

Hokianga Accord Update #40

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A harsh lesson of statutory management

“Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel.” Patrick Henry, 1788.

Gathering kaimoana is a centuries old tradition protected by the common law rights of access, fishing and navigation. The right to fish for food is currently under scrutiny. Suggestions include establishing a statutory body to exercise the mandate of people who fish, make policy decisions and set membership/licence fees to fund professionals to advocate on your behalf.

These outcomes will only be achieved by legislative changes and this prospect has the Hokianga Accord on high alert.

That is because the well-settled common law right to fish in the sea was confirmed by the Treaty of Waitangi, it applies to all New Zealanders and extends to our manuhiri [visitors].

Replacing a common law right with a statutory convention of lesser value will extinguish that broad right forever and have far-reaching, possibly unforeseen, consequences.

A harsh lesson on the effects of unintended outcomes from fisheries reforms is readily available and ought to serve as a warning to all.

It is doubtful that the people who agreed to the terms of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 would have accepted the loss of the customary fishing right if they knew what was to come.

There are few, if any, Maori that are enamoured with how the current customary fishing regime operates. It is a cumbersome permit-based system that does not deliver the fishing or management opportunities that many iwi, hapu and marae had hoped for.

There is increasing recognition by officials and Maori that fishing to feed the whanau is legally categorised as “recreational” fishing.

Therefore the common law recreational fishing right is significant for future generations of all New Zealanders, irrespective of race.

People are free to wander down to the seaside to fish at anytime, day or night, with very few restrictions as long as they obey the regulations. No one has to ask permission to fish and folk can take their catch home to feed their whanau.

Fishing is a permissible activity like walking in the park, riding a bike or picking puha. All can be done at a moment's notice and without the need for a signed permit or requirement to report that activity.

It is difficult to identify a single tangible benefit from replacing the public's common law right to fish for food with a statutory right and a licencing scheme.

Public fishing provides for the social, economic and cultural well-being of all New Zealanders, and the nation overall.

Exercising the customary fishing right can encompass many positive aspects including bringing whanau together to renew relationships, share experiences and provide food for large community gatherings.

However, the implications of exchanging a broad customary fishing right with a statutory right have been detrimental on some communities.

Maori based in the northern Bay of Islands have been trying for more than ten years to implement an effective local management scheme, but have been hampered by an onerous process and a lack of intent by government officials. Clearly the customary fishing regime has not achieved what was originally envisaged.

If a statutory right to fish for food is the answer then what is the riddle?

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