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CAUGHT IN THE QUOTA

Sarah BOYD
1,598 words
11 September 2004
Dominion Post
3
English
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Big quota cuts will be announced next week to the depleted stocks of New Zealand's most valuable export fish -- hoki. Sarah Boyd examines New Zealand's claim that it has the best-managed, most sustainable fisheries in the world.

Luigi Muello of Ngai Tahu Seafood casts a proprietorial eye over the rows of whole mackerel, scarp and **butterfish** sitting sleekly on ice at the Moore Wilson retail outlet. Tarakihi is the top seller in Wellington, but there's a wide array of choice and he reckons consumers are becoming more adventurous.

Sustainability? Not a problem in his view, thanks to the quota management system (QMS). He thinks the greens should be concentrating instead on poachers. "Why don't they come down hard on the paua poachers on the south coast? It's huge."

Environmentalists, though, are casting their net rather wider. Forest and Bird has issued what it calls a "best fish guide", giving an ecological ranking for each common species. Marks range from green (best choice) to amber (caution) and red (avoid), but in its first report no fish have made it to the green category.

Among the well-known fish it would remove from the menu are hoki, lemonfish, snapper and groper. "We consider the Ministry (of Fisheries) puts an incredibly positive spin on an incredibly alarming situation as far as New Zealand fisheries goes. We don't believe it has been upfront about the state of the stocks," says Barry Weeber, a senior Forest and Bird researcher.

Forest and Bird uses the ministry's own data, much of which it says is full of gaps. It also draws on other, often international, research when it makes its judgments about the environmental costs of fishing. So it gives more weighting to things like the damage to habitat by bottom trawling and the effect on the food chain and on biodiversity from the targeting of particular species. It concedes the scoring system is, in part, subjective, but it says it provides a snapshot of the New Zealand fisheries. The guide is printed on a wallet-size card and has been widely reported. But the ministry has not bothered to provide a comprehensive response to it.

The ministry says it is open and transparent, but, in fact, the sustainability information on its website is out of date and impenetrable to the layperson. Nowhere does it detail the state of each fish stock in an accessible form for the public. So the guide has filled a void -- and has been picked by the likes of Listener cooking columnist Lois Daish in an article on cooking fish.

Fisheries Minister David Benson-Pope, though, dismisses it as alarmist. "It's a purist view that there are fewer fish than there used to be and that's not acceptable. That's not the view of most people. You can't have an active and successful fishing industry and not catch fish." On the question of habitat damage, he counters with an analogy to farming. Whole areas of the country have been modified and most people would support continuing with that. What they won't support is further modification leading to deforestation.

"We're working hard to develop a position on the habitat issue in relation to the (proposed United Nations) bottom trawling moratorium. I think New Zealand has a pretty good record -- we do have 19 seamounts closed to fishing."

Richard Cade, chief executive of the Hoki Fishing Company, concedes that trawling the bottom of the sea has an impact, but he says that occurs across only about 20 per cent of New Zealand's fishing zone. "There are certain areas we don't go to because it's rocky and you lose gear. Often the trawl paths are the same we have used for 20 years."

Mr Benson-Pope's view is that the QMS -- which allocates individual transferable rights to catch a particular species -- is the best in the world. Because it's a property right to a share of the future catch, quota holders have an interest in ensuring sustainability -- or so goes the theory. The reality, though, is constant litigation by the fishing companies over what constitutes sustainability. The commercial, recreational and customary Maori sectors bitterly dispute their share of the resource and routinely end up in court.

Meanwhile, the ministry has been preoccupied since 1986 with the immense amount of work involved in bringing almost all species into the QMS -- letting work slide on wider environmental goals.

Globally, catches have quadrupled over the past 40 years, but are now in decline, with some fisheries depleted beyond repair. New Zealand is a relatively significant player, with the world's fourth-largest exclusive economic zone. Or, as Forest and Bird puts it, we are a fishing super power.

An international fisheries expert who visited here last month, Daniel Pauly, noted a smugness about the QMS and questioned the validity of assumptions behind catch levels. He also painted a horrific picture of the global marine eco-system damage caused by fishing.

The latest test of how the system works here may be the popular recreational fish kahawai. From October, it will be managed by a commercial quota which alarms many recreational fishermen and environmentalists.

Max Hetherington of the Recreational Fishing Council thinks kahawai is doomed at the levels being set because they are based on 1990s catches by purse seiners -- boats using nets as big as the Beehive that encircle schools of fish.

A vociferous fishing lobby group, option4, is apoplectic. Spokeswoman Trish Rea says the quota should have covered kahawai caught accidentally by commercial fishermen targeting other species -- incidents known as bycatch -- but otherwise reserved the fish for the recreational sector and Maori. "We did a survey with more than 2000 responses and 97 per cent said they can't catch kahawai anymore -- and when they do, they're smaller. All those people can't be wrong and those people are really pissed off."

However, Mr Benson-Pope says his instincts are conservative and he believes the quota's been set at a level that will allow the stock to grow. He has directed some research funding toward kahawai and will look at it again in a year. "If it doesn't (grow), then I'm in a position to take even more direct steps this time next year."

Even the critics of the QMS agree it's a step forward from the open slather approach of many overseas fisheries. Green party co-leader Jeanette Fitzsimons says quotas have successfully limited the number of boats operating -- "but it doesn't even attempt to deal with the sustainability of the marine eco-system". She says the fishing industry is campaigning strongly against controls on bottom trawling and she's sceptical its culture has really changed to embrace sustainability.

She does eat fish, though, and thinks all New Zealanders should be able to do so. "Ninety per cent of what's caught is exported anyway. I don't think New Zealanders should feel they shouldn't eat fish, but they should choose carefully."

She would like to see a precautionary principle applied to fishing. That would require a significant reduction in catch for some species, with a planned rebuild over 10 to 20 years. "The choice is between some contraction in the industry now or falling over a cliff later."

The minister is more mindful of the 26,000 jobs and more than \$1 billion a year export revenue the fishing industry generates. He's also confident the system as it is delivers sustainability. "I see a system that's flexible, is doing the job and is also striking a really good balance between conflicting imperatives."

Sustainable fish for dinner

John Annala, above, won't eat orange roughy, but only because he had too much of it during years aboard ships monitoring the catch.

He has just stepped down as the Ministry of Fisheries' chief scientist, having held the job since the ministry evolved out of Ag and Fish in 1995. He will eat any other kind of fish, confident it is being sustainably managed in New Zealand. A Forest and Bird report which paints a dire picture of the state of most of New Zealand's fish stocks doesn't wash with him. He's worked in fisheries here for 30 years, first attracted by a postgraduate fellowship opportunity and then falling in love with the country. He is leaving to become chief scientific officer for the Gulf of Maine Research Institute in his native United States, though will keep a house in Wellington.

Mr Annala reckons New Zealand is in a unique position as far as fisheries are concerned. There's no question in his mind that it's a world leader in terms of fisheries science, including having what he believes is the most sophisticated method for stock assessment in the world. But he says scientists have made mistakes in the past in estimating fish stocks -- orange roughy and oreo are examples. There are still many unknowns, particularly for deep-sea species. "Based on the information we have and our stock assessments, we're not over fishing. But I cannot definitively say to you that we are not overfishing."

The biggest challenge he sees ahead is addressing the environmental impact of fishing. "There's a strong green movement worldwide that's demanding that fisheries be shown to have minimal impact on the environment. We need to do a lot more to improve practices and to demonstrate that we have improved practices."

Document DOMPOS0020040913e09b0002u

Fish quota, Global dashers

150 words
3 October 2002
New Zealand Herald
English
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Fish quota

Ten more commercially caught fish species have been added to the quota management system. Paddle crab, **butterfish**, blue mackerel, queen scallops, cockles, anchovy, pilchard, garfish, sprats and kina are now included in the system, which allocates commercial fishers a tradeable share of the total allowable commercial catch.

Global dashers

New Zealanders John Bougen and cousin James Irving, who are trying to set a world record for visiting all 193 nations in under 160 days, are on target. They have visited 34 nations in 28 days and are heading to Europe after so far catching 44 flights, travelling 36,648km and using 18 airlines. They have also spent 98 hours waiting at airports, and were looking forward to using trains on the Continent.

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3, 4, 5, 15, 17, 20, 35, 40, 42, 45, 52, 53, 55, 59, 60, 62, 65, 66, 68, 71.

Document nzhld00020021002dya300016

Legal tempest leaves fishing industry high and dry.

By Lesley Springall.
4,006 words
2 October 2002
The Independent Business Weekly
English
(c) 2002 The Independent Business Weekly

What do paddle crabs, **butterfish**, pilchards, scampi and cockles have in common?

All have landed Fisheries Minister Pete Hodgson and his ministry in hot legal water.

Some of these court cases are still pending; others, like the paddle crabs, butterfish and pilchards, ended last week when the fishermen lost their case against minister and ministry - and perhaps their livelihoods - in the Court of Appeal.

The Ministry of Fisheries' August 2002 ministerial briefing papers said the contentious nature of issues within the fishing industry was such that, at time of writing, the ministry faced more than 30 legal cases, primarily judicial reviews.

The main problem is the government's intention to add all commercially significant species to the quota management system (QMS).

The fishermen lost their most recent legal challenge in the Court of Appeal last week. Paddle crabs, butterfish, pilchards and seven other species were added to the QMS yesterday - the first day of the new fishing season.

Cockles were given a stay of execution, after cockle fishing firm Westhaven Shellfish won its case against the government last month (The Independent 11 September).

The ministry is appealing the High Court judgment.

Another 40 species, including scampi, are earmarked for introduction to the QMS by 1 October 2004.

No-one interviewed by The Independent objected to the QMS, per se. All agreed it's the most effective way to manage commercial fisheries.

The arguments centre on who gets what share of the sustainable catch and how quota are to be allocated when a species is added to the QMS system.

Ultimately this comes down to the law or, more precisely, the 1996 Fisheries Act and its interpretation.

So why are the fishermen spending so much time and money in court when they could be out on the water? Is there something wrong with the Act? Or is the ministry's interpretation at fault?

Should Parliament review fisheries management issues yet again?

In the Westhaven cockles judgment, the High Court, accusing the ministry of bias, ordered the minister to desist from bringing cockle fisheries into the QMS until Westhaven's decade-long battle to extend its permit allocations had been given a fair hearing.

In the scampi case, two High Courts and the Court of Appeal found the ministry's allocation of individual catch entitlements (ICE) to have been illegal and unfair.

The ministry wanted to bring scampi into the QMS basing each fisherman's quota on ICE held in the 1990-92 period.

The rebel scampi fishermen objected, basically because they said, and the courts agreed, that during the 1990-92 qualifying period for quota allocation ministry officials had allowed Simunovich Fisheries to increase its catch while holding its competitors back.

In their judgment, Court of Appeal Justices Ted Thomas, Sir Kenneth Keith and John McGrath severely

criticised the ministry. "Suffice it to say that the ministry has seemingly moved from one regime to another in a manner which has caused considerable confusion; policies have been announced but have been revoked or then changed without due consultation or notice; other policies have been applied inconsistently as between competing fishers; advice to fishers has not been given even-handedly and the treatment of fishers has been unequal; assurances have been given which have not been kept and statements have been made which have been misleading. The ministry appears to have been all too ready to build on errors and injustices committed in preceding years and to rely on changing the legislation or adopting a new regime to overcome the problems caused by earlier mismanagement. The impression created is that much of this alleged mismanagement could have been avoided if, instead of defending questionable past decisions and focusing on legalities and 'litigation risk' management, the ministry's officers had, when making decisions, simply asked the straightforward question: 'is this reasonable and fair?'"

Following the judgment, instead of reassessing the rebel scampi fishermen's claims, the government went back to the 1996 Fisheries Act, saying it will divvy up quotas based on the 1990-92 catch history years, as stipulated in the Act, essentially allocating each the same level of quota as was deemed unfair under the ICE allocations.

Until the matter is resolved, campfi fishermen are forced to compete for the total allowable catch in each scampi management area.

Yesterday it began. Bigger boats with heavier gear chewed through the fuel, racing to the scampi grounds to catch as many fish as possible in as short a time as possible.

If the season goes as most fear it will, fishermen vying against each other to catch as many scampi as they can before the total quota for each particular area has been filled and the area closed will do the most damage to the scampi grounds and stocks.

Under this system, the fishermen will fish flat out for a short period and have their boats sit idle for the rest of the year.

Under a more rational quota management system, each fisherman would have the whole year to catch his quota. He could fish when weather, scampi prices and the scampi were at their best, thus maximising his yield on his investment.

No one - not the fishermen or the men from the ministry - favours this wasteful scampi race. But they are stuck with it.

The rebel scampi fishermen are expected to return to court shortly.

Mike Sullivan, head of Ocean Law New Zealand, the specialist Nelson-based law firm leading the legal charge against the ministry, is a harsh critic of the ministry - not, he stresses, the individuals within it but the culture forcing individuals to avoid making "the tough" decisions.

"If a dog pees on the carpet you spank it and throw it outside so it learns not to pee on the carpet. But for some reason politicians seem to take a view with the Ministry of Fisheries that if it pees on the carpet you reward it, with, say, retrospective legislation, and then you wonder why it keeps peeing on the carpet."

The latest furore over the maladministration of fisheries levies and the government's decision to bring in retrospective legislation to legitimise what the ministry has done and to avoid further legal action (The Independent 18 September) is yet another example of this, says Sullivan.

Ironically, the 1996 Act was introduced to reduce the amount of court action stemming from the introduction of the first 32 commercially significant fisheries into the QMS.

This was a visionary step, says Sullivan. "There's no question about it. New Zealand was, and is, at the forefront of the management of fisheries by means of allocating property rights."

However the move from the old permit system to Individual Transferable Quota (ITQ) was inevitably going to lead to problems because of the more valuable nature of property rights.

Holding an ITQ is no different to owning land. If you own it, you can borrow against it and you can sell it. It's valuable and should increase in value as long as the fisheries are sustainably managed.

The government wanted a new Act to tighten up the QMS and its administration to ensure sustainability of the country's fisheries and improve the allocation of individual transferable quota (ITQ).

Key to this, as agreed by the fishing industry and fundamental to the 1996 Act, was the decision to introduce all commercial, or potentially commercially significant, fisheries into the QMS as soon as possible so they could be better managed.

There were also other requirements leading to the need for a new Act, stemming from the country's international and domestic obligations arising from the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This gives Maori 20% of all quota when a species is brought into the QMS.

"There was a feeling in the ministry that what they needed to do was tighten up the legislation to remove areas of discretion, to make it more prescriptive and mechanistic, limiting the scope for review," says Sullivan.

Since 1986 a raft of amendments had been made to fisheries legislation to create greater flexibility. But this just added to its complexity.

The 1996 Act was meant to address this, says Sullivan.

However, given all the different areas to be taken into account and the ministry's desire to tighten up the administration of QMS, the opposite was achieved. The legislation grew in complexity.

Its introduction was beset by problems.

Enshrined within the Act are the 1990-1992 catch history years. Herein lies a major source of conflict.

A fisherman's quota allocation is to be based on his catch history in the 1990-1992 years. Some fishermen had a good catch in those years, others a poor catch. In the case of scampi, some fishermen were restrained from fishing by the ministry while the ministry allowed one fishing company to expand its fishing effort - and thus its catch - in those years.

Some fisheries were not exploited until after those years. Thus, there will be little quota allocated. Maori will be given 20% and the government will get the unallocated quota and sell it to the highest bidder.

This means a fishing company that started fishing a particular species or area after 1992 will get no quota for that species or area. So, if the fisherman wants to carry on fishing after the QMS comes into effect, he must buy quota from the government - possibly in competition with the bigger, better resourced companies.

As drafting the legislation followed a 1992 Task Force's report on the industry, these years were the most recent on which to base the allocation of quota.

However, given the complex nature of the industry it took more than two years to introduce the Bill to Parliament. The 1994 Bill was a "disaster," says Sullivan. "It was a terrible piece of law draughtsmanship. It was so loose - it had a lack of precision and checks and balances - so it got booted."

The Bill was re-drafted and subsequently became the 1996 Act. "The whole process of the review in the early '90s was to simplify QMS but we ended up with a system which is far more complicated. It's almost twice the size of the original legislation."

The problem with complex legislation is it becomes more difficult to ensure that it is consistently applied.

Different parts of the Act don't mesh, says Sullivan. "The 1986 Act was an empowering Act. It by and large set the mechanisms but it largely left the detail of implementation to decisions made on a case-by-case basis. It didn't prescribe decision-making."

However, no legislation is entirely prescriptive and there still exists, at the basis of any democracy, the need to be fair, says Sullivan. "That's what's partly fuelling this latest round of litigation."

"The problem with the ministry is that it has forgotten it is ultimately a servant of the people. There's an element within there that considers it is above the law."

Surprisingly some of Sullivan's comments have the ministry's support.

"Whenever you allocate resources you will always have quite a vigorous debate as different people want to maximise their positions," says Ministry of Fisheries deputy chief executive Stan Crothers. "And the law in respect of managing non-ITQ species and the process of bringing species into the QMS is not particularly robust."

"I think there's confusion with the way to manage non-ITQ species and how to transition them into the QMS. I do think we need to take a serious look at that part of the Fisheries Act."

Even though the Act was passed in 1996, it couldn't be implemented because the ministry didn't have

the systems in place to cope with it.

The Act was amended in 1999 and a new registry system developed with the industry to monitor the fishing industry and the quotas.

The registry is run by FishServe, a wholly-owned subsidiary of the Seafood Industry Council (SeaFIC).

Given the administration problems, the Act didn't fully come into force until October last year - a long time after the original 1990-1992 catch history years.

Crothers admits the world has moved on. Given the delays, for some fisheries, the 1990-1992 catch history years may not be the most appropriate or fairest mechanism for allocating quota.

"So for a whole range of reasons, instead of something that was initially envisaged to take between two and five years, we're talking about 10 to 15 years.

"This is the conundrum," he says.

The ministry is also under fire from the Treaty of Waitangi Fisheries Commission, Te Ohu Kai Moana, which is beset by its own problems on how to allocate the quota fairly to different iwi. The commission accuses the ministry of not moving species into the QMS quickly enough and thus not meeting its obligations under the Settlement Act. So the ministry is under attack from a number of sides, all wanting different things, says Crothers.

He denies the ministry has messed up. "We are administering the law, we believe, according to the law and we are doing the best we can within that legal framework."

On the issue of fairness, Crothers says the ministry is being procedurally fair. "The issue is whether the law provides for substantive fairness and that's a matter of conjecture."

He also denies the ministry isn't listening to the courts. "We take that damn seriously despite what people may think."

The ministry and the minister claim that under the law they must rely on the 1990-1992 catch history years for introducing species into the QMS and allocating quota.

After Maori are given their 20%, any quota left over - the majority in the case of paddle crabs, pilchards and butterfish - is auctioned by the government to the highest-bidder.

The smaller firms can't outbid the larger firms. So they will lose their businesses, say the fishermen.

Under the Act the minister also has the right to allocate ICE, which is more flexible and was developed to take into account the unique properties of different fisheries.

ICE can then be converted to quota, in the same manner that permits held during the catch history years are converted to quota, once the species is added to the QMS.

This is being tested in the courts.

In the paddle crabs case, four pilchard fishermen, butterfish fishing company Island Bay Fishing and paddle crab fisherman Matt Whittaker of Waikanae Crabs fought the ministry's decision to subject their fisheries to the QMS and base quotas on 1990-92 catch histories. They wanted ICE allocations. All said their fisheries were under-developed in 1990-92 and that they have invested significant time and money developing the fisheries since. They say their businesses will be jeopardised by the allocation of quota under the 1990-92 catch history years.

Denying the ministry or the minister acted unlawfully, Hodgson says he can only allocate ICE when it is environmentally prudent to do so, for example, for scampi.

The Court of Appeal, however, agreed with the fishermen that ICE was an alternative mechanism for allocating quota.

But, under the Act, this is left to the minister's discretion, said the judgment.

While supporting the fishermen's right to challenge the ministry's catch allocations, SeaFIC chairman Dave Sharp says the 1990-92 catch history years were certainly no secret.

They were debated right from the start, so anyone in the industry had to be aware of those qualifying years prior to developing their fisheries, he says. "But the courts are the right place to debate these issues."

Before 1986, fishing was just a cottage industry, raking in about \$12 million a year, says Sullivan. Now the sector is our fourth biggest export earner, pulling in \$1.5 billion in export revenue in 2001, including about 15% from aquaculture, and employing more than 26,000 people.

"There's no question that this is because of the stability and environment that transferable property rights confer," says Sullivan. But it's still a far cry from what could have been developed.

In 1992, at the beginning of the formation of the 1996 Act, the government introduced a moratorium on new permits for new fish species until it could bring these species into the QMS.

However permit/quota holders were allowed to request new permits for the species they already fished for. That's the issue currently being tested in the Westhaven case.

This is where the growth has come from. The moratorium stalled the development of new fisheries.

The moratorium is expected to remain in place until the 50-odd species earmarked for the QMS are added to the quota management system.

"Basically, prior to the introduction of the QMS, New Zealand's fisheries were becoming increasingly stressed by virtue of there being too many people chasing too few fish," says Sullivan.

ITQs allowed for the introduction of stricter management controls and forced the rationalisation of many parts of the industry.

All those questioned agree the industry needed rationalising and proper management if it was going to produce better and more sustainable returns for the country. The QMS was, and is, perceived as the best way to do this.

To compete effectively, especially internationally, the industry has to be more effective about what it does, just like any other industry, says Sullivan.

However, though economies of scale are required for the larger, deep sea trawling operations, in small, boutique or niche coastal fishing operations, smaller firms can often compete far more effectively than the larger firms, he says.

Crothers uses rock lobster as an example: "You can't get economies of scale in the rock lobster fishery because you need little boats that bounce off the rocks. But if you look at trawling and processing species like orange roughy you need big vessels and plants and big capital input."

All acknowledge the legal challenges and the moratorium have slowed the development of the industry. However, the ministry says it has given out many "special permits" to research new fisheries.

The industry disagrees.

In July, responding to criticism, the government trumpeted its special permit award to Vela Fishing to research the possibility of a deep-sea prawn fishery in New Zealand's Southern waters (The Independent 24 July).

Both parties stressed that if there is a commercially viable prawn fishery this does not mean Vela will get any privileges when quota are allocated.

"If there is a fishery there it would have been developed many years ago, were it not for the moratorium," says Sullivan.

Both Sullivan and Sharp say there should be some incentive for firms to find and develop new fisheries.

"We have one of the largest economic exclusive zones in the world. Within the constraints of sustainable development and basic principles of good environmental management we could double the wealth of this country. There's so much untapped potential out there. I find it ironic that the government talks about the knowledge wave and yet a huge proportion of that effort is focused on denying, preventing, limiting and placing road blocks in the way of sustainable development of what is probably our greatest asset - the living and mineral resources within our economic exclusive zones," says Sullivan.

Sharp says what is sometimes forgotten is that the purpose of the Act is for the 'sustainable utilisation' of our fisheries, meaning we have to use our resources.

Given the number of judicial reviews and growing disquiet among some factions in the industry and the wider community, Sullivan says the issue of fisheries management in New Zealand will come to a head

in the not too distant future.

The legislation should be reviewed and simplified and the portfolio given to a minister who has time to focus on it and the ministry's administration of it, he says.

The minister also needs a contestable source of advice, independent of the ministry, and the ministry and its officials should be held accountable for their mistakes, he says.

The ministry's argument that it is too complex to have different allocation mechanisms for fisheries is dismissed by Sullivan, as too simplistic. "The rest of the world manages fisheries on a quasi-flexible basis. I don't see why the Ministry of Fisheries can't.

"I'm not advocating wholesale free-for-all. No-one is. But prescriptive outcomes lead to injustice. The same shoe does not fit every foot, especially in fisheries."

Crothers stops short of saying there should be a law change. But the ministry does need a better way of bringing species into the QMS, he says. "There's a lot of energy and effort going into debating all these issues and I don't think that's particularly productive. There needs to be a clearer path from moving non-quota management species into the QMS."

Once this round of court cases is over - expected within the next couple of months - the ministry will advise the minister on how best to proceed, says Crothers.

"Now we rely on 10-year-old catch history. But that is still valid because a lot of people made a whole raft of investment decisions around that, so it's a very difficult problem to address. It would be manifestly unfair for the government to change the rules half-way through the game."

Until the analysis has been done and the result of the court cases taken into account, Crother says he can't be more specific about what the ministry will be recommending to the minister.

But whatever is done, all agree, someone is not going to be happy.

"The question about whether or not the Act is too prescriptive is in the eye of the beholder. If we were to change to the catch history years, for everyone who won one fish someone else would lose one fish," says Hodgson.

He dismisses criticism about the ministry's unfairness to fisherman, though acknowledges there were problems in the past, prior to the 1996 Act.

Is it fair to grant certain fishermen a full tally gratis of the quota they have caught since 1992? asks Hodgson. "All of the arguments so far have been predicated on the assumption that property rights to catch fish should be gifted. That's not an assumption shared by Parliament and it's not an assumption under which I operate."

Hodgson also dismisses Sharp's and Sullivan's assertions that fishermen should somehow be rewarded for finding and developing new fish species.

Vela Fishing, for example, will have the benefits of knowing about the prawn fishery. This will give them an economic advantage, says Hodgson. "The idea that this is grossly unfair - that just because one ship went out and found a new species, the owner of that ship should therefore have first right of refusal and the quota made across to them at no charge - is hardly the full story."

Given that the Act was fully implemented only in October last year, both Hodgson and Sharp say it needs time to bed in. "We are trying to get the most commercially valuable species into the QMS as soon as we can, so that this new Act, now in operation for a year, can be used to its full advantage," says Hodgson.

Any changes now would just lead to more delays and a raft of new legal challenges, "and the select committee [challenged with reviewing any changes], would never get home for the night," he says.

This doesn't help the paddle crabs, butterfish and pilchard fishermen.

But if the government does have the desire to be fair, perhaps when fishermen apply to buy back the quota they have been fishing for years, it will give them more than just a fair hearing compared to their competitors, says one observer.

However, judging by the criticisms of the court, fairness, at least where fisheries are concerned, is a highly debatable and litigious issue.

Document indbuw0020021009dya200007

Butterfish, pilchard and paddle crab fishermen take minister to court.

By Lesley Springall.
986 words
7 August 2002
Independent Business Weekly
English
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Three groups of fishermen are to appeal a High Court judgement dismissing their case last month against Fisheries Minister Pete Hodgson and the Fisheries Ministry.

Four commercial pilchard fishermen, **butterfish** fishing company Island Bay Fishing and paddle crab fisherman Matt Whittaker of Waikanae Crabs are fighting the ministry's decision to subject their fisheries to the quota management system (QMS) this October and allocate quota on the basis of catch histories in 1990 - 1992.

Seeking a judicial review, the fishermen claim their fisheries were under-developed in the 1990/92 catch history years, as specified in the Fisheries Act 1996. Thus the allocation of quota on that basis was unfair and would cost them their livelihoods (The Independent 13 March).

The fishermen claim to have invested significantly in developing their businesses and in commercialising previously uncommercial fisheries.

Total allowable commercial catch (TACC) limits are based on current data. Today's TACCs for the species in question is greater than the total catches in the 1991/92 fishing years when these fisheries were in their infancy.

Thus, the fishermen who developed these fisheries will be granted quota for only a small fraction of the total allowable catch.

The bulk of their fisheries will be seized by the Crown to auction off after allocating 20% to Maori as a Treaty of Waitangi settlement.

The fishermen claim they can't afford to compete with the large fishing companies for quota if they are forced to buy it back from the Crown.

Instead they want quota allocated on individual catch entitlements (ICE), based on current fishing levels.

The minister's claim that it was not open to him to consider individual catch entitlements for these fisheries was, the plaintiffs alleged, "fundamentally flawed as being founded upon wrong advice as to the law," summarised Justice Eddie Durie in his judgement.

Acknowledging the government's decision will seriously affect the fishermen's livelihoods, Justice Durie said that was, however, not the case to be answered. "The question is whether the Minister's decision is sustainable in law."

He dismissed evidence presented by six other paddle crab fishermen, who entered the case late and didn't support allocations based on ICE, saying the case was not about measuring the "competing equities of the various permit holders."

An application by Simunovich Fisheries to enter the case on the government's side was also dismissed before the hearing. Simunovich was, however, allowed to submit a large affidavit supporting the late entrant paddle crab fishermen.

Hodgson and his ministry are handing Simunovich the lion's share of the scampi fishery despite two High Court judges and the Court of Appeal finding the ministry's actions to have been illegal, unfair and unreasonable (The Independent 20 February and 10 July 2002).

Little mention was made of the scampi precedents in Justice Durie's judgement.

Crucial to this case was the ministry's 3 October 2001 decision to add 13 fisheries to the QMS, including paddle crabs, pilchards (and its associated by-catch anchovies) and butterfish, said Justice

Durie. "Amongst other things, the decision paper discounted the prospect of introducing individual catch entitlements and assumed that the catch-history model would apply."

The minister then sought further advice on how to mitigate the impact of the catch-history model on small-scale fishermen. Though the ministry's October 16 "mitigation paper" did not address the minister's concerns and "rather sought to strengthen" its original proposals, this was accepted, said Justice Durie.

The ministry's submissions that the reason for not including in the 1996 Fisheries Act a section of the 1983 Fisheries Act which sought fair results for fishermen based on their commitment to and dependence on the fishery, was because it led to ongoing litigation, was important, said Justice Durie.

However, he criticised the ministry's concerns about ICE being unfair to new entrants to a fishery and that they create "a perverse incentive to race for catch-history."

While that may be so, "it is not for the ministry to prevent that from happening for policy reasons of its own.

It cannot put itself above Parliament.

It has rather to reach conclusions on the scope and application of individual catch entitlements on the basis of statutory interpretation," said Justice Durie.

The 1996 Act does not contain any real guidance for ICE allocation, he noted. But both the Act and the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992 do presume the eventual transfer of commercially available fish stocks to the QMS.

"To restrict access to fisheries is antithetical to the Act, which encourages competition, so that any such restriction must be either a temporary expedient or it must require some special justification."

Allocating quota on most recent catch histories or ICE, reflecting recent catch histories - given that TACC limits are based on current catch limits - could give fishermen with the bulk of a fishery a virtual monopoly over the stock, Justice Durie opined.

Given the overall purpose of the Act, "the inevitable conclusion in this case is that it was not open to the ministry to allocate individual catch entitlements in respect of the subject fisheries."

Permit holders in these fisheries must have known quota would eventually be allocated according to the 1990-92 catch histories, he said. "Any investment on their part in the interim was at their own risk.

I appreciate that this may work a hardship for the plaintiffs but I think the law is clear."

However, while declining the application for judicial review, Justice Durie reserved costs saying that from the material before him "the ministry may well have misled the plaintiffs as to the availability of individual catch entitlements.

If that is so, this would not be a case where costs should follow the event."

The appeal is set down for the 28 and 29 August.

Document indbuw0020020807dy8700001

FISH PRICES.

104 words

19 November 1999

The Christchurch Press

4

English

(c) 1999 Knight-Ridder/Tribune Business News

Sir-Foodstuffs and Sealord wish to correct the misleading article headed Exporting leads to rise in fish prices (November 9), which blamed the Sealord group for the rise in supermarket fresh fish prices.

We did not say that Sealord is responsible for price rises for fresh tarakihi, groper, and **butterfish**, which are inshore species. Sealord is a deep-sea fishing operation, specialising in frozen fish products and holds quota for hoki, orange roughy, arca dory, ling, and squid.

DAVID JURIE seafood merchandise manager Foodstuffs (Wellington) Co-operative Society Ltd PHIL LOUGH chief executive Sealord Group Ltd.

(c) The Christchurch Press, INL 1999.

Document thepre0020010911dvbj009ug

EXPORTING LEADS TO RISE IN FISH PRICES.

By Seth ROBSON.

252 words

9 November 1999

The Christchurch Press

6

English

(c) 1999 Knight-Ridder/Tribune Business News

The price of fish is rising as fishing firms export their catch overseas, limiting what is available on the local market.

Fresh-fish prices in supermarkets have risen sharply in the past month, with tarakihi up 14 per cent, groper fillets up 21 per cent, and **butterfish** up 22 per cent.

Foodstuffs, which owns the New World and Pak 'n' Save chains, says the reason is the strong hold on fishing quotas held by Nelson firm Sealord and its preference to export.

Foodstuffs spokesman David Durie said supermarkets, struggling with a lack of supply for the domestic market, were getting plenty of questions from shoppers about high fish prices.

Fish was popular but price rises were cutting into sales, he said.

The Government, which sets fish quotas, should act to ensure New Zealanders were better supplied, he said.

Sealord chief executive Phil Lough said the company had always exported most of its freshly caught fish.

Mr Lough said firms were cashing in on the low exchange rate for the kiwi dollar, which meant exporters were getting higher prices overseas. He agreed that better export returns were putting pressure on domestic fish prices.

Christchurch fishmonger Peter Halloumis said the price increases were partly export-related.

But, he said, the rises probably had more to do with rough weather that had kept fishing boats in port over the last couple of weeks and a lull between fishing seasons.

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Document thepre0020010911dvv9008vg

EXPORTS BLAMED FOR FISH PRICE HIKE.

370 words
8 November 1999
New Zealand Press Association
English
(c) 1999 New Zealand Press Association

Wellington, Nov 8 - The price of fish is skyrocketing as fishing firms export their catch overseas, squeezing what is for sale on the local market.

Fresh fish prices in supermarkets have risen sharply in the past month, with tarakihi up 14 percent, gopro fillets up 21 percent, and **butterfish** up 22 percent.

Foodstuffs, which owns the New World and Pak 'n' Save chains, says the reason is the strong hold on fishing quotas held by Nelson firm Sealord and its preference to export.

The quota management system limits the tonnage of each type of fish that can be caught each year, with the total catch reviewed each year and quota rights bought by fishing companies.

Maori have been granted a share of quota rights and these are managed by the Waitangi Fisheries Commission, which owns half of Sealord. Brierley Investments owns the other half.

Foodstuffs spokesman David Durie said supermarkets were getting plenty of questions from shoppers about high fish prices. Stores were struggling with a lack of supply for the domestic market.

Fish was popular but price hikes were cutting into sales, Mr Durie said.

He said the Government, which sets fish quotas, should act to ensure New Zealanders were better supplied.

Sealord chief executive Phil Lough said the company had always exported most of its freshly caught fish.

Mr Lough said firms were cashing in on the low exchange rate for the kiwi dollar, which meant exporters were getting higher prices overseas. He agreed that better returns achieved overseas were putting pressure on domestic fish prices.

Luigi Muollo of fish wholesaler Cook Strait Fisheries in Wellington said supermarkets always wanted to buy fish very cheaply.

"If they can get it 5c (a kilo) cheaper somewhere else they will go there. There is no loyalty."

Mr Muollo said the reason wholesalers like himself could sell fish considerably cheaper than supermarkets was he didn't need to put a retail margin on the fish.

"We catch it with our boats, we fillet it, we're involved in virtually every phase of the fishing process."

Other big fishing firms such as Sanford and Seafresh in Seaview are export-oriented.

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Document nzpa000020010908dvv8002li

KAPITI SEA BOUNTY EXCITES CONSERVATIONISTS.

258 words

24 March 1999

The Dominion

15

English

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A RESURGENCE of sea life since the creation of Kapiti Marine Reserve has Conservation Department staff excited about the future of such reserves.

A survey by National Institute of Water and Atmospheric Research has found 10 to 20 times more legal-sized blue cod and four times as many big **butterfish** in the reserve than in nearby sites outside the reserve.

About twice as many crayfish were counted in the same area as in 1992 when the reserve was established.

Reserve committee chairman Ken Grange said the increases in numbers and sizes told only part of the story.

A dive team had reported the behaviour of fish and crayfish changed, with fish much less shy. "Some large crayfish even moved out of their caves to observe the divers."

Though the data was preliminary and full results would not be available for several weeks, the benefits of having a reserve were clear, Dr Grange said.

"This is good news for the area, particularly as the reserve's creation stemmed from a groundswell of public concern over the progressive degradation of the Kapiti marine environment."

Coastal marine officer Bruce Dix said it was also interesting to note that since the reserve was closed to fishing, the abundance and size of blue cod and butterfish had increased at the seal colony at Arapawaiti, or Hole-in-the-Wall, at the north end of Kapiti Island.

"This indicates very clearly that humans have more impact upon fisheries than seals do," he said.

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