

23 NOV 2015



OIA15-226

Graham Carter
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Dear Graham Carter

OFFICIAL INFORMATION ACT REQUEST

I refer to your official information request on 23 October 2015 requesting the following:

“Would you kindly provide us further information regarding this loss by Aotearoa Fisheries as the press release leaves a lot of unanswered questions.

1. *Can you give an exact date / time and location, when the vessel was hit by large waves?*
2. *If the weather conditions were so bad, why was the boat out there fishing?*
3. *Clearly the skipper would have known that the weather was bad as the crew were wearing life jackets so one would question the competence of the skipper in continuing to fish in these alarming conditions?*
4. *Did the vessel have camera's operating to record this loss?*
5. *What is the name of the boat and skipper?*
6. *The fish must have drifted faster than the trawler could steam as the fish beat the vessel back in. How did the fish get to the beach before the trawler?*
7. *If the crew were so scared of the sea and a near miss that caused an estimated (as their guess 500kg of fish) to wash up on the beach something else had to occur [occur]*
 - a. *The trawler continued to fish after the first wave hit, therefore it was not too rough*
 - b. *Or they simply got caught dumping fish so made up this story. If the boat had been in port when the fish were found I would have believed them.”*

Operations

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I note you have previously raised similar requests for information. Can I say that the Ministry for Primary Industries (MPI) is fully aware of the sensitivities of all stakeholders regarding the deliberate or accidental loss of fish from commercial fishing vessels and does investigate all incidences of observed or reported cases of discarding of fish at sea.

As a consequence of the high public interest and collaborative work between MPI and the commercial industry we are now seeing a significant increase in the self-reporting of such losses by commercial vessels. This self-reporting is encouraged and commended by MPI as it ensures that those that are discarding fish are either investigated and prosecuted when an offence has occurred or when the discarding has been legitimately reported, without any criminal intent, are made to cover the discarded fish (above Minimum Legal Size) with their Annual Catch Entitlement (ACE) or by way of paying a "Deem Value".

The relevant point with discarding is that when self-reporting, most commercial operators are acting in accordance with legislation and are unlikely to be prosecuted. In fact we at MPI continue to encourage this reporting as it allows fisheries managers to build a better picture of the reported take of the commercial sector. Accordingly, if operators are acting legally they are protected by rules of privacy and also confidentiality regarding their "Intellectual Property" such as the detail of catch composition, locations and effort. It is for these reason we refuse many OIA requests for commercially sensitive data regarding legitimate commercial operators. This also includes our refusal to name the vessel and companies to avoid litigation risk for companies acting in accordance with the law. With this in mind MPI has provided you with the following response to your specific questions.

The following information is released to you under the Official Information Act 1982 (OIA):

Question 1

MPI considers this information to be commercially sensitive. Therefore, I am withholding this information under the following sections of the OIA:

- s9(2)(b)(ii) where the making available of information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.
- s9(2)(ba)(i) - where the withholding of information is necessary to protect information which any person has been or could be compelled to provide under the authority of an enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that that such information should continue to be supplied.

Questions 2, 3

MPI does not have the information you have requested and therefore is unable to respond to this part of your request. Therefore, I am refusing this part of your request under section 18(e) of the OIA as the information is not held by MPI and therefore cannot be found or does not exist.

Question 4.

There was no camera operating on board this vessel.

Question 5.

MPI is withholding the name of the boat and the skipper under section 9(2)(a) - to protect the privacy of individuals. MPI also considers this information to be commercially sensitive and is also withheld under sections 9(2)(b)(ii), 9(2)(ba)(i).

Question 6 and 7

At the conclusion of the investigation MPI was confident that all aspects of the incident had been taken into consideration.

Graham I know that these answers do not satisfy your request and again some of your questions are not material to an MPI investigation once a commercial operator has reported the accidental loss of fish and covered that loss by "Deem Value" provisions or ACE. I can assure you that where evidence is sufficient we will prosecute any operator that illegally discards fish at sea and have done so on numerous occasions in the past. As frustrating as it is to all concerned these are tricky cases to take through the courts without irrefutable direct evidence. As you are aware MPI is investing heavily in observer coverage on the Snapper 1 commercial fishing fleet and in the short to medium term is considering the mandatory requirements for all commercial fishing vessels to have Vessel Monitoring Systems and Cameras in order to operate anywhere in the New Zealand Exclusive Economic Zone. If you require any further clarification on these issues I personally am willing to meet with you to discuss what we are doing in addressing illegal discarding to ensure we get an enduring solution to this issue.

MPI is satisfied that in the circumstances of this case, the withholding of the information is not outweighed by other considerations which render it desirable in the public interest to make the information available.

You have the right under section 28(3) of the OIA to seek an investigation and review by the Ombudsman of our decision to withhold information and refuse parts of your request.

Yours sincerely



Dean Baigent
Director Compliance