

Shared Fisheries – an overview

MFish Shared Fisheries discussion paper – a substitution of the present public non-commercial right to fish with a lesser ‘basic right’?

What is the discussion paper about?

The recently released 25 October 2005 – MFish Shared Fisheries discussion paper is the second attempt by the Government in only 6 years to obtain New Zealanders’ agreement to a change to their non-commercial right to catch fish. This time MFish proposes that right being replaced by a ‘baseline allocation’ coupled with ‘a basic right’ to fish as outlined below.

MFish’s proposal included this replacement ‘allocation’ being determined on a ‘value’ assessment, being subject to ongoing adjustment, and managed alongside commercial quota in our quota management system (QMS).

MFish says that it is unsure how many fish New Zealanders are catching as non-commercial fishers, and that this so called lack of information is compromising MFish’s efforts to properly manage our fisheries to provide plenty for all New Zealanders.

Under our present fisheries laws, New Zealanders’ present non-commercial right to fish which MFish’s proposal if implemented would replace, must be ‘allow(ed) for’ to enable New Zealanders to provide for their social, economic and cultural well-being. The replacement ‘basic right’ proposed by MFish, could as mentioned, be determined on a new yet to be defined value assessment.

New Zealanders includes ‘all’ New Zealanders whether Maori, of European or other descent. Since the 1992 Maori fisheries settlement, most of the time Maori go fishing they are categorised as recreational fishers. Maori customary fishing, as now administered under our fisheries laws, presently forms a very small part of the overall take of fish from our coastal waters.

‘Shared’ Fisheries or ‘Coastal’ Fisheries

The use by MFish of the term 'Shared Fisheries' in respect of the fisheries of our estuaries, harbours and coastal waters is perhaps somewhat of a misnomer. This is because New Zealand has one of the largest coastlines of any nation, and 'Shared Fisheries' may not convey to or enable the reader to identify with such waters and the fisheries in those waters which are part of everyday life for New Zealanders.

The ratio of boat ownership per person in New Zealand is also high by world standards due to our proximity to our estuaries, harbours and coastal waters all of which are accessible by dinghies, small runabouts and coastal launches and yachts alike.

It is therefore no accident that New Zealanders love of the water also means that we cherish our fisheries and marine wildlife and environment, and the ability to fish for food is one important part of what it means to be a New Zealander.

It has therefore been of concern to the number of us who are boaties and amateur fishers to watch the availability of certain fish, and the size of fish in our fisheries continuing to diminish since 1986, the year the Quota Management System (QMS) was introduced to enhance and restore the health of our fisheries arguably reduced as a consequence of the growth of our commercial fishing industry, and increasing sophistication and effectiveness of commercial bulk fishing methods.

What is my right to fish?

It is the right of every New Zealander to catch fish that is not for sale. This common law right is recognised, allowed for and protected by the Fisheries Act 1996 (FA), and subject to regulations under that Act on bag limits, fish size and fishing methods to name the main controls on non-commercial fishing.

This right co-exists but is entirely different from the fishing rights commercial fishers have under the QMS which was introduced in 1986 to rein in an expanding commercial fishing industry and to rebuild and enhance our coastal fisheries for all New Zealanders.

The Minister of Fisheries (the Minister):

- is required by Parliament in the Fisheries Act 1996 (the Act) to manage our fisheries to ensure sustainability which meeting the reasonably foreseeable needs of future generations – ‘fish come first’;
- in managing the use of our fisheries must conserve, use, enhance and develop our fisheries to enable New Zealanders to provide for their social, cultural and economic well-being;
- must ‘allow for’ the non-commercial right of New Zealanders to catch fish before the Minister sets or varies the total allowable commercial catch (TACC).

To do that, the Minister must adhere to both the environmental and information principles in the Act, and use the wide range of fisheries management tools and mechanisms to make sure that there are plenty of fish for the needs of all New Zealanders.

So what’s the problem with our fisheries then?

It is widely considered, at least among non-commercial fishers, that when the QMS was introduced too much quota for too few fish was allocated to commercial fishers.

On top of that more quota was allocated from decisions of the Quota Appeals Authority to commercial fishers unhappy with the allocation of quota they got from the Government.

Since then commercial fishers have carried on fishing with ever improving and sophisticated bulk fishing methods. The commercial industry favours fisheries under pressure as the best conditions for bulk fishing, namely, fewer, vigorously growing, and as a consequence smaller fish never to reach middle age let alone old age.

Meanwhile it is also widely acknowledged among non-commercial fishers that the quantity and quality of non-commercial fishers' catch has diminished – fewer and smaller fish. This is having serious consequences with many New Zealanders who traditionally and culturally rely on the bounty of the sea for food, let alone adverse flow-on effects on the marine environment. For example, the talked about fall in the population of sea birds which rely on kahawai to drive bait fish to the surface to feed the sea birds.

How does the Minister allow for my right to fish for food?

Under the Act the Minister must 'allow for' non-commercial fishing before setting or varying the TACC for commercial fishers.

New Zealanders' non-commercial public right to fish:

- is not quota under the Act, and must not and cannot be 'allocated' like commercial quota;
- must be 'allow(ed) for' **before** the TACC is fixed or varied, and in doing so achieve the sustainable use purpose of the Act including enabling New Zealanders to provide for their social, economic, and cultural well-being.

The Act gives the Minister has a wide discretion and ability in the way the Minister 'allow(s) for' our non-commercial public right to fish depending on considerations such as population shifts and growth, social, cultural and economic considerations, the seasons, the weather, the rate of fish reproduction, and fish mortality whether naturally or as a result of fishing by both commercial and non-commercial fishers.

One possible way of looking at it is that on the one hand the Minister balances enough fish left in the water for the future and avoid adverse effects on the aquatic environment, and on the other hand letting enough fish be caught to enable **people** to provide for their **social, economic, and cultural well-being**.

The Minister is supposed to be taking these considerations into account, but in the case of kahawai the New Zealand Big Game Fishing Council (NZBGFC) and the New Zealand Recreational Fishing Council didn't think he did. So they took the Minister to court over the way the Minister "allow(ed) for" the interests of non-commercial fishers when he set the TACC for kahawai.

This case has now been heard and the decision is eagerly awaited. In the meantime it is disappointing that MFish has seen fit to proceed with its Shared Fisheries consultation before the court's decision is delivered and the effects of that decision on our non-commercial public right to fish and marine environment considered.

What do non-commercial fishers want?

Non-commercial fishers want to catch more fish than presently available to catch in our key fisheries like snapper, crayfish, trevally, kahawai, and not just little fish, the leftovers from commercial fishing which ought to be left in the water for environmental reasons, and allowed to grow to provide for our future needs.

Non-commercial fishers want:

- ‘more fish in the water’ so they can just catch fish;
- a healthy balanced fishery with fish of all sizes and ages so that good sized fish can be caught more easily;
- the Minister and MFish to manage our fisheries as they are supposed to be managed under the Act – sustainable (including meeting the needs of future generations) utilisation (including conserving, using, enhancing and developing our fisheries to enable New Zealanders to provide for their social, cultural and economic well-being);
- the Minister to properly ‘allow for’ New Zealanders’ non-commercial customary and recreational rights to fish.

Why won’t MFish and the Minister do this?

MFish claims, without case studies in support, that our fisheries are under pressure as a result of competing interests, points to a lack of information on our non-commercial catch which is compromising MFish’s efforts to properly manage our fisheries, and says that there is uncertainty in the ‘allocation’ of fish between commercial fishers and non-commercial fishers.

Commercial fishers similarly say that MFish is managing our fisheries in a way which is threatening the value of their quota.

MFish also refers to the threat of claims for compensation by commercial fishers if their quota entitlement (in commercial fisher’s eyes) is reduced at their expense to benefit non-commercial fishers.

MFish’s solution – proposal

In outline, MFish’s solution to the dilemma MFish describes, is expressed as proposals in MFish’s discussion paper:

- manage fish stocks to increase the level of fish in the water above maximum sustainable yield (MSY)
 - **but only** where there would be *an increase in overall ‘value’ – economic and non-market value* – possibly involving a trade off as

between commercial fishers who want to catch more fish, and recreational and customary fishers who want more and bigger fish in the water;

- could involve a rebuild of fisheries where fish are less available to be caught by non-commercial fishers which would be treated by MFish on a case by case basis again if doing so would produce an *increase* in 'value,'

And,

- 'allocate' to recreational fishers:

In **6 key fisheries** - initially, yet to be selected -

a '**baseline amateur allocation**' of the total allowable catch (TAC)

- a **process** to determine the **baseline allocations** between amateur and commercial fishers (independent assessment of historical evidence, reasonableness of current allocations; valuation study between amateur and commercial; negotiation on overall value/trade-off);

- intended over **all** fisheries:

would take time, but would start as soon as approved by the Government;

- be subject to **adjustments** (proportional; value based; combination with proportional the default).

adjustments might be **considered** -

when changes to TAC;

to account for changes in customary allowances;

when significant changes were detected in relative value between commercial and amateur fishers;

significant changes to allocations would:

- require an adjustment period;

- need to be provided for in allocation decisions or agreements.

coupled with -

a **base level (minimum tonnage)** – the MFish so-called 'basic right' - 20% of baseline amateur allocation suggested with **priority** over commercial fishing, **reduced** only if all commercial fishing had already ceased in the fishery and a further reduction needed for sustainability.

'Key amendments' to the Fisheries Act, if passed by Parliament, to introduce these proposals could:

- remove the present non-commercial **recreational** right of every New Zealander as a recreational fisher to fish for food which the Minister must presently ‘allow for’;
- substitute the ‘baseline allocation’ (non-commercial quota), and the ‘basic right’ outlined above;
- place New Zealanders as non-commercial fishers as a minor shareholder in our coastal fisheries without assurance of improvement to our fisheries, and the extent of the ‘basic right’ possibly dependent on the ‘value’ assessment as between commercial and non-commercial fishers referred to above. This could be constrained by possible claims by commercial fishers for compensation on any shift of value from commercial fishers to non-commercial fishers which results in a reduction of commercial quota allocated ‘re-allocated’ to non-commercial fishers.

And,

- for **customary** fishers modify the present non-commercial right of customary fishers to fish for food by:
 - introducing allocation rules to specify **actual take** authorised under regulations;
 - providing such allocation **before** allocation to amateur and commercial (MFish says consistent with MFish practice);
 - providing that subject to overall sustainability limits set by the Minister, when reporting or records suggests that the authorised **take exceeds the allowance**, then there could be an increase;
- providing that there could be some increases where inshore fisheries important to Maori are rebuilt from depleted states to the actual customary take.

What do *non-commercial (recreational and customary) fishers* propose?

- that the Minister manage our fisheries sustainably to meet the needs of future generations of New Zealanders as required to do under the Act;
- that the Minister conserve, use, enhance and develop our fisheries to enable New Zealanders to provide for their social, cultural and economic well-being as required to do under the Act;
- that the Minister preserve, protect and properly ‘allow for’ the present right of every New Zealander as non-commercial fishers to fish for food;
- preparing a detailed submission to the Minister formally making these proposals;

- request your input, participation and support in doing so.

Finally,

Apart from 'defining' a recreational access [arguably not a right in the common law sense–] it appears that the 'value' assessment is MFish's attempt to introduce rules to 'make the 'allocation' process less arguable for MFish.

The questions “The Peoples Submission” intends addressing include:

- why does not or cannot our present FA enhance and improve fishing – ‘more fish in the water’ - for all New Zealanders?
- why the present Act has not been or cannot be properly tried out with all ‘bells and whistles’ first before introducing a change to New Zealanders’ present non-commercial right to catch fish, and trying new and untried fisheries management processes?
- without fully working out the detail will 'the basic right' as described in the discussion paper work to:
 - improve our fisheries ?
 - make more fish available to non-commercial fishers?

A public right must not be tampered with lightly and not without convincing and easily understood reasons. MFish’s Shared Fisheries discussion paper puts forward proposals, but is short on detail to satisfy and give the reader sufficient confidence that non-commercial fishers would be better off – more fish in the water available for non-commercial fishers to catch – if the proposals were implemented.

If the '**basic right**' is put in place and the new fisheries management proposals become law, but do not achieve the results of enhancing and improving our fisheries and aquatic environment with fish more available both in number and size for non-commercial fishers to catch, there may be no going back, or at least most unlikely that the present non-commercial right to fish would be reinstated. Legislation would be required to make that happen.

Moreover, MFish appears to be proceeding with undue haste with its consultation process by having imposed a very short consultation timeframe on New Zealanders inconveniently timed for the busy lead up to and during the Christmas holiday period.

The MFish imposed time for submission expires ‘before’ 28 February 2007.

13 December 2006