

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 Kim Andrew Robert Walshe in support of application for review  
Sworn this 26th day of August 2005**

Next Event Date:  
Judicial Officer:



**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 QC

09 375 8778  
09 366 0777

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

I, **Kim Walshe**, of Auckland, fisheries scientist and consultant, swear:

**1. Qualifications and Experience**

- 1.1 I am a fisheries scientist by profession with 31 years experience in fisheries management and research in New Zealand. I have been involved in marine fisheries resource assessment, management and research since 1974.
- 1.2 I am presently self employed as a consultant in marine and fisheries science and fisheries management and I am a Director of Akroyd Walshe Ltd which undertakes fisheries research and fisheries management advice for government and private companies. I hold the degrees of Bachelor of Science in Zoology from the University of Otago, and a Master of Business Administration from the University of Auckland. I am currently undertaking a PhD at Auckland University studying the management of commercial and recreational fisheries for the 30 year period from 1970 to 2001.
- 1.3 From 1974 until 1994 I was employed by the Ministry of Fisheries in a number of positions, starting as Scientist for the Bay of Plenty region (1974 and 1984). My work involved biological and fisheries management research, primarily in the Coromandel Scallop fishery.
- 1.4 In 1984 I transferred to Fisheries Management Division of the Ministry of Agriculture and Fisheries ("MAF"), now the Ministry of Fisheries (the "Ministry") as Assistant Director. My responsibility was two fold. Firstly policy development related to the planning and implementation of the Quota Management System. My second responsibility was as national manager of the Fisheries Management Science staff. This work involved determining the work programmes for science staff and monitoring their research and management work in commercial and recreational fisheries.
- 1.5 In 1986-87 I was appointed as national manager of recreational and aquaculture fisheries in the Ministry of Fisheries. Part of my role was the development of a national policy for recreational fisheries.
- 1.6 In 1988 I was appointed Regional Manager 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.



- 1.7 As the Regional Manager I was responsible for the Auckland regions science, enforcement and quota monitoring staff. As part of my role I developed consultative working groups with the various fishing sectors (Maori, commercial and recreational fisheries). During this time (and after leaving the Ministry in 1994) I have chaired a number of recreational (and other sector) working groups addressing fisheries management issues in the Auckland region. For example I chaired three recreational and other sector groups whose purpose was to develop strategic plans for the snapper fishery in the Auckland region. These committees and those related to the development of Fisheries Management Plans provided me with an understanding of recreational fisheries and related fisheries management issues.
- 1.8 In 1994 I resigned from MAF 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, Treaty of Waitangi Fisheries Commission, New Zealand Recreational Fishing Council and various private business clients.
- 1.9 I was appointed by the Minister of Fisheries (Hon Pete Hodgson) to two national consultative groups dealing with recreational fisheries. I have recently been appointed to the Recreational Fishing Ministerial Advisory Committee by the current Minister of Fisheries.
- 1.10 As a result of my experience, I am familiar with the history of fisheries management in New Zealand and with most developments in the management of New Zealand fisheries from the early 1970's onward, including legislation, policy and research.
- 1.11 **Attached** as Exhibit A is my full CV.
- 1.12 I have read the Code of Conduct for expert witnesses and agree to comply with it.
- Purpose**
- 1.13 I have been retained by the Plaintiff to act as an independent person to review the management of the kahawai fishery and the policy development of the recreational fishery, and to comment on the Minister's 2004 kahawai decisions in the light of this policy development.
- 1.14 In approaching this task I have had made available to me documentation obtained by the plaintiff groups through Official Information Act requests.

## 2. Terminology

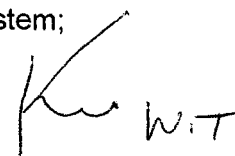
2.1 In this affidavit, I use the following terms:

- a. "2004 FAP" means the Ministry's Final Advice Paper dated 29 June 2004;
- b. "2004 IPP" means the Ministry's Initial Position Paper dated 12 January 2004;
- c. "ITQ" means Individual Transferable Quota;
- d. "the Minister" means the Minister of Fisheries;
- e. "the Ministry" means the Ministry of Fisheries also known as MAF, MAFFish or MFish;
- f. Unless the context otherwise indicates "the Minister's 2004 decision" means the Minister of Fisheries' 5 July 2004 decisions as communicated to stakeholders by letter dated 10 August 2004;
- g. "MSY" means maximum sustainable yield, which is the greatest yield that can be achieved over time while maintaining the productive capacity of the stock;
- h. "NZBGFC" means the New Zealand Big Game Fishing Council Inc.;
- i. "NZRFC" means the New Zealand Recreational Fishing Council Inc.;
- j. "QMA" means Quota Management Area;
- k. "QMS" means the Quota Management System;
- l. "TAC" means Total Allowable Catch;
- m. "TACC" means Total Allowable Commercial Catch.

## 3. Outline

3.1 This affidavit contains the following sections:

- A. Summary of Opinions;
- B. Early Management of Kahawai;
- C. The Introduction of the Quota Management System;



- D. The conflict over kahawai;
- E. The introduction of Kahawai to the Quota Management System.

#### 4. The Early Management of Kahawai

- 4.1 Prior to the 1980's recreational fishing had not been recognised as a major fisheries policy concern. The approach to recreational fisheries management in the 1970s was through the effective management and control of the commercial sector to ensure that sufficient fish resources are available for recreational fishermen.
- 4.2 Early commercial catches of kahawai were low.
- 4.3 During the 1960s, commercial fishers experimented with various techniques for catching pelagic species such as tuna, trevally, mackerel and kahawai. Their primary aim was to build a tuna fishery because they were thought to be valuable and had an overseas market.
- 4.4 The book 'Hooked – The Story of the New Zealand Fishing Industry' published by the Seafood Industry Council describes early attempts by industry to develop pelagic species during the 1960s ("Hooked").<sup>1</sup> There were stories of great shoals of surface-schooling pelagic fish but no-one had yet developed a method of catching them in bulk. Purse seining emerged as the method with the greatest capacity for catching large quantities of surface schooling fish. The method is described at page 231 in *Hooked*:

*"The principle of purse seining was to surround a school of fish and to close the net under them. There were several variations on the basic method but all involved 'pursing' the net by drawing tight on a wire rope running through rings along the bottom of the net. The ends of the net were hauled in until concentrated alongside the vessel...The skill lay in encircling the school, then closing the net before the fish could escape underneath."*

- 4.5 *Hooked* says that the experiments during the 1960s failed because insufficient quantities of tuna were landed, and trevally, mackerel and kahawai were hard to sell. During this period, there was no conflict between commercial and non-commercial fishers over kahawai and the fishery provided adequately for all users.

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<sup>1</sup> Johnson D., *et al.* (2004) *Hooked – The Story of the New Zealand Fishing Industry.*

- 4.6 Until the mid 1970s, kahawai were only caught as a by-catch of commercial fishing methods targeting other species such as snapper, the preferred table fish on the domestic market. Some kahawai was used for bait but much of it was dumped at sea. "New Zealand Fisheries" by J. G. Watkinson & R. Smith 1972 says at page 42:

*"In New Zealand there is little market demand for kahawai, although the fish was formerly popular with the Maori. Until recently there was no fishery for kahawai and it was caught as a by-catch in other fisheries. Small amounts are caught by trawlers but most are discarded at sea".*

- 4.7 In the mid 1970s domestic purse seine vessels started fishing for skipjack tuna in the summer and other species including trevally and kahawai during the winter, mainly in the Bay of Plenty and around Poverty Bay. By the late 1970s purse seining for kahawai during the winter and spring months had extended from Northland to the Wairarapa Coast, into the Taranaki Bight and around the north and east of the South Island. After 1977 the trevally catches declined and the purse seine vessels turned to concentrate more on less preferred species, such as kahawai and mackerels.

## 5. **The Introduction of the Quota Management System**

- 5.1 The new fisheries management regime was introduced in 1983 by the Fisheries Act 1983 but it did not include the quota management system (QMS) until 1986, when the QMS was introduced by the Fisheries Amendment Act 1986.
- 5.2 The QMS was intended to constrain commercial catches, particularly the overfishing and depletion of inshore fishing stocks that had occurred during the 1970's and 1980's.<sup>2</sup> The introduction of the QMS in 1986 marked the first stage in a property rights based management regime for New Zealand fisheries.

### **The Mechanics of the QMS**

- 5.3 The provisions of the Fisheries Act 1983 which gave effect to the QMS empowered the Minister to bring species into the QMS by declaring them "*subject to quota fishing*". A decision to include a species within the QMS was required to define the quota management areas (QMAs)

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<sup>2</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper, at page 5.

for that species and the Minister could declare species subject to the QMS for any specified QMA.

- 5.4 The Minister was empowered to specify a total allowable commercial catch (originally referred to as the "total allowable catch available for commercial fishers") available for each applicable quota management area. In setting a total allowable commercial catch (TACC), the Minister was required to allow for Maori, traditional, recreational, and other non-commercial interests in the fishery.
- 5.5 Once set, TACCs were to be allocated to individual fishers as individual transferable quota (ITQ) in proportion to their catch history for each QMA.
- 5.6 ITQ was a valuable asset in the hands of holders, being, at the time, a guaranteed perpetual authorisation from the Crown to harvest fish within a QMA to a prescribed annual tonnage limit, which was set yearly by the Crown.<sup>3</sup> With ITQ allocated to each individual fisher in proportion to catch history this provided commercial fishers an incentive to target non-QMS species as much as possible before their introduction to the QMS in order to maximise their catch histories. The larger each fisher's catch history, the more ITQ they would receive. In policy terms it was a perverse incentive as it was not the objective of the QMS to influence fishers behaviour in this manner. However, this strong commercial incentive resulted in commercial fishers maximising catches in species prior to their introduction to the QMS.
- 5.7 As compared with commercial fishing rights, relatively little was known about the extent of non-commercial catch levels at the time. Non-commercial fishers were left out of the rights-based approach. Although not included in the QMS, a review of the marine recreational fisheries controls occurred in 1983. A new regulation category (the Fisheries Amateur regulations) was introduced with the intention to '...provide a simple code for all amateur recreational fishers'.<sup>4</sup>

#### **Kahawai left as non-QMS species**

- 5.8 Although many species were introduced to the QMS shortly after the 1986 Amendment Act, Kahawai were left as a non-QMS species along

<sup>3</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper, at page 46.

<sup>4</sup> Botham, L. (1984) Fisheries Regulations Amended. Catch '84 June. Volume 11:1, Ministry of Agriculture and Fisheries, Wellington.

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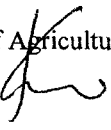
with some other species, probably because of their relatively low value as commercial fish.

- 5.9 This meant that there were effectively two fisheries regimes in place, one governing QMS species and another governing non-QMS species, including kahawai. The non-QMS species were expected to be introduced to the QMS in the near future. In the meantime, non-QMS species were at risk of overfishing as commercial fishers targeted non-QMS species to build up their catch histories in anticipation of those species being introduced to the QMS, and ITQ being allocated on the basis of catch history.
- 5.10 Policy consideration was given within the Ministry to the development of recreational fisheries policy in the context of the new ITQ commercial fisheries policy. In 1984 the Ministry of Fisheries published a discussion document on options for the management of inshore finfish fisheries.<sup>5</sup> The document made a number of references to recreational fishing. For example one of the objectives of the management measures was '*To preserve a satisfactory recreational fishery*' and an aim of the proposed policy was '*To enhance the recreational fishery*' (at page 10). The policy primarily addressed management (ITQs) for the commercial fishery and the need for constraint, but also foreshadowed the need for recreational fisheries management in stating '*Recreational fishers will have their catches of ITQ species restrained by daily catch limits*' (at page 24).
- 5.11 As part of 1984 inshore fishery policy initiative, the Ministry developed a marine recreational fisheries policy to be introduced in tandem with the implementation of ITQs. By August 1986 the draft policy had been developed.<sup>6</sup> However the policy was never implemented. There was a Ministry decision that insufficient resources were available to undertake both the QMS and Marine Recreational Policy regimes.<sup>7</sup>
- 5.12 Although amateur bag limits for shellfish/crustacean species and size limits for many species for had been in place since the 1970s, the first broad application of finfish bag limits was introduced in 1984. However the affected species were part of a combined bag limit of 50 fish per day

<sup>5</sup> Ministry of Agriculture and Fisheries (1984) Fisheries Management Options for Auckland Fisheries Management Area.

<sup>6</sup> Ministry of Agriculture and Fisheries (1986) Recreational Policy Update, Fisheries Bulletin Volume 1, Number 8, September 1986.

<sup>7</sup> The author (as Assistant Director of Fisheries Management Division, Ministry of Agriculture and Fisheries) was present at the Directors meeting where the decision was made.

  
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(rather than specific species limits) and the control only applied in one geographical area - the Hauraki Gulf.<sup>8</sup> In 1986 a comprehensive bag limit regime for the most important amateur target species was introduced.

5.13 The 1983 Fisheries Act also provided for the development of Fisheries Management Plans. However the FMPs were never implemented.

## 6. The dramatic increase in commercial kahawai catch post 1974

6.1 From the late 70s through the 80s the purse seine catch of kahawai increased dramatically. The main areas of commercial fishing were believed to be from the Bay of Plenty to Gisborne and the northern waters of the South Island. From 1983 – 1986 the Ministry estimated that purse-seining accounted for over 75% of commercial catches.

6.2 Table 1 below shows the steady increase in the *reported* commercial catches from 1974.<sup>9</sup> These are national reported commercial catch levels, and do not describe the catch within individual areas.

**Table 1: Reported catch (t) from the commercial fishery, from 1974 to 1987 -88.**

Year	Reported Commercial Catch (in tonnes)
1974	812
1975	345
1976	729
1977	1461
1978	2228
1980	3265
1981	3085
1982	3236
1983	4965
1984	4667
1985	4381
1885/86	4608

<sup>8</sup> Botham, L. (1984) Fisheries Regulations amended, Catch '84 June, Volume 11:5, Ministry of Agriculture and Fisheries, Wellington.

<sup>9</sup> MAFFish (1989) Recommendations from the Fishery Assessment Plenary, at page 90.

1986/87	7667
1987/88	9608

### Under reporting and misreporting of kahawai catch

- 6.3 The reported national catch figures above, however, do not show the full extent of the increase in commercial catch because there was also an amount of non-reporting and misreporting of kahawai catch during that period. This was known to the Ministry and was discussed in the Ministry's 1988, 1989 and 1990 Plenary reports which the Ministry produced to analyse the status of kahawai stocks from 1989 onwards.<sup>10</sup>
- 6.4 Three main sources of commercial non-reporting were noted in the Ministry's 1990 Plenary report.<sup>11</sup>
- a. Kahawai dumped at sea;
  - b. Bait for line and rock lobster fisheries; and
  - c. Catch reported as "mixed fish" by the purse seine fishery.
- 6.5 It was thought that large-scale *non*-reporting ceased by about 1983 because it became preferable to land kahawai rather than dump them at sea as more valuable commercial species became scarcer.
- 6.6 The Ministry's depiction of historical catch rates in Figure 1 under paragraph 117 of the Ministry's final advice paper (2004 FAP) to the Minister did not appear to include estimates of non-reported and mis-reported catch of kahawai.<sup>12</sup>

### Purse seine catch increases to record high

- 6.7 After 1986 and the introduction of the QMS, the purse seine fleet increased from 5 vessels to 7 vessels.<sup>13</sup>
- 6.8 During the same period, non-commercial fishers were reporting to the Ministry that kahawai were becoming increasingly difficult to catch.<sup>14</sup>

<sup>10</sup> MAFFish (1988) Papers from the workshop to review fish stock assessments 1987-88 for the New Zealand fishing year; MAFFish (1989) Recommendations from the Fishery Assessment Plenary; MAF Fisheries (1990) Report from the Fishery Assessment Plenary, April – May 1990: Stock Assessments and Yield Estimates.

<sup>11</sup> MAF Fisheries (1990) Report from the Fishery Assessment Plenary, April – May 1990: Stock Assessments and Yield Estimates, at page 94.

<sup>12</sup> MFish (29/06/04) Final Advice Paper on Kahawai, Figure 1.

<sup>13</sup> MAF Fisheries (1990) Report from the Fishery Assessment Plenary, April – May 1990: Stock Assessments and Yield Estimates.

<sup>14</sup> MAFFish (1988) Papers from the workshop to review fish stock assessments 1987-88 for the New Zealand fishing year.

Areas such as the Motu River Mouth in the eastern Bay of Plenty were identified as being of particular importance to non-commercial fishing. The Ministry's Plenary report for the 1987/88 fishing year also noted that.<sup>15</sup>

*"Much use is made of Kahawai in the Northland as bait for the big game sports fishing industry. Further uses of kahawai in the area are by tourists both for fishing and for the visual attraction of large schools of fish."*

- 6.9 Despite the estimated high levels of commercial catch and non-commercial fishers concerns, a lack of reliable stock assessment information meant that there was a lack of scientific evidence to prove that the catch rates were not sustainable. The Ministry's Plenary report for the 1987/88 fishing year said:<sup>16</sup>

*"With the exception of anecdotal reports of localised depletion occurring in some Northland waters, recent estimated catch levels appear to have been sustained without evidence of overfishing."*

- 6.10 The lack of evidence of overfishing was due to the lack of scientific information available. The Ministry's above statement suggests that there was evidence that the high commercial catch levels were sustainable without overfishing. However in reality, the Ministry did not have sufficient scientific evidence to establish whether the catch levels were sustainable or not.
- 6.11 By the 1987-1988 fishing year, the reported commercial catch had reached a peak of 9608 tonnes, which was a record high. The 7 purse seine vessels took 86% of the catch. Nearly half (4769 tonnes) of the total catch was taken from the Bay of Plenty, whereas in previous years about 20-30% of the commercial catch had been taken from that area.<sup>17</sup> This meant that the effect on the stock became concentrated in that area which forms part of KAH1.
- 6.12 The dramatic increase in 1988/89 was probably because commercial fishers aimed to fully report their catches or increase catch to build up

<sup>15</sup> MAFFish (1988) Papers from the workshop to review fish stock assessments 1987-88 for the New Zealand fishing year, at page 159.

<sup>16</sup> MAFFish (1988) Papers from the workshop to review fish stock assessments 1987-88 for the New Zealand fishing year, at page 160.

<sup>17</sup> MAFFish (1989) Recommendations from the Fishery Assessment Plenary.

catch histories in the anticipation of kahawai being introduced to the QMS. The Ministry's Plenary report for 1990 said<sup>18</sup>:

*"The increase in catch since 1985 was probably due to commercial fishers and fishing companies ensuring that their kahawai catch was fully reported, and increasing targeting for kahawai in anticipation that kahawai would become incorporated into the QMS. Kahawai is currently not part of the QMS, and there are no TACs on the fishery."*

- 6.13 The Ministry's 1989 Plenary report provided some scientific information which indicated that the commercial kahawai catch alone was well above the best available estimates of sustainable catch levels. Maximum constant yield (MCY) for the commercial fishery was estimated at 3048 tonnes in 1989.<sup>19</sup> MCY estimates are the maximum yield that can be consistently taken from a fishery on a yearly basis and is an indicator of sustainability.
- 6.14 The reported commercial catch of 9608 tonnes for the 1987/88 fishing year was more than three times the best available estimate of sustainable catch (3048 tonnes).

#### **Recognition of the need to constrain commercial catches**

- 6.15 In its Plenary report for 1989, the Ministry noted that non-commercial fishers were submitting that it was becoming increasingly difficult to catch kahawai, particularly between the North Cape and East Cape.
- 6.16 The report acknowledged that areas in the Bay of Plenty such as the Motu river mouth were particularly important for non-commercial fishing. The Bay of Plenty area was also the area where about half (4769t) of the commercial catch was taken in 1988/89.<sup>20</sup> The commercial catch in the Bay of Plenty alone exceeded the best available estimate of sustainable catch for the whole fishery across New Zealand.
- 6.17 Concern about the availability of kahawai to non-commercial fishers was growing, particularly in the area which now forms KAH1. Kahawai was described as a "very significant" recreational fish.<sup>21</sup> A Marine Recreational Survey from 1987 had shown kahawai as the second most

<sup>18</sup> MAF Fisheries (1990) Report from the Fishery Assessment Plenary, April – May 1990: Stock Assessments and Yield Estimates, at page 94.

<sup>19</sup> MAFFish (1989) Recommendations from the Fishery Assessment Plenary, at page 91.

<sup>20</sup> MAFFish (1989) Recommendations from the Fishery Assessment Plenary, at page 90.

<sup>21</sup> MAFFish (1989) Recommendations from the Fishery Assessment Plenary, at page 91.

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frequently caught species by recreational fishers and it estimated that 311,345 non-commercial fishers were catching kahawai annually.<sup>22</sup>

- 6.18 The Ministry's Plenary report for 1989 concluded that there was a conflict between recreational and commercial fishers and that commercial catches needed to be constrained.<sup>23</sup> A combination of overall commercial catch restrictions and local area restrictions on commercial catches was suggested.
- 6.19 In anticipation of constraints on commercial kahawai fishing, Sanford wrote to the Ministry by letter dated 23 April 1990. This was addressed to me in my capacity as regional manager.<sup>24</sup> The letter stated that commercial fishers had been encouraged to target pelagic species in the late 1970's and early 1980's and had made a large investment. Among other things, it stated that there was a lack of hard evidence to support submissions by non-commercial fishers that kahawai numbers had substantially declined and stressed the need for scientific research.
- 6.20 By early 1990, the proposed restrictions had not yet been introduced. The reported commercial catch for the 1988-89 year was down on the record high at 7374 tonnes but still well above the then estimated MCY of 5180 tonnes.<sup>25</sup> Although kahawai had been identified as a significant non-commercial species, no information on non-commercial catch was available. The Ministry's 1990 Plenary report states:<sup>26</sup>

*"There is an urgent need to obtain a better estimate of the total catch of this important non-commercial species."*

- 6.21 The 1990 Plenary report repeated the need to introduce restrictions on commercial catches and, similarly to the 1989 report, suggested a combination of overall and localised controls on commercial catch.<sup>27</sup>

## **7. The Introduction of Commercial Catch Limits**

- 7.1 The rapid increase in purse seine catches and reports from non-commercial fishers that kahawai were no longer available led the

<sup>22</sup> MAFFish (1989) Recommendations from the Fishery Assessment Plenary, at page 92.

<sup>23</sup> MAFFish (1989) Recommendations from the Fishery Assessment Plenary, at page 92.

<sup>24</sup> Letter from Sanford to MAFFish dated 23 April 1990.

<sup>25</sup> MAF Fisheries (1990) Report from the Fishery Assessment Plenary, April – May 1990: Stock Assessments and Yield Estimates, at page 95.

<sup>26</sup> MAF Fisheries (1990) Report from the Fishery Assessment Plenary, April – May 1990: Stock Assessments and Yield Estimates, at page 96.

<sup>27</sup> MAF Fisheries (1990) Report from the Fishery Assessment Plenary, April – May 1990: Stock Assessments and Yield Estimates, at page 96.

then Minister, the Honourable Ken Shirley, to review the management of kahawai in 1990.

- 7.2 The Government considered several mechanisms to manage kahawai. The preferred options were Term Transferable Quotas or Individual Transferable Quotas but both were unavailable. ITQ were unavailable because the Crown was prevented from issuing ITQ until Maori claims had been settled. Term Transferable Quotas ("TTQs") were unavailable without new legislation.
- 7.3 Commercial catch limits were the least preferred but only remaining option. Several major problems were identified with them. The Ministry said "*history shows competitive TACs [commercial catch limits] have often been unsuccessful*".<sup>28</sup> In a proposal to the Minister, the Ministry discussed the problems with commercial catch limits, saying that they created a "*competitive race for fish*" which was the "*antithesis*" of one of the Ministry's aims of fisheries management being.<sup>29</sup>

*"An allocation system which allows individuals to plan their own fishing in the most efficient manner with minimal need to take account of other fishers' activities."*

- 7.4 Commercial catch limits were said to do the exact opposite. The Ministry said:<sup>30</sup>

*"Competitive TACs encourage increasing fishing effort and targeting, distortions in fishing practice and a tendency to bulk catching methods which produce poor quality fish."*

- 7.5 Purse seining was the most prevalent bulk fishing method at the time. Commercial catch limits were also thought to lead to.<sup>31</sup>

*"Increased fishing effort as the catches approach the TAC. Whereas individual allocations encourage the fisher to spread catches out during the fishing year, competitive TACs usually have the opposite effect. As the TAC level is approached, fishing*

<sup>28</sup> MAF Fish (24/04/90) Memo to the Minister of Fisheries: Management Options for the Kahawai Fishery, at page 7. Note that "competitive TAC" are the same as "competitive catch limits" and "commercial catch limits", the terms are sometimes used interchangeably.

<sup>29</sup> MAF Fish (24/04/90) Memo to the Minister of Fisheries: Management Options for the Kahawai Fishery, at page 3.

<sup>30</sup> MAF Fish (24/04/90) Memo to the Minister of Fisheries: Management Options for the Kahawai Fishery, at page 6.

<sup>31</sup> MAF Fish (24/04/90) Memo to the Minister of Fisheries: Management Options for the Kahawai Fishery, at page 6.



*effort increases as fishers seek to maximise their share of whatever allocation is left."*

- 7.6 A document was produced in 1990 called "Proposals for the Management of the Kahawai fishery" outlining the Minister's proposals. It noted.<sup>32</sup>

*"There is concern in the rapid rise in commercial catch of kahawai in recent years in the absence of any information about the sustainability of increased levels of catch."*

- 7.7 The report noted the trend of increasing commercial catches and identified purse seining as the major source. It said:<sup>33</sup>

*"Catches have fluctuated from year to year, however there has been an increasing trend in commercial catch. The major commercial fishing method for kahawai is purse seining, with smaller quantities taken by set nets. Kahawai is also taken as a by-catch of other fishing methods. Currently managed as a non-quota species, kahawai are subject to few commercial fishing restrictions."*

- 7.8 A meeting report between the Ministry and Sanford shows the then Minister's thinking, it says:<sup>34</sup>

*"Mr Shirley replied that he did not see competitive quotas as desirable in the long term, but as TTQs were not available without new legislation and the Government had made a commitment not to issue quota rights in perpetuity, IQs and competitive quotas are the remaining options. IQs are not favoured because they give a message relating the basis of allocation to catch history. In any case he did not believe that IQs could be introduced by 1 October, Competitive TACs [commercial catch limits] are a **holding position** because we need to have some management of kahawai" [emphasis added].*

- 7.9 Being the least preferred but only available option, the then Minister introduce commercial catch limits as an interim holding position. The Minister's initial decision did not include decisions to set limits for each

<sup>32</sup> MAF Fish (1990) Proposals for the Management of the Kahawai Fishery, at page 6.

<sup>33</sup> MAF Fish (1990) Proposals for the Management of the Kahawai Fishery, at page 4.

<sup>34</sup> MAF Fisheries (23/08/90) Meeting Report of meeting between MAF Fish and Commercial Fishing Representatives, at page 1.

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individual QMA and the issue of how to apportion to the total limit between QMAs was still being debated.

- 7.10 The New Zealand Big Game Fishing Council (NZBGFC) wrote to the Minister saying that setting a commercial catch limit was a positive step but outlined remaining major concerns.<sup>35</sup> The submission stated the NZBGFC's concern that the catch limits for each QMA would be based on pro-rata reductions from catch history which would distort the commercial catch limits, and concentrate the catch allowance in QMA1. The submission also noted that the commercial catch limits only controlled target catches of kahawai, not by-catch.

### **A Change in Government**

- 7.11 The government changed and there was a new Minister appointed, the Honourable Doug Kidd. In a letter dated 1 February 1991, the new Minister explained that he was in the process of reviewing the decisions made by his predecessor.<sup>36</sup>
- 7.12 Minister Kidd was of the opinion that transferability was necessary for kahawai and proposed to introduce ITQ.<sup>37</sup> The Minister hoped to reach a settlement with Maori so that a system of ITQ could be implemented as soon as possible.
- 7.13 As a holding position, the Minister decided to set commercial catch limits as proposed by his predecessor and purse seine catch limits were imposed for each quota management area.

### **The 1990/91 Commercial Catch Limits**

- 7.14 The new Minister retained the total commercial catch limit at 6,500 tonnes set by his predecessor and set purse seine catch limits for each QMA in proportion to average purse seine catch for 1987-1989. No restriction was placed on KAH 9 or KAH 10.<sup>38</sup> A voluntary moratorium on the targeting of kahawai by the purse seine method in the Bay of Plenty from 1 December 1990 to 31 March 1991 was also in place which had been negotiated between the commercial fishers and recreational fishing representatives. There was no control placed on kahawai by-catch.

<sup>35</sup> NZBGFC letter to the Ministry of Fisheries dated 27 September 1990.

<sup>36</sup> Letter from the Minister of Fisheries dated 1 February 1991.

<sup>37</sup> Letter from the Minister of Fisheries dated 20 May 1991.

<sup>38</sup> Letter from MAF Fish to Auckland FISHMAC dated 17 June 1991.



### The 1991/1992 Commercial Catch Limits

- 7.15 The scientific information provided by the 1991 Plenary report was uncertain saying "*it is unclear whether current catches are sustainable*".<sup>39</sup> The report showed that purse seiners took 90% of the total commercial catch for 1989/90.
- 7.16 The Minister kept the commercial catch limits and the purse seine catch limits the same. The overall commercial catch limit remained at 6,500t and the purse seine catch limits were 1,666 for KAH 1, 851 for KAH 2 and 2,339 for KAH 3.
- 7.17 The commercial catch limits for the 1992/1993 fishing year were rolled over from 1991/92. The voluntary moratorium on purse seining in the Bay of Plenty also remained in force from 1 December 1990 to 31 March 1991.

### The 1993/94 Commercial Catch Limits

- 7.18 In 1993, there was a "TACC review" for the 1993/94 fishing year.<sup>40</sup> Although kahawai were not part of the QMS, the term TACC was used to describe the commercial catch limits imposed from then on. The TACC review evaluated the TACC options in conjunction with the 1993 Plenary report.<sup>41</sup>
- 7.19 The Plenary report was not underpinned by adequate stock assessment information.<sup>42</sup> The Plenary report stated, however, that research already underway would improve the stock assessment information.<sup>43</sup>
- 7.20 The TACC review discussed submissions from industry and the recreational sector. Recreational fishers from the NZBGFC and the NZRFC had submitted that "*recreational catches are poor*" and reported a marked decline in recreational catch.<sup>44</sup> The Ministry noted the recreational fishers submissions.<sup>45</sup>

<sup>39</sup> MAF Fisheries (1991) Report from the Fishery Assessment Plenary, April – May 1991: Stock Assessments and Yield Estimates, at page 120.

<sup>40</sup> MAF Fisheries (1993) TACC and Management Review for the 1993/94 Fishing Year.

<sup>41</sup> MAF Fisheries (1993) Report from the Fishery Assessment Plenary, May 1993: Stock Assessments and Yield Estimates.

<sup>42</sup> MAF Fisheries (1993) Report from the Fishery Assessment Plenary, May 1993: Stock Assessments and Yield Estimates.

<sup>43</sup> MAF Fisheries (1993) Report from the Fishery Assessment Plenary, May 1993: Stock Assessments and Yield Estimates, at page 136.

<sup>44</sup> MAF Fisheries (1993) TACC and Management Review for the 1993/94 Fishing Year, at page 41.

<sup>45</sup> MAF Fisheries (1993) TACC and Management Review for the 1993/94 Fishing Year, at paragraph 26.

*"A considerable body of anecdotal evidence suggests there is a problem with availability of kahawai to the recreational sector, particularly in KAH 1 and KAH 9 where they submit fish are smaller and less abundant".*

- 7.21 Sanford submitted in a letter dated 27 August 1993 that purse seine companies had agreed to extend the moratorium on taking kahawai from 1 December until the Tuesday after Easter each year.<sup>46</sup> The submission said that kahawai were a valuable part of the purse seine catch. They reported that out of the 1666 tonnes of kahawai purse seine catch in KAH 1, around 300 tonnes was sold to the local market in a variety of forms. In particular, the submission referred to success in the sale of smoked kahawai.
- 7.22 The Ministry concluded, against the non-commercial submissions, that the stock assessment did not show any grounds for concern over the overall status of the kahawai stock.<sup>47</sup> The Ministry drew this conclusion against a clear lack of information on the status of kahawai stocks evident in the 1993 Plenary report.
- 7.23 The TACC review recommended that the purse seine catch limit of 1,666 tonnes for KAH 1 be extended to also cover KAH 9, which had previously had no catch limit.<sup>48</sup>
- 7.24 Ultimately, the Minister reduced the catch limit for KAH 1 for the 1993/94 year to 1,200 tonnes and expanded to include KAH 9, which had previously had no restrictions. The purse seine catch limits were 1,200 for KAH 1 and KAH 9 combined, 851 for KAH 2 and 2,339 for KAH 3. The voluntary moratorium on purse seining in KAH 1 had extended from 1 December to the Tuesday after Easter.

#### **The 1994/95 Commercial Catch Limits**

- 7.25 By the 1994/95 "TACC review", the Ministry had information that the catch limits had been exceeded in both the 1991/92 and 1992/93 fishing years, particularly in KAH 1 where most of the purse seining effort was concentrated. In the 1991/92 fishing year the purse seine catch in KAH 1 was 1754 tonnes, over the limit of 1666 tonnes.<sup>49</sup> In the 1992/93 the

<sup>46</sup> Sanford letter to the Minister of Fisheries dated 27 August 1993.

<sup>47</sup> MAF Fisheries (1993) TACC and Management Review for the 1993/94 Fishing Year, at page 42.

<sup>48</sup> MAF Fisheries (1993) TACC and Management Review for the 1993/94 Fishing Year, at paragraph 34.

<sup>49</sup> MAF Fisheries (1994) TACC and Management Review for the 1994/95 Fishing Year, at page 56.

purse seine catch exceeded the KAH 1 limit of 1,666t with a catch of 2,043 tonnes.<sup>50</sup> The reported catch figures in the TACC review differed from the 1994 Plenary report because the reported catch records used in the Plenary report had been found to contain errors.<sup>51</sup> Subsequent Plenary reports, however, did not correct those errors.

- 7.26 The NZRFC submitted to the Ministry on the 1994/95 catch limits.<sup>52</sup> It reiterated the many submissions that were made in previous years by the NZRFC and the NZBGFC saying that recreational catches were poor, the kahawai fish stock was being depleted and purse seiners were the main culprit.
- 7.27 Despite the overruns in the 1991/92 and 1992/93 years, the "TACC review" for the 1994/1995 fishing year was very similar to the previous year.<sup>53</sup> Kahawai had still not been introduced into the QMS and it was becoming clear that kahawai would continue to be managed under competitive catch limits originally seen as a holding measure.
- 7.28 The stock assessment information in the 1994 Plenary report was still poor despite repeated requests and acknowledgment from the Ministry that better information was needed.<sup>54</sup>

*"Stock assessment information for kahawai is limited and uncertain. The information available to the Stock Assessment Working Group did not provide grounds for concern over the overall status of the kahawai stock. The evidence available suggests that the commercial purse seine fishery is having little impact of the stock. From these conclusions it is not clear that further reductions in purse seine catch will improve the availability of kahawai to the recreational sector"*<sup>55</sup>.

- 7.29 Despite the lack of information and the submissions from recreational fishers, the report concluded that:

<sup>50</sup> MAF Fisheries (1994) TACC and Management Review for the 1994/95 Fishing Year, at page 56.

<sup>51</sup> MAF Fisheries (1994) TACC and Management Review for the 1994/95 Fishing Year.

<sup>52</sup> NZRFC (1994) Initial Position Paper on Kahawai and Kingfish for the 1994 TACC round from the NZ Recreational Fishing Council.

<sup>53</sup> MAF Fisheries (1994) TACC and Management Review for the 1994/95 Fishing Year.

<sup>54</sup> MAF Fisheries (1994) Report from the Fishery Assessment Plenary, May 1994: Stock Assessment and Yield Estimates.

<sup>55</sup> MAF Fisheries (1994) TACC and Management Review for the 1994/95 Fishing Year, at paragraph 22.

*"the limited information on kahawai suggests that recent catch levels are sustainable"*<sup>56</sup>.

7.30 Again, in my opinion, the Ministry did not have sufficient scientific information to say that catch levels were sustainable nor to say that they were not, particularly within individual QMAs where catch was concentrated.

7.31 The commercial catch limits for the 1994/1995 year were rolled over from the previous year. The voluntary moratorium on purse seining in KAH 1 continued to be from 1 December to the Tuesday after Easter.

#### **The 1995/96 Commercial Catch Limits**

7.32 The "TACC review" for 1995/96 carried on in the same manner as the previous reviews.<sup>57</sup> The Ministry's stock assessment information in the Plenary report was still limited and uncertain, as it had been from the time commercial catch limits began.<sup>58</sup>

7.33 The purse seine catch limits were set at 1,200 tonnes for KAH 1 and KAH 9 combined, 851 tonnes for KAH 2 and reduced to 1500 tonnes for KAH 3. The voluntary moratorium on purse seining in KAH 1 continued to be from 1 December to the Tuesday after Easter.

#### **Commercial Catch Limits from 1995/96 to 2003/04**

7.34 The commercial catch limits and purse seine catch limits remained unchanged from 1995/96 until kahawai's introduction into the QMS in 2004.

7.35 Originally intended as a short-term holding position in the 1990/91 fishing year, commercial catch limits continued right up until kahawai were introduced to the QMS in 2004.

7.36 A table summarising the purse seine catch limits that applied from 1990/91 is shown below.

<sup>56</sup> MAF Fisheries (1994) TACC and Management Review for the 1994/95 Fishing Year, at paragraph 2.

<sup>57</sup> MAF Fish (1995) Review of TACCs and Management Controls for the 1995/96 Fishing Year.

<sup>58</sup> MAF Fish (1995) Report from the Fishery Assessment Plenary, May 1995: Stock Assessments and Yield Estimates.

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**Table 2: Reported catches (t) by purse seine method and competitive purse seine catch limit (t) from 1990-91 to 2000-02<sup>59</sup>.**

		KAH 1		KAH 2		KAH 3		KAH 9		KAH 10		Total
Year	Catch	Catch Limit	Catch	Catch Limit	Catch	Catch Limit	Catch	Catch Limit	Catch	Catch Limit	Catch	Catch Limit
1990-91	1422	1666	493	851	n/a#	2839*	0	None	0	None	n/a	5356
1991-92	1754	1666	751	851	1522	2339	0	None	0	None	4080	4856
1992-93	2043	1666	1055	851	1792	2339	560			None	4290	4856
1993-94	1262	1200	1101	851	1714	2339	15	§	0	None	4092	4390
1994-95	1225	1200	821	851	1644	2339	0	§	0	None	3690	4390
1995-96	1077	1200	805**	851	1146	1500	0	§	0	None	3028	3551
1996-97	1041	1200	516	851	578	1500	0	§	0	None	2135	3551
1997-98	949	1200	65	851	60	1500	0	§	0	None	1074	3551
1998-99	1416	1200	134	851	463	1500	0	§	0	None	2015	3551
1999-00†	1371	1200	553	851	520	1500	0	§	0	None	2444	3551
2000-01†	1256	1200	668	851	173	1500	0	§	0	None	2097	3551

# By March 1991 when the catch limit was imposed, the purse seine catch had already exceeded 2339 t and the fishery was immediately closed.

\*\* Closed at 94.6% of the TACC.

\* As the catch already exceeded 2339 t before the Minister's decision was announced, an extra 500 t was allocated to cover kahawai bycatch only.

§ The combined catch from KAH 9 and KAH 1 was limited to 1200 t.

† Provisional data only.

## 8. Legislation and Recreational Policy Reviews

8.1 The introduction of the QMS in 1986 marked the first stage in a rights based management regime for New Zealand fisheries. In the following decade a number of reviews were undertaken to assess the regimes performance and to identify future developments for the regime. A number of these reviews considered the relationship between the QMS and recreational fisheries, and the need for a defined recreational fishing right.

8.2 In 1989 the Minister of Fisheries (Hon. Colin Moyle) released a marine recreational fisheries policy based on three principles:

- All New Zealanders can benefit from a well managed fishery. The principle recognised that management '...must seek to balance social, cultural, environmental and economic costs and benefits arising from different use.'

<sup>59</sup> All data are from Ministry of Fisheries records except those for 1993-94 which are from the CELR database.

- Management of the recreational fisheries should be consistent with the biological objectives of fisheries management. These objectives included preventing over-fishing, managing fish stocks for the long term sustainable yield, reducing juvenile mortality and wastage due to fishing.
- The public has a right to a reasonable recreational access to fishery resources. This principle sought to maintain the present rights of non-commercial fishes except where constraint was required for conservation, public health and safety reasons. The principle also stated 'licensing of non-commercial users is considered inappropriate for marine recreational fisheries.'

- 8.3 The most contentious aspect of the policy arose from the Minister's foreword to the policy where he stated '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.'
- 8.4 The status of the Policy is a moot point. The Ministry of Fisheries have the position that the Policy was never approved by the Cabinet of the day or any subsequent Cabinet.<sup>60</sup>
- 8.5 The early 1990s was a period of intense debate over fisheries management and various legislation reviews were produced. The rising conflict between non-commercial and commercial fishers over fisheries resources was a key issue, and featured strongly in the legislation reviews that were produced during that period.
- 8.6 The first was a report entitled "Building on Progress – Fisheries Policy Development in New Zealand" released in July 1991. The report was presented to the Ministry by Dr Peter Pearse and commended by Minister Kidd.<sup>61</sup> It stated that:<sup>62</sup>

*"Adoption of the quota management system signalled a basic shift in fisheries policy from a regulatory approach to one based on property rights. The new approach eliminates the single-*

<sup>60</sup> The author interviewed the former Minister and the Manager Recreational Fisheries in 2001, as part of my PhD research, and sought release of the Cabinet papers from the Parliamentary Cabinet Office. The Minister and the Ministry of Fisheries Manager of Recreational Fisheries at the time have told me that they believed the policy was approved by a Cabinet committee, however they could not remember in detail the approval process. The New Zealand Government Cabinet Office have refused to release the Cabinet papers of the period stating a policy of embargo on recent Cabinet papers.

<sup>61</sup> P Pearse (1991) Building on Progress – Fisheries Policy Development in New Zealand.

<sup>62</sup> P Pearse (1991) Building on Progress – Fisheries Policy Development in New Zealand, at page 8.

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*single-minded competition for fish and the wasteful over-investment in fishing capacity which occurs when the claims of individual fishers to the catch are not defined. Instead, it provides users with well-defined, securely-vested and valuable interests in the catch, giving them strong incentives to develop efficient fishing enterprises and to support good, long-term resource management."*

- 8.7 The problem for kahawai was that it had not yet been introduced to the QMS and was still being managed as a "single-minded competition for fish" using commercial catch limits. The problem of managing some species under the QMS while managing others as non-QMS species was highlighted by the Pearse report. It said.<sup>63</sup>

*"Quotas on some species, but not others, aggravates pressures on those outside the system. Facing well-defined limits on their catches of quota species fishers turn their effort to the remaining unrestricted opportunities in non-quota species. Their incentive to do so is sharpened considerably by the usual practice, when quota systems are introduced to new fisheries, of issuing the initial quotas to established fishermen in accordance with their historical catches. This gives rise to the well known practice of "fishing for quota", which means fishing in non-quota fisheries for the purpose of establishing a claim on quotas when they are introduced. The result is that non-quota species are often poorly managed, and they are brought into the quota system only with difficulty."*

- 8.8 This statement rang true for kahawai. Commercial fishers, having been promised that kahawai would soon be introduced to the QMS as an ITQ species, had a strong incentive to fish to build catch histories. From recreational fishers' submissions on the marked decline in kahawai over the preceding years it was apparent there were increasing pressures on the stock. To minimise the distortions of fishing effort this incentive caused, the Pearse report recommended that non-QMS species be introduced quickly.

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<sup>63</sup> P Pearse (1991) Building on Progress – Fisheries Policy Development in New Zealand, at page 8.

- 8.9 In a speech to recreational fishers on 7 July 1991, the Minister said the legislation suggested a preference to recreational fishers<sup>64</sup> and emphasised the need for better definition of recreational rights. The Minister referred to kahawai as an example of the problems that can occur when moving a species into the QMS<sup>65</sup>.
- 8.10 There was a clear need for recreational fishers to be given explicit rights, recreational rights being more implicit than explicit at that time. The Pearse report noted that the quota management system had clearly strengthened commercial claims on fish resources and left recreational interests behind.<sup>66</sup> Commercial fishers' ITQ, it said, gave commercial fishers a stronger claim on catch. The information on recreational (and sustenance) fishers was also very limited, the report said:

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

- 8.11 The Ministry proposed to hold a meeting between non-commercial and commercial representatives in September 1991 to discuss the issues facing kahawai. In August 1991, MAFFish set out the proposed framework for the meeting in an internal letter to me. All interested parties were invited to make submissions on the framework to the discussions and to attend the meeting.<sup>67</sup>
- 8.12 Several problems facing kahawai management were acknowledged in the letter. Recent increases in purse seine catches were said to have resulted in recreational fishers raising concerns about kahawai. Competitive catch limits were not considered to be a satisfactory way of managing kahawai. The lack of scientific information available was also considered a problem, with the Ministry acknowledging that.<sup>68</sup>

*"MAF does not have sufficient data on kahawai to confidently recommend appropriate sustainable catch levels."*

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<sup>64</sup> Subsequent High Court and Court of Appeal judgements have determined that there is no absolute priority right for either the recreational or the commercial sector under the Fisheries Act (McGechan J, 1997, Tipping JC, 1997).

<sup>65</sup> Hon. Doug Kidd, Speech to Recreational Fishing Council and New Zealand Sportfishing Council on 7 July 1991.

<sup>66</sup> P Pearse (1991) Building on Progress – Fisheries Policy Development in New Zealand, at page 9.

<sup>67</sup> Letter from MAF Fish to Kim Walshe, Regional Manager of MAF Fish dated 23 August 1991.

<sup>68</sup> Letter from MAF Fish to Kim Walshe, Regional Manager of MAF Fish dated 23 August 1991.

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- 8.13 That letter also talked about the spatial conflict that was occurring between recreational and commercial fishers over kahawai:<sup>69</sup>

*"Both recreational and Maori interests are concerned about commercial catch levels and the spatial separation of commercial operations from areas of specific interest to non-commercial fishers."*

- 8.14 Recognising the conflict between recreational and commercial fishers, the Ministry suggested that non-commercial fishers be given priority over commercial fishers with respect to kahawai.<sup>70</sup>
- 8.15 The Ministry subsequently received submissions on the letter.
- 8.16 The NZBGFC submitted that it had been attempting to establish no-go areas with purse seiners for the previous two years.<sup>71</sup> The Ministry's records had shown that the purse seiners were making their catches close to the shore and the NZBGFC submitted that this was causing localised depletion of kahawai in inshore areas, where recreational fishing mostly occurs. The NZBGFC submission also referred to the problem of concentration of commercial catch in KAH1, saying that most commercial catch was taken from a 100 mile stretch of coastline between Bowentown heads to Whakatane within 8 miles of the shore.<sup>72</sup>
- 8.17 A submission from the NZRFC calculated that between 1983-1986 purse seine vessels reported a catch of 13,001t compared to a reported catch of 25, 937t between 1986 – 1990, which represented a 99.5% increase.<sup>73</sup> The letter requested that no purse seining be allowed in QMA 1 and no purse seining within 6 nautical miles of New Zealand's coast line. It said that an estimated 244,000 people catch kahawai annually and 80% (or 195,000 people) catch kahawai in QMA1. The average fisherman, it said, is on the water 38 days a year. It requested that the Ministry conduct research to establish the present and future recreational and tourism worth of kahawai and also, that research be conducted so that TACs could be clearly established.

<sup>69</sup> Letter from MAF Fish to Kim Walshe, Regional Manager of MAF Fish dated 23 August 1991, at page 2.

<sup>70</sup> Letter from MAF Fish to Kim Walshe, Regional Manager of MAF Fish dated 23 August 1991, at page 2.

<sup>71</sup> Letter from MAF Fish to Kim Walshe, Regional Manager of MAF Fish dated 23 August 1991.

<sup>72</sup> NZBGFC letter dated 2 September 1991.

<sup>73</sup> NZRFC Submission dated 30 August 1991.



- 8.18 Sanford submitted in a letter dated 6 September 1991 that they had made a \$40 million investment in pelagic species and had been previously encouraged to target pelagic species. The letter stressed the need for haste in introducing kahawai to the QMS.<sup>74</sup>
- 8.19 A meeting was held at the Ministry in September 1991 and it was clear that it was still intended that kahawai would move into the QMS as soon as possible. Records of the meeting show that the Minister regarded the move into the QMS as "*the key to rational management*".<sup>75</sup>

#### **Fisheries Legislation Review – Public Discussion Paper**

- 8.20 The review of fisheries legislation that started with the 'Building on Progress' document continued and the Ministry released a document called 'Fisheries Legislation Review – Public Discussion Paper' in December 1991.<sup>76</sup> The review was undertaken by an independent (to the Ministry) panel chosen by the Minister. It continued on many of the same themes as the Pearse report released in July 1991, noting that recreational fishers' rights were vulnerable, being more implicit than explicit.<sup>77</sup> It noted that the Minister was required to take account of non-commercial rights as part of the process of setting the TACC saying:<sup>78</sup>

*"The current Fisheries Act obliges the Minister to take account of non-commercial catch in the process of setting a TACC.*

*However, we doubt whether in practice sufficient information exists to take adequate account of non-commercial catch."*

- 8.21 Better information on recreational catch was regarded as essential for the underpinning adequate management of the recreational fishery for the longer term.<sup>79</sup>
- 8.22 It also reiterated the problems of having two regimes co-existing, namely QMS and non-QMS species. It noted that:<sup>80</sup>

*"A further undesirable feature of the present "two regime" approach is that in combination with the "historical catch" allocation method, it creates incentives to "fish for quota". Fishers*

<sup>74</sup> Sanford letter dated 2 September 1991.

<sup>75</sup> Minutes of Pelagic Management Meeting, Gillingham House, Wellington on 4 September 1991, at page 9.

<sup>76</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper.

<sup>77</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper, at page 18.

<sup>78</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper, at page 59.

<sup>79</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper, at page 18.

<sup>80</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper, at page 24.

*will fish extensively in a fishery which they believe will be introduced into the QMS so as to build up a catch history and to drive the stock levels to the point where QMS management become critical to stock survival.*

*These incentives and the resulting fishing for quota are likely to produce particularly severe impacts on fisheries and have the potential to generate difficult to reverse effects."*

- 8.23 The conflict between recreational and commercial fishers over the same areas was considered to be of particular importance. Recreational fishers had been complaining of unfair competition with commercial fishers within the same areas. The report said:<sup>81</sup>

*"Issues of particular concern include exclusion of commercial vessels from areas which are popular for recreational fishing. This concern is captured under the "unfair competition" concern commonly raised by recreational fishers throughout the country. Satisfactory recreational experiences depend upon the presence of recreational fish stocks in such numbers as to make catch effort fall reasonably in line with expectations of fishers, while at the same time ensuring that stock levels are sufficient to allow continued recreational use."*

- 8.24 Geographical variation was considered as important in considering recreational fishing in New Zealand, given that the types of fisheries, access, the weather and coastal conditions vary enormously around New Zealand. It was considered that bag limits and gear restrictions appropriate for one area may be excessive in another.<sup>82</sup>
- 8.25 The general thinking was that all non-QMS species should be introduced into the QMS. It was not regarded as a simple matter of introducing all remaining species "overnight". There were some issues that needed to be overcome before this could happen. Firstly, the Ministry needed to reach a settlement with Maori. The second was that research and information was required to enable the Ministry to be able to set a TAC in accordance with the 1983 Act. The third problem envisaged was that the administrative cost of introducing some species would result in net losses for some low value species. The fourth problem was that the

<sup>81</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper, at page 18.

<sup>82</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper, at page 53.

Ministry had experienced problems through allocating quota on the basis of catch history, notably because it created an incentive to "fish for quota". The Ministry considered that a more sophisticated process of allocation was required.<sup>83</sup>

### **The 'Sustainable Fisheries' Report**

- 8.26 MAFFish produced a further legislation review report in May of 1992 which was similar to the reports produced in 1991 and echoed many of the same sentiments.<sup>84</sup> It noted that allocation on the basis of catch history could penalise recreational fishers.<sup>85</sup>

*"Basing allocation on historical catches may penalise recreational groups where recreational catches have historically be[en] suppressed in stressed fisheries or where catches have been constrained by problems caused by spatial depletion."*

### **Fisheries Task Force Report**

- 8.27 A Fisheries Task Force had also been set up to review fisheries legislation which produced a report released in August of 1992.<sup>86</sup> The submissions received by the task force report stressed the importance of adequate scientific information for sound fisheries management.<sup>87</sup> There was also considerable discussion about the value of recreational fishers in the economy. Many recreational fishers, and others, submitted that the total income from tourism, marine sports and other marine activities was almost as great as the income generated by the commercial sector.<sup>88</sup>

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<sup>83</sup> Fisheries Task Force (1991) Fisheries Legislation Review – Public Discussion Paper, at page 26 - 27.

<sup>84</sup> Fisheries Task Force (1992) Sustainable Fisheries – Report of the Fisheries Task Force to the Minister of Fisheries on the Review of Fisheries Legislation.

<sup>85</sup> Fisheries Task Force (1992) Sustainable Fisheries – Report of the Fisheries Task Force to the Minister of Fisheries on the Review of Fisheries Legislation, at page 51.

<sup>86</sup> Bridgeport Group (1992) Synopsis of Submissions on Fisheries Task Force Report – Sustainable Fisheries.

<sup>87</sup> Bridgeport Group (1992) Synopsis of Submissions on Fisheries Task Force Report – Sustainable Fisheries, at page 46.

<sup>88</sup> Bridgeport Group (1992) Synopsis of Submissions on Fisheries Task Force Report – Sustainable Fisheries, at page 33.

### **Continued Reports of Kahawai Decline**

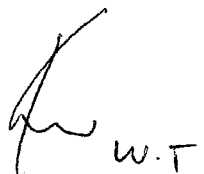
8.28 The Ministry continued to receive reports of kahawai decline. In about November 1992, the NZBGFC sent out a request to fishing clubs to report on the status of kahawai. The NZBGFC received submissions from fishing clubs which were collated and sent to the Ministry. A summary of the submissions received stated that, out of 189 submissions, 188 reported a decline in kahawai numbers between 50% and "*total annihilation*".<sup>89</sup>

### **9. Settlement of Maori Issues – Treaty of Waitangi (Fisheries Claims) Settlement Act 1992**

- 9.1 As mentioned above, Maori had lodged various claims against the Crown concerning customary fishing rights which had resulted in a court injunction that prevented the Crown from issuing ITQ.
- 9.2 In September 1992, the Crown and Maori representatives entered into a Deed of Settlement which was later given statutory effect in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Under the Deed of Settlement, Maori:
- a. Acknowledged and agreed that the quota management system was a lawful and appropriate regime for the sustainable management of commercial fishing in New Zealand waters;
  - b. Agreed to the repeal of section 88(2) of the Fisheries Act 1983 which provided that "nothing in this Act shall affect Maori fishing rights"; and
  - c. Agreed to discontinue various proceedings against the Crown.
- 9.3 In return, the Deed of Settlement provided for payment by the Crown to the Maori Fisheries Commission a sum of \$150,000,000.00 which was to enable the Commission to buy a half share in Sealord Products Limited so as to gain ownership of a significant part of that company's fishing rights.
- 9.4 The Crown also undertook to allocate to the Commission 20% of the quota of any new species brought into the QMS after the date of the Deed of Settlement.

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<sup>89</sup> NZBGFC report dated April 1993.



## 10. The Fisheries Act 1996

- 10.1 In the intervening period, while commercial catch limits were still being implemented to manage kahawai, a new Fisheries Act was enacted which replaced the Fisheries Act 1983. Under the new Act, the QMS remained the tool for the management of the fishery although many species remained outside the QMS. This meant that the fishery continued to be managed by two separate regimes. With some minor word changes, in effect, the 1996 legislation continued the previous provisions in the 1983 Act, whereby non-commercial fishing interests were to be allowed from before the commercial catch was set.
- 10.2 With the introduction of the Fisheries Act 1996, the specification of the qualifying years for kahawai (for example, the 1990/91 and 1991/92 fishing years) for calculation of provisional catch entitlement largely removed the incentive for commercial fishers to compete against other commercial fishers in a "race for fish" to build up catch history, although the commercial catch limits continued to be applied under the new legislation. The specification of these qualifying years was significant for commercial fishers because the amount of ITQ each fisher receives is dependent on their catch history during a "qualifying year".
- 10.3 The new Act also expressly recognised the Treaty of Waitangi Fisheries Commission's right to receive a guaranteed 20% out of the TACC (under section 44).
- 10.4 Around this time the level of recreational fishing in some inshore fisheries (most notably New Zealand's north east coast snapper fishery - SNA1) raised concerns about the need to constrain the recreational catch so as to not undermine the ITQ right. For example since the mid 1990's the fishing industry promoted a policy of restraining recreational harvest to a proportion of the total allowable catch.<sup>90</sup> Following the Minister of Fisheries intention in the mid 1990s to reduce the allocation of SNA1 quota to commercial fishers, the commercial sector sought redress through the Courts. In part the industry's case argued that the recreational fishery was inadequately managed (particularly by the use

<sup>90</sup> Peacey, J. (1996) The New Zealand Seafood Industry Economic Review 1994-1996, New Zealand Fishing Industry Board, Wellington, New Zealand.

of by bag limits) and that the commercial ITQ was being undermined as a consequence.<sup>91</sup>

## 11. **Kahawai Brought Onto Schedule 4 of the Fisheries Act 1996**

- 11.1 In 2000, kahawai were brought onto Schedule 4 of the Fisheries Act 1996 which included other species considered to be fully commercially developed. This coincided with some amendments made to the Act by the Fisheries Amendment Act 2000 which were entitled "Special provisions for the allocation of commercial quota in stocks listed in Schedule 4". The amendments included the enactment of new sections 35(6), and 50A – 50G.
- 11.2 Where provisional catch history would exceed 80% of the available TACC, then the amount of ITQ available would need to be reduced to bring the total ITQ within the limit of the TACC and to allow for the mandatory 20% to be set aside for Maori. For species such as kahawai that were fully commercially developed in the 1990/91 and 1991/92 fishing years (the default "qualifying years"), this 80% limit was likely to be exceeded.
- 11.3 Sections 50A-50G were a mechanism to handle compensation issues where this 80% limit was exceeded. Where the provisional catch history exceeded the 80% limit, the Crown would compulsorily acquire the excess. Under section 50G, every person whose quota holding was reduced by the compulsory Crown acquisition was entitled to compensation at the rate for that species set out in Schedule 4A. The rate for kahawai was \$780 per tonne, which reflected the relatively low port price from kahawai.

## 12. **Review of Recreational Fishing Rights –"Soundings"**

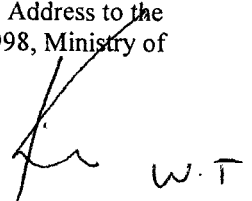
- 12.1 The 1996 Act did not resolve underlying policy issues concerning the provision for recreational fishing sector. In 1998, the Ministry of Fisheries' deputy Chief Executive summarised the position of the recreational sector as follows:
- a. Firstly, that the pace of change in other sectors was leaving the recreational sector increasingly isolated and threatened;

<sup>91</sup> Wilkinson, V. (1996) Affidavit of Vaughan Hilton Wilkinson in support of Application for Judicial Review by First, Second and Third Applicants (CP 237/95).

- b. Secondly, the recreational fishing right was poorly defined and the right was likely to be further eroded over time;
  - c. Thirdly, the recreational sector needed to take a more proactive role in the use of their right for example self management including funding and co-management with other sectors and Government.<sup>92</sup>
- 12.2 As a consequence, the Ministry and the New Zealand Recreational Fishing Council formed a *Joint Working Group on Recreational Fishing Rights* and developed a public discussion document (called "Soundings") on the future of recreational fishing. The "Soundings" discussion document proposed three options, which were open to public submission.
- 12.3 The first option was a status quo approach described as the discretionary share (since the Minister would determine the recreational share of the catch each time he/she reviewed the total allowable catch).
- 12.4 The main feature of the second option (called the proportional share) was the setting of the TAC with a fixed proportion allocated to the recreational sector. As the TAC changed the recreational sector allocation would move in lock-step – i.e. the same proportion to the commercial sector as the TACs change.
- 12.5 The third option (called recreational management) was an elaboration of the second option. The major changes from the second option were that recreational rights would be made clearer in law and that formal recreational fishing representative organisations would be established by government to act on behalf of recreational fishers.
- 12.6 A total of 62,117 submissions were received, 99% of which were from recreational fishers. Almost all of the submissions (61,178) rejected all of the Soundings options, instead supporting a fourth option ("option 4", which was promoted by a recreational fisheries lobby group, which took its name as option 4).
- 12.7 Option 4 proposed four principles for recreational fisheries management:
- No licensing of amateur fishers;

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<sup>92</sup> Crothers, S. (1998) Towards improving New Zealand's Recreational Fisheries: Recreational Fishing Rights and the Devolution of Associated Management Responsibilities. Address to the New Zealand Recreational Fishing Council Annual General Meeting July 25, 1998, Ministry of Fisheries.





- Amateur fisher priority over commercial fishers for free access to a reasonable daily bag limit to be enshrined in legislation;
- The ability to exclude commercial methods that deplete recreationally important areas; and
- The ability to devise plans to ensure future generations enjoy the same or better quality of rights while preventing fish conserved for this purpose being given to the commercial sector (inter-generational equity).

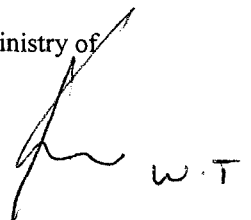
12.8 The joint working group analysed the submissions and advised the Minister that there was support for the further development of policy to:<sup>93</sup>

- Better define the public share of and access to fisheries;
- Improve the management of recreational fishing;
- Not implement any form of licensing of marine recreational fishers;
- Note that any future public policy debate on the recreational share, access and management would benefit from a broad scale education and information programme on NZ fisheries management;
- Support exploring ways to improve the measurement of the recreational harvest;
- Support the need to improve the input and participation of Iwi in the further development of the recreational rights policy.

12.9 Following the Soundings review the Minister developed a Ministerial Consultative group to act as a sounding board as policy was developed. A year later Stage 1 of the process had been completed with the development of a set of objectives for future management. The objectives were based on the National Policy Statement on Marine Recreational Fisheries Management promulgated in 1989 but never recognised as government policy:

- Access to a reasonable share of inshore fishery resources equitably distributed between recreational fishers;
- Improve, where practical, the quality of recreational fishing;

<sup>93</sup> Hodgson, P. (2003) Recreational Fisheries Reform – draft Paper to Cabinet. Ministry of Fisheries, Wellington.



- Increase public awareness and knowledge of the marine environment and the need for conservation of fishery resources;
- Improve management of recreational fisheries;
- Reduce conflict within and among fishery user groups;
- Maintain current tourist fisheries and encourage the development of new operations where appropriate;
- Prevent depletion of resources in areas where local communities are dependent on the sea as a source of food; and
- Provide more opportunities for recreational fishers to participate in the management of fisheries.

12.10 Subsequently, Cabinet approved the objectives as guidelines for the development of recreational fisheries policy.<sup>94</sup>

12.11 For the recreational sector, one positive feature of the first round discussions was an agreement that licensing was not an option for the recreational sector. The Minister concluded:<sup>95</sup>

*"The consultation process undertaken thus far concludes the first phase of reform. The process considered a wide range of possible policy options. These options included licensing and devolution of management responsibilities. Some of these options, particularly any form of licensing, are now confirmed as inappropriate in the New Zealand environment at this time."*

12.12 A second Ministerial Consultative Group was formed in 2002. I was a member of both Ministerial Consultative Groups. The purpose of this group was to develop a specific proposal for reform based on the agreed objectives. The reform proposal was to be referred back for public consultation by mid 2003.

12.13 By late 2003 the second consultative group had developed a draft reform package consisting of:

- An amendment to section 21 of the Fisheries Act 1996 to provide specific allocation criteria the Minister must have regard to when making allocation decisions;

<sup>94</sup> Ministry of Fisheries, 2004.

<sup>95</sup> Hodgson, P. (2002) Recreational Fisheries Reform – Draft paper to Cabinet, Ministry of Fisheries, Wellington.

- An amendment to section 311 of the Fisheries Act which would provide a stronger access right to non-commercial fishers when there is insufficient abundance of a fish stock for both commercial and non-commercial fishers;
- The provision of research services to provide information on abundance and other issues to assist in section 311 process;
- A more transparent resource, funding and expenditure process within the Ministry so that sector groups can see that resources/funding are being allocated to the most meritorious projects (e.g. in context of the sustainability measures round);
- The development of an amateur fishing information strategy to guide research priorities and to better underpin the information needs of the reform proposal, together with a significant increase in funding;
- MFish to review recreational regulations (limited review of up to top 10 regulations of most concern) within specified timeframe; and
- When more certain information on the amateur harvest becomes available fishery management decisions based on the 1996 Recreational Fishing Harvest Estimates will be reviewed.

12.14 To date there has been no final agreement on the package. The main point of contention had revolved around the drafting to section 21 and the allocation criteria to be used by the Minister.

### 13. **The Introduction of Kahawai to the QMS**

13.1 In mid-2003, the Ministry finally proposed to the Minister that kahawai should enter the QMS on 1 October 2004. The Ministry provided the Minister with an initial position paper and a final advice paper.<sup>96</sup>

13.2 The NZBGFC submitted to the IPP. The Ministry summed up their submissions in the FAP:<sup>97</sup>

<sup>96</sup> MFish (2003) Introduction of New Stocks into the Quota Management System on 1 October 2004 - Consultation Document; MFish (2003) Final Advice Paper on the Introduction of New Stocks to the Quota Management System on 1 October 2004.

<sup>97</sup> MFish (2003) Final Advice Paper on the Introduction of New Stocks to the Quota Management System on 1 October 2004.

*“The NZBGFC considers that the IPP does not address allocation issues. It submits there has been longstanding recreational concern over the decline in the kahawai fishery. This scarcity has manifested in allocation issues most notably at the Motu River Mouth and the Hauraki Gulf.”*

- 13.3 The Ministry agreed there were problems with allocations for kahawai but that the “quantitative allowances” would be addressed in more detail in the subsequent phase of QMS entry when TACs, TACCs, and allowances were proposed for kahawai stocks.
- 13.4 The Minister outlined the decision to introduce kahawai to the QMS in a decision letter dated 6 November 2003. The Minister also set out the QMAs for kahawai management.<sup>98</sup>
- 13.5 The Minister's decision was ratified by the Fisheries (Declaration of New Stocks Subject to the Quota Management System) Notice (No 2) 2003, which scheduled kahawai to be introduced to the QMS on 1 October 2004.
- 13.6 In March 2004, the Ministry produced a "Briefing for the Minister of Fisheries".<sup>99</sup> The document is notable by its omission to mention the ongoing policy debate between non-commercial and commercial fishers that had continued for almost two decades. A new Minister, the Honourable David Benson-Pope had been appointed to the Fisheries Portfolio.

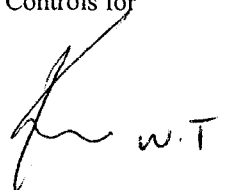
#### **The lead up to the Minister's decision's on kahawai**

- 13.7 The Ministry advised the Minister on proposals to set TACs, TACCs and “allow for non-commercial fishing interests” for kahawai by an initial position paper (2004 IPP) dated 12 January 2004<sup>100</sup>.

<sup>98</sup> Minister of Fisheries' Decision Letter on the Stocks to be Introduced to the Quota Management System on 1 October 2004.

<sup>99</sup> MFish (2004) Briefing for the Minister of Fisheries.

<sup>100</sup> MFish (2004) Initial Position Paper on the Setting of Sustainability and Other Controls for Kahawai Stocks to be introduced into the QMS on 1 October 2004.



13.8 The submissions by recreational fishing interests are referred to in the evidence of the Presidents of the NZBGFC and NZRFC. Sanford, the main commercial fishing company to target kahawai also made a detailed submission.<sup>101</sup> Sanford did not support the TACs and TACCs proposed in the 2004 IPP because:

- "a. *The methodology for calculating the TACC is flawed in that it fails to properly apply the provisions of the Fisheries Act 1996.*
- b. *The TAC should be based on the available stock assessment which (although dated) is based on an evaluation of the sustainability of the resource. The use of catches over an arbitrary time period to set the TACC is inappropriate where a stock assessment is available, and is also inappropriate where commercial catches have been constrained by catch restrictions.*
- c. *Allowances made for recreational and customary fishing are excessive, which erodes the volume of kahawai available for allocation to the commercial sector."*

13.9 A final advice paper dated (2004 FAP) to the Minister on kahawai was released on 29 June 2004<sup>102</sup>. It maintained the approach recommended in the 2004 IPP of basing the TACs, TACCs and non-commercial "allowances" in proportion to each fishing sector's catch history. The 2004 FAP is discussed in greater detail in the affidavit of John Holdsworth.

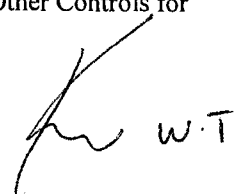
13.10 At paragraphs 117 – 119 of the 2004 FAP the Ministry plot by graph the reported cumulative kahawai landings by fishing sector between 1970 – 2003.

13.11 At paragraphs 118 – 119 of the 2004 FAP the Ministry stated:

- 118 *However, MFish does not share submitters views that management of the kahawai fishery after 1991 was ineffective and that as a result any kahawai stock is depleted due to commercial fishing.*

<sup>101</sup> Sanford Submission to the 2004 Kahawai IPP dated 16 April 2004.

<sup>102</sup> MFish (2004) Final Advice Paper on the Setting of Sustainability and Other Controls for Kahawai Stocks to be introduced into the QMS on 1 October 2004.



119 *As shown in Figure 1, the introduction of purse seine limits was effective in limiting commercial catches. The reported number of annual purse seining target sets on kahawai was reduced from about 250 sets in 1987 – 88 prior to the introduction of catch limits to average about 60 sets after their introduction.*

13.12 At paragraphs 121 – 122 of the 2004 FAP the Ministry in advising the Minister refer to the size of the estimates for the non-commercial catch in these terms:

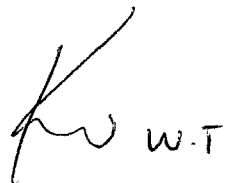
121 *Trends in non-commercial catch, while developed for the 1996 assessment model, are unknown. The two most recent harvest estimates suggest recreational fishers currently account for a much greater component of total landings than the commercial sector. Whether this is the result of a more recent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

122 *It is clear that collectively non-commercial catches now contribute significantly to the total mortality on kahawai stocks. Further, revised estimates of current utilisation are beyond the best available estimates of sustainable use of the fishery (7 600 and 8 200 tonnes).*

13.13 The Minister decided to set the TACs at a 15% reduction of combined estimates of recreational and commercial current catch plus estimated customary catch for KAH 1, KAH 2, KAH 3 and KAH 8, and at a nominal levels for KAH 4 and KAH 10. The Minister also based both the TACCs and the recreational "allowance" on a 15% proportional reduction of combined estimates of commercial and recreational current catch for KAH 1, KAH 2, KAH 3 and KAH 8.

#### 14. **Concluding Comments**

14.1 Some 19 years after introduction of the QMS, and despite numerous policy reviews, non-commercial fishing interests remain in a position where they (as a sector) are at risk from being disadvantaged by the lack of a defined allocation policy which protects recreational fishers



sectoral interests, and which is left largely to a broad administrative discretion on the part of a Minister.

- 14.2 In the case of kahawai there has been for many years an absence of scientific data about the overall stock size. Coupled with a lack of definition of non-commercial interests, in the case of kahawai I believe that the non-commercial fishing sector is vulnerable to being left behind, in effect to the benefit of the commercial fishing sector.
- 14.3 While on the face of it the non-commercial fishing sector has received a majority allocation of the fishery (overall some 58%) the Minister's decision, based upon the Ministry's policy preference for using current use, is, in effect, a-historical. It does not seriously recognise or seek to address the effects of sustained purse seine fishing upon non-commercial catch rates over the last two and a half decades.
- 14.4 The Minister's decision applies (based on Ministry advice) a proportional approach to the allocation of kahawai between the recreational and the commercial sectors. Again, in my opinion the proportional allocation approach (which was one of the options presented in the "Soundings" process) leaves non-commercial fishing interests vulnerable to being subordinated, particularly when the clear history for this fishery has shown elevated commercial catch levels, which have resulted in fish stocks being fished down. This inevitably results in the non-commercial catch being suppressed. I do not believe that the Minister, or the Ministry in advising the Minister have properly taken into account the likely effect of this history of the fishery, in making *initial* allocation decisions for the kahawai fish species.

**SWORN by KIM ANDREW ROBERT**

**WALSHE** at Auckland

this 26th day of August 2005

before me:



Wei-Jist Tan  
Solicitor  
Auckland

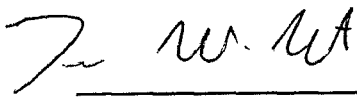
**A Solicitor of the High Court of New Zealand**

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) *Kim Walshe*  
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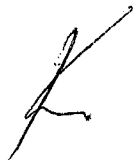
This is the document marked "A" mentioned and referred to in the affidavit of **KIM ANDREW ROBERT WALSH** sworn at Auckland this 26<sup>th</sup> day of August 2005 before me:



Wei-Jiat Tan  
Solicitor  
Auckland

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Solicitor of the High Court of New Zealand





" A "

## CURRICULUM VITAE

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**Full Name:** Mr Kim Walshe

**Present Position:** Director

**Present Employer:** Akroyd Walshe Ltd

**Present Work Address:** P O Box 28814

AUCKLAND 5

Phone (09) 480 9620  
Fax (09) 480 9620  
Email kwalshe@xtra.co.nz

### **Academic Qualifications:**

1974 BSc  
1982 DipBA  
1991 MBA

Currently undertaking PhD at School of Biological Sciences Auckland studying recreational and commercial fisheries management

### **Years as a Practising Researcher:**

30 yrs

### **Professional Positions Held:**

1974 - 1983 Scientist Fisheries Management Division Ministry of Agriculture and Fisheries

1983 - 1987 Assistant Director (Science) Fisheries Management Division Ministry of Agriculture and Fisheries

1987 Manager Recreational and Aquaculture Fisheries MAFFisheries Ministry of Agriculture and Fisheries

1987 - 1994 Regional Manager MAFFisheries Ministry of Agriculture and Fisheries

1994 - present Director Akroyd Walshe Ltd

**Ministry of Fisheries research contracts completed by Akroyd Walshe Ltd in the last three years:**

<b>Project No.</b>	<b>Project name</b>
SNA 9802	Estimation of mortality of juvenile snapper
TOH 9801	Distribution and abundance of toheroa on Dargaville beach
SEC 9802	Monitoring Performance of Commercial Fisheries Policy
REC 9802	Motivations and perceptions of marine recreational fishers.
SNA 1999-02	Estimation of mortality of juvenile snapper
AKI 1999-01	Intertidal shellfish monitoring in the Auckland FMA
REC 2000-04	Recreational fishers understanding of fisheries regulations
AKI 2000-01	Intertidal shellfish monitoring in the Auckland FMA
TOH 2000-01	Distribution and abundance of toheroa on Muriwai beach
SEC 2000-02	Subsistence Fishers in New Zealand
AKI 2000-02	Intertidal shellfish monitoring in the Auckland FMA
REC2000-02	Monitoring of recreational harvest levels of shellfish on 10 beaches in the Auckland region
AKI 2000-03	Intertidal shellfish monitoring in the Auckland FMA
AKI 2000-04	Intertidal shellfish monitoring in the Auckland FMA

**Ministry of Fisheries research contracts - Subcontractor contracts**

<b>Project No.</b>	<b>Project name</b>
SEC 2000-04	Organisational structures for the delivery of fisheries management services in New Zealand

**Recent publications and research reports**

**Chapters in Books**

Manly, B. F. J., Walshe, K.A.R. 1999. The population management plan for the New Zealand Sealion. In G.W. Garner et al. (eds) *Marine Mammal Survey and Assessment Methods*. 271 – 285. A.A. Balkema. Rotterdam.

**Papers in journals**

Manly, B. F. J., Akroyd, J. M., Walshe, K.A.R. Two-phase stratified random survey on multiple populations at multiple locations. *New Zealand Journal of Marine and Freshwater Research*. Vol. 36: 581-591

Akroyd, J. M., Walshe, K.A.R., Miller, R. B. Abundance distribution and size structure of toheroa (*Paphies Ventricosa*) at Ripiro Beach Dargaville Northland. *New Zealand Journal of Marine and Freshwater Research*. Vol. 36: 581-591

**Research Reports**

Akroyd, J. A., C. Batstone, B. Sharp, and K.A.R. Walshe. 1999. Monitoring Performance of Commercial Fisheries Policy. Research report to the Ministry of Fisheries on research project SEC 9802. Ministry of Fisheries. Wellington.

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- Barnes, P. and Walshe, K. 1997. Underwater setting methods to minimise the accidental and incidental capture of seas birds by surface longliners. Report on a prototype device developed by Akroyd Walshe Ltd/Paul's Kites Ltd. *Science for conservation* 66. Department of Conservation. Wellington.
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- Walshe, K.A.R., Akroyd, J. M. 2001. Recreational fishers understanding of fisheries regulations in the upper north Island. Research report to the Ministry of Fisheries on research project REC 2000-04. Ministry of Fisheries. Wellington.
- Walshe, K.A.R., Akroyd, J. M., and Manly, B. F. J. 2001. Intertidal shellfish monitoring in the Auckland Fisheries Management Area. Research report to the Ministry of Fisheries on research project AKI 2000-01. Ministry of Fisheries. Wellington.