

Shared Fisheries - A House Built On Sand

Opinion Piece by Bill Kirk

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The recent High Court decision in favour of recreational and Maori non-commercial fishers found that the catch allowances for kahawai were unlawfully set because the wellbeing of recreational fishers had not been properly considered and/or allowed for. The Minister of Fisheries has been directed to reconsider his kahawai decisions this year. The precedent set by this ruling is applicable to all shared fisheries.

The findings by the High Court also suggest that most, if not all, current recreational allowances - the total tonnage taken by all recreational fishers combined - may be equally unlawful because they were set in the same erroneous way.

Nevertheless, *Shared Fisheries*, a public discussion paper produced by the Ministry of Fisheries (MFish) promotes using the now unlawful recreational allowances as baseline allocations under the guise of better integrating recreational fishing with the Quota Management System (QMS) enjoyed by New Zealand's commercial fishers.

There is an abundance of compelling evidence to show that the current recreational allowances are flawed, inadequate and unsuitable for this purpose: Crucial points, which MFish chose to hide or gloss over during the *Shared Fisheries* consultation process.

If MFish continue with its blinkered implementation of *Shared Fisheries* as proposed, the outcome could be catastrophic. Recreational fishing as we know it will be sacrificed so MFish can dodge responsibility for its mistakes and thereby avoid paying compensation. Furthermore, it is near certainty that closed-fishing seasons, gear constraints, stringent bag limit reductions and a raft of regulation changes and reporting duties will need to be imposed on all recreational fishers as a result.

No doubt recreational fishing licences - or some other compulsory levy - will be essential to pay for the enormous bureaucracy and the multitude of fisheries enforcement vessels and personnel required to constrain a million recreational fishers to a fraction of their current catch. Effectively, recreational fishers are being set up and will be punished for problems MFish has created by giving preference to commercial fishing.

How Did This Happen?

Clearly MFish has long since abandoned the key principles upon which the QMS was founded. The QMS was sold to the public on the understanding that commercial fishers would be constrained to a sustainable harvest to allow fisheries, which had been depleted by excessive commercial fishing, to rebuild. Theoretically, this was to lead to a reduction in catching costs for the fishing industry, sustainable fisheries and **improved customary and recreational fishing.**

Mistake One – Inflated Commercial Quotas

In 1986 a Quota Appeals Authority was set up to address claims from commercial fishers and companies who were dissatisfied with their initial quotas. The QAA quickly turned into a lolly scramble for valuable catching rights, and within a couple of years many commercial quotas had escalated to levels above what could be caught before the QMS was implemented.

In most cases MFish chose to do nothing about the excessive commercial quotas that exceeded their own scientists' best estimates of sustainable catch. This rampant disregard for the rights of non-commercial fishers has adversely affected customary and recreational fishers and has prevented or slowed the rebuilding of many fisheries.

A more prudent Ministry would have always constrained commercial catches to the scientifically determined Total Allowable Commercial Catch (TACC).

Mistake Two – Tax Overfishing

If commercial fishers exceed their quotas they can pay a fee to the Government to avoid prosecution. This mechanism is called deeming. While some provision for overcatch is desirable, deeming creates a perverse incentive as it allows the adverse effects on fisheries to be overlooked. Turning a blind eye to the impact of deeming allows an income stream for Government and additional profit for fishing companies.

At the same time, MFish has ignored the impact of the excessive catches on customary and recreational fishers. Chronic deeming in some fisheries causes the quotas (already inflated by the QAA) to be exceeded by 50% or more in some important shared fisheries every year.

Mistake Three – Use of Inaccurate Information

MFish well know that recreational allowances have been set incorrectly and are too low in most cases. This problem stems from the difficulty in accurately measuring the catch of a million recreational fishers. Why then in the *Shared Fisheries* paper has MFish pretended that the current recreational allowances are accurate? Clearly they are not, and therefore not a suitable basis on which to allocate future catching rights to recreational fishers.

MFish cannot argue ignorance or forgetfulness regarding their flawed recreational allowances, because most recreational submissions over the past six years have made exactly this point. The only conclusion that can be drawn is that MFish has intentionally omitted this crucial information purely to mislead recreational fishers who took the time to submit to *Shared Fisheries*, thus making Mfish' preferred policy proposals look far more attractive than they actually are. For example, those supporting the proposals would not realise that their catch limits would possibly be halved in some fisheries.

The reason for the deceit is obvious: MFish has completely botched the implementation of the QMS through its *laissez faire* attitude to constraining commercial catches, and in estimating and ‘allowing for’ non-commercial catch. Why doesn’t MFish just admit the truth? How can the public be expected to trust a Ministry that is not open and honest about mistakes it has made?

The *Shared Fisheries* paper is not about improving recreational fishing rights. It’s about the Government avoiding compensation, reducing recreational catch and pretending that recreational fishers are the problem.

More importantly, *Shared Fisheries* seeks to diminish the strength of the recreational fishing right. The kahawai judgment shows very clearly that all New Zealanders have a well-founded and time-honoured right to fish in the sea. This is not the same as the right MFish has described.

It is MFish that has to change its policy toward recreational fishing through giving effect to the law, not the other way around. Don’t let MFish take your rights away.

MFish could have easily put its *Shared Fisheries* consultation on hold and given the court the opportunity to clarify the nature and extent of the public’s right to fish in the sea. In this respect MFish has put its policy at risk and now have to recognise that it has made serious errors. In their haste to push through the *Shared Fisheries* policy MFish has not only misinformed all those who submitted but also disregarded the law.

Albert Einstein once said, “No problem can be solved from the same consciousness that created it. We must learn to see the world anew.” The MFish approach to resolving the shared fisheries issues it has created proves the truth of those words.

The big question is can we trust MFish to implement the Fisheries Act properly, or will it continue with the unlawful shared fisheries allocation policy it has constructed and change the Act to match the flawed policy?

Your current rights dictate that you can:

- Demand the current Fisheries Act be correctly and lawfully observed as per the kahawai judgment
- Demand that nothing in the Fisheries Act related to recreational fishing be altered before all recreational allowances are lawfully reset
- Demand that the *Shared Fisheries* policy be put on hold until better information on recreational catch is available.

Make sure that your views are taken into account. Visit www.option4.co.nz to read the comprehensive response to the *Shared Fisheries* proposals in "The People's Submission" and send your message directly to the Ministry of Fisheries.

BREAKOUT BOXES:

While many recreational fishers see the outcome as an outright win, most recreational leaders involved in the case are concerned that MFish will use the current *Shared Fisheries* review of recreational fishing rights to remove or undermine the strong fishing rights contained in the current Fisheries Act. The court has determined that all New Zealanders currently enjoy these rights.

Despite the clarity of the judgment, MFish policy seemed dismissive when addressing the annual TOKM fisheries conference in Napier where it was stated that the ruling was “not helpful” in sorting out the respective allocations between commercial and recreational fishers. A recent article in the Independent stated that one of MFish’ objectives in *Shared Fisheries* is to reduce the recreational catch. Readers may also remember the scampi case, where MFish pleaded in court that it was not their job to be fair. The judge disagreed, but MFish don’t seem to have learnt much from that exercise.

The Bribe

The sweetener offered to recreational fishers in the *Shared Fisheries* reforms is a package worth \$3-million to establish an Amateur Fishing Trust. But anyone wanting to play a part should be aware that they must comply with Government’s objectives in order to be appointed. Only lapdogs need apply.

NB Amateur fishers could lose in the order of \$100 million dollars worth of catching rights if the *Shared Fisheries* proposals are implemented. What a swap! We give up \$100 million for a ‘Trust’ worth nothing staffed by poodles? I don’t think so.

ENDS