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Common law or statutory right to fish – the difference

Recent unrest in Egypt is a reminder of how overwhelming and effective public pressure can be. Here in New Zealand a similar, but more subtle, level of public pressure has convinced politicians to avoid the widespread backlash associated with licencing amateur fishers.

As every red-blooded Kiwi knows, one of the gifts of living in Aotearoa is that anyone, at any time, can go down to the sea and fish. The bonus at day's end is a healthy meal.

This ability to freely access our kaimoana, within local limits, is based on the public's common law right of access to the sea, to fish. A right that people in many other countries have lost, due to the imposition of a statutory right and corporate body to "manage" their licenced activity.

Fishing freedom and success
A preliminary analysis of overseas jurisdictions suggests that the New Zealand public enjoy far greater freedom, and fishing success, than people in many other countries.

Two reasons for this success is that recreational fishing is a public good administered by the government for the nation's benefit, and the fisheries resources are communal property managed by the government with a dedicated fisheries portfolio.

As we learnt from the Supreme Court kahawai ruling, the Minister of Fisheries can exercise his discretion when setting the commercial catch level, but he has to make a reasonable provision for the public's non-commercial interests in a fish stock.

This is a positive aspect of the Court's judgment because it confirms the government's exposure to unpopular fisheries policies. Ultimately all voters have a say in how our environment and fisheries are managed.

In comparison, in countries where statutory rights have replaced common law rights, fishing is only allowed by permission. This permission is usually obtained through a licence system.

Licencing regimes are a formidable barrier to entry and an effective tool in reducing public participation in fishing.

Invariably these systems evolve from a simple idea into complex and costly regimes driven by the bureaucracy that administers them.

A simple licence regime was introduced in West Australia several years ago. Now, recreational fishing from boats requires approval from two separate government departments. There are initial costs and annual fees running into hundreds of dollars. Annual boat registration fees apply and every skipper has to pay for, and pass, an exam and several medical tests.

Licence fees from the fisheries department vary depending on the individual's age, fishing method and target species. The annual boat-fishing fee is $30. Fishing with a net is an additional $40, targeting rock lobster and abalone (paua) costs $40 each.

A common complaint in Australia and other statutory regimes is that the fees required to maintain the sprawling bureaucracy is out of proportion to the benefits for fishers.

For Kiwis these multiple costs are a major concern and would be widely unpopular on top of the already-hefty family tax bill.

Claims that a statutory right is on a par with your common law right to fish in the sea are misleading. There are clear differences in their origin and how they are administered.

option4 continues to work with a variety of organisations who are committed to both protecting our existing fishing rights and ensuring sustainable fisheries management, to provide for our children's needs and well-being.

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