

Property Rights and Recreational Fishing : never the twain shall meet?

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ABSTRACT

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New Zealand's experience following the 1986 introduction of the quota management system (QMS) to manage major commercial fisheries illustrates that when designing a rights based fisheries management system, it is advisable to consider the rights of all sectors from the start. Rather than focusing purely on the commercial sector, consideration also needs to be given to how the rights of others in shared fisheries (e.g. indigenous and recreational fishers) should be specified and provided for.

The focus of this paper is on the nature of the work now underway in New Zealand to better specify and, in so doing, strengthen the rights of the recreational fishers. As well as improving fisheries management generally, the work is designed to improve the quality of recreational fishing and enable recreational fishers to play a greater role in the management of recreational fishing.

From a fisheries management perspective, the current lack of specificity as to what the recreational and commercial share of the available catch should be creates incentives for each harvest group to focus on increasing their share at the other's expense. The potential to work together to enhance yields in shared fisheries so all can benefit is often lost sight of. As such there are potential fisheries management benefits in shared fisheries that all fishers, and the nation, are missing out on.

INTRODUCTION

There is sometimes a tendency to associate property rights solely with commercial fishing. However, there is a wider place for property rights in fisheries management. Explicit property rights can be vested in other groups, such as communities, recreational fishers, and indigenous fishers.

This paper examines work going on to improve the management of marine recreational fishing in New Zealand using a property rights approach. It begins with a discussion of how recreational fishing is managed now. A comparison of the rights of recreational fishers with the rights of customary (indigenous) and commercial fishers who share in the harvesting of the fisheries resource follows. This discussion leads into an explanation of the nature of the work to better specify, and in so doing strengthen the rights of recreational fishers.

HOW IS RECREATIONAL FISHING MANAGED IN NEW ZEALAND?

A simplified version of the way fisheries are managed is as follows. For each fishstock, the fisheries Minister sets a total allowable catch (TAC), based on scientific advice as to the sustainable level of extraction from the fishery. The TAC is then allocated to the recreational, customary and commercial sectors. Customary and recreational take is provided for when setting the annual commercial catch limit. There is no specific guidance for the Minister in setting recreational take. Essentially the Minister weighs up competing interests and decides what is a reasonable share.

In a collective sense then recreational fishers have a right to a share of TAC. Individually, recreational fishers also have rights. Anyone, including an overseas tourist, is free to fish in the sea, provided they do not sell their catch and they comply with the amateur fishing regulations. New Zealand has world class recreational fishing. Not surprisingly fishing is a very popular pursuit. About one in five New Zealanders fish recreationally in the sea in any one year, and many overseas tourists join them.

The amateur fishing regulations include controls such as daily bag limits, minimum fish sizes, closed areas, closed seasons, and method and gear restrictions. The regulations serve a range of functions, including:

- managing recreational take so as the TAC is not overshot
- enabling all recreational fishers to have a “fair go” rather than having very high individual limits which could result in the majority of the (collective) recreational share going to a relatively small proportion of recreational fishers, and
- fisheries compliance purposes—the commercial compliance regime applies when a person is found in possession of fish at a specified level well above the amateur bag limits.

The Ministry of Fisheries uses telephone and diary surveys, and boat ramp interviews to monitor recreational take.

HOW DO RECREATIONAL FISHERS' RIGHTS STACK UP WITH COMMERCIAL AND CUSTOMARY RIGHTS?

Underlying the brief description above about how recreational fishing is managed are some fundamental problems for the recreational sector, and indeed for fisheries management generally. The recreational fishing sector is in fact very much “behind the 8 ball” in terms of how their rights stack up against the customary and commercial sectors. This is not a good position to be in as the fishery is a shared resource.

Commercial fishing rights

Over the past 15 years, commercial fishers have worked with government to implement clearly defined, appropriately specified and enforceable property rights. In 1986 government introduced the quota management system (QMS) to manage commercial fishing in the marine environment, using individual transferable quota. The QMS has evolved over time, with a number of changes made to improve the system. The Fisheries Amendment Act 1999 heralded the most recent changes. Amongst other things, the Act:

- allows responsibility for the operation of the quota registry to be devolved to the fishing industry, and

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- enables research, compliance and other services required by government to be directly purchased by the fishing industry.

Concurrently with the evolution of the QMS has been a change in behaviour of many quota holders. Through representative organisations, quota holders are continuing to seek more direct responsibility and control over their fishing activities. Together these changes have strengthened the rights of the commercial fishing sector.

Customary fishing rights

The QMS provided private rights to harvest fisheries (shares of fishstocks) without first determining who owned the resource. Understandably the indigenous Māori population saw this as an affront to their rights under the Treaty of Waitangi signed with the Crown in 1840. The development of the QMS therefore triggered addressing of customary fishing grievances.

The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 split the commercial and non-commercial components of the customary fishing right and provided for each in a different way. The commercial part of the Settlement provided for quota, cash and other assets to be deeded to Māori.

The non-commercial component of the customary fishing right continues to place Treaty obligations on the Crown. The Settlement requires the Minister, acting in accordance with the principles of the Treaty of Waitangi, to consult with tangata whenua and develop policies to help recognise the use and management practices of Māori in the exercise of their non-commercial fishing rights.

Customary fishing regulations have been enacted for the management of customary (non-commercial) fishing. The regulations devolve responsibility for the management of customary fishing to Māori. A rigorous framework, involving authorisations (permits) issued by authorised individuals (kaitiaki), and reporting of take is included. The regulations clearly signal the expanding role of Māori in managing their fishing rights and interests. One example of this greater role is the contract that the Ngai Tahu tribe has with the Crown for the delivery of non-criminal compliance services for customary fishing over most of the South Island.

Recreational Fishing rights

Unfortunately for recreational fishers, their collective rights to a share of the fishery are not well defined, relative to customary and commercial fishers who share in the same resource.

When allocating the available catch, the Minister provides for customary and recreational take and then sets the annual commercial catch limit. Recreational fishers do not have any priority in law over commercial fishers, or vice versa. The fisheries Minister simply needs to make an allowance that he or she considers reasonable. If recreational fishers think the allowance the Minister sets for them is unfair, it is hard for them to take action for two reasons:

- their right is loosely defined, and decisions are hard to overturn unless the Minister acted unreasonably, and.
- unlike commercial fishers, recreational fishers are not well resourced to take legal action to defend their rights.

Rights that are not well defined are difficult to protect and/or enhance. Population growth in many regions popular for fishing; environmental pressures like algal blooms; and competing demands for coastal space (e.g. from marine farming and marine protected areas) are likely to put increased demand on available fisheries resources. The risk for the recreational sector is they may not be well placed to protect their interests as the pressure comes on. There is a danger that the recreational sector could shoulder a disproportionate burden relative to commercial sector in any adjustment that is necessary, and that the quality of recreational fishing may reduce over time.

A related problem with recreational fishing rights is how the rights are managed. Recreational fishers largely rely on the government to give effect to

and manage their rights. Until very recently there has been little discussion about whether this is the best way to manage recreational fishing.

Management by the Ministry of Fisheries tends towards something of a "one size fits all" approach. For example, the amateur fishing regulations are similar in approach around the country. However, New Zealand's coastline and coastal communities are very diverse, with different needs and local conditions. Many of the frustrations that recreational fishers have are local concerns. Commonly there are concerns expressed about the impact of commercial fishing on recreational fishing in particular areas. The Ministry does not have the detailed knowledge, and more importantly the resources, to become heavily involved in local disputes. The Ministry's primary role is to ensure the sustainability of fishstocks, rather than advocating for one sector (e.g. recreational) at the expense of another, or mediating disputes. It is not surprising that recreational fishers sometimes express frustration about the lack of responsiveness when they have made the effort to influence fisheries management decisions. These factors, and a concern by many recreational fishers that the quality of fishing has declined, suggest it is unlikely that recreational fishers can rely on government to fully meet their needs and aspirations.

POLICY REFORM

Over the past year, the Ministry of Fisheries has been working collaboratively with the New Zealand Recreational Fishing Council Inc (NZRFC). The NZRFC is the main national body for recreational fishers, representing a range of individuals and clubs throughout the country.

The joint Ministry/NZRFC working group is preparing a public consultation document on improving recreational fishing. The intention is for the consultation to be managed and undertaken jointly by the working group.

Two key areas being looked at to better position the recreational sector are:

- better defining the recreational right by introducing a proportional share arrangement, and
- enhancing recreational fishers' rights to directly manage their share.

BETTER DEFINING THE RIGHT - PROPORTIONAL SHARE

Recreational shares in key fisheries would be set as an on-going proportion of the available catch, rather than being subject to the Minister's discretion each time a stock is reviewed. The proportion would be set as a percentage of the available catch. For example, if the recreational share was set at 40% in a particular fishery and the available catch for the year was 100 tonnes, 40 tonnes would be allocated to the recreational sector. In subsequent years the proportion would remain in place, with the tonnage allocation varying in line with changes to the available catch.

A benefit of an on-going proportional share for the recreational sector is protection of their share from erosion. There is also the potential that in some fisheries, the recreational sector could make a case for a higher share than at present when shares are first set.

Perhaps more importantly however, having a share known in advance provides the recreational sector with greater status to sit around the table with customary and commercial fishers in the area and work out how they can manage the fishery so they can all benefit. A proportional share would remove the current incentives for both the commercial and recreational sectors to lobby the Minister to increase their collective share. Such behaviour is time consuming and not a productive use of resources— a good example of a zero sum game because an increase for one sector would result in a decrease for the other. Position taking is encouraged which

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contributes to tensions between sector groups and diverts attention away from opportunities to work together constructively.

However, a proportional share arrangement would mean that the obvious way to improve fishing for all three harvest groups would be by working together to increase yields, or coming to agreements over use of particular areas within fisheries. The following sorts of agreements might be possible:

- commercial fishers stay out of a particular area at particular times (e.g. a harbour over the summer holiday period) or cease to use particular methods in certain areas in return for the recreational fishers supporting a commercial harvest strategy
- fewer fish be harvested in order to generate larger fish and better catch rates in the fishery, and
- different areas for commercial and non-commercial shellfish harvesting be set aside.

For agreements like these to be enforceable, they would need to be reflected in regulation. In considering doing so, the Crown would look at compliance costs and the degree to which the individuals who negotiated the agreement are representative. Mandate is a particular issue for recreational fishers, as customary and commercial fishers tend to be more readily identifiable and are often affiliated with representative groups.

There are a number of issues to consider in better defining the recreational right with a proportional share, including:

- which stocks would be subject to the proportional option
- how the proportional shares would be set
- how recreational fishing would be managed within the share
- what response could be made if recreational demand significantly increased after shares were set
- whether there are any circumstances when the level of the shares could be reviewed, and
- what if recreational shares are set at a higher level than currently—how would any costs be managed.

If the benefits of a proportional share are kept in mind, none of these issues is insurmountable. For example, data analysis and consultation could be used to identify those fisheries where recreational take is significant. As to the level of the shares, it would not have to be the current share. The overall aim would be to give the recreational sector access to a “fair” share of the available catch. Criteria such as the value of the particular fishstock to each sector, historical catch rates, and the degree to which commercial fishing is restricted in the fishery could be used as a basis for negotiating the level of the share. However, matters such as these can never be an exact science because there is imperfect information. As such, there would need to be a process involving the Crown and stakeholders in the particular fishery to work the issues through.

SHARED MANAGEMENT

The concept would see a legislative framework to enable mandated regionally based recreational management groups (RMGs) to be established to:

- manage recreational fishing with the Crown
- work with commercial and customary fishers to develop plans to manage harvesting.

The role and functions of RMGs would be clearly specified in statute. The bodies would need to be representative of regional recreational fishers and accountable to the government and fishers. A RMG would give recreational fishers a stronger voice to act for recreational interests at the local and national level.

In managing recreational fishing, the RMG would need to develop some form of a plan including the following sorts of matters:

- the objectives for recreational fishing in the fishery or area
- fisheries management controls to give effect to those objectives
- governance rules for decision making by the RMG
- supporting services – compliance, research and education
- specification of how the environmental obligations in the Fisheries Act would be met, and

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- funding.

An important role in managing recreational fishing would be recommending¹ management controls (e.g. closed areas, daily bag limits) for recreational fishing. The controls would be set with reference to the collective share and compliance costs would need to be considered. The government would also need to be satisfied that its sustainability and Treaty of Waitangi obligations were not put at risk. The RMG would have flexibility to customise controls to suit the needs of the fishers they represent. For example, there might be a wish to allow use of scuba for obtaining paua (abalone), something that the rules do not currently allow. RMGs could also help enforce the controls. For example, they could be responsible for operating the Honorary Fishery Officer network currently co-ordinated by the Ministry of Fisheries.

Having a recognised mandated recreational body would also facilitate all three harvest groups, customary, recreational and commercial, coming to agreements about how best to manage the fishery they share. The sorts of agreements outlined earlier in discussions about the proportional share concept would be easier to implement with a mandated RMG. The three harvest groups could also undertake other work to promote their shared interests. For example:

- make representations to local councils seeking more sustainable land management practices if important fish nursery areas are being adversely affected by run-off and pollution, and
- investigate technologies to reduce mortality of undersized fish, reduce capture of unwanted by-catch, and improve detection of blackmarket shellfish.

RMGs would be managing (shares of) fishstocks of considerable value (monetary and non-monetary). A number of issues would need to be worked through more fully before RMGs could be established:

- How a mandate would be established
- Role and functions of RMGs
- How to ensuring the Crown continues to deliver on Treaty and sustainability obligations
- How RMGs should be funded
- Whether trading (or leasing) of shares between sectors should be permitted.

None of these issues is insurmountable. Indeed there is already one model of shared fisheries management in New Zealand, with regionally based Fish and Game Councils managing trout fishing. However, if shared management of marine recreational fishing does eventuate, it will not happen overnight as issues like the ones above will need to be worked through. The intention is that if the recreational sector is interested in having a much greater say in how recreational fishing is managed, the Fisheries Act 1996 would be amended to enable RMGs to be established over time to assume management rights.

CONCLUSION

There is a place for property rights approaches in the management of recreational fishing. In an ideal world, rights for all harvest groups would be better defined at the one time. However, New Zealand's situation suggests there is potential for formalised recreational property rights even when individual transferable quota already exists for commercial fishers, and the rights of customary fishers are also well-defined.

Introducing a formalised property rights regime for the recreational fishing is not a task for the faint hearted, and is something that takes considerable time. There are some major challenges that need to be worked through in a calm way with a longer-term strategic perspective. However, with every challenge lie opportunities. Potential benefits of better defined recreational rights are not limited to protecting the recreational share from erosion. The benefits extend to better fisheries management outcomes through more responsive management, more collaboration and much greater participation in fisheries management decisions. The potential benefits suggest to me that progress will be made in New Zealand and that the challenge of using property rights to improve recreational fishing is one worth investigating.

¹ Controls would probably need to be gazetted by government so they can be effectively enforced.

