

## SECTION 14: ALTERNATIVE TOTAL ALLOWABLE CATCH

### Summary

1 The Fisheries Act 1996 (FA 96) provides for sustainability measures to be set or varied in order to ensure sustainability. Section 11 of the Act sets out the matters that the Minister of Fisheries must consider before setting or varying a sustainability measure. Section 11(3)(a) of the FA 96 clarifies that sustainability measures may include the setting or varying of a catch limit for any stock.

2 The need to set or vary a sustainability measure is to be determined in the context of ensuring sustainability (as defined in the purpose (s 8) of the Act), taking into account the obligations specified in ss 9 (environmental principles) and 10 (information principles). Before doing anything under s 11, the Minister is required to consult in accordance with the provisions of s 12. All decisions must be made in a manner consistent with the obligations of s 5 (application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992).

3 Catch limits for stocks managed under the Quota Management System (QMS) usually take the form of a total allowable catch (TAC) set or varied under s 13. The Act also contains provisions that allows the setting or varying of alternative and by-catch TACs for certain QMS stocks, provided such TACs are better able to meet the purpose of the Act than would a TAC set under s 13.

4 Section 14 provides for stocks to be listed on the Third Schedule to the Act, and sets out the considerations associated with setting or varying a TAC for these stocks. TACs are set under s 14 if the Minister determines that is more appropriate than the 'default' option of s 13. However, considerations under s 14 must remain *intra vires* the FA 96. Importantly, this policy definition has been developed within the context of the policy for interpreting the scope of s 8 (purpose of the FA 96).

5 A TAC set or varied under s 14 of the Act may also need to be supported by additional sustainability measures to assist with ensuring the sustainability of a stock or stocks. A range of non-limiting options is outlined in s 11(3)(b)-(e) (sustainability measures). Additional management measures may also need to be set under other sections of the Act, where they are necessary to support any 'alternative' management regime.

### Purpose of this Policy Definition

6 The purpose of this FA 96 Policy Definition is to provide the Minister of Fisheries with a policy on the setting, or varying, of a TAC under s 14 of the Act. This section of the Act provides for an alternative TAC (provided it better meets the purpose of the Act than a TAC set under s 13) which can be applied to stocks listed on the Third Schedule.

## Background and scope of legislative provisions

7 The QMS was introduced in 1986 to improve the management of New Zealand's fisheries. The primary goals behind establishing the QMS were to limit the catch of commercially harvested stocks to levels that would both conserve stocks, and enable greater economic returns. The QMS has the potential to achieve these goals and to maximise the net economic return from commercial fishing to the nation. Stocks are introduced to the QMS in accordance with the provisions of s 19, which includes the requirement for costs and benefits of such a step to be had regard to.

8 Under the FA 96, stocks are brought into the QMS via the provisions of ss 18 and 19. Key considerations required by these sections include the determination of the one or more species that form the stock, and the declaration of a Quota Management Area (QMA) for each stock.

9 Each stock introduced into the QMS has a TAC set by the Minister of Fisheries, in accordance with the provisions of s 13, or if an alternative TAC is better able to meet the purpose of the Act, under s 14 (or 14A). For a TAC to be set under s 14 (reproduced as Attachment A), the stock must be listed on the Third Schedule. Once a stock is in the QMS, the TAC for a stock listed on the Third Schedule may be varied through the provisions of either s 14, or s 13.

10 Under the Fisheries Act 1983, an alternative total allowable commercial catch (TACC) could only be set for the southern scallop fishery. The FA 96 provides for the setting of an alternative TAC (as opposed to a TACC) for the southern scallop fishery, and also lists squid (all QMAs) on the Third Schedule.

11 The Minister is required to set a TAC by notice in the *Gazette* under either s 13(1) or s 14(1), for all stocks introduced into the QMS. Only stocks listed on the Third Schedule to the Act can have a TAC set under s 14(1). Once set, a TAC remains in effect unless varied. A TAC for a stock listed on the Third Schedule can be varied under either s 13 or s 14. Downward variations can only occur at the beginning of a fishing year.

12 The TAC specified under s 13(1) is required to maintain the stock size, over time, at or above a level that can produce the MSY, having regard to the interdependence of stocks. MSY is defined as meaning (in relation to any stock) *'the greatest yield that can be achieved over time while maintaining the stock's productive capacity, having regard to the population dynamics of the stock and any environmental factors that influence the stock'*.

13 The TAC specified under s 14(1) must be set at a level that would better meet the purpose of the Act than would a TAC set under s 13(1). The purpose of the Act is to *'provide for the utilisation of fisheries resources while ensuring sustainability'*.

14 The provisions of s 14 recognise that there will be some stocks that will be better managed according to alternative targets than the stock level required under s 13. These stocks must be listed on the Third Schedule. Only the Governor-General may add (or omit) stocks to that Schedule.

15 In order to be listed on the Third Schedule, stocks are required to meet one of three criteria listed under s 14(8)(b):

- a) It is not possible, because of the biological characteristics of the species, to estimate maximum sustainable yield; or
- b) A catch limit for New Zealand has been determined as part of an international agreement; or
- c) The stock is managed on a rotational or enhanced basis.

16 Squid stocks (all QMAs) are listed on the Third Schedule, due to the inability to estimate MSY. The southern scallop stock is on the Schedule, due to the fishery being supported by an enhancement and rotational fishing programme. The enhancement programme is given statutory recognition under s 310 (southern scallop enhancement programme). The rotational fishing programme is approved annually by the Minister of Fisheries under s 11. Specific area closures necessary to ensure stock enhancement and/or efficient harvesting can be implemented under the provisions of s 313 (closures of the southern scallop fishery). Both ss 310 and 313 only apply to the southern scallop fishery.

17 Section 14(4) makes it explicit that a TAC can be set at zero under s 14(1), or varied to zero under s 14(3). This approach may be necessary in order to conserve depleted stocks, or for the setting of TACs in QMAs where the stock does not exist or for which there is no information.

18 Section 14(5) provides that any TAC set or varied under s 14 will normally have effect on or from the first day of the next fishing year for the stock concerned. However s 14(6) provides for within fishing year increases of TACs for stocks listed on the Third Schedule. Under s 14(7), within fishing year increases to the TAC are limited in duration to the year that they apply. For the following year such TACs will revert to the TAC that formerly applied (unless varied under s 14(3)).

19 The combined provisions of s 14(6) and (7) may be used by the Minister to manage catch limits in highly variable fisheries that are listed on the Third Schedule, and for which information on current biomass is available within a fishing year. In such cases the TAC can be increased. Section 14 does not provide for a within fishing year decrease of a TAC.

20 Section 14(8) provides that the Governor-General may, by Order in Council, omit from the Third Schedule the name of any stock. The Governor-General may also add a stock to the Third Schedule, if he or she is satisfied that one of the [three] prescribed conditions is met.

21 Section 13(10) clarifies that for stocks managed under s 13 the Minister does not have to set an initial TAC for a stock already in the QMS prior to 1996, unless he or she proposes to vary a TACC for that area or stock under s 20. While no express provision exists for stocks listed on the Third Schedule, a similar requirement would apply through association.

## Discretion

22 Section 14(1) provides that, notwithstanding anything in s 13 of the Act, the Minister may set an alternative TAC for any stock listed on the Third Schedule. The setting of a TAC under one of ss 13, 14 or 14A for each stock introduced into the QMS is, however, mandatory. For stocks listed on the Third Schedule it is at the Minister's discretion as to whether he/she sets a TAC under either ss 13 or 14.

23 Section 14(3) states that the Minister may vary any TAC set under s 14(1), hence discretion exists as to whether or not to vary a TAC. The discretion over if and when TACs are varied under s 14(3) implies that there is no fixed period for the review of stock status.

24 Further, s 14(4) states that a TAC set under s 14(1) or varied under s 14(3), may be at, or to, zero. There is discretion as to if and when this approach is to be implemented.

25 In setting a TAC under s 13, the Minister is required to achieve over time a stock level at or above that which can produce the MSY (as defined in s 2) for the stock, after having regard for the interdependence of stocks. The ability to set an alternative TAC for a stock under s 14 arises from the recognition that for some stocks MSY may not be the best criterion to achieve the purpose of the Act. The broad characteristics of stocks for which alternative TACs may be appropriate are outlined in s 14(8)(b). At the time of enactment of the FA 96 only squid (all QMAs) and southern scallops were included on the schedule. These provisions provide some discretion for the Governor-General in determining whether to add or omit stocks from the Third Schedule.

26 Stocks that are listed on the Third Schedule may also have their TACs varied upwards within a fishing year. There is discretion as to whether a TAC should be varied during a fishing year, and whether it is this mechanism that needs to be used to manage highly variable stocks subject to an alternative TAC.

27 For fishstocks already in the QMS prior to the passage of the FA 96, TACs do not have to be set until TACCs for those stocks are varied. There is discretion over whether TACs for such stocks are set earlier than required by the Act.

### Limitations on Discretion

28 All setting or varying of TACs under s 14(1), (3) or (6) by way of a notice in the *Gazette* can only be done under the authority of the Minister. Any variations to a TAC can only take effect at the beginning of a fishing year.

29 A TAC may be varied upwards during a fishing year pursuant to s 14(6). Within fishing year increases can only be considered if supported by information related to the relative or absolute abundance of the stock during the current fishing year.

30 While discretion exists over the periodicity of the review of the status of stocks, this period should be appropriate to the natural variability of the stock, after having regard to the interdependence of stocks. If the best available information suggests that the sustainability of a stock at the current or target biomass level is not ensured, then there is an implied obligation to

review the stock status.

31 The discretion as to whether a TAC is set or varied under s 13 or s 14, is limited in that those stocks that have TACs set or varied under s 14 must be listed on the Third Schedule, and hence meet the [three] broad characteristics outlined in s 14(8). Only the Governor-General has the authority to add or omit stocks to or from the Third Schedule.

### **Legislative Intent**

32 The QMS is intended to be the primary management mechanism for commercial fisheries within the Exclusive Economic Zone (EEZ). For each stock in the QMS, a TAC is required to be set, and following a review may be varied. In most circumstances, setting the TAC at a level that will allow the stock to move towards a level that can produce the MSY best achieves the purpose of the Act.

33 Through s 14, Government have recognised that in some circumstances the TAC for a QMS stock can be set with reference to stock levels other than that which can produce MSY (if appropriate due to the special circumstances relating to that stock). A limited number of circumstances have been recognised in s 14(8), and a stock must be listed the Third Schedule before a TAC can be set under s 14. Even once a stock is listed on the Schedule, the Minister retains discretion as to whether he or she sets a TAC under s 13 or s 14. This sequence of steps is intended to ensure that alternative TACs are only set in appropriate circumstances.

34 For stocks listed on the Second or Third Schedule's to the Act, there may be merit in considering increases in the TAC during the fishing year. Use of this provision is conditional upon the availability of data on abundance that relates to the current year. Furthermore, to avoid TACs being set at high levels, but without abundance data to support this in subsequent years, the intent is for any within fishing year TAC increases to be limited to the fishing year to which the available information relates.

35 In relation to the southern scallop fishery, Government has given statutory effect to the rotational fishing and enhancement programmes that support the inclusion of the fishery on the Third Schedule. The enhancement programme is empowered under s 310 of the Act, and represents a continuation under statute of a management initiative first established in 1983. The rotational fishing programme is subject to the considerations of s 11, and its implementation may be assisted by the provisions of s 313. The area closures to the commercial fleet that establish the rotational fishing strategy were first implemented in 1989, and allow for enhanced and wild stocks to both contribute to the spawning biomass and reach harvestable size before being subject to commercial fishing. At all times area closures are intended to protect sufficient adult stocks to ensure adequate recruits to the fishery.

## Relevant policy issues and proposed policy principles

36 The objectives of this policy definition are to develop policy on:

matters that the Minister would consider before recommending to the Governor-General that a stock be added or omitted from the Third Schedule under s 14(8).

when the Minister would consider setting a TAC pursuant to s 14(1).

when the Minister would consider varying a TAC pursuant to s 14(3).

when the Minister may consider setting or varying a TAC at, or to, zero in accordance with s 14(4).

when the Minister may consider increasing a TAC for a stock listed on the Third Schedule during a fishing year pursuant to s 14(6).

### Adding or omitting stocks to, or from, the Third Schedule

37 A stock may be included on the Third Schedule as part of, or following, the introduction of a stock into the QMS. The Minister would recommend adding a stock to the Third Schedule if he or she was satisfied that one or more of the criteria outlined in s 14(8) were met. Before making such a recommendation, the Minister has to meet the consultative obligations of s 12. If the Minister supports the inclusion of the stock on the Third Schedule, a recommendation would be made to the Governor-General to that effect.

38 For a stock already managed under the QMS and subject to a TAC set under s 13 of the FA 96, the Minister would consider the merits of a proposal to add a stock to the Third Schedule, before agreeing to consult with stakeholders over the proposal. The initial proposal could come from any person with an interest in the stock or the effects of fishing on the stock or area concerned.

39 All considerations of the suitability for a stock to be added to the Third Schedule should include an evaluation of whether the provisions of Parts II and III (the 'front end') of the FA 96 are met by the proposal. Any proposal must be consistent with these obligations if it is to be advanced.

40 The current conditions that must be met before the Governor-General could add a stock to the Third Schedule are specified in s 14(8)(b):

*A stock for which it is not possible, because of the biological characteristics of the species, to estimate MSY*

41 At the time of the passage of the FA 96, one stock that was already managed under the

QMS was included on the Third Schedule in accordance with this criterion;

squid (*Nototodarus sloani*, *Nototodarus gouldi*) - all QMAs.

42 As further stocks are introduced into the QMS there may be other instances where it is not possible, because of the biological characteristics of the species (or species mix) involved, to estimate MSY. The information principles embodied in Part II of the Act set out the information standards that decision makers must be guided by in assessing this criterion. These principles are interpreted as requiring high quality scientific advice to support the inclusion of further stocks on the Third Schedule.

43 The situation may arise whereby the best available scientific advice subsequently demonstrates that MSY can be reliably estimated for a stock, that had previously been listed on the Third Schedule because it could not be. In these situations, the Minister would consider setting a TAC for that stock under s 13. The Minister may also recommend to the Governor-General that the stock be omitted from the Third Schedule. This step may be taken once the new management regime under s 13 is demonstrably the most effective.

*A stock that has a catch limit for New Zealand determined as part of an international agreement*

44 At the time of the passage of the FA 96, no stocks already within the QMS were included on the Third Schedule in accordance with this criterion.

45 The inclusion of such stocks in the future will be dependent on decisions being made pursuant to ss 18 and 19 of the Act, to introduce stocks subject to international agreements into the QMS. Stocks that may need to be considered may include migratory stocks and, potentially, straddling stocks, depending on the nature and extent of New Zealand's international obligations at that time.

46 Where the international agreement for a catch limit is not based on MSY, then if such stocks are to be managed under the QMS they will need to be listed on the Third Schedule. However, if the international agreement is based on maintaining stocks at a level that is at or above a level that can produce the MSY, then there is no statutory requirement to manage the stock under an alternative TAC. Under these circumstances, recommending the stocks inclusion on the Third Schedule is a matter of discretion for the Minister.

47 The breakdown of an international agreement that is not based on MSY, would not automatically lead to a recommendation to omit a stock from the Third Schedule. Removal of a stock from the Third Schedule could be appropriate if a TAC was able to be set in accordance with s 13(2). Otherwise the stock would need to remain on the Third Schedule to allow management under an alternative TAC.

*A stock managed on a rotational or enhanced basis*

48 At the time of the passage of the FA 96, one stock that was already managed under the QMS was included on the Third Schedule in accordance with this criterion;

## Scallops (*Pecten novaezelandiae*) - southern scallop fishery.

49 The Act links the criterion of rotational fishing and enhancement with ‘or’ under s 14 (8)(b)(iii), so one or both of these strategies could result in the setting of an alternative TAC. However the consideration of further stocks being added to the Third Schedule on the basis of being an enhanced fishery, requires a policy for integrating enhancement of fisheries into the overall fisheries management framework.

50 If additional stocks were to be considered for addition to the Third Schedule on the basis of being supported by a rotational fishing regime, then this would be most applicable to sedentary stocks. Rotational fishing was developed with reference to scallops and its application to mobile fishstocks is yet to be further evaluated. Any proposal to have rotationally fished stocks added to the Third Schedule would need to be consistent with the full range of overarching provisions contained in Part II of the FA 96. It would also have to demonstrably meet the criteria of better meeting the purpose of the Act, than management under a TAC set in accordance with s 13.

51 At the time southern scallops were included on the Third Schedule, both rotational fishing and an enhancement programme supported the fishery. A recommendation to omit southern scallops would only be necessary if the combination of enhancement and rotational fishing failed to ensure the sustainability of the fishery. Subsequent to the enactment of the FA 96, scientific advice has demonstrated that rotational fishing, even in the absence of enhancement, provides for the sustainability of that stock. While enhancement may still occur, it is not a prerequisite for ensuring sustainability in the southern scallop fishery.

52 In the case of further stocks being considered for inclusion on the Third Schedule due to management on a rotational basis, a failure of that rotational strategy to ensure the sustainability of the stock would normally lead to the setting of a TAC under s 13 of the Act. If any rotational strategy were unable to be modified to ensure sustainability, a recommendation to remove the stock from the Schedule would be appropriate.

### **Removing a stock from the Third Schedule**

53 The Minister may recommend to the Governor-General that a stock be omitted from the Third Schedule. The reasons for initiating such a recommendation would normally relate to rationale for the stock being initially listed on that Schedule no longer applying.

54 There is no mandatory requirement to omit a stock from the Third Schedule. The Minister has the discretion to set or vary a TAC under s 13 for stocks managed under the QMS if the management framework that supports the stocks inclusion on the Third Schedule does not perform as anticipated.

### **Setting a TAC pursuant to s 14(1)**

55 For a stock listed on the Third Schedule of the Act, the Minister has a choice as to whether a TAC is set pursuant to ss 13(1) or 14(1). The Act requires that the default choice is to set a TAC pursuant to s 13, unless the purpose of the Act is better served by setting a TAC under s 14(1).

56 In considering whether or not to set a TAC under s 14(1) for a stock listed on the Third Schedule, the Minister would need to be provided with an initial proposal that demonstrated the ‘alternative’ approach better achieved the purpose of the Act. Once set under s 14(1), a TAC must continue to remain in force until varied under s 14(3) or a new TAC is set under s 13(1).

57 The nature of the alternative management regime provided for under s 14, means that the TAC may not necessarily be the primary measure that ensures the sustainability of the stock. In particular, there is potential for a disparity between the TAC and available catches, in that actual catches may be well below the TAC.

58 The extent of this disparity will depend on the role that supporting management measures (evaluated in accordance with s 11) have in controlling the effects of fishing and ensuring the sustainability of the stock. For instance, key management measures for southern scallops include enhancement and rotational fishing programmes, and in this fishery the TAC, once set, may assist with managing intra-sector allocative issues, rather than being the primary mechanism for ensuring sustainability.

59 On the other hand a TAC set as part of an international agreement will normally be regarded as the primary sustainability measure, even if that agreement is not based on MSY.

#### **Varying a TAC under s 14(3)**

60 To facilitate the review of a TAC set under s 14(1), MFish should operate a business process that allows sustainability issues to be identified and evaluated. The Minister may agree to consult over a sustainability issue concerning a stock managed under an alternative TAC. However, before taking any action he or she is required to meet the consultative obligations of s 12, and then following that, take into account the matters specified in s 11(1) and 11(2A), and have regard to any relevant provisions of the plans specified in s 11(2). These steps assist with defining the full nature of the problem and considering possible solutions, including those that may not require a sustainability measure to be set or varied.

61 Having met those obligations and those arising from ss 5, 8, 9, and 10 of the Act, the Minister is able to consider setting or varying a sustainability measure under s 11(3), in order to manage any adverse effect of fishing. If the Minister decides to vary a TAC in order to manage such an effect, then the provisions of s 14(3) (or s 13(4)) are invoked, and a TAC may be varied.

62 The Act normally requires the full range of management options to be examined. But if, in the case of an alternative TAC, the best available information suggests that such a TAC no longer better meets the purpose of the Act, then a variation to, or the setting of, a ‘default’ TAC (s 13(4)) would be expected to follow.

63 A decision to vary a TAC needs to be supported by relevant information. For some stocks the setting of what are, in effect, multi-year TACs may be appropriate. TACs for some stocks may be reviewed over a time period that fits with the available research information, after having regard to the biological characteristics of the stock in question and of interdependent stocks.

64 Where multi-year TAC strategies are set in place, decision rules should be developed to address situations where the stock may be coming under stress, (or at the other end of possibilities be exhibiting high abundance), during the intervening years. This may best be achieved through a fisheries plan approved under s 11A.

#### **Setting or varying a TAC at, or to, zero under s 14(4)**

65 Section 14(4) provides the Minister with the explicit authority to determine a TAC of zero. This provision may be invoked in situations where there are strong biological reasons for prohibiting all removals from a stock in order to ensure sustainability.

66 A TAC of zero may also be appropriate for a single species target fishery where there is a requirement for a rapid rebuild. While the FA 96 contains a range of offence and defence provisions that address an overrun of a TAC, setting a TAC of zero in a situation where the stock is inevitably taken as a by-catch may not be effective. If it was important to prohibit extractions entirely, method closures may also be required to reinforce a TAC of zero.

67 In some circumstances a TAC may need to be set at zero when a stock listed on the Third Schedule is introduced into the QMS. This may apply within a QMA where the stock either does not exist, or for which there is no reliable information on stock abundance. In these situations the TAC could be set at zero, until new information is available that demonstrates that sustainable yields can be taken from the stock within the QMA in question, or the Minister approves an exploratory fishing regime, consistent with Part II of the Act.

#### **Increasing the TAC of a stock on the Third Schedule during a fishing year**

68 TACs for stocks are usually set or varied at the beginning of the fishing year. There is scope for varying TACs for stocks listed on the Third Schedule (upwards but not downwards) during a fishing year. This may assist in managing species whose abundance is highly variable, in a manner similar to the provisions of s 13(7) of the FA 96.

69 Varying TACs for stocks listed on the Third Schedule requires high information thresholds to be met. If a TAC is set for a stock in anticipation that that stock will have high abundance in that year, but this does not eventuate, then there may be associated implications for ensuring sustainability. These implications may not so much relate to the stock concerned (as many Third Schedule stocks may be resilient to the impact of harvesting), but to interdependent stocks, or associated or dependant species. Fishers may have problems keeping within their by-catch holdings or avoiding species that are not managed for harvest while endeavoring to catch the target stock (which in turn may not be as abundant as the TAC might infer). However when abundance is high, an inability to take surplus yields when they are available may represent lost potential from the fishery.

70 In a fishery where there is a substantial differential between the expected or actual catch, and the TAC, unused quota may be used to acquire minimum quota holdings as a cover for illegal activities. While the FA 96 contains provisions that deal with over-fishing of TACs, the setting of unobtainable TACs would place unnecessary demands on the compliance regime for by-catch

stocks.

71 Management of a highly variable stock may not be the only reason necessitating a within fishing year increase of a TAC. An upwards variation of an international agreement, or new information concerning the biology of a stock and its resilience to fishing, may also support such a management response.

72 Where information is available on stock abundance within a fishing year, s 14(6) provides that the TAC may be increased for any stock listed on the Third Schedule. This provision allows stakeholders to take advantage of any increased abundance for the remainder of the fishing year. Following the completion of the fishing year, the TAC reverts to its former level unless varied under s 14(3).

73 However, due to the range of management options available through s 14, setting or varying an alternative TAC under s 14(1) or (3) may negate the need for within fishing year increases under s 14(6). As an example, a TAC may be able to be set at a high level in relation to current biomass in situations where supporting management measures ensure the sustainability of the stock. Such an arrangement routinely operates in the southern scallop fishery, where internal arrangements by quota owners control the availability of quota in accordance with stock abundance, and with the approval of the Minister of Fisheries.

74 The Minister would consider increasing a TAC within a fishing year for a Third Schedule stock, following an application from a representative harvester group. The application should have substantial support from the relevant harvester group(s), and should report the views of other affected stakeholders.

### **Links to other parts of the Fisheries Act**

75 All policies for s 14, must be consistent with the overriding purpose and principles of the FA 96, clarified in policies for s 5 (Application of international obligations and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992), s 8 (Purpose), s 9 (Environmental principles) and s 10 (Information principles).

76 Section 14 prescribes steps for the setting and varying of alternative TACs. An alternative TAC, once set, is a sustainability measure (defined under the Act as being *any measure set or varied under Part III of the Act for the purpose of ensuring sustainability*). It differs from a TAC set under s 13, because when setting or varying an alternative TAC the Minister is able to consider whether that management response would better meet the purpose of the Act. This reinforces direct and strong linkages between this definition, and the policy definitions for ss 8 and 13.

77 New stocks are brought into the QMS via the provisions of ss 18 and 19. Key considerations required under these sections include the determination of one or more species that form the stock, and the declaration of a QMA for each stock. The requirement to make these decisions before determining catch limits creates strong linkages between these sections, and policy definitions for ss 13, 14 and 14A (which all provide for the setting of TACs). Linkages with ss 14 and 14A are reinforced through the need for certain criteria to be met on an ongoing basis, before

TACs can be set under those sections. Otherwise the Act requires TACs to be set or varied under s 13.

78 Before doing anything under s 11 or s 14, the Minister is required to consult in accordance with the obligations set out in s 12. Consultation will assist the Minister in determining the best course of action to take to any given situation. This means there are important linkages between the policy definition for s 12, s 11 and s 14.

79 Prior to deciding to vary any sustainability measure in the form of a TAC or TCL, the Minister for Fisheries must ensure that the matters outlined in s 11(1) and s 11(2A) are firstly taken into account, and the matters outlined in s 11(2) are had regard to. Having done that, the Minister would need to be satisfied that varying a TAC was the best option to address a sustainability issue. These obligations create linkages with the policy definition for s 11.

80 While the TAC is an important sustainability measure under the Act, supporting measures including those outlined in s 11(3) can be implemented in order to ensure sustainability. In the case of a stock listed on the Third Schedule, supporting management measures may represent the primary means of ensuring sustainability. This reinforces linkages with s 11.

81 TAC decisions made under s 14, lead on to decisions made under s 20 (TACC setting) and s 68 (within fishing year allocation of a higher TAC) of the Act. Having set a TAC, the Minister is required to allow for all other forms of mortality under s 21, before setting a TACC for each stock in the QMS under s 20. A linkage is therefore established between policy definitions for s 14, and for ss 20 and 21. No policy definition has been prepared for s 68.

### **Application of Section 14**

82 A TAC can only be set or varied under s 14 if a stock is listed on the Third Schedule to the Act. Only stocks that meet the criteria of s 14(8)(b) can be considered for inclusion on the Third Schedule. The Minister makes a recommendation to the Governor-General as to which stocks meet this criteria, and periodically reviews this recommendation. Only the Governor-General has the authority to add or omit stocks to, or from, the Third Schedule, by way of an Order in Council.

83 Where stocks are listed on the Third Schedule to the Act, it does not automatically follow that a TAC will be set or varied under s 14. The test will be whether a TAC set or varied under s 14 will better meet the purpose of the Act, than a TAC set under s 13.

84 MFish needs to develop a business process that provides for the setting or varying of TACs. The need to set a TAC for a stock listed on the Third Schedule under s 14 may arise through different circumstances:

- On the entry of a stock into the QMS (following a decision under s 18).
- For stocks introduced into the QMS prior to 1996, TACs are to be set as TACCs are varied (consistent with s 13(10)).
- Following the alteration of a QMA (pursuant to s 25).

85 Once set, the TAC may be varied under s 14(3). This would occur where the Minister decides to vary an alternative TAC (in response to a threat or opportunity to ensuring sustainability) through considerations required by s 11(3)(a)).

86 Before deciding to set or vary a TAC under s 14, the Minister must first meet his or her consultative obligations under s 12. Following that, the matters specified under s 11(1), (2) and (2A) need to be considered.

87 Explicit provision is made for the Minister to be able to set or vary a TAC at, or to, zero. This should only apply where there is no information to support the initial setting of TACs, where such an action is deemed necessary to ensure the sustainability of the stock, or where relevant biological, environmental, social, economic and cultural considerations support a rapid rebuild of a depleted stock.

88 The TAC of a stock listed on the Third Schedule is able to be varied upwards within a fishing year. A process for reviewing TACs for these stocks within the fishing year should be provided by harvesters, and the evaluation of the need to increase a TAC during this time must be based on information related to the current fishing year. Such TACs can be increased under s 14(6), but must revert to the initial TAC for the start of the following fishing year (unless varied under s 14(3)).

89 Section 14 may also provide for explicit non-statutory alternatives to within fishing year increases to stocks whose abundance is highly variable. It may be more effective for harvesters to implement lease-back arrangements that have the same effect as the statutory provisions.

## Appendix: A

**14. Alternative total allowable catch for stock specified in Third Schedule—**(1) Notwithstanding anything in section 13 of this Act, if satisfied, in the case of any quota management stock listed in the Third Schedule to this Act, that the purpose of this Act would be better achieved by setting a total allowable catch otherwise than in accordance with subsection (2) of that section, the Minister may at any time, by notice in the Gazette, set in respect of the quota management area relating to the quota management stock a total allowable catch for that stock that he or she considers appropriate to achieve the purpose of this Act.

(2) Every total allowable catch set under subsection (1) of this section for any stock shall continue to apply in each fishing year for the stock unless varied under subsection (3) of this section.

(3) The Minister may from time to time, by notice in the Gazette, vary any total allowable catch set under subsection (1) of this section for any stock by increasing or reducing the total allowable catch.

(4) Without limiting subsection (1) or subsection (3) of this section, the Minister may set or vary any total allowable catch at, or to, zero.

(5) Except as provided in subsection (6) of this section, every setting or variation of a total allowable catch shall have effect on and from the first day of the next fishing year for the stock concerned.

(6) After considering information about the abundance during the current fishing year of any stock listed in the Third Schedule to this Act, the Minister may, by notice in the Gazette, increase the total allowable catch for the stock with effect from such date in the fishing year in which the notice is published as may be stated in the notice.

(7) If a total allowable catch for any stock has been increased during any fishing year under subsection (6) of this section, the total allowable catch for that stock shall, at the close of that fishing year, revert to the total allowable catch that applied to that stock at the beginning of that fishing year; but this subsection does not prevent a variation under subsection (3) of this section of the total allowable catch that applied at the beginning of that fishing year.

(8) The Governor-General may from time to time, by Order in Council,—

(a) Omit the name of any stock from the Third Schedule to this Act:

(b) Add to that Schedule the name of any stock if-

(i) It is not possible, because of the biological characteristics of the species, to estimate maximum sustainable yield; or

(ii) A catch limit for New Zealand has been determined as part of an international agreement; or

(iii) The stock is managed on a rotational or enhanced basis.