Legal Challenge and its Implications

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Two key points

• Legal and scientific certainty are very different

• Legal challenge is a sign of change …… not necessarily a bad thing
Scientific certainty

• I’m not a scientist .... but

Jack Letouneau
Question

What level of certainty does a decision maker need to support their decision?
Answer

• Traditionally the decision must not be irrational

• Creeping doctrine of *proportionality* from EU
  
  – Measure suitable to achieve objective
  – Measure necessary to achieve objective
  – Excessive burdens on the individual

• There are other legal challenges but these relate more to process

Roel Wijnants
Why is legal challenge on the increase?

VW Passat 2000-2005

VW Passat 2005-2011
Legal challenges come out of change

- Client Earth / MCS legal challenge over implementation of Habitats Directive
  Why should a port doing maintenance dredging be subject to the Habitats Directive and not a bottom trawling fishing boat?

- Isle of Anglesey CC et al. v Welsh Ministers et al.
  The rights of private shellfisheries over the Crown needed to be crystallised

- R v SoS Environment, Food and Rural Affairs (ex parte UK Association of Fish Producer Organisations)
  The public need to know who owns the UK fishing quota
Shape of things to come

• More legally trained lobbyists?
• Legal threats do not translate necessarily into action
What’s needed?

- Don’t panic
- Legal challenge can be a good thing
- Openness regarding legal threats to government bodies
  - Best practice MMO disclosure of MCS / CE correspondence
  - Compare MCZ process, rumours of legal threats but what’s the substance?
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