

# New Fishing Law: The End of a Long Proceeding

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After a year of strenuous discussion and negotiation, the bill presented by the Executive to amend the Law on Fishing and Aquaculture was finally passed; it included matters concerning sustainability of the hydrobiological resources, access to the industrial and artisanal fishing activity, and regulation of research and control.

The main urgency for approving the bill was given by the imminent expiry on next December 31<sup>st</sup> of the Maximum Catch Limit per Vessel Owner (LMCA, in Spanish). In other words, the allocation of industrial quotas based on the historical catch for a specific period of time<sup>i</sup>, thus reducing the fishing effort and preventing damages for the activity and the employment by the setting of global quotas with no individual allocations (Olympic race).

The recently passed bill was, however, much more ambitious: it sought to introduce amendments which would not only determine the access to the industrial fishing activity, but

also a series of other relevant matters to ensure sustainability of the fishing activity, such as the importance of science in the decision-making process, strengthening of research and control, regulation of large-scale artisanal fishing, and protection of the vulnerable marine ecosystems, among others. Therefore, we should acknowledge and celebrate the agreements achieved to enact this law, which will significantly and positively change the way of managing and administering the fisheries in the country. The most relevant aspects of this law and some critical comments in relation to certain agreed points are analyzed below.

### **Fish Ownership**

One of the subjects discussed during the law's proceeding was related to the fish's ownership. The bill sets forth that hydrobiological resources and their ecosystems are subject to the Chilean sovereignty in inland waters, internal waters and territorial sea, and to their sovereign rights and jurisdiction in the Exclusive Economic Zone and the Continental Platform, in accordance with the international law and the current law's regulations.

This wording aims at finding consensus between two postures; on the one hand, the political Opposition's demand to grant absolute, exclusive, inalienable and imprescriptible dominium of hydrobiological resources to the State and, on the other hand, not contradicting the international agreements and the Civil Code rules. The latter stipulates that fish are *res nullius*, that is, nobody's property –therefore, neither from the State-, so anyone can claim their ownership through the use that, according to this regulating body, is made through fishing. In other words, today the fish belong to the first one who catches them: they are nobody's property, but anyone can become their owner. And since they are scarce goods, the authority administers their catch to secure the resource's sustainability.

In practice, the proposed wording achieves consensus between both postures, without affecting the commitments assumed in international conventions like *Convemar*. Based on this wording, it is understood that the *res nullius* character of fish is not affected. The State of Chile exerts sovereignty over internal waters, inland waters and territorial sea, and it holds exclusive exploitation rights over fish and management of these resources.

### **Sustainability of the Fishing Activity**

One of the law's most relevant aspects is that it provides for the sustainability of hydrobiological resources as the core of the fishing regulation. This is essential to guarantee the viability of the extractive fishing activity in the medium and short run, which is not only an important export sector, but also creates approximately 128,000 jobs in the country.

The law explicitly incorporates the sustainability target and introduces new concepts on this matter. For example, it highlights the maximum sustainable yield –the objective level that should be reached and maintained in the different fisheries, since that is the point where the maximum catch is achieved without compromising the resource's availability over time- and the biological point, which allows assessing a resource's yield from the conservation perspective. The latter is crucial to determine the fisheries' condition and to define the global catch quotas, all of which remains in the hands of the Scientific and Technical Committees (STC) since the law's enacting.

It should be noted that the law creates eleven STC composed mainly by specialized scientists, plus representatives of the Undersecretary of Fisheries and the Fisheries Development Institute (IFOP, in Spanish). These committees shall rule in relation to the fisheries' condition, define the Biological Reference Points (BRP) and the research programs. A very important feature is that these STC will define a global catch quotas' range every year, which shall be binding for the authority; so, discretionality is eliminated from the decision-making process and the National Fisheries Service has no more adjudicatory authorities, privileging science over political decisions.

Other relevant sustainability issues concern the binding nature of providing for management plans through committees composed by industrial and artisanal representatives, and special measures were stipulated for collapsed fisheries, where restoration programs and protection measures for fishing grounds shall have to be defined. A regulation for Vulnerable Marine Ecosystems (VME) was also passed, where sea bottom fishing is forbidden unless demonstrated that the activity causes no harm. The presence of scientific observers is also required in all fishing trips to these ecosystems.

### **Strengthening Research**

The sustainability objectives are impossible to reach without a solid base of scientific knowledge, which requires strengthening the organisms in charge of research to rely on high technical quality studies for an adequate management of fisheries. Therefore, the law incorporates a national scientific research program which enables to generate, both for extractive fishing and aquaculture, the sufficient knowledge about their condition, elaborate sustainability strategies and carry out permanent surveillance.

With the new law, basic research is formally submitted to the IFOP, institution whose public role is acknowledged and to which an independent budget is allocated. External evaluation for the projects is also incorporated and complete transparency and public access to the databases are required. The additional research will be performed by the Fishery Research Fund (FIP), whose research model has been particularly positive, since it has allowed developing quality projects, based on proposals' effective selection, letting and assessment systems.

### **Access to the Industrial Activity**

The law introduces Tradable Fishing Permits (TFP) in order to definitely regulate the access to industrial fishery. Class A TFPs, to which the currently operating industrial actors voluntarily agree, shall be granted based on the historical catch and shall have a 20-year duration; they will be renewable inasmuch as they do not incur in any of the non-renewal or expiry grounds (including environmental, fishing and labor aspects).

Although it would have been convenient to keep open-ended permits as stipulated in the original bill –which was consistent with the recommendations of the Court for the Defense of Free Competition (TDLC)-, the agreed solution should generate enough incentives for long-run investments, which entails value added production and the creation of more stable jobs. Additionally, the TFPs shall be completely transferable and divisible, thus improving the secondary markets of these permits, favoring an efficient fund allocation.

Partial biddings are also established, which was an objective promoted by the Executive from the proceeding's very start, and was one of the most debated aspects. Finally, biddings up to 15% of the fisheries' industrial quota were passed, in full exploitation system and managed with a global catch quota, which are triggered at a 5% rate when the fishery is at 90%, 95% and 100% of its maximum sustainable yield (RMS). This mechanism seems reasonable inasmuch as it does not impair the sustainability target – because it allows the entry of more actors only if the fishery is close to its optimal exploitation level-, originating the class B TFPs, with 20-year duration without renewal. The introduction of biddings has been questioned because they seem unnecessary to the goal of incorporating new actors, insofar as it is guaranteed by the TFP's transferability and divisibility. Furthermore, it has been said that it represents a discriminatory treatment, since it only reduces the industrial fraction, unlike the artisanal sector which does not only have open-ended fishing permits, but also its share will not be affected by any bidding process whatsoever.

A debatable issue is that biddings at all events were approved, which should be triggered three years after the BRP's definition, unless it is a collapsed fishery. This could be considered contradictory to the sustainability principle, since it allows making catch quota biddings when fisheries are not even close to their RMS. This would mean to grant new licenses in overexploited fisheries that would eventually increase the fishing effort (by means of additional vessels), this being inconsistent with the precautionary principle incorporated by the law.

Another innovation of the law regards the payment of permits. So far, only the industrial sector pays a permit, whose price is based on the respective vessel's Gross Registered Tonnage (GRT), regardless of the real catches, which has entailed competitiveness losses due to quota reductions. By 2011, the revenues obtained from this permit accounted for US\$34 millions. With the approval of the law, TFP holders shall pay a permit per registered vessel, plus a special tax for the quota allocated tonnage. A provisional rule was also passed, which sets a 40% maximum payment ceiling in addition to what each vessel owner paid in 2012 for the years 2014, 2015 or 2016, with the purpose of preventing an excessive rise as a result of the special tax implementation. It should be noted that although the proposed formula is not optimal –the most reasonable is to apply the special tax on the obtained profit and not a catch theoretical value- at least it gradually

corrects deficiencies of the past, where collection was solely based on the existing vessels, either in service or not, with no link whatsoever to the real catch amount.

### **Regulation for the Large Scale Artisanal Sector**

Probably, one of the law's most relevant contributions is a greater regulation on the artisanal sector, currently responsible for 52% of the country's extractive fishing; the law makes a clear distinction between small-scale artisanal fishermen and those whose characteristics are closer to the industrial category. In fact, during 2012, from a total of 13,073 artisanal boats, 90% corresponded to vessels whose length is inferior to 12 meters; however, the proportion of these smaller ships did not exceed 18% of artisanal landings. In this context, the passed law increased the requirements for the large-scale artisanal sector, introducing at the same time, important benefits for the most vulnerable artisanal sector.

In the first place, the law's approval ratified the agreement of the earlier fishing negotiation table, where the current subdivision between industrial and artisanal sector was modified for twelve fisheries. This means a transfer of approximately US\$50 millions in fishing quotas in favor of the latter, increasing the artisanal world's share in the extractive fishing to 55% of the total.

Second, the law extended the strip of 5 marine miles and internal waters reserved for artisanal fishing down to the southern limit of the great island of Chiloé, closing the entrance to industrial vessels in the whole country, except regions XV, I, II and IV (following upon technical report and agreement). Additionally, the 1<sup>st</sup> mile strip is reserved for smaller artisanal boats, allowing drillings on approval of the same.

Third, the following improvements to the management and development of artisanal fisheries were introduced: improvements to the Artisanal Register and the Artisanal Extraction System (AES), allowing the transfer of quotas, among others; mandatory character of the life insurance for artisanal fishermen under 65 years old; the contract to the concerned party was regulated; new powers were granted to the Undersecretary to control the fishing effort and redistribute a portion of the unspent balance among regions at the end of each period; among others.

Fourth, a bill which creates the Institute for Development of Artisanal and Small Scale Aquaculture (INDEPA) was committed within three months, and it shall seek to boost the sector's productive and commercial capacity and promote the consumption of seafood. In turn, a bill aimed at promoting seaweed repopulation will be presented, which will benefit the artisanal sector through the development of this kind of fisheries, and indirectly, by the ecosystem's strengthening, due to the important role of seaweed in this respect.

Fifth, the bill shall require larger vessels to have a satellite positioning system and catch certification, which will affect a minor portion of the artisanal sector (around 8% of the artisanal fleet), but which is responsible for 80% of the resource's catch. This is absolutely necessary to allow an effective catch control aimed at guaranteeing the sustainability of the fishery resource.

Sixth, a permit is incorporated for the artisanal vessel owners whose ships' length exceeds 12 meter. The installation costs of the satellite positioning system and part of its operational costs will be discounted from the payment of this permit, as well as the landing certification costs. The license cost concerning the Management and Exploitation Areas for Benthic Resources (AMERB) will be eliminated.

### **Other Relevant Features**

The law improves the institutional framework for an effective action both in industrial and artisanal fishing. Therefore, the budget, staff and powers of the National Fisheries and Aquaculture Service (Sernapesca) are increased; this organism will also be obliged to render an annual public account to assess the efficacy of its monitoring role.

In relation to the social platform, programs and funds are committed to the rehiring of the extractive fishing workers who may have lost their work source as a consequence of this law, and to education scholarships for their children, as well as training and technical higher education programs for the industry's employees and scholarships for their children, despite the fact that this new law should not entail adverse labor effects, since it should tend to the fisheries' recovery. Nevertheless, and although it is understood as part of the negotiation with the different sectors, it should be highlighted that these benefits shall be granted within a specific term, and not as it occurred in previous proceedings, where benefits have been unjustifiably perpetuated over time.

There is one last agreed point which deserves a comment. In every economic-natured bill proceeding, the legislator's need to protect small-scale actors arises, with or without justification. In this specific case, in addition to this protection, the benefits of fish consumption by the population were also discussed, understanding thereby that the consumption of hydrobiological resources by the population should be promoted. Thus, in order to achieve both effects, the Congress estimated that it was necessary to include a rule that stipulates reserving the 1<sup>st</sup> mile of the global catch quota for all species, except benthic, demersal and seaweed resources, in order to bid it among the registered processing plant proprietors which qualify as small-scale businesses. This quota is aimed at transformation activities of these resources and is exclusively intended for

the elaboration of direct human consumption products, and only artisanal vessel owners duly registered in the Fishing Register may extract them.

The bill's amendment has a double problem. First, it does not consider the country's actual situation, since only in small pelagic zones there could be greater resource requirements for human consumption, not in the rest of the fisheries –inasmuch as quotas are currently caught by artisanal fishermen and are already assigned to human consumption–, so it seems unnecessary to include the rest of the fisheries. But the substantial point is that it introduces a distortion in the market, while arbitrarily assigning a percentage of the catch to a particular activity and destination, without considering its profitability. Consequently, while it favors the processing plants, it impairs the artisanal and industrial fishermen since it restrains their negotiating and trading capacity.

### **Conclusions**

In global terms, the passed bill is an important progress towards sustainable fishery management in the country's, since it privileges science in the decision-making process and limits the authority's discretionality through the creation of technical committees and the strengthening of fishing research; it extends the requirements applied to the industrial sector to the large-scale artisanal sector, which nowadays operates with no major regulation, while at the same time it keeps and increases the privileges of small-scale artisanal fishermen; it establishes a definitive system of industrial quota allocations, which avoids having to legislate again on this matter; and strengthens control, among others.

It is true that a series of measures were presented that allowed reaching agreements in a discussion that seem endless, but the consequences were certain concessions that are not necessarily going in the right direction. Among them we can mention the approval of biddings at all events and the 1% quota reserved for smaller processing plants. However, it does not spoil the meaning of achieving the enactment of this law for the current administration and the future of the country's extractive fishing.

The only thing which is still pending is the review required to the Constitutional Court by some opposing Senators, regarding certain guidelines of the bill (issues concerning the indigenous consultation, duration and renewal of TFPs, and biddings, among others) prior to being enforced as law of the Republic.

### In brief...

#### **NEW FISHING LAW:**

- The passed bill means an important progress for the sustainable management of the country's fisheries, since:
- It privileges science in the decision-making process and limits the authority's discretionality through the creation of technical committees and the strengthening of fishing research.
- It extends the requirements applied to the industrial sector to the large-scale artisanal sector, which nowadays operates with no major regulation, while at the same time it keeps and increases the privileges of small-scale artisanal fishermen.
- It establishes a definitive system of industrial quota allocations, which avoids having to legislate again on this matter.
- It strengthens control.

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<sup>i</sup> The Law Nr 19,713 stipulated the maximum catch limits per vessel owner to be in force until 2002 and afterwards it was extended until December 31<sup>st</sup> of 2012 by the Law Nr 19,849.