulfilled.

The fishing industry has had the economic benefits of overfishing while non-commercial fishers have faced reductions and a diminished ability to catch a reasonable daily bag limit:

- Recreational catch has been suppressed for 30 years due to excessive commercial fishing depleting the fishery. This has resulted in non-commercial fishers catching fewer and smaller fish than they otherwise would, for a whole generation.
- The fishery has not rebuilt, in part because of chronic deeming.

- Recreational fishers have had to endure two previous bag limit cuts, a size limit increase and gear restrictions prior to last year's cuts. This resulted in a 26% annual reduction in non-commercial catch since 1995.
- Non-commercial fishers have had their allowances determined by what they catch in a depleted fishery. We believe this is an unfair way of determining their interests as the share is based on current utilisation in a commercially depleted fishery with a history of chronic deeming.
- In 2005 non-commercial fishers received a further 13% reduction in their allowance.

In contrast, commercial fishers were compensated to accept a TACC of 1330 tonne at the outset of the QMS. The 2005 decision has reduced that TACC to 1300 tonne, around 2.5% reduction!

This disproportionate outcome in SNA8 has been achieved under the guise of the Ministry's preferred proportional allocation model.