Potential of property rights-based management

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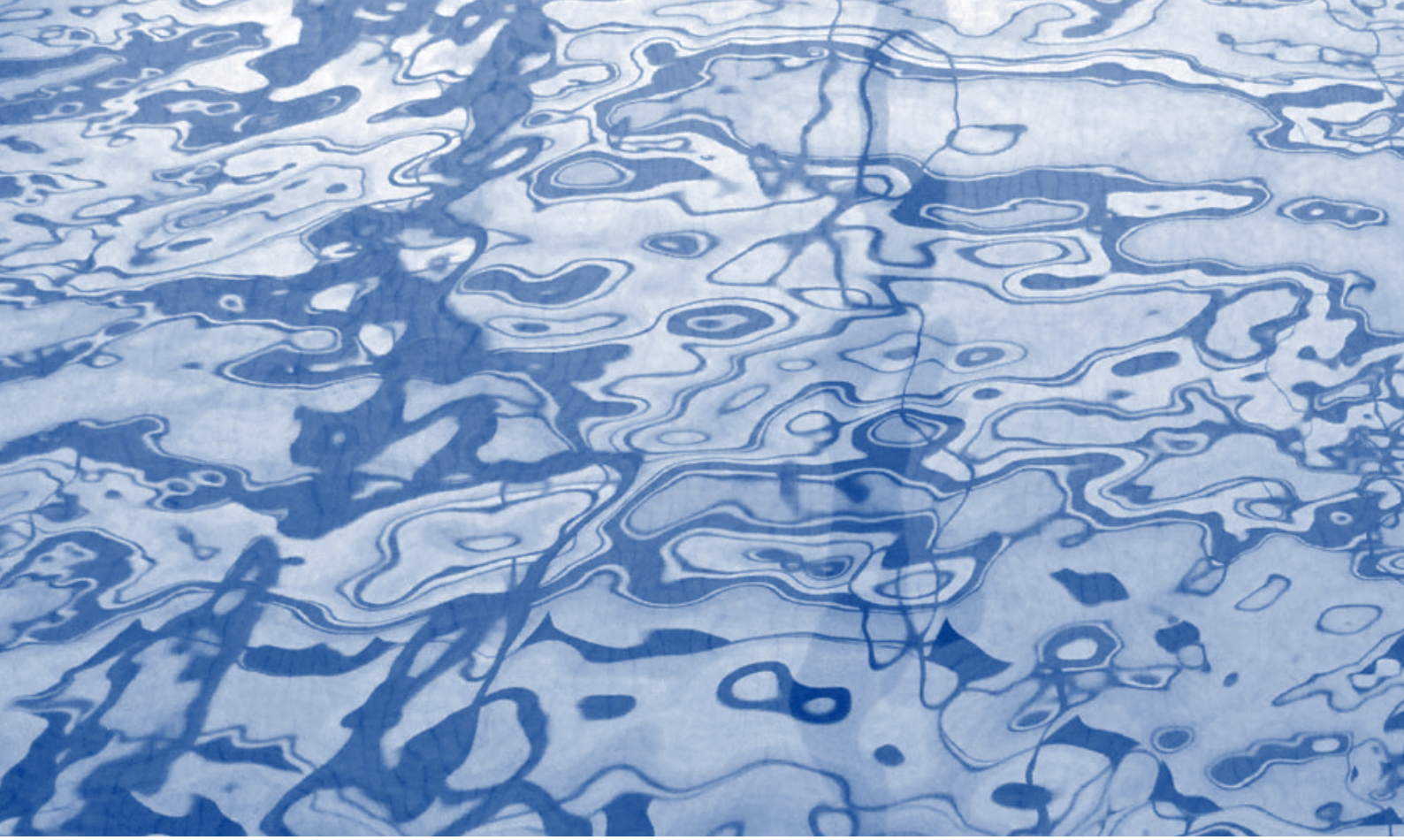

Potential of property rights-based management

The world is full of good intentions: achieving the full potential of property rights-based management, or not.

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Abstract

Any transition to a property rights-based management regime is generally accompanied by government and stakeholder expectations and intentions of an improved custodial attitude, stock rebuild, and improved economic and environmental performance amongst others. This paper draws on examples from the New Zealand rock lobster fisheries to discuss both the success and failure of rights-based management regimes in circumstances where non-commercial allocation issues are ignored, remain unresolved, or are attended to by a currency dissimilar to and/or incompatible with commercial property rights. The paper also examines consequences to the integrity of the New Zealand property rights regime of failing to operate market mechanisms to address changing societal values and political preferences in regard to the marine environment.

Sharing the fish between extractive users

Allocation of fisheries resources across sectors can only be reliably undertaken within a consistent rights-based management framework. The fortunes of the sectors – extractive and non-extractive – are ultimately bound up in the levels of abundance of the stock or stocks in which they have an interest. Given the background of inherent cyclical and seasonal natural variability of those stocks the levels of abundance can only be maintained at or propelled towards preferred levels by adjusting aggregate removals.

My contention is that any allocation between sectors is meaningless in terms of sensible fisheries management objectives unless it is done within a secure rights-based framework that contains the incentives for long-term stewardship of fisheries resources.

There is no point in contemplating resource sharing between commercial and non-commercial extractive users unless allocations are meaningful. It is simple enough to do the exercise on paper – derive a yield estimate from a stock assessment and allocate the available yield between each of the extractive sectors using some agreed or imposed formula – but unless there is a commitment to constraining removals to the limit of the allowances made, such allocations serve no useful purpose other than to generate bureaucracy and cost, and to jeopardise the overall quality of fishing and the sustainability of fisheries resources.

There is much to learn from the New Zealand experience of the property rights regime we call the quota management system (QMS). Overall it has been a success in terms of halting stock declines, facilitating increases in stock abundance, and bringing about the fleet restructure that was inevitable after so many years of administration that was passed off as management. The same property rights also fulfilled a critical role as the currency of

settlement of a long-standing grievance[1] in regard to fisheries, the details of which are widely published.

The achievements and successes of the NZ property rights regime are widely acknowledged in international fisheries policy and economics literature, and self-righteously promoted by our own politicians and officials when deemed convenient to do so, but the macro-economic overviews obscure the failure of the New Zealand QMS to achieve its inherent potential. You might expect that after 20 years of a property rights regime most if not all of the proposed and anticipated theoretical benefits of the QMS would be realised. They are not. But they could have been, and still can be.

It is expedient for commentators and practitioners to lament the failure of successive New Zealand governments to complete the property rights framework that underpins the QMS and blame that for the problems we encounter.

Despite much success the system has failed to meet its full potential not just because of government inertia in regard to the framework – the lack of completion is just a symptom of a much deeper problem. The problem is that there is no consistent genuine buy-in or commitment to the underlying principles of rights-based management in fisheries by the majority of politicians and officials.

Many of those principles are observed in the breach and as a consequence there is an increasingly progressive decline in confidence amongst commercial rights holders themselves – those whom the theory expects to demonstrate a responsible custodial attitude towards the resource in which they have a direct interest and investment in the form of individual transferable quotas (ITQs).

But they are also not without blame – it is an indictment on both government agencies and industry organisations such as the ones I work for that we have been unable to impart a proper understanding and acceptance of the value and opportunity of commercial property rights to the persons who own them let alone those who utilise them.

It grieves me to find many of my own constituents who still regard ITQ as no more or no less than just another condition on their fishing permit. That is not to say that there have been no expressions of custodial attitude and collective responsibility – there have been many voluntary initiatives successfully implemented across inshore and deepwater fisheries since the QMS was implemented in 1986. But I am personally convinced that the commercial rights holders themselves are failing to appreciate what they

1 Treaty of Waitangi (Fisheries Claims) Settlement Act

have and still not enabling the full potential of their asset in the form of ITQs.

Where the real meets the imagined

Overall, the QMS has not achieved its full potential because some of the most basic tenets of a rights-based regime are rarely acknowledged and/or routinely ignored by politicians, bureaucrats, ENGOs, and the wider community.

Rights-based regimes should provide a useful foundation for using market mechanisms to resolve competing interests and shifting priorities. The market solutions for addressing changed political preferences or societal attitudes and priorities in relation to fisheries resources in New Zealand are both ignored and/or avoided.

Government agencies find themselves having to manufacture operational policy "workarounds" that enable the expropriation or diminution of commercial property rights demanded by their political masters in fulfilment of personal or party policy agendas, without provision for opportunity adjustment or compensation for the owners of those rights. Such devices ultimately invite litigation or censure, or both.

Rights-based regimes should also provide a secure policy and operational policy environment that encourages and facilitates a progressive devolution of management responsibility to rights holders. In New Zealand the devolution opportunities are stifled by an inherent fear embodied in that tiresome cliché of "putting the rabbits in charge of the lettuce patch". The potential of the QMS is further confounded because the longer that the devolution opportunity is withheld from commercial rights holders, the less inclined and less able they are to take it.

It is interesting to note that successive governments have been more willing to allow devolution in respect of customary rights to sea fisheries – devolution which, within a sustainability framework, extends to the rights holders themselves being able to set the rules as to who, where, how, and how much fishing is done under the authority of a customary permit.

There is one particular expression of the customary right in which devolution of management authority extends to a complete prohibition on commercial fishing or at best (from my perspective at least) an attenuation of commercial rights, and the ability to modify recreational fishing rules and behaviour.

The allocation challenge – shared fisheries and recreational fishing

There is still a great deal of confusion about the nature and extent, the priority, and the application of a recreational fishing right in New Zealand. Since 1998 there have been two serious attempts to deal with the issue and another is intended for 2006.

In my work for the NZ RLIC I have studied the records of several New Zealand recreational fishing conferences in search of an acceptable definition (acceptable to the recreational fishing sector) of that right.

I settled on the following, which is an amalgam of three elements that I believe constitute the basis for a more formal legislative definition of the recreational/amateur fishing right in New Zealand:

> A reasonable share of the key "recreational" fish stocks with … reasonable access to these key "recreational" fish stocks and to other fish stocks which recreational fishers may fish from time to time … within a context of sustainable use of the fisheries resource[2].

If this definition of the "recreational right" is acceptable to the sector then it certainly contains all of the elements that enable an alignment with existing customary and commercial rights within the QMS.

What is outlined above is my definition – and I have satisfied myself that the vexing questions of allocation and competing use can be resolved within a rights-based framework if the opportunities to do so are created and then taken up. Unfortunately in this case it is not my world, so these issues are not yet mine to resolve.

As noted, in New Zealand the effort to resolve them continues. The essential confusions in the dialogue appear to be firstly a failure to properly distinguish the linkages between fish, fishing grounds, and fishing success. The second relates to the failure to declare or even acknowledge that individual recreational rights and responsibilities are but part of a larger collective responsibility to constrain aggregate catches within whatever allocation or "allowance" is made for recreational take. Thirdly, there is clearly some resistance to the fact that better defined commercial and customary property rights to sea fisheries have been instituted, and that they are intended to have a form and function that simply cannot be cast aside as a matter of political or administrative expediency.

2 Words drawn from the records of NZ Recreational Fishing Council annual general meeting reports 1996 – 1999.

In order to put allocation and catch sharing issues into a context for further consideration and discussion I offer this selection of observations about recreational fishing in New Zealand –

- It is not as though there is no recreational fishing right in New Zealand. The right of every citizen to fish is enshrined in legislation. It is the nature and extent of the right and who is responsible for it that has become a contest.

- In New Zealand there is no such thing as a "recreational fishery", other than three specific instances where regulations have distinguished a clear demarcation between commercial and recreational fishing activity.

Two of those demarcations are spatial[3], the third relates to exclusive use of shellfish stocks[4]. In all three instances the quality of non-commercial fishing is a disappointment to the users themselves despite the exclusivity they enjoy. Experience confirms that spatial separation is not an effective remedy to competing fishing expectations and aspirations.

All other New Zealand fisheries are "shared" resources in terms of interests and opportunities. There is recreational fishing taking place within many fisheries (species/stocks) concurrently with customary, commercial and illegal fishing, with most activity taking place across the suite of inshore fish stocks and selected pelagic fisheries.

- There are no compelling arguments for any priority allowance to be made to recreational fishing. "We want" doesn't count.

Recreational fishermen and women do not constitute the community at large – they are not the "public". They comprise a sector group within society, albeit a numerically large one which perceives itself and is perceived by a few politicians (nominally those in opposition) to be influential in terms of "voting power". However it is interesting to note that in New Zealand the "weight of numbers" brought to the opposition against no-take marine reserves in areas of particular significance to the recreational fishing sector has been consistently ineffectual.

- There is no well-defined rationale for current amateur daily bag limits.

Does a daily bag limit imply some upper limit on aggregate catch, or did it just look "about right" when it was set? Does the bag limit constrain aggregate recreational removals or just provide opportunity for more catch to be taken? Does a recreational bag limit have any association with the value of the rock

3 Mimiwhangata in Quota Management Area (QMA) 1 and the Marlborough Sounds blue cod fishery in QMA 5.
4 Toheroa in the North and South Islands; scallops in Southland.

lobster (or other species) in dollar terms? Or the value of them as food? Or the value of an enjoyable experience? If so, how is the "happiness quotient" measured and evaluated? Does a bag limit take account of the increased recreational fishing population and the efficiency gains available to them? Or increased leisure time and discretionary spending?

The answer is none of the above. Bag limits for most shared stocks just are … they are there because they are there, and in my view are another remnant of a by-gone administrative regime and are useless management interventions unless backed up by record keeping and reporting.

Individual daily bag limits are not an adequate expression of the recreational right to sea fisheries. That right must comprise the collective right to a share of a TAC, and bag limits are one tool that will assist in constraining aggregate catch to the limit of the defined share. On their own in the absence of rigorous monitoring and audit of fishing success, individual daily bag limits are no more than an inconvenience to an ambitious recreational fisherman or woman.

- Recreational fishing is not "non-commercial".

The recreational fishing industry generates huge commerce in terms of fishing gear, vessels and equipment, fuel use, electronics, books, magazines and videos, travel, accommodation, charter operations, advertising promotions and fund raising. In my world this aspect of recreational fishing is extremely useful in terms of establishing a basis for negotiated cooperative agreements between sectors.

However, and in my view, the relative "monetary values" of recreational and commercial fishing are not an appropriate basis for defining proportional shares of the available yield. There is no useful comparison between estimated levels of discretionary expenditure on recreational fishing within the domestic economy and the export revenues and employment generated by commercial rights holders. Allocation based on confirmed catches is the only defensible option in the context of the existing property rights regime in New Zealand – once allocation is implemented and the individual rights and opportunities confirmed the quality of the recreational fishing experience can be addressed by various means.

Whatever allowances are made for the commercial and non-commercial sectors in TAC setting, there is still a principal requirement for fishing to be managed within the context of the fishery – consistent with the biology and behaviour of species, the physical characteristics of access, the demographic of the respective fishing communities, and the nature and extent of established rights and opportunities. All of these (and more) will inform and shape the appropriate management plan for a fishery. Fishery management

plans within a rights-based regime where outputs conditioned by input controls (TACs) are the principal sustainability tool cannot be limited to managing only commercial utilisation; they must by definition be inclusive of all extractive uses.

Industry expectations and aspirations

After twenty-one years as a full time professional inshore fisherman I moved from the boat deck to the office in the early 1990s. I have first hand experience of three phases of rock lobster fisheries management in New Zealand – open access, limited entry, and ITQ. My principal work as a fisheries adviser is for the NZ Rock Lobster Industry Council (NZ RLIC), which is the national umbrella organisation for the network of nine regional commercial rock lobster stakeholder groups (CRAMACs)[5].

In New Zealand, rock lobster fisheries are very much "shared fisheries" in which commercial and non-commercial extractive users have legitimate rights and opportunities, and in which fish thieving is so prevalent that managers are obliged to make explicit provision for illegal unreported removals when recommending total allowable catches (TACs) and total allowable commercial catches (TACCs) to ministers for decision.

Issues in regard to non-commercial rights and responsibilities are of highest priority for the lobster industry, and the NZ RLIC has advocated the resolution of those and other issues in a manner and a process that are compatible with the rights-based framework that underpins the QMS.

The NZ RLIC has consistently proposed that a rights-based management regime which incorporates both commercial and non-commercial extractive users will ensure sustainable use of fisheries and enable market solutions to fisheries management, allocation, and environmental issues.

It is our contention that recreational fishermen and women should be allowed an individual catch share within an aggregate catch total that is expressed as an explicit proportional share of the available sustainable yield from a fishery, or group of fisheries, and that aggregate removals must be constrained to the relevant allowance.

Further, it is our contention that the share must be expressed as "catch conditioned by harvest rules" – a mix of output and input controls - and ideally take the form of a collective but divisible and tradable property right. The aggregate catch total that is the recreational share must be transferable, tradable, and adjustable, within and between sectors.

5 See http://www.seafood.co.nz/industry/otoz/rlicoun/ for more information on industry organisation.

In our view, the collective and individual recreational right must approximate as much as possible the commercial property rights in the respective fisheries. In our model the currency of allocation is fish, not method, nor time nor space. It is particularly useful to have a "common currency" in lobster fisheries in that it allows for a full range of negotiated agreements between extractive user groups.

The NZ RLIC contends that cooperative endeavour by all sectors united in a common objective of maintaining and/or enhancing stock abundance and the quality of the respective fishing experiences is good for the fisheries, for the rock lobster industry, and for all other rights holders and interested parties.

Commercial property rights are strengthened by the application of a recreational equivalent. There is less inclination to dismiss lightly the rights and opportunities held by commercial fishermen and women if similar rights are employed by or on behalf of recreational interests. Likewise, customary rights are also further enhanced by the completion of the rights based regime.

The allocation of explicit rights will bind the recreational fishing sector into the established fisheries research and management processes, united in the common purpose of rebuilding, maintaining or enhancing fish stocks. Improved attribution and accountability for research and management costs, including data collection and compliance, will generate greater efficiencies across all sectors.

The recreational sector will better assist customary and commercial rights holders in constraining the level of fish thieving, which in New Zealand fisheries is costing millions of dollars in departmental expenditure, lost income and management levies. Fish thieves are the common enemy of legitimate extractive users.

The recreational fishing satisfaction levels (as measured by individual and aggregate tonnage and spatial and temporal access) will wax and wane according to the status of the stocks and the nature of negotiated agreements between sectors, not be left to chance or preserved by political or administrative expediency and/or patronage.

A tradable rights regime enables the issues of "more" or "less" and "how" and "where" to be settled by negotiation between the rights holders without political interference. For example the recreational share in some rock lobster fisheries may be traded off seasonally or permanently to enable purchase of rights in more preferred species, or to fund other initiatives in support of recreational fishing. That same share may also be progressively increased as recreational interests stand in the market to buy or lease commercial rights

as they become available, or, cooperate in rebuilding stocks so that the recreational shares can be proportionally increased by TAC decisions.

Recreational extractive users will at last become accountable for the impact that they have on fish stocks and other rights holders. Like their commercial counterparts, once properly installed in the QMS the recreational fishing community will be collectively liable for their misdemeanours. Existing regulatory arrangements invoke financial penalties for convicted non-commercial fish thieves, but there is no loss of fishing opportunity imposed (unlike the quota forfeiture applicable to commercial operators) that will assist rebuilding stock abundance.

Is sharing the fish really a big ask?

Yes it is, but not an impossible one. There are some major challenges to overcome if New Zealand is to maintain the incentives to nurture fisheries and reverse the erosion of the QMS. Rather than indulge the more extravagant notions of recreational rights by way of endless meetings and workshops we need to make some progress on confirming the extent of the right and the governance structures in support of it.

This can be done if the correct disciplines and incentives are brought to bear. There is a tendency for both politicians and officials to tell the recreational fishing community what it wants to hear, rather than what it needs to know. That will definitely have to change before any real progress will be made.

In my 34-year experience of inshore fisheries in New Zealand, single, localised fishing issues driven by strong personalities with a flair for publicity have generated and dominated the more public debates that have engendered operational policy and political responses. For too long the political and administrative system around fisheries in New Zealand has provided a refuge for the disaffected and impressionable, demanding no accountability from them, and removing all incentives for them to individually or collectively analyse and respond to the legitimacy or otherwise of their perceived grievances.

Individual greed and self interest based in part on an indefensible claim to a priority generated by a perceived "birth right" to catch fish where, when and in as much quantity as desired is often the motivation for public denigration of commercial fishing by recreational fishing interests and is also a distraction for officials more focused on relationship building than on managing fishing.

In several notable instances in New Zealand confrontation with my rock lobster industry constituents has been generated by commercial and quasi-commercial

interests reliant on recreational fishing and/or eco-tourism activities for their economic well being and the maintenance of chosen lifestyles. In other instances the demand for punitive constraints on commercial fishing is driven by disaffected former commercial fishermen or crew who either by their own neglect or circumstance were less well served by the transition to the QMS in 1986 or since than they believe was their entitlement.

It is a feature of the New Zealand situation that motive and strategic intent behind media attacks on commercial fishing and the existing fisheries management arrangements are rarely interrogated by politicians and bureaucrats, who are more sensitive to how their own responses will be judged by the media and the wider community.

Criticism of commercial fishing and of the current fisheries management regime in New Zealand is marked by sometimes astonishing levels of misinformation and/or misunderstanding. Amongst influential politicians and senior officials the rights-based regime that underpins our fisheries management lacks a champion. As does the fishing industry. Government agencies have historically been reluctant to actively and publicly promote our property-rights regime or to defend the legitimacy of commercial fishing. The administrative complexity of the New Zealand QMS conspires against us all in this regard, but in my view the underlying principles and purpose of our system should be easily disseminated and can be easily understood by a reasonable person. However I concede the right of even reasonable persons not to like it just the same …

Despite my expressions of concern about the attitudes and incentives (or lack thereof) I have an abiding confidence that the recreational and commercial sectors can work it out if given a secure foundation from which to operate. Our common interests in fish, access to fish, and the quality of our fishing experiences outweigh our differences – which at the place we most often meet – out on the water – are all at the margin. Elsewhere I am bound to admit that things can definitely get more serious, but not to the point where cooperation and collaboration is impossible. Even the more extreme recreational fishing advocacy draws on market solutions to satisfy recreational expectations of priority access and use.

Building blocks for meaningful allocation and management of fishing.

A solid statutory underpinning of the cooperative management process within a rights based framework is the fundamental building block for sharing fisheries resources.

In situations where the community and government have endorsed both commercial and non-commercial exploitation of sea fisheries, truly effective fisheries management requires a policy framework that loudly and definitively declares the legitimacy of commercial rights. Governments must confirm the respective rights and attendant responsibilities for recreational fishing in statute and enable and empower the cooperative user group processes in support of agreed research and management objectives.

The greatest challenge is for the recreational sector to be organised into the properly constituted representative groups on an appropriate scale that will be enable oversight and management of the respective fisheries shares within the defined allocation limits, and/or trading of shares in order to increase recreational opportunity in preferred fisheries. The greatest challenge for the relevant government agency is to properly exercise the role that directs and facilitates recreational interests into that arrangement.

The abiding perception of government as a benevolent patron and a protector of the recreational fishing community has been an excuse for the recreational sector (with some notable exceptions) to do little except complain and criticise if they perceive problems in meeting their expectations and/or ambitions. The universal remedy is widely believed to be the removal of commercial fishing by whatever means available but in the instances where that has been done it has only been of temporary succour to the proponents.

A government department should not fall into a recreational fishing advocacy role intentionally or by default. It may well coordinate the development of a recreational fishing agency or agencies, but it should not become that agency. The primary role of government should be to set agreed standards and audit the individual and collective performance of sector groups in relation to their respective fisheries shares. For example, in New Zealand the Ministry of Fisheries currently monitors and audits the commercial catch to ensure that it stays within the TACC. There is no similar process in place to monitor and audit recreational catch. One consequence is that incentives for commercial rights holders to enhance stock abundance are lost.

Conclusion

Experience in New Zealand lobster fisheries has demonstrated that where properly mandated recreational representative groups are prepared to engage and commit to agreed outcomes, commercial interests are able to successfully negotiate satisfactory arrangements to facilitate recreational fishing access and opportunity, and more importantly, to address the common interests of stock decline, fish thieving, or potential spatial exclusion.

Proportional shares of the available yield linked by a tradable rights system is achievable and workable, and more importantly is a win/win/win situation for industry, customary and recreational interests, and for government. Leave the mechanics of preferences and priorities for rights holders to resolve – it will be done if the rights are secure and compatible.