

In the High Court of New Zealand  
Auckland Registry

CIV2005-404-4495

Under Part I of the Judicature Amendment Act 1972

In the matter of an application for review

between

**The New Zealand Recreational Fishing Council Inc, and  
New Zealand Big Game Fishing Council Inc**

Plaintiffs

and

**Minister of Fisheries**

First Defendant

and

**The Chief Executive of the Ministry of Fisheries**

Second Defendant

and

**Sanford Limited, Sealord Group Limited and Pelagic  
& Tuna New Zealand Limited**

Third Defendant

**Affidavit of Richard Owen Boyd in support of application for review**

**Affirmed this 31<sup>st</sup> day of August 2005**

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 **HESKETH HENRY**  
Lawyers

Plaintiff's Solicitors  
11<sup>th</sup> Floor  
41 Shortland Street  
Private Bag 92093  
DX CP 24017  
AUCKLAND  
Tel +64 9 375 8700  
Fax +64 9 375 8771

Solicitor  
Senior Counsel

Stuart Ryan  
Lyn Stevens

09 375 8778  
09 366 0777

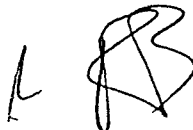
stuart.ryan@heskethhenry.co.nz  
lynstevens@lischambers.co.nz



I **Richard Owen Boyd** of Wanaka, a fisheries scientist and consultant, solemnly and sincerely affirm that:

### Qualifications and Experience

1. I am a fisheries scientist by profession with over 35 years experience in fisheries management and research in Canada and New Zealand. I have been involved in marine fisheries resource assessment, management and research since 1967.
2. I am presently self-employed as a consultant in marine and fisheries science and fisheries management and I am a Director and Principal Consultant of Boyd Fisheries Consultants Limited. The company is based in Wanaka where I have worked since 1999.
3. I hold the degrees of Bachelor of Science (Honours) in Zoology from the University of British Columbia, Canada, and Master of Science (1<sup>st</sup> Class Honours) in Zoology from the University of Auckland.
4. From 1967 until 1978 I was employed by the Canadian Department of Fisheries and Oceans ("DFO"), Pacific Region, in Vancouver in a number of positions, starting as a student assistant (1967 and 1968), then following the completion of my BSc as a biological field assistant (1969-1970) and after the completion of my MSc I was employed as a fisheries biologist (1972 - 1978).
5. While with DFO I became familiar with a broad range of fisheries, including research and management approaches. My work included both commercial and recreational fisheries and the use of fisheries catch and effort statistical data.
6. I came to New Zealand to join the Fisheries Management Division of the Ministry of Agriculture and Fisheries ("MAF"), now the Ministry of Fisheries (the "Ministry") in Auckland as a fisheries scientist in 1978. I was appointed to develop an improved management regime for the Hauraki Gulf snapper fishery, one of the most important and valuable inshore fisheries in New Zealand.



7. In 1980 I was seconded to Head Office in Wellington for two months to chair a MAF working party responsible for the lay drafts which later became the Fisheries Bill introduced into Parliament in 1981 or 1982. This in due course became the Fisheries Act 1983.
8. From about 1981 on when some of my initial work on the Hauraki Gulf snapper fishery was completed, I became increasingly involved in the wider fisheries throughout the Auckland region. From 1982 until late in 1986 I held the position of Regional Fishery Management Officer (Scientist in Charge) for the Auckland Region of Fisheries Management Division, MAF. The Auckland Region incorporated New Zealand's fisheries waters in the northern half of the North Island.
9. As the Regional Fisheries Management Officer for MAF in Auckland, I was responsible for the region's then 21 scientific and technical staff undertaking research and management of fish, shellfish and seaweed resources in the region. My responsibilities included the management of the region's scientific and technical staff, development of regional fisheries management policies for commercial and recreational fisheries, fisheries research programmes, development of fishery management plans and consultation on fishery matters with stakeholder groups.
10. At about the time the Quota Management System was introduced on 1 October 1986 I became attached to the operations group of the Ministry's Head Office in Wellington. In this position I had responsibility for advising the Operations Director on technical matters related to the QMS, including the analysis and audit of data provided on various returns provided by quota holders and licensed fish receivers.
11. In the latter part of 1986 I was seconded to the MAF team involved in the Muriwhenua Fisheries Claim before the Waitangi Tribunal and was involved in the preparation of the Crown's evidence to the Waitangi Tribunal hearings. My particular responsibility was to provide evidence to the Waitangi Tribunal on the post-Treaty of Waitangi history of New Zealand fisheries and the development of fisheries management policies in New Zealand from 1840 up to 1986.

12. In 1988 I was asked to develop a new national policy on aquaculture and I developed a policy framework for aquaculture as a precursor to planned new aquaculture legislation dealing with allocation of space and sustainability issues. This process was subsequently overtaken by resource management law reform.
13. I resigned from MAF in 1989 to become a fisheries consultant. As a fishery consultant I have worked on contract for a variety of organisations, including the Ministry of Fisheries, Department of Conservation, New Zealand Fishing Industry Board, New Zealand Federation of Commercial Fishermen Inc, Ministry of Foreign Affairs and Trade, Seafood Industry Council and the Treaty of Waitangi Fisheries Commission. I also work for a range of private businesses and clients.
14. As a result of my experience, I am familiar with the history of fisheries management in New Zealand as with most developments in the management of New Zealand fisheries from 1978 onward, including legislation, policy and research.
15. **Attached** as exhibit "A" is my full CV.
16. As a fishery consultant and scientist I have appeared on a number of occasions as an expert witness on fisheries related matters before the Environment Court, the Waitangi Tribunal and the High Court.
17. I have read the Code of Conduct for expert witnesses and agree to comply with it.

**Purpose**

18. I have read the following affidavits filed on behalf of the Plaintiff in these proceedings:
  - a. Affidavit of John Clive Holdsworth (JH) dated 26 August 2005.
  - b. Affidavit of Kim Walshe (KW) dated 26 August 2005.





19. I have been retained by the Plaintiff to act as an independent person to review and comment on the evidence of JH and KW and to identify any other matters that I believe are relevant to these proceedings.
20. I deal with each in turn.

### Evidence of JH

21. I agree with the observations and conclusions of JH in relation to the failure of the Ministry to use the best available information in assessing the sustainability of the kahawai fishery and the failure to recognise that the quality of the recreational kahawai fishery has declined.
22. It is my opinion that JH correctly identifies key weaknesses and errors in the approach adopted by the Ministry and the Minister of Fisheries (the "Minister") in 2004 when setting total allowable catches ("TACs") and making an allowance for recreational interests in the kahawai fishery.
23. In his evidence JH notes that the Ministry in the IPP and the FAP, and the Minister in making his decisions, assumed a single national kahawai stock and failed to take into account the different history of fishing and status of each individual stock in each kahawai quota management area ("QMA"). In my opinion and based on kahawai research and published reports which are known to the Ministry, it is far from certain whether kahawai in New Zealand form one national stock or comprise more than one separate self-sustaining populations or stocks. The adoption of a number of separate kahawai QMAs under the quota management system (the "QMS") was a therefore a prudent management decision by the Minister. However, what the Ministry and Minister then failed to consider was whether the simulation model used as a benchmark for setting all of the kahawai TACs - which was based on an assumed single national stock - was a reliable guide to the sustainability of the kahawai stock in each individual QMA. This is a fundamental matter of relevance to sustainability. If kahawai in New Zealand comprise a number of separate populations, then the application of the results of the simulation model could potentially be very misleading when applied to individual stocks. Given the lack of certainty that there is only one



national kahawai stock, I am surprised that the Ministry and the Minister failed to consider options for TACs in each individual QMA that took this specific risk into account.

24. JH expresses the view that the Minister was required to carry out an evaluation of the sustainability of the kahawai catch in each QMA. I agree. I am not convinced that the decision by the Minister that the national simulation model provides a reference point for all kahawai stocks is an adequate or appropriate substitute for such an assessment. JH notes the different distribution of commercial and recreational catches in the different QMAs and the particular concerns of the recreational sector about catch rates and the status of the kahawai stock in KAH1 in submissions to the Ministry. Given the need to assess the sustainability of individual kahawai stocks in each QMA and the availability of this information, I believe there was sufficient data available to the Ministry and the Minister to suggest that the biological status of the kahawai stocks in each QMA might be different. Accordingly, it seems an unusual oversight that such a possibility does not seem to have been given any detailed consideration by the Ministry or the Minister.
25. I agree with JH that recreational fishing interests are much more complex than the simple volume of catch. Anyone who has familiarity with recreational fishing will be aware of the wide range of values associated with this activity. The Ministry's policy preference for using current use (i.e., catch) as a basis for allocation does not recognise that catch on its own may not be a meaningful measure of the recreational interest in a fishery. In my opinion, the 2004 kahawai initial position paper ("IPP") and final advice paper ("FAP") should have contained a detailed and objective evaluation of the adequacy of using current catch as a proxy for the recreational interest in the fishery. If such an evaluation had been provided, I believe that it is very probable that it would have shown that current catch may not be an adequate measure of the full recreational interest in the kahawai fishery. Similar evaluations should have also been undertaken in respect of the interests of other sectors in the kahawai fishery. In my opinion, the fact that such

evaluations were not provided indicates an extremely constricted and narrow policy approach to allocation by the Ministry.

### Evidence of KW

26. I agree with KW that the Ministry had insufficient information available to conclude in its annual Plenary reports that kahawai catch levels in the 1990s were sustainable. Once commercial catch limits ("CCLs") were introduced in the early 1990s, the Ministry seems to have been somewhat single-minded in its view that there was little information to suggest concern over the status of kahawai stocks. This was in spite of the ongoing submissions of the recreational sector about the state of the kahawai fishery and the lack of robust stock assessment information. For the same reasons as KW, I believe that insufficient information was also available to support the key assumption of the Ministry in paragraph 20 of the 2004 kahawai IPP that setting TACs at the level of current utilisation was sustainable. Paragraph 20 said:

*Current recreational perceptions are of a decline in the availability of kahawai. The current proposal to set TACs at the level of current utilisation assumes that these perceptions are associated with a reduction in the kahawai stock to a level at or above  $B_{MSY}$  and not below that level.*

27. In my opinion the Ministry provides insufficient information to support this assumption in preference to the assumption that recreational perceptions may indicate that the stock has been reduced to a level below  $B_{MSY}$ .
28. I agree with the conclusions of KW in paragraphs 14.1 and 14.2 that the lack of definition of recreational fishing rights is a significant issue that places the recreational sector at risk, especially in the light of the much clearer definition of commercial fishing rights under the Fisheries Act 1996. I reached similar conclusions in a recent report that I prepared for a public agency in Canada which I refer to later in my evidence. In my opinion, not only does the lack of definition of these rights risk leaving the recreational sector behind, but it also presents similar risks to other

non-commercial interests and poses quite different but equally important risks to the commercial sector. In addition, the unsatisfactory nature of the present rights framework creates very real threats to the sustainability of the resource due to the fact that there is no clear direction in the Fisheries Act 1996 that requires non-commercial catches to be monitored or for them to be constrained to the allocation allowance determined by the Minister.

29. In my opinion, KW is correct in his conclusion that the proportional allocation approach that has been preferred by the Ministry leaves non-commercial fishing interests vulnerable to being subordinated, especially when combined with a catch history that will have been affected by elevated commercial catch levels that have fished down stocks. Similarly, it is also possible that under the proportional allocation approach, the commercial sector's interests may be at risk from the influence of CCLs, other management controls or even their voluntary purse-seine restrictions which may have reduced their kahawai catches in recent years. In preferring a proportional allocation approach based on recent catches, the Ministry does not recognise the impact of any of the key developments in the history of the kahawai fishery and its management that may have distorted catches of any of the sector groups.

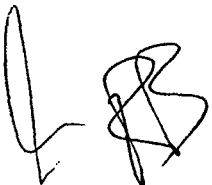
#### **Other Matters**

30. In my opinion, kahawai exemplifies the need to take into account the value of a species to particular sector groups when considering allocation. Two examples illustrate this point which I set out below.
31. The majority of recreational fishers rely on near-shore resources because of their accessibility. It is because kahawai is a near shore species that it features so prominently as a recreational species whereas orange roughy does not. Although it is a mobile pelagic schooling species, kahawai frequently schools near the shore where it can be caught by trolling from small boats used by recreational fishers. Kahawai also congregate seasonally at river mouths, where they can be caught from the shore. It is the accessibility of kahawai combined with



its attributes as a sport fish on light tackle that makes it so important to the recreational sector. In my opinion, these values are not adequately captured or protected when allocation is based solely on current use.

32. It is well known that kahawai are a fish of special significance to Maori for personal use, especially in the eastern Bay of Plenty. Although the 2004 kahawai FAP acknowledges the importance of the Maori subsistence and recreational kahawai fishery, in my opinion there is insufficient recognition of the potential effect that the Minister's decisions might have on the Maori component of the recreational interest. This stems from the fact that in New Zealand law, Maori customary fishing rights are relatively narrowly defined, being constrained by the requirement to have a specific authorisation for each occasion on which harvesting takes place and being limited to what might be considered 'ceremonial' purposes only. The result is that Maori must take kahawai for their own personal subsistence use within the daily recreational bag limit (and within the overall recreational fisheries allowance). Therefore, most kahawai fishing by Maori for personal use or subsistence has largely been subsumed into the recreational right, even though it is a customary or traditional subsistence activity. This is in direct contrast to North America, for example, where customary 'food fishing' by indigenous peoples is generally separate from the recreational right.
33. The evidence of JH provides an estimate of the likely reduction in the daily recreational bag required to give effect to a 15% reduction in recreational catch, indicating that the daily bag limit might need to be reduced to 3 or 4 kahawai a day. JH also notes that such a bag limit reduction would be one of the few practical ways to give effect to a reduction in the recreational allowance. The effect on Maori of such a reduction would be highly significant if such a bag limit was imposed, especially at the Motu River mouth which is a traditional Maori fishery for personal use. In my opinion, the traditional and continuing subsistence value of kahawai to Maori illustrates the need to incorporate the utility value of the resource into the mix of factors used to determine the recreational interest.



34. Other jurisdictions worldwide are faced with almost identical allocation issues as New Zealand. Fisheries resources are finite and where there are competing demands for a limited resource there is a need to make allocation decisions. Recently, I was asked by the Ministry of Agriculture, Food and Fisheries, in Victoria, Canada ("MAFF") to provide a report describing "the New Zealand model" for allocation of the TAC to the recreational sector. In the report, I provided a summary of the current policy and practice for recreational allocations as well as some of the history of the development of the present legislation and approach. Although my report for MAFF was aimed at a different audience, it discusses a number of issues that may be of some relevance to the current proceedings. MAFF has agreed that I can attach a copy of my report to my evidence as the report has entered the public domain in Canada. This report is annexed as exhibit "B".

35. In my opinion, the present approach by the Ministry and Minister in relying on solely on the current utilisation of the resource rather than the value of the kahawai resource to each sector (termed the utility value by the Ministry) is overly narrow as it fails to take account of the value of the resource to each sector. I do not agree that uncertainty about the utility value to each sector is a valid reason for rejecting this approach. I am not aware of any systematic efforts by the Ministry to see if it could determine (or not) the utility value of the kahawai resource to each sector group apart from a 1998 contingent valuation study on a number of recreational species (including kahawai) undertaken for the Ministry by the South Australian Centre for Economic Studies. In my opinion, successful allocation policies do need to take into account the very different values of each sector group as well as the needs and current utilisation of each group. In the case of kahawai, the recreational sector has made consistent submissions over a very long period about the value of this species as a recreational resource. It is not unreasonable to expect that concerted efforts would be made by the Ministry to determine these values as well as the values of the resource to other sectors.


36. In discussion with MAFF in Victoria as I completed my report for them, I learned that explicit allocation decisions had already been made for

some fisheries on the West Coast of Canada based on the relative value of the resource to sector groups. For example, there is a policy that the recreational sector had priority allocation for chinook salmon (*Oncorhynchus tshawytscha*) and coho salmon (*Oncorhynchus kisutch*) as these two species had been assessed as having a higher recreational value than a commercial value. However, for the Pacific halibut (*Hippoglossus stenolepis*) which is a valuable commercial resource, the recreational allocation has been initially capped at 12% of the TAC until such time as the recreational and commercial sectors agree on an acceptable mechanism to allow for adjustment of the recreational share through acquisition of additional quota from the commercial sector. Irrespective of the reasons for these particular decisions, they illustrate that the value of the resource to different sectors can be used as a logical basis for making allocation decisions.

37. Although affording one sector group a priority allocation over other sector groups based on the utility value can be highly controversial, it is a potential policy option and in my opinion deserves consideration as do other policy options for allocation. To my knowledge, the Ministry of Fisheries has never promoted detailed discussion on the possible array of policy options that could be adopted to guide the allocation of fisheries resources to commercial and non-commercial interests or for transferring allocations between sector groups to meet changing needs.
38. In my opinion, it would be very helpful to have such policy discussions in order to develop more explicit policies on the allocation of fisheries resources in New Zealand with the objective of providing greater certainty to sector groups.
39. The values that each sector group place on the fisheries resource are frequently very different and may not be directly comparable, which means reaching consensus on how allocation decisions might be made will never be an easy task. However, until policies are developed that take into account the different values of the resource, sector groups will continue to feel threatened that their interests may not be adequately recognised each time an allocation decision is made. In my opinion, the Ministry and the Minister are in a position to develop such policies.



AFFIRMED by RICHARD OWEN )  
BOYD at Wanaka this 31<sup>st</sup> day of )  
August 2005 )  
before me: )



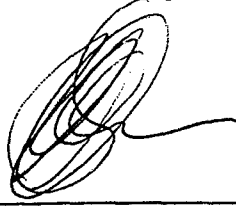
C.K. STEVEN

A Solicitor of the High Court of New Zealand



**A**

This is the document marked **A** mentioned and referred to in the affidavit of **Richard Owen Boyd** affirmed at Wanaka this 31<sup>st</sup> day of August 2005 before me:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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Solicitor of the High Court of New Zealand

**A**

**Richard Owen Boyd**

***Curriculum Vitae***

*Boyd Fisheries Consultants Ltd  
1 Baker Grove  
Wanaka 9192  
New Zealand  
Tel [+64] 3 443 6389  
Faxl [+64] 3 443 6381  
e-mail [rboyd@ihug.co.nz](mailto:rboyd@ihug.co.nz)*

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## **Richard Owen BOYD**

**Date of Birth:** 12 May 1947

**Citizenship:** New Zealand, Canada

**Place of Birth:** Canada

**Position:** Senior Consultant

**Qualifications:** Bachelor of Science (Hons) in Zoology  
University of British Columbia, Canada, 1969.  
Master of Science (First Class Honours)  
in Zoology  
University of Auckland, 1972.

**Expertise** Marine Fisheries Assessments  
Fisheries Research and Management  
Environmental and Coastal Management  
Fisheries and Aquaculture Policy  
Fisheries and Aquaculture Development

**Language and degree of proficiency:** English  
French (Read Only)

**Countries of Work Experience:** Canada, New Zealand, Tonga, Singapore, U.S.A.

### **Overview and Career Synopsis**

Rick Boyd was born and raised in Canada and has been involved in fisheries biology and management in Canada and in New Zealand for over 40 years. He worked as a Fisheries Biologist for Environment Canada, Fisheries Service, in Vancouver for seven years in the 1970s after completing his Master of Science degree in zoology. With the Fisheries Service in Vancouver he worked in the salmon fishery and the roe herring and other fisheries on the Central Coast and in Georgia Strait. These intensively managed fisheries provided a solid background in the problems and needs of intensive fisheries management. He moved to New Zealand in 1978, continuing his career in fisheries management and research. His initial responsibility was to develop an improved management regime for the problematic Hauraki Gulf snapper fishery – New Zealand's most valuable inshore finfish fishery. His New Zealand experience includes 11 years with the Ministry of Fisheries from 1978 to 1989 where he was deeply involved in fisheries management in the very challenging period leading up to the introduction of the Quota Management System and individual transferable quotas in 1986 and the first few years after the QMS implementation. In 1980 he chaired a

Ministry of Fisheries working group that developed the conceptual framework for the 1983 Fisheries Act which replaced the outdated 1908 Fisheries Act. Over the period 1983 to 1986 he and his staff were responsible for developing fishery management plans under the 1983 Fisheries Act and then in the formation of policies leading up to the QMS in 1986. In 1986 and 1987 he was a member of the Crown's team that provided evidence to the Waitangi Tribunal in response to the Muriwhenua Fisheries Claim, the first major Treaty claim on fisheries. Since 1989 he has worked as an independent fisheries consultant. In 1990 he assisted Maori on the Ngai Tahu fisheries claim before the Waitangi Tribunal. In 1992 he was appointed to a Government review team to review the quality and relevance of fisheries research in New Zealand. In 1994 he was asked by the New Zealand Ministry of Foreign Affairs to arrange and manage the ASEAN fisheries trade mission to New Zealand. As a research provider to the Ministry of Fisheries, he led the project team responsible for the 1999-2000 and 2000-2001 national marine recreational fishing surveys to estimate marine recreational catches in New Zealand. As a fisheries consultant he has worked on a wide range of projects for Government, industry, the recreational sector and Maori.

### ***Employment History:***

**From:** June 2004 **to:** present  
**Employer:** Boyd Fisheries Consultants Ltd  
**Position Held:** Director and Principal Consultant  
**Description of Duties:**

Principal consultant for the company. Responsible for provision of the company's expertise in fisheries management and research. Provision of expertise in fisheries resource assessments, aquaculture and fisheries-related environmental assessments. Provision of expert evidence on fisheries matters.

**From:** February 1997 **to:** June 2004  
**Employer:** Kingett Mitchell Ltd.  
**Position Held:** Senior Consultant  
**Description of Duties:**

Senior consultant responsible for managing fisheries research contracts, fisheries assessments and fisheries management expertise. Responsible for provision of the company's expertise in fisheries, including research, management, policy and legislation. Provision of expertise in aquaculture and related environmental assessments.

**From:** 1989 **to:** 1997  
**Employer:** Boyd Fisheries Consultants Ltd  
**Position Held:** Director and Principal Consultant  
**Description of Duties:**

Senior fisheries consultant working in the area of fisheries and aquaculture, specialising in fisheries assessments, fisheries research and management, fisheries policy and legislation, fisheries and aquaculture development, Maori fisheries, and coastal resource management.

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**From:** 1978 to: 1989  
**Employer:** New Zealand Ministry of Agriculture and Fisheries Auckland  
**Position Held:** Fisheries Management Scientist  
**Description of Duties:**

◆ **1988 to 1989: Senior Fisheries Scientist -Strategic Planner for Aquaculture.**

This special position, attached to the Ministry's Policy Group in Wellington, was established to overcome long-standing problems with the management of aquaculture. Responsibility for development of national policy on aquaculture. Preparation of proposed strategic plan for aquaculture and proposals for new aquaculture legislation

◆ **1987-1988: Senior Fishery Scientist (Quota Management System).**

Responsible for development of fisheries analytical approaches and research to meet the technical and operational needs of New Zealand's quota management system.. Responsible for liaison between scientific, administrative and enforcement branches.

◆ **1982 to 1986: Regional Fishery Scientist, Auckland Region.**

Regional Science Manager of the Auckland Fisheries Region. Responsibility for the region's fisheries and aquaculture research and commercial and recreational fisheries management programmes. Development of Fishery Management Plan for the Auckland Region. Assistance in development and implementation of policies leading to the New Zealand Quota Management System. Responsible for regional environmental protection of fisheries resources including marine reserves development. Responsible for developing and maintaining relationships with other coastal agencies, and regional government. Manager of 28 fisheries staff.

◆ **1978 to 1982: Fisheries Scientist, Auckland.**

Fisheries Scientist responsible for fisheries research and fisheries management programmes for the Hauraki Gulf snapper fishery, the largest and most valuable of New Zealand's inshore finfish fisheries. Responsible for providing fisheries assessments and input into environmental issues affecting the Ministry of Agriculture and Fisheries' statutory responsibilities for conservation of fisheries and fishery resources. Development of fisheries management plans for the snapper fishery.

**From:** 1975 to: 1978  
**Employer:** Department of Fisheries and Oceans Vancouver, Canada  
**Position Held:** Fisheries Management Biologist, Georgia Strait Division  
**Description of Duties:**

Fisheries management biologist with the Canadian Government's Department of Fisheries and Oceans, Fisheries Service, Vancouver. Supervision of coast-wide commercial catch sampling programme for the Pacific herring fishery. Provide annual stock assessment and biomass estimates of Pacific herring fishery in Georgia Strait. Appointed member of Pacific Herring Committee to develop annual coast-wide fisheries plans for the roe-herring and food herring fisheries.



**From:** 1972 to: 1975  
**Employer:** Department of Fisheries and Oceans Vancouver, Canada  
**Position Held:** Fisheries Management Biologist, Central Coast Division  
**Description of Duties:**

Fisheries management biologist with the Canadian Government's Department of Fisheries and Oceans, Fisheries Service, Vancouver. Assist in management programmes for the Central Coast's salmon fisheries, including Rivers Inlet and Smiths Inlet sockeye salmon fisheries. Undertake salmon tagging studies, conduct salmon fishery escapement surveys and salmon spawning surveys. Develop fishery management programmes and provide in-season fishery management advice. Assist in management of the roe-herring fishery.

**From:** 1967 to: 1970  
**Employer:** Department of Fisheries and Oceans Vancouver, Canada  
**Position Held:** Biological Assistant  
**Description of Duties:**

Research assistant and associated field work in monitoring salmon and herring fisheries. Assist in salmon tagging programmes. Hatchery assistant at Big Qualicum River salmon hatchery including juvenile salmon enumeration, operate salmon counting fence facilities, fish husbandry. Commercial and recreational salmon fishery catch sampling. Undertake research project on the morphometrics of juvenile herring populations (undertaken for the Department as part of studies towards BSc Hons).

#### **Examples of Consulting Projects and Assignments**

- Project for Ministry of Agriculture, Fisheries and Food, Victoria, Canada. Provide a report on New Zealand's policy and practice in allocation of the TAC to the recreational sector. 2005
- Project for Ministry of Fisheries, Wellington. Selectivity of the recreational snapper fishery in quota management area 1 (SNA1). 2004-05
- Project for Blue Water Marine Research Ltd, Whangarei. Assessment of catch and effort information in the recreational fishery. 2004
- Project for Gary Bevin, Consulting Economic Analyst and New Zealand Federation of Commercial Fishermen Inc. Assistance in preparation of a report on the comparative operating costs of domestic and charter vessels in New Zealand's deepwater fishery. 2004
- Project for Mitchell Partnerships and Pegasus Bay Aquaculture. Evaluation of commercial fishing issues in Pegasus Bay in relation to aquaculture development. 2004-2005
- Project for New Zealand Mussel Industry Council. Assessment of policy issues in relation to the introduction of green lipped mussels into the Quota Management System. 2003-04.

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- Project for Ministry of Fisheries, Wellington. Develop and provide an audit of the tag recovery phase of the snapper tagging programme conducted on the west coast of the North Island (SNA8). 2003-2004.
- Project for Southern Clams Ltd, Dunedin. Review of stock assessments and the management of the cockle fisheries of Otago Peninsula. 2003
- Project for New Zealand Seafood Industry Council, Wellington. Review and report on the management of bycatch species under the Quota Management System including and assessment of issues and options for bycatch management. 2003
- Project for Hauraki Maori Trust Board, Paeroa. Identification and assessment of mussel farming opportunities in the Firth of Thames, including review of regulatory and legislative environment and environmental assessment requirements, 2002.
- Project for New Zealand Marine Research Foundation, Whangarei. Survey on the economic contribution of the New Zealand big-game fishery. 2000-2001
- Project for Ministry for the Environment, Wellington. Scoping of the perceptions of organisations to environmental issues. 2000.
- Project for Clement & Associates Ltd, Nelson. Review of the pilchard fishery. 2000
- Project for South Australian Centre for Economic Studies, Adelaide, Australia. Arrange field interviews of New Zealand recreational fishers. 1999
- Project for Ministry of Fisheries, Wellington. Undertake the National Marine Recreational Fisheries Survey in 2000 and 2001. This project involved three sub-projects, including national telephone survey, national diary survey and national boatramp survey. 1998 to 2004.
- Project for Contact Energy Limited, Wellington. Project manager for fisheries assessment and baseline fisheries monitoring for the Otahuhu Combined Cycle Power Station. 1998.
- Project for Treaty of Waitangi Fisheries Commission, Wellington. Review of the annual wetfish, paua and rock lobster fisheries quota leases to Iwi, 1996, 1997, 1998, 1999, 2000.
- Project for Contact Energy Limited, Wellington. Project manager for development of coastal environmental monitoring and management plans for Otahuhu Combined Cycle Power Station. 1997-1998.
- Project manager for Solid Energy New Zealand Limited resource consent applications for offshore coal terminal. Management of preparation of technical evidence for consent hearings. 1997.

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- Project for New Zealand Fishing Industry Association Inc. Preparation of expert evidence in relation to Judicial Review of snapper fishery TAC decision. 1996.
- Project for Te Iwi Morori Trust Board, Chatham Islands. Assessment of fisheries resources in the vicinity of the Chatham Islands in relation to quota allocation and future business development opportunities. 1996.
- Project for Solid Energy New Zealand Ltd. Fisheries assessment the Karamea Bight in relation to proposed offshore coal export jetty near Westport. 1996.
- Project for Raukura Moana Fisheries Ltd, Te Rapa. Review of aquaculture and preparation of a database on the aquaculture industry in New Zealand. March-May 1996.
- Project for Tranz Rail Ltd. Fisheries assessment of Clifford Bay, Marlborough in relation to proposed new offshore ferry terminal at Clifford Bay. 1995.
- Project for Environment BOP. Assessment of tradeable water permits for the Rotorua Geothermal Field. (Joint consultancy with G. Bevin, Consulting Economic Analyst and D. H. Smith, Civil and Environmental Engineer). 1995.
- Project for MAF Policy (Fisheries), Ministry of Agriculture and Fisheries, Wellington. Assistance with policy and implementation of new aquaculture legislation to be incorporated in the new Fisheries Act. 1994 - 1995.
- Project for ASEAN/New Zealand Business Council and Ministry of Foreign Affairs and Trade. Arrange and manage the ASEAN Fisheries Management and Technology Mission to New Zealand, 1994.
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This is the document marked **B** mentioned and referred to in the affidavit of **Richard Owen Boyd** affirmed at Wanaka this 31<sup>st</sup> day of August 2005 before me:

A handwritten signature in black ink, consisting of several overlapping loops and a trailing line.

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Solicitor of the High Court of New Zealand

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## The New Zealand Model for TAC Allocation to Recreational Fisheries

Report for Ministry of Agriculture, Food and Fisheries  
Victoria, BC

Prepared by

Rick Boyd  
Boyd Fisheries Consultants Limited  
Wanaka, New Zealand  
E-mail: [rboyd@ihug.co.nz](mailto:rboyd@ihug.co.nz)

March 2005



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## Summary

This report examines the New Zealand approach for TAC allocation to recreational fisheries. The purpose of the report is to provide an understanding of the New Zealand approach, examine how it operates in practice and identify issues that have arisen in New Zealand from implementation of the policy. The report then discusses the applicability of the policy in other jurisdictions.

New Zealand adopted a rights-based approach to management of its commercial fisheries in 1986 with the introduction of an individual transferable quota management system (the 'QMS'). There was no attempt at that time to incorporate recreational fishing within a rights-based framework. This means that commercial fishing rights under the QMS are very well defined, but recreational fishing rights are less clear.

Under the Fisheries Act 1996, the Minister of Fisheries must first set a total allowable catch (TAC) for the entire fishery before setting a total allowable commercial catch (TACC) which cannot exceed the TAC. In setting the TACC, the Fisheries Act requires that the Minister of Fisheries must allow for recreational and other non-commercial interests. He is also required to consult with sector groups and after he makes his decision he must provide the reasons for his decision in writing.

The Fisheries Act 1996 provides no statutory guidance on how the Minister is to make allocation decisions and no priority is given to any sector. This leaves allocation decisions entirely up to the Minister. There is no other Government policy on allocation to guide decision making or sector groups. As a result, the current process is politicised and expensive to service for all sectors.

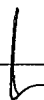
Efforts by Government to develop a rights-based approach to recreational fishing policy have not been successful due to a lack of consensus within the recreational fishing community. All stakeholders, including Government, believe that recreational fishing rights need better definition.

The strengths of the New Zealand model come from the explicit statutory requirement to make an allowance for the recreational (and other non-commercial) interest when setting a TACC within a sustainable TAC. Recreational and other non-commercial interests must be taken into account. The weaknesses of the New Zealand model arise as a consequence of a lack of clear definition of recreational fishing rights and the uncertainties and costs this creates for all stakeholders.

Other jurisdictions can learn from the New Zealand experience. Most importantly, recreational rights should be defined at the same time as commercial rights so that all stakeholders have comparable rights and similar incentives to participate in co-management. There are a number of important allocation issues that need to be resolved at the same time to underpin a rights-based approach to fisheries management. These issues include how the rights are

defined and controlled for each sector, the priority of rights for each sector, the basis for initial allocation of rights between sectors, how future changes in allocation are to be made, compensation for re-allocation of rights between sectors, who should be responsible for determining transfers of rights between sectors, who will 'hold' the recreational allocation on behalf of recreational users and should have the right to harvest the recreational allocation.

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## 1. Introduction

The overall purpose of this report is to describe and discuss the current system for allocation of marine fishery resources to the recreational sector in New Zealand and to discuss its applicability in other jurisdictions. The report has been commissioned by the Ministry of Agriculture, Food and Fisheries, Victoria, B.C. and the full terms of reference are provided in Appendix 1.

As in many other jurisdictions, New Zealand has competing demands for the available surplus in many of its marine fisheries. These demands include resource extraction by the Maori customary sector, the commercial seafood sector and the recreational sector. Both the commercial and recreational sectors are significant resource users and often compete for the same fish in the same areas. Environmental organizations also have non-extractive interests in the sustainability of the fishery.

Allocation between the commercial and recreational sectors presents a range of highly controversial and potentially complex issues in New Zealand. Allocation to the Maori sector arises from the guarantees to Maori in the Treaty of Waitangi<sup>1</sup> and is therefore subject to different criteria.

Before describing the New Zealand approach for allocation of the total allowable catch (TAC) to the recreational sector and how this system is operating, key background information is presented in order to place the New Zealand approach into its full context.

The present allocation framework, examples of the policy in practice and stakeholder views are then presented before assessing the policy in the context of its applicability to other jurisdictions.

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<sup>1</sup> See Appendix 2 for information on Maori fishing rights and the Treaty of Waitangi.

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## **2. New Zealand Fisheries in Context**

### **2.1 Introduction to the Context**

New Zealand's culture and its legal and political systems are similar to those in other parliamentary democracies. The public expect to be consulted and to have an opportunity for input to decisions affecting them. Politicians debate the merits of different approaches in a debating chamber open to public view when laws are changed. Contentious issues are frequently politicised by sector interests.

Recreational fishing is a popular and highly valued activity in New Zealand. As fishery resources have become exploited, and frequently depleted through over-fishing, recreational fishers have experienced a decline in individual catch rates. Allocation to the recreational sector to protect and maintain recreational fishing opportunities is therefore an issue of importance to the public.

The following sections of Chapter 2 provide a background to New Zealand fisheries which will assist in understanding the complexity surrounding the development of the current New Zealand model for allocation to the recreational sector. Some of this information may not be needed by all readers, and these readers should skip to the summary at the end of Chapter 2.

### **2.2 Historical and Cultural Profile**

New Zealand is a small maritime country comprised of 3 main islands extending from 34°S to 47°S. The country is long (1600 km) and narrow (400 km at its maximum width). Most of the population lives on or near the coast and even those that don't are usually only an hour or two away. With a population of just 4 million people, the Government is also very close to public opinion.

Prior to European settlement, Maori relied on seafood for a significant portion of their diet. The coast yielded fish, shellfish, marine mammals and seabirds. Apart from birds, bats and the Polynesian rat, New Zealand had no large terrestrial animals for food.

With abundant seafood resources it is not surprising that European settlers and more recent migrants have taken the opportunity to enjoy fishing for food and recreation. Due to the nature of many of the more abundant and available resources (demersal species and shellfish), most recreational fishing in New Zealand is often as much about providing fresh seafood for the table as it is about recreation.

When the first Europeans arrived, Maori were both accomplished fishers and natural entrepreneurs. Maori became the first commercial fishers supplying the small settlements and larger towns with much of their fresh fish. As a consequence of the Maori land wars and increasing settlement, Europeans dominated the commercial fishery by the end of the 19<sup>th</sup> century. The seafood





industry remained relatively small and was based on supplying the domestic market until the 1960s, largely due to a system of limited licensing coupled with export controls.

The limited licensing system was removed in the 1960s to stimulate economic development. In response to the arrival of foreign fishing fleets New Zealand declared a 200 mile exclusive economic zone in 1978. This additional stimulus and growing export demand, coupled with an open access policy resulted in very rapid growth within the commercial seafood industry. This culminated in the so called 'inshore fishery crisis' by the early 1980s, with too many boats chasing too few fish.

Increased commercial fishing pressure with progressive exploitation of previously abundant inshore resources had a significant impact on other users as well. Fish and shellfish became more difficult to catch and commercial fishers started working in areas that previously had received little or no commercial fishing pressure. Maori, who had a close association with these resources, were particularly aware of the decline. Catch success in the recreational fishery also dropped.

### **2.3 Management and Allocation to the Recreational Sector Prior to the QMS**

Fisheries in New Zealand were generally managed on a needs basis in the period prior to 1986. Both commercial and recreational fisheries were managed using a combination of method, area and gear restrictions together with size limits for certain species. A limited licensing regime was in place in selected commercial fisheries. Maori customary (non commercial) fishery needs for defined cultural purposes<sup>2</sup> were managed under a customary permit system.

Commercial fishing in some inshore areas, particularly around large population centres and in the large shallow harbours found in northern New Zealand, was usually regulated by method and gear restrictions, but rarely prohibited altogether in any waters. Ostensibly, commercial fishing restrictions near cities and in harbours were for conservation reasons, but some were the result of political pressures from local residents, recreational fishers and sometimes from small-scale commercial fishers. A de-facto system of allocation to the recreational sector operated for some recreational fisheries, especially bivalve shellfish. Bivalves in local harbours and beaches near population centres were generally off limits to commercial fishers – Fishery Officers made these decisions based on local knowledge until the 1980s. Daily bag (catch) limits for recreational fishers were universal for most shellfish species by the 1980s. For finfish species there were no daily recreational catch limits in place at all until 1984 except for one species in one area.

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<sup>2</sup> See Appendix 2 for information on Maori fishing rights and the Treaty of Waitangi.

In 1983, a moratorium was introduced on the issue of new commercial fishing permits<sup>3</sup> in the commercial fishery as a result of the so called 'inshore fishery crisis'. A new Fisheries Act was also passed in 1983 replacing the previous 1908 Fisheries Act. This provided a wider range of regulation making powers for fishery managers. Early in 1984, a daily recreational catch limit of 50 fish for the combined take of all finfish was introduced for the first time. The primary purpose of imposing the daily recreational catch limit at that time was to limit the opportunity for people to try and circumvent the commercial fishing permit moratorium by harvesting 'commercial quantities' and selling them. Although it was illegal to sell fish without a commercial fishing permit, there were many ways to do so.

In summary, management of the recreational fishery was largely confined to method, gear and minimum fish size restrictions until the mid-1980s. Most recreational fishing for finfish species was viewed as low-impact and inconsequential compared to the commercial fishery. Little data existed on the size of the recreational harvest. Allocation to the recreational sector was implicit through controls on commercial fishing aimed at protecting stocks, especially those with a high recreational value.

## **2.4 Quota Management System**

In 1986 New Zealand introduced individual transferable quotas (ITQs) to its main commercial fisheries. The quota management system or QMS initially provided for ITQs as fixed tonnages. The total of all individual allocations (in metric tonnes) added up to the total allowable catch (TAC) for each fish stock.

The effect of the QMS was to limit the total commercial catch in all of the main fisheries. Under the Fisheries Amendment Act 1986, the Minister of Fisheries set the total allowable catch available for commercial fishing (TAC) for species or stocks subject to the QMS.

By 1989 it had become clear that fixed ITQs placed the risk of stock variability on the Crown and not the industry and in 1990 the QMS was amended to a proportional ITQ system. ITQs were converted from metric tonnes to shares in the commercial TAC. As the TAC changed from year to year, each ITQ retained its share of the TAC, but the annual catch (in tonnes) permitted under each ITQ varied in proportion to the annual TAC.

Since 1986, the QMS has been extended to cover most commercially harvested species. Government policy is to eventually incorporate all commercial species, including any new species, into the QMS. There is a significant workload associated with introducing species into the QMS, so only a certain number of species are being added to the QMS each year.

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<sup>3</sup> In New Zealand the term commercial fishing permit is used for a general and annually renewable authority to fish commercially, and the term licence is used only for limited licence fisheries. No limited licence fisheries remain in place in 2005.

## 2.5 TACs and TACCs

Total allowable catches or TACs were referred to in two different ways in the Fisheries Amendment Act 1986 resulting in potential confusion. In relation to each fish stock in the QMS, the Fisheries Act provided that: *'the Minister, ... may specify the total allowable catch (TAC) for all specified species and management areas'*<sup>4</sup>:

The Fisheries Act also contained a separate definition of total allowable catch in the interpretation section of the Act as being *'with respect to the yield from a fishery means the amount of fish ... that will produce from that fishery the maximum sustainable yield as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish, and any generally recommended sub-regional or regional or global standards'*<sup>5</sup>

In 1989, the Fisheries Act was also amended to clarify the references to total allowable catches under the QMS. The amendment replaced the expression 'total allowable catch' when setting TACs for the QMS, with a 'total allowable commercial catch' (TACC). This change was intended to clarify the intent of the TACC under the QMS and to avoid any confusion with the other definition of TACs.

The Fisheries Act 1996 has since expanded and refined the definitions of TAC and TACC so that they are more detailed and explicit, but they remain the same in principle.

## 2.6 Maori Fisheries Claims

The initial allocation of individual transferable quota in 1986 generated a lengthy sequence of events which culminated in the settlement of Maori commercial fishing claims in 1992.

In brief, the allocation of property rights in fisheries in the form of ITQ in 1986 threatened Maori interests in the fishery. Section 88(2) of the Fisheries Act 1983 stated that *'nothing in this Act shall affect any Maori fishing right'* but the scale and extent of those rights had never been agreed between the Crown and Maori<sup>6</sup>.

Maori commercial fishing claims were eventually settled through a process starting in the Courts and concluding with a largely political arrangement between Maori and the Crown. The Crown initially transferred 10% of all ITQ to Maori in 1989 as an interim arrangement and subsequently agreed to provide funds to Maori to purchase 50% of a large New Zealand commercial fishing company that held about 20% of ITQ in 1992 and to provide Maori with 20% of ITQ for any new

<sup>4</sup> s28C, Fisheries Amendment Act 1986

<sup>5</sup> s2, Fisheries Act 1983

<sup>6</sup> see Appendix 2 for a reference to the 'Report of the Waitangi Tribunal on the Muriwhenua Fisheries Claim' which discusses this topic.



species or stock added to the QMS.<sup>7</sup> As part of the settlement, Maori had to agree to the repeal of s88(2), from the Fisheries Act, removing the risk to the Crown of any future litigation in relation to commercial as well as customary Maori fishery claims.

The settlement of Maori fisheries claims has provided Maori interests with a significant presence and interest in the commercial fishery through quota ownership. Importantly, the commercial fisheries settlement brought Maori commercial fishing interests into the mainstream seafood industry on an equal commercial footing with non-Maori.

Maori commercial fishing assets are now divided into two asset pools. About half of the Maori-owned ITQ is tribal and has been (or is in the process of being) allocated to individual Iwi (tribes). The other half of the Maori commercial fishing assets are owned by a pan-Maori organisation Te Ohu Kai Moana which utilises and manages these assets through its fishing company Aotearoa Fisheries Limited (AFL). AFL is now one of New Zealand's largest fishing companies. AFL's profits are distributed as dividends to Iwi.

There is now no legal distinction between Maori and non-Maori ITQ under the Fisheries Act. In theory this means there is full transferability between Maori and non-Maori quota. Maori commercial fishing rights are therefore protected only as long as Maori retain ownership of their ITQ. To prevent alienation of Maori quota, Maori requested and Government agreed to include provisions in the Maori Fisheries Act 2004 that require tribes selling ITQ to provide a first right of refusal to Te Ohu Kai Moana. There are no restrictions on Maori tribes or Te Ohu Kai Moana purchasing ITQ from non-Maori to add to their quota holdings. This has already occurred with Te Ohu Kai Moana and some Iwi purchasing fishing companies or quota on the open market to grow the Maori presence in the commercial fishery.

## 2.7 Summary

New Zealand adopted an individual transferable quota management system (the 'QMS') in its commercial fisheries in 1986, largely as a result of an 'inshore fishery crisis' stemming from fleet over-capitalisation and over-fishing concerns. The QMS was adopted to deal with a perceived crisis in the commercial fishery. At the time, there was little concern about the impacts of the other sector groups (i.e., Maori commercial and customary, and recreational). There was no attempt to incorporate recreational fishing within a rights-based framework. Maori saw the QMS as a threat to their Treaty rights and used the Courts to force Government to recognise their claims. This resulted in the settlement of Maori commercial fishing claims and an improved framework for managing customary fisheries.

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<sup>7</sup> see the Maori Fisheries Act 1989/ Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Maori Fisheries Act 2004

In summary, the prevailing view in 1986 was that the commercial sector was responsible for over-fishing and the depletion of stocks. In any case, fishery managers were stretched to the limit in dealing with the introduction of the QMS. By managing the commercial fishery sustainably and by re-building stocks, it was believed that the needs of the recreational and other non-commercial sector would largely be protected.

Since 1986, considerable change in fisheries has taken place in New Zealand. Most fish stocks appear to be healthy or rebuilding. The economic health of the seafood industry has improved considerably. Maori fishery claims have been settled. Fisheries management has evolved within a statutory framework now requiring much stricter environmental standards, in line with international trends. The QMS is much more complex and embraces many more species. More robust information is available on the fishery, including estimates of recreational fish harvests. Sector groups are much better informed. Expectations of sector groups have also grown. However, recreational fishing rights remain relatively undefined. As a result, allocation policy lacks certainty, with negative impacts on the interests of all stakeholder groups.



### **3. The New Zealand 'Model' for Allocation of the TAC to the Recreational Sector**

#### **3.1. Outline of the New Zealand Model**

The setting of total allowable catches, total allowable commercial catches and allocation to the recreational sector are governed by explicit provisions in the Fisheries Act 1996. An outline is provided in this section of Chapter 3 in order to provide an overview of the New Zealand model. This is followed in the remaining sections of Chapter 3 with a more detailed description of the development of the policy, the legal framework, and how the policy is being applied.

The New Zealand allocation approach is structured so that the Minister of Fisheries must first set a total allowable catch (TAC) for the entire fishery before setting a total allowable commercial catch (TACC) for the commercial sector and allocating to non-commercial interests.

The TAC must be set in accordance with a number of reference points (principally the maximum sustainable yield or MSY). This approach is designed to ensure sustainability of the resource.

The TACC can only be set once the TAC has been set and cannot be greater than the TAC. In setting the TACC, the Minister of Fisheries must allow for (amongst other things) recreational interests. Although the Fisheries Act does not explicitly state that he is required to do this, the practice that has been adopted is for the Minister to specify the various non-commercial allowances in metric tonnes. The TACC is also set in metric tonnes. Thus, the sum of the TACC plus the various other allowances equals the TAC.

The Fisheries Act does not specify how the Minister is to make the allowances and the Minister has an unfettered discretion to allocate to each sector as he decides. No priority is given to any sector in the Act. However the Act does require the Minister to consult with sector groups and to provide the reasons for his TACC decision in writing. In practice he also advises sector groups of the reasons for his allocation decision including the reasons for the amount of the allowance he has made for each of the non-commercial sectors.

#### **3.2. Development of Recreational Fisheries Policy**

Prior to the QMS being introduced in 1986, there was no specific allocation requirement in New Zealand fisheries legislation that provided for specific allocations to be made to the recreational sector. There was also no stated national recreational fisheries policy.

Development of a recreational fishing policy was stimulated by two factors. One was the Fisheries Act 1983 which contained a provision for the development of statutory fishery management plans (FMPs). The FMP provisions provided for



public input and the development of management plans which would be implemented through the 1983 Act. However, FMPs were ultimately overtaken by the QMS and although work started on FMPs, they never progressed much beyond the initial stages of preparation. Therefore, no policies on recreational fishing were developed under the FMP process.

Allocation to the recreational (and other non-commercial) sectors when setting a TAC was a consequence of setting total allowable catches for commercial fishing under the QMS in 1986. The Fisheries Amendment Act 1986 which introduced the QMS provided (in relation to TACs for the QMS) that:

'the Minister, after allowing for the Maori traditional, recreational and other non-commercial interests in the fishery may specify the total allowable catch (TAC) for all specified species and management areas'<sup>8</sup>

This provision was included in the Act as a consequence of the allocation of property rights in the form of ITQs to the commercial sector in the inshore fishery. It followed that other (non-commercial) interests in the fishery had to be provided for in the TAC setting process. This provision did that, but left the amount of the allowance for recreational (and other) interests at the Minister's discretion. No national policy on recreational fisheries existed at that time to provide any clear directions as to what that allowance should be or how it should be determined.

A discussion document "Draft National Policy for Marine Recreational Fishing" was initially released in early 1986. After an hiatus over the 2 year period over which the QMS was introduced and its associated administrative systems bedded in, a final document "National Policy for Marine Recreational Fisheries" was released in 1989. When the (then) Minister of Fisheries (Hon. Colin Moyle) released the National Recreational Fisheries Policy document, he stated that the cornerstone of the policy was given in the first national objective which was: 'to ensure recreational users have access to a reasonable share of fishery resources. 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. This position reflects Government's resolve to ensure all New Zealanders can enjoy and benefit from our fisheries.'<sup>9</sup> This statement has subsequently been called the 'Moyle promise'.

Although the 1989 policy signaled that it would be the basis for development of regional recreational fishery strategies in fishery management plans (FMPs), the Government later repealed the FMP provisions from the Fisheries Act. The QMS had been adopted as the principal management tool and FMPs were no longer considered necessary. As a result of the discarding of FMPs, the impetus behind the 1989 National Recreational Fisheries Policy was lost. The 1989 National

<sup>8</sup> s28C, Fisheries Amendment Act 1986

<sup>9</sup> Minister of Fisheries covering letter in National Policy for Marine Recreational Fisheries, June 1989. A copy is on the web at: [http://option4.co.nz/Your\\_Rights/moyles.htm](http://option4.co.nz/Your_Rights/moyles.htm)

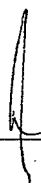
Recreational Fishing Policy was never approved by Cabinet or implemented. In 1990 there was a change of Government.

From 1989 on, the Fisheries Act was amended a number of times, resulting in some re-writing of the sections concerning the setting of the TAC and the TACC. However, the provision requiring the Minister to make an allowance for the recreational (and other non-commercial) interests in the fishery when setting a TACC under the QMS remained essentially the same. The most important amendment to the Fisheries Act affecting commercial fishing interests came in 1989 when the QMS was altered from a system of fixed ITQ allocations to proportional ITQ. This change transferred the risk of TACC reductions from the Crown to ITQ owners. Under the fixed tonnage ITQ regime, each quota owner held a specific tonnage of ITQ and the sum of all ITQs equaled the TACC. Therefore, the Crown had to purchase ITQ on the open market to give effect to a TACC reduction, but whenever the TACC was increased the Crown sold the increase on the open market. With fixed tonnage ITQs, industry was therefore protected from risk if there was an increased allocation to the recreational sector. Under the proportional ITQ regime, each quota owner has a proportion of the TACC so that whenever a TACC is varied, the ITQ changes in proportion. Proportional ITQs meant that industry was now more at risk from reallocation to the recreational sector.

Public consultation on recreational fisheries policy and the way recreational fisheries were managed did not surface again until 2001 with the release of a discussion document by the Ministry of Fisheries called 'Soundings'. This document was some 3 years in the making, being the result of a joint working group between the Ministry of Fisheries and the New Zealand Recreational Fishing Council established in 1998. The purpose of 'Soundings' was to obtain public comment on future management of the recreational fishery. In particular, the document signaled that its primary focus was to more clearly define recreational fishing rights.

In 'Soundings' the public was asked what they thought of three options for future management, or if they had other solutions for the future management of recreational fishing. 'Soundings' contained three options for allocation and management of the recreational fishery which can be summarised as follows:

- Option 1: the recreational fishing share of the total allowable catch would be set at the Minister of Fisheries' discretion. The Ministry of Fisheries would continue to manage the fishery. This was the *status quo*.
- Option 2: defining recreational fishers' rights by establishing a set proportional share of the total allowable catch for recreational fishers, possibly including recreational priority for some fisheries. The Ministry of Fisheries would continue to manage the recreational fishery. This option would set the recreational catch as a specified share of the TAC, but no specific shares were proposed.





- Option 3: Option 2 but with co-management of the recreational fishery. This option fixed the recreational share as well as giving significant responsibility for how the fishery was managed to recreational interests.

The response by the recreational fishing sector to the 'Soundings' document was mixed. For some, the document was lengthy and contained concepts that were relatively complicated. For others, especially the more extreme recreational interests, the document represented a significant threat. Both Options 2 and 3 (the change options) would potentially result in a capping of the recreational share as a proportion of the TAC. 'Soundings' stated that these options would improve recreational rights by clarifying what the recreational share would be. However, these more extreme recreational interests focused on potential threats in these proposals. They also focused on missing elements of policy.

In particular, there was no reference at all to the 1989 'Moyle promise' that many recreational interests believed had to be a key part of recreational fishing policy because it would give them priority of access to key recreational species.

The reaction of recreational interests to the Soundings document was to develop a fourth option. This movement quickly grew into a new, highly organised and well resourced lobby group calling itself 'option4'. The objective and principles of option4 are given on its web site<sup>10</sup>:

*option 4 objective: To carry the four principles of option4 all the way through the rights redefinition process and to have those principles enshrined in legislation.*

*option4 principles*

- *A priority right over commercial fishers for free access to a reasonable daily bag-limit to be written into legislation.*
- *The ability to exclude commercial methods that deplete recreationally important areas*
- *The ability to devise plans to ensure future generations enjoy the same or better quality of rights while preventing fish conserved for recreational use being given to the commercial sector.*
- *No licensing of recreational fishers.*

In 2003, option4 and the New Zealand Recreational Fishing Council, together with the New Zealand Big Game Fishing Council reached agreement to work together in promoting the interests of recreational fishers. This alliance made it difficult for the Ministry of Fisheries and Government to make any significant new progress in achieving the original aim of the 'Soundings' document, which was to clarify the recreational allocation by more clearly defining it.

<sup>10</sup> See [www.option4.co.nz/](http://www.option4.co.nz/)

In 2003 policy discussions were continued between Government officials and recreational interests through a committee known as the reference group with the aim of developing a reform option that would be acceptable to the recreational sector. The report of the reform group contained a package of proposals for better defining the recreational fishing right. Although recreational interests participated in the process of developing the proposed reforms, option 4 and other lobby groups opposed key elements of the proposals and in the end the reference group's recommendations were not taken up by Government.

Since 2003, no further progress has been made towards defining the recreational fishing right although the Ministry and Minister of Fisheries continue to consult with recreational fishing interests on recreational fishing policy.

### 3.3. Legislative Framework

The Fisheries Act 1996 was a major re-write of fisheries legislation in New Zealand and introduced a new purpose and environmental principles. The Act is extraordinarily complex, prescriptive and detailed, containing 370 sections (when initially passed into law) plus 12 schedules<sup>11</sup>. It has already been amended at least a dozen times and now contains many more sections and 16 schedules. A summary of even the main parts of the Act is well beyond the scope of this report.

What the 1996 Act makes clear is that the QMS is to be the principal tool for the management of every species or stock of fish that is subject to any commercial fishing. Any other management arrangement is effectively a temporary approach and to be used only until the species or stock is introduced into the QMS.

As a result, TACC setting under the QMS has become the principal allocation mechanism.

The main sections of the Act that deal with TAC and TACC setting and the recreational allowance are set out below:

#### 13. Total allowable catch—

(1) Subject to this section, the Minister shall, by notice in the Gazette, set in respect of the quota management area relating to each quota management stock a total allowable catch for that stock, and that total allowable catch shall continue to apply in each fishing year for that stock unless varied under this section[, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26].<sup>12</sup>

(2) The Minister shall set a total allowable catch that—

- (a) Maintains the stock at or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; or

<sup>11</sup> The Fisheries Act 1996, incorporating amendments, can be located and viewed on-line at [www.legislation.co.nz](http://www.legislation.co.nz)

<sup>12</sup> The words enclosed in square brackets, wherever they occur, have been inserted by an amendment to the 1996 Act.

- [(b) Enables the level of any stock whose current level is below that which can produce the maximum sustainable yield to be altered—
    - (i) In a way and at a rate that will result in the stock being restored to or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; and
    - (ii) Within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock; or]
  - (c) Enables the level of any stock whose current level is above that which can produce the maximum sustainable yield to be altered in a way and at a rate that will result in the stock moving towards or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks.
- (3) In considering the way in which and rate at which a stock is moved towards or above a level that can produce maximum sustainable yield under paragraph (b) or paragraph (c) of subsection (2) of this section, the Minister shall have regard to such social, cultural, and economic factors as he or she considers relevant.

**20. Setting and variation of total allowable commercial catch—**

- (1) Subject to this section, the Minister shall, by notice in the Gazette, set in respect of the quota management area relating to each quota management stock a total allowable commercial catch for that stock, and that total allowable commercial catch shall continue to apply in each fishing year for that stock unless varied under this section[, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26].
- (2) The Minister may from time to time, by notice in the Gazette, vary any total allowable commercial catch set for any quota management stock by increasing or reducing that total allowable commercial catch.
- (3) Without limiting the generality of subsections (1) and (2) of this section, the Minister may set or vary a total allowable commercial catch at, or to, zero.
- (4) Every total allowable commercial catch set or varied under this section shall have effect on and from the first day of the next fishing year for the quota management stock concerned.
- (5) A total allowable commercial catch for any quota management stock shall not—
  - (a) Be set unless the total allowable catch for that stock has been set under section 13 or section 14 of this Act; or
  - (b) Be greater than the total allowable catch set for that stock.

**21. Matters to be taken into account in setting or varying any total allowable commercial catch—**

- (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.
- (2) Before setting or varying a total allowable commercial catch for any quota management stock, the Minister shall consult such persons and organisations as the Minister considers are representative of those classes of

- persons having an interest in this section, including Maori, environmental, commercial, and recreational interests.
- (3) After setting or varying any total allowable commercial catch under section 20 of this Act, the Minister shall, as soon as practicable, give to the parties consulted under subsection (2) of this section reasons in writing for his or her decision.
- [(4) When allowing for Maori customary non-commercial interests under subsection (1), the Minister must take into account—
- (a) Any mataitai reserve in the relevant quota management area that is declared by the Minister by notice in the Gazette under regulations made for the purpose under section 186;
- (b) Any area closure or any fishing method restriction or prohibition in the relevant quota management area that is imposed by the Minister by notice in the Gazette made under section 186A.]
- (5) When allowing for recreational interests under subsection (1) of this section, the Minister shall take into account any regulations that prohibit or restrict fishing in any area for which regulations have been made following a recommendation made by the Minister under section 311 of this Act.

**311. Areas closed to commercial fishing methods—**

- (1) The Minister may, where—
- (a) Catch rates by recreational fishers for a stock are low; and
- (b) Such low catch rates have a significant adverse effect on the ability of recreational fishers to take their allowance for that stock; and
- (c) The low catch rates are due to the effect of commercial fishing for the stock in the area or areas where recreational fishing for the stock commonly occurs; and
- (d) A dispute regarding the matter has been considered under Part 7 of this Act and the Minister is satisfied that all parties to the dispute have used their best endeavours in good faith to settle the dispute but have failed to do so,—

after consulting with such persons or organisations as the Minister considers are representative of those classes of persons who have an interest in the matter, recommend the making of regulations under section 297 of this Act that close an area or areas to commercial fishing for that stock, or prohibit a method or methods of commercial fishing in an area or areas for that stock for the purpose of better providing for recreational fishing for that stock, provided that such regulations are not inconsistent with the Maori Fisheries Act 1989, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, or Part 9 of this Act.

These statutory provisions are detailed in words, but relatively straightforward in practice. The Minister of Fisheries must set a TAC and a TACC for every fish stock under the QMS. Section 13 of the Act requires the Minister to set a sustainable TAC. The maximum sustainable yield is the principal reference point for setting the TAC. Section 20 requires the Minister to set a TACC that is not greater than the TAC. Section 21 requires the Minister of Fisheries to make an allowance for recreational fishing interests when setting a TACC, but the amount of that allowance is ultimately the Minister's. Section 21 also requires the Minister to take into account mataitai (Maori customary fishing) reserves and other areas closed to commercial fishing under section 311 of the Act when setting a TACC.

There are significant differences in the way that commercial and recreational fishing rights are specified in the Fisheries Act. Under the present statutory framework, the commercial allocation is explicitly recognised in the form of a TACC and this is divided into individual shares of the TACC in the form of ITQ. ITQ is a right to catch a share of the TACC<sup>13</sup> each year and is fully transferable in whole or in part. It can be subdivided and aggregated. ITQ has a legal owner and the ownership changes when it is transferred. In this respect it has many of the attributes of real and personal property, even though it is not a physical object. However, the recreational allocation is an 'allowance' for recreational interests in the fishery. Although the Minister specifies the recreational allowance as a quantum when he sets a TACC, the recreational allocation does not have a specific owner but is a form of collective right that has no clear owner. These underlying differences in the nature of the rights mean that it is not currently possible for market-based transfers to occur between the commercial and recreational shares of the TAC. One of the reasons why policy makers want to better specify the recreational right is to provide the opportunity for market based mechanisms to be used for reallocation in the future.

In summary, the 1996 Fisheries Act sets out in considerable detail the things that the Minister must do in setting TACs and TACCs and in reaching a TACC decision. These include a specific requirement to allow for the recreational interest when setting a TACC, to consult and to give the reasons for his decision in writing. However, the legal framework does not constrain how the Minister makes recreational allocation decisions. Differences in the nature of the commercial and recreational right prevent the use of market based approaches to reallocate the resource.

### **3.4. The Policy as Now Applied**

TAC and TACC setting occurs in two situations. One is when the TAC and TACC are set when a species is first introduced to the QMS. The second is when a TAC or TACC is varied under the Act. The process for both is essentially the same although there are different risks to Government in respect of claims for compensation by the commercial sector as result of allocation decisions. The compensation issue is discussed later in this report.

There is an annual cycle for the review of sustainability measures and other management controls in New Zealand fisheries, culminating in decisions of the Minister in respect of (amongst other things) setting or varying TACs and TACCs.<sup>14</sup> This process provides for participation by all sectors (commercial, recreational, Maori commercial and customary and environmental organisations).

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<sup>13</sup> The details of how annual catch entitlements are generated from ITQ is more complex than described here but this outline is sufficient for the purposes of this report. For further details the reader should refer to s66 of the Fisheries Act 1996.

<sup>14</sup> An outline of the process can be found at [www.fish.govt.nz/sustainability/research/stock/process.htm](http://www.fish.govt.nz/sustainability/research/stock/process.htm)

The cycle commences with annual stock assessments and yield estimates. This part of the process brings together research providers and sector groups to review the results of research and other fishery information. There is a number of fishery assessment working groups that deal with different species or species groups. The results from the working groups are brought together in an annual Fishery Assessment Plenary. The results of the Annual Plenary are published<sup>15</sup> and include fishery summaries that provide estimated catches by commercial, recreational and Maori customary fisheries.

Following the Annual Plenary, the Ministry of Fisheries initiates consultation with sector groups by releasing an initial position paper (IPP) on the review of sustainability measures. The IPP contains the Ministry's preliminary recommendations for management, including TACs, TACCs and other matters. The IPP includes a proposed method for allocation. Following a period of consultation, the Ministry releases its final advice paper (FAP) which the Minister (if he agrees with the recommendations it contains) signs and any TAC or TACC decisions are implemented. The Minister also provides a letter to stakeholders advising of his decisions and the reasons for them<sup>16</sup>.

In spite of detailed documentation in the IPP and FAP, no specific allocation policy is enunciated by the Ministry or the Minister that sets out in advance the methods to be used for apportioning stocks between sector groups. Instead, the method of allocation is determined separately for each individual fish stock without an overall policy approach to guide the process. When the Minister advises of the decisions he has made, indicates the reasons for his allocation decisions.

The FAP in 2004 included nearly 20 pages of discussion on statutory obligations and policy guidelines, including nearly 9 pages of discussion under the heading of allocation. The FAP includes extensive discussion on allocation and allocation models, including both claims-based (catch history) and utility-based<sup>17</sup> allocation approaches. The detailed discussion in the FAP indicates that there are a wide range of considerations that could have a bearing on allocation. However, the FAP provides no real guidance whatsoever on allocation policy. Two simple statements in the 2004 FAP neatly summarise the actual policy position. These statements are set out below:

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<sup>15</sup> The 2004 Plenary reports can be found at [www.fish.govt.nz/sustainability/research/assessment/plenary/index.html](http://www.fish.govt.nz/sustainability/research/assessment/plenary/index.html)

<sup>16</sup> The 2004 IPP, FAP and Minister's decision letter in relation to the annual sustainability review can all be found at [www.fish.govt.nz/sustainability/decisions/index.html](http://www.fish.govt.nz/sustainability/decisions/index.html)

<sup>17</sup> The Ministry of Fisheries FAP in 2004 identified two approaches to allocation. Utility-based approaches are described as those involving population trends, relative value to respective sector groups, investment and level of development, ability to utilise the allocation and social, cultural and economic impacts. Claims-based approaches are described as including existing allocations, current catch, equity of allocation, current participation levels and importance of the resource to one or more sectors. These are usually equated to relative value (utility-based) or catch history (claims-based).

*'The allocation of the TAC is a matter for the Minister's assessment taking into account all relevant considerations.'*

*'No explicit statutory mechanism provides guidance as to the apportionment of the TAC between sector groups either in terms of a quantitative measure or prioritisation of allocation.'*

In brief, the present allocation policy in New Zealand relies on Ministerial discretion, which is constrained only slightly by the process that the Minister is required to follow under the Act before making a decision.

### **3.5. Recent Allocation Examples**

#### **3.5.1 Kahawai**

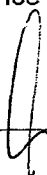
In 2004, kahawai, which is a very important recreational species was introduced to the QMS. The way that the recreational allowance was made for kahawai when the Minister set the TACC provides insight into the present application of the New Zealand allocation model.

The kahawai (*Arripis trutta*) is an excellent sports fish on light tackle, although many recreational fishers use much of their catch for bait as the species is not highly valued by non-Maori for its eating qualities but is excellent as bait. Kahawai has a relatively low value as a commercial species with much of the catch taken by purse seine. Although it does not have a high commercial value, kahawai is important to the economics of New Zealand's small purse seine fishery.

Maori value kahawai highly for food purposes and have traditionally harvested kahawai in large numbers where they school close to shore along the coast and in estuaries.

Recreational fishers believe that catch success in the recreational kahawai fishery has been adversely affected by commercial fishing, especially purse seining. Stock assessment information indicates that kahawai stocks are not over-fished. Many recreational fishers also believe that because kahawai has high recreational value but a relatively low commercial value, that they should receive a priority allocation of kahawai.

The kahawai FAP noted that the allocation of the TAC was an important part of the introduction (to the QMS) process and that the introduction process allocated property rights (ITQs) to the commercial sector. The FAP also noted that any subsequent reallocation of these property rights to another sector could be the subject of compensation. The kahawai FAP also stated that in shared fisheries, the Ministry has a policy preference for the claims-based allocation model and



recommended this allocation approach be adopted for kahawai by the Minister of Fisheries.

The Minister's allocation decision on kahawai in 2004, was based on catch history. In other words, the Minister's decision was to apportion the TAC between sectors based on their recent share of the total catch. Based on stock assessment information, the TAC was set at 15% below the level of recent catches. Thus, with a proportional allocation based on catch history, the decision cut the allocation to each of the commercial and recreational sectors by 15% compared to their recent catches.

The Minister's decision on allocation for kahawai stated:

*'I believe that the information on current use provides the best basis for allocating between each interest group. Accordingly I have decided to set allowances and TACCs that reflect current use in the fishery, reduced proportionally to fit within the bounds of the TAC set to ensure sustainability.'*

The Minister also announced that he might need to adopt additional management measures to achieve the catch reduction, and signaled he was considering the possible introduction of a reduced recreational daily catch limit of kahawai to ensure that the recreational catch remained within the allowance he had made. However, the Minister subsequently decided not to implement any change to the recreational daily catch limit and, to date, no action has been taken to limit or reduce the recreational kahawai catch.

Recreational fishing interests were far from satisfied with the Minister's allocation decision on kahawai. They believe that recreational fishers should have been given priority allocation of kahawai. As a result, option4 and allied recreational organisations are considering challenging it in the Courts by seeking a judicial review.

In summary, the Minister's decision on kahawai resulted in a situation where the commercial catch was reduced by 15% to fit within their proportional share of the TAC. This was achieved through the TACC set by the Minister under the Act. However, no measures have been introduced in the recreational fishery to reduce the recreational catch by 15% in order to ensure that this reduction is given effect.

### 3.5.2 Kingfish

The kingfish (*Seriola lalandi*) is another highly valued recreational species and is valued as a trophy fish. Kingfish is an important species for charter vessels as well as private vessels and it is also a prized species for spear fishers. Most of the commercial harvest is taken as a by catch.





Kingfish were introduced into the QMS in 2003 and there was strong pressure from the recreational sector for all of the kingfish TAC to be allocated to the recreational sector, or alternatively that there should be a substantial reallocation to the recreational sector because of the high recreational value of the fishery.

The kingfish IPP indicated that there were two options for allocation between the commercial and recreational sectors, one using the catch history method and one using the utility method. The Ministry of Fisheries indicated in the IPP that it did not have a preference as to which allocation method was adopted but provided an extensive discussion of both the -based and utility options and presented detailed information to support either approach.

The final advice given by the Ministry to the Minister in the kingfish FAP also gave no preference to the catch history or utility option and the FAP stated *'The policy discussion on the utility and claims-based approaches is not intended to fetter your discretion, but rather to provide policy guidance in order to provide a more robust allocation framework.* It is difficult to reconcile how the Ministry could believe that by not indicating a preference on the basis for kingfish allocation that it was providing any real policy guidance to the Minister of Fisheries. It also created considerable uncertainty amongst sector groups who did not know until the Minister made his decision what their likely allocation would be. Although kingfish supports a shared fishery between the commercial and recreational sectors, the policy used by the Ministry for allocation in this fishery is inconsistent with the policy adopted for the kahawai fishery the following year when the Ministry stated that in shared fisheries, the Ministry has a policy preference for the claims-based allocation model.

In the end, the Minister adopted the claims-based approach for allocation of kingfish, citing one of the reasons for his decision being the undermining of ITQ rights if he had adopted the utility-based approach and reallocated from the commercial to the recreational sector. He also indicated that decisions by Government to reallocate would be imperfect in the absence of a market to make such tradeoffs.

To achieve sustainability, the kingfish TAC was set at a level 20% below recent catches and the allocation to all sectors (including the TACC) was set at a level 20% below their catch history. To assist in reducing the recreational catch to the recreational allowance, the Minister increased the minimum legal size of kingfish in the recreational fishery from 65 cm to 75 cm.



## 4. Effectiveness of the Policy

### 4.1 Stakeholder Views

#### 4.1.1 Government

The present policy on allocation to the recreational sector is based on the provisions of the Fisheries Act 1996. This provides that the recreational allowance is at the discretion of the Minister and no priority is afforded to any sector group.

The Ministry of Fisheries is aware that there is a need to clarify policy on allocation of the TAC to the recreational sector and has actively pursued a number of policy initiatives to try and achieve this. These initiatives include the Soundings document in 2001 and the Reference Group work in 2003. The Ministry believes that the recreational fishing right needs better definition in order to achieve a better alignment of incentives by all sectors in dealing with allocation matters.

The Ministry considers that the best time to define recreational fishing rights would have been at the time that a rights-based system was adopted in the commercial fishery in 1986, but this was not possible at the time.

The release of the 'Soundings' document by Government in 2001 was aimed at developing better public awareness of the issues and obtaining feedback on how recreational fishing rights might be defined in a way that was acceptable to the public. However, ultimately this policy development process has stalled because some recreational sector interests have found it difficult to agree to any change to the *status quo* unless certain policies were agreed first. The lack of consensus has made it difficult to make real progress in defining the recreational right. Government believes there needs to be a high level of public consensus to any reform of the recreational fishing right.

The Ministry is continuing dialogue with the recreational sector on recreational fishing rights. However, until some form of consensus is reached, allocation to the recreational sector will remain at the Minister's discretion as provided for under the Fisheries Act 1996.

The Ministry indicated that recent decisions by the Minister of Fisheries on setting the recreational allowance for kahawai and for kingfish when these species were introduced into the QMS provides insight into the application of the present allocation policy. For kahawai, a claims-based approach to allocation was preferred because of the importance of this species to both the commercial and non-commercial sectors. For kingfish, a utility-based approach was considered as a possible approach because this species has a very high recreational value but a relatively low commercial value. However, the Minister determined that a claims-based approach should be adopted for kingfish.

#### 4.1.2 Commercial Sector

The seafood industry is New Zealand's fourth largest export earner and is therefore an important contributor to the economy. Exports of seafood products from New Zealand (including aquaculture) were worth approximately NZ\$1.4 billion in 2004. Over 90% of seafood production is exported.

The commercial sector has strong views about the current policy, or lack of policy, on allocation of the TAC to the recreational sector. The New Zealand Seafood Industry Council (SeaFIC) is the industry's parent organisation. SeaFIC coordinates industry submissions to the Ministry and Minister of Fisheries to ensure that the industry speaks with a single voice on most issues.

Key issues identified in discussion with the industry cover two main areas. One is the lack of clarity in the present allocation policy. Specific comments in relation to allocation include:

- The legislation is not clear.
- The allocation policy adopted by the Ministry/Minister is not clear.
- The Minister is vulnerable to lobbying.
- The Minister can reallocate by 'stealth' when he initially sets a TACC at the time a species is introduced into the QMS so that there is no risk the industry can claim compensation.
- There has been no process for establishing allocation policy.
- The policy guidelines set out in the IPPs and FAPs include both claims-based and utility-based approaches, but the application of a utility-based policy has not been agreed by the industry.

Many of these points have been identified in sections 3.3 and 3.4 of the report. However, the issue of 'reallocation by stealth' is of particular concern to the commercial sector because of the compensation issue. Although the process for setting TACs and TACCs is essentially the same when they are initially set under the Act and when they are varied, there are important differences to the industry in terms of the potential for compensation. Section 308 of the Fisheries Act provides that a reduction of the TACC for the purposes of ensuring sustainability is not liable to compensation. Section 308 also provides that Government is not liable to compensation when TACs and TACCs are initially set when a species are first introduced into the QMS. However, the Act is silent on the issue of compensation where a reallocation between commercial and non-commercial interests takes place. This at least provides the opportunity for compensation should the Minister reallocate when a TAC or TACC is varied. The industry's concern is therefore that the Minister can avoid the risk of Government having to compensate by choosing to reallocate at the time of introduction to the QMS.

The industry identified its views on the principal areas of need to overcome the problems with the present allocation approach in its submission to Government on the 'Soundings' document as follows:



*'The current management regime for recreational fishing, including the current level of Crown intervention, is hindering increased stakeholder involvement in fisheries management and putting at risk the sustainable management of fisheries resources. SeaFIC (the Seafood Industry Council) therefore endorses the need for better definition and management of recreational fishing rights. In order to achieve this, SeaFIC supports three inter-related initiatives:*

- *Better protection for access to and exercise of harvest rights for both commercial and recreational fishers through:
 
  - *the use of negotiated access arrangements, including spatial use agreements, between various fisheries rights holders; and*
  - *an alternative process for resolving access disputes between recreational fishers and commercial fisheries rights holders;**
- *A proportional allocation of harvesting rights between commercial and recreational fishers for stocks where there is a significant recreational harvest; and*
- *Encouraging the representation and constructive participation of recreational fishers in access negotiations and other fisheries management processes.'*

Overall, the industry's concerns about the effectiveness of the present allocation policy centre on the current lack of definition of recreational rights which prevents the full benefits of a rights-based fishery management approach from being realised in New Zealand.

The industry feels it is in a dilemma on the allocation policy issue because it considers that the recreational sector now has stronger lobbying power. Allocation has become such a political issue that the commercial sector is reluctant to see it resolved because the result may not be in the industry's favour.

In litigation taken by the commercial sector in 1995 challenging a Ministerial decision to reallocate to the recreational sector in the snapper fishery, the Courts indicated that the law was clear that the Government had to compensate the industry where the resource was reallocated and that the Minister had an obligation to maintain the recreational sector within its allocation. To reduce the risk of having to pay compensation, the Government subsequently amended the Fisheries Act.

The commercial sector has not pressed the legal issue of maintaining the recreational sector to within its allocation because it fears the consequences of doing so more than allowing the present situation to continue. However, the continuation of the present approach means that there continues to be no basis in law or public policy for adjusting sector shares in order to provide for change in the fishery.

Overall, the commercial sector sees the policy void as causing an inexorable erosion of their commercial fishing rights. When the QMS was introduced, ITQ

was in the form of fixed tonnage. Any change to the commercial allocation had to be on a willing-seller willing-buyer basis. Starting with the change from fixed tonnage to proportional ITQ, commercial rights have been steadily weakened. The overall industry view is that Government is demonstrating that it is no longer committed to a strong rights-based fishery management approach and that other policy considerations are now more important.

#### 4.1.3 Maori Sector

The commercial Maori sector in New Zealand is represented by Te Ohu Kai Moana (TOKM), a statutory organisation which has as its principal purpose the advancement of Iwi (tribes) in the development of fisheries, fishing and fishing related activities. TOKM coordinates input by Maori to the Ministry and Minister of Fisheries on a range of fisheries matters so that Maori, where appropriate, speak with a single voice on fishery matters.

Maori customary fishing rights derive from ancestral linkages between iwi/hapu (tribes/sub tribes) and their environment – a relationship that is confirmed in the Treaty of Waitangi and to which the Crown is obliged to give effect. Appendix 2 to this report provides additional background information on Maori fishing rights.

The Maori position on allocation of the TAC is broadly similar to that of the commercial sector. TOKM's submission on the 'Soundings' document included the following points on allocation:

- o The priority of rights should be made clear.
- o Maori customary (non-commercial) rights should have priority over all other rights and should be entrenched in the law.
- o Following the allocation made for customary take, Maori commercial rights should take priority. However, given the difficulties under the QMS of distinguishing between Maori and non-Maori commercial rights, all commercial rights would effectively take second place to customary but have priority over recreational.

Maori support the principle of using catch history (the claims-based approach) for allocation between sectors and do not support the use of the utility-based approach. Because the Maori commercial interest is captured within the TACC, it is very important to Maori that recreational rights are well defined and that these do not erode their commercial rights.

#### 4.1.4 Recreational Sector

A significant proportion of New Zealanders participate in the marine recreational fishery and the recreational harvest is significant. Appendix 3 provides background information on the recreational fishery.

Many recreational fishers do not belong to any formal organisation. However, there are a number of recreational fishing organisations in New Zealand which cater for specific interest groups. The New Zealand Recreational Fishing Council



(NZRFC) was formed a number of years ago at the request of Government in order to coordinate and provide a single voice where possible on issues affecting the recreational sector. The NZRFC is a Council made up of delegates representing 6 National and 9 Regional Associations plus Club representatives and Branch delegates elected to represent the public sector members.

NZRFC believes that recreational fishing rights in New Zealand should have been defined at the same time as commercial rights when the QMS was introduced. NZRFC believes that s21(d) of the Fisheries Act does give priority to recreational fishing interests when the Minister sets a TACC because in practical terms he must make that allowance before setting the TACC. NZRFC believe that if the public took Government to court over the issue, that the courts would find in the public's favour. However, the resources to pursue litigation are not available.

Recreational fishers want priority over commercial users for up to a dozen of the key species of most importance to the recreational sector. These species should be managed for non-commercial values to maximise recreational opportunities. They believe that the recreational allowance in all fisheries should be allowed to grow with growth in the general population so that recreational fishery values can be maintained. They do not support proportional allocation of the TAC as this does not provide for growth in the recreational fishery.

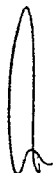
NZRFC believe that there is a lack of resourcing of the recreational sector which has made it difficult for the recreational sector to provide the kind of input needed by Government to achieve consensus on recreational fishing rights. NZRFC believe that Government should legislate to create a parent recreational organisation and provide adequate resources to fund it.

NZRFC believe that the 'Soundings' document produced by the Ministry contained the right approach for progressing the recreational fishing rights issue. However, lobby groups which are not part of mandated recreational organisations are hindering progress in reaching a consensus on how to define recreational fishing rights.

## **4.2 Discussion**

### **4.2.1 Overview**

There is no doubt that allocation to the recreational sector is being achieved under the present policy in New Zealand. However, although there are strong points in the present framework, there are some significant weaknesses to the present approach which constrain its effectiveness



It is evident that policy makers and Government are reluctant to tackle what is a controversial issue by developing a more defined recreational fishing right in the face of public opposition.

In spite of the fact that a strong, well-defined rights-based approach was adopted for the commercial sector 19 years ago, there has been no real progress since in implementing a similar approach for the recreational sector. None of the recreational policy proposals have produced a result to date. Maori Treaty fishing rights, both commercial and customary, were resolved only through litigation or the threat of litigation as anyone who was part of that process is aware. However, the same incentive to resolve recreational fishing rights issues does not exist. As a consequence of the failure to resolve recreational rights issues, many of the potential benefits that were initially envisaged when a rights-based approach was implemented in the commercial fishery are now not being realised.

Before proceeding to the final section of the report which contains an assessment of the applicability of the New Zealand model in other jurisdictions, some of the strengths and weaknesses of the present New Zealand model are discussed and summarised below.

#### **4.2.2 Strengths of the New Zealand model**

The primary strength of the New Zealand allocation model is the fact that there is an explicit statutory requirement to allocate to the recreational sector and that these explicit decisions are required to be made. The statute also requires that the allowances plus the TACC must remain within the TAC which itself must be sustainable. In setting the TACC the requirements are quite specific. The Minister of Fisheries must:

- allow for recreational (and other) non commercial interests in setting TACCs
- consult with sector groups, and
- provide reasons for his/her decisions in writing.

The end result is that an explicit allowance is made to the recreational sector and all sectors have input to that decision within a statutory framework to ensure sustainability.

These statutory requirements and the annual cycle of stock assessments where information on the harvests of all sectors are clearly identified and quantified (within the limits of the available information), enhance the recognition of recreational fishing interests. The consultative process assists in refining this information and ensures that the necessary information is available for the Ministry and Minister of Fisheries to make decisions.



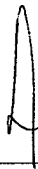
### 4.2.3 Weaknesses of the New Zealand model

Just what are the weaknesses of the New Zealand approach and is the policy ultimately effective?

There are a number of weaknesses evident in the present approach.

1. There is no specific statutory requirement to limit recreational catches to the allowance determined by the Minister of Fisheries. This undermines the underlying principle of the Fisheries Act which is to ensure sustainability of the resource.
2. There is no basis in law and no stated policy for either setting or adjusting sector shares in line with changes in the fishery or changes in the needs of sector groups.
3. The existing allocation model relies too much on Ministerial discretion on a case by case basis. Some might argue that this is an advantage because this approach does not constrain decision making. However, it causes uncertainty for all sectors with associated negative consequences, which include the following:
  - o While it may be proper for the Minister/Government to make what are ultimately political decisions about resource allocation, the present open ended Ministerial discretion and case-by-case approach imposes very high transaction costs on all sectors, including Government.
  - o As there is no statutory guidance and no specific policies have been developed by the Ministry of Fisheries or Government to guide sector groups on allocation policy, the issue is effectively up for grabs each time an allocation decision needs to be made under the QMS. Neither the recreational sector nor the commercial sector can make long term plans on their future.
4. The present policy is inequitable because although the commercial share is strictly controlled the recreational share of the resource is not and the Minister has not always acted to reduce recreational catches in accordance with allocation decisions that he has made.

For example, the 15% reduction in the allocation of kahawai to the recreational sector discussed earlier in the report was not implemented through any specific fisheries management initiatives aimed at limiting the recreational catch to the reduced level. Once the Minister of Fisheries decided to make no change to the daily recreational catch limit for kahawai he effectively signaled to all sectors that he was not prepared to constrain the recreational catch. In contrast, the commercial allocation of





kahawai was set as a TACC with all of the accompanying statutory controls under the QMS to ensure it was not exceeded.

5. The present allocation framework and policy is not durable in the medium term. The commercial right is becoming increasingly uncertain due to 'creep' of recreational catches due to population growth, without any clear policy to either allow or prevent this occurring.

Why are these weaknesses allowed to continue when they are so widely recognised, at least to some degree, by almost all of the sector groups?

When the QMS was first introduced into the New Zealand commercial fishery, there was a crisis in many of the inshore fisheries and decisive action was both needed and taken. At that time, policy makers were prepared to adopt what was considered (at the time) to be a relatively radical approach (the use of ITQs) to manage the commercial fishery. Strong policy was needed and this message was conveyed to Government and the policy was taken up.

It is now almost 19 years since the QMS was introduced and the policy incentive to implement a similar framework for the recreational sector appears to have been lost. Decisiveness has been replaced by inertia and uncertainty. Strong lobbying by certain interests in the recreational sector (especially option4) has been very destructive to reaching consensus amongst the recreational sector. Although the option4 faction represents a minority of recreational views, it presents the most extreme views and is vocal and highly visible.

New Zealand fish stocks are generally healthy (in large measure due to the effectiveness of the QMS) and along with the commercial sector, the recreational sector has benefited from this. Maori (Treaty) fisheries claims have been settled with the QMS first seen as a threat to these rights and then becoming a major part of the solution because it provided a secure form of commercial fishing right.

In 2005, there is no longer a fishery crisis. The present allocation policy deals with the issues on a day to day basis. Although the status quo is not entirely satisfactory, the system still functions adequately in political and practical terms. The recreational sector has more political voice than the commercial sector. Defining the recreational right is perceived by some recreational lobby groups as a threat rather than an opportunity. In this respect, the option4 lobby group has been extremely divisive and counterproductive to attempts to make progress in this policy area. The risk from continuing with the present less than satisfactory approach where recreational rights are left undefined is much greater to the commercial sector, but they have a much weaker voice in political terms so the commercial sector is reluctant to try to force the issue.

It is apparent that the really difficult political decisions associated with developing more explicit allocation policies and better defining recreational fishing rights have been and continue to be avoided by Government. What is unfortunate



about allowing this situation to continue is that it has made the commercial right progressively less certain over time.

The QMS implemented a rights-based management system in the commercial fishery in 1986. As well as creating an environment where competition for the resource was replaced by efficient use of the resource, one of the main benefits of this rights-based system has been the assumption of greater collective responsibility for the resource and its management by the commercial sector. However, the full benefits of the QMS will not be realised until all other sectors have similar incentives for co-management.

Specifying recreational rights has the potential to remove, or at least reduce, competition for the resource between the commercial and recreational sectors. The settlement of Maori Treaty fishing rights means that Maori interests now also have similar incentives to the commercial sector. Well defined recreational rights would create an environment where recreational fishers could begin to take more collective responsibility for the resource. It would also provide an opportunity for co-management.



## 5. Applicability in other Jurisdictions

### 5.1 *Is the New Zealand Model Applicable Elsewhere?*

Would the New Zealand model for allocation to the recreational sector be a suitable approach in other jurisdictions? What does the New Zealand experience tell us about the New Zealand approach?

If there is one message that all stakeholder groups in New Zealand agree on, including Government, it is that the best time, perhaps the only opportunity, to specify recreational rights is when commercial fishing rights are being re-defined, especially if a rights-based approach or individual quotas are being contemplated for the commercial fishery. In fact, the New Zealand experience indicates that if recreational rights are not defined at the same time as commercial rights, it may become too difficult to define them in the future.

The strengths and weaknesses of the New Zealand 'model' have been discussed in the previous section. The main strengths of the New Zealand approach are the conceptual elements and statutory provisions that require recreational (and all other non-commercial) interests to be allowed for in setting TACCs. The New Zealand statutory framework also requires that the total of the TACC and other allocations remain within the TAC which also must be set at a sustainable level. The weaknesses of the New Zealand model arise from a lack of certainty in how allocations are to be determined, so that the process has become costly to service and is highly politicised. This uncertainty is almost entirely a consequence of a reluctance to define recreational rights because they are contentious. It is also symptomatic of a failure to develop public policy documents that deal effectively with the key underlying issues, such as whether any form of priority should or should not apply to one group of stakeholders over another. The fact that these issues are contentious should not be an excuse for inaction.

The New Zealand experience also indicates that piecemeal approaches to policy do not provide durable solutions. The benefits of a strong rights-based management approach in the commercial fishery in New Zealand are clearly at risk because of the lack of well defined rights in the recreational sector.

Overall, the New Zealand model has key weaknesses that indicate it should not be adopted as the model elsewhere unless there is the will to more clearly define recreational fishing rights. There is also a need to develop and resolve key elements of the allocation policy that ensure that there is more certainty for all stakeholders. Well defined rights combined with certainty about allocation means that stakeholders have the confidence to participate in decision making knowing they are all on an equal footing. This creates the incentive for all stakeholders to participate fully and frankly in co-management. Without such an incentive, stakeholders will inevitably look to someone else for the answer.



## 5.2 Conclusions and Recommendations

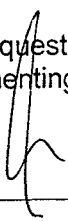
There are a number of allocation issues and questions that need to be resolved to underpin a rights-based approach to fisheries management. A number of these questions are not presently being addressed in TAC/TACC setting in New Zealand.

An effective allocation framework under a rights-based management system requires that key policy areas be fully addressed so that all stakeholders have certainty. This means that there should be answers to the following high level questions:

- Should commercial and recreational fishing rights be defined in equal terms and therefore be subject to the same statutory obligations and controls? In other words, if the commercial catch is to be controlled within a TACC, should the same degree of control be expected over the recreational catch to ensure that not only is the sustainability of the resource assured but also that allocation decisions are indeed fully and effectively implemented?
- Should the recreational allocation be a share of the TAC or a fixed quantity and similarly should the commercial allocation be a share of the TAC or a fixed quantity?
- Should any priority be given to recreational or commercial rights over the other?
- Should allocation decisions use a claims-based approach or a utility-based approach or have some other basis such as a political decision or an agreement between the stakeholders?
- How should future changes in allocation of the resource be determined, and in particular should these be political decisions or decisions reached by agreement between the rights holders?
- Should compensation be provided where allocations are changed and should that compensation be a political decision or a decision of the rights holders?
- Should allocation changes be allowed to occur in both directions, i.e., can rights transfer both from and to commercial and from and to recreational rights holders?
- Who will 'own' or hold the recreational right on behalf of recreational fishers, and to what extent is it a collective right and to what extent an individual right?
- Who has the right to harvest the recreational allocation? For example, should operators in the recreational fishing business (especially recreational charter vessels) be included in the recreational right or the commercial right?


These are not all independent issues, but they all need to be addressed.

In part the answers to these questions will be dictated by just how far policy makers want to go in implementing a rights-based framework. For example, a



rights-based framework may or may not allow full transferability within or between sectors and may or may not allow stakeholders to be responsible (in full or in part) for making allocation decisions between themselves by using the market.

Regardless of the approach that is ultimately adopted, these key questions and the related policy and implementation issues need to be thought through and answered in adopting a rights-based fisheries reform package. It is not only the present that needs to be considered, but also the future. In New Zealand, it appears that not enough consideration was given to the future when the rights-based approach was adopted in the commercial fishery. Other jurisdictions need to ensure that they do address future needs so that allocation does not become an ongoing problem and so that all stakeholders have certainty.

A handwritten signature, possibly the name 'L', is written in black ink. It consists of a vertical line with a small horizontal stroke at the top and a small horizontal stroke at the bottom, with a vertical line extending downwards from the bottom stroke.

## Appendix 1

### Terms of Reference

1. Prepare a report on New Zealand policy and practice for the allocation of Total Allowable Catch (TAC) of marine species to the recreational sector in New Zealand.
2. The report will include:
  - A description of the policy, its development and operational elements that are necessary for implementation,
  - An assessment of the effectiveness of the policy from the government, stakeholders and contractor's point of view,
  - A description and assessment of the issues arising in New Zealand from implementation of the policy,
  - Discussion of the applicability of this policy to marine recreational fisheries in other jurisdictions (e.g. British Columbia).



## Appendix 2

### **Overview of Maori fishing rights and the fisheries settlement**

Maori fishing rights stem from guarantees in the Treaty of Waitangi. The Treaty was signed at Waitangi on 6 February 1840 by a group of Maori chiefs and the British Government. While there has been considerable controversy about the meaning of the Treaty of Waitangi (there is both an English and a Maori text which have slightly different meanings), it is generally considered to be the founding document of modern New Zealand in which sovereignty was ceded to Britain by Maori so that New Zealand became a British colony.

Detailed information on the Treaty of Waitangi, including its full text, is available on the New Zealand government website <http://www.treatyofwaitangi.govt.nz/>. The Waitangi Tribunal hears Treaty Claims and makes recommendations based on its findings to Government. Information on the Waitangi Tribunal can be found on its website <http://www.waitangi-tribunal.govt.nz/>. 'The Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim' which can be found in '.pdf' format on the Waitangi Tribunal's website provided much of the impetus behind the Maori fisheries settlement in New Zealand. Further background on Maori fishing claims and settlements culminating in the Maori Fisheries Act 2004 can be found at <http://teohu.maori.nz/mfa/background.htm>.

Maori commercial fishing rights are now accommodated within the quota management system (in the form of ITQ owned by Maori) and within the QMS Maori commercial fishing is not distinguished from other commercial fishing.

Maori fishing for food (personal use) is governed by the recreational fishing regulations that apply to all recreational fishing in New Zealand and food fishing is not included as part of Maori customary fishing rights.

Maori customary (non-commercial) fishing rights involve the taking of fish for ceremonial or social purposes only. Maori customary rights are subject to controls under the Fisheries Act 1996 and a permit must be obtained on each occasion they are exercised. The Ministry of Fisheries website <http://www.fish.govt.nz/customary/introduction.html> provides a summary of these controls. The 1996 Fisheries Act also makes provision for the establishment of local fisheries (taiapure) with Maori management committees in areas of traditional importance to Maori. It also provides for Maori fishing reserves (mataitai) which can be set aside for Maori customary fishing purposes.



## Appendix 3

### Overview of the New Zealand marine recreational fishery

Since the late 1980s, there have been a number of surveys and studies on recreational fishing in New Zealand. Much of the work has focused on obtaining robust harvest estimates to be used in stock assessments and TAC setting. The surveys indicate that a very high proportion of recreational fishing activity and harvest in New Zealand is undertaken by line fishing from privately owned boats, by line fishing from shore and by hand gathering or diving along the coast. There is an active recreational fishing industry (commercial operators involved in providing services to recreational fishers). Only a small proportion of this industry provides direct fishing services in the form of charter fishing trips and fishing lodges. Most of the marine recreational fishing industry supplies indirect services such as boats, fishing gear and bait.

A 1991 nationwide telephone survey (National Research Bureau 1991) found that 38% of respondents aged 16 years or older claimed to have fished (marine and freshwater) at least once in the previous 12 months. Of these 21% had fished from a boat in saltwater, 21% had fished in saltwater from land and 6% had undertaken underwater fishing. The same survey estimated that \$745 million was spent annually on recreational fishing. A 1999 nationwide telephone survey (Akroyd Walshe 1999) found that 78% of respondents aged 16 years or older claimed to have fished in the sea at least once at some time in the past, with 45% claiming to have fished at least once within the past 12 months. The definition of fishing in this survey included fishing in the sea from a boat, fishing in the sea from land, fishing for sea-going species at a river mouth, underwater fishing and fishing by hand gathering or trapping (e.g. shellfish gathering). When expanded to the New Zealand population (both the 1991 and 1999 telephone surveys were fully national using random samples), these surveys indicate that up to 2 million adults say they have fished in the sea at some time in the past, and nearly 1 million say they fished in the previous 12 months. New Zealand's adult population (age 16 years or older) is about 3 million out of a current total population of about 4 million people.

Commencing in 1991, the Ministry of Fisheries conducted regional surveys and then subsequently undertook national surveys to estimate marine recreational harvests throughout New Zealand. In 1996 the first national marine recreational fishing survey (NMRFS) estimated harvests using a combined telephone, diary and boat ramp survey (Bradford 1998). A second national survey was undertaken in 2000 (Boyd & Reilly, in press) using nearly the same methodology, followed by a repeat survey in 2001. A technical review of the survey methodology following the 2000 NMRFS indicated that the harvest estimates using the combined telephone survey diary method may not be as accurate as earlier believed. A new methodology using a combined aerial and boat ramp



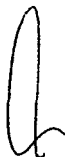
survey is currently being tested to replace the telephone and diary survey method.

Harvest estimates in the 1996 and 2000 NMRFS cited above indicate that recreational harvests for some species are very significant and may exceed commercial harvests. For example recreational harvests in the popular snapper (*Pagrus auratus*) fishery in northern New Zealand were estimated at 2.4 million fish (2,300 metric tonnes) in the 1996 survey and 6.9 million fish (6,200 tonnes) in the 2000 survey. This is believed to be the largest recreational fishery in the country. The commercial TACC in this snapper fishery is 4,500 tonnes. With the majority of New Zealand's population living in northern New Zealand, it is not surprising that the allocation of the snapper resource between recreational and commercial users is very high on the public agenda. The commercial snapper fishery is also one of the most valuable inshore fisheries in northern New Zealand and is a key species to the economic viability of many commercial fishers and local fishing companies.

There is no requirement for a marine recreational fishing license in New Zealand. Public opinion is strongly opposed to any marine recreational fishing license requirement and it appears highly unlikely that Government will consider introducing a license in the foreseeable future.

## References

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- Boyd, R.O.; Reilly, J.L. (in press). 1999/2000 national marine recreational fishing survey: harvest estimates. *New Zealand Fisheries Assessment Report 2005/XX* 28 p.
- Bradford, E. (1998). Harvest estimates from the 1996 national marine recreational fishing survey. *New Zealand Fisheries Assessment Research Document 98/16*. 27 p. (Unpublished report held in NIWA library, Wellington, New Zealand)
- National Research Bureau (1991). *The economic worth of recreational fishing in New Zealand*. Recreational Research Report. (Unpublished report held by National Research Bureau, Auckland, New Zealand.)



## Organisations Consulted

The Consultant had informal discussions with a range of persons in all sectors in the course of preparing this report in order to gain a better understanding of current policies and how they operate, and greatly benefited from these discussions.

In addition, the following organisations and persons were consulted to obtain the stakeholder views on allocation presented in section 4.1 of the report. While every attempt has been made to properly represent the views of stakeholders, the author takes full responsibility for the summaries of those views and any conclusions drawn from them in this report.

Ministry of Fisheries, Wellington. S. Crothers, M. Edwards

New Zealand Seafood Industry Council, Wellington. N. Gibbs

Sanford Ltd, Auckland. V. Wilkinson.

Te Ohu Kai Moana, Wellington. T. Norris.

New Zealand Recreational Fishing Council, Wellington. M. Heatherington.

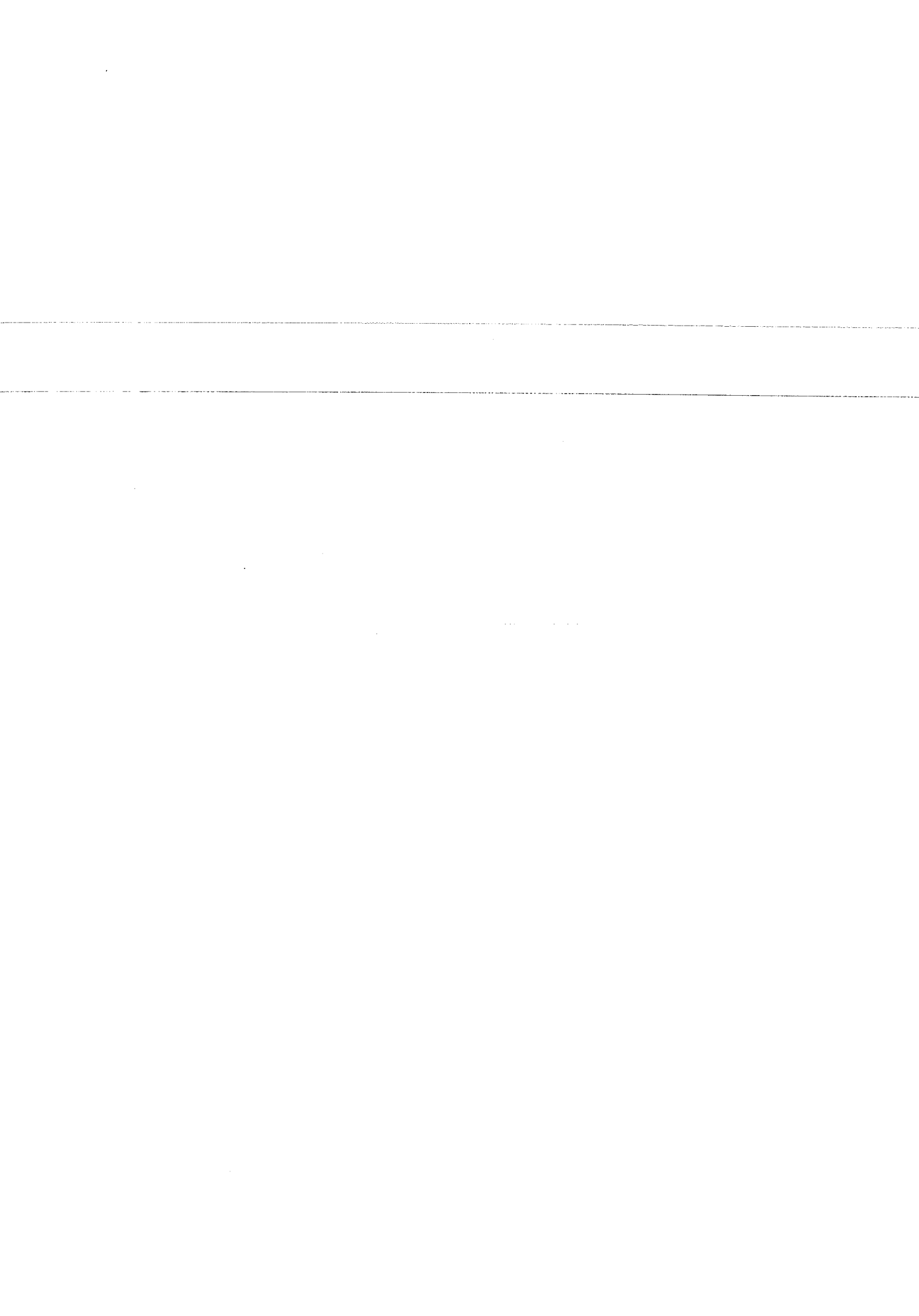
New Zealand Big Game Fishing Council, Whangarei. J. Romeril.



## About the Contractor

Rick Boyd was born and raised in BC and has been involved in fisheries biology and management in Canada and in New Zealand for over 35 years. He worked as a Fisheries Biologist for Environment Canada, Fisheries Service, in Vancouver for seven years in the 1970s after completing his Master of Science degree in zoology. With the Fisheries Service in Vancouver he worked on the roe herring and other fisheries on the Central Coast and in Georgia Strait. He moved to New Zealand in 1978, continuing his career in fisheries management and research. His New Zealand experience includes 11 years with the Ministry of Fisheries from 1978 to 1989 where he was deeply involved in fisheries management in the frenetic period leading up to the introduction of the QMS in 1986 and the first few years after its implementation. In 1980 he chaired a Ministry of Fisheries working group that developed the conceptual framework for the 1983 Fisheries Act which replaced the outdated 1908 Fisheries Act. In 1986 and 1987 he was a member of the Crown's team that provided evidence to the Waitangi Tribunal in response to the Muriwhenua Fisheries Claim, the first major Treaty claim on fisheries. Since 1989 he has worked as an independent fisheries consultant. In 1990 he assisted Maori on the Ngai Tahu fisheries claim before the Waitangi Tribunal. In 1992 he was appointed to a Government review team to review the quality and relevance of fisheries research in New Zealand. As a research provider to the Ministry of Fisheries, he led the project team responsible for the 1999-2000 and 2000-2001 national marine recreational fishing surveys to estimate marine recreational catches in New Zealand. As a fisheries consultant he has worked on a wide range of projects for Government, industry, the recreational sector and Maori.





In the High Court of New Zealand  
Auckland Registry

CIV2005-404-4495

Under Part I of the Judicature Amendment Act 1972

In the matter of an application for review

between

**The New Zealand Recreational Fishing Council Inc, and  
New Zealand Big Game Fishing Council Inc**

Plaintiffs

and

**Minister of Fisheries**

First Defendant

and

**The Chief Executive of the Ministry of Fisheries**

Second Defendant

and

**Sanford Limited, Sealord Group Limited and Pelagic  
& Tuna New Zealand Limited**

Third Defendant

**Affidavit of Richard Owen Boyd in support of application for review**

**Affirmed this 31<sup>st</sup> day of August 2005**

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**H** HESKETH HENRY  
Lawyers

Plaintiffs Solicitors  
11<sup>th</sup> Floor  
41 Shortland Street  
Private Bag 92093  
DX CP 24017  
AUCKLAND  
Tel +64 9 375 8700  
Fax +64 9 375 8771

Solicitor  
Senior Counsel

Stuart Ryan  
Lyn Stevens

09 375 8778  
09 366 0777


stuart.ryan@heskethhenry.co.nz  
lynstevens@llschambers.co.nz



I **Richard Owen Boyd** of Wanaka, a fisheries scientist and consultant, solemnly and sincerely affirm that:

### **Qualifications and Experience**

1. I am a fisheries scientist by profession with over 35 years experience in fisheries management and research in Canada and New Zealand. I have been involved in marine fisheries resource assessment, management and research since 1967.
2. I am presently self-employed as a consultant in marine and fisheries science and fisheries management and I am a Director and Principal Consultant of Boyd Fisheries Consultants Limited. The company is based in Wanaka where I have worked since 1999.
3. I hold the degrees of Bachelor of Science (Honours) in Zoology from the University of British Columbia, Canada, and Master of Science (1<sup>st</sup> Class Honours) in Zoology from the University of Auckland.
4. From 1967 until 1978 I was employed by the Canadian Department of Fisheries and Oceans ("DFO"), Pacific Region, in Vancouver in a number of positions, starting as a student assistant (1967 and 1968), then following the completion of my BSc as a biological field assistant (1969-1970) and after the completion of my MSc I was employed as a fisheries biologist (1972 - 1978).
5. While with DFO I became familiar with a broad range of fisheries, including research and management approaches. My work included both commercial and recreational fisheries and the use of fisheries catch and effort statistical data.
6. I came to New Zealand to join the Fisheries Management Division of the Ministry of Agriculture and Fisheries ("MAF"), now the Ministry of Fisheries (the "Ministry") in Auckland as a fisheries scientist in 1978. I was appointed to develop an improved management regime for the Hauraki Gulf snapper fishery, one of the most important and valuable inshore fisheries in New Zealand.



7. In 1980 I was seconded to Head Office in Wellington for two months to chair a MAF working party responsible for the lay drafts which later became the Fisheries Bill introduced into Parliament in 1981 or 1982. This in due course became the Fisheries Act 1983.
8. From about 1981 on when some of my initial work on the Hauraki Gulf snapper fishery was completed, I became increasingly involved in the wider fisheries throughout the Auckland region. From 1982 until late in 1986 I held the position of Regional Fishery Management Officer (Scientist in Charge) for the Auckland Region of Fisheries Management Division, MAF. The Auckland Region incorporated New Zealand's fisheries waters in the northern half of the North Island.
9. As the Regional Fisheries Management Officer for MAF in Auckland, I was responsible for the region's then 21 scientific and technical staff undertaking research and management of fish, shellfish and seaweed resources in the region. My responsibilities included the management of the region's scientific and technical staff, development of regional fisheries management policies for commercial and recreational fisheries, fisheries research programmes, development of fishery management plans and consultation on fishery matters with stakeholder groups.
10. At about the time the Quota Management System was introduced on 1 October 1986 I became attached to the operations group of the Ministry's Head Office in Wellington. In this position I had responsibility for advising the Operations Director on technical matters related to the QMS, including the analysis and audit of data provided on various returns provided by quota holders and licensed fish receivers.
11. In the latter part of 1986 I was seconded to the MAF team involved in the Muriwhenua Fisheries Claim before the Waitangi Tribunal and was involved in the preparation of the Crown's evidence to the Waitangi Tribunal hearings. My particular responsibility was to provide evidence to the Waitangi Tribunal on the post-Treaty of Waitangi history of New Zealand fisheries and the development of fisheries management policies in New Zealand from 1840 up to 1986.

12. In 1988 I was asked to develop a new national policy on aquaculture and I developed a policy framework for aquaculture as a precursor to planned new aquaculture legislation dealing with allocation of space and sustainability issues. This process was subsequently overtaken by resource management law reform.
13. I resigned from MAF in 1989 to become a fisheries consultant. As a fishery consultant I have worked on contract for a variety of organisations, including the Ministry of Fisheries, Department of Conservation, New Zealand Fishing Industry Board, New Zealand Federation of Commercial Fishermen Inc, Ministry of Foreign Affairs and Trade, Seafood Industry Council and the Treaty of Waitangi Fisheries Commission. I also work for a range of private businesses and clients.
14. As a result of my experience, I am familiar with the history of fisheries management in New Zealand as with most developments in the management of New Zealand fisheries from 1978 onward, including legislation, policy and research.
15. **Attached** as exhibit "A" is my full CV.
16. As a fishery consultant and scientist I have appeared on a number of occasions as an expert witness on fisheries related matters before the Environment Court, the Waitangi Tribunal and the High Court.
17. I have read the Code of Conduct for expert witnesses and agree to comply with it.

### **Purpose**

18. I have read the following affidavits filed on behalf of the Plaintiff in these proceedings:
- a. Affidavit of John Clive Holdsworth (JH) dated 26 August 2005.
  - b. Affidavit of Kim Walshe (KW) dated 26 August 2005.





19. I have been retained by the Plaintiff to act as an independent person to review and comment on the evidence of JH and KW and to identify any other matters that I believe are relevant to these proceedings.
20. I deal with each in turn.

### **Evidence of JH**

21. I agree with the observations and conclusions of JH in relation to the failure of the Ministry to use the best available information in assessing the sustainability of the kahawai fishery and the failure to recognise that the quality of the recreational kahawai fishery has declined.
22. It is my opinion that JH correctly identifies key weaknesses and errors in the approach adopted by the Ministry and the Minister of Fisheries (the "Minister") in 2004 when setting total allowable catches ("TACs") and making an allowance for recreational interests in the kahawai fishery.
23. In his evidence JH notes that the Ministry in the IPP and the FAP, and the Minister in making his decisions, assumed a single national kahawai stock and failed to take into account the different history of fishing and status of each individual stock in each kahawai quota management area ("QMA"). In my opinion and based on kahawai research and published reports which are known to the Ministry, it is far from certain whether kahawai in New Zealand form one national stock or comprise more than one separate self-sustaining populations or stocks. The adoption of a number of separate kahawai QMAs under the quota management system (the "QMS") was a therefore a prudent management decision by the Minister. However, what the Ministry and Minister then failed to consider was whether the simulation model used as a benchmark for setting all of the kahawai TACs - which was based on an assumed single national stock - was a reliable guide to the sustainability of the kahawai stock in each individual QMA. This is a fundamental matter of relevance to sustainability. If kahawai in New Zealand comprise a number of separate populations, then the application of the results of the simulation model could potentially be very misleading when applied to individual stocks. Given the lack of certainty that there is only one



national kahawai stock, I am surprised that the Ministry and the Minister failed to consider options for TACs in each individual QMA that took this specific risk into account.

24. JH expresses the view that the Minister was required to carry out an evaluation of the sustainability of the kahawai catch in each QMA. I agree. I am not convinced that the decision by the Minister that the national simulation model provides a reference point for all kahawai stocks is an adequate or appropriate substitute for such an assessment. JH notes the different distribution of commercial and recreational catches in the different QMAs and the particular concerns of the recreational sector about catch rates and the status of the kahawai stock in KAH1 in submissions to the Ministry. Given the need to assess the sustainability of individual kahawai stocks in each QMA and the availability of this information, I believe there was sufficient data available to the Ministry and the Minister to suggest that the biological status of the kahawai stocks in each QMA might be different. Accordingly, it seems an unusual oversight that such a possibility does not seem to have been given any detailed consideration by the Ministry or the Minister.
25. I agree with JH that recreational fishing interests are much more complex than the simple volume of catch. Anyone who has familiarity with recreational fishing will be aware of the wide range of values associated with this activity. The Ministry's policy preference for using current use (i.e., catch) as a basis for allocation does not recognise that catch on its own may not be a meaningful measure of the recreational interest in a fishery. In my opinion, the 2004 kahawai initial position paper ("IPP") and final advice paper ("FAP") should have contained a detailed and objective evaluation of the adequacy of using current catch as a proxy for the recreational interest in the fishery. If such an evaluation had been provided, I believe that it is very probable that it would have shown that current catch may not be an adequate measure of the full recreational interest in the kahawai fishery. Similar evaluations should have also been undertaken in respect of the interests of other sectors in the kahawai fishery. In my opinion, the fact that such



evaluations were not provided indicates an extremely constricted and narrow policy approach to allocation by the Ministry.

### Evidence of KW

26. I agree with KW that the Ministry had insufficient information available to conclude in its annual Plenary reports that kahawai catch levels in the 1990s were sustainable. Once commercial catch limits ("CCLs") were introduced in the early 1990s, the Ministry seems to have been somewhat single-minded in its view that there was little information to suggest concern over the status of kahawai stocks. This was in spite of the ongoing submissions of the recreational sector about the state of the kahawai fishery and the lack of robust stock assessment information. For the same reasons as KW, I believe that insufficient information was also available to support the key assumption of the Ministry in paragraph 20 of the 2004 kahawai IPP that setting TACs at the level of current utilisation was sustainable. Paragraph 20 said:

*Current recreational perceptions are of a decline in the availability of kahawai. The current proposal to set TACs at the level of current utilisation assumes that these perceptions are associated with a reduction in the kahawai stock to a level at or above  $B_{MSY}$  and not below that level.*

27. In my opinion the Ministry provides insufficient information to support this assumption in preference to the assumption that recreational perceptions may indicate that the stock has been reduced to a level below  $B_{MSY}$ .
28. I agree with the conclusions of KW in paragraphs 14.1 and 14.2 that the lack of definition of recreational fishing rights is a significant issue that places the recreational sector at risk, especially in the light of the much clearer definition of commercial fishing rights under the Fisheries Act 1996. I reached similar conclusions in a recent report that I prepared for a public agency in Canada which I refer to later in my evidence. In my opinion, not only does the lack of definition of these rights risk leaving the recreational sector behind, but it also presents similar risks to other

non-commercial interests and poses quite different but equally important risks to the commercial sector. In addition, the unsatisfactory nature of the present rights framework creates very real threats to the sustainability of the resource due to the fact that there is no clear direction in the Fisheries Act 1996 that requires non-commercial catches to be monitored or for them to be constrained to the allocation allowance determined by the Minister.

29. In my opinion, KW is correct in his conclusion that the proportional allocation approach that has been preferred by the Ministry leaves non-commercial fishing interests vulnerable to being subordinated, especially when combined with a catch history that will have been affected by elevated commercial catch levels that have fished down stocks. Similarly, it is also possible that under the proportional allocation approach, the commercial sector's interests may be at risk from the influence of CCLs, other management controls or even their voluntary purse-seine restrictions which may have reduced their kahawai catches in recent years. In preferring a proportional allocation approach based on recent catches, the Ministry does not recognise the impact of any of the key developments in the history of the kahawai fishery and its management that may have distorted catches of any of the sector groups.

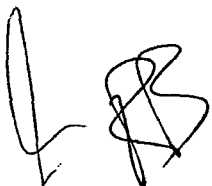
#### **Other Matters**

30. In my opinion, kahawai exemplifies the need to take into account the value of a species to particular sector groups when considering allocation. Two examples illustrate this point which I set out below.
31. The majority of recreational fishers rely on near-shore resources because of their accessibility. It is because kahawai is a near shore species that it features so prominently as a recreational species whereas orange roughy does not. Although it is a mobile pelagic schooling species, kahawai frequently schools near the shore where it can be caught by trolling from small boats used by recreational fishers. Kahawai also congregate seasonally at river mouths, where they can be caught from the shore. It is the accessibility of kahawai combined with



its attributes as a sport fish on light tackle that makes it so important to the recreational sector. In my opinion, these values are not adequately captured or protected when allocation is based solely on current use.

32. It is well known that kahawai are a fish of special significance to Maori for personal use, especially in the eastern Bay of Plenty. Although the 2004 kahawai FAP acknowledges the importance of the Maori subsistence and recreational kahawai fishery, in my opinion there is insufficient recognition of the potential effect that the Minister's decisions might have on the Maori component of the recreational interest. This stems from the fact that in New Zealand law, Maori customary fishing rights are relatively narrowly defined, being constrained by the requirement to have a specific authorisation for each occasion on which harvesting takes place and being limited to what might be considered 'ceremonial' purposes only. The result is that Maori must take kahawai for their own personal subsistence use within the daily recreational bag limit (and within the overall recreational fisheries allowance). Therefore, most kahawai fishing by Maori for personal use or subsistence has largely been subsumed into the recreational right, even though it is a customary or traditional subsistence activity. This is in direct contrast to North America, for example, where customary 'food fishing' by indigenous peoples is generally separate from the recreational right.
33. The evidence of JH provides an estimate of the likely reduction in the daily recreational bag required to give effect to a 15% reduction in recreational catch, indicating that the daily bag limit might need to be reduced to 3 or 4 kahawai a day. JH also notes that such a bag limit reduction would be one of the few practical ways to give effect to a reduction in the recreational allowance. The effect on Maori of such a reduction would be highly significant if such a bag limit was imposed, especially at the Motu River mouth which is a traditional Maori fishery for personal use. In my opinion, the traditional and continuing subsistence value of kahawai to Maori illustrates the need to incorporate the utility value of the resource into the mix of factors used to determine the recreational interest.

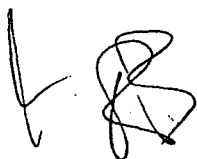


34. Other jurisdictions worldwide are faced with almost identical allocation issues as New Zealand. Fisheries resources are finite and where there are competing demands for a limited resource there is a need to make allocation decisions. Recently, I was asked by the Ministry of Agriculture, Food and Fisheries, in Victoria, Canada ("MAFF") to provide a report describing "the New Zealand model" for allocation of the TAC to the recreational sector. In the report, I provided a summary of the current policy and practice for recreational allocations as well as some of the history of the development of the present legislation and approach. Although my report for MAFF was aimed at a different audience, it discusses a number of issues that may be of some relevance to the current proceedings. MAFF has agreed that I can attach a copy of my report to my evidence as the report has entered the public domain in Canada. This report is annexed as exhibit "B".
35. In my opinion, the present approach by the Ministry and Minister in relying on solely on the current utilisation of the resource rather than the value of the kahawai resource to each sector (termed the utility value by the Ministry) is overly narrow as it fails to take account of the value of the resource to each sector. I do not agree that uncertainty about the utility value to each sector is a valid reason for rejecting this approach. I am not aware of any systematic efforts by the Ministry to see if it could determine (or not) the utility value of the kahawai resource to each sector group apart from a 1998 contingent valuation study on a number of recreational species (including kahawai) undertaken for the Ministry by the South Australian Centre for Economic Studies. In my opinion, successful allocation policies do need to take into account the very different values of each sector group as well as the needs and current utilisation of each group. In the case of kahawai, the recreational sector has made consistent submissions over a very long period about the value of this species as a recreational resource. It is not unreasonable to expect that concerted efforts would be made by the Ministry to determine these values as well as the values of the resource to other sectors.
36. In discussion with MAFF in Victoria as I completed my report for them, I learned that explicit allocation decisions had already been made for



some fisheries on the West Coast of Canada based on the relative value of the resource to sector groups. For example, there is a policy that the recreational sector had priority allocation for chinook salmon (*Oncorhynchus tshawytscha*) and coho salmon (*Oncorhynchus kisutch*) as these two species had been assessed as having a higher recreational value than a commercial value. However, for the Pacific halibut (*Hippoglossus stenolepis*) which is a valuable commercial resource, the recreational allocation has been initially capped at 12% of the TAC until such time as the recreational and commercial sectors agree on an acceptable mechanism to allow for adjustment of the recreational share through acquisition of additional quota from the commercial sector. Irrespective of the reasons for these particular decisions, they illustrate that the value of the resource to different sectors can be used as a logical basis for making allocation decisions.

37. Although affording one sector group a priority allocation over other sector groups based on the utility value can be highly controversial, it is a potential policy option and in my opinion deserves consideration as do other policy options for allocation. To my knowledge, the Ministry of Fisheries has never promoted detailed discussion on the possible array of policy options that could be adopted to guide the allocation of fisheries resources to commercial and non-commercial interests or for transferring allocations between sector groups to meet changing needs.
38. In my opinion, it would be very helpful to have such policy discussions in order to develop more explicit policies on the allocation of fisheries resources in New Zealand with the objective of providing greater certainty to sector groups.
39. The values that each sector group place on the fisheries resource are frequently very different and may not be directly comparable, which means reaching consensus on how allocation decisions might be made will never be an easy task. However, until policies are developed that take into account the different values of the resource, sector groups will continue to feel threatened that their interests may not be adequately recognised each time an allocation decision is made. In my opinion, the Ministry and the Minister are in a position to develop such policies.



**AFFIRMED** by **RICHARD OWEN** )

**BOYD** at Wanaka this 31<sup>st</sup> day of )

August 2005

before me: )



CK STEVEN.

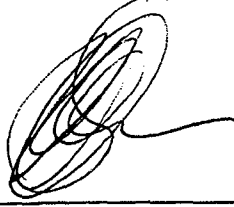
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**A Solicitor of the High Court of New Zealand**



**A**

This is the document marked **A** mentioned and referred to in the affidavit of **Richard Owen Boyd** affirmed at Wanaka this 31<sup>st</sup> day of August 2005 before me:

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Solicitor of the High Court of New Zealand

**A**

**Richard Owen Boyd**

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***Curriculum Vitae***

*Boyd Fisheries Consultants Ltd  
1 Baker Grove  
Wanaka 9192  
New Zealand  
Tel [+64] 3 443 6389  
Fax [+64] 3 443 6381  
e-mail [rboyd@ihug.co.nz](mailto:rboyd@ihug.co.nz)*

L

## **Richard Owen BOYD**

**Date of Birth:** 12 May 1947

**Citizenship:** New Zealand, Canada

**Place of Birth:** Canada

**Position:** Senior Consultant

**Qualifications:** Bachelor of Science (Hons) in Zoology  
University of British Columbia, Canada, 1969.  
Master of Science (First Class Honours)  
in Zoology  
University of Auckland, 1972.

**Expertise** Marine Fisheries Assessments  
Fisheries Research and Management  
Environmental and Coastal Management  
Fisheries and Aquaculture Policy  
Fisheries and Aquaculture Development

**Language and degree of proficiency:** English  
French (Read Only)

**Countries of Work Experience:** Canada, New Zealand, Tonga,  
Singapore, U.S.A.

### **Overview and Career Synopsis**

Rick Boyd was born and raised in Canada and has been involved in fisheries biology and management in Canada and in New Zealand for over 40 years. He worked as a Fisheries Biologist for Environment Canada, Fisheries Service, in Vancouver for seven years in the 1970s after completing his Master of Science degree in zoology. With the Fisheries Service in Vancouver he worked in the salmon fishery and the roe herring and other fisheries on the Central Coast and in Georgia Strait. These intensively managed fisheries provided a solid background in the problems and needs of intensive fisheries management. He moved to New Zealand in 1978, continuing his career in fisheries management and research. His initial responsibility was to develop an improved management regime for the problematic Hauraki Gulf snapper fishery – New Zealand's most valuable inshore finfish fishery. His New Zealand experience includes 11 years with the Ministry of Fisheries from 1978 to 1989 where he was deeply involved in fisheries management in the very challenging period leading up to the introduction of the Quota Management System and individual transferable quotas in 1986 and the first few years after the QMS implementation. In 1980 he chaired a

Ministry of Fisheries working group that developed the conceptual framework for the 1983 Fisheries Act which replaced the outdated 1908 Fisheries Act. Over the period 1983 to 1986 he and his staff were responsible for developing fishery management plans under the 1983 Fisheries Act and then in the formation of policies leading up to the QMS in 1986. In 1986 and 1987 he was a member of the Crown's team that provided evidence to the Waitangi Tribunal in response to the Muriwhenua Fisheries Claim, the first major Treaty claim on fisheries. Since 1989 he has worked as an independent fisheries consultant. In 1990 he assisted Maori on the Ngai Tahu fisheries claim before the Waitangi Tribunal. In 1992 he was appointed to a Government review team to review the quality and relevance of fisheries research in New Zealand. In 1994 he was asked by the New Zealand Ministry of Foreign Affairs to arrange and manage the ASEAN fisheries trade mission to New Zealand. As a research provider to the Ministry of Fisheries, he led the project team responsible for the 1999-2000 and 2000-2001 national marine recreational fishing surveys to estimate marine recreational catches in New Zealand. As a fisheries consultant he has worked on a wide range of projects for Government, industry, the recreational sector and Maori.

---

### ***Employment History:***

**From:** June 2004 **to:** present  
**Employer:** Boyd Fisheries Consultants Ltd  
**Position Held:** Director and Principal Consultant  
**Description of Duties:**

Principal consultant for the company. Responsible for provision of the company's expertise in fisheries management and research. Provision of expertise in fisheries resource assessments, aquaculture and fisheries-related environmental assessments. Provision of expert evidence on fisheries matters.

**From:** February 1997 **to:** June 2004  
**Employer:** Kingett Mitchell Ltd.  
**Position Held:** Senior Consultant  
**Description of Duties:**

Senior consultant responsible for managing fisheries research contracts, fisheries assessments and fisheries management expertise. Responsible for provision of the company's expertise in fisheries, including research, management, policy and legislation. Provision of expertise in aquaculture and related environmental assessments.

**From:** 1989 **to:** 1997  
**Employer:** Boyd Fisheries Consultants Ltd  
**Position Held:** Director and Principal Consultant  
**Description of Duties:**

Senior fisheries consultant working in the area of fisheries and aquaculture, specialising in fisheries assessments, fisheries research and management, fisheries policy and legislation, fisheries and aquaculture development, Maori fisheries, and coastal resource management.



**From:** 1978 to: 1989  
**Employer:** New Zealand Ministry of Agriculture and Fisheries Auckland  
**Position Held:** Fisheries Management Scientist  
**Description of Duties:**

◆ **1988 to 1989: Senior Fisheries Scientist -Strategic Planner for Aquaculture.**

This special position, attached to the Ministry's Policy Group in Wellington, was established to overcome long-standing problems with the management of aquaculture. Responsibility for development of national policy on aquaculture. Preparation of proposed strategic plan for aquaculture and proposals for new aquaculture legislation

◆ **1987-1988: Senior Fishery Scientist (Quota Management System).**

Responsible for development of fisheries analytical approaches and research to meet the technical and operational needs of New Zealand's quota management system.. Responsible for liaison between scientific, administrative and enforcement branches.

◆ **1982 to 1986: Regional Fishery Scientist, Auckland Region.**

Regional Science Manager of the Auckland Fisheries Region. Responsibility for the region's fisheries and aquaculture research and commercial and recreational fisheries management programmes. Development of Fishery Management Plan for the Auckland Region. Assistance in development and implementation of policies leading to the New Zealand Quota Management System. Responsible for regional environmental protection of fisheries resources including marine reserves development. Responsible for developing and maintaining relationships with other coastal agencies, and regional government. Manager of 28 fisheries staff.

◆ **1978 to 1982: Fisheries Scientist, Auckland.**

Fisheries Scientist responsible for fisheries research and fisheries management programmes for the Hauraki Gulf snapper fishery, the largest and most valuable of New Zealand's inshore finfish fisheries. Responsible for providing fisheries assessments and input into environmental issues affecting the Ministry of Agriculture and Fisheries' statutory responsibilities for conservation of fisheries and fishery resources. Development of fisheries management plans for the snapper fishery.

**From:** 1975 to: 1978  
**Employer:** Department of Fisheries and Oceans Vancouver, Canada  
**Position Held:** Fisheries Management Biologist, Georgia Strait Division  
**Description of Duties:**

Fisheries management biologist with the Canadian Government's Department of Fisheries and Oceans, Fisheries Service, Vancouver. Supervision of coast-wide commercial catch sampling programme for the Pacific herring fishery. Provide annual stock assessment and biomass estimates of Pacific herring fishery in Georgia Strait. Appointed member of Pacific Herring Committee to develop annual coast-wide fisheries plans for the roe-herring and food herring fisheries.



**From:** 1972 **to:** 1975

**Employer:** Department of Fisheries and Oceans Vancouver, Canada

**Position Held:** Fisheries Management Biologist, Central Coast Division

**Description of Duties:**

Fisheries management biologist with the Canadian Government's Department of Fisheries and Oceans, Fisheries Service, Vancouver. Assist in management programmes for the Central Coast's salmon fisheries, including Rivers Inlet and Smiths Inlet sockeye salmon fisheries. Undertake salmon tagging studies, conduct salmon fishery escapement surveys and salmon spawning surveys. Develop fishery management programmes and provide in-season fishery management advice. Assist in management of the roe-herring fishery.

**From:** 1967 **to:** 1970

**Employer:** Department of Fisheries and Oceans Vancouver, Canada

**Position Held:** Biological Assistant

**Description of Duties:**

Research assistant and associated field work in monitoring salmon and herring fisheries. Assist in salmon tagging programmes. Hatchery assistant at Big Qualicum River salmon hatchery including juvenile salmon enumeration, operate salmon counting fence facilities, fish husbandry. Commercial and recreational salmon fishery catch sampling. Undertake research project on the morphometrics of juvenile herring populations (undertaken for the Department as part of studies towards BSc Hons).

### **Examples of Consulting Projects and Assignments**

- Project for Ministry of Agriculture, Fisheries and Food, Victoria, Canada. Provide a report on New Zealand's policy and practice in allocation of the TAC to the recreational sector. 2005
- Project for Ministry of Fisheries, Wellington. Selectivity of the recreational snapper fishery in quota management area 1 (SNA1). 2004-05
- Project for Blue Water Marine Research Ltd, Whangarei. Assessment of catch and effort information in the recreational fishery. 2004
- Project for Gary Bevin, Consulting Economic Analyst and New Zealand Federation of Commercial Fishermen Inc. Assistance in preparation of a report on the comparative operating costs of domestic and charter vessels in New Zealand's deepwater fishery. 2004
- Project for Mitchell Partnerships and Pegasus Bay Aquaculture. Evaluation of commercial fishing issues in Pegasus Bay in relation to aquaculture development. 2004-2005
- Project for New Zealand Mussel Industry Council. Assessment of policy issues in relation to the introduction of green lipped mussels into the Quota Management System. 2003-04.



- Project for Ministry of Fisheries, Wellington. Develop and provide an audit of the tag recovery phase of the snapper tagging programme conducted on the west coast of the North Island (SNA8). 2003-2004.
- Project for Southern Clams Ltd, Dunedin. Review of stock assessments and the management of the cockle fisheries of Otago Peninsula. 2003
- Project for New Zealand Seafood Industry Council, Wellington. Review and report on the management of bycatch species under the Quota Management System including and assessment of issues and options for bycatch management. 2003
- Project for Hauraki Maori Trust Board, Paeroa. Identification and assessment of mussel farming opportunities in the Firth of Thames, including review of regulatory and legislative environment and environmental assessment requirements, 2002.
- Project for New Zealand Marine Research Foundation, Whangarei. Survey on the economic contribution of the New Zealand big-game fishery. 2000-2001
- Project for Ministry for the Environment, Wellington. Scoping of the perceptions of organisations to environmental issues. 2000.
- Project for Clement & Associates Ltd, Nelson. Review of the pilchard fishery. 2000
- Project for South Australian Centre for Economic Studies, Adelaide, Australia. Arrange field interviews of New Zealand recreational fishers. 1999
- Project for Ministry of Fisheries, Wellington. Undertake the National Marine Recreational Fisheries Survey in 2000 and 2001. This project involved three sub-projects, including national telephone survey, national diary survey and national boatramp survey. 1998 to 2004.
- Project for Contact Energy Limited, Wellington. Project manager for fisheries assessment and baseline fisheries monitoring for the Otahuhu Combined Cycle Power Station. 1998.
- Project for Treaty of Waitangi Fisheries Commission, Wellington. Review of the annual wetfish, paua and rock lobster fisheries quota leases to Iwi, 1996, 1997, 1998, 1999, 2000.
- Project for Contact Energy Limited, Wellington. Project manager for development of coastal environmental monitoring and management plans for Otahuhu Combined Cycle Power Station. 1997-1998.
- Project manager for Solid Energy New Zealand Limited resource consent applications for offshore coal terminal. Management of preparation of technical evidence for consent hearings. 1997.

- Project for New Zealand Fishing Industry Association Inc. Preparation of expert evidence in relation to Judicial Review of snapper fishery TAC decision. 1996.
- Project for Te Iwi Morori Trust Board, Chatham Islands. Assessment of fisheries resources in the vicinity of the Chatham Islands in relation to quota allocation and future business development opportunities. 1996.
- Project for Solid Energy New Zealand Ltd. Fisheries assessment the Karamea Bight in relation to proposed offshore coal export jetty near Westport. 1996.
- Project for Raukura Moana Fisheries Ltd, Te Rapa. Review of aquaculture and preparation of a database on the aquaculture industry in New Zealand. March-May 1996.
- Project for Tranz Rail Ltd. Fisheries assessment of Clifford Bay, Marlborough in relation to proposed new offshore ferry terminal at Clifford Bay. 1995.
- Project for Environment BOP. Assessment of tradeable water permits for the Rotorua Geothermal Field. (Joint consultancy with G. Bevin, Consulting Economic Analyst and D. H. Smith, Civil and Environmental Engineer). 1995.
- Project for MAF Policy (Fisheries), Ministry of Agriculture and Fisheries, Wellington. Assistance with policy and implementation of new aquaculture legislation to be incorporated in the new Fisheries Act. 1994 - 1995.
- Project for ASEAN/New Zealand Business Council and Ministry of Foreign Affairs and Trade. Arrange and manage the ASEAN Fisheries Management and Technology Mission to New Zealand, 1994.
- Project for Metocean PLC, Aberdeenshire, United Kingdom. Fishery resource assessment for the west coast of the North Island from Manukau Harbour to Cook Strait in relation to oil extraction from Maui B. 1994.
- Project for Kingett Mitchell and Associates, Auckland. Fishery assessment of the outer Hauraki Gulf in relation to selection of a site for disposal of dredgings, including consultation with the fishing industry. 1994.
- Project for New Zealand Fishing Industry Board, Wellington. Advice and assistance in the development of a research strategy for the New Zealand fishing industry. 1994.
- Project for National Institute of Water and Atmospheric Research Ltd (NIWA), Wellington. Advice on the aquaculture sector in New Zealand and assessment of NIWA's future role in aquaculture research. 1993.
- Project for New Zealand Fishing Industry Board, Wellington. Preparation of the New Zealand Fishing Industry Board coastal policy. 1993
- Project for New Zealand Fishing Industry Board, Wellington. Assistance with development of a fishery management plan for the snapper fishery on the northeast coast of the North Island. 1992.

h



- Project for New Zealand Ministry of Research, Science and Technology, Wellington. Review of Fisheries Research in New Zealand. Member of review team to identify quality and relevance of current government funded fisheries and aquaculture research in New Zealand. 1992.
- Project for Aquaculture Federation, New Zealand Fishing Industry Board, Wellington. Assessment of Fisheries Task Force Report on the Review of Fisheries Legislation. 1992.
- Project for MAF Fisheries, New Zealand Ministry of Agriculture and Fisheries. Assessment of Department of Conservation Draft New Zealand Coastal Policy Statement. 1992.
- Project for Aquaculture Federation, Wellington. Assessment of Fisheries Task Force Public Discussion Paper on Review of Fisheries Legislation, and development of proposals on the integration of aquaculture management into new fisheries legislation. 1992.
- Project for Kingett Mitchell and Associates Ltd, Auckland. Fisheries assessment of Shakespeare Bay and Queen Charlotte Sound in relation proposed Shakespeare Bay development. 1991.
- Project for the New Zealand Ministry of Agriculture and Fisheries, Wellington. Review of freshwater fish farming regulations, and assessment of policy options. 1990.
- Project for the New Zealand Ministry of Agriculture and Fisheries, Wellington. Assistance and advice on the development of policies required for the development of new aquaculture legislation. 1990.
- Project for New Zealand Fishing Industry Board, Wellington. Assessment of the Resource Management Bill in relation to the fishing and aquaculture industries. 1990.
- Project for Kingett Mitchell and Associates Ltd., Environmental Consultants, Auckland, New Zealand. Fisheries assessment and report on distribution and abundance of fish and shellfish species and the distribution of commercial and recreational fishing in the inner Hauraki Gulf, an area under investigation by the Ports of Auckland Ltd to locate a new dredge spoil disposal site. 1990.
- Project for the New Zealand Ministry of Commerce, Auckland. Investigation of fisheries resources and business opportunities in the fishing industry in the Hauraki tribal district. 1990.
- Project for New Zealand Ministry of Agriculture and Fisheries, Wellington. Report on new aquaculture legislation and preparation of a draft national policy for aquaculture, 1989.
- Project for New Zealand Ministry of Agriculture and Fisheries, Wellington. Assistance in assessing the impacts of the proposed Resource Management Law Reform on MAF's policies on fisheries and aquaculture in New Zealand. 1989.



B

This is the document marked **B** mentioned and referred to in the affidavit of **Richard Owen Boyd** affirmed at Wanaka this 31<sup>st</sup> day of August 2005 before me:

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Solicitor of the High Court of New Zealand

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**B**

## The New Zealand Model for TAC Allocation to Recreational Fisheries

Report for Ministry of Agriculture, Food and Fisheries  
Victoria, BC

Prepared by

Rick Boyd  
Boyd Fisheries Consultants Limited  
Wanaka, New Zealand  
E-mail: [rboyd@jhug.co.nz](mailto:rboyd@jhug.co.nz)

March 2005



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## Summary

This report examines the New Zealand approach for TAC allocation to recreational fisheries. The purpose of the report is to provide an understanding of the New Zealand approach, examine how it operates in practice and identify issues that have arisen in New Zealand from implementation of the policy. The report then discusses the applicability of the policy in other jurisdictions.

New Zealand adopted a rights-based approach to management of its commercial fisheries in 1986 with the introduction of an individual transferable quota management system (the 'QMS'). There was no attempt at that time to incorporate recreational fishing within a rights-based framework. This means that commercial fishing rights under the QMS are very well defined, but recreational fishing rights are less clear.

Under the Fisheries Act 1996, the Minister of Fisheries must first set a total allowable catch (TAC) for the entire fishery before setting a total allowable commercial catch (TACC) which cannot exceed the TAC. In setting the TACC, the Fisheries Act requires that the Minister of Fisheries must allow for recreational and other non-commercial interests. He is also required to consult with sector groups and after he makes his decision he must provide the reasons for his decision in writing.

The Fisheries Act 1996 provides no statutory guidance on how the Minister is to make allocation decisions and no priority is given to any sector. This leaves allocation decisions entirely up to the Minister. There is no other Government policy on allocation to guide decision making or sector groups. As a result, the current process is politicised and expensive to service for all sectors.

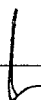
Efforts by Government to develop a rights-based approach to recreational fishing policy have not been successful due to a lack of consensus within the recreational fishing community. All stakeholders, including Government, believe that recreational fishing rights need better definition.

The strengths of the New Zealand model come from the explicit statutory requirement to make an allowance for the recreational (and other non-commercial) interest when setting a TACC within a sustainable TAC. Recreational and other non-commercial interests must be taken into account. The weaknesses of the New Zealand model arise as a consequence of a lack of clear definition of recreational fishing rights and the uncertainties and costs this creates for all stakeholders.

Other jurisdictions can learn from the New Zealand experience. Most importantly, recreational rights should be defined at the same time as commercial rights so that all stakeholders have comparable rights and similar incentives to participate in co-management. There are a number of important allocation issues that need to be resolved at the same time to underpin a rights-based approach to fisheries management. These issues include how the rights are

defined and controlled for each sector, the priority of rights for each sector, the basis for initial allocation of rights between sectors, how future changes in allocation are to be made, compensation for re-allocation of rights between sectors, who should be responsible for determining transfers of rights between sectors, who will 'hold' the recreational allocation on behalf of recreational users and should have the right to harvest the recreational allocation.

---



*Boyd Fisheries Consultants Ltd*

## 1. Introduction

The overall purpose of this report is to describe and discuss the current system for allocation of marine fishery resources to the recreational sector in New Zealand and to discuss its applicability in other jurisdictions. The report has been commissioned by the Ministry of Agriculture, Food and Fisheries, Victoria, B.C. and the full terms of reference are provided in Appendix 1.

As in many other jurisdictions, New Zealand has competing demands for the available surplus in many of its marine fisheries. These demands include resource extraction by the Maori customary sector, the commercial seafood sector and the recreational sector. Both the commercial and recreational sectors are significant resource users and often compete for the same fish in the same areas. Environmental organizations also have non-extractive interests in the sustainability of the fishery.

Allocation between the commercial and recreational sectors presents a range of highly controversial and potentially complex issues in New Zealand. Allocation to the Maori sector arises from the guarantees to Maori in the Treaty of Waitangi<sup>1</sup> and is therefore subject to different criteria.

Before describing the New Zealand approach for allocation of the total allowable catch (TAC) to the recreational sector and how this system is operating, key background information is presented in order to place the New Zealand approach into its full context.

The present allocation framework, examples of the policy in practice and stakeholder views are then presented before assessing the policy in the context of its applicability to other jurisdictions.

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<sup>1</sup> See Appendix 2 for information on Maori fishing rights and the Treaty of Waitangi.

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## 2. New Zealand Fisheries in Context

### 2.1 Introduction to the Context

New Zealand's culture and its legal and political systems are similar to those in other parliamentary democracies. The public expect to be consulted and to have an opportunity for input to decisions affecting them. Politicians debate the merits of different approaches in a debating chamber open to public view when laws are changed. Contentious issues are frequently politicised by sector interests.

Recreational fishing is a popular and highly valued activity in New Zealand. As fishery resources have become exploited, and frequently depleted through over-fishing, recreational fishers have experienced a decline in individual catch rates. Allocation to the recreational sector to protect and maintain recreational fishing opportunities is therefore an issue of importance to the public.

The following sections of Chapter 2 provide a background to New Zealand fisheries which will assist in understanding the complexity surrounding the development of the current New Zealand model for allocation to the recreational sector. Some of this information may not be needed by all readers, and these readers should skip to the summary at the end of Chapter 2.

### 2.2 Historical and Cultural Profile

New Zealand is a small maritime country comprised of 3 main islands extending from 34°S to 47°S. The country is long (1600 km) and narrow (400 km at its maximum width). Most of the population lives on or near the coast and even those that don't are usually only an hour or two away. With a population of just 4 million people, the Government is also very close to public opinion.

Prior to European settlement, Maori relied on seafood for a significant portion of their diet. The coast yielded fish, shellfish, marine mammals and seabirds. Apart from birds, bats and the Polynesian rat, New Zealand had no large terrestrial animals for food.

With abundant seafood resources it is not surprising that European settlers and more recent migrants have taken the opportunity to enjoy fishing for food and recreation. Due to the nature of many of the more abundant and available resources (demersal species and shellfish), most recreational fishing in New Zealand is often as much about providing fresh seafood for the table as it is about recreation.

When the first Europeans arrived, Maori were both accomplished fishers and natural entrepreneurs. Maori became the first commercial fishers supplying the small settlements and larger towns with much of their fresh fish. As a consequence of the Maori land wars and increasing settlement, Europeans dominated the commercial fishery by the end of the 19<sup>th</sup> century. The seafood





industry remained relatively small and was based on supplying the domestic market until the 1960s, largely due to a system of limited licensing coupled with export controls.

The limited licensing system was removed in the 1960s to stimulate economic development. In response to the arrival of foreign fishing fleets New Zealand declared a 200 mile exclusive economic zone in 1978. This additional stimulus and growing export demand, coupled with an open access policy resulted in very rapid growth within the commercial seafood industry. This culminated in the so called 'inshore fishery crisis' by the early 1980s, with too many boats chasing too few fish.

Increased commercial fishing pressure with progressive exploitation of previously abundant inshore resources had a significant impact on other users as well. Fish and shellfish became more difficult to catch and commercial fishers started working in areas that previously had received little or no commercial fishing pressure. Maori, who had a close association with these resources, were particularly aware of the decline. Catch success in the recreational fishery also dropped.

### **2.3 Management and Allocation to the Recreational Sector Prior to the QMS**

Fisheries in New Zealand were generally managed on a needs basis in the period prior to 1986. Both commercial and recreational fisheries were managed using a combination of method, area and gear restrictions together with size limits for certain species. A limited licensing regime was in place in selected commercial fisheries. Maori customary (non commercial) fishery needs for defined cultural purposes<sup>2</sup> were managed under a customary permit system.

Commercial fishing in some inshore areas, particularly around large population centres and in the large shallow harbours found in northern New Zealand, was usually regulated by method and gear restrictions, but rarely prohibited altogether in any waters. Ostensibly, commercial fishing restrictions near cities and in harbours were for conservation reasons, but some were the result of political pressures from local residents, recreational fishers and sometimes from small-scale commercial fishers. A de-facto system of allocation to the recreational sector operated for some recreational fisheries, especially bivalve shellfish. Bivalves in local harbours and beaches near population centres were generally off limits to commercial fishers – Fishery Officers made these decisions based on local knowledge until the 1980s. Daily bag (catch) limits for recreational fishers were universal for most shellfish species by the 1980s. For finfish species there were no daily recreational catch limits in place at all until 1984 except for one species in one area.

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<sup>2</sup> See Appendix 2 for information on Maori fishing rights and the Treaty of Waitangi.

In 1983, a moratorium was introduced on the issue of new commercial fishing permits<sup>3</sup> in the commercial fishery as a result of the so called 'inshore fishery crisis'. A new Fisheries Act was also passed in 1983 replacing the previous 1908 Fisheries Act. This provided a wider range of regulation making powers for fishery managers. Early in 1984, a daily recreational catch limit of 50 fish for the combined take of all finfish was introduced for the first time. The primary purpose of imposing the daily recreational catch limit at that time was to limit the opportunity for people to try and circumvent the commercial fishing permit moratorium by harvesting 'commercial quantities' and selling them. Although it was illegal to sell fish without a commercial fishing permit, there were many ways to do so.

In summary, management of the recreational fishery was largely confined to method, gear and minimum fish size restrictions until the mid-1980s. Most recreational fishing for finfish species was viewed as low-impact and inconsequential compared to the commercial fishery. Little data existed on the size of the recreational harvest. Allocation to the recreational sector was implicit through controls on commercial fishing aimed at protecting stocks, especially those with a high recreational value.

## **2.4 Quota Management System**

In 1986 New Zealand introduced individual transferable quotas (ITQs) to its main commercial fisheries. The quota management system or QMS initially provided for ITQs as fixed tonnages. The total of all individual allocations (in metric tonnes) added up to the total allowable catch (TAC) for each fish stock.

The effect of the QMS was to limit the total commercial catch in all of the main fisheries. Under the Fisheries Amendment Act 1986, the Minister of Fisheries set the total allowable catch available for commercial fishing (TAC) for species or stocks subject to the QMS.

By 1989 it had become clear that fixed ITQs placed the risk of stock variability on the Crown and not the industry and in 1990 the QMS was amended to a proportional ITQ system. ITQs were converted from metric tonnes to shares in the commercial TAC. As the TAC changed from year to year, each ITQ retained its share of the TAC, but the annual catch (in tonnes) permitted under each ITQ varied in proportion to the annual TAC.

Since 1986, the QMS has been extended to cover most commercially harvested species. Government policy is to eventually incorporate all commercial species, including any new species, into the QMS. There is a significant workload associated with introducing species into the QMS, so only a certain number of species are being added to the QMS each year.

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<sup>3</sup> In New Zealand the term commercial fishing permit is used for a general and annually renewable authority to fish commercially, and the term licence is used only for limited licence fisheries. No limited licence fisheries remain in place in 2005.

## 2.5 TACs and TACCs

Total allowable catches or TACs were referred to in two different ways in the Fisheries Amendment Act 1986 resulting in potential confusion. In relation to each fish stock in the QMS, the Fisheries Act provided that: *'the Minister, ... may specify the total allowable catch (TAC) for all specified species and management areas'*<sup>4</sup>.

The Fisheries Act also contained a separate definition of total allowable catch in the interpretation section of the Act as being *'with respect to the yield from a fishery means the amount of fish ... that will produce from that fishery the maximum sustainable yield as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish, and any generally recommended sub-regional or regional or global standards'*<sup>5</sup>

In 1989, the Fisheries Act was also amended to clarify the references to total allowable catches under the QMS. The amendment replaced the expression 'total allowable catch' when setting TACs for the QMS, with a 'total allowable commercial catch' (TACC). This change was intended to clarify the intent of the TACC under the QMS and to avoid any confusion with the other definition of TACs.

The Fisheries Act 1996 has since expanded and refined the definitions of TAC and TACC so that they are more detailed and explicit, but they remain the same in principle.

## 2.6 Maori Fisheries Claims

The initial allocation of individual transferable quota in 1986 generated a lengthy sequence of events which culminated in the settlement of Maori commercial fishing claims in 1992.

In brief, the allocation of property rights in fisheries in the form of ITQ in 1986 threatened Maori interests in the fishery. Section 88(2) of the Fisheries Act 1983 stated that *'nothing in this Act shall affect any Maori fishing right'* but the scale and extent of those rights had never been agreed between the Crown and Maori<sup>6</sup>.

Maori commercial fishing claims were eventually settled through a process starting in the Courts and concluding with a largely political arrangement between Maori and the Crown. The Crown initially transferred 10% of all ITQ to Maori in 1989 as an interim arrangement and subsequently agreed to provide funds to Maori to purchase 50% of a large New Zealand commercial fishing company that held about 20% of ITQ in 1992 and to provide Maori with 20% of ITQ for any new

<sup>4</sup> s28C, Fisheries Amendment Act 1986

<sup>5</sup> s2, Fisheries Act 1983

<sup>6</sup> see Appendix 2 for a reference to the 'Report of the Waitangi Tribunal on the Muriwhenua Fisheries Claim' which discusses this topic.



species or stock added to the QMS.<sup>7</sup> As part of the settlement, Maori had to agree to the repeal of s88(2), from the Fisheries Act, removing the risk to the Crown of any future litigation in relation to commercial as well as customary Maori fishery claims.

The settlement of Maori fisheries claims has provided Maori interests with a significant presence and interest in the commercial fishery through quota ownership. Importantly, the commercial fisheries settlement brought Maori commercial fishing interests into the mainstream seafood industry on an equal commercial footing with non-Maori.

Maori commercial fishing assets are now divided into two asset pools. About half of the Maori-owned ITQ is tribal and has been (or is in the process of being) allocated to individual Iwi (tribes). The other half of the Maori commercial fishing assets are owned by a pan-Maori organisation Te Ohu Kai Moana which utilises and manages these assets through its fishing company Aotearoa Fisheries Limited (AFL). AFL is now one of New Zealand's largest fishing companies. AFL's profits are distributed as dividends to Iwi.

There is now no legal distinction between Maori and non-Maori ITQ under the Fisheries Act. In theory this means there is full transferability between Maori and non-Maori quota. Maori commercial fishing rights are therefore protected only as long as Maori retain ownership of their ITQ. To prevent alienation of Maori quota, Maori requested and Government agreed to include provisions in the Maori Fisheries Act 2004 that require tribes selling ITQ to provide a first right of refusal to Te Ohu Kai Moana. There are no restrictions on Maori tribes or Te Ohu Kai Moana purchasing ITQ from non-Maori to add to their quota holdings. This has already occurred with Te Ohu Kai Moana and some Iwi purchasing fishing companies or quota on the open market to grow the Maori presence in the commercial fishery.

## 2.7 Summary

New Zealand adopted an individual transferable quota management system (the 'QMS') in its commercial fisheries in 1986, largely as a result of an 'inshore fishery crisis' stemming from fleet over-capitalisation and over-fishing concerns. The QMS was adopted to deal with a perceived crisis in the commercial fishery. At the time, there was little concern about the impacts of the other sector groups (i.e., Maori commercial and customary, and recreational). There was no attempt to incorporate recreational fishing within a rights-based framework. Maori saw the QMS as a threat to their Treaty rights and used the Courts to force Government to recognise their claims. This resulted in the settlement of Maori commercial fishing claims and an improved framework for managing customary fisheries.

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<sup>7</sup> see the Maori Fisheries Act 1989/ Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Maori Fisheries Act 2004

In summary, the prevailing view in 1986 was that the commercial sector was responsible for over-fishing and the depletion of stocks. In any case, fishery managers were stretched to the limit in dealing with the introduction of the QMS. By managing the commercial fishery sustainably and by re-building stocks, it was believed that the needs of the recreational and other non-commercial sector would largely be protected.

Since 1986, considerable change in fisheries has taken place in New Zealand. Most fish stocks appear to be healthy or rebuilding. The economic health of the seafood industry has improved considerably. Maori fishery claims have been settled. Fisheries management has evolved within a statutory framework now requiring much stricter environmental standards, in line with international trends. The QMS is much more complex and embraces many more species. More robust information is available on the fishery, including estimates of recreational fish harvests. Sector groups are much better informed. Expectations of sector groups have also grown. However, recreational fishing rights remain relatively undefined. As a result, allocation policy lacks certainty, with negative impacts on the interests of all stakeholder groups.



### **3. The New Zealand 'Model' for Allocation of the TAC to the Recreational Sector**

#### **3.1. Outline of the New Zealand Model**

The setting of total allowable catches, total allowable commercial catches and allocation to the recreational sector are governed by explicit provisions in the Fisheries Act 1996. An outline is provided in this section of Chapter 3 in order to provide an overview of the New Zealand model. This is followed in the remaining sections of Chapter 3 with a more detailed description of the development of the policy, the legal framework, and how the policy is being applied.

The New Zealand allocation approach is structured so that the Minister of Fisheries must first set a total allowable catch (TAC) for the entire fishery before setting a total allowable commercial catch (TACC) for the commercial sector and allocating to non-commercial interests.

The TAC must be set in accordance with a number of reference points (principally the maximum sustainable yield or MSY). This approach is designed to ensure sustainability of the resource.

The TACC can only be set once the TAC has been set and cannot be greater than the TAC. In setting the TACC, the Minister of Fisheries must allow for (amongst other things) recreational interests. Although the Fisheries Act does not explicitly state that he is required to do this, the practice that has been adopted is for the Minister to specify the various non-commercial allowances in metric tonnes. The TACC is also set in metric tonnes. Thus, the sum of the TACC plus the various other allowances equals the TAC.

The Fisheries Act does not specify how the Minister is to make the allowances and the Minister has an unfettered discretion to allocate to each sector as he decides. No priority is given to any sector in the Act. However the Act does require the Minister to consult with sector groups and to provide the reasons for his TACC decision in writing. In practice he also advises sector groups of the reasons for his allocation decision including the reasons for the amount of the allowance he has made for each of the non-commercial sectors.

#### **3.2. Development of Recreational Fisheries Policy**

Prior to the QMS being introduced in 1986, there was no specific allocation requirement in New Zealand fisheries legislation that provided for specific allocations to be made to the recreational sector. There was also no stated national recreational fisheries policy.

Development of a recreational fishing policy was stimulated by two factors. One was the Fisheries Act 1983 which contained a provision for the development of statutory fishery management plans (FMPs). The FMP provisions provided for



public input and the development of management plans which would be implemented through the 1983 Act. However, FMPs were ultimately overtaken by the QMS and although work started on FMPs, they never progressed much beyond the initial stages of preparation. Therefore, no policies on recreational fishing were developed under the FMP process.

Allocation to the recreational (and other non-commercial) sectors when setting a TAC was a consequence of setting total allowable catches for commercial fishing under the QMS in 1986. The Fisheries Amendment Act 1986 which introduced the QMS provided (in relation to TACs for the QMS) that:

'the Minister, after allowing for the Maori traditional, recreational and other non-commercial interests in the fishery may specify the total allowable catch (TAC) for all specified species and management areas'<sup>8</sup>

This provision was included in the Act as a consequence of the allocation of property rights in the form of ITQs to the commercial sector in the inshore fishery. It followed that other (non-commercial) interests in the fishery had to be provided for in the TAC setting process. This provision did that, but left the amount of the allowance for recreational (and other) interests at the Minister's discretion. No national policy on recreational fisheries existed at that time to provide any clear directions as to what that allowance should be or how it should be determined.

A discussion document "Draft National Policy for Marine Recreational Fishing" was initially released in early 1986. After an hiatus over the 2 year period over which the QMS was introduced and its associated administrative systems bedded in, a final document "National Policy for Marine Recreational Fisheries" was released in 1989. When the (then) Minister of Fisheries (Hon. Colin Moyle) released the National Recreational Fisheries Policy document, he stated that the cornerstone of the policy was given in the first national objective which was: 'to ensure recreational users have access to a reasonable share of fishery resources. 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. This position reflects Government's resolve to ensure all New Zealanders can enjoy and benefit from our fisheries.'<sup>9</sup> This statement has subsequently been called the 'Moyle promise'.

Although the 1989 policy signaled that it would be the basis for development of regional recreational fishery strategies in fishery management plans (FMPs), the Government later repealed the FMP provisions from the Fisheries Act. The QMS had been adopted as the principal management tool and FMPs were no longer considered necessary. As a result of the discarding of FMPs, the impetus behind the 1989 National Recreational Fisheries Policy was lost. The 1989 National

<sup>8</sup> s28C, Fisheries Amendment Act 1986

<sup>9</sup> Minister of Fisheries covering letter in National Policy for Marine Recreational Fisheries, June 1989. A copy is on the web at: [http://option4.co.nz/Your\\_Rights/moyles.htm](http://option4.co.nz/Your_Rights/moyles.htm)

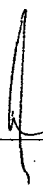
Recreational Fishing Policy was never approved by Cabinet or implemented. In 1990 there was a change of Government.

From 1989 on, the Fisheries Act was amended a number of times, resulting in some re-writing of the sections concerning the setting of the TAC and the TACC. However, the provision requiring the Minister to make an allowance for the recreational (and other non-commercial) interests in the fishery when setting a TACC under the QMS remained essentially the same. The most important amendment to the Fisheries Act affecting commercial fishing interests came in 1989 when the QMS was altered from a system of fixed ITQ allocations to proportional ITQ. This change transferred the risk of TACC reductions from the Crown to ITQ owners. Under the fixed tonnage ITQ regime, each quota owner held a specific tonnage of ITQ and the sum of all ITQs equaled the TACC. Therefore, the Crown had to purchase ITQ on the open market to give effect to a TACC reduction, but whenever the TACC was increased the Crown sold the increase on the open market. With fixed tonnage ITQs, industry was therefore protected from risk if there was an increased allocation to the recreational sector. Under the proportional ITQ regime, each quota owner has a proportion of the TACC so that whenever a TACC is varied, the ITQ changes in proportion. Proportional ITQs meant that industry was now more at risk from reallocation to the recreational sector.

Public consultation on recreational fisheries policy and the way recreational fisheries were managed did not surface again until 2001 with the release of a discussion document by the Ministry of Fisheries called 'Soundings'. This document was some 3 years in the making, being the result of a joint working group between the Ministry of Fisheries and the New Zealand Recreational Fishing Council established in 1998. The purpose of 'Soundings' was to obtain public comment on future management of the recreational fishery. In particular, the document signaled that its primary focus was to more clearly define recreational fishing rights.

In 'Soundings' the public was asked what they thought of three options for future management, or if they had other solutions for the future management of recreational fishing. 'Soundings' contained three options for allocation and management of the recreational fishery which can be summarised as follows:

- Option 1: the recreational fishing share of the total allowable catch would be set at the Minister of Fisheries' discretion. The Ministry of Fisheries would continue to manage the fishery. This was the *status quo*.
- Option 2: defining recreational fishers' rights by establishing a set proportional share of the total allowable catch for recreational fishers, possibly including recreational priority for some fisheries. The Ministry of Fisheries would continue to manage the recreational fishery. This option would set the recreational catch as a specified share of the TAC, but no specific shares were proposed.





- Option 3: Option 2 but with co-management of the recreational fishery. This option fixed the recreational share as well as giving significant responsibility for how the fishery was managed to recreational interests.

The response by the recreational fishing sector to the 'Soundings' document was mixed. For some, the document was lengthy and contained concepts that were relatively complicated. For others, especially the more extreme recreational interests, the document represented a significant threat. Both Options 2 and 3 (the change options) would potentially result in a capping of the recreational share as a proportion of the TAC. 'Soundings' stated that these options would improve recreational rights by clarifying what the recreational share would be. However, these more extreme recreational interests focused on potential threats in these proposals. They also focused on missing elements of policy.

In particular, there was no reference at all to the 1989 'Moyle promise' that many recreational interests believed had to be a key part of recreational fishing policy because it would give them priority of access to key recreational species.

The reaction of recreational interests to the Soundings document was to develop a fourth option. This movement quickly grew into a new, highly organised and well resourced lobby group calling itself 'option4'. The objective and principles of option4 are given on its web site<sup>10</sup>:

*option 4 objective: To carry the four principles of option4 all the way through the rights redefinition process and to have those principles enshrined in legislation.*

*option4 principles*

- *A priority right over commercial fishers for free access to a reasonable daily bag-limit to be written into legislation.*
- *The ability to exclude commercial methods that deplete recreationally important areas*
- *The ability to devise plans to ensure future generations enjoy the same or better quality of rights while preventing fish conserved for recreational use being given to the commercial sector.*
- *No licensing of recreational fishers.*

In 2003, option4 and the New Zealand Recreational Fishing Council, together with the New Zealand Big Game Fishing Council reached agreement to work together in promoting the interests of recreational fishers. This alliance made it difficult for the Ministry of Fisheries and Government to make any significant new progress in achieving the original aim of the 'Soundings' document, which was to clarify the recreational allocation by more clearly defining it.

<sup>10</sup> See [www.option4.co.nz/](http://www.option4.co.nz/)

In 2003 policy discussions were continued between Government officials and recreational interests through a committee known as the reference group with the aim of developing a reform option that would be acceptable to the recreational sector. The report of the reform group contained a package of proposals for better defining the recreational fishing right. Although recreational interests participated in the process of developing the proposed reforms, option 4 and other lobby groups opposed key elements of the proposals and in the end the reference group's recommendations were not taken up by Government.

Since 2003, no further progress has been made towards defining the recreational fishing right although the Ministry and Minister of Fisheries continue to consult with recreational fishing interests on recreational fishing policy.

### 3.3. Legislative Framework

The Fisheries Act 1996 was a major re-write of fisheries legislation in New Zealand and introduced a new purpose and environmental principles. The Act is extraordinarily complex, prescriptive and detailed, containing 370 sections (when initially passed into law) plus 12 schedules<sup>11</sup>. It has already been amended at least a dozen times and now contains many more sections and 16 schedules. A summary of even the main parts of the Act is well beyond the scope of this report.

What the 1996 Act makes clear is that the QMS is to be the principal tool for the management of every species or stock of fish that is subject to any commercial fishing. Any other management arrangement is effectively a temporary approach and to be used only until the species or stock is introduced into the QMS.

As a result, TACC setting under the QMS has become the principal allocation mechanism.

The main sections of the Act that deal with TAC and TACC setting and the recreational allowance are set out below:

#### 13. Total allowable catch—

(1) Subject to this section, the Minister shall, by notice in the Gazette, set in respect of the quota management area relating to each quota management stock a total allowable catch for that stock, and that total allowable catch shall continue to apply in each fishing year for that stock unless varied under this section[, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26].<sup>12</sup>

(2) The Minister shall set a total allowable catch that—

(a) Maintains the stock at or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; or

<sup>11</sup> The Fisheries Act 1996, incorporating amendments, can be located and viewed on-line at [www.legislation.co.nz](http://www.legislation.co.nz)

<sup>12</sup> The words enclosed in square brackets, wherever they occur, have been inserted by an amendment to the 1996 Act.

- [(b) Enables the level of any stock whose current level is below that which can produce the maximum sustainable yield to be altered—
    - (i) In a way and at a rate that will result in the stock being restored to or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; and
    - (ii) Within a period appropriate to the stock, having regard to the biological characteristics of the stock and any environmental conditions affecting the stock; or]
  - (c) Enables the level of any stock whose current level is above that which can produce the maximum sustainable yield to be altered in a way and at a rate that will result in the stock moving towards or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks.
- (3) In considering the way in which and rate at which a stock is moved towards or above a level that can produce maximum sustainable yield under paragraph (b) or paragraph (c) of subsection (2) of this section, the Minister shall have regard to such social, cultural, and economic factors as he or she considers relevant.

**20. Setting and variation of total allowable commercial catch—**

- (1) Subject to this section, the Minister shall, by notice in the Gazette, set in respect of the quota management area relating to each quota management stock a total allowable commercial catch for that stock, and that total allowable commercial catch shall continue to apply in each fishing year for that stock unless varied under this section[, or until an alteration of the quota management area for that stock takes effect in accordance with sections 25 and 26].
- (2) The Minister may from time to time, by notice in the Gazette, vary any total allowable commercial catch set for any quota management stock by increasing or reducing that total allowable commercial catch.
- (3) Without limiting the generality of subsections (1) and (2) of this section, the Minister may set or vary a total allowable commercial catch at, or to, zero.
- (4) Every total allowable commercial catch set or varied under this section shall have effect on and from the first day of the next fishing year for the quota management stock concerned.
- (5) A total allowable commercial catch for any quota management stock shall not—
  - (a) Be set unless the total allowable catch for that stock has been set under section 13 or section 14 of this Act; or
  - (b) Be greater than the total allowable catch set for that stock.

**21. Matters to be taken into account in setting or varying any total allowable commercial catch—**

- (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.
- (2) Before setting or varying a total allowable commercial catch for any quota management stock, the Minister shall consult such persons and organisations as the Minister considers are representative of those classes of

persons having an interest in this section, including Maori, environmental, commercial, and recreational interests.

- (3) After setting or varying any total allowable commercial catch under section 20 of this Act, the Minister shall, as soon as practicable, give to the parties consulted under subsection (2) of this section reasons in writing for his or her decision.
- [(4) When allowing for Maori customary non-commercial interests under subsection (1), the Minister must take into account—
- (a) Any mataitai reserve in the relevant quota management area that is declared by the Minister by notice in the Gazette under regulations made for the purpose under section 186;
  - (b) Any area closure or any fishing method restriction or prohibition in the relevant quota management area that is imposed by the Minister by notice in the Gazette made under section 186A.]
- (5) When allowing for recreational interests under subsection (1) of this section, the Minister shall take into account any regulations that prohibit or restrict fishing in any area for which regulations have been made following a recommendation made by the Minister under section 311 of this Act.

**311. Areas closed to commercial fishing methods—**

- (1) The Minister may, where—
- (a) Catch rates by recreational fishers for a stock are low; and
  - (b) Such low catch rates have a significant adverse effect on the ability of recreational fishers to take their allowance for that stock; and
  - (c) The low catch rates are due to the effect of commercial fishing for the stock in the area or areas where recreational fishing for the stock commonly occurs; and
  - (d) A dispute regarding the matter has been considered under Part 7 of this Act and the Minister is satisfied that all parties to the dispute have used their best endeavours in good faith to settle the dispute but have failed to do so,—

after consulting with such persons or organisations as the Minister considers are representative of those classes of persons who have an interest in the matter, recommend the making of regulations under section 297 of this Act that close an area or areas to commercial fishing for that stock, or prohibit a method or methods of commercial fishing in an area or areas for that stock for the purpose of better providing for recreational fishing for that stock, provided that such regulations are not inconsistent with the Maori Fisheries Act 1989, the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, or Part 9 of this Act.

These statutory provisions are detailed in words, but relatively straightforward in practice. The Minister of Fisheries must set a TAC and a TACC for every fish stock under the QMS. Section 13 of the Act requires the Minister to set a sustainable TAC. The maximum sustainable yield is the principal reference point for setting the TAC. Section 20 requires the Minister to set a TACC that is not greater than the TAC. Section 21 requires the Minister of Fisheries to make an allowance for recreational fishing interests when setting a TACC, but the amount of that allowance is ultimately the Minister's. Section 21 also requires the Minister to take into account mataitai (Maori customary fishing) reserves and other areas closed to commercial fishing under section 311 of the Act when setting a TACC.

There are significant differences in the way that commercial and recreational fishing rights are specified in the Fisheries Act. Under the present statutory framework, the commercial allocation is explicitly recognised in the form of a TACC and this is divided into individual shares of the TACC in the form of ITQ. ITQ is a right to catch a share of the TACC<sup>13</sup> each year and is fully transferable in whole or in part. It can be subdivided and aggregated. ITQ has a legal owner and the ownership changes when it is transferred. In this respect it has many of the attributes of real and personal property, even though it is not a physical object. However, the recreational allocation is an 'allowance' for recreational interests in the fishery. Although the Minister specifies the recreational allowance as a quantum when he sets a TACC, the recreational allocation does not have a specific owner but is a form of collective right that has no clear owner. These underlying differences in the nature of the rights mean that it is not currently possible for market-based transfers to occur between the commercial and recreational shares of the TAC. One of the reasons why policy makers want to better specify the recreational right is to provide the opportunity for market based mechanisms to be used for reallocation in the future.

In summary, the 1996 Fisheries Act sets out in considerable detail the things that the Minister must do in setting TACs and TACCs and in reaching a TACC decision. These include a specific requirement to allow for the recreational interest when setting a TACC, to consult and to give the reasons for his decision in writing. However, the legal framework does not constrain how the Minister makes recreational allocation decisions. Differences in the nature of the commercial and recreational right prevent the use of market based approaches to reallocate the resource.

### **3.4. The Policy as Now Applied**

TAC and TACC setting occurs in two situations. One is when the TAC and TACC are set when a species is first introduced to the QMS. The second is when a TAC or TACC is varied under the Act. The process for both is essentially the same although there are different risks to Government in respect of claims for compensation by the commercial sector as result of allocation decisions. The compensation issue is discussed later in this report.

There is an annual cycle for the review of sustainability measures and other management controls in New Zealand fisheries, culminating in decisions of the Minister in respect of (amongst other things) setting or varying TACs and TACCs.<sup>14</sup> This process provides for participation by all sectors (commercial, recreational, Maori commercial and customary and environmental organisations).

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<sup>13</sup> The details of how annual catch entitlements are generated from ITQ is more complex than described here but this outline is sufficient for the purposes of this report. For further details the reader should refer to s66 of the Fisheries Act 1996.

<sup>14</sup> An outline of the process can be found at [www.fish.govt.nz/sustainability/research/stock/process.htm](http://www.fish.govt.nz/sustainability/research/stock/process.htm)

The cycle commences with annual stock assessments and yield estimates. This part of the process brings together research providers and sector groups to review the results of research and other fishery information. There is a number of fishery assessment working groups that deal with different species or species groups. The results from the working groups are brought together in an annual Fishery Assessment Plenary. The results of the Annual Plenary are published<sup>15</sup> and include fishery summaries that provide estimated catches by commercial, recreational and Maori customary fisheries.

Following the Annual Plenary, the Ministry of Fisheries initiates consultation with sector groups by releasing an initial position paper (IPP) on the review of sustainability measures. The IPP contains the Ministry's preliminary recommendations for management, including TACs, TACCs and other matters. The IPP includes a proposed method for allocation. Following a period of consultation, the Ministry releases its final advice paper (FAP) which the Minister (if he agrees with the recommendations it contains) signs and any TAC or TACC decisions are implemented. The Minister also provides a letter to stakeholders advising of his decisions and the reasons for them<sup>16</sup>.

In spite of detailed documentation in the IPP and FAP, no specific allocation policy is enunciated by the Ministry or the Minister that sets out in advance the methods to be used for apportioning stocks between sector groups. Instead, the method of allocation is determined separately for each individual fish stock without an overall policy approach to guide the process. When the Minister advises of the decisions he has made, indicates the reasons for his allocation decisions.

The FAP in 2004 included nearly 20 pages of discussion on statutory obligations and policy guidelines, including nearly 9 pages of discussion under the heading of allocation. The FAP includes extensive discussion on allocation and allocation models, including both claims-based (catch history) and utility-based<sup>17</sup> allocation approaches. The detailed discussion in the FAP indicates that there are a wide range of considerations that could have a bearing on allocation. However, the FAP provides no real guidance whatsoever on allocation policy. Two simple statements in the 2004 FAP neatly summarise the actual policy position. These statements are set out below:

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<sup>15</sup> The 2004 Plenary reports can be found at [www.fish.govt.nz/sustainability/research/assessment/plenary/index.html](http://www.fish.govt.nz/sustainability/research/assessment/plenary/index.html)

<sup>16</sup> The 2004 IPP, FAP and Minister's decision letter in relation to the annual sustainability review can all be found at [www.fish.govt.nz/sustainability/decisions/index.html](http://www.fish.govt.nz/sustainability/decisions/index.html)

<sup>17</sup> The Ministry of Fisheries FAP in 2004 identified two approaches to allocation. Utility-based approaches are described as those involving population trends, relative value to respective sector groups, investment and level of development, ability to utilise the allocation and social, cultural and economic impacts. Claims-based approaches are described as including existing allocations, current catch, equity of allocation, current participation levels and importance of the resource to one or more sectors. These are usually equated to relative value (utility-based) or catch history (claims-based).

*'The allocation of the TAC is a matter for the Minister's assessment taking into account all relevant considerations.'*

*'No explicit statutory mechanism provides guidance as to the apportionment of the TAC between sector groups either in terms of a quantitative measure or prioritisation of allocation.'*

In brief, the present allocation policy in New Zealand relies on Ministerial discretion, which is constrained only slightly by the process that the Minister is required to follow under the Act before making a decision.

### **3.5. Recent Allocation Examples**

#### **3.5.1 Kahawai**

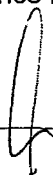
In 2004, kahawai, which is a very important recreational species was introduced to the QMS. The way that the recreational allowance was made for kahawai when the Minister set the TACC provides insight into the present application of the New Zealand allocation model.

The kahawai (*Arripis trutta*) is an excellent sports fish on light tackle, although many recreational fishers use much of their catch for bait as the species is not highly valued by non-Maori for its eating qualities but is excellent as bait. Kahawai has a relatively low value as a commercial species with much of the catch taken by purse seine. Although it does not have a high commercial value, kahawai is important to the economics of New Zealand's small purse seine fishery.

Maori value kahawai highly for food purposes and have traditionally harvested kahawai in large numbers where they school close to shore along the coast and in estuaries.

Recreational fishers believe that catch success in the recreational kahawai fishery has been adversely affected by commercial fishing, especially purse seining. Stock assessment information indicates that kahawai stocks are not over-fished. Many recreational fishers also believe that because kahawai has high recreational value but a relatively low commercial value, that they should receive a priority allocation of kahawai.

The kahawai FAP noted that the allocation of the TAC was an important part of the introduction (to the QMS) process and that the introduction process allocated property rights (ITQs) to the commercial sector. The FAP also noted that any subsequent reallocation of these property rights to another sector could be the subject of compensation. The kahawai FAP also stated that in shared fisheries, the Ministry has a policy preference for the claims-based allocation model and



recommended this allocation approach be adopted for kahawai by the Minister of Fisheries.

The Minister's allocation decision on kahawai in 2004, was based on catch history. In other words, the Minister's decision was to apportion the TAC between sectors based on their recent share of the total catch. Based on stock assessment information, the TAC was set at 15% below the level of recent catches. Thus, with a proportional allocation based on catch history, the decision cut the allocation to each of the commercial and recreational sectors by 15% compared to their recent catches.

The Minister's decision on allocation for kahawai stated:

*'I believe that the information on current use provides the best basis for allocating between each interest group. Accordingly I have decided to set allowances and TACCs that reflect current use in the fishery, reduced proportionally to fit within the bounds of the TAC set to ensure sustainability.'*

The Minister also announced that he might need to adopt additional management measures to achieve the catch reduction, and signaled he was considering the possible introduction of a reduced recreational daily catch limit of kahawai to ensure that the recreational catch remained within the allowance he had made. However, the Minister subsequently decided not to implement any change to the recreational daily catch limit and, to date, no action has been taken to limit or reduce the recreational kahawai catch.

Recreational fishing interests were far from satisfied with the Minister's allocation decision on kahawai. They believe that recreational fishers should have been given priority allocation of kahawai. As a result, option4 and allied recreational organisations are considering challenging it in the Courts by seeking a judicial review.

In summary, the Minister's decision on kahawai resulted in a situation where the commercial catch was reduced by 15% to fit within their proportional share of the TAC. This was achieved through the TACC set by the Minister under the Act. However, no measures have been introduced in the recreational fishery to reduce the recreational catch by 15% in order to ensure that this reduction is given effect.

### 3.5.2 Kingfish

The kingfish (*Seriola lalandi*) is another highly valued recreational species and is valued as a trophy fish. Kingfish is an important species for charter vessels as well as private vessels and it is also a prized species for spear fishers. Most of the commercial harvest is taken as a by catch.





Kingfish were introduced into the QMS in 2003 and there was strong pressure from the recreational sector for all of the kingfish TAC to be allocated to the recreational sector, or alternatively that there should be a substantial reallocation to the recreational sector because of the high recreational value of the fishery.

The kingfish IPP indicated that there were two options for allocation between the commercial and recreational sectors, one using the catch history method and one using the utility method. The Ministry of Fisheries indicated in the IPP that it did not have a preference as to which allocation method was adopted but provided an extensive discussion of both the -based and utility options and presented detailed information to support either approach.

The final advice given by the Ministry to the Minister in the kingfish FAP also gave no preference to the catch history or utility option and the FAP stated *'The policy discussion on the utility and claims-based approaches is not intended to fetter your discretion, but rather to provide policy guidance in order to provide a more robust allocation framework.* It is difficult to reconcile how the Ministry could believe that by not indicating a preference on the basis for kingfish allocation that it was providing any real policy guidance to the Minister of Fisheries. It also created considerable uncertainty amongst sector groups who did not know until the Minister made his decision what their likely allocation would be. Although kingfish supports a shared fishery between the commercial and recreational sectors, the policy used by the Ministry for allocation in this fishery is inconsistent with the policy adopted for the kahawai fishery the following year when the Ministry stated that in shared fisheries, the Ministry has a policy preference for the claims-based allocation model.

In the end, the Minister adopted the claims-based approach for allocation of kingfish, citing one of the reasons for his decision being the undermining of ITQ rights if he had adopted the utility-based approach and reallocated from the commercial to the recreational sector. He also indicated that decisions by Government to reallocate would be imperfect in the absence of a market to make such tradeoffs.

To achieve sustainability, the kingfish TAC was set at a level 20% below recent catches and the allocation to all sectors (including the TACC) was set at a level 20% below their catch history. To assist in reducing the recreational catch to the recreational allowance, the Minister increased the minimum legal size of kingfish in the recreational fishery from 65 cm to 75 cm.



## 4. Effectiveness of the Policy

### 4.1 Stakeholder Views

#### 4.1.1 Government

The present policy on allocation to the recreational sector is based on the provisions of the Fisheries Act 1996. This provides that the recreational allowance is at the discretion of the Minister and no priority is afforded to any sector group.

The Ministry of Fisheries is aware that there is a need to clarify policy on allocation of the TAC to the recreational sector and has actively pursued a number of policy initiatives to try and achieve this. These initiatives include the Soundings document in 2001 and the Reference Group work in 2003. The Ministry believes that the recreational fishing right needs better definition in order to achieve a better alignment of incentives by all sectors in dealing with allocation matters.

The Ministry considers that the best time to define recreational fishing rights would have been at the time that a rights-based system was adopted in the commercial fishery in 1986, but this was not possible at the time.

The release of the 'Soundings' document by Government in 2001 was aimed at developing better public awareness of the issues and obtaining feedback on how recreational fishing rights might be defined in a way that was acceptable to the public. However, ultimately this policy development process has stalled because some recreational sector interests have found it difficult to agree to any change to the *status quo* unless certain policies were agreed first. The lack of consensus has made it difficult to make real progress in defining the recreational right. Government believes there needs to be a high level of public consensus to any reform of the recreational fishing right.

The Ministry is continuing dialogue with the recreational sector on recreational fishing rights. However, until some form of consensus is reached, allocation to the recreational sector will remain at the Minister's discretion as provided for under the Fisheries Act 1996.

The Ministry indicated that recent decisions by the Minister of Fisheries on setting the recreational allowance for kahawai and for kingfish when these species were introduced into the QMS provides insight into the application of the present allocation policy. For kahawai, a claims-based approach to allocation was preferred because of the importance of this species to both the commercial and non-commercial sectors. For kingfish, a utility-based approach was considered as a possible approach because this species has a very high recreational value but a relatively low commercial value. However, the Minister determined that a claims-based approach should be adopted for kingfish.

#### 4.1.2 Commercial Sector

The seafood industry is New Zealand's fourth largest export earner and is therefore an important contributor to the economy. Exports of seafood products from New Zealand (including aquaculture) were worth approximately NZ\$1.4 billion in 2004. Over 90% of seafood production is exported.

The commercial sector has strong views about the current policy, or lack of policy, on allocation of the TAC to the recreational sector. The New Zealand Seafood Industry Council (SeaFIC) is the industry's parent organisation. SeaFIC coordinates industry submissions to the Ministry and Minister of Fisheries to ensure that the industry speaks with a single voice on most issues.

Key issues identified in discussion with the industry cover two main areas. One is the lack of clarity in the present allocation policy. Specific comments in relation to allocation include:

- The legislation is not clear.
- The allocation policy adopted by the Ministry/Minister is not clear.
- The Minister is vulnerable to lobbying.
- The Minister can reallocate by 'stealth' when he initially sets a TACC at the time a species is introduced into the QMS so that there is no risk the industry can claim compensation.
- There has been no process for establishing allocation policy.
- The policy guidelines set out in the IPPs and FAPs include both claims-based and utility-based approaches, but the application of a utility-based policy has not been agreed by the industry.

Many of these points have been identified in sections 3.3 and 3.4 of the report. However, the issue of 'reallocation by stealth' is of particular concern to the commercial sector because of the compensation issue. Although the process for setting TACs and TACCs is essentially the same when they are initially set under the Act and when they are varied, there are important differences to the industry in terms of the potential for compensation. Section 308 of the Fisheries Act provides that a reduction of the TACC for the purposes of ensuring sustainability is not liable to compensation. Section 308 also provides that Government is not liable to compensation when TACs and TACCs are initially set when a species are first introduced into the QMS. However, the Act is silent on the issue of compensation where a reallocation between commercial and non-commercial interests takes place. This at least provides the opportunity for compensation should the Minister reallocate when a TAC or TACC is varied. The industry's concern is therefore that the Minister can avoid the risk of Government having to compensate by choosing to reallocate at the time of introduction to the QMS.

The industry identified its views on the principal areas of need to overcome the problems with the present allocation approach in its submission to Government on the 'Soundings' document as follows:



*'The current management regime for recreational fishing, including the current level of Crown intervention, is hindering increased stakeholder involvement in fisheries management and putting at risk the sustainable management of fisheries resources. SeaFIC (the Seafood Industry Council) therefore endorses the need for better definition and management of recreational fishing rights. In order to achieve this, SeaFIC supports three inter-related initiatives:*

- *Better protection for access to and exercise of harvest rights for both commercial and recreational fishers through:
  - *the use of negotiated access arrangements, including spatial use agreements, between various fisheries rights holders; and*
  - *an alternative process for resolving access disputes between recreational fishers and commercial fisheries rights holders;**
- *A proportional allocation of harvesting rights between commercial and recreational fishers for stocks where there is a significant recreational harvest; and*
- *Encouraging the representation and constructive participation of recreational fishers in access negotiations and other fisheries management processes.'*

Overall, the industry's concerns about the effectiveness of the present allocation policy centre on the current lack of definition of recreational rights which prevents the full benefits of a rights-based fishery management approach from being realised in New Zealand.

The industry feels it is in a dilemma on the allocation policy issue because it considers that the recreational sector now has stronger lobbying power. Allocation has become such a political issue that the commercial sector is reluctant to see it resolved because the result may not be in the industry's favour.

In litigation taken by the commercial sector in 1995 challenging a Ministerial decision to reallocate to the recreational sector in the snapper fishery, the Courts indicated that the law was clear that the Government had to compensate the industry where the resource was reallocated and that the Minister had an obligation to maintain the recreational sector within its allocation. To reduce the risk of having to pay compensation, the Government subsequently amended the Fisheries Act.

The commercial sector has not pressed the legal issue of maintaining the recreational sector to within its allocation because it fears the consequences of doing so more than allowing the present situation to continue. However, the continuation of the present approach means that there continues to be no basis in law or public policy for adjusting sector shares in order to provide for change in the fishery.

Overall, the commercial sector sees the policy void as causing an inexorable erosion of their commercial fishing rights. When the QMS was introduced, ITQ



was in the form of fixed tonnage. Any change to the commercial allocation had to be on a willing-seller willing-buyer basis. Starting with the change from fixed tonnage to proportional ITQ, commercial rights have been steadily weakened. The overall industry view is that Government is demonstrating that it is no longer committed to a strong rights-based fishery management approach and that other policy considerations are now more important.

#### 4.1.3 Maori Sector

The commercial Maori sector in New Zealand is represented by Te Ohu Kai Moana (TOKM), a statutory organisation which has as its principal purpose the advancement of iwi (tribes) in the development of fisheries, fishing and fishing related activities. TOKM coordinates input by Maori to the Ministry and Minister of Fisheries on a range of fisheries matters so that Maori, where appropriate, speak with a single voice on fishery matters.

Maori customary fishing rights derive from ancestral linkages between iwi/hapu (tribes/sub tribes) and their environment – a relationship that is confirmed in the Treaty of Waitangi and to which the Crown is obliged to give effect. Appendix 2 to this report provides additional background information on Maori fishing rights.

The Maori position on allocation of the TAC is broadly similar to that of the commercial sector. TOKM's submission on the 'Soundings' document included the following points on allocation:

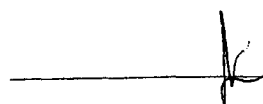
- The priority of rights should be made clear.
- Maori customary (non-commercial) rights should have priority over all other rights and should be entrenched in the law.
- Following the allocation made for customary take, Maori commercial rights should take priority. However, given the difficulties under the QMS of distinguishing between Maori and non-Maori commercial rights, all commercial rights would effectively take second place to customary but have priority over recreational.

Maori support the principle of using catch history (the claims-based approach) for allocation between sectors and do not support the use of the utility-based approach. Because the Maori commercial interest is captured within the TACC, it is very important to Maori that recreational rights are well defined and that these do not erode their commercial rights.

#### 4.1.4 Recreational Sector

A significant proportion of New Zealanders participate in the marine recreational fishery and the recreational harvest is significant. Appendix 3 provides background information on the recreational fishery.

Many recreational fishers do not belong to any formal organisation. However, there are a number of recreational fishing organisations in New Zealand which cater for specific interest groups. The New Zealand Recreational Fishing Council



(NZRFC) was formed a number of years ago at the request of Government in order to coordinate and provide a single voice where possible on issues affecting the recreational sector. The NZRFC is a Council made up of delegates representing 6 National and 9 Regional Associations plus Club representatives and Branch delegates elected to represent the public sector members.

NZRFC believes that recreational fishing rights in New Zealand should have been defined at the same time as commercial rights when the QMS was introduced. NZRFC believes that s21(d) of the Fisheries Act does give priority to recreational fishing interests when the Minister sets a TACC because in practical terms he must make that allowance before setting the TACC. NZRFC believe that if the public took Government to court over the issue, that the courts would find in the public's favour. However, the resources to pursue litigation are not available.

Recreational fishers want priority over commercial users for up to a dozen of the key species of most importance to the recreational sector. These species should be managed for non-commercial values to maximise recreational opportunities. They believe that the recreational allowance in all fisheries should be allowed to grow with growth in the general population so that recreational fishery values can be maintained. They do not support proportional allocation of the TAC as this does not provide for growth in the recreational fishery.

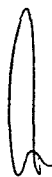
NZRFC believe that there is a lack of resourcing of the recreational sector which has made it difficult for the recreational sector to provide the kind of input needed by Government to achieve consensus on recreational fishing rights. NZRFC believe that Government should legislate to create a parent recreational organisation and provide adequate resources to fund it.

NZRFC believe that the 'Soundings' document produced by the Ministry contained the right approach for progressing the recreational fishing rights issue. However, lobby groups which are not part of mandated recreational organisations are hindering progress in reaching a consensus on how to define recreational fishing rights.

## **4.2 Discussion**

### **4.2.1 Overview**

There is no doubt that allocation to the recreational sector is being achieved under the present policy in New Zealand. However, although there are strong points in the present framework, there are some significant weaknesses to the present approach which constrain its effectiveness



It is evident that policy makers and Government are reluctant to tackle what is a controversial issue by developing a more defined recreational fishing right in the face of public opposition.

In spite of the fact that a strong, well-defined rights-based approach was adopted for the commercial sector 19 years ago, there has been no real progress since in implementing a similar approach for the recreational sector. None of the recreational policy proposals have produced a result to date. Maori Treaty fishing rights, both commercial and customary, were resolved only through litigation or the threat of litigation as anyone who was part of that process is aware. However, the same incentive to resolve recreational fishing rights issues does not exist. As a consequence of the failure to resolve recreational rights issues, many of the potential benefits that were initially envisaged when a rights-based approach was implemented in the commercial fishery are now not being realised.

Before proceeding to the final section of the report which contains an assessment of the applicability of the New Zealand model in other jurisdictions, some of the strengths and weaknesses of the present New Zealand model are discussed and summarised below.

#### **4.2.2 Strengths of the New Zealand model**

The primary strength of the New Zealand allocation model is the fact that there is an explicit statutory requirement to allocate to the recreational sector and that these explicit decisions are required to be made. The statute also requires that the allowances plus the TACC must remain within the TAC which itself must be sustainable. In setting the TACC the requirements are quite specific. The Minister of Fisheries must:

- o allow for recreational (and other) non commercial interests in setting TACCs
- o consult with sector groups, and
- o provide reasons for his/her decisions in writing.

The end result is that an explicit allowance is made to the recreational sector and all sectors have input to that decision within a statutory framework to ensure sustainability.

These statutory requirements and the annual cycle of stock assessments where information on the harvests of all sectors are clearly identified and quantified (within the limits of the available information), enhance the recognition of recreational fishing interests. The consultative process assists in refining this information and ensures that the necessary information is available for the Ministry and Minister of Fisheries to make decisions.



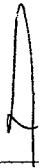
### 4.2.3 Weaknesses of the New Zealand model

Just what are the weaknesses of the New Zealand approach and is the policy ultimately effective?

There are a number of weaknesses evident in the present approach.

1. There is no specific statutory requirement to limit recreational catches to the allowance determined by the Minister of Fisheries. This undermines the underlying principle of the Fisheries Act which is to ensure sustainability of the resource.
2. There is no basis in law and no stated policy for either setting or adjusting sector shares in line with changes in the fishery or changes in the needs of sector groups.
3. The existing allocation model relies too much on Ministerial discretion on a case by case basis. Some might argue that this is an advantage because this approach does not constrain decision making. However, it causes uncertainty for all sectors with associated negative consequences, which include the following:
  - o While it may be proper for the Minister/Government to make what are ultimately political decisions about resource allocation, the present open ended Ministerial discretion and case-by-case approach imposes very high transaction costs on all sectors, including Government.
  - o As there is no statutory guidance and no specific policies have been developed by the Ministry of Fisheries or Government to guide sector groups on allocation policy, the issue is effectively up for grabs each time an allocation decision needs to be made under the QMS. Neither the recreational sector nor the commercial sector can make long term plans on their future.
4. The present policy is inequitable because although the commercial share is strictly controlled the recreational share of the resource is not and the Minister has not always acted to reduce recreational catches in accordance with allocation decisions that he has made.

For example, the 15% reduction in the allocation of kahawai to the recreational sector discussed earlier in the report was not implemented through any specific fisheries management initiatives aimed at limiting the recreational catch to the reduced level. Once the Minister of Fisheries decided to make no change to the daily recreational catch limit for kahawai he effectively signaled to all sectors that he was not prepared to constrain the recreational catch. In contrast, the commercial allocation of





kahawai was set as a TACC with all of the accompanying statutory controls under the QMS to ensure it was not exceeded.

5. The present allocation framework and policy is not durable in the medium term. The commercial right is becoming increasingly uncertain due to 'creep' of recreational catches due to population growth, without any clear policy to either allow or prevent this occurring.

Why are these weaknesses allowed to continue when they are so widely recognised, at least to some degree, by almost all of the sector groups?

When the QMS was first introduced into the New Zealand commercial fishery, there was a crisis in many of the inshore fisheries and decisive action was both needed and taken. At that time, policy makers were prepared to adopt what was considered (at the time) to be a relatively radical approach (the use of ITQs) to manage the commercial fishery. Strong policy was needed and this message was conveyed to Government and the policy was taken up.

It is now almost 19 years since the QMS was introduced and the policy incentive to implement a similar framework for the recreational sector appears to have been lost. Decisiveness has been replaced by inertia and uncertainty. Strong lobbying by certain interests in the recreational sector (especially option4) has been very destructive to reaching consensus amongst the recreational sector. Although the option4 faction represents a minority of recreational views, it presents the most extreme views and is vocal and highly visible.

New Zealand fish stocks are generally healthy (in large measure due to the effectiveness of the QMS) and along with the commercial sector, the recreational sector has benefited from this. Maori (Treaty) fisheries claims have been settled with the QMS first seen as a threat to these rights and then becoming a major part of the solution because it provided a secure form of commercial fishing right.

In 2005, there is no longer a fishery crisis. The present allocation policy deals with the issues on a day to day basis. Although the status quo is not entirely satisfactory, the system still functions adequately in political and practical terms. The recreational sector has more political voice than the commercial sector. Defining the recreational right is perceived by some recreational lobby groups as a threat rather than an opportunity. In this respect, the option4 lobby group has been extremely divisive and counterproductive to attempts to make progress in this policy area. The risk from continuing with the present less than satisfactory approach where recreational rights are left undefined is much greater to the commercial sector, but they have a much weaker voice in political terms so the commercial sector is reluctant to try to force the issue.

It is apparent that the really difficult political decisions associated with developing more explicit allocation policies and better defining recreational fishing rights have been and continue to be avoided by Government. What is unfortunate



about allowing this situation to continue is that it has made the commercial right progressively less certain over time.

The QMS implemented a rights-based management system in the commercial fishery in 1986. As well as creating an environment where competition for the resource was replaced by efficient use of the resource, one of the main benefits of this rights-based system has been the assumption of greater collective responsibility for the resource and its management by the commercial sector. However, the full benefits of the QMS will not be realised until all other sectors have similar incentives for co-management.

Specifying recreational rights has the potential to remove, or at least reduce, competition for the resource between the commercial and recreational sectors. The settlement of Maori Treaty fishing rights means that Maori interests now also have similar incentives to the commercial sector. Well defined recreational rights would create an environment where recreational fishers could begin to take more collective responsibility for the resource. It would also provide an opportunity for co-management.



## 5. Applicability in other Jurisdictions

### 5.1 *Is the New Zealand Model Applicable Elsewhere?*

Would the New Zealand model for allocation to the recreational sector be a suitable approach in other jurisdictions? What does the New Zealand experience tell us about the New Zealand approach?

If there is one message that all stakeholder groups in New Zealand agree on, including Government, it is that the best time, perhaps the only opportunity, to specify recreational rights is when commercial fishing rights are being re-defined, especially if a rights-based approach or individual quotas are being contemplated for the commercial fishery. In fact, the New Zealand experience indicates that if recreational rights are not defined at the same time as commercial rights, it may become too difficult to define them in the future.

The strengths and weaknesses of the New Zealand 'model' have been discussed in the previous section. The main strengths of the New Zealand approach are the conceptual elements and statutory provisions that require recreational (and all other non-commercial) interests to be allowed for in setting TACCs. The New Zealand statutory framework also requires that the total of the TACC and other allocations remain within the TAC which also must be set at a sustainable level. The weaknesses of the New Zealand model arise from a lack of certainty in how allocations are to be determined, so that the process has become costly to service and is highly politicised. This uncertainty is almost entirely a consequence of a reluctance to define recreational rights because they are contentious. It is also symptomatic of a failure to develop public policy documents that deal effectively with the key underlying issues, such as whether any form of priority should or should not apply to one group of stakeholders over another. The fact that these issues are contentious should not be an excuse for inaction.

The New Zealand experience also indicates that piecemeal approaches to policy do not provide durable solutions. The benefits of a strong rights-based management approach in the commercial fishery in New Zealand are clearly at risk because of the lack of well defined rights in the recreational sector.

Overall, the New Zealand model has key weaknesses that indicate it should not be adopted as the model elsewhere unless there is the will to more clearly define recreational fishing rights. There is also a need to develop and resolve key elements of the allocation policy that ensure that there is more certainty for all stakeholders. Well defined rights combined with certainty about allocation means that stakeholders have the confidence to participate in decision making knowing they are all on an equal footing. This creates the incentive for all stakeholders to participate fully and frankly in co-management. Without such an incentive, stakeholders will inevitably look to someone else for the answer.



## 5.2 Conclusions and Recommendations

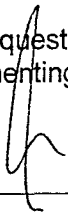
There are a number of allocation issues and questions that need to be resolved to underpin a rights-based approach to fisheries management. A number of these questions are not presently being addressed in TAC/TACC setting in New Zealand.

An effective allocation framework under a rights-based management system requires that key policy areas be fully addressed so that all stakeholders have certainty. This means that there should be answers to the following high level questions:

- Should commercial and recreational fishing rights be defined in equal terms and therefore be subject to the same statutory obligations and controls? In other words, if the commercial catch is to be controlled within a TACC, should the same degree of control be expected over the recreational catch to ensure that not only is the sustainability of the resource assured but also that allocation decisions are indeed fully and effectively implemented?
- Should the recreational allocation be a share of the TAC or a fixed quantity and similarly should the commercial allocation be a share of the TAC or a fixed quantity?
- Should any priority be given to recreational or commercial rights over the other?
- Should allocation decisions use a claims-based approach or a utility-based approach or have some other basis such as a political decision or an agreement between the stakeholders?
- How should future changes in allocation of the resource be determined, and in particular should these be political decisions or decisions reached by agreement between the rights holders?
- Should compensation be provided where allocations are changed and should that compensation be a political decision or a decision of the rights holders?
- Should allocation changes be allowed to occur in both directions, i.e., can rights transfer both from and to commercial and from and to recreational rights holders?
- Who will 'own' or hold the recreational right on behalf of recreational fishers, and to what extent is it a collective right and to what extent an individual right?
- Who has the right to harvest the recreational allocation? For example, should operators in the recreational fishing business (especially recreational charter vessels) be included in the recreational right or the commercial right?

These are not all independent issues, but they all need to be addressed.

In part the answers to these questions will be dictated by just how far policy makers want to go in implementing a rights-based framework. For example, a



rights-based framework may or may not allow full transferability within or between sectors and may or may not allow stakeholders to be responsible (in full or in part) for making allocation decisions between themselves by using the market.

Regardless of the approach that is ultimately adopted, these key questions and the related policy and implementation issues need to be thought through and answered in adopting a rights-based fisheries reform package. It is not only the present that needs to be considered, but also the future. In New Zealand, it appears that not enough consideration was given to the future when the rights-based approach was adopted in the commercial fishery. Other jurisdictions need to ensure that they do address future needs so that allocation does not become an ongoing problem and so that all stakeholders have certainty.

A handwritten signature, possibly the name 'J', is written in black ink. It consists of a vertical line with a small hook at the top and a horizontal crossbar near the bottom.

## Appendix 1

### Terms of Reference

1. Prepare a report on New Zealand policy and practice for the allocation of Total Allowable Catch (TAC) of marine species to the recreational sector in New Zealand.
2. The report will include:
  - A description of the policy, its development and operational elements that are necessary for implementation,
  - An assessment of the effectiveness of the policy from the government, stakeholders and contractor's point of view,
  - A description and assessment of the issues arising in New Zealand from implementation of the policy,
  - Discussion of the applicability of this policy to marine recreational fisheries in other jurisdictions (e.g. British Columbia).



## Appendix 2

### **Overview of Maori fishing rights and the fisheries settlement**

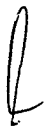
Maori fishing rights stem from guarantees in the Treaty of Waitangi. The Treaty was signed at Waitangi on 6 February 1840 by a group of Maori chiefs and the British Government. While there has been considerable controversy about the meaning of the Treaty of Waitangi (there is both an English and a Maori text which have slightly different meanings), it is generally considered to be the founding document of modern New Zealand in which sovereignty was ceded to Britain by Maori so that New Zealand became a British colony.

Detailed information on the Treaty of Waitangi, including its full text, is available on the New Zealand government website <http://www.treatyofwaitangi.govt.nz/>. The Waitangi Tribunal hears Treaty Claims and makes recommendations based on its findings to Government. Information on the Waitangi Tribunal can be found on its website <http://www.waitangi-tribunal.govt.nz>. 'The Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim' which can be found in '.pdf' format on the Waitangi Tribunal's website provided much of the impetus behind the Maori fisheries settlement in New Zealand. Further background on Maori fishing claims and settlements culminating in the Maori Fisheries Act 2004 can be found at <http://teohu.maori.nz/mfa/background.htm>.

Maori commercial fishing rights are now accommodated within the quota management system (in the form of ITQ owned by Maori) and within the QMS. Maori commercial fishing is not distinguished from other commercial fishing.

Maori fishing for food (personal use) is governed by the recreational fishing regulations that apply to all recreational fishing in New Zealand and food fishing is not included as part of Maori customary fishing rights.

Maori customary (non-commercial) fishing rights involve the taking of fish for ceremonial or social purposes only. Maori customary rights are subject to controls under the Fisheries Act 1996 and a permit must be obtained on each occasion they are exercised. The Ministry of Fisheries website <http://www.fish.govt.nz/customary/introduction.html> provides a summary of these controls. The 1996 Fisheries Act also makes provision for the establishment of local fisheries (taiapure) with Maori management committees in areas of traditional importance to Maori. It also provides for Maori fishing reserves (mataitai) which can be set aside for Maori customary fishing purposes.



## Appendix 3

### **Overview of the New Zealand marine recreational fishery**

Since the late 1980s, there have been a number of surveys and studies on recreational fishing in New Zealand. Much of the work has focused on obtaining robust harvest estimates to be used in stock assessments and TAC setting. The surveys indicate that a very high proportion of recreational fishing activity and harvest in New Zealand is undertaken by line fishing from privately owned boats, by line fishing from shore and by hand gathering or diving along the coast. There is an active recreational fishing industry (commercial operators involved in providing services to recreational fishers). Only a small proportion of this industry provides direct fishing services in the form of charter fishing trips and fishing lodges. Most of the marine recreational fishing industry supplies indirect services such as boats, fishing gear and bait.

A 1991 nationwide telephone survey (National Research Bureau 1991) found that 38% of respondents aged 16 years or older claimed to have fished (marine and freshwater) at least once in the previous 12 months. Of these 21% had fished from a boat in saltwater, 21% had fished in saltwater from land and 6% had undertaken underwater fishing. The same survey estimated that \$745 million was spent annually on recreational fishing. A 1999 nationwide telephone survey (Akroyd Walshe 1999) found that 78% of respondents aged 16 years or older claimed to have fished in the sea at least once at some time in the past, with 45% claiming to have fished at least once within the past 12 months. The definition of fishing in this survey included fishing in the sea from a boat, fishing in the sea from land, fishing for sea-going species at a river mouth, underwater fishing and fishing by hand gathering or trapping (e.g. shellfish gathering). When expanded to the New Zealand population (both the 1991 and 1999 telephone surveys were fully national using random samples), these surveys indicate that up to 2 million adults say they have fished in the sea at some time in the past, and nearly 1 million say they fished in the previous 12 months. New Zealand's adult population (age 16 years or older) is about 3 million out of a current total population of about 4 million people.

Commencing in 1991, the Ministry of Fisheries conducted regional surveys and then subsequently undertook national surveys to estimate marine recreational harvests throughout New Zealand. In 1996 the first national marine recreational fishing survey (NMRFS) estimated harvests using a combined telephone, diary and boat ramp survey (Bradford 1998). A second national survey was undertaken in 2000 (Boyd & Reilly, in press) using nearly the same methodology, followed by a repeat survey in 2001. A technical review of the survey methodology following the 2000 NMRFS indicated that the harvest estimates using the combined telephone survey diary method may not be as accurate as earlier believed. A new methodology using a combined aerial and boat ramp



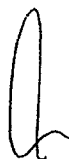
survey is currently being tested to replace the telephone and diary survey method.

Harvest estimates in the 1996 and 2000 NMRFS cited above indicate that recreational harvests for some species are very significant and may exceed commercial harvests. For example recreational harvests in the popular snapper (*Pagrus auratus*) fishery in northern New Zealand were estimated at 2.4 million fish (2,300 metric tonnes) in the 1996 survey and 6.9 million fish (6,200 tonnes) in the 2000 survey. This is believed to be the largest recreational fishery in the country. The commercial TACC in this snapper fishery is 4,500 tonnes. With the majority of New Zealand's population living in northern New Zealand, it is not surprising that the allocation of the snapper resource between recreational and commercial users is very high on the public agenda. The commercial snapper fishery is also one of the most valuable inshore fisheries in northern New Zealand and is a key species to the economic viability of many commercial fishers and local fishing companies.

There is no requirement for a marine recreational fishing license in New Zealand. Public opinion is strongly opposed to any marine recreational fishing license requirement and it appears highly unlikely that Government will consider introducing a license in the foreseeable future.

## References

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- Boyd, R.O.; Reilly, J.L. (in press). 1999/2000 national marine recreational fishing survey: harvest estimates. *New Zealand Fisheries Assessment Report 2005/XX* 28 p.
- Bradford, E. (1998). Harvest estimates from the 1996 national marine recreational fishing survey. *New Zealand Fisheries Assessment Research Document 98/16*. 27 p. (Unpublished report held in NIWA library, Wellington, New Zealand)
- National Research Bureau (1991). The economic worth of recreational fishing in New Zealand. *Recreational Research Report*. (Unpublished report held by National Research Bureau, Auckland, New Zealand.)



## Organisations Consulted

The Consultant had informal discussions with a range of persons in all sectors in the course of preparing this report in order to gain a better understanding of current policies and how they operate, and greatly benefited from these discussions.

In addition, the following organisations and persons were consulted to obtain the stakeholder views on allocation presented in section 4.1 of the report. While every attempt has been made to properly represent the views of stakeholders, the author takes full responsibility for the summaries of those views and any conclusions drawn from them in this report.

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Ministry of Fisheries, Wellington. S. Crothers, M. Edwards

New Zealand Seafood Industry Council, Wellington. N. Gibbs

Sanford Ltd, Auckland. V. Wilkinson.

Te Ohu Kai Moana, Wellington. T. Norris.

New Zealand Recreational Fishing Council, Wellington. M. Heatherington.

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New Zealand Big Game Fishing Council, Whangarei. J. Romeril.



## About the Contractor

Rick Boyd was born and raised in BC and has been involved in fisheries biology and management in Canada and in New Zealand for over 35 years. He worked as a Fisheries Biologist for Environment Canada, Fisheries Service, in Vancouver for seven years in the 1970s after completing his Master of Science degree in zoology. With the Fisheries Service in Vancouver he worked on the roe herring and other fisheries on the Central Coast and in Georgia Strait. He moved to New Zealand in 1978, continuing his career in fisheries management and research. His New Zealand experience includes 11 years with the Ministry of Fisheries from 1978 to 1989 where he was deeply involved in fisheries management in the frenetic period leading up to the introduction of the QMS in 1986 and the first few years after its implementation. In 1980 he chaired a Ministry of Fisheries working group that developed the conceptual framework for the 1983 Fisheries Act which replaced the outdated 1908 Fisheries Act. In 1986 and 1987 he was a member of the Crown's team that provided evidence to the Waitangi Tribunal in response to the Muriwhenua Fisheries Claim, the first major Treaty claim on fisheries. Since 1989 he has worked as an independent fisheries consultant. In 1990 he assisted Maori on the Ngai Tahu fisheries claim before the Waitangi Tribunal. In 1992 he was appointed to a Government review team to review the quality and relevance of fisheries research in New Zealand. As a research provider to the Ministry of Fisheries, he led the project team responsible for the 1999-2000 and 2000-2001 national marine recreational fishing surveys to estimate marine recreational catches in New Zealand. As a fisheries consultant he has worked on a wide range of projects for Government, industry, the recreational sector and Maori.



