Why we are getting it so wrong?

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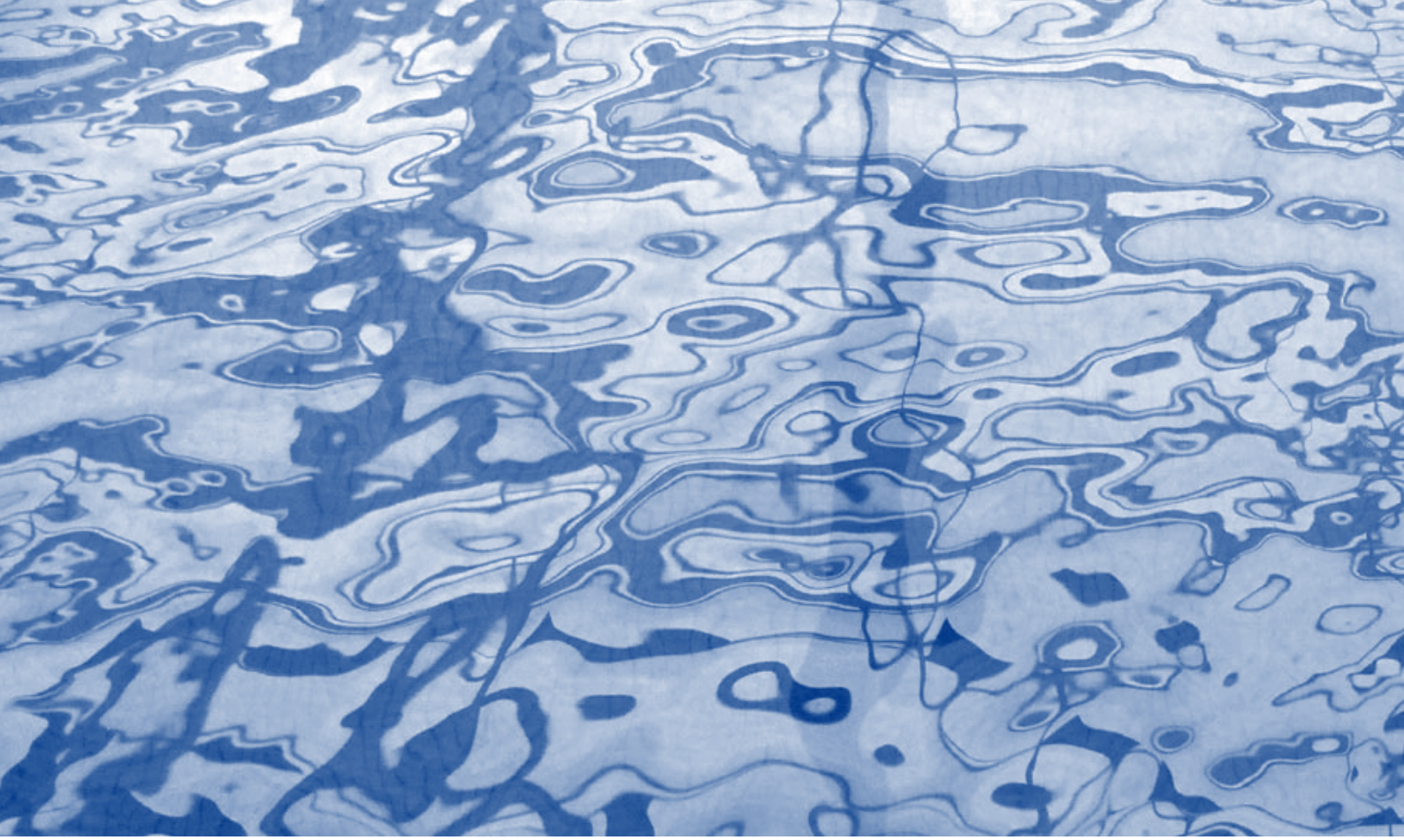

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Abstract

The Australian community are seeing common law rights to fish recreationally for personal use that extend back to the Magna Carta and beyond being eroded or eliminated by current fisheries and marine reserves management and resource sharing/allocation processes in every Australian jurisdiction. These processes have been advocated by government policy makers as essential (in theory) for sustainability and the conservation of biodiversity, but little hard evidence has been presented. So far community expectations have rarely, if ever, been met – either in terms of sustainability, or in terms of equitable allocation for non-commercial and indigenous use, by existing management and allocation processes. These processes are progressively changing the common property nature of Australian fish resources, and appear to be aimed primarily at extending commercial usage rights, or in the case of marine reserves, removing completely the common law right to fish recreationally in specific waters. This paper explores the reasons behind the failure and outlines the recreational perspective for way forward to effective resource sharing as a prerequisite for long-term biological, ecological, commercial and social sustainability.

Introduction

What should be the most powerful single driver for resource sharing in our fisheries, common property access rights, are under threat. Common property access rights have survived since the Magna Carta declaration of 1215, but are under more threat now than ever before. The big question that this raises for the recreational sector is: what will replace common property access rights in Australian fisheries?

In the last 50 years fisheries managers throughout Australia, often under the justification of the philosophy expressed by Garrett Hardin's 1968 essay "Tragedy of the commons" (Hardin 1968) have significantly eroded the effect of common law access rights to the detriment of recreational and indigenous interests, and indeed the wider community many of whom may aspire to catch a fish at some time in the future. This erosion of rights occurs every time part, or all, of a community resource is allocated to a specific interest by the creation of legislation. This in turn reduces the amount of common property resource available to the remainder of the community.

An unfortunate aspect of this partitioning process is that the disenfranchisement of the non-commercial sectors has often not improved the sustainability of the fish resource.

The total catch for the commercial fishing sector has been regularly reported by fisheries management agencies across Australia for many years, and has frequently – and erroneously - been used by fishery managers and scientists as a surrogate for total catch and hence the condition of the resource.

It is only in relatively recent times that attempts have been made to empirically assess the total recreational catch. These data have been reported by numerous authors (e.g. Williamson *et al.* 2006, Henry *et al.* 2003, Platten 2004).

Despite issues with comparability of data and methodology between commercial and recreational catch assessments many state fisheries agencies are now reporting on the catch by each sector, and the relative proportion of the total catch taken by each sector (e.g. Fletcher & Head 2006);

These data clearly illustrate the effect of establishing commercial fisheries property rights – no matter how well intentioned - without talking into the account needs of other sectors and other uses.

The greatest proportion of the catch in the vast majority of Australian fisheries is currently locked up in the property right implied by the establishment of commercial fisheries management plans.

The formulation of these plans, and the bureaucratic processes used to determine them, has seldom, if ever, taken into account the access needs of the recreational sector.

This trend continues unabated (Kearney 1994).

Resource allocation also occurs when significant portions of popular, readily accessible and productive fisheries are designated no-fishing (sanctuary) zones in marine parks – which is in effect an allocation to non-extractive interests.

The erosion of common property access rights continues in Australia even though most state and federal legislation recognises the common property nature of our fish stocks. Despite this all governments have found great difficulty in translating this into effective resource sharing. Even when fish are defined in law as property of the Crown, the quality of resource allocation decisions has not improved.

One of the difficulties has been identifying who recreational fishers are, although this again has been previously been documented by Kearney (1994), who identified 12 groups that have an interest in living aquatic resources. This list comprised one commercial group and no less than nine different recreational fishing groups. This in part explains why the recreational sector is difficult to engage in resource sharing issues.

Although the recreational sector in Western Australia comprises about one third of the state's population, resource sharing meetings rarely draw more than ten recreational participants. Perhaps because they are not aware of their common property rights and therefore don't turn up to defend them, or worse they assume 'the government' will look after their collective interests – after all that's what governments are supposed to do. However, it would be a mistake to interpret poor recreational attendance to mean that we don't care about the consequences of resource sharing, because we do.

It is worth noting that in 2002 in Western Australia the Integrated Fisheries Review Committee (Anon. 2002), chaired by Justice Toohey, established the following seven solid guiding principles for resource sharing. At the same time the committee acknowledged that "more specific principles to provide further guidance around allocation decisions may also be established for individual fisheries". The committee's guiding principles are:

a) Fish resources are a common property resource managed by the government for the benefit of present and future generations.
b) Sustainability is paramount and ecological requirements must be accounted for prior to any allocation to user groups.
c) Decisions must be made on best available information and where this information is uncertain, unreliable, inadequate or not available, a precautionary approach adopted to minimise risk to fish stocks. The absence of, or any uncertainty in, information should not be used as a reason for delaying or failing to make a decision.
d) A sustainable target catch level must be set for all fisheries and explicit allocations designated to each user group.
e) Allocations to user groups should account for the total mortality on fish resources resulting from the activities of each group, including bycatch and mortality of released fish.
f) The total catch across all user groups should not exceed the sustainable target catch level. If this occurs immediate steps should be taken to reduce the take within prescribed levels. Management arrangements for each user group should aim to contain their catch within the level set for that group.
g) Allocation decisions should aim to maximise the overall benefit to the Western Australian community from the use of fish stocks and take account of economic, social, cultural and environmental factors.

All-to-often resource sharing goes wrong because of the way that fisheries managers, and governments, view resource sharing, and the sequence in which management is developed. Frequently the shark's share of our fish stocks is notionally allocated to the commercial sector as a result of prior licensing and management arrangements. Historical commercial catch data are the primary determinant in entry to a fishery. Catch data I should add, which is retrospective, often self-reported, probably erroneous, and seldom independently validated, and at times sadly shows some stocks being commercially over-exploited or showing evidence of inshore stock depletions.

Perhaps it's a case of possession being nine points of the law. Decision makers don't say this of course, but the way they talk and act inevitably leads to this conclusion. Simple evidence of this is that the common 'solution' to resource sharing appears all too frequently revolve around how little is required to be conceded by the commercial sector in order to appease the recreational

sector, rather than how would the community like the government to allocate access to a common property resource on its behalf?

Western tuna and billfish fishery (WTBF)

Recent experience with resource sharing in the WTBF unfortunately provide several examples of where we doing it so very wrong in Australia.

The resource sharing outcome in the WTBF has neither reflected the differing catch and fishing experience expectations that the recreational sector has, and the higher stock levels required to achieve this, nor our lower fishing efficiency and limited fishing range. It would appear that the requirements and rights of recreational anglers were simply not adequately understood, or recognised, by the Australian Government during the WTBF process. Our pre-existing fishery expectations were not met.

The Australian Government also virtually excluded the WA Department of Fisheries from the resource sharing process even though it is acknowledged that they manage the recreational sector. They also have some other fisheries that are negatively impacted upon by the Australian longline fleet. Consequently, as you may have already heard, the Western Australian Government is extremely displeased with the resource sharing outcomes to-date, indeed they view the federal minister's decision as "a work in-progress".

It goes without saying that allocating a recreational proportion of the total allowable catch (TAC) for a given fishery, and expecting recreational anglers to be happy competing with a far more efficient commercial fleet, is clearly unreasonable. The fact that many recreational anglers, chasing billfish and tuna, choose to participate in catch and release programs and much of their catch is released with documented high survival rates means that resource sharing via a TAC allocation would be pointless.

A key point is that the TAC, and the allocations to each sector, need to also take into account the total fishing mortality caused by each sector – as well as the landed catch. It is also critical that this is not limited to a single-species approach. Serial depletion is all too common.

However basing the allocation to each sector on the fishing mortality is meaningless if one sector relies on the abundance of fish in the water, and causes few fish deaths, directly or indirectly, while the other is only concerned with the volume of the harvest.

The recreational sector is keen to point out that their impact, when measured as total fishing mortality, is in the case of the WTBF very low indeed. Not surprisingly recreational fishing organisations continue to argue that the best social and economic return in this instance would come from allocating exclusive access to inshore stocks to their sector. We were unsuccessful with this argument too and evidence provided in a study of the economic value of striped marlin in NSW, by Ernst & Young (2004), was summarily dismissed by the Australian Government. This study showed that striped marlin, are worth roughly 50 times more to the recreational sector with nominal stock mortality. Therefore, logic suggests that the best value to the community from the use of this resource would be derived from exclusive allocation to the recreational sector.

All too often, a decision to go to a TAC managed fishery with explicit management targets based on historic catch levels is triggered by indications that the target species is in decline. Unfortunately the nature of these decisions is that thin science means the government essentially asks the commercial sector what it wants. Despite modelling by fisheries scientists that illustrate high fishing mortality and low adult biomass, these data are seldom incorporated in the management goals for the fishery.

As a result the TAC is set at the level the commercial sector is prepared to accept – usually near their historic peak catch – the recreational and other sectors are essentially ignored in the process, and the management goal becomes an almost unattainable "target" catch level.

In practice this means that the TAC and individual transferable quotas become in essence "fish futures" trading, where the entitlement on paper is worth more to the fisherman than the actual catch.

This problem is compounded where the commercial sector dominates the fish management authority and becomes the primary source of advice to government fisheries ministers.

Therefore it is surprising to the recreational sector that TACs are allocated on the basis of catch history, especially as our history goes largely unrewarded. To us, this is rewarding the operators who have previously done the most damage to fish stocks. Surely recognising the first operators in the fishery by assigning the most valuable secure access right would seem far more appropriate.

So what were we looking for from resource sharing? The recreational sector expected the provision of resource sharing outcomes that adequately allows access to their share of the resource, within safe range of smaller recreational vessels, and without unreasonable competition from commercial operators. It is also a given that recreational strike rates will be maintained at levels that existed prior to the Australian longline fishery starting up.

The solution, in part, would have been adequate spatial and temporal management, supported by maintaining commercial exploitation at levels that allow adequate recruitment into recreational fishing zones (Ridge Partners 2005).

I also have to say that again that when it came to resource sharing, it caused great angst amongst recreational anglers that little or no heed was paid to over 50 years of responsible recreational access, and that this history was neither properly considered nor viewed as equivalent to commercial access, which only started in 1997.

A bitter irony was that the recreational sector interests were recognised by the Australian Government in 1992, and a 50nm exclusion zone for foreign longliners was introduced to protect inshore stocks. This was removed when the Australian commercial fishery commenced. Is that a resource share removed without consultation? It certainly is.

By way of addressing the high bycatch of the longline fleet the allocation of further iconic species could have been made in favour of the recreational sector. Species such as striped marlin and sailfish would have been appropriate, but instead the Australian Government changed the Commonwealth Fisheries Management Act to over-ride the existing state protection of marlin, sailfish and spearfish, from commercial exploitation, a regulation that had existed in WA prior to the commencement of Australian longline operations.

In the WTBF a very unfortunate management decision was made that the stock availability for the Australian fleet extended out to nearly the middle of the Indian Ocean! Inadequate allowance was made for the fact that the distant fleets of other nations, over whom Australia exercises no control, continue to fish stocks down in the same waters outside the Australian Exclusive Economic Zone (EEZ). Importantly what this has meant is that we are looking to establish TACs for the fishery that are determined over a large area but in reality, because of economic factors and vessel size, the vast majority of the effort and catch not surprisingly occurred as close to port as possible, again encouraging subsequent associated stock depletions.

Another very significant detrimental impact on the recreational sector, and the reason why resource sharing in this fishery will always remain contentious, is the method of commercial fisheries management employed. It

is common practise to use what I refer to as regressive allocation, as opposed to progressive allocation.

Let me illustrate these two stock allocation methods.

	Sector	Environmental/ breeding stock	Indigenous	Recreational	Commercial
A	Proportion of total adult biomass	40%	10%	10%	40%
B	Progressive sectoral TAC allocation (t)	40,000	10,000	10,000	40,000
	Regressive allocation model with high or no TACs(t)	40,000	50,000	60,000	100,000

Here is a simple illustration, with a hypothetical adult virgin stock of 100,000 tonnes, that I have used to demonstrate the impacts of two differing stock allocation methods.

The progressive allocation process, from left to right (line B), would protect the breeding biomass, protect indigenous access rights where they exist, allow the strike rate and catch levels of the recreational sector to significantly be retained and would ensure that the commercial sector could develop their fishery around relatively stable predictable stock and catch levels. It goes without saying that inshore stock depletion issues would need to be adequately addressed to make this allocation method work effectively. This allocation method is of course difficult when there are no accurate biomass stock estimates available, in which case the precautionary principle should be used for all allocations.

However, the TAC management approach adopted by the Australian Fisheries Management Authority is to determine an arbitrary TAC level and then reduce the TAC once stock abundance, and/or size, indicates that the stock is being fished at higher than recruitment levels, which means slowing or stopping fishing when the stock can be identified as being over-fished and the breeding stock is in decline! By simply looking at the table it becomes obvious that using the regressive allocation model, that is allocating right to left (line C), the recreational and indigenous sectors get wiped out before any cutbacks are made to the commercial TAC! This is clearly an unacceptable outcome for every stakeholder other than perhaps commercial interests.

What did the recreational sector receive from the recent WTBF resource sharing process?

Given that longliners historically do not operate inside the 200m isobath, the recent WTBF allocation process gave us very little indeed. The commercial sector would argue that they wanted the little bit we got, but if we look at

the lack of appropriate commercial fisheries management supporting the small recreational fishing zones, and the vast area that remains available for commercial exploitation, then our view is we have been very poorly served by a very flawed system. However, the recreational sector has had a far longer attachment to this fishery than commercial operators and we will continue to work towards more equitable arrangements.

The WTBF, which commenced around 1995, has 124 fishing permits issued and the number of active vessels has fallen from a high of around 45 in 1999 down to two currently. This is hardly a vibrant commercial fishery.

On the other hand there are several thousand recreational anglers, and increasing numbers of tourists, who wish to continue to access this fishery.

Conclusions

The recreational sector sees its' common property right continually eroded, even though the Supreme Court recognised this public right in the Croker Island case in 2001. It has become clear that if we are to see equity for all sectors in years to come the recreational sector too will need some form of access right that does not necessarily replace existing common property rights, but rather provides us with an equal form of access right to those provided to commercial operators – some equity. Indeed a right to fish, by any other name. This interestingly was one of the outcomes from the Coolangatta Resource Sharing Workshop (Department of Agriculture, Forestry and Fisheries 2002). We are still waiting. . . . .

During the proceedings in the previous three days of this conference the option for equal fully tradeable access rights for both extractive sectors has been presented – the Canadian halibut example. This could well be a way forward in Australia.

It is vital that fisheries mangers also adopt new fisheries management regimes that do not favour commercial operators and disadvantage other groups. Commercial client capture must become a thing of the past if we are to see equity in Australian fisheries management in years to come. We all have rights after all.

All-in-all resource sharing is not that complicated. The difficulty seems to be getting governments, and government agencies, to recognise what is required to achieve equitable resource sharing outcomes that meet community expectations and not simply meet commercial operators' expectations.

So it appears that we have started, perhaps I should say blundered, along the road to resource sharing and the challenge now is how quickly can we learn to do it a lot better. The solutions are available, it is simply a matter of accepting and adopting them.

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