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Fishing rights changes 'real possibility'

Significant changes to public fishing rights are a real possibility and there are increasing concerns that we may be given little opportunity to have our say. These changes are being forced on us because of the Crown's ongoing refusal to acknowledge whether compensation is payable if the Minister of Fisheries reduces commercial catch limits for reasons other than sustainability.

Failure to address the compensation issue will have major consequences for all New Zealanders who fish for food, recreation or those who enjoy the amenity value of having "more fish in the water".

For years fishing industry representatives have threatened compensation claims and the Crown have dodged the issue, choosing instead to reduce the public's access to fisheries just to satisfy commercial demands to retain over-inflated catch limits set in 1986.

option4 does not believe compensation is payable due to the secretive deal struck in 1990, between industry captains and the government, and the subsequent amendment to the Fisheries Act.

Stonewalling behaviour by the Ministry in not providing all the available documents in relation to our Official Information Act request has impeded further research.

During the Supreme Court hearing of the Kahawai appeal the leading judge, Dame Sian Elias, questioned whether compensation is payable. Despite her best effort the Solicitor General, representing the Crown, did not offer any clarity, as seen by the transcript below.

ELIAS CJ:
But because so much has been said about potential lawsuits, compensation, it's the case, isn't it, that if the TAC is lowered and that pain flows through to quota, that there's no comeback, is that right?

SOLICITOR-GENERAL:
Yes.

ELIAS CJ:
Is that not the case if it's done under section 21 adjustments or is all this interorum? [sic, in terrorem]

SOLICITOR-GENERAL:
Yes. I won't say yes and I won't say no.

BLANCHARD J:
What would this be, some sort of public law damages?

SOLICITOR-GENERAL:
We'll have to wait and see.

ELIAS CJ:
Yes I'm sorry. It was sort of vulgar curiosity on my part.

What does in terrorem mean? Essentially it is serving or intended to threaten or intimidate. This well describes how our fisheries are managed and why we are not making any progress in securing reasonable access to healthy fisheries for the public.

Industry has captured fisheries management processes. Decisions are now based on manipulated ‘science’ and under the cloud of compensation claims if the Minister dares to reduce commercial allocations without applying similar reductions to the public’s allowance.

Whether it is Treasury-driven or policy, it appears that successive governments have ruled out compensation as a means to address depletion caused by overallocation, issuing too much quota for too few fish. Yet over-allocation is the root cause of many of our problems today.

This constraint on compensation has underpinned previous MFish attempts to change the nature of non-commercial fishing rights. These include Soundings (2000), Shared Fisheries (2006), and more recently the Fisheries 2030 project.

Fortunately public opposition thwarted both Soundings and Shared Fisheries but MFish appears to be pressing ahead with its 2030 initiative, regardless of public opinion. There is money to be made.

The Ministry’s solution to extracting more value from our fisheries while protecting commercial fishing is to define the public’s share of the total allowable catch in a particular fishing, and integrate that into the quota management system.

This would enable the Minister to allocate a strict proportion of fish to the public, which could not be exceeded, while retaining the excessive commercial allocations.

Such a fundamental and significant change to public fishing rights can only occur via a law change.

All the signals indicate that this process could start very soon and without public consultation. MFish has advised it will ‘engage’ with stakeholders. The difference may seem subtle but this has huge implications for non-commercial fishing interests, who would have limited ability to influence the outcome.

Consultation requires the Ministry to both have an open mind and provide submitters the opportunity to modify policy. Engagement does not invoke any legal threshold.

Any policy initiatives that affect public fishing must be subject to a robust consultation process. Otherwise we risk having short ‘engagement’ timeframes used as a weapon against us, and possibly sweeteners thrown out to distract us while the main event of legislative change is driven through.

To date it all smells very much like an ambush. Forcing public fishing rights to exist under the quota management system, in the form of a quota right, is something dear to the hearts of commercial stakeholders.

If you treasure your present right to fish and want to continue that tradition then you will need to stand up and be heard when this process gets underway. The alternative is to accept a minority share in the leftovers of a poorly managed quota management system and a form of licensing to make sure your catch remains within the new allocation.