

A Pakeha Recreational Fishing Perspective

2nd April 2007

This speech was prepared by the option4 team for delivery at Te Matau a Maui Maori Fisheries Conference on 2nd April 2007. Unfortunately it was not delivered due to time constraints.

E nga mana. E nga reo, rau Rangatira ma, tena koutou, tena koutou, tena koutou katoa. He honore tino nui tenei ki tenei Pakeha humarie nei e ngakau nui ana kia whai korero ki roto i tenei hui nui. Ngati Kahungunu, te mana whenua o tenei rohe, tena koutou, tena koutou, tena koutou katoa. Nga mate, haere, haere, haere atu ra. Te hunga ora, tena tatou katoa, ka huri.

Dignitaries, kaumatua, kuia, iwi and hapu leaders and delegates.

It is my pleasure to again be invited to update you on a pakehas recreational perspective.

Every man, woman and child - both Maori and tauiwi - possesses **a non-commercial common law right to fish** for food ('the peoples' common law right to fish').

The peoples' common law right is recognised and protected in our fisheries law, and must be 'allowed for' by Minister of Fisheries to 'enable people to provide for their social, economic and cultural well being'.

In my address to this conference last year I explained what **option4** – an unincorporated non-commercial fishers lobby group stands for.

In a nutshell, I explained that option4 stands for:

- More fish in the water;
- Protection of every New Zealander's common law right to fish for food subject to regulations on bag limits, fish size, and methods; and
- The peoples' common law right to fish being fully and properly 'allowed for' so that people can provide for their well-being.

What has happened since February 2006?

Since the February 2006 conference two important things have happened in the realm of **New Zealanders'** non-commercial fishing:

- The publication by the Government and the Ministry of Fisheries (MFish) of the ‘Shared Fisheries proposals for managing New Zealand’s shared fisheries: A public discussion paper’ (‘Shared Fisheries’); and
- The hearing of the application to the High Court of the NZRFC and NZBGFC for a judicial review of the Minister’s decisions relating to kahawai in the years 2004 and 2005 (‘the kahawai challenge’), and the decision of the High Court handed down on 21 March 2007.

Shared Fisheries proposals

‘Shared Fisheries’ is the second attempt by the Government and MFish in only 6 years to obtain New Zealanders’ agreement to a change to the peoples’ common law right to catch fish.

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’ efforts to properly manage our fisheries to provide plenty for all New Zealanders.

This time MFish proposes that the peoples’ common law right to fish be replaced by something else; a ‘baseline allocation’ coupled with ‘a basic right’ to fish.

However only bare details of the proposal are given by MFish.

As well as the peoples’ common law right to catch fish being removed and replaced with this new ‘idea’, we have no assurance that this will work to put more fish in the water, and more kai on our tables.

Also, this request to New Zealanders to give up their common law right to catch fish is made against a backdrop of the ability of New Zealanders to actually catch fish by exercising their right having been eroded in important fisheries by:

- The Minister, on MFish’ advice, not properly allowing for the peoples’ common law right to catch fish;
- Such fisheries not having been improved as intended by the Quota Management System (QMS) introduced in the mid 1980’s to rein in an expanding commercial fishing industry.

One of the reasons that has made ‘Shared Fisheries’ so hard to get to grips with, including those who know something about fisheries management, is that ‘Shared Fisheries’ does not explain:

- The nature of the peoples’ common law right to fish and how the Minister must ‘allow for’ such right; and
- Why New Zealanders need to give up that right for something else to improve our fisheries.

MFish has previous publications on the peoples' common law right to fish and how that right must be 'allowed for' by the Minister so that people can provide for their well-being. However 'Shared Fisheries' says:

'Shared Fisheries' section **4.1- The basic right to catch fish**

"Many New Zealanders **feel** that the freedom to cast a line to catch a fish is a **cultural tradition** that **should** be maintained. They are concerned that changes to the management of shared fisheries might mean restrictions or limitations were placed on this **tradition**. This **value** is part of our national identity and should be protected".

In summary then, MFish is asking everyone of us on this Marae today to trade our common law right to fish for an 'idea' without, as will be seen in a moment from the recent kahawai challenge decision, that right having been fully and properly 'allowed for' for years.

Kahawai legal challenge decision

Two important purposes of bringing the Kahawai legal challenge were to obtain the Court's guidance on:

- The nature and extent of the peoples' common law right to fish under the law as it exists at present; and
- How the Minister must allow for that right.

We had been advised and understood that:

- The peoples' common law right to fish was strong; and
- Such right was not being properly 'allowed for'.

It was just that most New Zealanders we talk to do not understand what their common law right to fish means, and how it is allowed for'. This 'uncertainty appears to be played on in 'Shared Fisheries'.

The Court emphatically agreed on both counts in the case of kahawai.

In particular, the Court:

- Recognised that recreational fishing interests as "rights" stem from the common law;
- Held that commercial ITQ property rights are subject to the statutory obligation that the Minister must first provide for [recreational] fishing interests before setting the total allowable commercial catch (TACC) - this reaffirms that commercial property rights are not paramount or inviolate when setting the TACC;

- Held that allowing for peoples' wellbeing - people's health or physical welfare - is the 'starting point' when setting the TACC;
- Held that it is open to the Minister to set the TACC at zero but not the allowance for [recreational] fishers, and that both Maori and [recreational], must be provided for where they exist. The same does not apply for commercial interests;
- Held that given that a TACC is a means of 'providing for the utilisation [use] of enabling people 'to provide for their social, economic and cultural wellbeing' is a mandatory consideration at this stage of allowing for recreational interests;
- Held that when setting a TACC the statutory starting point is to identify and make an appropriate allowance for recreational interests by reference to the social, economic and cultural value of the resource to their wellbeing;
- Held that when setting a TACC for kahawai, the Minister must have regard first to the TAC and then allow for non-commercial fishing interests in the stock.

There is much more in the decision including application in other fisheries, but that is all time today permits me to talk about.

What does the kahawai challenge decision mean to 'Shared Fisheries'?

The Court has made it clear that:

- All New Zealanders possess a non-commercial common law right to fish; and
- That it is incumbent on the Minister and MFish, as adviser to the Minister, to properly 'allow for' peoples' common law right to fish by enabling them to provide for their wellbeing

This right is precious to me. When more New Zealanders understand that firstly:

- They possess such right,
- And secondly, that the Minister must properly allow for it

then they too will want the right fully and properly 'allowed for'.

Conclusion

The Court in the Kahawai decision held that the Minister's decisions in 2004 and 2005 were unlawful to the extent, amongst other reasons, that the Minister fixed the TACC's for kahawai for all kahawai areas without having proper regard to the social, economic and cultural wellbeing of the people.

It is my view that 'Shared Fisheries' has been overtaken and made redundant by the Court's decision.

There is much work to be done with MFish, commercial fishers, and non-commercial fishers both customary and recreational to decide on the mix and match of fisheries

management tools and mechanisms to both improve our fisheries and enable people provide for their wellbeing by catching kai for the table.

We will be at Oturei marae on the 19th and 20th of April for the 8th Hokianga Accord hui where we will continue the quest for clarity and pathways forward. All are welcome.

Mauri ora

Scott Macindoe

On behalf of the option4 team