

Ot.prp. nr. 20 (2007-2008)

Proposition to the Norwegian Parliament for adoption of the Marine Resources Act

4.3.4 Assessments of the Ministry

The right of property can traditionally be defined as the right that gives the owner of an object all that prevails over the object that is not specifically escaping in or with cheer in law or as a result of legally valid actions. This rule may be devoid of a legal part, such as the right to sell the object, and an actual part, for example the right to use the object. As a rule, the right to prevent others from taking advantage of or exploiting the object is also the right.

The Ministry assumes that there is no such right of ownership in the selection process to propose wild living marine resources. The decision points out that the proposal is linked to the role of the state as a manager, and the state's responsibility for balancing the calanda and the marine ecosystems and producing a high-quality excess. The proposal also does not apply to the individual individual, the individual specimen of a species of fish, but a "moving mass" — the resources that, at any time, are found in the area subject to Norwegian fisheries jurisdiction. A government right of property to wild living marine resources would have to be distinguished from the government's right to other types of natural resources, cf. the discussion in the administration.

Therefore, this is to be seen as a proposal for a more symbolic right of property, as an expression of the government's responsibility more than as an expression of the right of property for the state in the traditional sense, if we regard the state as a legal entity here.

Furthermore, the Ministry assumes that the selection has meant the proposal for state property as an expression of the community's right to resources in contrast to a privately owned resource, such as the non-mutable minerals in the mining law of 30 June 1972 or watercourses that run over private grounds pursuant to the Water Resource Act of 24 November 2000.

On the basis of the high-relationships, the Ministry must acknowledge that the expression "property right" does not differ in order to bring this out. The use of this expression has created other associations. The Ministry is therefore united with the Parliamentary Boards in that the Act should not declare state property rights as the majority in the committee proposes.

Legally speaking, no specific paragraph is necessary in the Act relating to the Government's Administrative Responsibility for wild living marine resources. Part of the government's control expenses are today covered by the industries through the control fees introduced from 2005 onwards. If more business finance is introduced for management tasks, a discussion may arise at one point whether or not who will manage the priorities and who will carry out the practical tasks. Even though the view of what is a government task can change over time, there is no doubt that this is currently in the state, and that the government will also have to have the fundamental responsibility for the management of the marine ecosystems in the future. This applies regardless of whether the law declares state property law or not.

On the other hand, the Ministry sees grounds for considering whether the law should contain an expression of the community's right to the resources, particularly on the basis of the Norwegian Fishermen's Association's high regard.

The Fisheries Association pointed to a "development towards a more rights-based harvest of resources, where operators have invested private capital to a greater extent in order to achieve higher quota shares on their fishing vessels. This means that many of those currently participating in fishing have invested very large amounts in order to be able to run the fishing they practice, and it is

difficult to imagine that these should not have a legal position. The Fiskarlaget believes that, against this background, "it has arisen private rights".

As a matter of fact, fishing in the lake has been an universal right of access. However, this court is driven within the frameworks that follow the rules of the salt water fishing law and in the Participation Act. Access to commercial fishing is fully regulated through the rules set out in and in accordance with the Participation Act, cf. Section 4:

"A vessel cannot be used for commercial fishing or hunting unless an acquisition permit has been granted by the Ministry".

For a number of fisheries there is also a requirement for a licence, cf. Participant Act Chapter III, or annual restrictions have been established in the scope of Participant Act Section 21. When access for a vessel group is restricted in this way, access will be given to economic value that can be realised when a vessel is shut down for continued operation in the same fisheries. It is also seen in the works of various structural schemes that allow the purchase of such a vessel with a view to collecting more quotients on one vessel.

The economic connections that is indebted in such cases is discussed in different cases, for example in Reprot to the Storting No. 20 (2002-2003) structural action in the coastal fishing fleet chapter 10.3.6, down on page 71 and further on page 72. General measures to remedy the negative consequences of such a concession price were discussed by a public public already in the NOU 1981:3 licensing scheme in the fishing chapter 4.3.

This is not new, even though the number of transactions where such remuneration has been paid between the parties has increased over the past decade, due to limitations in access to more and more fisheries and because of the structural arrangements.

Here, however, we must make clear that remuneration between private parties does not in themselves provide a new content in the licence to fish, as the Fishermen's Association seems to be. The licences that have been granted by the fisheries authorities in individual decisions with remeal in the Participant Act or in the structural arrangements have been defined as a result of the national laws, regulations and conditions of the licence. The license gives the right to run a certain business, but the framework for this work is not beyond the basis of the home base. The framework will also be possible to change, the ante in accordance with the legislation that she is currently or as a result of legislative amendments.

This is because the enterprises are based on, and depending on, public licences based on the fact that the enterprises are not allowed without such permission.

The fact that there is a price between private parties on their own access to participating in a vessel group where participation is limited by means of a licensing scheme or an annual regulation reaffirmed in Section 21 of the Participant Act, and that the value of such measures is applied, will be an upward approach which may place greater or less emphasis on when the authorities assess different regulatory measures. However, this does not preclude changes, the amount of quoting among different groups, the award of new concessions or a row of other interventions to which the legislation contributes to. This has not been doubtful, and it has been based on various notifications with further details, e.g. in St. meld. No 92 (1982-83) Guidelines for the Fisheries Policy Chapter 3.3, Report to the Storting No. 59 (1992-93) on structural and regulatory policy on the fishing fleet Chapter 3.2.5 Section Quantity Scheme, in Report to the Storting No. 51 (1997-98) Perspectives on the development of Norwegian fisheries industry Chapters 7.2.2 and 7.2.3 and in Ot. prp. 67 (1997-98) On the Act related to the Right to Participate in Fishing and Hunting (the Participation Act), for example, on page 50 of the note to Section 16 and page 51 of the note to Section 19. The discussion

in Report to the Storting No. 20 (2002-2003) has also been used for structural measures in the coastal fishing fleet chapter 10.1.

In Report to the Storting No 51 (1997-98) Chapter 7.2.2, it points to this:

Quota regulations pursuant to the Saltwater Fishing Act are a distribution scheme for catching quotas through catch quotas. The fish resources represent a national wealth, which the government will manage at annual allocations based on overall objectives. Thus, the owners do not have a quota right even though he has a license to operate a particular fishing. The quota is normally allocated for one year, but may, if necessary, be changed during the year, e.g. for resource considerations.

In its recommendation on this white paper, the food committee pointed out this white paper, Innst. S. No. 93 (1998-99) Chapter 2.2, that “the fish is a national common resource to be managed and exploited for the benefit of coastal communities”. In the heart. O. No. 38 (1998-99) to the Participation Act this was exhausted in Chapter 2.3, where said follows:

The Committee would point out that fish resources belong jointly to the Norwegian people. As a rule, there are no individuals or individual companies that can be granted perpetual exclusive rights to harvest (and profit) free of charge, while others are excluded from participating in fishing. At the same time, the Committee acknowledges the need to limit resource utilisation in the interests of long-term and sustainable exploitation of marine resources. The Committee therefore considers that the Participation Act is important in relation to regulating participation in fishing and thereby the total capacity in the fishing fleet.

It is clear that the legislation has not seen any contradiction between restrictions on participation in fishing, and that the resources are a national common resource. Among other things, it may not be claimed that the economic value generated by such limitations in participation, and the fact that this value is resolved through transactions between private parties, has changed the legal status and situation of the fishing boat owners or the legal status and situation of the fishing boat owners. The opportunity to recall concessions or make other changes to the licensing groups in the Participation Act is for example.

A privatisation of the resources, as the Fisheries Association seems to have done on the basis of financial transactions between private parties, would require a legislative decision. The argument that transactions between private parties should form the basis for a legal position that goes beyond what explicitly follows the regulations do not have legal ground. This debt is owed even if it is regulated arrangements that have created the economic value for which the business owners have paid. As mentioned, this is something one can take a larger or lesser regard for political roadside events, but it does not represent a legal barrier for the state’s law enforcement and management.

In order to clarify the situation, the Ministry believes, based on this, that the new Marine Resources Act states that the wild living marine resources lie to the community in Norway. There is therefore a guide in Section 2 about this.

When it comes to the genetic resources, an overall expression of the state’s relationship to genetic material will be incorporated into the new natural code. The national right of property is not a necessary basis for the administrative arrangements made in the law here when genetic material from wild living marine resources is concerned.

The proposal will imply a formal change in relation to the fine-lived organisms that have been regulated through the rules of continental sokkellova. Nevertheless, the Ministry cannot see that this will lead to practical changes.

Note from the Sami Parliament

In the consultation process, the Sami Parliament has in principle pointed out that concreteisation is needed in the form of the Sami's right to fishing as already followed by customary and international law. In the alternative, and as a possible solution, the Sami Parliament has nevertheless opened up for a wording that assumed that the state of Norway is established on the territory of two peoples, samar and Norwegians. This with a waiting for the follow-up of the conclusions of the coastal fishing committee, cf. Chapters 4.5.4 and 4.5.5.