

## option4 Update #85

NZ Fishing News July 2007 edition

June 2007

### Fishing Rights Not for Sale

The Ministry of Fisheries issued the *Shared Fisheries* discussion document in October 2006. It included proposals for managing shared fisheries such as snapper, blue cod, kahawai, kingfish, shellfish and crayfish. What became obvious early on was the lack of explanation of what our current right to fish is and any acknowledgement that the Kahawai Legal Challenge, which sought to clarify the nature of recreational (non-commercial) fishing rights, was underway.

Just how far the government can push its *Shared Fisheries* proposals will depend on New Zealanders knowing what their non-commercial right to fish is, and how important that right is to them.

The challenge is for all New Zealanders to protect our non-commercial right to fish - inherited from common law - and not be pushed aside by the government, guided by a Ministry of Fisheries whose time appears to be running out.

#### Common Law Rights

Maori have been sustenance fishing in New Zealand for centuries, long before the settlers arrived. It is no accident that Maori refer to the sea as their “food basket”. The fact that many people these days view fishing as a release from their busy lives arguably adds to the fundamental status of all New Zealander’s common law right to fish.

Common law rights stem from the Magna Carta of 1215 and belong to every New Zealander irrespective of economic status. The right is recognised, and must be “allowed for” as per the current Fisheries Act (1996).

This historical right to fish was confirmed by the High Court in the judicial review proceedings of the Minister’s management decisions for kahawai. The court’s decision was released on March 21<sup>st</sup> 2007.

Justice Rhys Harrison described every New Zealander’s non-commercial right to fish as a “*well settled common law right, subject only to express statutory limitation to fish and provide for his or her needs where that right has particular value in a country where easy proximity to the sea in a temperate climate contributes to the popularity of fishing as a recreational pastime*”.

By contrast, MFish describe the right to fish in paragraph 4.1 of *Shared Fisheries* as,

“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.”

This is weasel speak.

Fishing is a public right that is part of the New Zealand way of life. Why is MFish so afraid to say how it is? When the law says the Minister shall allow for non-commercial fishing interests it means he must!

### **Fishing Interests**

So, when the Minister sets the total allowable commercial catch for a fish stock he must allow for both customary and recreational fishing interests by applying the mandatory consideration of enabling people to provide for their social, economic and cultural wellbeing.

In broad terms, there is an obligation on the Minister to provide for that wellbeing by ensuring that there are enough fish in the water for people to catch.

A recent Colmar Brunton poll commissioned by the fishing industry found that 25 percent of those surveyed had never fished recreationally. Simple math means that 75 percent of New Zealanders are competing with the fishing industry for an ever-diminishing supply of fish!

When we factor in population increases and the insatiable overseas demand for our fisheries exports it is no wonder amateur fishing representatives spent considerable effort, over a four month period, responding to the government's plan to reduce non-commercial catch.

There is a silver lining however.

After years of mismanagement of our inshore fisheries, amateur and Maori fishing interests are now working together to ensure ongoing sustainable management of our precious fisheries and the protection of our marine environment.

### **The Hokianga Accord**

The Hokianga Accord (the mid-north regional iwi fisheries forum) is a prime example of the increasing awareness and mutual respect for traditional and customary values in fisheries management and how this adds value to all New Zealander's right to fish.

*Shared Fisheries* has been discussed at a number of the forum's hui and no doubt it will be discussed again at the ninth hui scheduled for August 17<sup>th</sup> and 18<sup>th</sup> 2007.

The work Ngapuhi, Ngati Whatua and other tangata whenua are doing includes gathering information on fishing activities and the impacts it has on fisheries and environment. option4 and the New Zealand Big Game Fishing Council recognise the potential that exists for Maori and non-Maori to work together for the benefit of all New Zealanders and are fully supportive of the Hokianga Accord.

### **Fisheries Mismanagement**

Undeniably the laissez-faire, hands-off approach taken by MFish has not delivered on the promises made in 1986, at the introduction of the quota management system. Protracted debates continue about how many fish amateur, customary and commercial fishers are catching and whether each sector is able to access their fair share of inshore fisheries of social and cultural importance.

The fact that most commercially caught kahawai are hunted by spotter planes, scooped up by purse seine vessels and exported for petfood and Australian crayfish bait is evidence that commercial considerations, particularly big corporate companies, have held sway in fisheries management.

As the High Court ruled, the use of fisheries to enable people to provide for their wellbeing is a mandatory requirement of the law. That wellbeing includes the state of people's health or physical welfare and can be provided for by catching kahawai or purchasing it from retail outlets.

Whose wellbeing then is served if legislation changes limit the catch of those New Zealanders who can least afford to buy popular fish at over \$30 per kilo?

Cabinet is due to decide mid-year on reforms and to implement changes to change the Fisheries Act by year's end. Why? Current legislation already contains the management tools and mechanisms to rebuild and manage our fisheries sustainably.

The deficiency lies in the willingness of fisheries managers and others to recognise that fundamental values associated with common law rights, such as the right to fish, are not up for grabs, negotiation or sale. Not now, not ever and that's the major reason why option4, NZBGFC and the Hokianga Accord exists!