

Te Ohu Analysis of **Shared Fisheries** Proposals and Options

This paper provides an analysis of **Shared Fisheries** commencing with a summary of the proposals and options contained within each section of the **Shared Fisheries** discussion document. We have used the same format as the Government's document.

Shared Fisheries includes "proposals" and "options". "Proposals" are those where Cabinet has expressed a clear view. Where there is a sequence of proposals they are not alternatives - one or more of them may be advanced. "Options" are presented where there is more than one way to achieve the proposal that Government would like views on.

In this paper we provide comments on our concerns with each proposal or option of the **Shared Fisheries** paper. We conclude each section with suggested improvements either to one or more of the proposals or options in each section. In some instances we suggest that the status quo is the best option with some small improvements and in other instances we suggest *alternative* approaches are used.

Section 1: Introduction to **Shared Fisheries**

1. The aim of the proposals set out in the **Shared Fisheries** paper is to:
"provide opportunities for New Zealanders to get the best value from the use of fisheries resources"
2. To achieve this aim it states that two key ideas form the basis for the proposals and options put forward in the document.
 - *"All New Zealanders have a basic right to catch fish"*
 - *"Shared fisheries should be managed in such a way that produces the best value for New Zealand"*
3. The document defines shared fisheries as those fisheries in which all sectors (customary, commercial and recreational) have an interest. The Ministry of Fisheries (Mfish) has specifically identified shared fisheries as including:
 - inshore fisheries (e.g. Snapper, Blue Cod, Kahawai, Rock Lobster and Paua)
 - offshore fisheries (e.g. gamefish)
 - freshwater fisheries (e.g. eels).
4. The document is very short on detail and analysis of any implications on current fisheries management. Understanding the implications of proposed changes requires a degree of historical context and an appreciation for how fisheries are currently managed. Appendix 1 of this paper provides background on these matters.
5. **Shared Fisheries** identifies the following key concerns:
 - effective management is currently undermined by poor information on amateur catch and uncertainty surrounding the process for allocating the available catch between commercial, customary and amateur fishers.
 - risks associated with management decisions based on poor information, the cost of ongoing contention and litigation, and the loss of value associated with inadequate incentives for all sectors to protect and improve shared fisheries.

6. However the proposals and options contained in **Shared Fisheries** either do not provide solutions, or where solutions are provided they do not create incentives for good fisheries management. Moreover, while **Shared Fisheries** signals that there is conflict between sectors in shared fisheries, there is a lack of proper description of the particular fisheries in which these conflicts have arisen. We estimate that there may only be 5 or 6 key fisheries and areas where there is a concern. Without a clearer picture of the problem, the elaborate list of proposals and options may be likened to “using a sledge hammer to crack a nut”.
7. The proposals and options are presented in a simplistic way with little analysis of the implications or impact on existing fisheries interests. Without this it is difficult to determine what the cumulative implications of the changes could be on the fisheries management system including the QMS and the Fisheries Settlement. The remaining sections of this report provide an analysis of the proposals and options contained in **Shared Fisheries** and our concerns relating to each.

Alternative Problem Solving Approach

The **Shared Fisheries** paper does not provide a rational basis for the proposals it offers. A robust analysis of shared fisheries would need to be based on the following:

Clarify the problem:

- a. What is the problem to be addressed?
- b. Why is it a problem?
- c. How serious is the problem?
- d. Does it need to be addressed now?
- e. Who is affected?
- f. In what way?

Rationalising the solutions

- a. What are the range of possible solutions for dealing with the problem(s)?
- b. How costly is/are the solution(s)?
- c. Who should pay?
- d. Will solving the problem create other problems?
- e. What are the costs and benefits of each option and which option or mix of options will resolve the problem(s) most effectively at the least cost?

Section 2: Getting better information on catch and value

8. The **Shared Fisheries** paper states that

“any effective management system depends on good information. In fisheries, this means knowing who is catching what, when and where.”

9. It goes on to point out that both the commercial and customary sectors are required to report their catch but this is not currently the case with the recreational sector.

10. It discusses past failed attempts to get information on recreational take through surveys and the need to get more survey information through new survey methods and in addition to this:

“information that will ensure amateur interests are properly recognised and taken into account in effective management of shared fisheries”.

11. Three proposals are advanced for getting better information:

Proposal A More survey and monitoring work – ideas suggested include flights over specific areas to count boats, boat ramp surveys, increased use of web-cams at boat ramps, seeking information through fishing clubs, adding fishing questions to the Census and the 3-yearly Household Economic Survey.

Proposal B Reporting for recreational charter operations – charter boats would be registered and operators would be required to furnish reports on catches.

Proposal C Estimating relative values for commercial and amateur fishing – effort will first be put into developing methods for providing valuation information about shared fisheries. These methods would then be used to assess relative values of the commercial and non-commercial sectors to assist in decisions on allocating or reallocating shares.

Implications and concerns

12. The proposals do not set out and analyse a full range of options. For instance they avoid having the recreational sector take responsibility for monitoring and reporting its catches. While this may be too difficult to achieve in one step because of the lack of any real capacity at present to implement such a programme, the idea should not be abandoned but could be implemented gradually. Proposing a system that elevates the status of the recreational interests through legislation but does not require the recreational sector to exercise any meaningful responsibility is clearly unjust as well as working against sustainable management of fisheries.
13. **Proposal A** - using new methods and combining these with other data sources - is unlikely to provide any significant advancement on the current situation. Combining past unreliable survey results with new results of an experimental nature is not a satisfactory replacement for catch reporting. In addition it will be extremely expensive to implement with costs of obtaining and validating the results estimated to be in the millions of dollars. This money could be far better spent developing simple methods for the recreational sector to improve reporting their catch on an incremental sub-sector basis – as proposed for the charter boat sub-sector.
14. The only real proposal that will provide additional valuable information is that described in **Proposal B** – charter boat reporting. Te Ohu has argued for this in the past. It should be supported as an important contribution to long-term improvement of recreational harvest reporting overall. The frequency of reporting will be important and one addition that we might suggest is that the reliability of reporting results is randomly checked through observers as is the case with commercial fishing.

15. Rather than propose to directly quantify the share of interests in fisheries for the recreational sector and then allow that sector to reach agreement with others, **Proposal C** proposes to develop a proxy that estimates the nature and extent of those interests, along with those of the commercial sector, so that the Government can determine what mix of shares represents the 'best' value.
16. We agree that the value of the share of any fishery to each sector cannot be measured in exactly the same dimensions. However, we consider that only each sector can decide its trade-off points.
17. Having the Government determine the trade-off point for any fishery is highly likely to result in ever-increasing uncertainty and litigation about the nature and extent of each sector's rights or entitlements. Multi-dimensional valuation analysis is more an art than a science. Where Government proposed to do this in recent years there has been substantial disagreement over the methodology proposed. Even if you could develop agreement on the value to the different sectors on a particular set of shares of the TAC, the analysis is not dynamic and able to accurately predict the value for different shares of that same TAC or for different levels of TAC. The danger with the proposal is that it will be this or similar methodology with the uncertainties involved in such methodology that will be used to determine how much compulsory change will occur to the shares of any fishery in the circumstances set out in later proposals in the paper – see below.

Suggested Improvements to Catch Reporting

Incremental Improvements to Recreational Catch Reporting

At a sector level there is a need to aim in the long-term for significantly improved catch reporting by the recreational sector.

This aim may be achieved incrementally commencing with the Charter boat sub-sector then working with the other sub-sectors (i.e. fishing clubs, boat ramp managers) to develop simple ways for recreational fishers to report their catch.

We support the proposal for Charter boat operators to register their boats and report their catch. We suggest that there is a need to agree on the frequency of reporting and compliance testing.

Section 3: Setting the Total Allowable Catch

18. Both proposals in the ***Shared Fisheries*** paper aim at increasing fish size and abundance (or both) by moving the Total Allowable Catch (TAC) away from the standard practice of managing at the Maximum Sustainable Yield (MSY). MSY is the maximum biological yield that can be obtained while at the same time protecting the sustainability of the fishery. The ***Shared Fisheries*** paper states that both proposals are designed to “*better recognise the importance of amateur and customary values*”.

19. The proposals are:

Proposal A Setting the TAC for a stock target level above that which achieves MSY.

Proposal B Setting the TAC in depleted fisheries to allow faster rebuild times.

20. The paper states that these proposals would be applied on a case-by-case basis “*if doing so would produce an increase in value obtained from the shared fishery*”.

Implications and concerns

21. The overall effect of this approach will be to reduce the TAC and the Total Allowable Commercial Catch (TACC). Other than exceptional circumstances where the industry would get more money from fewer larger fish, this approach will go against commercial use of their current rights and result in the industry receiving less income. Te Ohu opposes any compulsory acquisition of Fisheries Settlement assets or the access to ACE arising from those assets.

22. The paper states “*all sectors might need to forego some of the catch to build and maintain a higher stock level.*” The systems used to manage the commercial sector means that their catch can be restrained and shown to be so. There are no existing measures that can do this for the recreational sector and nor are any proposed. These proposals should be opposed unless there are to be measures that demonstrate that recreational take can and will be capped year to year to achieve the outcome proposed. In each circumstance where such proposals are to be implemented, the commercial sector including Iwi should be provided with redress and this should be on a ‘willing-seller willing-buyer’ approach.

Status Quo Improvements for TAC Setting

Clarify that the sole purpose for setting the TAC is to protect sustainability

The purpose of setting a TAC should be for no reason other than to protect sustainability. The underlying sustainability of the resource must receive the highest priority when managing fisheries at MSY.

Allocation of the TAC amongst the sectors must be kept as a completely separate decision from that of protecting the underlying sustainability of the resource.

In this context the TAC should only be determined by the Maximum Sustainable Yield.

Any proposal to manage a fishery for a different goal to MSY should be agreed by the sectors in the development of a Fisheries management plan.

Section 4: Priorities for allocating the TAC

23. The **Shared Fisheries** paper claims that the present approach to making allocations of the TAC lacks certainty. It argues that priorities need to be established in law for recreational and customary fishing over commercial fishing. The proposals are:

Proposal: Priority for amateur fishing over commercial fishing - a minimum tonnage for the amateur sector would be established in each shared fishery (perhaps to be set at 20% of the current baseline amateur allocation in each fishery). This would have priority over commercial take and would only be reduced if all commercial fishing had already ceased in the fishery and a further reduction in take was needed to ensure sustainability.

Proposal: Clarify provisions for Maori customary take – rules would establish that “actual customary take” is to be provided for before allocation to the amateur and commercial sectors. The customary allowance would be increased when reporting showed the actual take exceeded the current allowance – subject to sustainability limits.

Implications and concerns

24. Te Ohu agrees that the current process for allocating the TAC lacks long-term certainty. When the Minister sets the TAC for any fishstock, he must make an allowance for both customary non-commercial take and recreational take. These allowances – though often arbitrary – have generally been set on the same basis for many years.
25. In recognition of the importance of providing permanent commercial property rights (and the incentives for sound fisheries management practices that arise from those) the Fisheries Act provides that the Minister cannot adjust the shares of the TAC without being liable for compensation unless those changes arise for sustainability reasons and happen when the TAC needs to be reduced.
26. Case law has set down that the current wording in the Act contains no pre-set priority among sectors when adjusting the TAC down – each case must be determined on its merits. However with change in shares possible at this time it is difficult to secure agreement amongst sectors to work together on management of a fishstock to manage and/or build a fishery.
27. The adjustment needed to complete the rights regime in a manner that would encourage cooperative management would be to make the current allowances the long-term base rights for each sector and allow the sectors to make short-term (annual) trades where they want to enhance their position.
28. However the proposals do not provide for this – instead they propose to alter the legislation to set out the following priority for each sector - customary non-commercial 1st, recreational take 2nd and commercial 3rd.
29. This is a vastly different legislative regime than the negotiators and Iwi considered when deciding whether to agree to the QMS as part of the Fisheries Settlement. With this set of proposals advancing a priority for the recreational sector over the commercial Fisheries Settlement and with no proposals in the paper to ensure that the recreational sector will manage its

take within its allocation, there is a high likelihood that the commercial settlement will be eroded with little compensation irrespective of Iwi wishes.

30. The Fisheries Settlement set out the recent agreement about Iwi aboriginal rights to fish that were recognised and secured under the Treaty of Waitangi. The highest New Zealand courts agreed that those ownership rights continued up to the time of the introduction of the QMS and the settlement proceeded on the basis that it provided certainty to the continued priority of Iwi rights.
31. The **Shared Fisheries** paper proposals change that. The first proposal which suggests a priority baseline allocation of 20% for the recreational sector fails to acknowledge that there is no accepted basis for a recreational “right”. It is unacceptable to suggest that a priority be given to this sector ahead of the rights that were secured and guaranteed in the Fisheries Settlement simply because the sector desires or demands it.
32. In addition, there is simply no information to justify 20% as an appropriate percentage. On that basis, a fixed percentage could well be set at any level (such as 100%), also without any real justification. It can be expected that recreational feedback on the discussion paper will target increasing this share.
33. We would support - as we have in the past - a legitimate priority for customary non-commercial fishing ahead of commercial and recreational fishing, as outlined in the second proposal. However the successful application of this proposal depends on the full implementation of the customary regulations and their reporting components. To date nearly ten years following the promulgation of the customary regulations, full implementation is far from a reality and in many cases customary non-commercial fishing is still legitimately conducted under regulation 27A which does not have a compulsory reporting requirement. If setting the customary non-commercial allowance is going to be based only on what is reported then the allowance will be set well below the actual level of legitimate need for customary non-commercial fishers. Further to this, there is little incentive for Maori to utilise the customary regulations if it is easier to catch fish under the recreational rules, which require no reporting. Through the combined components of the Fisheries Settlement (commercial and non-commercial) Maori carry far more stringent reporting responsibilities than do recreational fishers.

Alternative - Priorities

Any priority for allocating the TAC must:

1. Protect sustainability based on MSY (as discussed in section 3 above) as the highest priority.
2. Provide for customary needs to the full extent necessary – this will require the full implementation of the customary regulations so that catch records can provide an accurate picture of the customary take/allowance needed.
3. Fully implementing the customary regulation will require the Crown providing positive incentives for Maori to utilise them.
4. Fix the remaining share between the commercial and recreational sectors as proportions of the remaining TAC based on current allowances – with any cuts required to fully satisfy the customary needs shared proportionally amongst the commercial and recreational sectors.

Section 5: Setting and adjusting amateur and commercial allocations

34. The **Shared Fisheries** paper argues that past allocation decisions have to be revisited because of “*perceptions that current allocations are not reasonable*”. It also argues for a new process for adjusting shared fisheries in order to “*create the most value for shared fisheries*”. Three options are advanced for re-setting allocations in key fisheries. These are:

Option A Re-setting allocations following an independent assessment – this would involve a panel or person assessing evidence and submissions and making a recommendation to the Minister.

Option B Re-setting allocations following a study of value in the commercial and amateur sectors – this would involve a valuation exercise to compare commercial and non-commercial values. The aim would be to “maximise value”.

Option C Re-setting allocations following a negotiation process – this would involve discussions between the sectors on a comprehensive package involving TAC, rebuilding periods and area management issues.

35. The paper also offers three options for “ongoing adjustments”. These are:

Option A Proportional adjustments where allocation changes are spread between the commercial and recreational sectors with variation on this providing for proportional adjustment subject to agreed rules.

Option B Value-based adjustments – the suggestion is that this could be based on estimates of the marginal value of fish i.e. the value of the “next fish caught”.

Option C Combination model – proportional adjustment would be the default but valuation information would be used to shift allocations to where they created greatest overall value.

Implications and concerns

36. The range of proposals presented in this section clearly reflects and responds positively to the recreational sector’s unsubstantiated claims of historical injustice in allocating the recreational share. This claim is subjective only. With there being no reported catch by recreational fishers, it is impossible to assess whether recreational fishers either cumulatively cannot catch the allowance the Minister makes or are catching well in excess of that allowance. With no catch and effort information collected (as there is for the commercial sector) there is no objective analysis that can be carried out to determine the health of the fishery for the recreational sector. There can only be anecdotal information on catch effort. MFish regularly deals with such anecdotal information and has policy on it - in all the normal decision-making under the Fisheries Act such information is treated with caution and not used to make decisions on.

37. The paper suggests a number of options for adjusting the amateur allocation “*to generate greater legitimacy*”. This implies that the current shares are not legitimate. This ignores the substantial work undertaken at the time of the introduction of the QMS by officials, sector representatives and the Select

Committee at that time. It is likely that the current set of participants – officials, politicians and recreational fishers’ representatives did not participate in that process. The fact that recreational fishers do not agree with the outcome of the earlier process is no basis for proposing a set of changes that will substantively undermine the effective QMS and the Fisheries Settlement.

38. All of the proposals in this section are designed to justify a means of taking quota off the commercial sector and transferring that as an increased allowance to the recreational sector. Te Ohu opposes all these proposals. The value of the Settlement from the fisheries noted in the document – snapper, kahawai, kingfish, blue cod, crayfish and paua across all the fish stocks was approximately \$80 million at the commencement of Te Ohu Kai Moana in November 2004. While changes may not affect every fishstock it can be seen that these proposals have the potential to seriously affect a substantive part of the Settlement.
39. In terms of resetting allocations Te Ohu could only support the general idea of option C – a negotiation process. However, that process would have to be wider than is proposed in this option including:
- debate with the Crown on establishing the nature of a recreational “right”
 - determining appropriate responsibilities that go with the right (if established)
 - establishing an organisation sufficiently capable of delivering on those responsibilities
 - negotiation only on the basis of either “willing-seller willing-buyer” exploring adjustments up and down for a number of fisheries or appropriate redress agreed and provided by the Crown so that in both circumstances the same value of the Settlement is maintained
 - integration of those rights into the fisheries management framework in a way that does not destroy the currency of existing legitimate rights.
40. In the proposals to make ongoing adjustments, the only proposal that would remotely resemble a viable proposition for Te Ohu is the variation on Option A – proportional adjustment equally spread between the commercial and recreational sectors subject to agreed rules. The industry position – that we have supported - is that shares should only be exchanged on a “willing-seller willing-buyer” basis. The variation on option A may provide the means for such negotiations to take place. However the package of proposals and options in the paper would create little incentive for the recreational sector to enter into negotiations.
41. Furthermore, it is unlikely that the recreational sector would be able to organise itself sufficiently for such rules to be agreed and enforceable in the short term. Effort should be directed at addressing this capacity before advancing these proposals.

Suggested Improvements to Resetting Allocations

A Fair and Transparent Negotiation Process

Any negotiation process would require a wider scope than is covered in Option C. Such a process would need to include:

- a. debate with the Crown on establishing the nature of a recreational “right” compatible with the current set of rights and allowances (set according to the priority approach described above)
- b. determining appropriate responsibilities that go with the right (if established)
- c. establishing an organisation sufficiently capable of delivering on those responsibilities.

Once the nature of the recreational “right” including its responsibilities has been clarified and an organisation capable of managing those responsibilities has been established then the Crown can step back and allow sectors to trade their shares of the fisheries based on a ‘willing-seller willing-buyer’ basis.

Under this scenario sectors can exchange shares in some fisheries for shares in others allowing market forces to operate revealing the true value of the fisheries to each sector. Initially this should only involve trading of some or all of the allowable catch for that sector for the next fishing year. Once experience is built in this, more long-term trades could be allowed for.

Section 6: Local area management

42. The **Shared Fisheries** paper suggests the need for management at scales smaller than Quota Management Areas to “help increase the value of shared fisheries, especially for customary and amateur fishers in inshore areas”. It proposes three methods to achieve this, one or more of which could be implemented. These are:

Proposal A Providing for a coastal zone or areas where key species are managed for non-commercial fishing – the proposal is to extend current zones with commercial bulk-fishing exclusions to cover the whole coast out to perhaps 2km.

Proposal B Providing for sector-initiated proposals to protect or strengthen specific interests e.g. to create amateur fishing havens closed to commercial fishing or to exclude bulk-fishing methods from particular areas.

Proposal C Creating area-based fisheries plans – the idea is to develop plans to cover all shared fisheries within nominated areas such as harbours.

Implications and concerns

43. These proposals are designed to exclude commercial fishing on a local area scale. The cumulative effects of such area exclusions will result in reduced

access for the commercial sector to take their legal entitlements. If areas are to be closed redress should be provided.

44. The paper's authors have also not reported that there are already a number of provisions in the Fisheries Act for sector initiated proposals including section 186A as well as a considerable number of both formally closed areas and of voluntary undertakings covering areas around the coast where commercial fishers do not operate in order to enhance the amateur fishing experience. Some of the closures are seasonal – linked to holiday periods or seasonal species abundance – others are year round. These voluntary and compulsory exclusions, and the statutory powers already available need to be considered before there is any progress down the path of this proposal.
45. A consequence of Options A and B is that the local area tools developed for the recreational sector will directly compete with the non-commercial provisions in the Fisheries Settlement namely taiapure and mataitai. Te Ohu raised this issue with the Government in our submission on *Soundings* in December 2000 where we submitted:

“The Commission opposes the erosion of commercial rights represented by the proposal for Coastal Zones that arrogate a preference for recreational fishers. The Commission considers that the desire by recreational and customary fishers to enhanced local stocks can best be dealt with through the existing mechanisms of mataitai, taiapure and management plans, once basic entitlements and organisational issues are addressed...”

46. Te Ohu can not support the advancement of these local area tools because they will undermine both the commercial and non-commercial components of the Fisheries Settlement.
47. Proposal C provides the only viable alternative but only where the area chosen is of a sensible size for fisheries management. Te Ohu would not be able to support an area based plan where it does not include a suitable biogeographical range for the species that are the target of management. It is highly unlikely that a harbour is of sufficient size to manage fisheries except for some shellfish stocks. Management of small areas often only results in a transferral of effort into another nearby zone – moving the problem not solving it.

Status Quo – Utilise the current tools available

Encourage recreational fishers to support the customary tools or Participate in area based fisheries plans

Recreational fishers should be encouraged to support the local area management tools already provided within the Fisheries Act including method restrictions, area closures, mataitai and taiapure.

In instances where sectors have fully tradable rights (as described in section 5 above) area based fisheries plans would provide an ideal tool to negotiate sector interests. This proposal would be improved by consideration of the biogeographical range of the target species for management.

Section 7: Redress following adjustments in allocations or access

48. The **Shared Fisheries** paper suggests that if the Government proposes changes to allocations or access, any significant costs that would be imposed on the commercial sector could be assessed and the need for redress considered. It offers two options:

Option A Leave redress with the Courts – this suggests that the industry could rely on common law to seek compensation.

Option B Provide a specific process for consideration of redress to the commercial sector – an analysis would have to be provided to decision makers assessing the costs and benefits of the proposed changes. Decision makers would then decide whether to proceed with the proposed change. They could also decide to pay redress or leave Courts to consider whether redress was warranted.

Implications and concerns

49. The Fisheries Settlement is stated in legislation to be full and final. The Maori Fisheries Act 2004 contain provisions that mean that the quota involved will always be held by all Iwi. Te Ohu opposes any proposals that result in compulsory transfer of the use of ACE arising from that quota.

50. There are very few circumstances where Government now uses compulsory acquisition as the means to effect a transfer of use of property between sectors in society. Currently this usually is only used where space is needed for public goods infrastructure. Te Ohu considers that the uses contemplated by the proposals in the **Shared Fisheries** paper do not meet the general criteria for compulsory change and a 'willing-seller willing-buyer' approach should be followed. This is particularly important where Fisheries Settlement assets are involved.

51. The redress options in the **Shared Fisheries** paper provide some acknowledgement that Government can not simply confiscate property rights without considering the associated costs. The inclusion of this section in the paper is to be applauded although it will need clarification and strengthening.

52. While the options presented acknowledge that the "effects" on rights will form the basis for redress to be provided what is unclear is how the assessment will determine what level of effect constitutes a "significant effect".

53. Essentially these options sort the cases for redress into two camps:

- those that clearly have a significant effect – these are likely to be the obvious high value inshore fisheries such as paua and rock lobster. This group is also more likely to have the funds available to pursue a court case
- those that are likely to have only a potentially significant effect – such as small commercial inshore fisheries for pipi or cockle or 'low value' finfish. These groups are less likely to have funds available to pursue court action.

54. A further matter that requires consideration is the size of the area from which commercial fishers may be excluded to provide for recreational zones. While the size of any single proposal may be small in some instances the effect may

be big particularly where there is more than one exclusion area in an overall QMA. Also in those fisheries where in practice fish are only caught in a small portion of the overall QMA, then any restrictions that affect that portion will be much more significant than the ratio of areas.

55. Having categorised these two types of claimants it is likely to be in the Government's interests to offer redress based on its evaluation of risk of a successful court action. The groups that are likely to succeed at court are in the former category and those that are not are in the later.
56. If the Government is confronted with a claimant group in the former category it would be in its interest to directly negotiate a redress package rather than leaving it up to the Courts to determine how much compensation they should pay. However, if confronted with claimant groups from the later category it would be in its interest to leave the claimants to pursue court action - with the associated risks of failure and costs. This is represented by the default provided in option B.
57. Without further clarification and alteration to the proposals these options could assist the Government to manage risks associated with redress and not to directly offer a fair, consistent and transparent process for redress. The default provided in option B suggests that the Government will only provide redress in the high value fisheries where the effects are clearly significant and not in the lower value fisheries. Te Ohu could not support such a divisive proposal as the quota delivered through the settlement spans all fisheries.
58. What is needed is a fully developed and agreed set of criteria. Option B needs to be strengthened by inclusion of the considerations mentioned above and made fully transparent ahead of any recreational coastal zone or reallocation taking place.

Suggested Improvements to the Redress Proposals

A transparent and comprehensive redress proposal will send a clear message that in New Zealand property rights are valued and respected. Therefore clear criteria will need to be developed that articulate:

- a. what constitutes a "significant effect".
- b. what basis will be used for determining the value of compensation provided.

Agreement on these criteria and the process ahead would be needed prior to advancing any shifts in allocations or access.

Section 8: Representing amateur fishers' interests

59. The ***Shared Fisheries*** paper argues for a greater involvement by amateur fishers in fisheries management, particularly in contributing views into the decision making process and in the development of fisheries plans. It notes that current organisations find it difficult to generate funding and to represent all amateur interests.
60. The ***Shared Fisheries*** paper proposes the creation of an Amateur Fishing Trust, to be funded mainly by Government. The trust's mandate would be to

work with existing fishing organisations to provide professional input into fisheries management, fund projects and promote the development of a representative and funded structure for the amateur fishing sector.

Implications and concerns

61. We agree with the idea of establishing an organisation that can represent and manage the interests of the recreational sector. In our view, such an organisation should be independently funded and be accountable to its membership. Such an organisation should also have the mandate to manage catch reporting and negotiate directly with the commercial sector to resolve differences of opinion or to agree on an exchange of shares in shared fisheries on a 'willing-seller willing-buyer' basis.
62. However in the context of the other proposals set out in the discussion paper, the proposed Trust could be seen to be a Government funded lobby group set up to represent and promote the political interest of the sector. While Te Ohu would agree with the need for an organisation to manage the recreational sector's activities, this proposal will not achieve these needs.

Suggested Improvements to the Amateur Fishing Trust

An organisation is needed to manage the responsibilities of the recreational sector agreed upon. These responsibilities may include:

- a. collating and reporting sub-sector catches at regular intervals
- b. managing sub-sector catches within the overall recreational allocation
- c. trading recreational sector shares with the commercial sector
- d. negotiate fisheries plans with the commercial sector.

Such an organisation will need to be independent of the Government and self funding. Such funding will only be possible if the trust has the support and mandate of the recreational sector to deliver services in the sectors interests. To achieve this the recreational sector need to have positive incentives to support the trust financially. Such services might include:

- a. those mentioned above
- b. sector co-ordination and professional submission writing services.

Section 9: Have your say

63. The Minister of Fisheries launched the **Shared Fisheries** discussion document on the 25th October 2006. Mfish has been holding meetings/hui with tangata whenua and stakeholders during November and December 2006.
64. **Submissions are due on 28th February 2007.**
65. Final decisions on reforms that flow out of the consultation process along with the nature and timing of implementation will be taken by Cabinet in mid 2007 with legislation expected to be introduced at the same time.
66. While the consultation process described above may meet the Ministry of Fisheries consultation obligations under the Fisheries Act, Te Ohu considers

that the potential impact of the reform is of sufficient importance to hold a workshop for iwi to discuss the proposals and options with a view to agreeing on a collective response for submission purposes. The workshop is to be held on 9th February 2007 providing sufficient time to finalise a draft submission in time for the due date of 28th February.

Have your say

Te Ohu Kaimoana Workshop on *Shared Fisheries*

What: Workshop to finalise a collective submission to the Ministry of Fisheries - Shared Fisheries discussion document

Where: Wellington (venue to be advised)

When: Friday 9th February 2007 from 10am to 3pm.

DRAFT

Appendix 1 Elements of New Zealand's current fisheries management system

1. There are two general approaches to fisheries management. The first involves the Government annually setting the rules for management including decisions about fishing methods, allocation and re-allocation of fishing rights to different interest groups. Under this scenario, Government decisions can be influenced by sector lobby groups. Decisions on the allocation of rights are generally politically based, and changes can be made in response to sector demands. There is very little certainty or incentive for those who wish to invest in fisheries to do so on a long-term basis.
2. The second "rights-based" approach involves the initial allocation by Government of property rights in the form of harvest rights to different sectors on a perpetual basis. The role of the Government is to set in place the desired management objectives, leaving it to rights holders to work out the most effective and efficient means to achieve them. Under this scenario, fisheries rights holders have a more secure basis for investing in the management and development of their share of the fisheries. The Government has no role in reallocating rights once they have been allocated in the first instance, leaving it to rights holders to trade their rights on a "willing-seller willing-buyer" basis. The ability to trade could be for all of the underlying share, or only part of that share, or only part or all of the annual entitlement arising from that share.
3. New Zealand used the approach set out in paragraph 8 but inshore fisheries were failing. In response to this, from 1986, New Zealand embarked on a rights-based approach to fisheries management when it introduced the Quota Management System (QMS). The QMS effectively created a property right in Individual Transferable Quota (ITQ), from which Maori were excluded. Maori challenged the Government's right to allocate these perpetual rights on the basis that the Crown did not own the rights in the first place – as Maori had never ceded them. This claim formed the basis for negotiations between the Crown and Maori which resulted in the 1992 Fisheries Settlement.

The Fisheries Settlement

4. In 1992 the Fisheries Settlement settled claims by Maori that their rights in fisheries, guaranteed under Article II of the Treaty, had been breached by the Crown. The Settlement contained two components of redress. Both components established more clearly defined property rights, although different in their nature and extent:
 - a commercial right, delivered by the Crown in the form of quota, known as Individual Transferable Quota (ITQ). This property right achieved legitimacy through the settlement process and can be described as perpetual, transferable and subject to sustainability limits established by MFish on a periodic basis for each stock.
 - a non-commercial right that takes the form of regulations that provide for the use and management practices of Maori. These regulations provide for Kaitiaki to issue authorisations for customary harvest and deliver local area management tools such as Taiapure and Mataitai. These property rights were also legitimised through the settlement process and can be described as collective (i.e. belonging to tangata whenua). They operate at the Quota Management Area or Fisheries Management Area scale for

customary harvest allowances or at the local area management scale for Taiapure and Mataitai.

5. At the time of the settlement negotiations with Maori, the Crown promoted the concept of the QMS as having the following advantages:
 - it was a means to cap total catch and therefore protect overall sustainability
 - the property rights Maori would receive in the form of ITQ would be perpetual and therefore were robust and enduring
 - an express purpose of allocating ITQ was to give security to ITQ holders which would allow them to plan and invest with greater confidence.
6. It was in this light that the Maori negotiators agreed to exchange the customary rights protected in Section 88(2) of the 1983 Fisheries Act with the perpetual rights outlined above. Given the “full and final” nature of the settlement, they expected that the integrity of these rights would be protected.
7. Since the settlement, each stock managed within the QMS is managed within an overall Total Allowable Catch (TAC). Within this TAC three sectors obtain a share where:
 - the commercial sector receives a set Total Allowable Commercial Catch (TACC) which is divided into quota shares. Maori receive 20% of these shares through Te Ohu
 - the recreational sector receives an allowance, along with daily bag limits based on national telephone and diary surveys - with specified size limits and fishing method controls
 - the customary sector receives an allowance based on a percentage of the recreational allowance depending on the species relative importance – which is authorised by a Kaitiaki appointed by the tangata whenua.

How is sustainability managed?

8. Maximum Sustainable Yield (MSY) is a management target dealt with in section 13 of the Fisheries Act¹. In population modelling terms there is no single point on a population curve where MSY can be achieved – rather there are a range of possible points from which to choose depending on circumstances. Factors affecting MSY include time and space. So that the longer the time period and the

¹ Section 13 states: “(1) Subject to this section, the Minister shall, by notice in the Gazette, set in respect of the quota management area relating to each quota management stock a total allowable catch for that stock, and that total allowable catch shall continue to apply in each fishing year for that stock unless varies under this section.

The Minister shall set a total allowable catch that –

- Maintains the stock at or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks; or
- Enables the level of any stock whose current level is below that which can produce maximum sustainable yield to be altered –
 - i. In a way and at a rate that will result in the stock being restored to or above a level that can produce the maximum sustainable yield, having regard to the interdependence of stocks and any environmental conditions affecting the stock; and
 - (ii) Within a period appropriate to the stock and its biological characteristics; or

Enables the level of any stock whose current level is above that which can produce the maximum sustainable yield to be altered in a way and at a rate that will result in the stock moving towards or above a level that can produce a maximum sustainable yield, having regard to the interdependence of stocks...”

larger the geographical space in which you view a population model then the more fish (or yield) that can be sustainability extracted.

9. To date the general rule has been that the Government must manage fisheries on the basis of MSY and can't change sector shares of the TAC except to accommodate sustainability concerns. Any changes in shares for reasons other than sustainability would attract compensation.

How is the TAC established and reviewed?

10. The Total Allowable Catch (TAC) is derived from the MSY. That is the maximum amount of fish that can safely be removed from a fish-stock while still leaving sufficient fish in the water to grow and breed.
11. A stock assessment is conducted that estimates the total increases in biomass (births and growth) less the total decreases (deaths through natural mortality and harvest extractions) to determine where the TAC should be set.
12. Catch information obtained from both the commercial and customary sectors forms the basis for estimating the annual extractions from these sectors. However the lack of catch reporting information of an equivalent nature from the recreational sector causes problems in obtaining a true picture of total extractions.
13. In fisheries where recreational fishers take a large or the majority of the total harvest there is no means of evaluating whether total recreational extractions are exceeding sustainable limits. This has the potential to put such stocks at risk.
14. To date the Government has addressed the recreational catch reporting problem by conducting recreational surveys every five years. These surveys have proven to be extremely unreliable with as much as 300% variation in the results between them. Surveys such as this are extremely expensive to conduct in an estimated range of \$1-2 million each. Despite these results the Government has persisted with this method of obtaining the recreational harvest estimates stating that it is the "best available information".
15. Managing fisheries using five year old unreliable survey information is clearly no way to manage fisheries under stress and at risk. The obvious alternative would be to implement, or progressively implement a recreational reporting requirement so that total extractions can be identified as a basis to determine sustainable levels of extractions.

Allocating shares in the TAC

16. Legislation creates no priority for any sector although it states that an allowance must be provided for customary and recreational fishers before setting the Total Allowable Commercial Catch (TACC)². Indeed the 1997 Snapper court case determined that there was no priority inherent in the fisheries Act and that :

² Section 21 deals with Matters to be taken into account in setting or varying any total allowable commercial catch. Its states:

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

- (a) The following non-commercial fishing interests in that stock, namely-
 - (i) Maori customary non-commercial fishing interests; and
 - (ii) Recreational interests; and
- (b) All other mortality to that stock caused by fishing."

“The Minister has the discretion to allocate the TAC on a case by case basis weighing all competing demands”

17. In recent years, the Government has introduced a distinction between a “claims based model” (allocating shares of the resource based on historical patterns of use) versus a “utility model” (allocating shares based on the utility that sectors will receive from the resource) when introducing species into the QMS. MFish has been working to advance the utility model using the concept of “maximising value”, so that the sector that MFish analysis suggests values the resource most will receive the greater share of the TAC for a stock when introduced. The primary question raised by this approach is: how are these values specified, and is it appropriate for the Government to determine which sector places the highest value on particular fisheries rather than direct agreement between those sectors?
18. Te Ohu’s view on this has always been that besides the fundamental responsibility to protect the underlying sustainability of the resource that:
- the customary sector should receive the highest priority as there are ongoing obligations on the Government to provide for the customary use and management practices of tangata whenua
 - the commercial sector should receive the next priority because it (a) forms a component of the Article II rights protected under the fisheries settlement and (b) forms the basis of a rights-based management system into which Maori are now locked-in
 - the recreational sector should receive the last priority in this hierarchy as there interests have no clearly defined rights.

Managing catch within allocations

19. Both the commercial and the customary sectors have rigorous permitting and reporting requirements attached to them with stringent compliance regimes and penalties for non-compliance³.
20. For example, a commercial fishing vessel must be permitted before going fishing, comply with gear and area restrictions and also record their catches following fishing then complete aggregate reports of catch on a monthly basis. The commercial sector is also required to fund management of the fisheries through levies paid to MFish based on their quota value.
21. The customary sector has to obtain a permit or authorisation prior to going fishing and in the case of the customary regulations report catch to the Kaitiaki who then must lodge quarterly aggregate reports with MFish.
22. In contrast, the recreational sector is not required to have any permits or authorisations prior to going fishing or report their catch. While there are bag limits and method controls there is little compliance effort and very little information upon which to proceed with prosecutions.
23. To date management of the recreational sector within its share has not been possible because there is no way to link the controls (i.e. bag and size limits) to the overall allowance in the absence of a reporting system.

³ More detailed information on reporting requirements is contained in Appendix 1.

The basis of the recreational share

24. The Minister is required to set the recreational allowance and this has been occurring since 1986. At the time of QMS introduction there was extensive input from recreational fishers (and their organisations) as to their share of the fisheries and exclusions of commercial fisheries from certain areas. As is the nature of such negotiations the recreational sector did not get all it wanted.
25. To complete the rights-based approach the nature and extent of the recreational share needs to be defined. There have been a number of attempts to initiate this over the years.
26. The “*Soundings*” discussion paper released by MFish in 2000 was an example of a recent attempt to clarify the recreational interest, although the process resulted in an unexpected response from part of the recreational sector when the “Option 4” group intervened with a mass petition to prevent any type of licensing system. Following this reaction the Government abandoned those proposals to improve management of the recreational sector – stating instead that there was “insufficient information” upon which to base management decisions. However they have not until now given an indication of what information was needed. Namely, information concerning value and maximising value.
27. During the last 5 to 10 years, while there has been good progress in developing clearly specified rights and responsibilities in the commercial sector and to a lesser extent the customary sector, there has been a growing number of instances where recreational fishers have expressed their claim to a “right” to catch fish. A number of prominent examples including the Snapper Court case in 1997, the current Kahawai Court action and at a local area scale the Kaipara Harbour, the Hauraki Gulf and the Marlborough Sounds. In all of these instances conflict resulted without any tangible management changes. In one instance gun shots were fired at a fishing vessel.

Appendix 2

An outline of the permitting and catch reporting responsibilities of the commercial and customary non-commercial sectors.

The commercial and customary sectors are required to:

1. Obtain approval to harvest prior to going fishing

Commercial fishers are required to hold a fishing permit and obtain Annual Catch Entitlement (ACE) or otherwise later pay a deemed value for any fish caught with out ACE

Customary fishers are required to obtain a permit (under regulation 27A of the Fisheries Act) or an authorisation (under the customary regulations) from an authorised Kaitiaki indicating:

- how much of each species may be taken under the permit or authorisation
- from what area the fish may be taken
- methods that may be used to harvest
- specified purpose for which the harvesting may take place (i.e. hui, tangi or other purpose)
- any other conditions the Kaitiaki considers necessary.

2. Follow strict reporting requirements

Commercial fisheries are required to complete a Catch Effort Landing Return CELR or Catch Landing Return (CLR) to provide details on landed catch.

Customary fishers are required to completed a report back to the Kaitiaki on the quantity of fish gathered under the authorisation (not required under the temporary regulation 27A requirements)

3. Follow additional aggregated reporting requirements

Commercial fishers are required to complete Monthly Harvest Returns (MHR) to the Ministry of Fisheries with a summary of the quantity and species of fish caught in that period

Customary fishers are required to complete quarterly catch landing returns reporting the species and quantities of fish caught in each quarter.

4. Comply with record keeping requirements

Commercial fishers are required to keep copies of all reports and including any ACE trading and Licence Fish Receiver purchase and unloading dockets

Customary fishers are required to keep copies of authorisations issued, quarterly reports and report the total number and quantity of fish taken under the customary framework at an AGM of the tangata whenua who appointed them.

5. Compliance proceedings for breaches of the regulatory procedures are well advanced for both the commercial and customary sectors.